Appeal No. 22-CV-303

DISTRICT OF COLUMBIA COURT OF APPEALS

KEISHA STALEY, *et al*.

Appellants,

v. **2021 CAB 3930**

DISTRICT OF COLUMBIA, *et al*.

Appellees.

On Appeal from the Superior Court of the District of Columbia

Civil Action Number 2021 CA 003930 B

(Judge Hiram E. Puig-Lugo, D.C. Superior Court)

APPELLANTS' REPLY BRIEF

/s/ *Johnny Barnes*

Johnny Barnes, D.C. Bar Number 212985
Counsel for Appellants
301 "G" Street, S.W - Suite B101
Washington, D.C. 20024
AttorneyJB7@gmail.com
Telephone (202) 882-2828

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STATEMENT OF THE ISSUES

Plaintiffs, who are Black, are long-term residents of a Neighborhood named Brentwood, and live across the street, a "stones throw" from the proposed Bus Depot. They have lived in Brentwood a varied number of years, including as many as forty years, *Compl*. p. 25 and 26.

More than half of the Industrial Facilities in the District of Columbia plague Ward Five, where the Brentwood Neighborhood is located. The cumulative effects of this disproportionate placement of Industrial Facilities are long term and compounded. The Defendants want to put a Bus Terminal in the heart of this residential neighborhood, with 250 buses, 500 employees who drive to work and occupy the limited neighborhood parking spaces, a fueling station and a training facility for bus drivers. The Bus Depot would be placed at the vortex of Montana Avenue and "W" Street, one block from New York Avenue and the Amtrak Yard where trains assemble. In addition, nearby is diesel spewing snowplows, salt trucks, limousine buses and other trucks and buses on at least 10 acres of land owned by the Defendants, the District of Columbia Government, and within breathing distance of its Brentwood residents. Worse, already in the Neighborhood, all on “W” Street, N.E., across from Plaintiffs, is the Brentwood Solid Waste Disposal Facility, located at 1241 “W” Street, N.E.; the DPW Solid Waste Collection Division, the DDOT Street and Bridge Maintenance Division, located at 1531 “W” Street, N.E.; next to the Capitol Paving of D.C. Construction Company, located at 1525 “W” Street, N.E.; the Federal IPC Transfer (the recycling center), located at 1220 “W” Street, N.E.; and the Fort Meyer Construction Company, located at 1155 “W” Street, N.E., *Compl*. P. 2 and 3. Plaintiffs already suffer from severe asthma,

respiratory illness, cancer, lung disease, heart ailments, premature deaths, and premature births, as well as other related health challenges, than in any other place in Washington, D.C., *Compl*. p. 3, *Plaintiffs Exhibit A* and Joint Appendix.

The District Government addresses two Issues in its Brief, one of which combines all of the claims made by Plaintiffs. Those Issues are:

1. Whether Plaintiffs have Standing to pursue their claims? and
2. Whether Plaintiffs have plausibly stated a claim for relief under any legal theory?

When it comes to the environment, Standing is almost automatic according to major rulings by the United States Supreme Court, including *Tennessee Valley Authority v. Hiram Hill et al.,* 437 U.S. 153 (1978) and *Massachusetts v. EPA,* 549 U.S. 497 (2007). Courts, including the United States Supreme Court, have found Standing and halted the construction of a Dam, nearly completed construction, costing $150 million, to save the snail darter, a fish facing extinction; ruling that the construction of the Dam was a *prima facie* violation of the Environmental Species Act (ESA). That Federal Court of Appeals deferred to the plain language of the ESA, *Hiram Hill v. Tennessee Valley Authority*, 549 F.2d 1064, 1069 (CA6 1977); The United States Supreme Court affirmed the Court of Appeals Decision by a vote of 6 to 3, *Tennessee Valley Authority v. Hiram Hill et al.*, 437 U.S. 153

(1978). Similarly, a $44 million road project was halted in San Antonio, Texas to save endangered, eyeless spiders, known as the Bracken Bat Cave Mesh weaver.

Moreover, the Defendants collided with the *Tennessee Valley Authority* Case when they failed to follow the D.C. Environmental Policy Act and failed to produce an Environmental Impact Statement before proceeding with the construction of the Bus Depot.

In addition, disparate Impact and Disparate Treatment are Discriminatory Practices in the District of Columbia and at the Federal level, and both practices are deemed admitted by Defendants because they failed and refused to respond to the discovery requests of Plaintiffs. An excellent study by one of Plaintiffs' Experts, Sarah Schoenfeld with the D.C. Policy Center, produced by Plaintiffs here and at the trial level, *Plaintiffs Exhibit B*, reveals that when Brentwood, in the Northeast Quadrant of Washington, D.C., was all White, during the 1930s, the Government protected that Community, even as restrictive covenants, "Mapping Segregation," according to Ms. Schoenfeld, kept Blacks out. After Mapping Segregation was declared unconstitutional by a federal court in 1948, Blacks moved in; but so did multitudinous, toxic, Industrial Facilities under which the Black residents of Brentwood now suffer, Joint Appendix.

STATEMENT OF THE CASE

While on the one hand, stating in their brief that, "[T]he following facts (none of which are subject to dispute) are drawn from the Complaint, the documents in it incorporated by reference, as well as matters of public record," Defendants claim that citations to the Complaint are needed, because "[Plaintiffs assert] without citation that Brentwood residents are more likely to suffer certain illnesses." That was the conclusion of a parade of experts, presented by Plaintiffs with the Complaint and subsequently as *Plaintiffs' Exhibit A and* included in the *Joint Appendix* at pages 51 to 88. Defendants then state that, "[Plaintiffs assert] without citation that half of the 'toxic facilities' are located in Ward 5." That was the finding of an exhaustive and lengthy *Washington Post* Article that was included among the Exhibits in Plaintiffs' Exhibit List at the trial level Motions Hearing. Defendants complain about Plaintiffs cite to the Mapping Graph of Sarah Schoenfeld, photos of the industrial facilities in the Brentwood Neighborhood, *Plaintiffs' Exhibit B*, certain types of vehicles and facilities at the Bus Depot location, all of which are Exhibits Plaintiffs produced. Defendants do not contest any of these assertions; they merely claim they "do not appear" to be a part of the record. There is a different Counsel for Defendants (Appellees) than there was for Defendants at the trial level.

As detailed in the Trial Docket with Defendant's Supplemental Appendix, Plaintiffs filed their Complaint on 2 November 2021, then filed a Motion for Injunctive Relief on 18 November 2021. Discovery was served upon Appellees on 19 November 2021. Appellees did not timely respond to the Discovery and indeed never responded. Under Court Rules, Plaintiffs' Requests for Admissions, unanswered by Defendants, are deemed admitted. Appellees filed an Opposition to Appellants' Motion for Injunctive Relief on 16 December 2021, and Appellants filed a Reply on 29 December 2021. After hearing, the Trial Court denied Appellants' Motion for Injunctive Relief on 6 January 2022. Appellants filed and served additional Discovery also on 6 January 2022. That discovery too was not responded to by Defendants. This matter then came before the Trial Court on Appellees' Opposed Motion to Dismiss Appellants' Complaint, filed 23 February 2022, and Appellants' Opposition, filed 6 March 2022, and Appellees' Reply, filed 14 March 2022. Appellants respectfully present their Opening Brief in this Appeal. The Order of the Trial Court of 24 March 2022, Dismissing the Complaint of Appellants, should be Reversed.

STATEMENT OF FACTS

Even without the proposed Bus Depot, unlike those who live in all other neighborhoods in the District of Columbia, those who live in Brentwood, **due to**

existing, suffocating industrial pollution, are more likely to be afflicted with severe asthma, respiratory illness, cancer, lung disease, heart ailments, premature deaths and premature births, as well as other related health challenges, than in any other place in Washington, D.C. Aggregate those health challenges by the invasion of the COVID Pandemic and the situation is horrifying!

Without proper permitting, according to their own Attorneys, --- the District of Columbia Office of Attorney General --- Appellees began construction of the proposed Bus Depot on 21 December 2021. The backdrop to that start day is shockingly revealing.

Two years earlier, on 1 November 2019, Mr. Wayne Gore with the D.C. Department of General Services stated in an email:

"In preparation for the project, the A/E team conducted an environmental impact study for internal use. **As part of the building permit process, all applicants are required to submit an Environmental Intake Form (EIF) with their application to determine if an Environmental Impact Screening (EIS) is required. If an Environmental Impact Screening is required, an interagency review team will look over the applicants' Environmental Impact Screening Form (EISF) and make a determination**." (Emphasis supplied)

A number of exchanges between Appellees, including Mr. Gore and the residents of Brentwood, can be found in the Joitn Appendix, at pages 110 to 120. **That process, outlined by Mr. Gore, was not followed**. As indicated, construction began on 21 December 2021, and demolition began long before that date. **For**

the first time, on 4 February 2022, the D.C. Department of General Services submitted an Environmental Impact Screening Form (EISF). The EISF can be found at pages 92 to 104 of the Joint Appendix. Indeed, two Paragraphs in that very recently revealed EISF are shocking:

PLAINTIFFS (APPELLANTS) HAVE STANDING TO SUE

As this Court recognized in *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1208 (D.C. 2002), the procedural injury implicit in an agency's failure to evaluate the potential serious environmental impacts of a project is sufficient to establish an injury in fact to support standing, "provided this injury is alleged by a plaintiff having a sufficient geographical nexus to the site of the challenged project to *expect to suffer whatever environmental consequences the project may have."* Id. (emphasis added) (citing *Sabine River Auth. V. U.S. Dep't of Interior*, 951 F. 2d 669, 674 (5th Cir. 1992).

Defendants (Appellees) read *Friends of Tilden Park* to require that Appellants must identify a separate concrete injury before alleging a procedural failure. This argument raises the bar for standing and overlooks the fact that the DCEPA is a procedural statute. As this Court clearly articulated, when the government fails to follow required environmental review procedures, it creates a risk that serious environmental impacts will be overlooked. *Friends of Tilden Park,* 806 A.2d at

1208. Plaintiffs with a sufficient geographical nexus may therefore expect to suffer *whatever* environmental consequences the project *may* have; they need not undertake their own environmental analyses to identify the substantive environmental harms that could result from the project and which the government is obligated to evaluate before moving forward with the project. *See e.g.*, *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000) (finding that plaintiffs established standing to challenge defendant's permit noncompliance without needing to show proof that defendant's noncompliance caused harm to the environment); *Federal Election Comm'n v. Akins,* 524 U.S. 11, 20-25 (1998) (finding that a group of voters' inability to obtain information that Congress decided to make public is sufficient injury in fact to satisfy Article III); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572, FN 7 (1992) (acknowledging that violations of procedural requirements could impact concrete interests of plaintiffs living next to facility where an environmental impact statement was not prepared before construction).

Appellees' characterization of the standard in *Friends of Tilden Park* would effectively gut the DCEPA by requiring that plaintiffs conduct their own environmental review to identify potentially significant environmental impacts of a project. Plaintiffs would only have Standing to challenge the government's noncompliance with the DCEPA if their own review revealed significant environmental

impacts that could separately injure the plaintiffs. Such an interpretation would effectively turn the DCEPA on its head, requiring the public to conduct independent environmental analyses in order to challenge the government's failure to do so. If the legislature had to impose this obligation on the public in order to challenge a governmental action, it would have established a very different statutory scheme. Instead, the express purpose of the DCEPA is to "promote the health, safety and welfare of District of Columbia ("District') residents, to afford the fullest possible preservation and protection of the environment through a requirement that the environmental impact of proposed District government and privately initiated actions be examined before implementation and to require the Mayor, board, commission, or authority to substitute or require an applicant to substitute an alternative action or mitigating measures for a proposed action, if the alternative action or mitigating measures will accomplish the same purposes as the proposed action with minimized or no adverse environmental effects." D.C. Code Section 8-109.01. Under the DCEPA, it is the government that is charged with conducting an environmental review before acting, not the public that must conduct an environmental review to challenge an action that has already been taken. Appellants – who have a concrete interest in the environmental quality (including the aesthetics, noise, traffic, and air quality) of the neighborhood in which they reside– are precisely the individuals

that the DCEPA was designed to protect. *See Sierra Club v. Morton,* 405 U.S. 727, 735 (1972) (environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons "for whom the aesthetic and recreational values of the area will be lessened by the challenged activity.").

Appellants argue that Supreme Court precedent does not support the argument that procedural harms may constitute an injury-in-fact, citing, for example, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2213 (2021) and *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016), both of which are distinguishable. The central issue in *TransUnion* was whether class action plaintiffs had standing under the Fair Credit Reporting Act (FCRA) sufficient to be entitled to damages. There, the Court merely held that, in a class action, "[e]very class member must have Article III standing in order to recover individual damages." *TransUnion*, 141 S. Ct. at 2208 (citing *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 466, 136 S. Ct. 1036, 194 L. Ed. 2d 124 (2016)). In *Spokeo*, the Court looked only at the "concreteness" component of the "injury-in-fact" element with regard to standing under the FCRA. There, the Court opined that the plaintiff could not establish standing by alleging a bare procedural violation, because a violation of one of the FCRA procedural requirements may result in no harm. *Id.* 578 U.S. at 342. This rationale is distinguishable from procedural harms alleged under environmental statutes, such as

NEPA – the federal analogue to the DCEPA – where the alleged procedural harm creates a risk to plaintiffs within proximity to the project that serious environmental impacts have been overlooked. *See Friends of Tilden Park,* 806 A.2d at 1208.

In fact, in *Spokeo,* the Supreme Court acknowledged that the facts under the FCRA claim at issue in the case were distinguishable from procedural violations that create a risk of real harm. "For example, the law has long permitted recovery by certain tort victims even if their harms may be difficult to prove or measure. See, e.g., Restatement (First) of Torts §§569 (libel), 570 (slander per se) (1938). Just as the common law permitted suit in such instances, the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any additional harm beyond the one Congress has identified." 578 U.S. 330, 341-342 (citing, *e.g. Federal Election Comm'n v. Akins*, 524 U. S. 11, 20-25, (1998) (confirming that a group of voters' "inability to obtain information" that Congress had decided to make public is a sufficient injury in fact to satisfy Article III); *Public Citizen v. Department of* Justice, 491 U. S. 440, 449, (1989) (holding that two advocacy organizations' failure to obtain information subject to disclosure under the Federal Advisory Committee Act "constitutes a sufficiently distinct injury to provide standing to sue").

The standard for standing under the DCEPA must not be interpreted to allow a project proponent to take advantage of their own avoidance of procedural compliance. Courts have interpreted standing requirements in cases involving fundamental procedural rights, such as the right to a hearing or an environmental impact statement, to prevent such an outcome. *See e.g., Nat'l Parks Conservation Ass'n v. Manson,* 414 F.3d 1, 8-9 (D.C. Cir. 2005) ("A plaintiff who alleges a deprivation of a procedural protection to which he is entitled never has to prove that if he had received the procedure the substantive result would have been altered. All that is necessary is to show that the procedural step was connected to the substantive result.") (Quoting *Sugar Cane Growers Coop. v. Veneman*, 289 F.3d 89, 94-95 (D.C. Cir. 2002).

DEFENDANTS (APPELLEES) IGNORED STATUTORY MANDATES

Appellees assert (at 36) that their procedural noncompliance with the DCEPA is inconsequential because the EISF and air quality and traffic studies conducted *after* the start of construction did not identify any environmental concerns that suggest a permit would not have been granted for the project had the EISF been prepared earlier. However, they admit that they never went through the actual procedural steps required by the DCEPA. This sort of procedural-short changing is precisely what the DCEPA is designed to prevent. Agencies cannot circumvent

required process to charge forward with an ill-conceived project, only waive their hands after the project has been challenged and argue that some other set of analyses conducted by the government is close enough to the DCPEPA requirements. Environmental review is neither horseshoes nor hand grenades. Siding with appellants would allow them to repeat this behavior in future cases, plowing ahead with projects without public input only to later argue that the input would not have mattered in any event. In fact, the Supreme Court provided an analogous example in *Lujan:* "under our case law, one living adjacent to the site for proposed construction of a federally licensed dam has standing to challenge the licensing agency's failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered, and even though the dam will not be completed for many years." 504 U.S. FN 7.

Appellees raise (at 14 and 36) for the first time their intention to incorporate electric bus charging infrastructure at the bus terminal site. This is an alternative to the project that was not evaluated in the February 2022 EISF, nor does the record contain any other alternatives analysis by Appellees, as required by 20 DMCR Section 7200.2. This Court should reverse the decision of the Superior Court and remand with instructions for Appellees to correct their procedural flaws, including, at

a minimum, to address the potential impacts of the electric bus pilot project and any other alternatives to the project, which should have been evaluated by Appellees prior to construction. The DCEPA requires nothing less than compliance with its procedural mandates, and Appellees must go back and fully satisfy these requirements in order for the project to move forward. At a minimum, such an outcome would ensure that the District is in fact fully analyzing its actions as required by the DCEPA. Compliance with these procedures would also allow for public engagement and a full and wholesome consideration of reasonable alternatives and mitigation, as required by the law and never conducted by the District.

As the United States Supreme Court has observed, imminent harm encompasses "threatened" as well as "actual" injury, *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982). And see *Gladstone Realtors v. City of Bellwood*, 441 U.S. 91, 99 (1979). Even a "small probability" of harm is sufficient to take a lawsuit out of the category of "hypothetical," *Elk Grove v. Evans*, 997 F.2d 328, 329 (7th Cir. 1993). Indeed, "relatively minor increments of risk" qualify for standing and meet the requirements of *Lujan*, *Mountain States Legal Foundation v. Glickman*, 92 F.3d 1228, 1231-1234 (D.C. Cir. 1996). In *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000), the Court endorsed the "partial

assignment" approach to standing to sue, allowing private individuals to sue on behalf of the U.S. government for injuries suffered solely by the government. The United States Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007), found that Massachusetts and eleven other states had standing, due to its "stake in protecting its quasi-sovereign interests" as a state, to sue the EPA over potential damage caused to its territory by global warming. The Court rejected the EPA's argument that the Clean Air Act was not meant to refer to carbon emissions in the section giving the EPA authority to regulate "air pollution agent[s]".And, in an even later environmental Case, on November 2, 2018, the U.S. Supreme Court announced that the trial in a case brought by 21 people, including minors, against the federal government for its role in the global warming crisis, could continue, *Juliana v. United States*, 10 U.S. 327 (2018).

In deciding whether a party has standing, a court must consider the allegations of fact contained in the complaint and affidavits in support of the party's assertion of standing. See *Warth v. Seldin*, 422 U.S. 490, 501 (1974). And, see *Warth*, 422 U.S. at 501 (when addressing motion to dismiss for lack of standing, both the D.C. Superior Court and the Court of Appeals must accept as true all material allegations of the complaint and must construe the complaint in favor of the party claiming standing. Standing is founded "in concern about the proper--and

properly limited--role of the courts in a democratic society, "*Warth*, 422 U.S. at 498. In the instant matter, Plaintiffs do show 1) concrete personal injuries that are actual or imminent; 2) that are clearly traceable to Defendants' conduct; and 3) that are "likely" to be redressed if the relief sought is granted, *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). Plaintiffs meet the Standing requirements. The evidence before the Court, at this stage, clearly demonstrates that the actual or imminent threat of personal injuries test is met. These are probabilistic injuries. And these injuries are traceable to the acts of Defendants. Moreover, at this stage --- the motion to dismiss stage, even before any in depth discovery has taken place --- Plaintiffs' burden was at a point where the Court must, "… presume that general allegations embrace the specific facts … necessary to support the claim," *Lujan* at 561.[1] Given that the fate of the injury and damages that is the subject of this lawsuit can only be fully protected by the Plaintiffs, Standing cannot be questioned. *Riverside Hospital v. D.C. Department of Health*, 944 A.2d 1098 (2008) in fact

[1] As the United States Supreme Court has observed, imminent harm encompasses "threatened" as well as "actual" injury, *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 472 (1982). And see *Gladstone Realtors v. City of Bellwood*, 441 U.S. 91, 99 (1979). Even a "small probability" of harm is sufficient to take a lawsuit out of the category of "hypothetical," *Elk Grove v. Evans*, 997 F.2d 328, 329 (7th Cir. 1993). Indeed, "relatively minor increments of risk" qualify for standing and meet the requirements of *Lujan*, *Mountain States Legal Foundation v. Glickman*, 92 F.3d 1228, 1231-1234 (D.C. Cir. 1996). In *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000), the Court endorsed the "partial assignment" approach to standing to sue, allowing private individuals to sue on behalf of the U.S. government for injuries suffered solely by the government.

found that Plaintiff had standing to assert its rights.

The concreteness of Plaintiffs' claims is further underscored by the EJSCREEN of the Environmental Protection Agency and Defendants' own Health Equity Report. And, how much more concrete can one get than the sworn claims of Plaintiffs.

DISPARATE IMPACT/TREATMENT WAS SHOWN AND ADMITTED

In Plaintiffs' Discovery Request No. 5, Defendants admit that the Neighborhood of Brentwood is situated in Ward 5, which houses roughly 50% [one Ward of the eight Wards] of the District's industrial land use sites where communities of color disproportionately suffer the health consequences caused by this cumulative pollution.

It matters not that the two current Bus Depots are located in Ward Five, and that the instant discussion is about moving those Depots from locations in Ward Five to another location in Ward Five. The point is that since the 1960s --- when, due to a Court Decision eliminating restrictive covenants and Brentwood shifting from all White to mostly Black --- half of the toxic facilities in the District of Columbia have been located, by Defendants, in Ward Five. The remedy for that disparate impact and disparate treatment is to equalize where toxic facilities are located; move some out of Ward Five and into the other Wards of the District of Columbia. and The D.C. Human Rights Act was enacted by the D.C. Council with

the intention "…to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit …" It is a broad remedial statute, to be generously construed, *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 889 (D.C. 1998); *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 398 (D.C. 1991). The Courts have also described the Human Rights Act as a "powerful, flexible, and far-reaching prohibition against discrimination of many kinds," *Executive Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 732 (D.C. 2000).

Both disparate impact and disparate treatment are discriminatory practices. Disparate impact is often referred to as unintentional discrimination, whereas disparate treatment is intentional.

STANDARD OF REVIEW – MOTION TO DISMISS

The D.C. Court of Appeals has established that it will review *de novo* the dismissal of a complaint under D.C. Superior Court Civil Rule 12 (b)(6) for failure to state a claim upon which relief can be granted, *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011); *Grayson v. AT&T Corp.*, 15 A.3d 219, 228 (D.C. 2011) (*en banc*); *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1022–23 (D.C.2007).

It is well settled that to withstand a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face,'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The United States Supreme Court has stated that the plaintiff must allege a "plausible entitlement to relief" by setting forth "a set of facts consistent with the allegations," *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1956 (2007).

This Court is required to take all factual allegations in the Complaint as true, *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Taking the factual allegations in the Complaint as true and construing them in a light most favorable to Plaintiffs clearly demanded a denial of the Motion to Dismiss. The claims of Plaintiffs are not only plausible and possible but likely as well.

CONCLUSION

Defendants, much like Donald Trump and the 2022 Election, seek to construct this Bus Depot in a residential neighborhood, 1) without complying with the provisions of the D.C. Environmental Policy Act; 2) without producing an Environmental Impact Statement, as required by law for this project; 3) without satisfying the Advisory Neighborhood Commission Act and other statutory mandates; 4) while claiming that residents of Brentwood lacked Standing to bring this lawsuit; and 5) while discriminating against Plaintiffs and other residents of the Brentwood

Community due to characteristics that are protected by the D.C. Human Rights Act and various Federal Laws.

The environment, once destroyed, is not likely to be repaired. Human health, safety and life, once lost, cannot be restored. The Standard of Review of a Trial Court's Decision, when evidence is adduced is Clear Error, as is clearly present here.

Respectfully Submitted,

/s/ Johnny Barnes

Johnny Barnes, D.C. Bar Number 212985
Counsel for Appellants
301 "G" Street, S.W - Suite B101
Washington, D.C. 20024
AttorneyJB7@gmail.com
Telephone (202) 882-2828

Dated: 2 January 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of January 2023, a true copy of the foregoing Reply Brief of Appellants was served upon the Court and all Counsel of Record using the Court's Electronic Service System.

/s/ Johnny Barnes

Dated: 2 January 2023

Johnny Barnes, D.C. Bar Number 212985