

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

MILWAUKEE INNERCITY CONGREGATIONS  
ALLIED FOR HOPE, 1000 FRIENDS OF  
WISCONSIN, SIERRA CLUB, and MILWAUKEE  
RIVERKEEPER,

Plaintiffs,

v.

Case No.

UNITED STATES DEPARTMENT OF  
TRANSPORTATION, PETE BUTTIGIEG, Secretary of  
the United States Department of Transportation,  
FEDERAL HIGHWAY ADMINISTRATION,  
SHAILEN BHATT, Administrator of the Federal  
Highway Administration (FHWA), GLENN  
FULKERSON, Division Administrator of the FHWA  
Wisconsin Division Office, and CRAIG THOMPSON,  
Secretary of the Wisconsin  
Department of Transportation,

Defendants.

---

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

---

**INTRODUCTION**

1. State and federal transportation officials have decided to reconstruct, expand and add travel lanes to a segment of the I-94 interstate highway running from 16<sup>th</sup> to 70<sup>th</sup> streets right through the city of Milwaukee, and to greatly enlarge the Stadium Interchange near the middle of the project. They plan to spend about \$1.75 billion of federal and state funds to do so, but refused

to meaningfully consider a reasonable alternative that would incorporate a public transportation element into the project - even though the same plans that they use to justify this project make clear that a substantial expansion of public transit in the region is necessary, and even though incorporating transit would meet the purpose and need of the project.

2. These officials also have failed to adequately (or at all) consider or mitigate adverse effects on the predominantly non-white residents of the project area, including effects on air quality, health and mobility caused by the anticipated 7 years-long construction of the project. They have failed to adequately consider or mitigate long term effects, including effects on air and water quality from increased emissions and from the 54 additional acres of highway right of way and 27 additional acres of pavement; increased urban sprawl and associated segregation; and the unequal distribution of the benefits and burdens of transportation system investments.

3. Plaintiffs Milwaukee Innercity Congregations Allied for Hope, Inc. (MICAHA), 1000 Friends of Wisconsin, Inc. (“1000 Friends”), the Sierra Club and Milwaukee Riverkeeper Inc. (“Riverkeeper”) therefore bring this action challenging the final approval of this Wisconsin Department of Transportation (WisDOT) project by the U.S. Department of Transportation (USDOT) and Federal Highway Administration (FHWA). FHWA’s final action approving the expressway project is unlawful because the action was based on a Final Supplemental Environmental Impact Statement (FSEIS) that Defendants prepared and approved with an unreasonably restrictive purpose and need statement; without adequate consideration of all reasonable alternatives; without adequate consideration of a wide range of project impacts, including social, racial, economic, land use, environmental, employment, indirect and cumulative impacts; and without adequate consideration of mitigation requirements and options.

## I. JURISDICTION AND VENUE

4. This action arises under NEPA, 42 U.S.C. § 4321 *et seq.* and the APA, 5 U.S.C. § 551 *et seq.*

5. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1361.

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(e) because the project is in this district and a substantial portion of the events or omissions giving rise to the claims occurred in the district.

7. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a).

8. This Court may issue a declaratory judgment and injunctive relief under 28 U.S.C. §§ 2201- 02.

## II. PARTIES

### A. *Plaintiffs*

9. Plaintiff MICAH is a multi-racial, interfaith organization committed to addressing justice issues that have an impact on the community and on the members of MICAH's three dozen member congregations. It is a non-stock corporation with its principal place of business at 1927 N. 4th St., Milwaukee, WI 53212. Among the justice issues that MICAH has long worked to address are jobs for unemployed and underemployed members and for the communities in which they live and the associated need for public transportation to access jobs that do exist. It has used and diverted its resources, through its Jobs and Economic Development Committee and Transportation Work Group, to organize, advocate and educate for improved public transportation. MICAH also organizes to seek health equity in Milwaukee and has used and diverted its resources to do so, including hiring a staff member devoted to that issue. MICAH has submitted testimony

on this project, including comments on the I-94 November 2014 Draft EIS (DEIS), the January 2016 Final EIS (FEIS) and the November 2022 Draft Supplemental EIS (DSEIS).

10. Most MICAH congregations are in Milwaukee, and most of MICAH's members live in Milwaukee. MICAH's office is in a predominantly minority neighborhood, many MICAH congregations are located in predominantly minority neighborhoods, and many members of those congregations are Black and Latino. Many MICAH members are also transit-dependent and unemployed or underemployed, use transit to access employment and other activities and services, and may suffer greater adverse health effects from the currently approved project than if a reasonable alternative with less highway expansion and more transit is constructed. In addition, members of MICAH include residents of neighborhoods adjacent to the I-94 East-West Project. The interests of MICAH members fall within the zone of interests protected by the laws sought to be enforced in this action.

11. In addition, individual MICAH members are affected by this project. For example, Adele Nance is a MICAH member who has been involved in MICAH's transportation equity work. She is a person of color who lives in a predominantly non-white neighborhood. She works as a caregiver, primarily across town and on the other side of the project area at St. Luke's Hospital on South 27<sup>th</sup> St. Having increased and improved transit options would positively impact her employment. She also uses public transportation to get to other activities and appointments. Ms. Nance objects to expanding I-94 to help suburban residents who do not live in Milwaukee get to and from their homes a few minutes faster and believes that doing so harms Milwaukee residents.

12. Joyce Ellwanger is a long-time MICAH member and leader in MICAH's transportation equity work who is deeply concerned about the effect of highway expansion and transit disinvestment on the City's communities of color. For the past 57 years, she has lived in a

predominantly non-white Milwaukee neighborhood three blocks from Interstate highway ramps. Ms. Ellwanger gave up her car three years ago due to concerns about CO<sub>2</sub> emissions and climate change. Now, she primarily depends on public transportation to get to appointments and activities around the city, including a school where she volunteers, community meetings in various locations, city and county board hearings, and libraries. As an 87-year-old with a chronic cough, Ms. Ellwanger will increasingly rely on public transit in the future.

13. Chuck Ellingson is a longtime active member of Cross Lutheran Church, a MICAH congregation. He lives in the city of Milwaukee and does not own a car. He uses public transportation frequently to get to and from work, medical appointments, church, recreational events and other activities even though using public transit can sometimes be inconvenient because of infrequent service, especially on Sundays. Mr. Ellingson's public transit use includes options that run through the project area and likely will be disrupted by years of construction.

14. Plaintiff 1000 Friends is a non-stock corporation incorporated in 1996 under the laws of the State of Wisconsin, and its principal place of business is Madison, WI 53725. It has approximately 1,500 members and supporters. 1000 Friends was organized in 1996 to advocate and promote uses of land, water, and air that shape healthy communities where people want to live, work, and play. It has fostered that objective since its inception through work that focuses on helping communities make the connection between land use and transportation decisions and Wisconsin's economic, environmental, and physical and mental health. It has used and diverted its resources to organize, advocate and educate for improved public transportation. It has also submitted testimony on these issues, including comments on the I-94 Draft Environmental Impact Statement (DEIS), Final Environmental Impact Statement (FEIS), and Draft Supplemental

Environmental Impact Statement (DSEIS) for this project.

15. 1000 Friends has members who live near the portion of I-94 that is the subject of this project and/or routinely use that highway and its connecting roads for work and personal purposes. Members of 1000 Friends will be adversely affected and injured by this expansion project in numerous ways, including but not limited to adverse effects on the health of their families and enjoyment of life due to increases in noise, air, and water pollution where they live and work. They will also be adversely affected by the cumulative impact on land use and development patterns of this expansion project, together with the many other major highway expansion projects in the Milwaukee area which have already been constructed, are currently under construction, or are planned for the future. The interests of 1000 Friends in this action fall within the zone of interests protected by the laws sought to be enforced in this action.

16. Plaintiff Sierra Club was founded in 1892 and is now the nation's largest and most influential grassroots environmental organization with more than two million members and supporters. The Sierra Club's mission is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out those objectives. The Wisconsin unit of the Sierra Club, known as the Wisconsin Chapter ("Chapter") has more than 12,000 members, including 3,000 members in Southeastern Wisconsin and 1,600 members in Milwaukee County. Its principal place of business is 754 Williamson Street, Madison, WI 53703.

17. Members of the Sierra Club include individuals who are dependent on public transit in Milwaukee County as well as individuals who would prefer to use public transit but are instead dependent on using automobiles for some or all of their travel within the region because of

inadequacies in the public transit system. Chapter members in the Milwaukee area include Black and Latino persons. The Chapter has used and diverted its resources to organize, advocate and educate for improved public transportation. It has also submitted oral and written testimony on these issues, including comments on the I-94 November 2014 Draft EIS (DEIS), the January 2016 Final EIS (FEIS) and the November 2022 Draft Supplemental EIS (DSEIS).

18. The Chapter also has members, including residents who live in neighborhoods adjacent to the project, who may suffer greater adverse health effects from the higher vehicle air emissions expected from the project as approved, than if a reasonable alternative with less highway expansion and more transit is constructed. The interests of Chapter members fall within the zone of interests protected by the laws sought to be enforced in this action.

19. Plaintiff Riverkeeper is a non-stock corporation (incorporated originally as Friends of the Menomonee River) under the laws of the State of Wisconsin, with its principal place of business at 600 East Greenfield Avenue, Milwaukee, WI 53204. Milwaukee Riverkeeper is a science-based advocacy organization working for swimmable, fishable rivers throughout the Milwaukee River Basin. It has approximately 5,000 members, supporters, and volunteers, including many who live near this segment of I-94. It has used and diverted its resources to organize, protect, advocate and educate for protecting and improving these waterways, for improved public transportation, and against unnecessary highway expansions. It has also submitted testimony on these issues, including comments on the I-94 Draft Environmental Impact Statement (DEIS), Final Environmental Impact Statement (FEIS), and Draft Supplemental Environmental Impact Statement (DSEIS) for this project.

20. Members of Riverkeeper live near the portion of I-94 that is the subject of this highway expansion project. Its members routinely use that highway, and roads connecting to it,

for work and personal purposes.

21. Riverkeeper's programs include river cleanups, water quality monitoring, stream restoration and educational activities. Riverkeeper also leads kayaking, canoeing, and other boat trips for its members and for the public, who enjoy, recreate on, and use the Menomonee River which is adjacent to this portion of the I-94 corridor, as well as the Milwaukee River and Milwaukee River Estuary downstream. Milwaukee Riverkeeper also created and manages the Milwaukee Urban Water Trail, which educates members of the community on how to safely and legally access Milwaukee's rivers for paddling, fishing, and other uses. Members of Riverkeeper will be adversely affected and injured by the highway expansion project in numerous ways, including but not limited to adverse effects caused by the quality and quantity of water discharged by the expanded highway to the Menomonee River, the resulting harms to the aquatic ecosystem, and by increased noise, air, and water pollution, resulting in their reduced enjoyment of the waterway. The interests of Riverkeeper in this action fall within the zone of interests protected by the laws sought to be enforced in this action.

**B. *Defendants***

22. Defendant Craig Thompson is the Secretary of the Wisconsin Department of Transportation. His principal place of business is the Hill Farms State Office Building, 4822 Madison Yards Way, Madison, WI 53705. He is sued in his official capacity only.

23. The Wisconsin Department of Transportation ("WisDOT") is the agency within the State of Wisconsin primarily responsible for highway planning, funding and construction. Its primary administrative office is the Hill Farms State Office Building, 4822 Madison Yards Way, Madison, WI 53705.

24. In conjunction with FHWA, WisDOT prepared, reviewed and approved the FSEIS



for the project. WisDOT also held hearings as part of the process of preparing the FSEIS.

25. References to the “state defendant” are to Defendant Thompson.

26. Defendant Shailen Bhatt is the Administrator of the Federal Highway Administration (FHWA), an agency of the U.S. Department of Transportation. He is sued in his official capacity only.

27. Defendant Glenn Fulkerson is the Division Administrator of the FHWA Wisconsin Division Office, which is located at 525 Junction Road, Suite 8000, Madison, Wisconsin, 53717. He is sued in his official capacity only.

28. Defendant FHWA is the agency within USDOT primarily responsible for highway planning and funding. The Wisconsin Division of FHWA, in coordination with WisDOT, was responsible for preparing, reviewing and approving the FSEIS in accordance with NEPA.

29. Defendants Bhatt, Fulkerson and FHWA are referred to collectively as “FHWA.”

30. Defendant Peter Buttigieg is Secretary of the U.S. Department of Transportation (USDOT). He is sued in his official capacity only.

31. Defendant USDOT is the executive department of the federal government responsible for approval of highway projects.

32. Defendants USDOT and Buttigieg are referred to collectively as “USDOT.”

33. References to the “federal defendants” are to the FHWA and USDOT Defendants.

### **III. FACTUAL BACKGROUND**

#### ***A. Facts Relating to Study Area***

34. The relevant portion of I-94 runs east-west through Milwaukee County, and primarily through the city of Milwaukee. At 124<sup>th</sup> St., approximately 3 ½ miles west of the study

area, I-94 enters Waukesha County.

35. Defendants have defined the “primary study area,” in which the greatest impacts of the project will occur, as “portions of Milwaukee, West Milwaukee, Wauwatosa, and West Allis that are adjacent to the project corridor” (Exhibit 3-29). FSEIS at 3-224.

36. Persons of color, predominantly Blacks and Latinos, constitute 59.4% of the primary study area population. FSEIS at 3-53.

37. People in poverty constitute 23.9% of the study area population, with most of that concentrated east of the Stadium Interchange and north of I-94. FSEIS at 3-72. Although the document does not disaggregate poverty by race, the neighborhoods identified as the poorest areas are the neighborhoods in the study area most heavily populated by persons of color, especially Black residents.

38. One in five households in the primary study area have no motor vehicles. FSEIS at 3.8.1.8.

39. Persons in the project area who have jobs are more likely than other Milwaukee County residents to commute to work by transit. *Id.* The FSEIS does not include information on what percentage of persons in the study area are unemployed (and thus do not “commute”) but need or use transit for other purposes, such as getting to school or medical appointments.

40. Defendants have defined the “secondary study area,” which will benefit from the project, as all of Milwaukee and Waukesha Counties. FSEIS at 3-225.

41. The FSEIS shows that the population of Waukesha County has a much smaller proportion of residents of color than does Milwaukee County, FSEIS at 3-70, with the white non-Hispanic population of Waukesha County at 87% and that of Milwaukee County at 49%. FSEIS at 3-70.

42. The FSEIS shows that the median income of Waukesha County households, \$94,310, is more than double the median income of study area households, \$41,370. *Id.* at 3-71.

43. The FSEIS does not include information on what percentage of the secondary study area population consists of zero-vehicle households, but, upon information and belief, those numbers are substantially lower than for persons and households in the primary study area.

44. Construction on the project is expected to last 7 years.

45. The FSEIS anticipates that the construction itself will cause adverse effects, including added construction noise, dust, and air pollution; congestion and disruption of traffic on the I-94 project corridor as well as on connecting highways and surface streets onto which traffic will be diverted; and delays and other adverse effects on the Milwaukee County Transit System's bus service.

46. The burden of those adverse effects will be borne most heavily by the disproportionately non-white residents of the primary study area.

***B. Facts Relating to Purpose and Need***

47. The FSEIS at 1.3 defines the purpose of the project as:

- a. Maintain[ing] a key link in the local, state, and national transportation network.
- b. Address[ing] the obsolete design of I-94 to improve safety and decrease crashes.
- c. Replac[ing] deteriorating pavement.
- d. Accommodat[ing] existing and future traffic volumes at an acceptable level of service

48. The FSEIS at 1.4 explains the need for the project in terms of "a combination of factors," including:

- a. Regional land use and transportation planning.

- b. System linkage and route importance.
  - c. High crash rates.
  - d. Existing freeway conditions and deficiencies.
  - e. Existing and future traffic volumes.
49. Plaintiffs have not objected to replacing deteriorating pavement.
50. Plaintiffs do not object to improving safety, especially by reducing serious crashes which result in significant personal injuries or deaths.
51. The same land use and transportation planning documents upon which Defendants rely to justify this project also explicitly state that a substantial increase in public transportation is required to meet regional transportation needs.
52. The FSEIS at Appendix B-4, Figures 20 and 21 shows that without a substantial increase in public transportation, this project will not achieve the Level of Service D (moderately congested conditions) throughout the planning period that it states that it needs to meet.
53. Nevertheless, Defendants unreasonably and arbitrarily failed to consider a reasonable alternative – either one proposed to them or one they could have developed - that incorporated the needed public transportation improvements, on the grounds that they would not achieve that Level of Service goal.
54. The FSEIS at Appendix B-4, page 32 shows that the approved 8-lane project will increase serious crashes which result in significant incapacitating personal injuries or deaths, compared to the No Build alternative and other alternatives without added travel lanes.

***C. Facts Relating to Transit Dependence***

55. There are significant racial disparities in transit dependence in the Metropolitan Statistical Area (“MSA”) and region, with persons of color being far less likely than whites to have

valid driver's licenses and far more likely than whites to live in "zero vehicle" households.

56. Persons of color use transit at a higher rate than white persons in the region.

57. A disproportionate number of persons of color who have driver's licenses have had those licenses suspended.

58. Persons with disabilities in the region are also disproportionately likely to depend upon public transportation.

59. Although there are many jobs and significant job growth in suburbs outside Milwaukee, including in Waukesha County, there is little transit service from Milwaukee County to Waukesha County or other suburban counties outside of Milwaukee County. Most of the minimal, inter-county transit service that exists has been structured for suburban residents to commute to jobs in downtown Milwaukee, rather than for Milwaukee residents to access jobs in Waukesha County.

60. Persons who commute from Milwaukee County to Waukesha County by car for employment are far more likely than those commuting from Waukesha to Milwaukee to have lower paying jobs, and "it is reasonable to conclude that the cost of owning and maintaining a vehicle is a relatively high burden for this group. A burden that likely discourages many others from pursuing employment opportunities." "Journey to Work, Commuting and 'Reverse Commuting' between Milwaukee and Waukesha County," (2019), FSEIS at Supporting Documentation, Volume 2 of 4.

61. Defendants repeatedly use the existence of "reverse commuting" to justify the project, especially its capacity expansion. But nowhere do they mention – much less analyze – the fact that their own reference materials show that reverse commuters have lower wage jobs and higher cost burdens from commuting. Nor do they acknowledge that the likelihood that the cost of

owning a car precludes many Milwaukee residents from even seeking employment in Waukesha County. Instead, they treat the situations of regular and reverse commuters as identical. This selective use of their own references is arbitrary and unreasonable.

62. Many persons, including a disproportionate number of persons of color and persons with disabilities, depend upon transit to access non-employment services and facilities, including health care, education, shopping, and recreation, as well as for work.

63. The purpose of the I-94 project is not only to address the circumstances of those living or working adjacent to the Project, but also to resolve regional transportation needs.

64. Public transportation is required to address regional transportation needs.

65. The Southeastern Wisconsin Regional Planning Commission (SEWRPC) is the legally designated metropolitan planning organization (MPO) for southeastern Wisconsin.

66. Defendants routinely rely on planning materials prepared by SEWRPC to support their plans and projects, including this project.

67. SEWRPC's Regional Transportation System Plan for 2035 ("2035 Plan") was in effect during the entire time when the DEIS and FEIS were developed, and its Vision 2050: A Regional Land Use and Transportation Plan ("Vision 2050"), was in effect during the time the DSEIS and FSEIS were developed.

68. The 2035 Plan explicitly stated that transit expansion was necessary to ensure that persons of color benefited from regional transportation system investments. The 2035 Plan also stated explicitly that transit improvements were to be given "equal priority" with other improvements and that even during economic downturns it is necessary that "progress in plan implementation, *particularly with respect to public transit*, continues, and is not eroded through service reductions." *Id.* at 366 (emphasis added).

69. The 2035 plan also clearly contemplated that offsetting and enhancing benefits, in the form of improved transit, would be provided for communities of color.

70. The reality, however, is that both before and since the 2035 Plan was adopted there was *both* an erosion of transit service and increases in bus fares.

71. During the process of developing the “Vision 2050” plan, it became absolutely clear that a substantial increase in public transportation was widely desired. For example, a random telephone survey of residents of SEWRPC counties found that 63% of respondents wanted to “improve/expand” public transportation in the region, while only 48% wanted to “improve/expand” state and interstate highways.

72. Similarly, a common theme of public comments on this project involved the need for more public transit. DSEIS at 6-4.

73. SEWRPC’s Vision 2050 plan also made clear that transit expansion was a critical, equitable, outcome for persons of color and persons with disabilities, and that was needed to provide offsetting benefits to those communities.

74. Defendants’ selective use of SEWRPC’s plans is arbitrary and unreasonable and fails to acknowledge, avoid or mitigate adverse effects on disproportionately poor and non-white, transit-dependent persons.

***D. Facts Relating to Segregation and Isolation of Communities of Color***

75. The MSA in which the project is located, as defined by the federal government, includes Milwaukee, Waukesha, Ozaukee and Washington counties, all of which are adjacent to Milwaukee County.

76. In 1990, 2000, 2010 and 2020, the Milwaukee MSA was, overall, the most racially segregated region in the United States for Blacks. There is also significant segregation of Latinos.

77. In 2020, Milwaukee County had a Black population of about 26%, a Latino population of about 16%, and a total minority population of about 51%, while Waukesha County's population was 85.5% white non-Hispanic, and only 1.6% Black and 5.4% Latino. "Within one quarter mile in each direction from I-94 approximately 51% of the population identifies themselves as a minority." FSEIS, App. D at 21.

78. The region's segregation is rooted in a long history of discriminatory governmental policies and actions that have continued into the present century and have been exacerbated by the political climate in many of Milwaukee's suburbs.

79. In metropolitan Milwaukee, freeway construction destroyed neighborhoods, many populated by communities of color. It also facilitated urban sprawl, which was overlaid with, and related to, racial segregation in housing. From 1950 – 1966, although only about 4% of Milwaukee's population was non-white, non-white persons were 33% of those displaced by freeway construction.

80. Racially disparate forms of residential relocations caused by freeway construction compounded the problem, while highway-induced sprawl quite literally paved the way for white flight from the city.

81. The project's capacity expansion elements alone, especially when combined with other recent and planned highway capacity expansion projects in the region, will contribute to and exacerbate suburban sprawl.

82. That sprawl will perpetuate or exacerbate racial segregation and will adversely affect currently undeveloped agricultural and open space land, with harmful environmental impacts.

83. Defendants' failure to acknowledge, avoid or mitigate adverse effects related to



urban sprawl and segregation is arbitrary and unreasonable.

***E. Facts Relating to Poverty and Joblessness***

84. “Within the Milwaukee metro area’s population, there are significant disparities between whites and minorities—far more pronounced than the disparities in almost all other metro areas. Whites on average have significantly higher educational attainment levels and per capita income levels, and a far lower poverty rate. Similar disparities also exist between whites and minorities within the City of Milwaukee itself. There are also significant disparities for education, per capita income, and poverty between City of Milwaukee residents and residents of the rest of the Milwaukee metro area. These geographical disparities in the Milwaukee area exceed the disparities between principal cities and their suburbs in almost all other metro areas.” SEWRPC, “A Comparison of the Milwaukee Metropolitan Area to its Peers,” *Memorandum Report No. 221* (March 2020) at iii-iv.

85. Persons of color in the MSA and region have significantly higher unemployment and joblessness rates than non-Hispanic white persons.

86. Data in the FSEIS which is focused on “commuting to work” does not analyze, address or mitigate the needs or circumstances of persons who do not work.

***F. Facts Relating to Health***

87. Numerous studies show that living near high-volume highways causes adverse health effects.

88. Persons of color in the region are disproportionately likely to suffer from pre-existing health conditions.

89. For example, persons of color in the region, especially Blacks, have far higher rates of air-quality-related respiratory disease, such as asthma, than white persons and less access to

health care.

90. The poorest sections of the primary study area are the Black neighborhoods east of the Stadium Interchange and north of I-94.

91. Poor persons are less likely to have access to health care and/or to the means to ameliorate pollution, such as air conditioning.

92. Information provided to Defendants in comments on the DSEIS, obtained from the federal government's own environmental justice screens, explicitly showed that Black and Latino neighborhoods in the project area were already more adversely affected by health conditions and pollution than white persons.

93. Years of construction-related dust, air pollution, noise and neighborhood disruption will contribute to adverse health effects on persons in the adjacent neighborhoods, especially in poorer, more non-white neighborhoods where there are more extensive pre-existing health conditions. Traffic-related air emissions resulting from this project will contribute to adverse health effects on persons in the adjacent neighborhoods, especially in poorer, more non-white neighborhoods where there are more extensive pre-existing health conditions.

94. Increased air pollution from the expanded highway would also be a significant contributor to increased heart disease incidence, premature death and adverse birth outcomes that have life-long impacts.

95. The qualitative impact of these emissions is not the same for white persons as it is for persons of color. It is also not the same for persons who are not poor as it is for poor persons (who are more likely to be persons of color).

96. Despite having been given a multitude of studies and information during the comment process, Defendants did not conduct a qualitative analysis. Instead, Defendants made

unreasonable, arbitrary and unsupported claims that the effects on all persons near the highway would be the same.

97. Increasing public transit would have beneficial health effects, as information provided to Defendants in the comment process showed. Public transit is a more active form of movement. Encouraging walking even short distances to and from transit stops has a cumulative beneficial impact on physical activity and health while decreasing air pollution.

98. Defendants' failure to analyze, avoid or mitigate adverse health effects, especially the racially disparate burdens of those effects, is arbitrary and unreasonable.

***G. Facts Relating to Air Quality***

99. Portions of the region have long been out of compliance with federal air quality standards.

100. Milwaukee County, Ozaukee County, almost all of Waukesha County, and significant portions of Washington County, Racine County and Kenosha County are Moderate Nonattainment areas for 8-hour Ozone (2015 Standard).

101. Ozone causes adverse effects, including damage to tissues in the respiratory tract, increasing coughing, chest tightness, and worsening symptoms of asthma. Asthmatic children using maintenance medications are particularly vulnerable to exposure to ozone.

102. In February 2024, the United States EPA updated the National Ambient Air Quality Standard (NAAQS) for fine particulate matter or soot (PM<sub>2.5</sub>), lowering the health-based level from 12 to 9 micrograms per cubic meter. Milwaukee County has not met and does not meet that current health-based standard.

103. The FSEIS does not address this reduction in the PM<sub>2.5</sub> standards, nor the fact that Milwaukee County does not meet that standard.

104. PM2.5 causes adverse effects including pulmonary and cardiovascular diseases and premature death.

105. Since the air quality in Milwaukee County fails and has failed to meet the current health-based standards for ozone and PM2.5, protecting the health of Milwaukee County residents requires reductions in emissions of those pollutants rather than expansions of such pollution sources. Considerably greater reductions are required in neighborhoods adjacent to or relatively close to major sources of PM2.5 emissions, such as high-volume interstate highways like this section of I-94.

106. As a result of adding travel lanes and increasing traffic volumes the project will increase ozone and PM2.5 emissions. These increases will be greater than those considered in the FSEIS because the added lanes will result in additional vehicle trips which would not have occurred if those lanes were not constructed. Such induced traffic was not included in Defendants' traffic projections.

107. Transit is an integral and stated method for Wisconsin to comply with Clean Air Act requirements.

108. Public transit also contributes to efficiency in the transportation system, including reduced air pollution and energy consumption. *2035 Plan* at 366.

109. Years of construction will contribute to adverse air quality effects, especially in the adjacent, disproportionately non-white neighborhoods.

110. Traffic-related air emissions resulting from this project will contribute to adverse air quality effects, especially in the adjacent, disproportionately non-white neighborhoods.

#### ***H. Facts Relating to Water Quality***

111. Defendants have stated that the design of the Stadium Interchange was intended to

downgrade or downsize the existing interchange in response to local requests to right-size it.

112. The project would expand the amount of land devoted to highway right of way by 54 acres and increase impermeable surfaces by 27 acres. The project's considerable expansion of the Stadium Interchange, rather than downsizing it, would cause much of these increases.

113. By increasing impermeable surfaces, the project will increase the amount of runoff into adjacent and downstream communities and bodies of water.

114. By increasing impermeable surfaces, the project will also increase the amount of roadway surfaces to which road salt is applied in winter and thus the amount of chloride pollution caused by road salt into adjacent and downstream communities and bodies of water.

115. The Menomonee River, into which the salt-contaminated stormwater would be discharged, is designated under §303(d) of the Clean Water Act as impaired for chlorides. This means that the increased discharge of chlorides to the River is not allowed.

116. The FSEIS does not acknowledge this already existing impairment of the River or the need to prevent additional discharges.

117. By increasing paved surfaces, the project will place additional loads on local and regional sewer systems and increase the likelihood of flooding and basement backups.

118. The FSEIS does not acknowledge or address the fact that flooding from the Menomonee River is already a serious problem, one that the Milwaukee Metropolitan Sewerage District, the wastewater and flood control agency for the region, has spent hundreds of millions of dollars to address.

119. The FSEIS does not acknowledge or address the fact that adding 27 acres of impervious surface will increase stormwater flows and exacerbate the already existing threat of increased flooding from larger, climate-change induced storms.

120. The FSEIS does not acknowledge or address that expanding the highway right of way, even the non-impervious surface expansion, will utilize land already needed to manage increasing stormwater flows from the existing highway and from non-highway properties that drain to the Menomonee River.

121. The FSEIS does not acknowledge or address likely flooding effects on the Valley Park neighborhood near the expanded Interchange.

122. Increased traffic will also lead to more toxic pollution in stormwater.

123. The years-long construction process will also result in increased amounts of dust, other particulates and toxic pollutants entering the Menomonee River and downstream waterways in stormwater.

124. The increase in pollution will harm the environment and will impair the health of the aquatic ecosystem.

125. The increase in pollution will impair recreational uses of the River.

126. The FSEIS addresses mitigation of water impacts of the project largely in vague and general terms, with no commitment to provide mitigation that corresponds to the magnitude of those impacts.

***I. Facts Relating to Cemeteries and Parks***

127. Multiple cemeteries are adjacent to a significant portion of the project, including Calvary Cemetery, a Catholic cemetery; Spring Hill Cemetery, a Jewish cemetery; and Wood National Cemetery, a veterans' cemetery. There are graves so close to the existing highway that I-94 cannot be widened in a portion of the project because it would disturb the graves.

128. Valley Park is a small park in the project area in a neighborhood commonly known as Valley Park or "Piggsville," and is used most often by residents of that neighborhood. Upon

information and belief, a majority of neighborhood residents are persons of color, and many if not most are lower income. The project will put one of the I-94 exit ramps connecting to the Stadium Interchange closer to Valley Park than in the current configuration of the Stadium Interchange. FSEIS at 3.26.2.2. This will increase adverse effects on the users of the park and on the park itself, including noise, air quality, water runoff and visual impacts.

129. Menomonee Valley community park is a 15-acre park below the portion of the 35<sup>th</sup> Street viaduct that is to be reconstructed as part of the project. About one-third of the park will be temporarily taken for construction use, and the project will result in a substantially wider viaduct over a portion of the park. FSEIS at 3.26.2

***J. Facts relating to climate change***

130. The FSEIS fails to reasonably address greenhouse gas emissions and the impact of the project on climate change, by failing to include induced traffic in its future traffic projections. Including newly induced trips resulting from the added capacity, as distinct from trips that simply moved from surrounding roads to the highway would more than double the increased traffic that was included in the FSEIS projections.

131. A very large amount of greenhouse gas emissions will result simply from construction of the project, with its added travel and auxiliary lanes, and the greatly expanded Stadium Interchange. These construction emissions are much greater in magnitude than the emissions from the vehicles travelling on the expanded highway for decades in the future.

132. The FSEIS “annualizes” the construction-related emissions by distributing them equally over the period between 2030 and 2050. That is misleading because it disregards the fact that the construction-related emissions are frontloaded. They will be incurred while materials to be used in construction are produced and transported, and while the expansion project is under

construction, between now and 2030 or 2031.

133. Greenhouse gases like carbon dioxide remain in the atmosphere for centuries, increasing the warming of the earth year after year after year. As a result, the impact in the year 2031, 2041, or 2051 of a ton of CO<sub>2</sub> emitted in 2025 is almost 5, 15, or 25 times the impact in those years of a ton emitted in 2030, 2040, or 2050.

134. The FSEIS fails to acknowledge or take account of the urgent need to reduce greenhouse gas emissions in order to avoid extremely harmful consequences of climate change, and that instead of reducing greenhouse gas emissions, the decision to approve this highway expansion project will do the opposite.

***K. Facts Relating to Mitigation***

135. Defendants did not adequately or meaningfully address mitigation of the adverse effects.

136. For example, in determining that there will not be adverse air quality effects on people living near the highway, the FSEIS unreasonably relied on a regional analysis in which the closest existing air quality monitor was 1.3 miles from the project site, rather than obtaining pollutant concentration data from locations actually representative of pollutant concentrations in the residential neighborhoods adjacent to the highway. It also failed to account for pollution generated by increased or induced traffic and relied on speculative conclusions regarding reduced per mile emissions from vehicles in the future.

137. In addition, Defendants failed to adequately avoid, minimize or mitigate adverse effects on the predominantly non-white residents of the primary study area.

138. Defendants instead essentially argue that there are no disproportionate effects. They arbitrarily and unreasonably asserted, for example, that all persons in the project study area would



suffer adverse effects to the same degree, or that there is no disproportionate harm because there was a lower percentage of people of color in the primary study area than in the city of Milwaukee (which constitutes neither the primary nor the secondary study area). Defendants then used the purported lack of adverse effects to claim that mitigation was not required.

139. Defendants had and were given extensive information on disproportionate effects during the comment process.

140. For example, during the EIS process organizations, including Plaintiffs, provided Defendants with extensive data about segregation and other documented racial disparities, such as disparate transit dependence and disparate pre-existing health conditions.

141. Among the information Plaintiffs provided was data, research and SEWRPC studies showing the need for actions including but not limited to transit preservation, improvement and expansion to address those deficits.

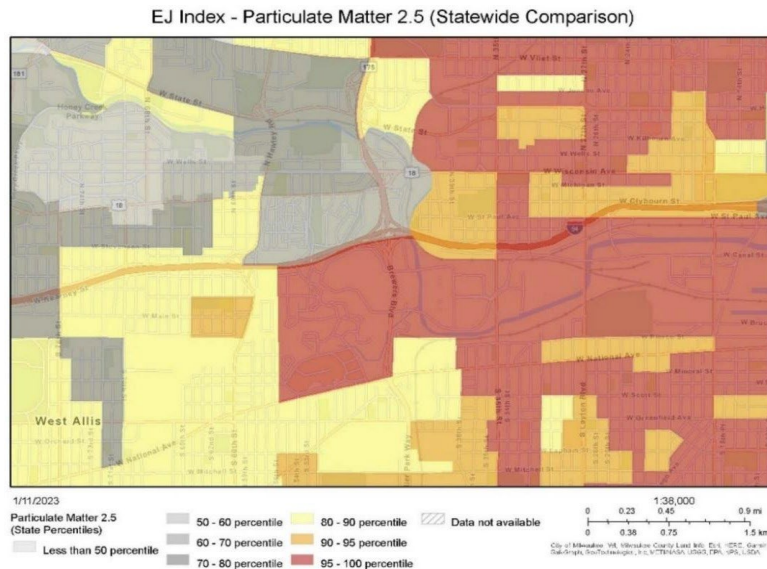
142. Defendants made the assertions that there was no disparate effect even though, *inter alia*, the same SEWRPC studies on which they rely to justify the project repeatedly have found disparate impacts on communities of color from the failure to provide transit.

143. Defendants made these assertions even though, *inter alia*, state of Wisconsin studies provided to Defendants show that persons of color suffer from pre-existing health effects at higher rates than white persons.

144. Defendant made these assertions even though, *inter alia*, maps generated by the government's own environmental justice screening tool also raise serious concerns over disparate adverse effects from pollution in the project area. This tool "highlights block groups with the highest intersection of low-income populations, people of color, and a given environmental indicator." Multiple maps generated encompassing the project area, using the environmental

justice screen mapping tool and (where available) statewide comparisons, are stark. These maps were provided to Defendants in the comment process.

145. For example, this map provided to Defendants shows greater adverse effects from PM<sub>2.5</sub> largely east of the project area – the area with the highest concentrations of persons of color.



146. It was therefore arbitrary and unreasonable for Defendants to claim that there is no disproportionate adverse effect from this pollution.

147. Similar problems pervade the FSEIS’ environmental justice analysis.

148. Defendants made these assertions of a lack of disproportionate effect even though, *inter alia*, on or about July 25, 2012, civil rights officials at FHWA headquarters in Washington, D.C. found WisDOT “deficient” in its civil rights compliance for, *inter alia*, the failure to have an appropriate implementation plan under Title VI of the Civil Rights Act, as required by 23 C.F.R. § 200.9 (b)(11).

149. FHWA’s July 2012 report outlined specific deficiencies, including WisDOT’s failure to address Title VI in its “Facilities Development Manual” (FDM), which is used to guide development of projects such as this one. FHWA told WisDOT that, among other changes, it

needed to address “[h]ow Title VI/Nondiscrimination impacts [are] identified and analyzed under” the FDM socioeconomic impacts chapter. Yet, as of August 2024, WisDOT had failed to update most of that chapter since the 1990s, and much of it had not been updated since the 1980s. FDM Section 5-25-5 was last updated in 1988. The “General Population Characteristics Study Area,” Attachment 25.1 in the FDM, is based on 1970 census data. <https://wisconsin.gov/rdwy/fdm/fd-25-05-att.pdf#fd25-5a25.1>

150. Defendant WisDOT has failed to remedy the deficiencies found and Defendant FHWA has arbitrarily and unreasonably failed to enforce its own findings of deficiencies. Those failures raise additional questions about Defendants’ intent and methodology in finding that no disparate impacts exist or need to be mitigated.

***L. Facts Relating to Safety and Congestion***

151. The FSEIS includes a capacity expansion to 8 travel lanes.

152. Defendants cannot widen the pavement in the portion of the project from Zablocki Drive to Hawley Road because this would disturb the graves in the adjacent cemeteries. In this segment, the increase in capacity will be accomplished by making the travel lanes narrower than prescribed by established safety standards and virtually eliminating shoulders.

153. The FSEIS claims that part of the project’s purpose and a significant reason for the capacity expansion is to increase safety. However, using 11-foot wide highway lanes and shoulders as narrow as 2 feet, rather than the standard lanes and full shoulders which could be accommodated if travel lanes were not added, *increases* the likelihood of serious crashes.

154. The safety analysis in the FSEIS, App. B-4, demonstrates that expanding the highway to 8 lanes will result in more traffic deaths and more serious personal injuries even if it may reduce minor crashes that only cause property damage.

155. Therefore, the project's capacity expansion will not achieve its stated safety improvement purpose.

156. The FSEIS also claims that part of the project's purpose is congestion reduction.

157. Defendants' records show that the approved "preferred alternative" will be unable to achieve its purpose and goal of being able to maintain a Level of Service of "D" unless transit usage in the region is at least doubled.

158. Unless the needed transit expansion facilities are included and implemented as part of highway expansion projects such as this one, such an increase in transit in the region will not occur.

159. Without the expansion of transit facilities contemplated in SEWRPC's 2035 and Vision 2050 plans, the project will not achieve its stated congestion reduction purpose.

***M. Facts Relating to Environmental Impact Statement Process***

160. The I-94 project is a southeastern Wisconsin "freeway megaproject," for which the WisDOT "may" provide funding under Wis. Stat. § 84.0145(3)(b).

161. NEPA requires agencies to "utilize a systematic, interdisciplinary approach which will ensure the integrated use of natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment." 42 U.S.C. § 4332(A). Because the project is a major federal action significantly affecting the quality of the human environment, Defendants prepared an EIS.

162. FHWA and WisDOT, working closely in conjunction with each other, prepared a DEIS for the project, which was signed on November 4, 2014.

163. FHWA and WisDOT, working closely in conjunction with each other, prepared an FEIS, which was signed on January 29, 2016.

164. A Record of Decision (“ROD”) for the project was issued on September 9, 2016.

165. The ROD for the project was rescinded on October 4, 2017.

166. On June 9, 2021, FHWA issued a notice of intent to prepare a Supplemental EIS.

167. A DSEIS was issued on November 8, 2022.

168. FHWA and WisDOT, working closely in conjunction with each other, prepared the FSEIS. The combined FSEIS and ROD were signed on March 8, 2024.

169. On March 22, 2024, FHWA’s “Notice of Final Federal Agency Actions on Proposed Highway in Wisconsin” (Notice) was published in the *Federal Register*, at 89 Fed. Reg. 20533. The notice announced final FHWA action granting approval of the I-94 project, and referred to the FSEIS, the ROD, and other documents in the administrative record for a description of the agency’s actions on the project.

#### **IV. STATUTORY AND REGULATORY FRAMEWORK**

170. The Federal Aid Highway Act (FAHA), 23 U.S.C. § 109(h), mandates that any “possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and . . . (1) air, noise, and water pollution; (2) destruction or disruption of man-made and natural resources, . . . community cohesion and the availability of public facilities and services; (3) adverse employment effects, and . . . (5) disruption of desirable community and regional growth.”

171. FAHA also mandates that highway projects be consistent with plans for implementation or maintenance of air quality standards. 23 U.S.C. § 109(j).

172. FAHA also requires that the statewide transportation planning process “emphasize the *preservation* of the existing transportation system.” 23 U.S.C. § 135(d)(1)(H) (emphasis added).

173. NEPA requires federal government agencies, and, as here, state agencies acting with the guidance and participation of the responsible federal officials, to prepare an EIS on all major federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C).

174. NEPA requires federal agencies to “utilize a systematic, interdisciplinary approach which will ensure the integrated use of natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man’s environment.” 42 U.S.C. § 4332(A); 40 C.F.R. § 1502.6 (1978).<sup>1</sup> NEPA requires agencies to “ensure the professional integrity, including scientific integrity, of the discussion and analyses in environmental impact statements.” 42 U.S.C. § 4332(D); 40 C.F.R. § 1502.24 (1978). Accordingly, agencies may not selectively ignore consequences or use discredited science.

175. Regulations promulgated by the federal defendants, which supplement the CEQ regulations, also state that it is the government’s policy that “[a]lternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.” 23 C.F.R. § 771.105(c); *see also* 23 C.F.R. § 771.101.

176. Regulations promulgated by the federal defendants also state that “No person,

---

<sup>1</sup> Because the EIS process was begun before September 14, 2020, the prior version of the Council on Environmental Quality (CEQ) regulations (40 C.F.R. Parts 1500-1508), promulgated in 1978, applies. National Environmental Policy Act Statement, FSEIS/ROD at I; *see also*, 40 C.F.R. § 1506.13 (2020).

because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this part.” 23 C.F.R. § 771.105(g).

177. Regulations promulgated by the federal defendants require “Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions...” 23 C.F.R. § 771.111(h)(ii).

178. An EIS must meaningfully evaluate alternatives to a proposed action, 42 U.S.C. § 4332(C)(iii), and must “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E). An EIS must “rigorously explore and objectively evaluate all reasonable alternatives, and . . . [d]evote substantial treatment to each alternative considered in detail . . . so that reviewers may evaluate their comparable merits.” 40 C.F.R. § 1502.14(a), (b) (1978).

179. The EIS must include the alternative of no action, must include reasonable alternatives not within the lead agency’s jurisdiction, and must include appropriate mitigation measures not already included in the proposed action or alternatives. 40 C.F.R. §§ 1502.14(c), (d), (f) (1978).

180. This analysis will be irreparably skewed by a failure to adequately consider either reasonable alternatives or the consequences of the proposed action.

181. An EIS must evaluate the effects of the proposed project. “Effects and impacts as used in these regulations are synonymous. Effects includes ecological . . . , aesthetic, historic, cultural, economic, social, or health [effects], whether direct, indirect, or cumulative.” 40 C.F.R.

§ 1508.8 (1978)

182. An EIS must take a “hard look” at indirect effects and their significance. *See also*, 40 C.F.R. §§ 1508.8(b), 1502.16(b) (1978). Indirect effects are those that are “caused by the action and are later in time or farther removed in distance [than direct effects], but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b) (1978). Indirect effects “include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” *Id.* In evaluating issues such as land use and growth patterns, an agency “cannot simply assume that development will occur at the same pace whether or not [D]efendants yield to the demand for more roads.” *Highway J Citizens Group v. USDOT*, 656 F.Supp.2d 868, 887 (E.D. Wis. 2009).

183. An EIS must evaluate “[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local . . . land use plans, policies and controls for the area concerned.” 40 C.F.R. § 1502.16(c) (1978). “Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.” 40 C.F.R. § 1506.2(d) (1978).

184. An EIS must evaluate “[u]rban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.” 40 C.F.R. § 1502.16(g) (1978).

185. An EIS must take a hard look at cumulative impacts. 40 C.F.R. § 1508.25 (1978). A “cumulative impact” is “the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking



place over a period of time.” 40 C.F.R. § 1508.7 (1978). The goal is to highlight negative impacts or effects that might occur if the minor effects of multiple actions accumulate over time.

186. An agency – including these specific agencies, who were instructed as such more than 10 years ago – cannot simply state that development will occur with or without the project, but instead must actually analyze the possible growth-inducing effects of a proposed highway project. *See, MICAH v. Gottlieb*, 944 F.Supp.2d 656, 671-73 (W.D. Wis. 2013).

187. An EIS must “[i]nclude appropriate mitigation measures not already included in the proposed action or alternatives” 40 C.F.R. § 1502.14(f) (1978) and “[m]eans to mitigate adverse environmental impacts.” 40 C.F.R. § 1502.16(h) (1978); *see also* 23 C.F.R. § 771.109(d).

188. “Mitigation” includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

40 C.F.R. § 1508.20 (1978). Thus, mitigation is not limited to mitigation of traffic congestion.

189. Mitigation can include “incorporating some form of transit into the project.” *MICAH v. Gottlieb*, 944 F.Supp.2d at 670.

190. The APA, 5 U.S.C. § 551 *et seq.*, requires that federal agency actions and decisions follow all statutorily prescribed procedures and comply with all applicable laws. The APA also requires that a reviewing court hold unlawful and set aside any agency action if it fails to meet statutory, procedural or constitutional requirements or if it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

191. The APA authorizes federal courts to enjoin agency activity if it fails to meet statutory, procedural or constitutional requirements or if it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

192. The federal and non-federal participation in this project, including but not limited to federal financial assistance for the project, is sufficiently interrelated to constitute a major federal action for NEPA purposes.

## CAUSES OF ACTION

### **CLAIM I: VIOLATION OF NEPA** **(Inadequate Analysis of Alternatives)**

193. Plaintiffs reallege and incorporate paragraphs 1 through 192 above.

194. The FSEIS and ROD prepared, reviewed and approved by WisDOT and Defendant Thompson, in conjunction with the federal Defendants, violated NEPA by utilizing a purpose and need statement that was unreasonably restrictive, and by failing to consider adequately all reasonable alternatives, including but not limited to incorporating and implementing substantial expansion of public transportation as part of the alternative.

195. The FSEIS and ROD prepared, reviewed and approved by WisDOT and Defendant Thompson, in conjunction with the federal Defendants, violated NEPA by developing and approving a project that fails to meet some of its own stated purposes and needs, while rejecting the Fix at Six alternative proposed by Plaintiffs as well as any other transit-inclusive alternative, on the grounds that they would fail to meet some of those same stated purposes and needs.

a. The FSEIS and ROD fail to meet the purpose and need of the project related to safety because they will increase serious crashes.

b. The FSEIS and ROD fail to meet the purpose and need of the project related

to traffic volumes because without incorporating a substantial public transportation element they will not achieve the level of service that they state the project is intended to achieve.

c. The FSEIS and ROD fail to meet the purpose and need of the project related to regional land use and transportation planning and linkages because they exclude a core element of that planning and those linkages, public transportation.

d. Reasonable alternatives proposed by Plaintiffs and/or that Defendants should have created would still meet the purpose and need by replacing deteriorating pavement and addressing serious deficiencies.

e. Reasonable alternatives proposed by Plaintiffs and/or that Defendants should have created would also meet the purpose and need by being a necessary element to accommodate traffic volumes.

f. Reasonable alternatives proposed by Plaintiffs and/or that Defendants should have created would also meet the purpose and need for safety by declining to include narrow, unsafe lanes with virtually no shoulders in the project.

g. Reasonable alternatives proposed by Plaintiffs and/or that Defendants should have created would also meet the purpose and need by including a core transportation element and necessary transportation linkages.

196. By using an incomplete and selective analysis of the environmental impacts of the project and by underestimating or ignoring the potential benefits of alternatives, Defendants arbitrarily and unreasonably skewed the analysis of alternatives.

197. For the foregoing reasons, the FSEIS fails to fulfill the purposes of NEPA and Defendants' decision to approve and proceed with the project based on that flawed FSEIS is

arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

**CLAIM II: VIOLATION OF NEPA  
(Inadequate Analysis of Effects)**

198. Plaintiffs reallege and incorporate paragraphs 1 through 197 above.

199. The FSEIS and ROD prepared, reviewed and approved by WisDOT, Defendant Thompson, and the federal Defendants violates NEPA by failing to adequately identify, disclose, study or mitigate the effects and impacts of the project on the natural and human environments in the region, including but not limited to:

a. The social, economic, employment, health and racial effects, including cumulative effects, of failing to preserve, improve and expand transit, and of the disparate treatment of highway and transit development in the region, especially in light of the known racial disparities and the documented need for transit to develop at the same rate as highways to achieve civil rights compliance and meet transportation and environmental needs of the community;

b. The land use, and associated social, cultural and racial effects, especially cumulative effects, including but not limited to impacts related to facilitation of suburban and exurban growth patterns (“sprawl”) and those effects insofar as they facilitate or perpetuate racially segregated residential land use patterns, the relocation of jobs and businesses from older, developed urban areas with significant minority populations to less developed, predominantly white, parts of the region, and/or the exclusion of transit-dependent workers from parts of the region where greater job growth is occurring;

c. Adverse health impacts resulting from years of construction and the increased volumes of traffic, including new induced traffic resulting from the expansion, and/or from inadequate provision of transit alternatives, and the extent to which any such

effects are disproportionately borne by persons of color;

d. Adverse impacts on the human and natural environment, including but not limited to cumulative effects from air pollution, and greenhouse gas emissions that would result both from the construction of the expanded highway project and from the increased volume of vehicle traffic that it would cause;

e. Community, neighborhood, economic development, employment, and local economic effects, especially on underemployed and unemployed, isolated and transit-dependent communities of color in Milwaukee and users of parks near the project area;

f. Impacts on water volume and quality, and associated impacts such as flooding impacts on nearby and downstream communities, from the increased runoff and pollution likely to occur by the significantly expanded impermeable pavement surface alone and/or combined with proposed water-related projects in the region, as well as impacts upon local and regional sewer systems; and

g. Multiple adverse effects, including but not limited to cumulative social and economic effects, on communities of color who comprise a majority of the primary study area, including but not limited to health and pollution effects, adverse effects of urban sprawl, and adverse effects of expending limited public funds on this project in lieu of and without including critically needed public transportation projects.

200. For the foregoing reasons, the FSEIS fails to fulfill the purposes of NEPA, and Defendants' decision to approve and proceed with the project based on that flawed FSEIS is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

**CLAIM III: VIOLATION OF NEPA  
(Failure to mitigate)**

201. Plaintiffs reallege and incorporate paragraphs 1 through 200 above.

202. The FSEIS and ROD prepared, reviewed and approved by WisDOT, Defendant Thompson, and the federal Defendants violates NEPA by failing to acknowledge, much less mitigate, the adverse effects of the expansion project on both the human and natural environment.

203. This failure includes but is not limited to mitigating the effect on transit-dependent communities—which are disproportionately composed of persons of color and persons with disabilities—of continuing to expand highway capacity while transit capacity declines.

204. This failure includes but is not limited to mitigating health and pollution effects related to expanding highway capacity, right of way and impervious surfaces, in a project area disproportionately populated by persons of color.

205. This failure includes but is not limited to mitigating the effects of urban sprawl effects on the environment and on perpetuating or exacerbating regional segregation.

206. This failure includes but is not limited to mitigating the effects of years of construction on the residents and neighborhoods of the project area, which is disproportionately populated by persons of color.

207. For the foregoing reasons, the FSEIS fails to fulfill the purposes of NEPA and Defendants' decision to approve and proceed with the project based on that flawed FSEIS is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Declare that the federal Defendants and Defendant Thompson have failed to comply with NEPA by failing to prepare an adequate FSEIS that considered all reasonable alternatives, addressed all required environmental and social, indirect and cumulative effects, and

mitigated the harms identified;

B. Declare that the Defendants' approval of, and decision to proceed with, the I-94 project, are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law;

C. Issue an order vacating the FSEIS, ROD, and Notice pertaining to the project and remanding the FSEIS, ROD, and Notice to Defendants for the purposes of curing their violations of NEPA and the APA;

D. Issue an order vacating any project agreement authorizing the use of federal funds for the project pursuant to 23 U.S.C. § 106(a);

E. Grant preliminary and permanent injunctions barring Defendants from taking any action that in any manner supports or funds the design, property acquisition, construction, or development of the highway project until the violations of NEPA and the APA have been cured;

F. Award Plaintiffs reasonable attorney fees, costs, expenses, and disbursements associated with this litigation; and

G. Grant such other or further relief as authorized by law and as this Court may deem just and proper.

Dated August 19, 2024.

Electronically signed by *Dennis M. Grzezinski*  
LAW OFFICE OF DENNIS M GRZEZINSKI  
By: Dennis M. Grzezinski (WI Bar No. 1016302)  
**Attorney for Plaintiffs 1000 Friends of  
Wisconsin, Sierra Club, and Milwaukee  
Riverkeeper**

1845 N. Farwell Avenue, Suite 202  
Milwaukee, WI 53202  
Tel: 414 530-9200  
Email: [dennisglaw@gmail.com](mailto:dennisglaw@gmail.com)

MIDWEST ENVIRONMENTAL ADVOCATES

By: Daniel P. Gustafson (WI Bar No. 1024275)

**Attorney for Plaintiffs 1000 Friends of  
Wisconsin, Sierra Club, and Milwaukee  
Riverkeeper**

634 W. Main Street, Suite 201

Madison, WI 53703

Tel: (608) 251-5047, x.5

Email: [dgustafson@midwestadvocates.org](mailto:dgustafson@midwestadvocates.org)

Dated August 19, 2024.

Electronically signed by *Karyn Rotker*

LEGAL ACTION OF WISCONSIN

By: Karyn Rotker (WI Bar No. 1007719)

Monica L. Cail (WI Bar No. 1088695)

**Attorneys for Plaintiff MICAH**

633 W Wisconsin Avenue, Suite 2000

Milwaukee WI 53203

Tel: (855) 947-2529

Email: [krotker@legalaction.org](mailto:krotker@legalaction.org)

[mlc@legalaction.org](mailto:mlc@legalaction.org)