

**Court of Appeals**  
**STATE OF NEW YORK**

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GLEN OAKS VILLAGE OWNERS, INC., ROBERT FRIEDRICH, 9-11 MAIDEN, LLC,  
BAY TERRACE COOPERATIVE SECTION I, INC., and WARREN SCHREIBER,

—against— *Plaintiffs-Respondents,*

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF BUILDINGS,  
and ERIC A. ULRICH, in his official capacity as  
Commissioner of the New York City Department of Buildings,

*Defendants-Appellants.*

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**BRIEF OF STEVEN ENGLEBRIGHT, LEAD ASSEMBLY SPONSOR  
FOR THE CLIMATE LEADERSHIP AND COMMUNITY  
PROTECTION ACT, AND NONPROFIT ORGANIZATIONS  
IN SUPPORT OF DEFENDANTS-APPELLANTS**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals of the State of New York, WE ACT for Environmental Justice, New York City Environmental Justice Alliance, Urban Green Council, New York Communities for Change, Sierra Club, and American Institute of Architects New York state that they are not-for-profit public benefit corporations with no parents, subsidiaries, or affiliates.

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## PRELIMINARY STATEMENT

Plaintiffs-Respondents urge the Court to find that the New York State Legislature, in passing legislation to address the urgent threat of climate change, simultaneously sought to block all complementary local measures aimed at furthering the State's goal of reducing greenhouse gas emissions. They base this claim on a theory that the state legislation, the 2019 Climate Leadership and Community Protection Act ("CLCPA"), intended to occupy the field by establishing an exhaustive program to regulate emissions reductions, and on a badly distorted reading of the CLCPA's savings clause. As New York City explains in its briefing, and as the trial court found, there is nothing in the CLCPA's text that plausibly supports Plaintiffs' sweeping preemption theory.

*Amici*, the lead Assembly sponsor of the CLCPA and six nonprofit organizations involved in passing both Local Law 97 and the CLCPA, submit this brief in support of Defendants-Appellants to make three additional points that demonstrate the weakness of Plaintiffs' claim. First, although Plaintiffs maintain that the Legislature intended to occupy the field of greenhouse gas emissions reductions, nothing in the legislative history, contemporaneous public record, or the CLCPA's structure and context remotely supports Plaintiffs' view. Second, as subsequent developments have made clear, the Legislature and the bodies it charged with fulfilling the CLCPA's mandates have relied on complementary local

action in general—and on New York City’s Local Law 97 in particular—to achieve the CLCPA’s goals. Finally, although Plaintiffs profess that they do not seek to raise a “dispute about climate-change and reducing the adverse effects of greenhouse-gas emissions,” Pls.-Resp’ts’ Br. at 1, their claims would fundamentally imperil efforts throughout the state to take on the existential threat of climate change.

### **INTEREST OF *AMICI CURIAE***

Steven Englebright currently represents the Fifth District in the Suffolk County Legislature. For three decades, he represented the state’s Fourth District in the New York State Assembly, where he served as the Chair of the Committee on Environmental Protection and the lead sponsor of numerous environmental laws. He was the lead sponsor of the CLCPA in the State Assembly.

WE ACT for Environmental Justice (“WE ACT”) is a nonprofit community-based membership organization originally founded in 1988 in West Harlem, Manhattan. WE ACT has since grown to operate two offices, located in New York City and Washington, D.C., and works to provide representation for the interests of low-income people and people of color in environmental health policies and the advancement of environmental justice. WE ACT accomplishes its goals through work in practice areas including climate justice, clean air, good jobs, healthy homes, and sustainable and equitable land use. WE ACT has been an active



participant in the passage and implementation of Local Law 97 and the CLCPA. Its actions include advocating for the adoption, fair implementation, and enforcement of Local Law 97 and initiating on-the-ground studies of the health impacts of gas stoves.

The New York City Environmental Justice Alliance (“NYC-EJA”) is a nonprofit membership network of grassroots organizations, founded in 1991 in New York City. NYC-EJA operates across New York City and advocates for improved environmental conditions, particularly focusing on issues that disproportionately impact low-income communities of color. NYC-EJA accomplishes its goals through coordinating campaigns to advance environmental justice in New York City and State. Its activities include a leading role in the passage of the CLCPA, as well as advocating for the passage of Local Law 97 and supporting equitable implementation of both laws.

Urban Green Council is a nonprofit organization founded in 2002 in New York City. Urban Green Council’s mission is to decarbonize buildings for healthy and resilient communities. A staff of policy experts at Urban Green Council works to advance green building policy in New York City and State, educate building professionals, and advance energy efficiency and electrification in the building sector. Urban Green Council has devoted significant resources to the passage and implementation of Local Law 97 and participates in the City of New York’s

ongoing Local Law 97 working group. Its recent activities include publishing a report to identify the retrofits needed to bring multifamily buildings into compliance with Local Law 97 and hosting a webinar to discuss rules proposed for Local Law 97 by the NYC Department of Buildings.

New York Communities for Change (“NYCC”) is a nonprofit membership group founded in 2010 in New York City. NYCC has since grown to include chapters and neighborhood groups in Manhattan, Brooklyn, Queens, and Nassau and Suffolk Counties. NYCC advances housing stability, healthy environments, economic justice, and increased social welfare across New York City and State. NYCC has expended significant resources to advance affordable and environmentally friendly housing policies, specifically advocating for the passage and robust enforcement of Local Law 97.

Sierra Club is a nonprofit membership organization founded in 1892, which operates chapters in all U.S. States, Washington D.C., and Puerto Rico. Sierra Club works to educate citizens and policymakers to protect the natural environment. The Atlantic Chapter of Sierra Club specifically focuses on the protection of New York’s air, water, communities, and natural spaces. The Atlantic Chapter has been active in the development and passage of Local Law 97 and has been an active member of the NY Renews coalition advocating for passage of the CLCPA.

The American Institute of Architects (“AIA”) New York is a professional association founded in 1857 and is the largest chapter of the national American Institute of Architects. AIA New York seeks to cultivate an architectural community that is adept, influential, and just, empowering its members to work at the apex of their abilities. The Chapter’s members include over 5,000 practicing architects, allied professionals, students, and public members interested in architecture and design. AIA New York engages its members to address critical issues facing the built environment, including, among other issues, adapting the built environment to reduce greenhouse gas emissions and adapting to climate change. AIA New York has launched several initiatives in support of New York City’s commitment to reducing its greenhouse gas emissions 80 percent by 2050, including a recurring course on building retrofits to reduce carbon emissions and comply with Local Law 97.

## **ARGUMENT**

*Amici curiae* provide additional context and arguments supporting the City of New York’s argument that the CLCPA neither expressly nor implicitly occupies the field of greenhouse gas emissions reduction legislation. First, neither the legislative history nor the structure of the CLCPA provide any evidence of legislative intent to preempt local measures aimed at reducing emissions. To the contrary, both the contemporaneous record and the structure of the CLCPA

provide every reason to believe that the CLCPA was intended to work in tandem with emissions reduction measures throughout the state, including local legislation in general and New York City's well-known Local Law 97 in particular.

Second, subsequent actions by both the State Legislature as well as the statewide bodies charged with implementing the CLCPA demonstrate the shared understanding that Local Law 97 and other local measures are essential to achieving the emissions reduction mandate that the CLCPA imposes. Far from supporting any claim that the CLCPA implicitly forecloses local climate action, the state has explicitly and repeatedly relied on local emissions reduction requirements.

Finally, adopting Plaintiffs' unfounded preemption claim would bring about disastrous results for New York's ability to address the urgent threat of climate change. This perverse outcome would directly contradict the Legislature's determination that the State and other jurisdictions must act now to reduce greenhouse gas emissions, and would stifle local innovation just when we need it most. The Court should dismiss Plaintiffs' preemption claim.

**I. There Is No Indication that the Legislature Intended to Occupy the Field of Climate Regulation by Enacting the CLCPA.**

Nothing in the legislative history or public record surrounding the passage of the CLCPA just two months after passage of Local Law 97 supports an intent by the State Legislature to occupy the field of climate regulation. Nor does the

CLCPA itself, a framework for planning future climate regulations across multiple agencies and levels of government, meet the high standard for implied field preemption.

**A) Local Law 97 and the CLCPA Were Both Enacted in Spring 2019 as Part of a Broad Movement for State and Local Climate Action.**

The landmark climate laws at issue here, Local Law 97 and the CLCPA, were enacted within months of each other in the spring of 2019 after parallel multi-year campaigns by advocates, including *amici*—many of whom were actively involved in campaigns for both laws. Federal hostility to climate change action at the time motivated advocates and legislators to advance strong state and local climate measures.

Local Law 97’s passage just prior to Earth Day 2019 made national news as one of the most ambitious local climate laws in the country.<sup>1</sup> During the same time period, advocates, state legislators, and the Governor were actively debating the

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<sup>1</sup> See, e.g., William Neuman, *Big Buildings Hurt the Climate. New York City Hopes to Change That*, N.Y. Times (Apr. 17, 2019), <https://www.nytimes.com/2019/04/17/nyregion/nyc-energy-laws.html>; Camila Domonoske, *To Fight Climate Change, New York City Will Push Skyscrapers to Slash Emissions*, NPR (Apr. 23, 2019), <https://www.npr.org/2019/04/23/716284808/new-york-city-lawmakers-pass-landmark-climate-measure>.

timing and scope of a state-level climate law.<sup>2</sup> In fact, characterization of the CLCPA as “comprehensive,” a word Plaintiffs rely on to support their preemption theory, seems to refer to the scope of the law’s emission reduction requirements: whether it would cover the economy as a whole, or, as Governor Cuomo had initially proposed, only the electricity sector.<sup>3</sup>

While the Legislature reached agreement on the CLCPA’s economy-wide scope, the law was not intended to specify the precise ways in which emissions would be reduced throughout New York’s multitude of cities, localities, industries, and sectors. Instead, the CLCPA was designed to initiate a process and create a plan to guide future climate action. As State Senator Jen Metzger put it in calling for enactment of the CLCPA, “We need a plan, a roadmap that is going to guide

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<sup>2</sup> See *New York State Senate Public Hearing on Climate and Community Protection Act Before the Senate Standing Comm. on Env’t Conservation*, 2019–2020 Leg. Sess. (N.Y. 2019), <https://www.nysenate.gov/calendar/events/environmental-conservation/andrea-stewart-cousins/february-12-2019/senate-majority>; Zach Williams, *Will New York Enact Climate Laws Before It’s Too Late?*, City & State N.Y. (Apr. 23, 2019), <https://www.cityandstateny.com/policy/2019/04/will-new-york-enact-climate-laws-before-its-too-late/177434/>; Brian Nearing, *Schumer Backs Ambitious State Climate Proposal*, Albany Times-Union (May 22, 2019), <https://www.timesunion.com/news/article/Schumer-backs-ambitious-state-climate-proposal-13870554.php>.

<sup>3</sup> See *The Energy 202: New York’s Cuomo is Pitching a Green New Deal. Climate Activists Say It’s Not Green Enough*, Wash. Post (Apr. 30, 2019), <https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2019/04/30/the-energy-202-new-york-s-cuomo-is-pitching-a-green-new-deal-climate-activists-say-it-s-not-green-enough/5cc75afba7a0a46fd9222b9b/>; Zach Williams, *Everyone Wants to Combat Climate Change. How Fast Can NY Do It?*, City & State N.Y. (May 16, 2019), <https://www.cityandstateny.com/policy/2019/05/everyone-wants-to-combat-climate-change-how-fast-can-ny-do-it/177347/>; The Brian Lehrer Show, *Could New York Have Net Zero Emissions by 2050? This Proposal Says Yes*, WNYC (June 5, 2019), <https://www.wnyc.org/story/albany-update-ccpa/>.

our policy, our programs and our investment in New York State.”<sup>4</sup> The Governor’s statement of necessity sending the bill to the Legislature stated that “[t]he bill is necessary to ensure that New York is on a path to net zero emissions.”<sup>5</sup>

Any discussion about whether the State should undermine the landmark City law or prevent other municipal action on climate by occupying the field of climate regulation is conspicuously absent from the legislative record or public debate during the crucial months between passage of Local Law 97 in April and the CLCPA’s enactment in June 2019. The lack of debate about vacating a brand new, widely publicized New York City climate law during discussions around the CLCPA indicates that legislators believed the CLCPA’s savings clause preserved Local Law 97. The savings clause, which is at the heart of this case, explicitly states that the CLCPA does not relieve any party of obligations under other applicable local laws. CLCPA § 11, 2019 N.Y. Sess. Laws Ch. 106 (S. 6599). Nothing in the legislative history reflects any debate about this section. The language of Section 11 has remained the same since the 2017 Climate and Community Protection Act, the precursor to the CLCPA,<sup>6</sup> and was not changed in later versions or during the final amendments negotiated in June 2019 to ensure passage of the bill.

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<sup>4</sup> Williams, *Everyone Wants to Combat Climate Change*, *supra* note 3.

<sup>5</sup> Governor’s Approval Mem., Bill Jacket, L. 2019, Ch. 106, at 005, <https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/85344>.

<sup>6</sup> See 2017 N.Y. Assembly Bill A8270B § 13.

**B) The CLCPA’s Framework for Planning Future Climate Measures in No Way Occupies the Field of Climate Regulation.**

The structure of the CLCPA also demonstrates that the state law is the beginning of a process and not the last word on climate regulation across the State of New York. Simply because the statute regulates statewide greenhouse gas emissions does not mean field preemption is warranted. “[T]hat the State and local laws touch upon the same area is insufficient to support a determination that the State has preempted the entire field of regulation in a given area,” *Incorporated Vil. of Nyack v. Daytop Vil.*, 78 N.Y.2d 500, 505 (1991) (quoting *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 99 (1987)). Instead, “[i]t is only when the State has evidenced a desire or design to occupy an entire field to the exclusion of local law” that the State law preempts local legislation. *People v. Judiz*, 38 N.Y.2d 529, 532 (1976). Courts have inferred such intent from “the nature of the subject matter being regulated and the purpose and scope of the State legislative scheme, including the need for State-wide uniformity in a given area.” *People v. Diack*, 24 N.Y.3d 674, 679 (2015). Intent to occupy a field may be inferred when a statute establishes a “comprehensive and detailed regulatory scheme” that leaves no room for local legislation. *New York State Club Assn. v. City of New York*, 69 N.Y.2d 211, 217 (1987).

There is nothing in the CLCPA’s scope or structure that supports an inference that the Legislature intended the law to occupy the field of climate



regulation. First, the subject matter being regulated is multi-dimensional and pervasive. The CLCPA requires that by 2030 greenhouse gas emissions be reduced 40% from their 1990 levels, and that by 2050 emissions be reduced 85% from 1990 levels. ECL 75-0107(1); ECL 75-0109(4)(a)–(b), (f). Enacting specific measures to realize these greenhouse gas reductions across all sectors of the state economy is an enormous task that could not be exhaustively addressed by a single statute. Recognizing this, instead of attempting to institute a comprehensive scheme, the CLCPA calls for a multi-year, stakeholder-driven planning process that does not presuppose that all climate action will be centered at the state level. The CLCPA creates a Climate Action Council, a body comprised of the heads of ten state agencies, as well as executive and legislative appointees, and directs it to develop a Scoping Plan, a roadmap for achieving the CLCPA’s economy-wide greenhouse gas emissions limits. *See* ECL 75-0103(1), (15). As described further in Section II, the Scoping Plan that was created pursuant to the CLCPA calls for a wide range of future steps that necessarily fall outside the scope of the statute itself, including municipal climate actions and additional state legislation.<sup>7</sup>

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<sup>7</sup> According to the Sabin Center for Climate Change Law at Columbia Law School and Columbia Climate School, the Scoping Plan calls for 59 different actions by the New York Legislature to amend existing laws or introduce new legislation. *See* Sabin Ctr. for Climate Change Law, Columbia Law School, *CLCPA Scoping Plan Tracker*, <https://climate.law.columbia.edu/Scoping-Plan-Tracker> (last visited Dec. 19, 2024).

The CLCPA leaves many crucial regulatory issues open. For example, nothing in the law requires any private entity to reduce its greenhouse gas emissions. This alone should lead the Court to conclude that the CLCPA has not created a “comprehensive and detailed regulatory scheme” that preempts all local climate measures.<sup>8</sup> While ultimately the statute requires state regulations to ensure achievement of the CLCPA’s 2030 and 2050 emissions mandates, the only economywide regulatory program being developed by the State, which has not yet been proposed, would still not require direct emission reductions from buildings.<sup>9</sup>

It is of no moment that “the local law prohibits conduct which is permitted by State law, because that test is much too broad” to determine preemption.

*Incorporated Vil. of Nyack*, 78 N.Y.2d at 508. Even where state laws set far more specific and detailed standards than the CLCPA, courts have upheld local laws that impose additional requirements or prohibit conduct permitted under state law. For

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<sup>8</sup> Plaintiffs place enormous importance on the statute’s use of the word “comprehensive” in the legislative findings and declaration. However, this Court has specifically noted that “[t]he Legislature’s use of the word ‘comprehensive’ in describing the State’s policy toward substance abuse does not, in and of itself, resolve” the question of implied field preemption. *Incorporated Vil. of Nyack*, 78 N.Y.2d at 507.

<sup>9</sup> The regulations being developed by the State would simply set a statewide declining cap on emissions and require fuel importers and very large direct emitters of greenhouse gases, like factories and landfills, to purchase allowances for their emissions, leaving room for complementary climate regulation at all levels of government. State agencies specified that in designing the regulations, they assumed Local Law 97 would stay in place to drive emissions reductions in New York City. See DEC & NYSERDA, New York Cap-and-Invest (NYCI) Pre-Proposal Stakeholder Outreach, Preliminary Scenario Analyses, at 19 (Jan. 2024), <https://capandinvest.ny.gov/-/media/Project/CapInvest/Files/2024-01-26-NYCI-Preproposal-Analysis-Webinar.pdf>.

example, the Court of Appeals upheld a New York City law that amended the New York City Human Rights Law to prohibit discrimination in certain types of “private clubs,” even when the State Human Rights Law, in language nearly identical to the pre-amendment city law, explicitly did not cover clubs that were “distinctly private.” *New York State Club Assn.*, 69 N.Y.2d 211; *see also Judiz*, 38 N.Y.2d 529 (finding New York City law prohibiting possession of certain toy guns not preempted by State law prohibiting possession of toy guns, despite being more restrictive).

Finally, there is no need for statewide uniformity regarding climate action generally, or emission reductions from large buildings, that would necessitate state preemption. New York City’s dense landscape of large multistory buildings is so distinct from the building stock in the rest of the state that city-specific regulations are the most natural and sensible way of regulating in this area. The City has “a legitimate, legally grounded interest in regulating development within its borders.” *Incorporated Vil. of Nyack*, 78 N.Y.2d at 508. And unlike other state laws found to have preempted local measures, the CLCPA does not strike a delicate balance of rights or interests that requires statewide uniformity. *Cf. Diack*, 24 N.Y.3d at 680 (finding state preemption where the state law sought to balance restrictions on sex offenders with need to ensure they had places to live, and local residency restrictions disrupted that balance); *Albany Area Bldrs. Assn. v. Town of*

*Guilderland*, 74 N.Y.2d 372, 378–9, (1989) (“[T]he State perceived no real distinction between the particular needs of any one locality and other parts of the State with respect to the funding of roadway improvements, and thus created a uniform scheme to regulate this subject matter,” (citation omitted)).

## **II. After Enacting the CLCPA, the Legislature Relied on the Continuing Validity of Local Law 97 and Other Complementary Local Measures.**

As state lawmakers and agencies have made clear, Local Law 97 is crucial to achieving the emission reductions mandated by the CLCPA. In fact, when subsequent state legislation threatened the effective implementation of Local Law 97, many of the same lawmakers who sponsored the CLCPA acted to preserve Local Law 97 from a budgetary scheme that would have undermined it. Further, the state Scoping Plan, the official CLCPA “roadmap,” highlights the importance of Local Law 97 and other local climate measures.

### **A) After Passing the CLCPA, State Legislators Stopped a State Effort to Weaken Local Law 97.**

Just one year after the CLCPA went into effect, many CLCPA co-sponsors rallied to preserve Local Law 97 in the face of a state effort to weaken the city law. The Governor’s Executive Budget for 2022, introduced in January 2021, included a measure that would have vastly expanded the ability of building owners to meet their emission reduction requirements under Local Law 97 by purchasing

renewable energy credits.<sup>10</sup> Advocates, including *amici*, estimated this would have encouraged building owners to avoid energy efficiency upgrades in their buildings altogether in favor of purchasing credits for existing renewable energy facilities, thereby leading to far fewer climate benefits from Local Law 97.

State legislators, including *amicus curiae* Steven Englebright, pushed back, with the message that the State should not undermine local legislation—and that the budget measure would “fly in the face” of the CLCPA itself.<sup>11</sup> Announcing the measure’s defeat, State Senate Deputy Leader Michael Gianaris stated, “[Local Law 97] was years in the making, the result of painstaking work and thorough analysis by a lot of people, and to swoop in and try to override it through the state process would be a huge mistake.”<sup>12</sup> Senator Liz Kreuger told the press that “New York State should not be in the business of undercutting bold local climate leadership.”<sup>13</sup> A group of Assemblymembers, including lead CLCPA sponsor and *amicus curiae* Steven Englebright, signed on to a letter opposing the measure, and it ultimately was not part of the final budget package. Legislators’ objections to any state measures that would undermine Local Law 97 clearly demonstrate that

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<sup>10</sup> See FY 2022 New York State Executive Budget, Transportation, Economic Development and Environmental Conservation Article VII Legislation, at Part R (Jan. 19, 2021), <https://www.budget.ny.gov/pubs/archive/fy22/ex/artvii/ted-bill.pdf>.

<sup>11</sup> Colin Kinniburgh, *Top State Lawmakers Oppose Cuomo’s Push to Override NYC’s Local Climate Law*, NY Focus (Feb. 18, 2021), <https://nysfocus.com/2021/02/18/cuomo-override-nyc-climate-law>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

they did not believe passage of the CLCPA a year and a half earlier had preempted the city law.

**B) State Bodies Implementing the CLPCA Recognized the Importance of Local Law 97 to Achieving the Mandates of the CLCPA.**

In enacting the CLCPA, the Legislature determined that “[t]he severity of current climate change and the threat of additional and more severe change will be affected by the actions undertaken by New York *and other jurisdictions* to reduce greenhouse gas emissions.” CLCPA § 1(2)(a) (emphasis added). State agencies implementing the CLCPA have indicated their reliance on extensive local actions to reduce emissions within the state, particularly Local Law 97, to achieve these goals. The significance of the local action at issue here is particularly large, because New York City’s greenhouse gas emissions make up a quarter of New York State emissions, and large buildings regulated under Local Law 97 account for about six percent of the state’s overall emissions.<sup>14</sup> Compliance with Local Law 97 would by itself accomplish nearly six percent of the state’s greenhouse gas emission reduction requirements. Were the Court to vacate Local Law 97, nothing in the state climate law otherwise mandates emission reductions from large buildings in New York City. Vacating Local Law 97 would therefore directly imperil the state’s ability to meet the CLCPA’s 2030 and 2050 targets.

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<sup>14</sup> See City of New York, Getting 97 Done, at 11 (Sept. 2023), [https://climate.cityofnewyork.us/wp-content/uploads/2023/09/Getting-\\_LL97Done.pdf](https://climate.cityofnewyork.us/wp-content/uploads/2023/09/Getting-_LL97Done.pdf).

State bodies charged with implementing the CLCPA have explicitly recognized the importance of Local Law 97 in meeting state emissions reduction mandates under the CLCPA. The New York State Public Service Commission agrees that Local Law 97 is “integral to the State’s ability to meet CLCPA mandates.”<sup>15</sup> In a preliminary analysis for the development of CLCPA implementing regulations, the New York State Department of Environmental Conservation relies on implementation of Local Law 97 to complement expected greenhouse gas emissions reductions from its own forthcoming regulations.<sup>16</sup> Similarly, the Climate Action Council’s Scoping Plan, the official New York State plan for implementing the CLCPA, explicitly recommends that New York enact an energy efficiency standard for existing buildings that would “align with New York City’s Local Law 97 and across State and local government requirements where appropriate.” New York State Climate Action Council, Scoping Plan 189 (Dec. 2022), <https://climate.ny.gov/resources/scoping-plan/>. Not only does the official roadmap for implementing the CLCPA contemplate Local Law 97 remaining in effect, but it also uses it as a model for future statewide legislation.

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<sup>15</sup> Order Adopting Terms of a Joint Proposal at 20, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service*, NY PSC Case No. 22-S-0659 (Nov. 16, 2023).

<sup>16</sup> See DEC & NYSERDA, New York Cap-and-Invest (NYCI) Pre-Proposal Stakeholder Outreach, *supra* note 9.

In fact, the State’s entire implementation plan for the CLCPA incorporates an understanding that local greenhouse gas reduction laws are an essential requirement for the CLCPA’s success. The Climate Action Council has explicitly incorporated municipal climate actions into the Scoping Plan and has unambiguously stated that “[p]artnership with local governments is a keystone of the State’s . . . greenhouse gas (GHG) emissions mitigation strategies.” *See* Scoping Plan at 396. The Scoping Plan also endorses the Climate Smart Communities program—a state certification program that incentivizes municipal greenhouse gas reduction targets and municipal climate ordinances.<sup>17</sup> *See id.* at 397.

If Plaintiffs were right that the CLCPA preempts local climate laws, then every decision-making body in the state would be required to start its climate plans from scratch and attempt to build a strategy that could stand without the local actions that supply the “keystone” of the State’s ability to reduce greenhouse gas emissions. Such an effort would set back the Legislature’s efforts to address

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<sup>17</sup> *See* DEC, Climate Smart Communities Grants (2024), <https://dec.ny.gov/sites/default/files/2024-05/cscgrantfactsheetgeneral.pdf>. Municipalities may create their own “Community Climate Action Plans,” which include “GHG reduction targets.” *See Certification Actions, PE2 Action: Community Climate Action Plan* (June 14, 2024), <https://climatesmart.ny.gov/actions-certification/actions/#open/action/11>. The Climate Smart Communities Program also encourages municipalities to “[a]dopt a local green building ordinance substantially equivalent to the Columbia Law School’s Center for Climate Change Law’s Model Municipal Green Building Ordinance.” *See Certification Actions, PE6 Action: Green Building Ordinance*, Climate Smart Communities (June 13, 2024), <https://climatesmart.ny.gov/actions-certification/actions/#open/action/69>.



climate change by at least half a decade, and there is no reason to believe that State action to create some new keystone could—on its own—fill the hole Plaintiffs propose to create in the state strategy that previously relied on complementary local authority.

### **III. Plaintiffs’ Unsupported Preemption Theory Would Radically Undermine New York’s Urgent Efforts to Address Climate Change.**

#### **A) The Court Should Not Undercut Action to Address the Urgent Threat of Climate Change.**

The urgent need to reduce greenhouse gas emissions on a rapid timeline to avoid the worst effects of climate change has not diminished since legislators enacted Local Law 97 and the CLCPA over five years ago. The “entire thrust, purpose and legislative history of the statute” emphasize that the CLCPA is intended to respond to a “currently existing, urgent problem that was worsening, not a developing or potential problem that might arise if appropriate action was not taken in the future.” *Danskammer Energy, LLC v. New York State Dep’t of Env’tl. Conservation*, 76 Misc. 3d 196, 249 (Sup. Ct. Orange County 2022).

The federal government has likewise recognized the urgency of the public interest in responding to climate change. The U.S. Supreme Court has determined that “[t]he harms associated with climate change are serious and well recognized.” *Massachusetts v. EPA*, 549 U.S. 497, 521 (2007). The Department of Defense has determined that “the existential threat of climate change . . . will continue to have

worsening implications for U.S. national security.”<sup>18</sup> The President’s Executive Order 14,008 explains that “[t]he United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents.” Exec. Order No. 14,008, 86 Fed. Reg. 7619, 7619 (Jan. 27, 2021).

A ruling that Local Law 97 is preempted by state law would largely halt New York City’s progress on climate change in its tracks and significantly set back the state’s ability to achieve the CLCPA’s mandates. The City’s April 30, 2024 Climate Budget reveals that “[p]rivate building emissions limits through Local Law 97 are the most impactful action the city is taking” to reduce greenhouse gas emissions.<sup>19</sup> The steepest emissions reductions under Local Law 97 will occur in the coming years. *See* N.Y.C. Admin. Code § 28-320.3.2, 28-320.3.4, 28-320.3.5.

Without Local Law 97, most of the anticipated greenhouse gas reductions from large buildings would likely not occur, and certainly not in the near term. As stated above, there is currently no alternate mandate under the CLCPA requiring large building owners to reduce emissions. Any effort to develop binding building

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<sup>18</sup> U.S. Dep’t of Def., Department of Defense Climate Risk Analysis 4 (2021), <https://media.defense.gov/2021/Oct/21/2002877353/-1/-1/0/DOD-CLIMATE-RISK-ANALYSIS-FINAL.PDF>.

<sup>19</sup> Press Release, Office of the Mayor, *Mayor Adams Celebrates Launch of New York City’s First Climate Budgeting Process* (Apr. 30, 2024), <https://www.nyc.gov/office-of-the-mayor/news/327-24/mayor-adams-celebrates-launch-new-york-city-s-first-climate-budgeting-process>.

emission reduction measures at the state level would likely take several years, delaying action that otherwise would take place under Local Law 97. Such a delay would cause a substantial setback to New York’s diminishing timeline for decarbonization and fly in the face of the urgency expressed by the CLCPA.

**B) Plaintiffs’ Theory Would Curtail or Eliminate Local Innovation in New York Aimed at Responding to the Existential Threat of Climate Change.**

While New York City’s Local Law 97 is the subject of this lawsuit, a decision on preemption has direct implications for a wide range of local measures to address climate change in communities across the state. Because the CLCPA does not directly regulate greenhouse gas emissions from buildings, a preemption ruling would not necessarily be limited to local building emissions laws. Preemption of Local Law 97 could have a tremendous sweep, threatening all local laws across the state that relate to climate. It would also have a chilling effect on any future municipal measures to address climate.

Preventing localities in New York State from legislating on urgent matters related to climate is directly contrary to the CLCPA and would hinder local innovation to reduce greenhouse gas emissions across the state. As recognized by the Scoping Plan itself, “[l]ocal leaders are the most well-equipped to understand community needs” and “are uniquely positioned to take action that will reduce GHG emissions.” Scoping Plan at 426. State leaders understand that it is important

to leave room for localities to regulate certain climate issues, and the Court should preserve that flexibility for municipalities to address locally specific circumstances as well as pilot innovative and more aggressive climate measures on a smaller scale.

Local Law 97 is an excellent example of the judgment made by New York's statewide bodies that balancing locally specific considerations when it comes to complex climate regulation is best left to local legislators. As Corey Johnson, then Speaker of the City Council, said of Local Law 97, "New York City is a complicated, dynamic place with lots of old buildings and new buildings and hospitals and houses of worship and affordable apartments . . . [s]o to craft a bill that would make a significant difference while at the same time understanding the variation of building stock was a challenge."<sup>20</sup> That challenge is best left to local officials.

Given the lack of support for any implied intent of the CLCPA to preempt local legislation, a preemption ruling here could also prompt attacks on virtually any local law that regulates in broad areas also addressed by state legislation. Such a ruling would unsettle the expectation of state and local cooperation that New York broadly depends upon, undermine the foundations of home rule, and give rise

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<sup>20</sup> Neuman, *Big Buildings Hurt the Climate*, *supra* note 1.


to confusion among local lawmakers and potential for protracted litigation challenging numerous local laws.

## CONCLUSION

At a time when every action to reduce greenhouse gas emissions is needed to address the urgent threat of climate change, Plaintiffs-Respondents' unsupported preemption theory would undercut New York City's most impactful actions and stifle local climate innovation across the state. *Amici*, the lead Assembly sponsor and organizations deeply involved in enacting and implementing both the CLCPA and Local Law 97, urge the Court to dismiss Plaintiffs-Respondents' claims.

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing brief was prepared on a computer using Microsoft Word, in 14-point Times New Roman font. The number of words in the brief, inclusive of point headings and exclusive of the cover, corporate disclosure statement, table of contents, table of authorities, and this certificate of compliance, is 5,324.

Dated: January 2, 2025  
New York, NY



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