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Appellate Division—First Department Case No. 2024-00134

COURT OF APPEALS OF THE STATE OF NEW YORK

GLEN OAKS VILLAGE OWNERS, INC., *et al.*,
Plaintiffs-Respondents,

v.

CITY OF NEW YORK, *et al.*,
Defendants-Appellants.

**BRIEF FOR *AMICUS CURIAE* THE SABIN CENTER FOR CLIMATE
CHANGE LAW IN SUPPORT OF DEFENDANTS**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.1(f), *Amicus Curiae* state that no such corporate parents, subsidiaries or affiliates exist.

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QUESTION PRESENTED

Whether New York State's Climate Leadership and Community Protection Act of 2019 preempts the field of greenhouse gas regulation and thus New York City's Local Law 97 of 2019.

STATEMENT OF INTEREST

The Sabin Center for Climate Change Law at Columbia Law School (the “Sabin Center”) submits this amicus brief in support of the City of New York’s (the “City”) appeal to the New York State Court of Appeals (the “Court of Appeals” or the “Court”). Our brief supports the City’s argument that New York City’s Local Law 97¹ is not preempted by New York State’s (the “State”) Climate Leadership and Community Protection Act (CLCPA)² and advises this Court of the significant and detrimental implications to local governments across the State if the CLCPA were held to impliedly field preempt Local Law 97.

The Sabin Center is an academic research center that develops legal techniques to fight climate change and promote climate justice, trains law students and lawyers in their use, and provides the public with up-to-date resources on key topics in climate law and regulation. We have extensive experience with and expertise in city climate law and policy, specifically with respect to state preemption of local laws.³ The Sabin Center also has significant expertise in the CLCPA,

¹ N.Y. City Local L. 97 (2019).

² N.Y. Env’t. Conserv. L. § 75-0101 et. seq. (2019).

³ See, e.g., Michael Burger & Amy E. Turner, URBAN CLIMATE LAW, Columbia Univ. Press (2023); Amy E. Turner, *The Legal Case for Equity in Local Climate Action Planning*, 50 FORDHAM URB. L. J. 1245 (2023).

including an ongoing effort to track state milestones and objectives set out under the Act.⁴

The May 16, 2024 Decision and Order (the “Decision”) by the Supreme Court of the State of New York, Appellate Division, First Judicial Department (the “First Department”) raised the question of whether, in enacting the CLCPA, “the State has preempted the field” of greenhouse gas (GHG) emissions regulation. Decision at 2; *see also* City Br. at 4; Plaintiff Br. at 6. The City filed a motion for leave to appeal to this Court, the New York State Court of Appeals, on June 20, 2024. On August 1, 2024, the First Department granted the City’s motion for leave to appeal to this Court to answer whether the CLCPA impliedly field preempts Local Law 97.

The question of whether Local Law 97, and by implication other municipal action to reduce GHG emissions, is field preempted is a novel legal question that this Court should answer in the negative. For the reasons set forth in the City’s brief, dated September 27, 2024, the CLCPA does not and was never intended to preempt Local Law 97. On the contrary, the State’s CLCPA scoping activities view Local Law 97 as a template for reducing GHG emissions in other municipalities. Moreover, the cascading adverse impacts on local climate action throughout the state from a finding of field preemption would be actually undermine the very purposes of the

⁴ *New York State Climate Law Tracker*, SABIN CENTER FOR CLIMATE CHANGE LAW, COLUMBIA LAW SCHOOL, <https://climate.law.columbia.edu/content/new-york-state-climate-law-tracker>.

statute. To be sure, the science is clear: We are in a climate emergency,⁵ and GHG emissions must be drastically reduced by the end of the decade to help avert the worst of climate change’s potentially catastrophic impacts. The CLCPA’s purpose is to achieve those ends.

Local governments in New York State and elsewhere have long been at the vanguard of climate policy innovation. In enacting the CLCPA and carrying out its scoping actions, the State has consistently recognized the importance of local efforts to achieving the CLCPA’s requirements. A finding of field preemption would not only hamstring the City and State’s climate goals but also set a precedent that could hinder climate progress across the state, with far-reaching implications for the urgent transition away from fossil fuels. To recognize the crucial role that local governments in New York have in reaching the state’s climate goals and ensure that local governments may still take effective climate action to reduce GHG emissions, the Sabin Center respectfully urges this Court to dismiss Plaintiffs’ claim that the

⁵ See IPCC, AR6 SYNTHESIS REPORT: CLIMATE CHANGE 2023 (2023) [hereinafter IPCC AR6 SR]; see also New York City Council, Res. No. 864-A-2019 (2019) (“Resolution declaring a climate emergency and calling for an immediate emergency mobilization to restore a safe climate”); County of Ulster, N.Y., Res. No. 409 (2019) (Resolution declaring a climate emergency); Town of East Hampton, Res. 2021-329 (N.Y. 2021) (same); Village of Kinderhook, Resolution 2020-Climate Crisis (N.Y. 2020) (same); Westchester County, Res. No. 2021-180 (N.Y. 2021) (same); Town of Mamaroneck, Resolution: Climate Emergency Declaration (N.Y. 2021) (same); City of New Rochelle, Res. No. 2021-68 (N.Y. 2021) (same); Village of Hastings-on-Hudson, Res. No. 53:22 (N.Y. 2021) (same).

CLCPA impliedly occupies the field of GHG emissions regulation in New York State and thus preempts Local Law 97.

PRELIMINARY STATEMENT

The Intergovernmental Panel on Climate Change (IPCC), a world-leading panel of scientific experts convened by the United Nations and the World Meteorological Organization, has made clear that the world must reduce GHG emissions from fossil fuel extraction and consumption as rapidly as possible to avoid the potentially catastrophic consequences of anthropogenic global warming and climate change.⁶ The latest IPCC assessment report (AR6) determined that average global surface temperature had increased by 1.1°C over pre-industrial levels as of 2019.⁷ More recent data shows that 2023 was the warmest year since 1850, averaging 1.54°C above pre-industrial levels,⁸ and 2024 is almost certain to replace 2023 as the hottest year on record.⁹ To retain an acceptable chance of limiting warming to 1.5°C, consistent with the goals of the Paris Agreement, the IPCC has determined the planet's GHG emissions must be reduced by approximately half by 2030.¹⁰ In other

⁶ See IPCC AR6 SR, *supra* note 5, at 68.

⁷ *Id.* at 42.

⁸ See BERKELEY EARTH, GLOBAL TEMPERATURE REPORT FOR 2023 (Jan. 12, 2024), <https://berkeleyearth.org/global-temperature-report-for-2023/>.

⁹ Kate Abnett and Alison Withers, *2024 is the hottest year on record, EU scientists say*, REUTERS (Dec. 9, 2024), <https://www.reuters.com/business/environment/2024-will-be-hottest-year-record-eu-scientists-say-2024-12-09/>.

¹⁰ See IPCC AR6 SR, *supra* note 5, at 92.

words, the health of the planet and its current and future inhabitants depends on the rapid reduction of emissions *this decade*.

Already, climate change is having devastating adverse impacts on people and ecosystems across the planet and in New York State.¹¹ The CLCPA’s legislative findings recognized that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York.”¹² In the City, where the present case was brought, climate change risks include extreme heat events, drought, sustained sea level rise, and inland and coastal flooding.¹³ These impacts often have a disproportionate adverse effect on marginalized groups like low income and communities of color.¹⁴ Localities across New York State are experiencing similar adverse climate impacts.¹⁵

Local governments currently have unprecedented federal resources at their disposal to address the climate crisis. The federal Inflation Reduction Act (IRA) of 2022¹⁶ mandates nearly-\$400 billion in direct spending¹⁷ (with the exact amount

¹¹ *Id.* at 46; see also *New York State Climate Impacts Assessment: Understanding and preparing for our changing climate*, NEW YORK STATE CLIMATE IMPACTS ASSESSMENT (2024), <https://nysclimateimpacts.org>.

¹² CLCPA §2(1) (2019).

¹³ NEW YORK CITY PANEL ON CLIMATE CHANGE (NPCC), NPCC4: NEW YORK CITY CLIMATE RISK INFORMATION 2022 (2022).

¹⁴ *Climate Change and Social Vulnerability in the United States*, U.S. ENV’T. PROTECTION AGENCY (Sept. 2021), <https://www.epa.gov/cira/social-vulnerability-report>.

¹⁵ See *infra* S. II(A), discussing adverse impacts of climate change on New York communities.

¹⁶ Public Law (United States) 117–169 (2022).

¹⁷ *Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act’s Investments in Clean Energy and Climate Action*, WHITE HOUSE v. 2 (Jan. 2023) at 5,

depending on the uptake of tax credits)¹⁸ on climate and clean energy. IRA programs enable direct grants¹⁹ to local governments for clean energy projects and allow local governments to claim new tax credits as a cash payment,²⁰ for example. IRA programs have already provided direct grants for reducing GHGs through local action in multiple regions of New York.²¹ Grants that funded municipal climate action planning helped local governments identify strategies to reduce GHG emissions, including through local requirements such as net-zero building codes.²² With local governments receiving federal funds for GHG-reducing actions, the state's efforts to meet the CLCPA's requirements have received an external boost that aligns with the statute's primary goal. The time for local governments to take advantage of these federal resources is now, and a holding that their actions to reduce

<https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>.

¹⁸ See, e.g., *The Inflation Reduction Act: Here's what's in it*, MCKINSEY & CO. (Oct. 24, 2022), <https://www.mckinsey.com/industries/public-sector/our-insights/the-inflation-reduction-act-heres-whats-in-it#>.

¹⁹ These include, without limitation, Climate Pollution Reduction Grants (Inflation Reduction Act § 60114), Assistance for Latest and Zero Building Energy Code Adoption (Inflation Reduction Act § 50131), Clean Heavy-Duty Vehicles (Inflation Reduction Act § 60106, Environmental and Climate Justice Block Grants (Inflation Reduction Act § 60201); and Investing in Coastal Communities and Climate Resilience (Inflation Reduction Act § 40001).

²⁰ Inflation Reduction Act § 13801; 26 U.S.C. § 6417 (2022).

²¹ See, e.g., *Priority Climate Action Plans for States, MSAs, Tribes, and Territories*, U.S. ENV'T. PROTECTION AGENCY (last accessed Dec. 15, 2024), <https://www.epa.gov/inflation-reduction-act/priority-climate-action-plans-states-msas-tribes-and-territories>; see also Romany M. Webb et al., *Implementing the Inflation Reduction Act: Progress to Date and Risks from a Changing Administration*, SABIN CENTER FOR CLIMATE CHANGE LAW (Sep. 9, 2024), https://scholarship.law.columbia.edu/sabin_climate_change/232/.

²² *Climate Action: Buffalo Niagara's Priority Climate Action Plan*, ONE REGION FORWARD at 45 (Mar. 2024), <https://www.epa.gov/system/files/documents/2024-02/buffalo-ny-msa-pcap.pdf>.

GHG emissions are field preempted could inhibit necessary advances toward statewide decarbonization.

Local levels of government have long been leaders in addressing climate challenges and will remain critical in driving mitigation and adaptation efforts. Local Law 97 is the most ambitious local law to reduce greenhouse gas emissions in New York; its success will act as a catalyst for local climate action across the state, and potentially nationwide. A finding of implied field preemption would place significant and undue constraints on New York's local governments' ability to protect the health and well-being of their municipalities and residents and reduce GHG emissions. In the context of the global climate crisis, such a ruling would imply that New York State, by enacting the nation's most ambitious climate law, simultaneously constrained local governments from contributing to the shared goal of climate mitigation—an inconsistency that would completely undermine the law's purpose.

The Sabin Center respectfully urges this Court to dismiss the question presented by the First Department, to which it has not spoken: Whether the CLCPA impliedly occupies the entire field of GHG emissions regulation in New York State, thus preempting Local Law 97.

ARGUMENT

I. A Finding of Field Preemption Will Harm New Yorkers and Hamstring Local Climate Action

The preemption question posed by the First Department has tremendous importance: Whether local governments in the State have the authority to enact ordinances to reduce GHG emissions. To date, this Court has not spoken on the issue of the relationship between state and local authority over GHG emissions regulation. Resolving this question will have critical consequences for near-term and future decarbonization at the State and local level in New York.

Local governments punch above their weight in driving GHG emissions reductions – reductions that are essential for New York to meet its ambitious climate goals under the CLCPA. If the CLCPA were held to preempt the field of GHG emissions regulation, the consequences would be far-reaching. Preemption would *necessarily* inhibit local regulation of GHG emissions, including but not limited to Local Law 97, and could interfere with other local efforts like policies meant to scale up needed renewable energy resources. Many of the types of actions already taken and planned by local governments to reduce their GHG emissions will be at risk of preemption or may be chilled by the specter of preemption. This surely was not the intention of the State nor contemplated by the CLCPA, which above all, is aimed at achieving statewide climate goals that are exceedingly ambitious, in large part in

collaboration with local governments.²³ The goals themselves – like reaching net-zero emissions from all economic sectors by 2050 – necessitate complementary state and local action. City Br. at 14 (explaining the CLCPA’s “all hands-on deck” approach). But if the CLCPA were to preempt the field of GHG emissions regulation, many of the types of local actions described throughout this brief could be prohibited, contravening the Statute’s text, stated purpose, and scoping activities.²⁴

Accordingly, this Court should dismiss Plaintiffs claim of implied field preemption, both to avoid worsening impacts of climate change on New Yorkers across the State and to allow local governments in the State to act on climate with the urgency that the moment demands.

A. New York Municipalities and their Residents Will Suffer

Greater Harm from the Climate Crisis if Field Preemption is

Found

Climate change is already having adverse impacts on communities across New York.²⁵ The most important action that the State and local governments can take

²³ See S. 6599, 2019-2020 Leg. Sess. (N.Y. 2019) (stating the CLCPA’s purpose to be “to adopt measures to put the state on a path to reduce statewide greenhouse gas emissions by eighty-five percent by two thousand fifty and net zero emissions in all sectors of the economy.”).

²⁴ See, e.g., NEW YORK STATE CLIMATE ACTION COUNCIL, FINAL SCOPING PLAN ch. 20, entitled “Local Government” (2022), <https://climate.ny.gov/resources/scoping-plan/>.

²⁵ See generally, *New York State Climate Impacts Assessment: Understanding and preparing for our changing climate*, NEW YORK STATE CLIMATE IMPACTS ASSESSMENT (2024), <https://nysclimateimpacts.org>.

to address the crisis at hand is to rapidly reduce GHG emissions. With most of the U.S. population living in urban areas,²⁶ GHG regulations at the municipal level ripple outward, buttressing state, national, and international commitments to climate action. Given the massive emissions reductions needed by 2030, the urgency to implement local climate action cannot be overstated. Moreover, the IRA provided for significant federal funding for local climate action – funds that are in part available now and that Congress clearly intended for use by local governments.²⁷ A finding of field preemption could directly undermine these GHG reduction efforts, causing harm in New York’s communities and leaving historic levels of federal money on the table, thereby worsening the already severe climate impacts on New Yorkers.

There are multiple and compounding risks associated with climate change affecting New Yorkers. According to the New York State Department of Environmental Conservation, New York communities along the Great Lakes stand to see more inland flooding, while municipalities on Long Island and adjacent to the

²⁶ *2020 Census Urban Areas Facts*, U.S. CENSUS Bureau (updated June 2023), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2020-ua-facts.html> (noting that 80% of the United States’ population lives within urban areas).

²⁷ For example, the IRA added new Section 6417 to the Internal Revenue Code, which allows local governments, among other nontaxable entities, to claim the value of certain clean energy and clean vehicle tax credits in cash. Prior to the addition of Section 6417, local governments were unable to claim federal tax credits; thus Section 6418 heralded a new way of providing federal funding for local climate-related investments. 26 U.S. Code § 6417 (2022).

lower Hudson River Valley now experience “worsening flooding, erosion, and storm surge.”²⁸ Chronic flooding from sea level rise and more frequent and severe storm surges are the new normal for communities like Southern Brooklyn and Queens in New York City.²⁹ With heavy precipitation events also predicted to increase in frequency and intensity, municipalities are at an increased risk of flooding from multiple sources.³⁰

Extreme heat, too, is on the rise: according to the New York State Climate Impacts Assessments, heat waves across the state are projected to “occur more often and become more intense.”³¹ Specifically, the number of days with a heat index³² greater than 85°F, the number of days with a heat index greater than 95°F, and the maximum heat index are expected to increase substantially in all areas of the State.³³ Data shared by the New York State Department of Health projects increasing temperatures over the coming decades, with average summertime temperatures

²⁸ *Climate Change Effects and Impacts*, N.Y. STATE DEP’T OF ENV’T CONSERVATION (last visited June 13, 2024), <https://dec.ny.gov/environmental-protection/climate-change/effects-impacts>.

²⁹ See *New York State Climate Impacts Assessment*, *supra* note 25, Chapter 2: *New York State’s Changing Climate* at 4.

³⁰ *Id.* at 19-22.

³¹ *Id.* at 4.

³² The “heat index” refers to the human-perceived temperature when air temperature is combined with relative humidity. See *What is the Heat Index?* NATIONAL WEATHER SERVICE, <https://www.weather.gov/ama/heatindex>.

³³ See *New York State Climate Impacts Assessment*, *supra* note 25, Chapter 2: *New York State’s Changing Climate* at 14-18.

rising between four and ten degrees Fahrenheit (2.2 to 5.6°C) in New York State.³⁴ Already, days with extreme heat are starting earlier in the year and ending later in the year due to climate change.³⁵ Longer and more frequent heat waves stress the state's agriculture sector, energy systems, transportation infrastructure, and the health and well-being of residents.³⁶

Risks associated with extreme heat³⁷ are especially pronounced in urban areas across the State, where communities with dense populations, large buildings, and significant paved areas experience daytime temperatures of between one and seven degrees Fahrenheit (0.56° to 3.9°C) higher than in less dense areas.³⁸ Heat island

³⁴ *Extreme Heat and Health in N.Y. State*, N.Y. STATE DEP'T OF HEALTH (last visited June 13, 2024), https://www.health.ny.gov/environmental/weather/heat_story_map.

³⁵ Hilary Howard, *The Dog Days of Summer Are Here Early. New York City Is Adapting*, N.Y. TIMES (June 21, 2024), <https://www.nytimes.com/2024/06/21/nyregion/nyc-weather-heat-summer.html>.

³⁶ See *New York State Climate Impacts Assessment*, *supra* note 25, at 4.

³⁷ Extreme heat, which is the leading cause of weather-related fatalities in the country, can lead to health impacts including heat exhaustion; heat stroke; increased risk and/or worsening of heart disease, asthma and chronic obstructive pulmonary disease (COPD); kidney damage; and more. See Terri Adams-Fuller, *Extreme Heat is Deadlier Than Hurricanes, Floods and Tornadoes Combined*, SCIENTIFIC AMERICAN (July 1, 2023), <https://www.scientificamerican.com/article/extreme-heat-is-deadlier-than-hurricanes-floods-and-tornadoes-combined/> and *Extreme Heat*, U.S. DEP'T OF HEALTH & HUMAN SERVS. (June 2024), <https://www.hhs.gov/climate-change-health-equity-environmental-justice/climate-change-health-equity/climate-health-outlook/extreme-heat/index.html>.

³⁸ *Heat Island Effect*, U.S. ENV'T. PROTECTION AGENCY (June 6, 2024), <https://www.epa.gov/heatislands>. Some estimates of the difference between surface temperatures in urban neighborhoods and surrounding areas are far higher. See, e.g., Nadja Popovich and Christopher Flavelle, *Summer in the City is Hot, but Some Neighborhoods Suffer More*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/interactive/2019/08/09/climate/city-heat-islands.html>.

impacts are felt in Albany,³⁹ Rochester,⁴⁰ Syracuse,⁴¹ and other areas around the State, as well as New York City.⁴² In many instances, neighborhoods with higher-than-average populations of low-income and/or of people of color are most impacted by urban heat impacts and a lack of measures to address them.⁴³

Wildfire risk and drought caused by changes in precipitation and higher temperatures have also emerged as top climate concerns in New York.⁴⁴ The fall of 2024 saw a record level of wildfire risk in New York fueled by a historic period of drought.⁴⁵ Persistent red flag warnings—where warm temperatures, low humidity and stronger winds contribute to increased risk of wildfires—led to the State banning

³⁹ Katherine Kiessling, *Climate change challenges hit home in Capital Region*, TIMES UNION (Nov. 17, 2023), <https://www.timesunion.com/gives/article/climate-change-challenges-hit-home-capital-region-18443232.php>.

⁴⁰ Brett Dahlberg, *Rochester-area ‘heat islands’ make heat waves even worse*, WXXI NEWS (July 19, 2019), <https://www.wxxinews.org/health/2019-07-19/rochester-area-heat-islands-make-heat-waves-even-worse>.

⁴¹ Carson Metcalf, *Urban heat island: Why Syracuse is warmer than the suburbs*, SPECTRUM NEWS 1 (Jul 19, 2021), <https://spectrumlocalnews.com/nys/central-ny/weather/2021/07/15/urban-heat-island--why-syracuse-is-warmer-than-the-suburbs>.

⁴² Samantha Maldonado, *How Much Hotter Is NYC’s Heat Island Effect Making Your Neighborhood?*, THE CITY (July 26, 2023), <https://www.thecity.nyc/2023/07/26/heat-island-hot-map-temperature/>.

⁴³ Nadja Popovich and Christopher Flavelle, *Summer in the City is Hot, but Some Neighborhoods Suffer More*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/interactive/2019/08/09/climate/city-heat-islands.html>.

⁴⁴ *Extreme Events*, NEW YORK STATE CLIMATE IMPACTS ASSESSMENT, <https://nysclimateimpacts.org/explore-the-assessment/new-york-states-changing-climate/nysc-extreme-events/#section-2> (last accessed Dec. 3, 2024).

⁴⁵ Haley Thiem, *Unusual fire risk across the Northeast in fall of 2024*, NOAA (Nov. 21, 2024), <https://www.climate.gov/news-features/event-tracker/unusual-fire-risk-across-northeast-fall-2024>.

open fires through November.⁴⁶ In New York City, Central Park received just 1.5 inches of rain in October, and the City experienced hundreds of autumn fires resulting from the dry weather, which cast the sky hazy and the air smoky.⁴⁷ In the span of two weeks, a “historic” numbers of brush fires broke out in parks in Upper Manhattan, Brooklyn, and the Bronx.⁴⁸ To respond to this year’s hundreds of fires that burned across the state, 400 fire departments with over 1,300 personnel have been deployed.⁴⁹ Exposure to wildfire smoke can damage the heart, lungs, and brain,⁵⁰ and exposure during pregnancy correlates with pre-term births, low birth weights, and negative maternal health outcomes.⁵¹ As climate change continues to increase wildfire smoke exposure in urban areas across New York, exposure to

⁴⁶ Michelle Bocanegra, *Red flag warning throughout NYC region as historic drought brings threat of more fire*, GOTHAMIST (Nov. 16, 2024), <https://gothamist.com/news/red-flag-warning-throughout-nyc-region-as-historic-drought-brings-threat-of-more-fire>.

⁴⁷ Alyce McFadden, *The N.Y.C. Region Is Dry and on Fire. Here’s How to Help.*, N.Y. TIMES (Nov. 20, 2024), <https://www.nytimes.com/2024/11/20/nyregion/nyc-drought-water-conservation-wildfires.html>.

⁴⁸ *FDNY releases new PSA during historic period of brush fires across New York City*, NEW YORK CITY FIRE DEP’T. (Nov. 13, 2024), <https://www.nyc.gov/site/fdny/news/Y11-13/fdny-releases-new-psa-during-historic-period-brush-fires-across-new-york-city>; see also Shayla Colon, *Brush Fire Under Control in Inwood Hill Park in Manhattan*, N.Y. TIMES (Nov. 13, 2024), <https://www.nytimes.com/2024/11/13/nyregion/inwood-hill-park-fire-nyc.html>.

⁴⁹ New York State, *Governor Hochul Updates New Yorkers on Wildfires Impacting New York State* (Nov. 20, 2024), <https://www.governor.ny.gov/news/governor-hochul-updates-new-yorkers-wildfires-impacting-new-york-state>.

⁵⁰ Alison Saldanha et al., *Dangerous Air: As California Burns, America Breathes Toxic Smoke*, KCRW (Sept. 28, 2021), <https://kcrw.co/3ISH4Oh>.

⁵¹ Mona Abdo et al., *Impact of Wildfire Smoke on Adverse Pregnancy Outcomes in Colorado, 2007 –2015*, INT’T J. OF ENV’T RSCH. AND PUB. HEALTH, Oct. 2019, <https://bit.ly/3q2c1ab>.

smoke may lead to mortalities⁵² and create compound events with other climate change impacts like heat waves.⁵³

In addition to GHG emissions, the combustion of fossil fuels also produces harmful co-pollutants like fine particulate matter (PM_{2.5}) with serious negative health impacts⁵⁴ that “disproportionately and systemically affect people of color.”⁵⁵ The presence of significant GHG pollution (such as from carbon dioxide and methane) and local air pollutants like nitrogen oxides also creates ground-level ozone, the primary component of urban smog.⁵⁶ Ground-level ozone also creates significant health risks for people in urban areas, particularly in low-income communities and communities of color. For example, the South Bronx neighborhood of New York City, a disadvantaged community situated next to multiple major roadways, experiences elevated air pollution levels due to vehicle traffic and has some of the highest asthma rates in the country.⁵⁷

⁵² Marshall Burke et al., *The Changing Risk and Burden of Wildfire in the United States*, PROCS. OF THE NAT’L ACAD. OF SCIS. OF THE U.S., Jan. 12, 2021, <https://bit.ly/3F4s1yD>.

⁵³ IPCC AR6 SR, *supra* note 5, at 51.

⁵⁴ Hiroko Tabuchi & Nadja Popovich, *People of Color Breathe More Hazardous Air. The Sources Are Everywhere*, N.Y. TIMES (Apr. 28, 2021), <https://www.nytimes.com/2021/04/28/climate/air-pollution-minorities.html>.

⁵⁵ Christopher W. Tessum et. al., *PM.25 polluters disproportionately and systemically affect people of color in the U.S.*, SCIENCE ADVANCES (Apr. 28, 2021), <https://www.science.org/doi/10.1126/sciadv.abf4491>.

⁵⁶ *Ground-level Ozone Basics*, U.S. ENV’T. PROTECTION AGENCY (May 14, 2024), <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics>.

⁵⁷ *Air pollution and public health in the South Bronx*, SOUTH BRONX UNITE, <https://www.southbronxunite.org/air-pollution-and-public-health> (last accessed Nov. 19, 2024).

At the same time, the IRA presents an unprecedented opportunity for municipalities to pair local climate action with federal funding, and this funding is only available over the next eight or so years. Key IRA programs like the Climate Pollution Reduction Grants (CPRG) have already funded local climate action planning in the Albany-Schenectady-Troy,⁵⁸ Rochester,⁵⁹ New York-Newark-Jersey City,⁶⁰ and Buffalo-Cheektowaga⁶¹ regions. Each of these plans contains objectives, strategies, and measures to curtail GHG emissions in the coming years, likely informing future local laws and regulations. The CPRG program, through its implementation grants, awarded over \$3 million to the Hudson Valley Regional Council to reduce fugitive methane emissions from closed municipal landfills.⁶² Meanwhile, the green bank programs of the IRA are designed to mobilize private capital over seven years⁶³ and a tax mechanism that allows local governments to

⁵⁸ *Priority Climate Action Plan for the Capital Region: A Climate Action Plan to Reduce Greenhouse Gas Emissions*, CAPITAL DIST. REG'L PLANNING COMM'N AND CAPITAL REGION CLIMATE ACTION COLLABORATIVE (Mar. 1, 2024), https://cdrpc.org/wp-content/uploads/2024/02/CPRG-Capital-Region-PCAP_2-21-24.pdf.

⁵⁹ *Priority Climate Action Plan Genesee/Finger Lakes Region*, GENESEE/FINGER LAKES REG'L PLANNING COUNCIL (2024), <https://www.epa.gov/system/files/documents/2024-02/gfl-priority-climate-action-plan.pdf>.

⁶⁰ *New York City – Newark – Jersey City Metropolitan Statistical Area (NY-NJ MSA) Priority Climate Action Plan*, N.Y. CITY, N. JERSEY TRANSP. PLANNING AUTH. & N.Y. METRO. TRANSP. COUNCIL (Mar. 2024), available at <https://ny-nj-msa-cprg-njtpa.hub.arcgis.com>.

⁶¹ *Climate Action: Buffalo Niagara's Priority Climate Action Plan*, ONE REGION FORWARD (Mar. 2024), <https://www.epa.gov/system/files/documents/2024-02/buffalo-ny-msa-pcap.pdf>.

⁶² *Hudson Valley Regional Council (New York)*, U.S. ENV'T. PROTECTION AGENCY (Aug. 1, 2024), <https://www.epa.gov/inflation-reduction-act/hudson-valley-regional-council-new-york>.

⁶³ *NCIF and CCLIA Fast Facts*, U.S. ENV'T. PROTECTION AGENCY (Apr. 4, 2024), <https://www.epa.gov/greenhouse-gas-reduction-fund/ncif-and-ccia-fast-facts>.

collect tax credit amounts in cash expires at the end of 2032.⁶⁴ Leveraging IRA funding to implement local climate action presents an unprecedented opportunity for localities to rapidly reduce emissions, and they must do so as soon as possible.

A holding that the CLCPA field preempts local regulation of GHG emissions would exacerbate the climate harms that New Yorkers already experience by inhibiting local governments from taking action to reduce GHG emissions. Without the authority to enact and implement emissions reductions laws, New York will lose the work of an indispensable level of government in its progress toward the emissions reductions mandate of the CLCPA. As outlined in the City’s brief, this Court should therefore acknowledge that the CLCPA does not and was never intended to field preempt Local Law 97, thus upholding local governments’ ability to regulate GHG emissions. In so doing, this Court will help ensure New York reaches its climate goals and protect the health and well-being of all New Yorkers.

**B. Local Governments in New York are Leaders in Reducing
GHG Emissions and Indispensable to Implementing the
CLCPA**

Cities not only experience climate impacts – they also lead climate mitigation efforts across the State. Indeed, localities are key players in the State’s climate plans.

⁶⁴ Inflation Reduction Act § 13801(a); 26 U.S.C. § 6417(d)(1)(E)(ii) (2022).

The CLCPA’s Final Scoping Plan – a plan that details how the state will reach the CLCPA’s climate mandates – devotes an entire chapter to explaining the importance of local governments to meeting the requirements of the CLCPA, noting that they “have an important role to play in meeting Climate Act mandates” by “enact[ing] codes, develop[ing] projects, adopt[ing] policies, and regulat[ing] land use.”⁶⁵ More specifically, the Final Scoping Plan states that “compliance standards” for energy efficiency performance standards for larger buildings should “align with [] Local Law 97.”⁶⁶ Local governments have been doing just what the Scoping Plan calls for. Their actions include procuring and deploying renewable energy resources, making it easier to site renewable energy projects,⁶⁷ investing in zero-emission vehicles and alternative modes of transportation, and electrifying buildings, among many other emission reduction actions. Strong local climate action is necessary to get to the economy-wide GHG emissions reductions mandated by the CLCPA and needed to stave off the worst impacts of climate change.

In addition to the metro areas that created climate action plans under the IRA’s Climate Pollution Reduction Grants (CPRG) program, many local governments in New York have made climate commitments that include specific actions to reduce

⁶⁵ NEW YORK STATE CLIMATE ACTION COUNCIL, FINAL SCOPING PLAN (2022), <https://climate.ny.gov/resources/scoping-plan/>.

⁶⁶ *Id.* at 189.

⁶⁷ *See, e.g.,* City of Ithaca, Zoning Code § 270-219.1(B)(2) (“Solar energy systems are permitted in all Town zones...”).

GHG emissions. For example, Yonkers has created a roadmap with actions that align with the State’s climate goals, like reducing community-wide GHG emissions by 85% by 2050 and sourcing 100% zero-emission electricity by 2040.⁶⁸ Schenectady County created a Community Climate Action Plan that includes policy recommendations to adhere to the CLCPA goals, including through the deployment of renewable energy resources, electrification and energy efficiency upgrades for buildings, and reduction of energy consumption through a variety of mechanisms.⁶⁹ Rochester’s climate action plan includes a goal to reduce GHG emissions by 40% from 2010 level by 2030 and identifies five areas of emissions reduction focus to achieve that goal.⁷⁰ Ithaca adopted a “Green New Deal” in 2019 that established a community-wide goal of carbon neutrality by 2030, to supply government operations with 100% renewable electricity and reduce emissions from the city’s vehicle fleet by 50% by 2025.⁷¹ Binghamton’s Climate Action Plan, in addition to inventorying the city’s GHG emissions, establishes GHG emissions goals and strategies like reducing GHG emissions from buildings and increasing publicly

⁶⁸ City of Yonkers, *Yonkers Climate Action Plan* (2023), <https://www.yonkersny.gov/DocumentCenter/View/2973>.

⁶⁹ County of Schenectady, *Climate Action Plan* (2023), https://www.schenectadycountyny.gov/sites/default/files/202306/PE2%20Climate%20Action%20Plan%20%28003%29_0.pdf.

⁷⁰ City of Rochester, *Climate Action Plan* (2017), <https://www.cityofrochester.gov/sites/default/files/202406/Rochester%20Climate%20Action%20Plan.pdf>.

⁷¹ City of Ithaca, *Green New Deal*, <https://www.cityofithaca.org/642/Green-New-Deal>.

available electric vehicle charging stations.⁷² These commitments and plans are just a snapshot of the widespread local climate activity that New York State is relying on to reach the state-wide goals of the CLCPA. If field preemption were found here, local governments could be prohibited from regulating GHG emissions, a key lever to meeting their climate goals.

Local governments are critical to the State reaching the CLCPA's goals of procuring 70% of the state's electricity from renewable energy by 2030 and zero-emission electricity by 2040, in particular by reducing GHG emissions from their highest-emitting sectors: buildings and transportation. Both sectors must achieve near total electrification if the State is to achieve its GHG emissions reduction targets. For example, as part of the city's efforts to decarbonize its entire building stock through electrification, Ithaca adopted an energy code supplement that requires certain buildings to make GHG reductions, incentivizing electrification.⁷³ Similarly, the City of Beacon adopted Local Law No. 1 of 2023 that requires electrification for new construction and major renovations of residential and commercial buildings.⁷⁴ The success of these local electrification efforts in reducing GHG emissions hinges

⁷² City of Binghamton, *Climate Action Plan* (2024), <https://www.binghamton-ny.gov/home/showpublisheddocument/12168/638550768173530000>.

⁷³ City of Ithaca, Ithaca Energy Code Supplement, Amendment No. 2 (Feb. 1, 2023), <https://www.cityofithaca.org/DocumentCenter/View/14088/Ithaca-Energy-Code-Supplement---City---REVISED-07-13-22>.

⁷⁴ City of Beacon, Local Law No. 1 (2023).

on local governments having legislative authority over GHG emissions, an authority that Plaintiffs' claim of implied field preemption threatens to eliminate.

Similarly, local governments have enacted policies that require or incentivize private property owners to adopt electric vehicle (EV) infrastructure. New York City's Local Law 55, enacted in 2024, creates new requirements for EV charging stations in parking areas with ten or more spaces: new open parking lots, parking areas in new buildings, and existing parking areas undergoing significant renovation must include charging stations for at least 20% of parking spaces and ensure that a minimum of 60% of parking spaces are EV-ready.⁷⁵ Utica requires that two EV charging ports be installed per 10 spaces for all new construction.⁷⁶ The city of Mount Vernon similarly has an EV charging station requirement for parking lots over 150 spaces.⁷⁷ And in Chenango, EV charging stations are permitted as an accessory use in all zoning districts.⁷⁸ In short, local governments are providing crucial support in achieving the requirements and goals of the CLCPA, exactly as the State envisioned.⁷⁹

Though local government actions to reduce emissions are ambitious and wide-ranging, their efforts may grind to a halt from a finding of implied field preemption.

⁷⁵ City of New York, Local Law 55 (2024).

⁷⁶ City of Utica, Code of Ordinances § 2-29-165.

⁷⁷ City of Mount Vernon, City Code § 267-19B(8)(c)[13].

⁷⁸ Town of Chenango, N.Y. Code § 74B-3.

⁷⁹ See NEW YORK STATE CLIMATE ACTION COUNCIL, *supra* note 65 at 398.

While Local Law 97 is the subject of this litigation, it is just one of countless local actions – existing and future – implicated by this Court’s decision. The scope of field preemption could preclude local regulation of GHG emissions and significantly risk chilling a variety of local initiatives to reduce GHG emissions and transition to clean energy. Yet, the CLCPA’s legislative findings make clear that rapid reduction of GHG emissions is necessary to combatting the climate crisis, without distinction between State and local actions to do so. City Br. at 14, 25.

For example, local governments could be cut off from enacting building decarbonization laws and could also lose the option to leverage IRA funding to do so. Because the State has relied on action at the local level, it would be time-consuming for the State to fill the regulatory gaps that could arise if field preemption is found here, and it may not have capacity to do so at all. Further, excluding local governments from an entire field of regulation could generate uncertainty around what local actions qualify as “regulating GHG emissions,” chilling local governmental action that, while perhaps not a direct regulation of GHG emissions, could be viewed as an indirect attempt, further hampering progress toward state-wide decarbonization. Without clarity as to whether any given action falls within the field of preemption, like EV-ready requirements in new and substantially renovated parking areas, municipalities may simply opt not to act rather than to expend valuable resources on policies that risk preemption. Further, if the CLCPA preempts

New York’s local governments from a broad swath of emissions reducing actions, municipalities in other states with strong climate laws may also feel the chill of preemption. At the very least, local climate action in New York State would be delayed from a field preemption finding, but with the State already falling behind on its CLCPA progress,⁸⁰ there is no time to spare. However, it was not the Legislature’s aim in passing the CLCPA to broadly preempt GHG emission reducing regulations and chill other climate actions merely because a local government, and not the State, undertakes it. City Br. at 24-29. Indeed, the statute’s text makes impossible any other interpretation. *Id.*

The climate consequences of this case are vast, but ultimately the issue is clear cut. With the State having affirmed in no uncertain terms that the CLCPA does not occupy the field of greenhouse gas regulation to the exclusion of local government action, no implied field preemption can be found. State App. Div. Br. at 9-11. For the Court to reach such a holding would be to determine that the State meant to defeat itself by intentionally preempting the very GHG emissions reduction measures central to the statute’s purpose. Local climate actions that reduce GHG emissions—including Local Law 97 and the other actions described herein—are

⁸⁰ Colin Kinniburgh, *Missed Deadlines Pile Up As New York’s Climate Law Turns Five*, NEW YORK FOCUS (June 19, 2024), <https://nysfocus.com/2024/06/19/new-york-climate-law-progress>.

“essential piece[s]” in the great puzzle of reaching the most aspirational emissions reduction mandates in the nation, as set forth in the CLCPA. *Id.* at 9.

CONCLUSION

For the reasons articulated above, the Sabin Center for Climate Change Law respectfully urges the Court to dismiss Plaintiffs’ claim that Local Law 97—and by implication, many other local climate actions—is impliedly field preempted by the CLCPA. A finding of field preemption could significantly hinder municipalities across New York State from enacting effective climate policies, which are critical to meeting the CLCPA’s emissions reduction requirements, mitigating the worst impacts of climate change, and leveraging unprecedented federal resources for implementation. The State is relying on local government regulation of GHG emissions to ensure that the CLCPA’s climate commitments are met on time, thereby safeguarding the climate and the health and well-being of current and future generations.

Dated: December 20, 2024

Respectfully Submitted,

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COURT OF APPEALS OF THE STATE OF NEW YORK

GLEN OAKS VILLAGE OWNERS, INC., *et al.*,
Plaintiffs-Respondents,

v.

CITY OF NEW YORK, *et al.*,
Defendants-Appellants.

AFFIRMATION OF SERVICE BY OVERNIGHT DELIVERY

MICHAEL BURGER, affirms under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true and that this document may be filed in an action or proceeding in a court of law: on December 20, 2024, I served one copy of the accompanying Motion for Leave to File *Amicus Curiae* Brief in Support of Defendants and one copy of the accompanying *Amicus Curiae* brief on all parties, by dispatching the papers to the parties by overnight delivery service at the address designated by them for that purpose, pursuant to CPLR 2103(b)(6):

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