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Attorneys for ErieCPR, et al. Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

ERIE CPR; Beary Clark; Harry Euell)
Michael Keys; Judy Lynch; Minister)
Luchetta Manus; Rev. Charles Mock;)
Cynthia Muhammad; Noel Remigio)
Abdulla Washington; Adam Trott;)
Lisa Austin, Taquanta Gray)
Plaintiffs,)
vs.)
PA Department of Transportation)
C/O Josh Shapiro, Attorney General)
Commonwealth of Pennsylvania)
16th Floor, Strawberry Square)
Harrisburg, Pennsylvania 17120)
and)

CASE NO. 1:18cv124

COMPLAINT FOR PRELIMINARY AND
PERMANENT INJUNCTION, AND FOR
DAMAGES

(42 U.S.C. § 2000d)

DEMAND FOR JURY TRIAL
Endorsed Hereon

PA Public Utility Commission)
 C/O Josh Shapiro, Attorney General)
 Commonwealth of Pennsylvania)
 16th Floor, Strawberry Square)
 Harrisburg, Pennsylvania 17120)
)
 and)
)
 City of Erie)
 C/O Edward J. Betza)
 Solicitor City of Erie Pennsylvania)
 626 State Street)
 Erie, PA 16501)
)
 and)
)
 Joseph Schember)
 Mayor, City of Erie)
 C/O Edward J. Betza)
 Solicitor City of Erie Pennsylvania)
 626 State Street)
 Erie, PA 16501)
)
 and)
)
 City Council of Erie Pennsylvania)
 C/O Edward J. Betza)
 Solicitor City of Erie Pennsylvania)
 626 State Street)
 Erie, PA 16501)
)
)
 Defendants.)

PRELIMINARY STATEMENT

1. This is a civil rights action brought by Erie CPR on behalf of African-American and Hispanic citizen stakeholders who reside in the City of Erie Pennsylvania, in the neighborhood adjacent to the McBride Viaduct to challenge the decisions of Defendants, Pennsylvania Department of Transportation (“PennDOT”), Pennsylvania Public Utilities Commission (“PAPUC”), the City of Erie, Pennsylvania, (City of Erie”), Mayor of the City Of

Erie, Pennsylvania, Joseph Schember (“Schember”) and the City Council of Erie to approve demolition of the McBride Viaduct in Erie, Pennsylvania, on the grounds that the proposed demolition violates the civil rights of the plaintiffs pursuant to Title VI of the Civil Rights Act of 1964, the U.S. Department of Transportation’s Title VI regulations, the Environmental Justice Provisions of Title VI, and the 14th Amendment of the U.S. Constitution. (See footnotes ¹ and ²). The proposed demolition must be rescinded because the Defendants are all the recipients of federal financial assistance subject to Title VI and the U.S. Department of Transportation regulations, and Defendants’ agents, employees and representatives have engaged in a pattern of intentional discrimination against Plaintiffs on the basis of the race, color, and national origin and because the demolition approvals have a discriminatory effect on the African-American and Hispanic plaintiffs who comprise 91% of the McBride Viaduct neighborhood.

2. Plaintiffs seek: (1) to have the demolition approvals granted by Defendants declared invalid and rescinded; (2) an *Order* declaring that Defendants failed to comply with their own policies and procedures and as a result have violated § 601 of Title VI of the Civil Rights Act of 1964, as amended 42 USC § 2000d, for evaluating demolition approvals; (3) an *Order* declaring that Defendants failed to comply with § 601 of Title VI of the Civil Rights Act of 1964, as amended 42 USC § 2000d because Plaintiffs were never provided with any public hearing prior to the approval of the demolition; (4) an *Order* requiring that Defendants show that each entity complied with § 601 of Title VI of the Civil Rights Act of 1964, as amended 42 USC § 2000d, prior to approving the demolition; (5) an *Order* requiring Defendants to develop a protocol for reviewing demolition applications in compliance with Title VI and to apply that protocol to conduct a valid analysis of the discriminatory adverse environmental effects that

¹ Defendants, Pennsylvania Department Of Transportation, Pennsylvania Public Utilities Commission, The City Of

² The City of Erie, Pennsylvania, Mayor, Joseph Schember, the City Council of Erie, Pennsylvania are referenced herein as “the City Defendants” unless specifically identified otherwise.

would be created by demolition of the McBride Viaduct ; and (6) an *Order* declaring that Plaintiffs have rights under § 601 of Title VI of the Civil Rights Act of 1964, as amended 42 USC § 2000d, to a public hearing to challenge the demolition of the McBride Viaduct before the demolition may proceed.

JURISDICTION

3. This is an action pursuant to Title VI of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000d³, the Department of Transportation’s civil rights regulations, 49 CFR Part 21; and the 14th Amendment of the U.S. Constitution. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331, 1343 as a case arising under the laws of the United States.

³ Plaintiffs bring this action for intentional discrimination or disparate treatment by Defendants , recipients of federal financial assistance , because plaintiffs have been subjected to unequal treatment when compared to Caucasian citizens of Erie, PA.

VENUE

4. The events which give rise to this action occurred in the Commonwealth of Pennsylvania, City of Erie, Pennsylvania and venue lies in the Western District of Pennsylvania pursuant to 28 U.S.C. §1391(b)(2).

PARTIES

5. Plaintiff Erie CPR (“ErieCPR”) is an unincorporated community organization composed of City of Erie and Erie County. It brings this action on its own behalf, its members, and other residents of the City of Erie, PA. The individual plaintiffs are members of ErieCPR.

6. Plaintiff Beary Clark lives in Erie, PA 16510. He is African-American.

7. Plaintiff Harry Euell lives in Erie, PA 16503. He is African-American.

8. Plaintiff Michael Keys lives in Erie, PA 16504. He is African-American.

9. Plaintiff Judy Lynch lives in Erie, PA 16505. She is Caucasian.

10. Plaintiff Luchetta Manus lives in Erie, PA 16503. She is African-American.

11. Plaintiff Charles Mock lives in Erie, PA 16504. He is African-American.

12. Plaintiff Cynthia Muhammad lives in Erie, PA 16503. She is African-American.

13. Plaintiff Noel Remigio lives in, Erie, PA 16503. He is Hispanic.

14. Plaintiff Abdulla Washington lives in Erie PA, 16503. He is African-American.

15. Plaintiff Adam Trott lives in Erie, PA 16507. He is Caucasian.

16. Plaintiff Lisa Austin lives in Erie, PA 16502. She is Caucasian.

17. Plaintiff Taquanta Gray lives at in Erie, PA 16503. She is African-American.

18. Defendant PennDOT is the department of the executive branch of state government which implements and enforces the transportation laws and regulations of the

Commonwealth of Pennsylvania. PennDOT oversees transportation issues in the Commonwealth of Pennsylvania.

19. Defendant PennDOT's central offices are located at Harrisburg, PA 16501.

20. Defendant PAPUC oversees the operations of the permitting and approval process for public projects funded by the Commonwealth and is responsible for developing and implementing its policies, procedures and proceedings pertaining to the abolition, alteration, construction, relocation and suspension of public highway-railroad crossings in order to prevent accidents and to promote public safety. PAPUC's offices are located, in Harrisburg, Pennsylvania.

21. Defendant City of Erie is a local municipality under the Commonwealth of Pennsylvania and Defendant Joseph Schember, who is Caucasian, is the duly elected Mayor of the City of Erie and the Erie City Council is the duly elected legislative body of the City of Erie.

22. Defendants are given the authority under Pennsylvania law to make, and did make, the project demolition decisions challenged in this case.

FACTUAL ALLEGATIONS

A. THE MCBRIDE VIADUCT/EAST AVE. BRIDGE NEIGHBORHOODS

23. The McBride Viaduct is named for an Erie, Pennsylvania Priest, Monsignor Lawrence McBride who was so moved by the death of a child crossing the railroad tracks that he lobbied and campaigned for construction of a bridge over the railroad tracks to save lives. In Erie today, the lives to be saved by the McBride Viaduct include African Americans who accounted for 17% of the overall population in 2010.

24. There are eight Census Tracts noted within the McBride Viaduct area.

25. Five census tracts are areas of African American citizen concentration (Census Tracts 7, 13, 14, 15, and 17).

26. Additionally, in 2010 Hispanics accounted for 6.9% of the City's populations. Therefore, an area of ethnic concentration would include tracts where 16.9% or more of the population was Hispanic. There is one census tract within the project study area that meets the criterion for areas of ethnic concentration of Hispanic residents; census Tract 15, which is located immediately to the east of the McBride Viaduct.

27. Defendants knew the racial identity of the total population as well as the areas of racial and ethnic concentration for the City of Erie and the Census Tracts that are adjacent to the McBride Viaduct area.

28. With the closing of the McBride Viaduct, access and connectivity to the City of Erie's Eastside neighborhoods is impacted since the viaduct served as a direct link between these communities.

29. The McBride Viaduct (East Avenue Bridge) is a City of Erie owned structure originally constructed in 1938. Structural work was performed in 1972 that included replacing a majority of the structural elements and rehabilitation of other structural components. This effort included deck replacement on the entire structure, beam replacement of almost all spans, replacement of a majority of the piers above the ground line, and the rehabilitation of both abutments and approaches.

30. The McBride Viaduct provides a 1,170-foot bridge span extending south from East 12th Street to East 19th Street and spanning the CSX and Norfolk Southern railroad tracks.

31. Today, the City of Erie has an estimated population of 98,593, of which 17% are African-American, 6.9% are Hispanic, and 15.2% are non-Hispanic white.

32. Erie County, the county in which the McBride Viaduct and the City of Erie are located, has a population of 281,000, of which 7.4% are African-American, 3.6% are Hispanic, and 75.1% are non-Hispanic white.

33. In the Buffalo Road / Franklin Avenue neighborhood in Erie, PA, residents most commonly identify their ethnicity or ancestry as Puerto Rican (18.2%). There are also a number of people of Sub-Saharan African ancestry (15.2%), and residents who report German roots (5.0%), and some of the residents are also of English ancestry (4.3%), along with some residents of African ancestry (3.9%), among others. In addition, 18.9% of the residents of this neighborhood were born in a country other than the United States.

34. Most of the residents of the McBride Viaduct neighborhoods are very low-income. The median household income is \$21,000.00 per capita income is \$28, 000.00 and a majority of residents have incomes at or below the federal poverty line.

35. A significant number of the Hispanic residents of the McBride Viaduct neighborhood and the adjoining census tracts have limited proficiency in the English language.

36. The McBride Viaduct neighborhoods have a mix of ethnic groups. They include African-Americans, Caucasian Whites, Asians, Hispanics, Africans and new Americans immigrants, including Bosnians, Ukrainians, Somali's, Bhutanese, and Nepalese. The area is located in a section of the city designated by the City of Erie as a Community Development target area. In addition, the entire public-school district is designated as economically disadvantaged.

37. The McBride Viaduct is located on East Avenue spanning a large industrial complex and active rail lines. The land use under the Viaduct and along the nearby Bayfront Connector is industrial and is zoned manufacturing. The Viaduct structure is located within an

industrial area and surrounded by commercial, multi and single-family residences as well as recreation and worship structures. In the immediate area of McBride Viaduct are several large public housing communities as well as scattered site (Section 8) dwellings. The railroad lines virtually separate the two residential neighborhoods to the north and south ends of the Viaduct and the Bayfront Connector. In addition, the Bayfront Connector separates the south end of the Viaduct from the East side of that neighborhood. The McBride Viaduct neighborhood and the adjoining predominately minority census tracts have a disproportionately greater concentration of waste processing, waste storage, waste disposal and waste transfer facilities than the predominantly white census tracts in Pennsylvania as well as in the City of Erie.

38. The McBride Viaduct and the adjoining predominantly minority census tracts, Census tracts 5, 7, 13, 14, 15, 16, 17, and 26, have a disproportionately greater concentration of pollution releasing industrial facilities than predominantly white census tracts in Pennsylvania as well as in the City of Erie.

39. Defendants enforcement of air quality, odor, noise, health, traffic, and other regulations at the McBride Viaduct has been ineffectual and inadequate for many years.

40. The result of these permitting and approval decisions by Defendants is that the McBride Viaduct neighborhood has become severely blighted, with environmental pollution and hazards that are disproportionately more dangerous to the citizen stakeholders' health than is the case in census tracts in Pennsylvania where the residents are predominately white as well as specifically in the City of Erie.

B. DEFENDANTS PATTERN OF INTENTIONAL DISCRIMINATION BASED UPON RACE

41. The Commonwealth of Pennsylvania, acting through its agencies, Defendants PennDOT and PAPUC, operate programs and activities that receive federal financial assistance.

42. Plaintiffs Clark, Euell, Keys, Manus, Mock, Muhammad, Washington and Gray are African-American and Plaintiff Remigio is Hispanic were and are discriminated against by Defendants because of their race in violation of Title VI and the U.S. Department of Transportation's regulations, 49 C.F.R. § 21.

43. Defendants in 2014 proposed two structural-compensatory measures, a pedestrian and bike crossing at East 19th and a sidewalk on the south side of East 12th Street. These two measures would have allowed citizen stakeholder pedestrians and bicyclists to a) more directly cross East and West over the Bayfront Connector and, b) to proceed East at East 12 Street without having to cross the highway intersection.

44. On November 13, 2017, Defendant PennDOT's McBride Avenue Project Team and its official, Bill Petit, distributed McBride Viaduct documents which had removed these two structural-compensatory measures.

45. Defendant PennDOT's removal of these two structural-compensatory measures was made without prior public notice or discussion at a public hearing.

46. The City Defendants failed to clean the McBride Viaduct's storm drains which fostered slow "demolition by neglect".

47. The City Defendants have regularly maintained and cleaned bridges in the white majority neighborhoods of the City of Erie but have not done so with the bridges in the predominantly African-American community.

48. Defendant City's Engineer, Jon Tushak, admitted during a 2018 television interview that he had been planning to demolish the McBride Viaduct for over a decade.

49. The City Defendant's plan included lip-service compliance with Title VI of the Civil Rights Act that resulted in the City Defendants, who acting in concert with Defendants

PennDOT and PAPUC imposed a decade long decision to demolish the McBride Viaduct without engaging Plaintiffs as required by law.

50. Defendants deliberately and intentionally failed to involve and engage the active participation of Plaintiffs and a substantial number of minorities and low-income individuals who are affected by the City Defendants neglect of the bridge and selection of an alternative involving demolition of the McBride Viaduct.

51. The effect of such actions by Defendants has been to exclude Plaintiffs from participation in, denying Plaintiffs the benefits of, and subjecting Plaintiffs to intentional race discrimination under the McBride Viaduct Demolition Project which receives federal financial assistance.

C. REPEATED FAILURE TO PROVIDE PUBLIC NOTICE

52. Defendants failed to notify all parties of interest, including Plaintiffs, of meetings regarding the McBride Viaduct demolition project as required by law.

53. Defendants failed to provide public notice regarding the Defendant City's application to Defendant PAPUC to demolish the McBride Viaduct.

54. Defendants failed to provide public notice of Defendant PAPUC's meeting and hearing dates regarding the actions being proposed concerning the McBride Viaduct before Defendant PAPUC by the City Defendants and Defendant PennDOT.

55. Defendants failed to provide public notice of the Defendant PAPUC meeting and hearing Agenda Items and (Last Minute) Carry In Agenda Items by the City Defendants and Defendant PennDOT officials seeking to demolish the McBride Viaduct and actions taken to permanently eliminate an above grade railroad crossing (bridge) without the opportunity for all

interested parties including Plaintiffs to attend, constructively engage, participate, be represented, or pursue appellate measures and/or relief.

56. Defendants failed to provide public notice of Defendant PAPUC meetings and hearings regarding the McBride Viaduct to minorities and low-income residents to attend, constructively engage, participate and be represented.

57. Defendants failed to provide public hearings regarding their selection of a preferred alternative to repairing the McBride Viaduct.

58. Defendants deliberately and intentionally failed to involve, constructively engage, and document the active participation and input of a substantial number of minorities, minority groups, low-income residents and others who would be affected by selection of an alternative involving demolition of the McBride Viaduct.

59. The effect of such actions by Defendants has been to exclude Plaintiffs from participation in, denying Plaintiffs the benefits of, and subjecting Plaintiffs to intentional race discrimination under the McBride Viaduct Demolition Project which receives federal financial assistance.

60. The race of Plaintiffs Clark, Euell, Keys, Manus, Mock, Muhammad, Washington and Gray, African-American, and other African-American Erie citizen stakeholders, and the race of Plaintiff Noel Remigio, who is Hispanic, and other Erie citizen stakeholders who are Hispanic, is the basis for their exclusion, denial of benefits, and intentional discrimination by Defendants with respect to the McBride Viaduct Demolition Project.

D. DISPARATE TREATMENT OF WHITE COMMUNITY AND BLACK COMMUNITY AND BRIDGES

61. At all times relevant herein, at least two bridge projects in the Defendant City's white communities, Frontier Park and Glenwood Park, both majority white neighborhoods, received new, costly neighborhood bridges with federal financial assistance.

62. The Norman Way Bridge located in the Glenwood Park/Glenwood Heights area of the Defendant City was replaced in 2013, with a new bridge costing over one million dollars. The bridge is located just east of the intersection of Norman Way and SR 0505 (Glenwood Park Avenue) and carries traffic over Mill Creek. The Project includes a new bridge structure with sidewalk, retaining wall improvements, a sanitary sewer upgrade encased in concrete and steel under the creek including a new spillway, a new water-supply main on the structure, guiderail and stream channel improvements. The new sidewalk was relocated to the south side of the structure to better align with the sidewalk on the west side of Glenwood Park Avenue.

63. The Millcreek Drift Catcher Zoo Train Bridge, which is 100 years old, was rehabilitated in the Glenwood Park neighborhood with federal financial assistance.

64. Federal transportation funding was spent to realign West 38th Street and Glenwood Park Avenue between Sassafras and Cherry Streets in or about 2014 in a majority white neighborhood.

65. Both the Norman Way Bridge and the Millcreek Drift Catcher Erie Zoo Train Bridge projects are Defendant City owned bridges and were completed under the supervision and pursuant to Defendant PennDOT guidelines and regulations, and were never scheduled for demolition.

66. Neither the Frontier Park or Glenwood Park communities, both majority white, lost connectivity to other Defendant City's neighborhoods as a result of their bridge projects. These bridges were repaired to ensure connectivity with nearby neighborhoods.

67. In 2016 Defendants pattern of intentional racial discrimination toward Defendant City's African-American residents was evident when the Defendant City's Metropolitan Transit Authority garage and parking lot construction project demolished the Division Street railroad underpass. The underpass had linked a portion of the Eastside minority population to Pieffer-Burleigh Elementary School.

68. Defendants by such acts engaged in disparate treatment of Plaintiffs and scheduled the McBride Viaduct Bridge Project, used daily by impoverished minorities and poor residents, for demolition by September 2018.

69. Defendants dismissed the potential bike-pedestrian-only use too early in the study without proper due diligence.

70. Defendants instead assigned the low standard threshold designation "no build" alternative to the repair for vehicular use instead of repair for bike-pedestrian-only use.

71. The scope of work necessary to repair the McBride Viaduct for vehicles required a substantial amount of additional work, and thus made the feasibility of the proposal to repair the Viaduct much more arduous than it should have been.

72. Bridges in the Defendant City's white communities of Glenwood and Frontier Park were only scheduled for new construction.

E. DEFENDANTS FAILED TO DEVELOP AND CONDUCT AN ADEQUATE AND LEGALLY SUFFICIENT ENVIRONMENT STUDY

73. Defendants public outreach only garnered less than a 10% response rate. An industry standard minimum acceptable response rate is 20% according to our Sociologist Consultant Josh Morgan, so the results relied upon by the Defendants are less than half the acceptable minimum standard. Instead of recognizing that their first public outreach attempt

failed to obtain the acceptable minimum amount of responses, Defendants blamed it on the Erie citizen stakeholders and said it was their failure to respond in adequate numbers.

74. Defendants failed to recognize the importance of on-site interviews of the actual impoverished users of the bridge to determine its value, and thus failed to conduct any such interviews. This led to Defendant's collective failure in appreciating and understanding the true value of the Viaduct to Plaintiffs and the other citizen stakeholders.

75. Defendants noted in the *McBride Viaduct Feasibility Study* the incredible diverse and impoverished urban population that the McBride Viaduct serves, but then failed to structure an appropriate public outreach plan that appropriately engaged such social justice populations that would result in a better response rate and a more adequately informed study.

76. Defendants failed to prepare an estimate to repair the McBride Viaduct for bike-pedestrian-only use.

77. Defendants admit that the project area is underserved for north-south connectivity, and that is why the McBride Viaduct is a popular bridge for non-vehicular use. However, Defendants nevertheless dismissed and minimized the value of the Viaduct to remain as a bike-pedestrian-only structure.

78. The *McBride Viaduct Feasibility Study* was prepared by traffic engineers, and lacked input from any architects, urban planners, urban designers or landscape architects. This resulted in a study that was too narrowly focused on vehicular traffic to be considered a complete study.

79. The environmental review within the study failed to recognize the environmental impact that removing the bridge would have on the existing Viaduct users. Demolishing the bridge forces the current users of the bridge to relocate from their shorter, more peaceful and

non-polluted route over the Viaduct to a much longer and more polluted and harrowing route alongside the four-lane arterial highway, Rt. 290, known as the Bayfront Connector. The alternative route is filled with noise, harmful particulate matter, and forces the walkers/bicyclists on the north end of the route to traverse to a very dangerous, “blind corner” intersection.

80. The ongoing maintenance required by the McBride Viaduct after repair will cost only a few thousand dollars per year instead of “millions”. This money, and the management of the maintenance program that the Defendant City failed to properly conduct for decades, can be raised and provided by an established non-profit agency through a “P3” agreement with the City and thus relieve the City of these smaller ongoing maintenance costs. The precedent already exists for this type of agreement by the arrangement between the Defendant City and L.E.A.F. for maintaining Erie’s Frontier Park.

81. The McBride Viaduct route is far superior by any measure to the alternative route along the four-lane arterial highway, Rt. 290.

82. The McBride Viaduct route accommodates over 200 trips per day by some of the Plaintiffs and other local citizen stakeholders.

83. The McBride Viaduct repair work is exempt from any requirements of ADA because the proposal is to repair in place without alteration. This is classified as maintenance/repair work, and not alterations or new construction. Only alteration or new construction work is required to address ADA compliance.

84. The Federal Highway Administration (FHWA) confirmed on April 18, 2016 that Defendant’s City Council would not be responsible to pay the \$87,000.00 for the *LR Kimball* study if they rejected the study’s recommendation to demolish the McBride Viaduct.

85. The federal financial assistance from FHWA and Defendant PennDOT for demolition of the McBride Viaduct can be reallocated to repair work on the bridge if the City Defendants decide to keep and repair the bridge in lieu of demolition. Defendant PennDOT confirmed in an email that the current amount available for reallocation is \$1.26M.

86. The City Defendants' designation of the *McBride Avenue Project* as a "neighborhood" project was a deliberate effort to evade the requirements of Title VI's environmental justice requirements and the City Defendants by doing so displayed deliberate indifference to the intentional discrimination being carried out against Plaintiffs.

87. A total of \$1.26 million is available from PennDOT for diversion from demolition to repair the McBride Viaduct.

88. The McBride Viaduct is not beyond repair and Defendant PennDOT verified this by providing a repair estimate.

89. There has never been a full public hearing on this project. The demolition team has only conducted several public meetings with tightly controlled agendas, meeting protocols and messaging that was biased toward the plan for demolition. Between February 2012 and July 2013 Defendants held three CAC meetings and two public presentations. The process was slanted toward demolition from the start. Defendants went through the steps of holding a meeting, but never sincerely investigated what it would take to repurpose the bridge. Ultimately, Defendants dismissed repurposing the bridge way too early.

90. On February 27, 2012, a public meeting was held to introduce and provide information on the *McBride Viaduct Feasibility Study* to the general-public, meet the project team, seek feedback on issues and to solicit nominations for the Citizen Advisory Committee

(CAC). Notes from the meeting, however, indicate that the public's role was simply to provide input and allow for public opinion to be integrated into the development process.

91. On July 31, 2013, Defendants' project presentation team announced that Defendants had decided to demolish the bridge, which decision by Defendants displayed deliberate indifference to the intentional discrimination being carried out against Plaintiffs, in violation of Title VI.

92. In 2004, Defendant PennDOT developed a comprehensive Environmental Justice (EJ) guidance document called *Every Voice Counts* to assist Defendant PennDOT and its planning partners in addressing EJ during the planning and programming processes for all aspects of transportation-related services.

93. Defendant PennDOT in *Every Voice Counts* recognized three primary reasons for identifying EJ populations; (a) to better engage EJ populations for inclusion in the public involvement process; (b) to identify and integrate the transportation needs and priorities of these populations in plans and programs; and (c) to assess the effects of alternative transportation planning policies, investments, and programs on EJ populations.

94. Defendants knew or should have known that low income and minority populations are located in the McBride Viaduct Project Study area.

95. Thus, an environmental justice analysis (EJ) was required by Defendants.

96. U.S. Department of Transportation Order 5610.2(a) and Federal Highway Administration Order 6640.23A directs that all state and local planning agencies using federal funds must address the environmental impacts of plans and projects on minority and low-income populations.

F. DESPITE NUMEROUS COMMUNITY REQUESTS, DEFENDANTS REFUSED TO HOLD PUBLIC HEARINGS

97. The City Defendants did not employ or contract a City Planner, nor hire a City Planning firm at any time before, during or after the *McBride Viaduct Feasibility Study* was conducted.

98. Defendants' public notification and outreach concerning the Defendant City's application to demolish the McBride Viaduct was very limited in the form of mailings, newsletters, surveys, comment forms, and public input.

99. No stenographer was present at any Citizen Advisory Committee meetings, public meetings, or Public Safety & Government Officials meetings.

100. Minutes of the meetings were the result of note-taking and not verbatim.

101. No recorded public hearings were ever conducted between 2010 and April 2018.

102. Defendants' public meetings and public outreach efforts failed to utilize multi-lingual forms of communication.

103. All of the meetings held by the Defendants were in English.

104. Defendants failed to provide a public interpreter for the public which included a mix of ethnic groups including: Asians; Hispanics; Africans; Bosnians; Ukrainians; Somalis; Bhutanese; and Nepalese and by doing so Defendants engaged in intentional discrimination which conduct displayed deliberate indifference to the Title VI rights of Plaintiffs.

G. LOSS OF KEY CONNECTIVITY

105. If the McBride Viaduct is demolished, the historic East Avenue business corridor will be forever severed from the heavily used Buffalo Road, Perry Plaza corridor leaving a 1.5 mile gap in north-south connectivity between Downing Avenue at-grade crossing and the Ash Street underpass with the only crossing being an arterial highway.

106. This is an irreparable loss of a more-healthy north-south connection for bikes and pedestrians.

H. INJURY TO HEALTH OF NEIGHBORHOOD CITIZENS

107. Before the McBride Viaduct was closed, the citizens of the neighborhood used the Viaduct to get to school, work, shopping and are now forced to walk a longer route (minimum 711 feet longer) which includes a harrowing 2000 feet walk alongside a four-lane arterial highway breathing in fumes and particulates from 14,000 daily cars, trucks and tractor trailers.

108. This route is projected by Defendant PennDOT to increase in traffic as the downtown and Bayfront are further developed.

109. Unborn children will be impacted, as will the infants in strollers, toddlers, and youth who must use the route to walk to school.

110. The cumulative impact of automobile exhaust toxins in this specific location during developmental years has not been assessed.

111. However, their harm is documented in many publications, the future increases of asthma, bronchitis, COPD, etc. will be irreparable.

112. By demolishing the McBride Viaduct, Defendants remove the only alternative route for these citizen stakeholders to avoid these toxins.

I. INCREASED DANGER TO RESIDENTS

113. With the closure and demolition of the McBride Viaduct the emergency response time for East side citizen stakeholders will increase to over four minutes which has a direct correlation to life or death for East side citizens. This is especially true for youth and persons

without transportation who depend upon timely life-saving responses from police, fire and EMS services.

114. With the closure and demolition of the McBride Viaduct, the at-grade shortcut over the railroad tracks is more likely to be used by youth because that is a direct line to get to the north side of the tracks for destinations north and northeast. Barriers will be breeched because they will no longer have the safer option of the Viaduct and the highway is much further away.

115. Thus it is inevitable that the sad story of the early 20th century (1918) will be repeated when at least one school child was killed crossing the railroad tracks at East Ave. This death, a century ago, was the reason the McBride Viaduct was constructed. No fence will be able to be constructed to keep immature adolescents and teenagers from taking the shortest route, the resulting harm will be irreparable.

116. The highway route forces the Erie neighborhood citizen stakeholders through a highly dangerous intersection at East 12th Street and Bayfront Highway.

117. Although Defendant City Council was told in the 2014 LRK study that a sidewalk would be constructed on the south side of East 12th Street to allow pedestrians to proceed east without crossing the dangerous highway intersection, no sidewalk will be constructed.

118. Erie citizen stakeholders walking and biking will have to dodge vehicles turning right-on-red as they cross East 12th Street and the Bayfront – an intersection with a dangerous blind spot.

J. DISINVESTMENT PLAN WILL CONTINUE INTO 21ST CENTURY

119. The Erie redlining map of 1937 urged bankers not to support investment in the Eastside.

120. Eighty years later the real-estate values map of the Defendant City shows the terrible success of this planned attack on the McBride neighborhoods.

121. By demolishing the Eastside's key, spacious pedestrian and bike path Defendants continue to intentionally discriminate against African-American and Hispanic Eastside citizens stakeholders on the basis of their race by perpetuating and cultivating the generational, structural racism and classism that has helped create and earned Defendant City the designation "worst city for Black Americans."

122. The loss of this functional and highly symbolic structure will seal the Defendant City's identity and reputation as a place unwilling to listen to "the least of us."

K. DEFENDANTS PENNDOT AND CITY FAILED TO PROPERLY ENGAGE IMPOVERISHED CITIZEN STAKEHOLDERS OF THE MCBRIDE NEIGHBORHOOD

123. Defendants PennDOT and the City Defendants failed to conduct a transparent process that engaged the Eastside citizen stakeholders.

124. Defendants relied on the *McBride Viaduct Study* that was flawed and biased, but then blamed the failure on the Eastside citizen stakeholders for their own failure to conduct the transparent process required for compliance with Title VI.

125. Defendants' use of the flawed and biased *McBride Viaduct Study* resulted in their dismissing the potential bike-pedestrian-only use too early in the study without proper due diligence and then unlawfully assigning the "no change" alternative to the repair for vehicular use.

126. Defendants' insistence in relying upon the flawed and biased *McBride Viaduct Study* caused them to engage less than 1,000 citizen stakeholders of the 23,000 citizen stakeholders combined for Census tracts 5, 7, 13, 14, 15, 16, 17, and 26 combined, or less than 5% of the relevant citizen stakeholders.

127. Defendants' reliance upon the *McBride Viaduct Study* means that the selected *Preferred Alternative* was determined without meaningful engagement by 95 % or a majority of the low income and minority populations within a one and half mile radius of the McBride Viaduct.

128. Defendants in using the *McBride Viaduct Study* as a public outreach tool garnered less than a ten percent 10% response rate. Defendants rather than acknowledging that their public outreach process failed, instead blamed the poor response rate on the Eastside citizen stakeholders and said it was their (the citizen stakeholders) failure to respond in adequate numbers.

129. Defendants' use of the *McBride Viaduct Study* is below the industry standard acceptable minimum response rate of 20%, and is actually less than half the acceptable minimum standard.

130. Defendants relied upon the *McBride Viaduct Study* despite its failure to recognize the importance of on-site interviews of the actual impoverished citizen stakeholders of the Viaduct to determine its value to them and which resulted in Defendants failing to conduct any on-site interviews that included the impoverished citizen stakeholders.

131. The *McBride Viaduct Study* recognized that the Viaduct neighborhood was an incredibly diverse and impoverished urban population, but Defendants failed to structure an

appropriate public outreach plan that properly engaged the Viaduct “social justice population” that would have resulted in a better response rate and a study compliant with Title VI.

132. Defendants’ use of the *McBride Viaduct Study* resulted in Defendants approving the demolition of the Viaduct without any calculation of an estimate to determine the cost of repairing the Viaduct for bike-pedestrian only use.

133. The *McBride Viaduct Study* acknowledges that the project area is underserved for north-south connectivity, and that is the reason the Viaduct is a popular bridge for non-vehicular use. Defendants nevertheless intentionally chose to disregard its potential as a bike-pedestrian-only repurposing of the structure.

134. Defendants used the *McBride Viaduct Study* as a basis for their decision to approve demolition of the Viaduct although it was prepared by traffic engineers, and lacked input from any architects, urban planners, urban designers or landscape architects.

135. The City Defendants and Defendant PennDOT failed to listen to the public and respond, as they had already decided to demolish the Viaduct before scheduling and conducting the “feasibility study” public meetings.

136. Defendant PennDOT’s *Project Level Environmental Justice Guidance* recognized that public involvement should be ongoing throughout the planning process, and should be designed to get all of the stakeholders actively involved.

137. Defendant PennDOT’s *Project Level Environmental Justice Guidance* has concluded that public involvement and outreach is the cornerstone of an effective EJ strategy for transportation planning and programming. It is the fundamental tool by which minority and low-income populations have representation and a voice in the process. As such, public involvement should be meaningful and measurable.

138. Defendants' public involvement was not ongoing throughout the planning process, and Defendants failed to make certain that all of the neighborhood stakeholders actively involved at all stages of the McBride Viaduct project development.

139. While Limited English Proficient (LEP) populations are not always EJ, this indicator is highly correlated with minority populations. When the demographic analysis reveals minority or low-income populations that do not speak English well or at all, public involvement materials should be prepared in the languages spoken by the communities being addressed.

140. Defendants failed to utilize appropriate public involvement techniques to ensure effective communication with non-English speakers.

141. At all times relevant herein, the Commonwealth has a statewide contract with INTERPRETALK for interpretive services, which is managed by PennDOT's Bureau of Equal Opportunity.

142. Agents of PennDOT and its planning partners failed to access these INTERPRETALK services at no cost to them.

143. Defendants failed to utilize interpretative services during the environmental justice review for the McBride Viaduct.

144. A critical component of public involvement is actually meeting with the public. Defendants' methods of contacting and meeting with the public was insufficient public involvement in violation of Title VI.

145. Defendants ignored the importance of identifying and communicating with EJ populations in the administration and implementation of federally-funded programs, policies, and activities that affect human health or the environment so as to identify and avoid

“disproportionately high and adverse” effects on minority and low-income populations and as a result violated Title VI.

146. A disproportionately high and adverse effect on minority and low-income populations means an adverse effect that is predominately borne by a minority population and/or a low-income population.

147. Demolition of the McBride Viaduct by the unlawful intentional racial discrimination by Defendants in violation of Title VI will cause Plaintiffs and the minority population and/or low-income population appreciably more severe or greater suffering in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

148. Defendants failed to evaluate the environmental justice effects of the McBride Viaduct’s demolition and address the transportation needs and concerns of the EJ populations in the plan or program.

149. Defendants violated Title VI by abrogating their responsibility to comply with the three basic principles of environmental justice which are to avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.

L. THE PennDOT, PAPUC APPROVAL PROCESS

150. Environmental Justice (EJ) refers to the implementation of **Title VI of the Civil Rights Act of 1964**. Section 601 of Title VI directs that all recipients of federal funding must eliminate discrimination on the basis of race, color, or national origin. Title VI states:

No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance, (Title VI, Civil Rights Act of 1964, U.S.C. 42, Sec 2000d et seq).

151. Defendants PennDOT, PAPUC and the City Defendants, at all times relevant herein, annually receive financial assistance from the U.S. Department of Transportation (“DOT”) and or the Federal Highway Administration (“FHWA”) to regulate and control transportation and enforce other environmental protection statutes in the Commonwealth of Pennsylvania.

152. DOT and FHWA provide financial assistance for the construction and repair of bridges such as the McBride Viaduct . One of the programs for which federal financial assistance is provided is the construction and repair of bridges such as the McBride Viaduct .

153. Plaintiffs are among the intended beneficiaries of this federal financial assistance.

154. Pursuant to 49 C.F.R. §21.5(b) (iv), Defendants in accepting such federal assistance for the construction, repair, and demolition of the McBride Viaduct , restricted Plaintiffs from the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program of federal assistance.

155. Pursuant to 49 C.F.R. §21.5(b) (vii), Defendants in accepting such federal assistance for the construction, repair, and demolition of the McBride Viaduct , denied Plaintiffs the opportunity to fully participate as a member of a planning, advisory, or similar body which is an integral part of the project.

156. Pursuant to 49 C.F.R. §21.5(d) Defendants in accepting such financial assistance for the McBride Viaduct were prohibited from selecting the McBride Viaduct site when the purpose of that selection or its effect when made was to exclude individuals such as Plaintiffs from participation in, to deny them the benefits of, or to subject them to racial discrimination.

157. Pursuant to 49 C.F.R. §21.7 (a), in accepting such federal assistance for the construction, repair, and demolition of the McBride Viaduct , Defendants PennDOT, PAPUC failed to provide lawful assurances to the DOT of effective compliance with the DOT's Title VI enforcing regulations, which included the following:

a. Defendants would not use criteria or methods of administering its environmental programs which have the effect of discriminating on the basis of race, color, or national origin, in accordance with 49 CFR §21.7

b. Defendants would not choose a site for a facility which has the effect of discriminating on the basis of race, color, or national origin, pursuant to 49 CFR §21.5(d); and

c. Defendants would adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of the DOT's Civil Rights regulations, 49 CFR §21.

158. On or about December 9, 2016, Defendant City of Erie applied to Defendants PennDOT and PAPUC for permits to demolish the McBride Viaduct.

159. On February 17, 2017, Defendants PennDOT and PAPUC basing their decision upon the flawed *McBride Viaduct Study* issued approval to demolish the McBride Viaduct in violation of Title VI. On March 6, 2017, Plaintiff ErieCPR through its President, Plaintiff Adam Trott, filed a petition for reconsideration request to Defendant PAPUC's demolition approval. Defendant PAPUC denied Plaintiff ErieCPR's request for an appeal on March 23, 2017. Without notifying Plaintiff ErieCPR or Plaintiff, Adam Trott. Defendant PAPUC held a secret, closed door carry-in agenda meeting, on July 12, 2017, to affirm denial of Plaintiff ErieCPR's request for an appeal hearing. Neither Defendant PennDOT nor the City Defendants published a public notice of the Defendant City's application to Defendant PAPUC for demolition of the McBride

Viaduct. Nor has Defendant PAPUC published public notice of its July 12, 2017, carry-in-agenda meeting.

160. On November 1, 2017, Defendants PennDOT and PAPUC informed the City Defendants that Defendant City was allowed to commence construction/demolition of the McBride Viaduct in violation of Title VI.

161. On February 7, 2018, Defendant City Council approved demolition of the McBride Viaduct and refused to consider a public hearing on the demolition approval, by tabling consideration of a motion to hold a public hearing. On or about April 17, 2018, Plaintiffs demanded that Defendants stop the unlawful, discriminatory conduct described above, but Defendants refused, and still refuse, to refrain from such intentional discriminatory conduct.

CLAIMS FOR RELIEF

FIRST COUNT

DEFENDANTS HAVE VIOLATED SECTION 601 OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. §2000d (INTENTIONAL DISCRIMINATION)

162. All of the allegations stated above in this Complaint are incorporated by reference as if set forth in full below.

163. Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, provides that no person in the United States shall be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance on the grounds of race, color, or national origin.

164. Defendants, PennDOT, PAPUC and City of Erie, who are recipients of federal financial assistance and subject to the requirements of Title VI, intentionally discriminated

against the plaintiffs and other African-American and Hispanic residents of McBride Avenue Bridge neighborhood and the adjoining communities on the basis of race, color, and national origin. This intentional discrimination is made evident by the following:

a. Defendants PennDOT, PAPUC and City of Erie knew that the residents of McBride Avenue Bridge and the surrounding neighborhoods were predominantly African-American and Hispanic.

b. Defendants PennDOT, PAPUC and City of Erie knew that the demolition of the McBride Avenue Bridge would have an adverse impact upon these African-American and Hispanic residents.

c. Defendants PennDOT, PAPUC and City of Erie chose to use the McBride Feasibility Study as the criteria for determining whether demolition should proceed, knowing that such a limited analysis could not reveal that demolition of McBride Viaduct would create a discriminatory impact upon plaintiffs.

d. Defendants PennDOT, PAPUC and City of Erie refused to conduct a disparate impact analysis because they contended that the operation of this demolition project would not have any negative impact upon the McBride Avenue Bridge community.

e. Defendants PennDOT, PAPUC and City of Erie were fully aware of the requirements of Title VI and of their obligations, as recipients of federal assistance, to comply with their assurances to the DOT that they will meet such requirements. They knew that their use of the McBride Feasibility Study and related environmental justice standards as the sole criteria was not consistent with the DOT's Guidelines for recipients of financial assistance and was in violation of Title VI.

f. Defendants PennDOT, PAPUC and City of Erie issued approvals to demolish the McBride Viaduct even though they knew of the illegal discriminatory impact it would have upon the plaintiffs and other African-American and Hispanic residents.

g. Defendants PennDOT, PAPUC and City of Erie have engaged in a pattern and practice of granting approvals to demolish bridges in communities where most of the residents are African-American and/or Hispanic to a greater extent than in predominantly white communities, resulting in intentional discrimination on the grounds of race, color, and national origin.

h. Defendants PennDOT, PAPUC and City of Erie have failed to develop or implement a procedure that ensures there will be no discrimination in their project approvals or to provide for meaningful public participation for residents of communities affected by the approval decisions.

i. Defendants PennDOT, PAPUC and City of Erie failed to translate documents which were made available in English into Spanish and other languages, even though they knew or should have known that a significant number of the affected population are Hispanic and have limited English proficiency, so that they require Spanish and other language materials to be available for meaningful participation in the permit process.

j. Defendants PennDOT, PAPUC and City of Erie failed to post signage near, at, or on the Viaduct about Viaduct meetings and potential Viaduct demolition where such notice could more effectively reach Viaduct users.

k. Defendants PennDOT, PAPUC and City of Erie's prior history of permitting decisions and their issuance of the approval to demolish the McBride Viaduct despite

knowledge of its discriminatory effects demonstrates that Defendants intended to and did discriminate against Plaintiffs on the basis of race, color, and national origin.

165. Defendants PennDOT and PAPUC's issuance of approval to demolish the McBride Viaduct violated Title VI, 42 U.S.C. §2000d.

SECOND COUNT

DEFENDANTS HAVE VIOLATED THE DOT REGULATIONS, 49 CFR
PART 21, ISSUED PURSUANT TO SECTION 602 OF TITLE VI OF THE CIVIL
RIGHTS ACT OF 1964, 42 USC §2000d-1
(DISCRIMINATORY EFFECT)

166. All of the allegations stated above in this Complaint are incorporated by reference as if set forth in full below.

167. Section 602 of Title VI, 42 U.S.C. §2000d-1, authorizes every federal department and agency which is empowered to extend federal assistance to any program or activity to effectuate the providence of Section 601 by issuing regulations.

168. Pursuant to Section 602, the DOT and FHWA have promulgated regulations which provide that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving DOT or FHWA assistance on the basis of race, color, or national origin. 49 CFR §21. The regulations further specifically prohibit a recipient of financial assistance from using criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. 49 CFR §21.7.

169. Defendants violated Title VI and the DOT regulations by approving demolition of the McBride Viaduct because such approval has the effect of discriminating against Plaintiffs on the basis of their race, color, and national origin, as demolition, and other negative effects resulting from the demolition will:

a. Cause the African-American and Hispanic residents of the McBride Viaduct Bridge community and the adjoining census tracts to be exposed to a substantially higher level of air pollution than most residents of predominately which communities in the Commonwealth of Pennsylvania.

b. Cause African-American and Hispanic residents of the McBride Viaduct Bridge community and the adjoining census tracts to suffer greater physical harm from the exposure to pollutants than most residents of predominately which communities in the Commonwealth of Pennsylvania.

c. Endanger the health and safety of the African-American and Hispanic persons who live near the facility to a far greater degree than it will injure most residents of predominately white communities in the Commonwealth of Pennsylvania.

d. Increase the existing disparity between the health of African-Americans and Hispanic residents who live near the McBride Viaduct as compared to the health of most residents of predominately white communities in the Commonwealth of Pennsylvania.

e. Lower the quality of life, property conditions, real estate values, and self-esteem of African-Americans and Hispanic persons who live in the neighborhood as compared to the quality of life, property conditions, real estate values, and self-esteem of predominately white communities in the Commonwealth of Pennsylvania.

170. Defendants violated Title VI and the DOT regulations because the permitting and demolition of McBride Viaduct results from the discriminatory practice by PennDOT, PAPUC of permitting a significantly greater proportion of discriminatory transportation projects in communities where the residents are predominately African-American and/or Hispanic than in

predominately white communities, creating discriminatory effects on persons on the basis of their race, color, and national origin.

171. Defendants have violated Title VI and the DOT regulations by using criteria and methods of administering its bridge project program which have the effect of subjecting Plaintiffs to discrimination on the basis of their race, color, and national origin, because:

a. Defendants PennDOT and PAPUC failed to investigate whether disparate discrimination would occur with regard to the demolition of the McBride Viaduct, even though they knew that the bridge would be located in a predominately minority community, and even though they had given assurances to the DOT that Defendants PennDOT and PAPUC's practices would not result in any intentional discrimination;

b. Defendants PennDOT and PAPUC relied exclusively on compliance with the *McBride Viaduct Study* and related environmental standards to determine whether any investigation of intentional discrimination was necessary;

c. Defendants PennDOT and PAPUC have not established any protocols for determining compliance with Title VI in its permitting and approval decisions, including procedures for conducting investigations and analysis of disparate intentional discrimination, and therefore cannot determine whether they are complying with the assurances that it gave the DOT that their practices do not violate Title VI and the DOT civil rights regulations;

d. Defendants PennDOT and PAPUC denying opportunity for persons with limited English proficiency to participate in the public process, and otherwise failed to provide for meaningful public participation for such persons;

e. Defendants PennDOT and PAPUC did not provide a grievance process to Plaintiffs regarding their civil rights complaints, in violation of 49 CFR §21.

f. Defendants PennDOT and PAPUC have scheduled the demolition of the McBride Viaduct without a determination that such demolition will be in compliance with federal law.

THIRD COUNT

THE DEFENDANTS HAVE VIOLATED THE RIGHT TO EQUAL PROTECTION AS GUARANTEED BY THE AMENDMENTS TO THE UNITED STATES CONSTITUTION

172. All of the allegations stated in this Complaint are incorporated by reference as if set forth in full below.

173. Pursuant to the 14th Amendment to the United States Constitution, every person has a right to equal protection under the law.

174. Defendants have intentionally discriminated against Plaintiffs on the basis of race, color, or national origin, in violation of the Equal Protection clause of the 14th Amendment and 42 U.S.C. §1983.

175. As a direct and proximate result of Defendants' actions, the Plaintiffs will suffer injuries, including damage to their health, decrease in safety, exposure to pollution, excessive traffic, and noise, a blighting effect on their community, lowering of self-esteem, decrease in property values, and the diminution of their quality of life.

176. In acting as is alleged in this complaint, Defendants acted knowingly, willfully, and maliciously, and with reckless and callous disregard for Plaintiffs' federally protected rights.

177. As a result of Defendants' actions, Plaintiffs have suffered and will continue to suffer extreme hardship and actual and impending irreparable injury and damages in that Defendants are proceeding on a schedule to complete the demolition the McBride Viaduct

by September 2018 leaving Plaintiffs disconnected from other Erie neighborhoods, including longer emergency response times to Plaintiffs as a result of the Viaduct closure and demolition, unlike the bridge projects in majority white neighborhoods of the City Defendant.

178. Plaintiffs have no adequate or speedy remedy at law for the intentional discrimination described above, because Defendants have continued to rely upon a flawed environmental justice study and are proceeding with the *McBride Viaduct Study's* schedule of demolition. This action for injunctive relief is Plaintiffs only means of securing prospective relief.

RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Find and declare that the Defendants PennDOT, PAPUC and City of Erie have violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000d *et seq.*, DOT civil rights regulations, 49 CFR Part 21, the 14th Amendment of the U.S. Constitution;
- (2) Declare the demolition approvals granted to Defendants invalid;
- (3) Issue an injunction rescinding the approvals, and enjoining the Defendants PennDOT, PAPUC and City of Erie from taking any further action whatsoever to demolish the McBride Viaduct;
- (4) Enjoin Defendants PennDOT, PAPUC from using its current procedures in evaluating this and other applications;
- (5) Order Defendants PennDOT, PAPUC to develop and adopt a comprehensive protocol for reviewing applications that will prevent the granting of approvals that

have the effect of discriminating against persons on the basis of color, race, or national origin;

- (6) Order Defendants PennDOT, PAPUC to adopt procedures for meaningful public participation in the application and approval process, including a requirement that public notices of all meetings and hearings, agendas, and related documents be translated and made available in Spanish and other languages when such translations are necessary in light of the demographics of the affected community;
- (7) Order the Defendants PennDOT, PAPUC to adopt a grievance procedure as required by 49 CFR §21;
- (8) Order the Defendants to pay plaintiffs' costs;
- (9) Order the Defendants to pay plaintiffs' reasonable expert and attorney's fees;
- (10) Order such other relief as the Court deems equitable and just.

Respectfully submitted,

/s/Lawrence Mays

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Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs, ERIE CPR, et al., pursuant to Fed. R. Civ. P. 38 (b), hereby request a trial by jury.

/s/Lawrence Mays

Lawrence Mays
Attorney for Plaintiffs
ERIE CPR, et al.

VERIFICATION

Michael Keys, of full age, after being duly sworn, deposes and states as follows:

I am a resident of Erie, Pennsylvania 16504. I am one of the founding members of ErieCPR and am presently the Spokesperson of the group. I have personal knowledge about the conditions in my neighborhood, the McBride Viaduct , and of the activities of ErieCPR.

I have reviewed the attached Verified Complaint and believe the information contained in it to be true. I hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

Michael Keys

SWORN TO AND SUBSCRIBED

BEFORE ME THIS _____ DAY OF

APRIL, 2018.
