

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**THE LITTLE ROCK DOWNTOWN NEIGHBORHOOD  
ASSOCIATION, INC., THE PETTAWAY NEIGHBORHOOD  
ASSOCIATION, THE HANGER HILL NEIGHBORHOOD  
ASSOCIATION, THE FOREST HILLS NEIGHBORHOOD  
ASSOCIATION, INC., THE COALITION OF  
LITTLE ROCK NEIGHBORHOODS, INC.,  
ARKANSAS COMMUNITIES ORGANIZATION, INC.,  
JOSHUA SILVERSTEIN, DALE PEKAR,  
JOHN HEDRICK, DENISE ENNETT,  
ROHN MUSE, BARBARA BARROWS  
and KATHY WELLS**

**PLAINTIFFS**

**Vs.**

**Case No. 4:19CV 362-JM**

**FEDERAL HIGHWAY ADMINISTRATION,  
UNITED STATES DEPARTMENT OF TRANSPORTATION;  
ANGEL L. CORREA, DIVISION ADMINISTRATOR,  
ARKANSAS DIVISION, FEDERAL HIGHWAY  
ADMINISTRATION; and  
ARKANSAS DEPARTMENT OF  
TRANSPORTATION and LORIE TUDOR,  
DIRECTOR, ARKANSAS DEPARTMENT OF  
TRANSPORTATION**

**DEFENDANTS**

**PLAINTIFFS' MOTION FOR  
PRELIMINARY AND PERMANENT INJUNCTION**

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**PLAINTIFFS' MOTION FOR  
PRELIMINARY AND PERMANENT INJUNCTION**

Come the Plaintiffs, by and through their attorneys, Richard H. Mays of Richard Mays Law Firm PLLC, Little Rock, Arkansas, and for their Motion for a Preliminary Injunction prohibiting the Defendants from commencing any construction on any portion of the proposed reconstruction of a 7.3 mile section of Interstate 30 in Little Rock and North Little Rock, Arkansas, more particularly described herein, pending a final hearing for a permanent injunction based on the merits of the First Amended Complaint or any subsequent amended Complaint filed herein, state:

1. On February 26, 2018, the Defendant Federal Highway Administration (FHWA) issued a document entitled “Finding of No Significant Impact” (FONSI) authorizing the reconstruction of a 7.3 mile section of Interstates 30 and 40 in the cities of Little Rock and North Little Rock generally described as the area between the intersections of Interstate 530, Interstate 440, and Interstate 30 on the south, and running north to the intersections of Interstate 30 and Interstate 40; also including the section of Interstate 40 from its intersection with I-30 eastward to its intersection with Highway 67/167; and also including the section of Interstate 40 from its intersection with I-30 westward to its intersection with MacArthur Boulevard (Ark. State Highway 365), all of such highway construction project (including the interchanges contained therein) commonly referred to as “the 30 Crossing Project”, or simply “the Project.” A map of the Project area is shown in Figure No. 1 in the First Amended Complaint. Interchanges with other major highways that will also be rebuilt are circled in that Figure 1.

2. The FONSI was based upon an Environmental Assessment (EA) prepared by the Defendant, Arkansas Department of Transportation (ArDOT) and issued on June 8, 2018.

3. On May 20, 2019, the Plaintiffs herein filed suit in the above entitled and numbered cause praying that the Court declare the EA and the FONSI declared to be null, void and otherwise ineffective as a basis for the decision by the FHWA and ArDOT to perform the 30 Corridor Project by reason of the failure of the Defendants, FHWA and ArDOT to comply with the requirements of the National Environmental Policy Act (“NEPA”), 42 USC §4321- 70, and its implementing regulations issued by the White House Council on Environmental Quality (“CEQ”) 40 C.F.R. §§1500-08, and the Federal-Aid Highway Act., as amended (“FAHA”), 23 U.S.C. §101 et seq.; the regulations implementing that Act, and Executive Orders 12898 and 11988; and other applicable laws and regulations.

4. On July 3, 2019 Plaintiffs filed a Motion for a Preliminary Restraining Order and Permanent Injunction (ECF 7) with an accompanying Brief (ECF 8), which were subsequently withdrawn without prejudice based upon the Joint Motion of the parties due to Defendants’ assurance that construction was not scheduled to commence immediately, and on condition that the Defendants would notify Plaintiffs’ counsel in writing 45 days in advance of Defendants’ intent to commence construction on the Project.

5. On December 23, 2019, the parties filed a Joint Motion for Stay of Proceedings and Motion to Withdraw a Joint Proposal for Briefing Schedule (ECF No. 25)<sup>1</sup> to allow Defendants the opportunity “to complete a Re-evaluation of the I-30 Project to determine

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<sup>1</sup> At the time of the preparation of this Brief, the Administrative Records (ARs) upon which the EA and the Reevaluation were based had not been lodged by the Defendants with the Clerk. The electronic devices contained the ARs were delivered to Plaintiffs on or about July 9, 2020. Due to the unavailability of the ARs during the preparation of this Brief, references to relevant documents herein will be to ECF documents and page numbers, where available. Plaintiffs will attempt to provide references to the ARs by supplement to the Brief.

whether the approved Finding of No Significant Impact (FONSI) for the project remains valid in light of the agreed-upon project scope.” (ECF No. 25, p. 1)

6. The Reevaluation was filed by the Federal Defendants on June 1, 2020 (ECF 38, 38-1— 38-8), finding that (i) the scope and design of the Project was to be modified to include reconstruction of only that portion of the original Project located between the intersection of I-30 with I-630 northward along I-30 to the intersection of I-30 and East Broadway Street in North Little Rock, with certain additional improvements in pavement surface extended to the intersection of I-30 and I-40; (ii) that if proposed Issue No. 1 (a proposed amendment to the Constitution of Arkansas to make permanent a one-half cent sales tax) on the November, 2020 general election ballot was adopted, the Project as originally designed (with certain modifications) would be constructed; and (iii) that the proposed changes in the scope and design of the Project required no additional environmental assessment.

7. Pursuant to the commitment of the Defendants to notify Plaintiffs’ counsel in writing 45 days in advance of Defendants’ intent to commence construction on the Project, Defendants notified Plaintiff’s counsel via email on June 5, 2020 that utility relocation work for the Project is planned to begin on July 21, 2020; that telecommunications relocation work will begin on July 28, 2020; that other pre-construction work will be commenced at or about the same time on the grounds of the Clinton Center and other areas near the I-30 bridge; and that construction on the roadbed portion of the Project is anticipated to commence in mid-October, 2020.

8. Because commencement of construction would constitute an irretrievable commitment of resources to the Defendants’ preferred alternative, possibly frustrating judicial review and foreclosing consideration of other viable alternatives, Plaintiffs now refile their

Motion for Temporary Restraining Order/Permanent Injunction and Brief in support of the Motion.

9. The actions of the FHWA and ArDOT in preparation and issuance of the EA and its findings, in approving and issuing the FONSI, and in preparation and issuance of the Reevaluation and its findings were unreasonable, arbitrary, capricious, an abuse of discretion and not in accordance with law as more fully described in the Brief that accompanies this Motion.

10. A preliminary injunction is necessary in this case because the work on the Project may commence on or about July 21, 2020. In the event of commencement of utility and telecommunication relocation and commencement of highway construction, Defendants may become obligated to pay contractors for mobilization and/or demobilization costs. Actual work may commence on demolishing roadways, excavation and grading of new roadbed, demolition of the I-30 bridge, and other work that would involve costs in excess of \$500 million, and constitute an irrevocable and irretrievable commitment to a particular course of action. In addition, the commencement of work on the Project would cause permanent and irrevocable harm to the environment and to Plaintiffs' interests as set forth in the Complaint, and frustrate any further meaningful environmental review of the decision of FHWA and ArDOT to perform the project work.

11. Plaintiffs can show a substantial likelihood of prevailing on the merits on final hearing and irreparable harm to the Plaintiffs should construction on the Project be allowed to proceed, as demonstrated in the accompanying Brief in support of this Motion. The Defendants will suffer no harm by delay pending review of this matter on the merits, and the public interest will be served in the issuance of a preliminary injunction to prevent construction of the Project

pending a final hearing in this matter, thereby ensuring compliance with NEPA and protection of the environment.

12. Pursuant to 28 USC §1657 and 5 USC §705, and Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs request that the Court expedite the consideration of this Motion by scheduling a hearing as soon as possible; that a preliminary injunction be issued, and that a schedule for submission of Motions and Cross-Motions for Summary Judgment on the merits be established as expeditiously as possible thereafter.

13. A Brief in Support of this Motion and the Plaintiffs' Exhibits Accompanying Motion for Preliminary Injunction are submitted contemporaneously herewith.

**WHEREFORE**, Plaintiffs pray:

- A. For a Preliminary Injunction restraining and enjoining the Defendants, and each of them and their contractors, from any activities regarding relocation of utilities or telecommunications lines or equipment, and/or construction on or implementation of the 30 Corridor Project, or any portion thereof, or otherwise acting pursuant to the Finding of No Significant Impact issued by the FHWA and the Reevaluation conducted by the Defendants, pending hearing on the merits of the Complaint.
- B. That the Court establish a schedule for submission of Motions and Cross-Motions for Summary Judgment on the merits and set a date and time for a hearing on such Motions and Cross-Motions for Summary Judgment.
- C. That the Court issue any and all other necessary and appropriate process to require the Defendants to refrain from implementation of the 30 Corridor Project, pending conclusion of these review proceedings, as provided by 5 USC §705.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the date set forth below he served a copy of the above and foregoing Motion upon counsel of record for the Defendants through the Court's ECF system. The undersigned is not aware of any other party or counsel who requires service by any other means.

Dated: July 10, 2020.

/s/ Richard H. Mays  
Richard H. Mays