

**NOTICE OF MOTION BY PETITIONER TO REARGUE AND TO AMEND PETITION,  
DATED NOVEMBER 12, 2015 [433 - 436]**

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**In the Matter of the Application of**

**CARL E. PERSON,**

**Petitioner,**

**For a Judgment under Article 78 of the CPLR,**

**-against-**

**NEW YORK CITY DEPARTMENT OF  
TRANSPORTATION,**

**Respondent.**

**Index No.**

**100484/15**

**(Hon. A. W. Hunter, J.S.C.)**

**NOTICE OF MOTION  
TO REARGUE AND  
TO AMEND**

**PLEASE TAKE NOTICE** that based upon the attached affirmation of Carl E. Person dated November 12, 2015 and supporting memorandum of law dated November 12, 2015, and all the pleadings and proceedings heretofore had herein, the undersigned will move this Court, in Room 130, located at 60 Centre Street, New York, New York 10007, at 9:30 a.m. on **December 10, 2015**, or as soon thereafter as counsel may be heard, for an order

1. Under CPLR 2221(d), for reargument of the Respondent's motion to dismiss (the "Respondent's Motion"), deny Respondent's Motion, and permit Petitioner to continue this proceeding with discovery and trial, on the grounds of overlooking or misapprehending the following facts and arguments demonstrating that Petitioner has standing to commence and maintain this Article 78 proceeding:

**Fact/Argument#1:** That ¶¶ 20-J, 20-V, 23, 27-A and 27-E of the Petition, to the extent quoted in ¶ 6 of the moving Person affidavit (and set forth below), mean in substance the same as ¶ 11A set forth below and in the proposed Amended Petition (Exhibit C). These

paragraphs in the Petition provide in relevant part:

20. These activities have had the following effect in New York County:

J. Motorists, their passengers and users of green and yellow taxicabs and black-car limousines are spending substantially more of their valuable time getting from one place to another in Manhattan \* \* \*

V. Causing damages to individuals \* \* \* including (i) the loss of valuable time caused by transportation delays \* \* \* (v) denial of use of public property put to illegal private use by Respondent;

23. The adverse, congestion effect of such activities is felt upon all 508.38 miles of streets and avenues in Manhattan (with a total of 6,718 blocks) [source: p. 3 of <http://www.fcnny.org/cmgrp/streets/pages/2001PDF/Report/DFMN.pdf>].

27. Petitioner has been damaged by the alleged activities of the Respondent in various ways \* \* \*:

A. The loss of Petitioner's valuable professional time caused by transportation delays, \* \* \* for an estimated 100 hours per year;

E. Denial to Petitioner of use of public property (i.e., parts of the sidewalks and streets in New York County) put to illegal private use by Respondent;

and they provide the same factual basis for standing of Petitioner as newly-added ¶ 11A in the proposed Amended Petition (Exhibit C), providing:

11A. Person's primary injury results from his activities as a motorist in New York County. Because of the Respondent's alleged activities, Person spends approximately 2 extra hours per week waiting in his car or in a taxicab (or about 100 hours per year), hours that would not have been lost but for the activities of the Respondent. These lost hours could have been devoted to personal pursuits of a non-economic nature, but were taken from Person by reason of the activities of the Respondent. Person estimates that he loses an average of about 1 hours per week (50 hours per year) as a passenger in taxis in New York County and about 1 hour per week (about 50 hours per year) as a motorist in New York County. Other persons in New York County who walk,

ride bicycles, take buses (with fast lanes), or do not go outdoors for whatever reason do not lose their personal hours by reason of the Respondent's activities. Because Person is in a non-moving or slow-moving vehicle for these hours, he cannot spend that time with his family, going to movies, telephoning his friends, doing internet research, walking on the sidewalk, shopping in stores, reading a book, looking at television or any of the other things that individuals do when not driving a car.

**Fact/Argument#2:** That ¶¶ 20-J, 20-V, 23, 27-A and 27-E of the Petition, to the extent quoted in ¶ 6 of the moving Person affidavit (and set forth above), mean in substance the same as ¶ 11B set forth below and in the proposed Amended Petition (Exhibit C), as follows:

11B. Person's primary injury as aforesaid motorist also results from his personal exclusion while a motorist from the road space (i.e., bike lanes) provided for use of bicyclists, as to which motorists are generally excluded. Assuming there are 500 miles of bike lanes in New York County (estimated from map at <http://www.nycbikemaps.com/maps/manhattan-bike-map/>), each lane approximately 5 to 6 feet wide, created by removing a lane of vehicular traffic (see p. 38, <http://home.nyc.gov/html/dcp/pdf/bike/design.pdf>). Five hundred miles (5,280 feet x 500 = 2,640,000 feet) x 5.5 feet (average of 5 and 6 feet) = 14,520,000 square feet in Manhattan taken away from Person and other motorists and turned over to bicyclists for their use, to the exclusion of Person and other motorists.

2. Under CPLR 3025(b), granting leave for Petitioner to amend his Petition, in the form attached as Exhibit B to the supporting affidavit of Carl E. Person; and
3. For such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that pursuant to CPLR § 2214(b), any answering affidavits and any notice of cross-motion, with supporting papers, if any, shall be served on the Petitioner at least seven days before the return date of the Petitioner's motion.

**Dated:** New York, New York  
November 12, 2015



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**Carl E. Person**  
*Petitioner, Pro Se*  
225 E. 36th St. - Suite 3A  
New York NY 10016-3664  
**Tel:** 212-307-4444  
**Fax:** 212-307-0247  
**email:** carlpers2@gmail.com