APL-2024-00106

To be argued by:
AMY MCCAMPHILL
15 minutes requested

Court of Appeals
State of New York

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

Plaintiffs-Respondents,

against

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.

REPLY BRIEF

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PRELIMINARY STATEMENT

Plaintiffs dedicate much of their brief to irrelevancies, such as their misplaced policy disagreements with Local Law 97 (*see, e.g.*, Brief for Respondents ("Resp. Br.") 8-16). But the only question here is whether the enactment of the Climate Act "clearly evinced" a legislative intent to preempt the entire field of greenhouse gas emissions reduction measures, precluding local action on one of the most pressing issues of our times and undercutting the State's ability to achieve its own goals under the Act. *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 97 (1987). The answer is no, and it is not close.

As explained in our opening brief (Brief for Appellants ("App. Br.")), a clear indication of preemptive intent is nowhere to be found—not in the Climate Act's text or design (*id.* at 23-28), not in the legislative history (*id.* at 34, 44), and not in the expressed views of various state bodies and the State as a whole (*id.* at 31-34). Instead, all signs point in the opposite direction—against field preemption. Those signs show that the Legislature intended to encourage complementary action to address the dire problem of climate change on all levels of government. Plaintiffs offer no credible reason why the Legislature would want to snuff out local laws, like Local Law 97, that "only further the State's policy interest." *Vatore v. Comm'r of Consumer Affs.*, 83 N.Y.2d 645, 650 (1994). And in

fact, the State has emphatically stated in this litigation that the Climate Act has no such preemptive effect (*see* App. Br. at 22-23).

Nor can plaintiffs brush off the Climate Action Council's embrace of local action in general and Local Law 97 in particular. The Council is the engine of the statutory scheme, and it is "significant that [it] believed that the statute was not intended to preempt local legislation." *Jancyn Mfg. Corp.*, 71 N.Y.2d at 99. The Climate Action Council's position is far more than a mere post-enactment statement: the Council's position is embodied in its scoping plan—an integral part of the statutory framework, which was submitted to the Legislature and the Governor and which sets the guideposts for any future regulatory action that may be taken by the lead state agency (*see* App. Br. 13, 18-19, 33).

We will not repeat all our points here, as plaintiffs don't seriously respond to them. On the core issues, they have remarkably little to say. Their first—and main—argument warps sections 10 and 11 in an attempt to conjure preemptive intent by negative implication, but that comes only by twisting the statutory text and ignoring basic rules of statutory interpretation. And even stretching that far yields no *clear* expression of preemptive intent.

Otherwise, plaintiffs argue that the Climate Act is "comprehensive" and "detailed," and has been described as such, because it sets out

a schedule of deadlines for future state action to reduce greenhouse gas emissions from a wide range of sources. We agree. The Climate Act is comprehensive and detailed in this sense, but that is not any sense that matters for preemption. The Climate Act may have a multi-stage apparatus and be ambitious in its reach, but nothing about it indicates that the Legislature intended to *exclude* localities from the field.

Because plaintiffs have so little to say on the merits, they invite this Court to double down on the Appellate Division's error by refusing to resolve the legal questions presented here. But plaintiffs' implied field preemption claim fails as a matter of law on every level: on the face of the statute, on the legislative record, and beyond. The claim should be dismissed.

ARGUMENT

PLAINTIFFS' BRIEF CONFIRMS THAT THEIR IMPLIED FIELD PREEMPTION CLAIM FAILS AS A MATTER OF LAW

A. Plaintiffs have no answer to the many reasons why section 11 is best read as a saving clause safeguarding local laws like Local Law 97.

We begin with section 11 because, while it underlies only one of our many arguments (*see* App. Br. 25-34, 44-48), it is central to plaintiffs' case, and the case crumbles there. Section 11 says that "[n]othing

in this act shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations, including state air and water quality requirements, and other requirements for protecting public health or the environment." L. 2019, ch. 106, § 11. Plaintiffs rely on this provision for their theory of preemptive intent by negative implication. But one need only read it to see otherwise: section 11 is, on its face, a saving clause that preserves other applicable federal, state, or local laws or regulations. So plaintiffs have to go to great lengths to try to make section 11 mean something other than what it says.

As explained in our opening brief (App. Br. 35-36), plaintiffs contend that the term "other" in section 11 should be read to refer all the way back to the phrase "greenhouse gas emissions reduction measures" in section 10, allowing them to transplant that phrase into section 11 itself. With those textual gymnastics, section 11 would read more like the following, with new text in italics: "Nothing in this act shall relieve any person, entity, or public agency of compliance with other applicable federal, state, or local laws or regulations *provided they are not greenhouse gas emissions reduction measures*, including state air and water quality requirements *provided they are not greenhouse gas emissions reduction measures*, and other requirements for protecting public

health or the environment *provided they are not greenhouse gas emissions reduction measures*."

Our opening brief identified eight separate reasons why plaintiffs' attempt to rewrite section 11 fails (*see* App. Br. 35-44). It is obvious that plaintiffs have no real response to any of them.

First, section 11 begins with the categorical phrase "[n]othing in this act" (*see* App. Br. 36-37). Plaintiffs refuse to take the Legislature at its word, and instead seek to impose a significant qualification on section 11 by leveraging a provision outside it (*see* Resp. Br. 29-30).

Second, and relatedly, the last antecedent rule of statutory construction prohibits plaintiffs' tactic (*see* App. Br. 41-42). Plaintiffs tacitly concede that the canon favors the City, as they must: the nearest antecedent for "other … laws or regulations" is the reference to "[t]his act" at the beginning of the sentence. Plaintiffs observe merely that the last antecedent rule is not absolute and can give way if compelling circumstances point to a different meaning (*see* Resp. Br. 31). But their pitch on that score begs the question: the only "compelling circumstance" they identify is their own unsupported conclusion that the sections are intended to clarify which powers are reserved to the State and which are not (*see id.*). Yet whether the provisions reflect such an intention is

precisely what the last antecedent canon helps to decide in the first place. Our reading of the saving clause thus stands unrebutted.

Third, section 11 makes no distinction between "federal, state, or local laws or regulations," but plaintiffs' interpretation does not work when applied to the first two terms in the trio: federal and state (*see* App. Br. 37-38). Plaintiffs respond by putting enormous weight on the term "applicable," claiming for the first time that federal and state laws are "applicable" because they are not preempted, and "local laws are 'applicable' only to the extent they are not preempted" (Resp. Br. 31).

But that gambit again begs the question, by simply assuming that local greenhouse gas emissions reduction measures are field-preempted whereas federal and state measures are not. The gambit also yields internal contradictions in plaintiffs' argument. That argument depends on reading the term "other" in section 11 to reference the phrase "greenhouse gas emissions reduction measures" in section 10 and thus to exclude such measures from the saving clause's scope. But when it comes to federal and state laws, plaintiffs suggest that the word "applicable" immediately reverses that supposed exclusion (Resp. Br. 30-31). Thus, in the case of federal laws, for example, plaintiffs' interpretation seems to be that section 11 first uses the term "other" to exclude a subset of federal laws from its protection—those addressing greenhouse gas

emissions reduction measures—and then in the next breath uses the term "applicable" to render that exclusion meaningless, as plaintiffs' gloss on the latter term leaves no room for federal laws to be "inapplicable." The theory makes no sense.

In any case, plaintiffs cite no authority for the notion that the term "applicable" has a preemptive connotation—let alone one that varies from term to term in an undifferentiated series. The most natural reading of "applicable" in this context is that it is referring to laws and regulations that are applicable to the "person, entity, or public agency" described earlier in section 11. The Legislature was simply saying: if other federal, state, or local laws or regulations apply to you, this law does not relieve you from complying with those other laws or regulations.

Fourth, plaintiffs' manufactured juxtaposition of sections 10 and 11 rests on the false premise that section 10 is a statement about the regulatory authority of state agencies; that is how they try to conjure a negative implication about the regulatory authority of localities (*see* App. Br. 39-40). But the Legislature spoke to state agencies' regulatory authority in section 8, not section 10, which is instead about preserving the preexisting power of a broader range of state entities to adopt and implement "greenhouse gas emissions reduction measures," such as state universities pursuing green infrastructure projects (*see id.*).

Plaintiffs' response is that none of this matters because section 10 "is a broader reservation of power" (Resp. Br. 30). Yet even they are unwilling to embrace the logical consequence of their position. While plaintiffs' contention is that the phrase "greenhouse gas emissions *reduction measures*" should be transposed from section 10 into section 11, their brief repeatedly engages in a sleight of hand by substituting that phrase with the narrower phrase "greenhouse-gas emissions *limits*" (*see, e.g.*, Resp. Br. 26, 32). But Section 10 does not use that phrase, and the phrase it does use ("greenhouse gas emissions reduction measures") sweeps broadly to capture "programs, measures and standards." ECL § 75-0101(6). So if plaintiffs' argument were accepted, that would mean that localities would be barred not just from adopting laws or regulations setting greenhouse gas emissions limits; they would be barred from implementing any programs, measures, or standards to reduce greenhouse gases, such as greening their own transportation fleets—that is, many, if not all, of the "voluntary" measures to encourage, not require, greenhouse gas emissions reductions, which plaintiffs profess to embrace (*see* Resp. Br. 6-8). That is a radical proposition, and plaintiffs are right to run away from it. But that is where their interpretation leads.

Fifth, sections 10 and 11 are textually mismatched in several ways, which undermines plaintiffs' claim that these provisions somehow work together to evince a preemptive intent that neither expresses on its own (*see* App. Br. 40-41). Plaintiffs' response is to say that the two sections' language need not be "identical, or even parallel" (Resp. Br. 32). We will concede that the language need not be identical, but plaintiffs' suggestion that the language need not even be parallel is puzzling when their entire argument hinges on the word "other" in the saving clause referring back to a phrase from the preceding statutory section. For such an argument to get off the ground, the two provisions need to be framed at least as close cousins. Yet plaintiffs fail to grapple with the many mismatches we have identified.

Sixth, plaintiffs' argument rests on an untenable distinction between greenhouse gas emissions reduction measures (covered in section 10) and public health and environmental laws and regulations (covered in section 11) (*see* App. Br. 42-43). Here, plaintiffs return to the fiction that their reading would only prohibit localities from setting "greenhouse-gas emission *limits*" (Resp. Br. 32), when the truth is that their reading would bar localities from adopting any "greenhouse gas emissions *reduction measures*" through law or regulation, ruling out all

kinds of local public health and environmental programs and standards to reduce greenhouse gas emissions (*see supra* at 7-8).

Seventh, although plaintiffs accuse us of reading section 11 "in a vacuum" (Resp. Br. 27), it is plaintiffs' interpretation that is profoundly out of step with the entire thrust of the Climate Act. True enough, the Act focuses on state action (Resp. Br. 32-33)—not surprisingly, for a state law—but plaintiffs miss the bigger picture.[1] The Act recognizes the urgent need for rapid reductions in emissions to combat climate change; it encourages other jurisdictions to implement complementary reduction strategies; it is styled as a statement about "leadership" on climate change, not a statement about the State going it alone; and it contemplates local action and input in multiple ways (*see* App. Br. 11-16, 25-28). The message is clear: "all hands on deck." It makes no sense to read section 10 as a highly oblique effort to tie the hands of localities from contributing to the shared fight against climate change.

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[1] Plaintiffs also miss the point about how distinctive and telling the Act's provisions are regarding state action—it vests *every* state agency with regulatory authority, L. 2019, ch. 106, § 8, and commands *every* state agency to consider the Act's climate-related goals in essentially *everything* they do, *id.* § 7. The Act's promiscuousness on those points confirms its "all hands on deck" message. And if the Legislature had intended to nonetheless preclude local governments from giving similar consideration to climate change in their own affairs, one would expect to see something clear in the statute drawing that line. Yet we do not.

Eighth, while the legislative history may not have much to say about section 11 specifically, plaintiffs do not dispute that the materials that do speak to it are consistent with our interpretation—not theirs (*see* App. Br. 44). Plaintiffs do not claim that there is anything in the legislative history indicating that section 11 would have preemptive effect.

In their effort to wave away all of this, plaintiffs contend that our reading of section 11 renders section 10 superfluous (Resp. Br. 29-30). The idea—so far as we can tell—is that if section 11 preserves other applicable state laws and regulations, then there would have been no need to preserve state entities' existing authority to implement greenhouse gas emissions reduction measures in section 10. But plaintiffs elsewhere claim that section 11 "makes clear that general State laws remain applicable" (*id.* at 31), so it is hard to see how their own interpretation avoids the problem. More to the point, their argument again fails to recognize that section 10 is about state entities' authority to implement "reduction measures," including green infrastructure projects or fleet electrification, not the need for regulated persons and entities to comply with "applicable … laws or regulations." The provisions speak to different things and are entirely consistent with each other, embracing the Climate Act's "all hands on deck" approach in different ways.

Section 11 means what it says: nothing in the Act excuses compliance with applicable local laws and regulations. Plaintiffs' twisted reading is no substitute for clearly evinced preemptive intent.

B. Nothing else in the Climate Act approaches a clear expression of legislative intent to occupy the field.

We have addressed plaintiffs' main argument, and it fails several times over. Plaintiffs' secondary arguments fare no better.

First, the Climate Act is not a "comprehensive and detailed regulatory scheme." *Consolidated Edison Co. of N.Y. v. Town of Red Hook*, 60 N.Y.2d 99, 105 (1983) (Resp. Br. 25). To the contrary, the Act is devoid of any regulatory requirements; it simply provides a framework for future action. In the cases cited by plaintiffs (Resp. Br. 37), the Legislature itself enacted detailed substantive schemes. *Cf. Chwick v. Mulvey*, 81 A.D.3d 161, 170-71 (2d Dep't 2010) (firearm regulation); *Ba Mar, Inc. v. County of Rockland*, 164 A.D.2d 605, 613 (2d Dep't 1991) (mobile home park regulation). That is decidedly not the case here.

Plaintiffs place much weight on the Climate Act's reference to itself as "comprehensive" (Resp. Br. 33 (citing L. 2019, ch. 106, § 1)) and on similar references from public officials (Resp. Br. 1-2, 34). But that description is entirely consistent with our interpretation. The Climate Act

is comprehensive in the sense that it establishes a multi-step procedural apparatus to address greenhouse gas emissions from all possible sources and sectors. But what matters for field preemption purposes is that nothing in the Act is prescriptive regarding any particular source or sector's pathway to reducing emissions—it leaves that task to regulators—and that nothing in the Act indicates that the Legislature envisioned this statute as so all-encompassing as to necessarily *exclude* local action. Rather, as we have explained at length, the prevailing theme of the Act is that combatting climate change requires everyone to pitch in.

This case is not at all akin to *Robin v. Incorporated Village of Hempstead*, (Resp. Br. 34), where the statute indicated that a single state agency should have "central, comprehensive responsibility" for an issue. 30 N.Y.2d 347, 350 (1972) (cleaned up). Here, as we have explained, the Climate Act instead evinces an "all hands on deck" approach. Similarly off-point is *People v. Diack*, 24 N.Y.3d 674, 683 (2015) (Resp. Br. 34), where the legislative history underscored the problems caused by local ordinances, and thus the need for a preemptive statewide regulatory solution. Here, in contrast, the Climate Act expects the State will partner with and learn from localities in a shared effort to achieve State's climate goals. *See, e.g.*, ECL §§ 75-0103(7), 75-0103(14)(a), 75-0109(1).

But set all that to the side. As this Court held in *Garcia v. New York City Department of Health & Mental Hygiene*, the State does not impliedly preempt a field where "the relevant statutes reflect the state legislature's recognition that municipalities play a significant role" in addressing the problem. 31 N.Y.3d 601, 620 (2018). This is so *even if* "the State has enacted a relatively comprehensive statutory scheme." *Id.*

According to plaintiffs, *Garcia* is entirely different from this case because there "the Legislature had, in prior legislation, recognized the city board's authority" to regulate in the relevant area (Resp. Br. 40 (citing *Garcia*, 31 N.Y.3d at 620-21)). But the same is true here, as we have already demonstrated (App. Br. 29-31). The State's Environmental Control Law, including, in particular, its Air Pollution Control Act, affirm municipal authority to regulate air pollution, and the State's Energy Law also recognizes municipal authority to regulate local buildings (App. Br. 30-31). Plaintiffs carp that the Climate Act "does *not* grant municipal governments … authority" (Resp. Br. 18), but we have never claimed that the Act is the *source* of the City's authority. Plaintiffs fail to recognize that the Act didn't have to grant municipalities authority to legislate, because municipalities already had longstanding authority to enact local laws such as Local Law 97. And, as *Garcia* recognizes, the well-known tradition of local laws exercising such pre-existing authority

matters when assessing a claim of state-law preemption, since "it would be difficult to reconcile the state legislature's repeated explicit recognition" of local authority "with an intent to implicitly repeal" such authority. *Garcia*, 31 N.Y.3d at 621.

Plaintiffs also miss the broader parallel between this case and *Garcia*: in both instances, state legislation embraced local action. The Climate Act does so through its section 11 saving clause; through its other provisions contemplating local input and action; and through its legislative findings, which, among other things, recognize the need for "complementary greenhouse gas reduction strategies" from "other jurisdictions." L. 2019, ch. 106, § 1(3). That's more than enough to defeat plaintiffs' preemption claim.

Second, nothing in the Climate Act indicates that the Legislature discerned a need for statewide uniformity in dealing with the climate crisis (*see* Resp. Br. 37-38, 41). For starters, although the Climate Act starts with a robust set of legislative findings, there is no statement expressing a need for a uniform approach. Instead, by creating a framework for future regulations based on broad information-gathering throughout the state, the Climate Act contemplates a wide variety of

paths may be utilized by both the State and its localities to reduce emissions.[2]

To be sure, the Climate Act notes a need to "prioritize the safety and health of disadvantaged communities," L. 2019, ch. 106, § 1(7), but such an objective does not require statewide uniformity (*see* Resp. Br. 38). Rather, the statute simply recognizes that certain jurisdictions have unique vulnerabilities—just like international accords recognize that certain jurisdictions bear particular responsibility for the climate crisis, under the principle of "common but differentiated responsibility."[3] Climate change is a "worldwide problem" (Resp. Br. 41), but that does not necessitate a top-down, uniform solution.

As the Climate Action Council recognized, "[l]ocal leaders are the most well-equipped to understand community needs and are uniquely positioned to take action that will reduce [greenhouse gas] emissions." Climate Action Council, *Scoping Plan: Full Report* (Dec. 2022) 426, *available at* https://perma.cc/R6WX-JT4W. Nothing in the Climate Act

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[2] Nor is a need for statewide uniformity somehow self-evident. Quite the contrary, the relevant landscape may well differ dramatically across the state. As just one example, in parts of New York, the largest contributor to climate change may be agricultural activities; in other places, it may be automobiles; and in New York City, it is emissions attributable to large buildings.

[3] *See, e.g.*, Christopher D. Stone, *Common But Differentiated Responsibilities In International Law*, 98 Am. J. Int'l L. 276 (April 2004).

suggests that the Legislature intended to squelch local innovation. To the contrary, as we have explained (App. Br. 15), the Legislature envisioned that state regulators would learn from such efforts.

Third, the Climate Act does not impose any "direct controls at the local level" (Resp. Br. 39 (quoting *People v. De Jesus*, 54 N.Y.2d 465, 469 (1981) (cleaned up)). Examples of such direct control include the Legislature "creating local … boards with the power to" regulate, "or issuing detailed instructions to localities." *Jancyn Mfg. Corp.,* 71 N.Y.2d at 99. The Climate Act does nothing of the sort.

Plaintiffs' scattershot remaining arguments do not move the needle. For instance, plaintiffs point to a legislative finding in the Climate Act, indicating that "there is a strong state interest in setting a floor statewide for labor standards, but allowing and encouraging individual agencies and local governments to raise standards." L. 2019, ch. 106, § 1(11) (Resp. Br. 33). According to plaintiffs, the absence of a similar finding about environmental standards is somehow meaningful. But the Legislature expressly affirmed the continued validity of local environmental and public health laws and regulations in section 11, an operative provision of the Climate Act. The legislative findings about labor standards cannot credibly be read to undermine the section 11 saving

clause, especially when the two are consistent in reaffirming local authority.

Grasping at straws, plaintiffs suggest that we are wrongly focused on *conflict* preemption (Resp. Br. 4-5, 42). Not so. Plaintiffs have disclaimed any such theory, and rightly so: no conflict arises where a local law merely prohibits something that is not prohibited by state law. *Police Benevolent Ass'n of the City of N.Y., Inc. v. City of N.Y.*, 40 N.Y.3d 417, 426 (2023). More fundamentally, plaintiffs misunderstand the significance of the State's embrace of complementary local action. That local climate action will complement the State's future regulations does not just go to show that there is no conflict preemption. The State's vision of complementary climate action also shows the State does not intend to preempt the field. *See Garcia*, 31 N.Y.3d at 620.

C. Plaintiffs have identified no basis for remand when their claim fails as a matter of law.

Our opening brief explained why plaintiffs' implied field preemption claim presents a question of law that can and should be resolved now (App. Br. 48-50). Plaintiffs' refrain about "well-pleaded allegations of legislative intent" (Resp. Br. 24, 39) misses the mark: legislative intent is not an adjudicative fact on which a plaintiff's allegations can control. Notably, plaintiffs still fail to cite "a single case finding that

dismissal would be inappropriate under circumstances remotely like those here" (App. Br. at 50).

The best they can come up with is *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299 (2019) (Resp. Br. 23), and that case is striking for how off-point it is. *Albrecht* did not even involve a question of field preemption. Instead, it addressed a specific and granular species of conflict preemption—"impossibility preemption" under federal drug labeling law. The United States Supreme Court held that state-law claims against drug manufacturers alleging that drug labelling should have warned of certain risks are preempted where there is "clear evidence that the FDA would not have approved" the suggested change to the drug's label, such that it would have been impossible for the manufacturer to comply with both federal law and the asserted state-law duty to warn. *Id.* at 302 (cleaned up). That particular preemption analysis involves "subsidiary factual disputes"—whether the FDA would have disapproved a particular label change—that are entirely absent from the field preemption question presented here. *Id.* at 317 (cleaned up).

Similarly inapt is the trial-level decision in *Corrado v. Metropolitan Transit Authority*, Index No. 102002/2010, 2014 N.Y. Misc. LEXIS 4255 (Sup. Ct. N.Y. Cnty. Sept. 26, 2014) (Resp. Br. 23). There, the defendant's preemption defense hinged on the unresolved "threshold"

factual issue of whether the plaintiff was a Metro-North employee under the Federal Employers' Liability Act. *Id.* at *56. But here, there are no disputed factual issues—subsidiary, threshold, or otherwise.

Next, plaintiffs complain about our reference to matters of public record—namely, the consistent, clear statements from state entities embracing Local Law 97, and the State's amicus brief disclaiming any preemptive intent behind the Climate Act (Resp. Br. 23-24). But plaintiffs' case fails on the statutory text, purpose, and history—even without referencing this material. In any event, this Court may of course take judicial notice of government records and may consider the views of amici. *See, e.g., Chazon, LLC v. Maugenest*, 19 N.Y.3d 410, 414 (2012) (taking judicial notice of data on agency website).

Moreover, as we have explained (*supra* at 2), in attempting to dismiss the Climate Action Council's scoping plan as mere "post-enactment statements" (Resp. Br. 24), plaintiffs ignore the central role that the scoping plan serves in the statutory scheme. Plaintiffs are also wrong to assert that we pointed to the plan "*for the first time* only on appeal" (Resp. Br. 24). To the contrary, we referred to the plan in Supreme Court, and the court quoted it in dismissing the case (Mem. in Supp. of City's Mot. to Dismiss, Sup. Ct. NYSCEF Doc. No. 6, at 11-12; Reply Mem., Sup. Ct. NYSCEF Doc. No. 25, at 3; Record on Appeal 9-10, 17).

Last, plaintiffs posit that that since other cases with preemption claims proceeded to summary judgment or trial, so should theirs (Resp. Br. 24, 24-25 n.4). But as we have already pointed out (App. Br. 49), in neither of the two cases cited by plaintiffs did the courts base their analyses on the type of factual record that would be developed via summary judgment or a trial. Plaintiffs say it best themselves: the "procedural postures" of these cases were "mere happenstance" (Resp. Br. 24 n.4). Plaintiffs' claim fails as a matter of law, and it should be dismissed now.

CONCLUSION

This Court should reverse in relevant part and dismiss plaintiffs' implied field preemption claim.

Dated: New York, New York
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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, and according to that software, it contains 4,645 words, not including the table of contents, the table of cases and authorities, the statement of questions presented, this certificate, and the cover.

APL-00106

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against

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.

AFFIRMATION OF SERVICE BY OVERNIGHT DELIVERY

AMY MCCAMPHILL, 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 November 29, 2024, I served three copies of the accompanying Reply 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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