To be Argued by:
RANDY M. MASTRO
(Time Requested: 30 Minutes)

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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., 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.

BRIEF FOR PLAINTIFFS-RESPONDENTS

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PRELIMINARY STATEMENT

This appeal arises out of a challenge to the legality of New York City's controversial Local Law 97, which mandates drastic reductions in greenhouse-gas emissions on unrealistically short timetables, backed by draconian penalties. That City law contravenes the State's self-described "comprehensive" legislative scheme—enacted in the Climate Leadership and Community Protection Act ("CLCPA")—which preempts the field of greenhouse-gas-emission regulations for the State. CLCPA § 1. Plaintiffs—small landlords and building owners facing financial ruin from the City's new mandates—challenged the City's overreach, primarily on State law preemption grounds. After the trial court dismissed their complaint, they successfully petitioned the First Department, which reversed the trial court's decision and remanded for further proceedings on the preemption claim.

This is not a dispute about climate-change and reducing the adverse effects of greenhouse-gas emissions. All parties here agree that is a laudable goal. What is at issue here is a more fundamental question—namely, whether State law has covered the field and therefore preempts attempts by subdivisions of the State to write their own rules, undermining the comprehensive scheme the Governor and the State Legislature intended at the time of this State law's passage. The answer was obvious to the First Department: there is (at minimum) a colorable claim here that State law preempts the field. Even Governor Cuomo called this a "comprehensive" package

at the time he signed this landmark State legislation into law. R.69. That should end the inquiry.

For more than a decade, New York City sought to meet a 2030 target of cutting emissions by 30% from their 2005 levels. In furtherance of that goal, the City promulgated a series of voluntary programs that achieved significant success—reducing emissions by 19% relative to 2005 in just a few short years—consistent with the State's voluntary scheme.

However, in 2019, the City replaced its array of carrots with a big stick: the draconian and unworkable Local Law 97. *See* N.Y.C. Local Law 97 (2019). Casting aside the significant efforts and investments private owners had made to comply with the City's earlier incentive programs, the City ratcheted up its goal by a third—targeting a *40%* reduction, instead of 30%. It did so without extending the 2030 deadline for that steeper reduction, even though the City was a decade *closer* to it. And instead of building on the City's success in providing positive incentives for private entities to reduce their emissions, the City did a 180-degree turn, promulgating inflexible new square-footage-based emissions limits and imposing harsh penalties on building owners for exceeding those newly enacted caps. This City law, moreover, exempts broad categories of buildings, thus ensuring that its penalty provisions fall most heavily on a relatively narrow subset of cooperative and condominium owners.

Meanwhile, Governor Cuomo and the State Legislature chose a different path and enacted the CLCPA, a wide-ranging and comprehensive *statewide* regulatory scheme for limiting greenhouse-gas emissions, voluntary in nature but intended to foster cooperation to achieve the State's goals. The Legislature opted for a very distinct approach from Local Law 97. Instead of mandating drastic emissions reductions on an unachievable timeframe and relegating citizens to hoping for mercy in enforcement, the Legislature chose to build a cooperative regulatory system headed by a Climate Action Council, an expert body tasked with achieving targeted emissions reductions. Recognizing the importance of public participation, transparency, and robust procedures to ensure informed decision making, the Legislature required the Council to consider the input of numerous advisory panels, including those concerned with local stakeholders' views. But the State Legislature also made clear its intent to occupy the field of greenhouse-gas emissions regulation: it enacted the CLCPA, by its plain terms, to serve as "a comprehensive regulatory program to reduce greenhouse gas emissions" across New York State. CLCPA § 1. To that end, the CLCPA sets ambitious targets for the reduction of greenhouse-gas emissions statewide and lays out a clear plan by which the State will achieve those goals.

Facing the imminent imposition of ruinous penalties, this coalition of small landlords and property owners sued for a declaration that Local Law 97 is preempted

by the CLCPA. The trial court dismissed their complaint but, in doing so, misapplied New York's field-preemption analysis, improperly requiring that Plaintiffs show an actual conflict between the CLCPA and Local Law 97. CLCPA § 1. On appeal, the First Department unanimously reversed, agreeing that the trial court's dismissal was premature and reinstating the preemption claim.

The City, having failed to convince the First Department that the CLCPA's comprehensive statewide regulatory scheme for limiting greenhouse-gas emissions does not preempt Local Law 97, sought leave to appeal. In both that petition and its current papers, the City misstates the issue on appeal and the law of preemption—miscasting the First Department's decision as a radical departure from the typical adjudication of preemption claims. In reality, this appeal presents the unremarkable question of whether the trial court applied the proper standard: that is, whether Plaintiffs' "*alleged* facts 'fit within *any* cognizable legal theory'" such that their claims survive a motion to dismiss. *Sassi v. Mobile Life Support Servs., Inc.*, 154 N.Y.S.3d 290, 292 (2021) (emphasis added) (citation omitted). That turns on whether the plaintiff has a cause of action, "not whether [it] stated one." *Siegmund Strauss, Inc. v. E. 149th Realty Corp.*, 104 A.D.3d 401, 403 (1st Dep't 2013) (citation omitted).

This complaint readily meets that low bar. The City's response is to (1) ignore the rules of statutory construction; (2) advance the trial court's erroneous application

of the wrong preemption framework; and (3) urge this Court to elevate the subsequent conduct of various state actors over the plain textual evidence of the Legislature's intent. These efforts do nothing to nullify this complaint's well-pleaded allegations that the CLCPA evinces the State Legislature's intent to occupy the field of greenhouse-gas emissions regulation. At the very least, the City's arguments raise a factual dispute inappropriate for disposition at the pleading stage. Because these small landlords and property owners *have* a cause of action, *Siegmund Strauss*, 104 A.D.3d at 403, the First Department correctly reversed the trial court's order of dismissal and remanded this case for further proceedings on the preemption claim.

Moreover, the City repeatedly insists that the State Legislature must have "clearly evince[d]" its intent for field preemption. City Br. 28; *see also id*. 31. To demonstrate that, both the City and trial court suggest there must be a direct conflict between the City's law and the State's scheme—something the City claims doesn't exist here because Local Law 97 is supposedly "complementary," even though it imposes mandates and draconian penalties for failure to comply that are nowhere to be found in the State's voluntary scheme of cooperation to achieve stated goals. City Br. 2. But "[w]here the State has preempted the field, a local law regulating the same subject matter is deemed inconsistent with the State's transcendent interest, *whether or not the terms of the local law actually conflict with a State-wide*

statute." *Albany Area Builders Ass'n v. Town of Guilderlan*d, 74 N.Y.2d 372, 377 (1989) (emphasis added). So long as a "local law intrudes into an area covered by the state regulatory scheme, even minor local variations are invalid." *Mayor of City of N.Y. v. Council of City of N.Y.*, 4 Misc. 3d 151, 159 (Sup. Ct. N.Y. Cnty. 2004). Here, on its face, this local law, at a minimum, clearly "intrudes" upon the State's "transcendent interest" in enacting a self-described "comprehensive" State scheme. That is ground enough to support this preemption claim.

Accordingly, this Court should affirm the First Department's remand for further proceedings on the preemption claim.

QUESTION PRESENTED

Did the First Department correctly reverse the trial court's premature dismissal of Plaintiffs' preemption claim when Plaintiffs adequately alleged that the CLCPA's text, comprehensive structure, and legislative history evince the Legislature's intent to preempt the field of greenhouse-gas emissions regulation?

STATEMENT OF THE CASE

A. Factual Background

1. The City long relied on voluntary measures to regulate emissions.

The City began regulating greenhouse-gas emissions over a decade ago through a series of laws aimed at improving energy efficiency and reducing carbon emissions. R.44–48 ¶¶ 29–51. None of the laws included enforcement mechanisms

or penalties, and yet those voluntary, incentive-laden schemes resulted in significant reductions in greenhouse-gas emissions. For example, the 2008 New York City Climate Protection Act (also known as Local Law 22) called for a 30% citywide reduction in greenhouse-gas emissions by 2030 to be achieved via preexisting City initiatives "and any additional policies, programs and actions to reduce greenhouse gas emissions that contribute to global warming." R.44–45 ¶ 33. And by 2014, the City had reduced its greenhouse-gas emissions by 19%—notwithstanding the absence of compulsory programs, enforcement mechanisms, or penalties. R.46 ¶ 41.

Since its passage, Local Law 22 has required the City to establish voluntary programs to "encourage private entities operating within the city of New York to commit to reducing their own greenhouse gas emissions." R.47 ¶ 44 (quoting N.Y.C. Admin Code § 24-803(d)). And in keeping with that approach, when the City enacted Local Law 66 in 2014 to amend its greenhouse-gas reduction targets, the City did not use enforcement mechanisms or impose any penalties to achieve its goal. R.46 ¶ 43. Rather, the City continued to focus on its voluntary incentive programs. *See, e.g.*, R.47–48 ¶¶ 46–47.

As recently as January 2017, the City expanded one such program, known as the "Carbon Challenge," to commercial owners and tenants. R.47 ¶ 46. As of 2018, Carbon Challenge participants had spent approximately $1.3 billion total on building upgrades but were saving around $190 million annually in energy costs and had

succeeded in reducing their annual emissions by 580,000 metric tons of carbon dioxide. R.48 ¶¶ 48–49. The NYC Carbon Challenge Report, in its evaluation of the program's first decade, concluded that the "success of the NYC Carbon Challenge demonstrate[d] that motivating voluntary action on the part of private and institutional sector leaders can lead to substantial progress on policy goals" such that "the efforts of the Challenge participants [had] a measurable impact on citywide emissions." R.48 ¶ 50.

2. The City changes course and enacts Local Law 97, which imposes mandatory emissions regulations.

Not content with the massive success of its voluntary programs, the City veered in a radically different direction just two years after launching its Carbon Challenge, passing Local Law 97 on May 9, 2019. R.49 ¶ 52. That law replaces the 30% emissions-reduction target for 2030—which the City was on track to achieve through voluntary incentive programs—with a new 40% target to be met by the same deadline (and in less time). R.49–50 ¶ 57. To achieve that goal, Section 5 of Local Law 97 imposes, for the first time, *mandatory* emissions caps on nearly 60% of buildings in the City, but not, notably, on City buildings. R.49–50 ¶ 57. The law further attempts to prescribe methods for calculating emissions limits, reporting emissions, and assessing "penalties" for non-compliance. *See, e.g.*, R.50 ¶¶ 59–61.

Covered buildings defined. As a preliminary matter, Local Law 97 applies broadly to all new and existing, privately owned "Covered Building[s]" in New York

City. A "Covered Building" is a member of one of these three categories: "(i) a building that exceeds 25,000 gross square feet (2322.5 m²) or (ii) two or more buildings on the same tax lot that together exceed 50,000 gross square feet (4645 m²), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 50,000 gross square feet (4645 m²)." R.50 ¶ 63 (quoting N.Y.C. Admin Code § 28-320.1).

But this definition of a "Covered Building" leaves gaping holes where guidance should be. For example, although the law expressly addresses multi-building *condominiums*, it is silent as to the treatment of *cooperatives*—like Plaintiffs Glen Oaks and Bay Terrace—consisting of two or more buildings governed by the same board of managers and that together exceed 50,000 gross square feet. R.50 ¶ 63; *see also* R.71–72 ¶¶ 152, 154–55; R.78–79 ¶¶ 178, 180. Local Law 97 similarly says nothing about what happens when a single, multi-building cooperative occupies several tax lots, only some of which fall within prong (ii) of the "Covered Building" definition. R.51 ¶ 64.

Calculating and reporting emissions limits. Local Law 97's procedures for calculating the emissions limits with which building owners must comply and for reporting the emissions their buildings generate are similarly haphazard. As a general matter, the law dictates that greenhouse-gas-emissions limits should be calculated as the product of a building's gross square footage and the applicable

"building emissions intensity limit," the latter of which is determined not by how the building is *actually used*, but instead on the building's occupancy type. R.52–53 ¶ 70. However, although the law prescribes a method for calculating annual building emissions limits from 2024–2029, it makes clear that, for 2030 to 2034, the DOB "may establish different limits, including a different metric or method of calculation." R.53 ¶ 72 (quoting N.Y.C. Admin Code § 28-320.3). And aside from setting a floor for average emissions intensity across *all* Covered Buildings, Local Law 97 left entirely to the DOB's discretion future limits on building emissions intensity—but required the DOB to establish limits for calendar years 2035 through 2050 by January 1, 2023. R.53 ¶ 73–74.

The DOB set some of those revised limits in the January 2023 rule amendments, but the amendments include future emissions coefficients only for the 2030-to-2034 compliance period. *See* 1 RCNY § 103-14. Nor does the rule offer even the illusion of certainty—the DOB expressly reserved the right to "modif[y]" those coefficients "as necessary." 1 RCNY § 103-14(d)(3)(vii). For the subsequent compliance periods between 2034 and 2050, DOB did not delineate any coefficients; instead, it merely required that emissions be reduced to zero by 2050. That is, the DOB set a destination without providing a map. And for over three years (from Local Law 97's inception until the promulgation of these rules), building owners, landowners, and shareholders lacked any notice of their long-term obligations or

what retrofitting efforts they could begin in the hopes of meeting the 2030–2050 limits, all while the 2024 limits loomed in the immediate future. R.53 ¶ 74. Thus, despite the DOB's express "recognition that compliance with the emissions limits requires significant investments of *time* and other resources," 1 RCNY § 103-14 (emphasis added), the DOB gave the newly regulated Covered Building owners less than a year to make the improvements necessary to avoid looming 2024 penalties.

As for reporting a building's annual emissions, Local Law 97 instructs that those be calculated based on the types of energy a building consumes. R.54 ¶ 76. Each energy source (*e.g.*, electricity, natural gas, steam) is assigned a "greenhouse gas coefficient," which is then multiplied by the number of one-thousand British thermal units (kBtu) of energy used to calculate the total emissions generated by that energy use. R.54 ¶ 76. Like the provisions purporting to set emissions limits, Local Law 97 dictates some (but not all) of the greenhouse-gas coefficients for calendar years 2024–2029. R.54 ¶ 78 (quoting N.Y.C. Admin Code § 28-320.3.1.1). It does not address coefficients for 2035 and beyond *at all*, R.54 ¶ 78—and neither did the DOB, *see* 1 RCNY § 103-14(d).

Local Law 97's procedures for calculating and reporting emissions also fail to provide a reasonable method of capturing buildings' energy efficiency. Instead, the law relies on the blunt measure of total energy used, an approach that penalizes energy-efficient but densely occupied buildings. R.54–55 ¶ 79. For example, an

older building with poor insulation and insufficient heating systems that is sparsely populated and occupied only during regular business hours may use less total energy than a residential building outfitted with top-of-the-line insulation, state-of-the-art heat pumps, and LED lighting (making it more *energy*-efficient) but that is densely occupied around the clock (making it also more *space*-efficient). R.54–55 ¶ 79. Local Law 97's reliance on the imprecise and often misleading tools of square footage and total energy to calculate allowable emissions thus results in a metric totally divorced from the law's energy-conservation and greenhouse-gas-elimination goals. R.54–55 ¶ 79.

Penalties. Local Law 97 imposes annual fines on owners whose buildings' annual emissions exceed the applicable limits. R.56 ¶ 84. Specifically, a building that exceeds its annual metric-tonnage limit is liable for a "civil penalty of not more than an amount equal to the difference between the building emissions limit for such year and the reported building emissions for such year, multiplied by $268." R.56 ¶ 85 (quoting N.Y.C. Admin. Code § 28-320.6). This provision alone will result in upwards of hundreds of millions of dollars' worth of penalties each year on a citywide basis. R.83–84 ¶ 208.

Take, for example, Plaintiff Glen Oaks. Absent retrofitting, Glen Oaks expects to face fines of $132,100 per year for the 2024–2029 compliance period. R.73 ¶ 160. For the 2030–2034 compliance period, those fines will increase

eightfold to a staggering $1,096,200 per year, with even tighter caps (and thus larger fines) to follow thereafter. R.73 ¶ 160. And retrofitting is not a solution. Even if Glen Oaks were to spend the estimated $24 million[1] to replace its 47 boilers with new, high-efficiency boilers, Glen Oaks would reduce its annual fines for the 2030–2034 compliance period by only $278,000—leaving Glen Oaks to pay $818,200 in annual penalties. R.74 ¶ 162. The trial court dismissed these penalties as minimal when spread over the 2,904 units. R.24. But viewing the fees in this manner obfuscates the reality for Glen Oaks' lower- and middle-class residents: Glen Oaks will need to raise its maintenance fees by *five* percent (as opposed to its typical one to three percent) just to cover these penalties—in addition to increases to account for inflation, taxation, and property upgrades. R.71 ¶ 153; R.73–74 ¶ 161.

Further, under Local Law 97, the DOB or any agency it "designate[s]" may impose a penalty via an administrative proceeding before the Office of Administrative Trials and Hearings ("OATH")—a City adjudicative body—or in court. R.56 ¶ 86. The law tells the adjudicative body to give "due regard" to a number of "aggravating or mitigating factors," including an owner's good-faith compliance efforts—but the law itself does not make good-faith compliance efforts

[1] Just a *study* of its heating equipment cost Glen Oaks $64,000. R.74 ¶ 162. Retrofitting the heating system in this fashion would cost nearly $9,000 per unit. *See* R.71 ¶ 152; R.74 ¶¶ 162–163.

a defense and offers no guidance for weighing these factors. R.56–57 ¶¶ 88–89 (quoting N.Y.C. Admin Code § 28-320.6.1).

While owners may seek various "adjustments" to the annual building-emissions limits, the DOB may choose—in its apparently unfettered discretion—to award these adjustments or not. R.58–64 ¶¶ 97–119; *see* N.Y.C. Admin. Code § 28-320.7 (providing that if an owner makes the necessary showing, the DOB "*may* grant an adjustment of the annual building emissions limit applicable to a covered building" (emphasis added)).

Implementing regulations. In January of 2023, after notice and comment, the DOB issued implementing regulations. 1 RCNY § 103-14. Perhaps those regulations could have salvaged the City's greenhouse-gas scheme, but, instead, they further exacerbated the law's problems.

In those regulations, the DOB specified its criteria for judging good-faith efforts for the 2024–2029 compliance period. 1 RCNY § 103-14(i)(2). But owners will be hard-pressed to satisfy all of the necessary requirements, which include, *inter alia*, comprehensive reporting and a decarbonization plan certified by a registered design professional. *Id.* And even if owners jump through those hoops, the DOB reserves the authority to reject those efforts: the DOB *may* choose in its discretion to mitigate the penalty, or not, such that a mitigation would only apply for *one* calendar year. *Id.* Nothing in the regulations suggests that the DOB would eliminate

a penalty altogether upon a showing of good faith; demonstrating good faith may yield only a "*mitigated* penalty." *Id.* (emphasis added). As the immediately preceding section of the regulation makes clear, the DOB knew how to provide for reducing penalties all the way to zero—under that provision, a showing of an "unexpected or unforeseeable event or condition may result in a penalty of *zero* dollars." § 103-14(i)(1) (emphasis added).

And the kicker is that even in the unlikely event that a building owner manages to convince the DOB to exercise its enforcement discretion in the owner's favor, the DOB has acknowledged that it is not itself the final arbiter of the penalty that owner will pay: "DOB recognizes that OATH as the adjudicating body has the ultimate responsibility with respect to the amount of the penalty to be imposed and may impose penalties that vary the amounts recommended by DOB." 1 RCNY 103-14, at 5. In other words, an owner must convince not just the DOB but also a separate adjudicatory body that the legislatively prescribed penalties are excessive in light of the owner's attempts to comply with the law's strictures.

Similarly unhelpful is the regulation's provision of a procedure for mediated resolution under which the DOB may "agree[] … not to bring an enforcement proceeding," subject to "terms and conditions determined by" the DOB. § 103-14(j)(3). Once again, those resolutions are offered solely within the DOB's discretion—and an owner must still make the already-onerous showing of good-faith

efforts or some equally compelling showing, as well as meeting further requirements. *Id.* § 103-14(j)(3)(i).

And as for the discretion afforded to the DOB to grant "adjustments," the implementing regulations offer no additional clarity, instead merely pointing back to the codified Local Law 97. *See* 1 RCNY § 103-14(f).

The upshot is that—under both the statute itself and the implementing regulations—even if owners, landlords, and shareholders subject to Local Law 97 spend the huge sums necessary to try to bring their buildings into compliance, many of these attempts are doomed to fail given the short timeframe for compliance. R.57 ¶ 92. This is true even for those who built and maintained their buildings in full compliance with the City's then-existing environmental laws and energy code. R.57 ¶ 92. And, adding insult to injury, these steep penalties will not go toward producing renewable energy or reducing emissions in the City—rather, the penalties will go the City's general fund. R.58 ¶ 94.

3. New York State enacts a comprehensive emissions reduction scheme.

New York State has been a leader in fighting climate change. As long ago as 2009, the State established its own greenhouse-gas-emissions reduction targets. R.47 ¶ 45. In 2016 and 2018, the State Assembly passed climate bills, and then-Governor Cuomo also proposed similar legislation in his January 2019 annual budget. R.64–65 ¶ 121. The Legislature then reformulated the Governor's proposal

as the CLCPA. R.64–65 ¶ 121. The CLCPA was enacted on July 18, 2019, putting into effect what the Legislature described in its legislative findings as "a *comprehensive* regulatory program to reduce greenhouse gas emissions" across the State, and what the press has applauded as "one of the most ambitious climate targets by a legislature anywhere in the world." R.64 ¶ 120 (emphasis added).

The CLCPA sets ambitious targets for reducing New York State's greenhouse-gas emissions, including limiting total statewide emissions to 60% of their 1990 levels by 2030 and 15% of the 1990 levels by 2050; setting a "net zero" emissions goal in "all sectors of the economy" by 2050; requiring that 70% of the State's electrical energy come from renewable energy sources by 2030; and requiring the State to achieve an electrical system that runs entirely on renewable energy by 2040. R.65 ¶¶ 122–24. The CLCPA also sets forth a clear and detailed plan for achieving these goals, empowering expert state regulatory agencies—acting with the input of advisory bodies including those representing local-level stakeholders—to set appropriate goals. The statute includes at least fourteen independent deadlines by which regulators must complete certain steps necessary to achieve the CLCPA's targets. R.65 ¶ 126.

According to the legislative findings, the CLCPA "will build upon [New York State's] past developments [in combating climate change] by creating a comprehensive regulatory program to reduce greenhouse gas emissions." R.68–69

¶ 139. Various state officials echoed this sentiment—for example, Assembly Speaker Carl Heastie praised the Legislature for enacting "comprehensive legislation to address and mitigate climate change." R.69 ¶ 141; *see also* R.69 ¶¶ 142–44 (surveying similar statements by other state legislators and executive branch officials).

Consistent with its comprehensive scope, the CLCPA does *not* grant municipal governments the authority to impose different or more demanding energy usage requirements. R.70 ¶¶ 145–46. This is no oversight—Section 8 of the CLCPA expressly authorizes certain *state* agencies to "promulgate greenhouse gas emissions regulations" in order to achieve the "statewide" emissions limits established by the CLCPA, while Section 7 affirmatively compels certain agency action, also exclusively at the state level. R.70 ¶ 147. Section 10 of the CLCPA further states that "nothing in [the CLCPA] shall limit the existing authority of a *state* entity to adopt and implement greenhouse gas emissions reduction measures." R.70 ¶ 148 (emphasis added). By contrast, Section 11, which clarifies that the CLCPA does not create an exemption to "other" generally applicable health and environmental requirements, does not contain a corresponding reference to "greenhouse gas emissions reduction measures." R.70 ¶ 148. In short, local governments retain authority to impose other health and environmental

requirements, but how much to limit greenhouse-gas emissions—and how to go about it—is now a State issue.

Compare this to the City's regime, which sets arbitrary deadlines to comply with unrealistic mandates, all but ensuring massive penalties for noncompliance. Unlike the State scheme—which expressly relies on an expert body and can therefore evolve as needed—Local Law 97's goals are not tethered to realty. This disconnect has already produced absurd results. The State recently acknowledged that its energy grid will not be capable of meeting its 2030 energy goals, including for economic reasons.[2] So, even if Plaintiffs and others similarly situated *could* meet the City's goals, the State's energy grid will still rely on non-renewable energy sources. And if they cannot, they will be heavily penalized even while the State prudently adjusts course. That makes no sense. And it is certainly not what the Legislature intended.

B. Proceedings Below

Plaintiffs-Appellants are two garden cooperatives in the City borough of Queens, their respective board presidents (each of whom is also a co-op shareholder and resident), and the owner of a mixed-use residential and commercial building in the borough of Manhattan. R.43 ¶¶ 19–23. Plaintiffs support clean energy. R.35

[2] *Governor Hochul & New York State Comptroller State NYS Will Not Meet 2030 Energy Goal*, Newsday, (July 27, 2024) https://files.constantcontact.com/.

¶ 1; R.38 ¶ 9. But their stories illustrate the significant and disproportionate harm that Local Law 97 imposes on owners, landlords, and shareholders throughout the City.

Because they face onerous and unreasonable penalties if they fail to comply with Local Law 97's new strictures, Plaintiffs sued, seeking (1) declarations that the CLCPA preempts Local Law 97 and that Local Law 97 is unconstitutional under the Fourteenth Amendment of the United States Constitution and Article I, Section 6 of the New York State Constitution; and (2) a permanent injunction. R.43–44 ¶¶ 24–25. Defendants (New York City, the DOB, and DOB Commissioner Eric A. Ulrich) moved to dismiss. The parties briefed that motion in 2022 before the DOB issued its implementing regulations in January 2023.

The trial court did not rule on the motion until October 30, 2023, ten months after the DOB's regulations went into effect. The trial court did not seek new briefing or hold a hearing to allow the parties to address those regulations. Instead, the trial court granted Defendants' motion to dismiss in its entirety. Although Plaintiffs alleged that the CLCPA occupied the field of greenhouse-gas reduction at the state level and that field preemption does not require a conflict between state and local law—the intrusion of local law into an area the State has reserved for itself *is* the conflict—the trial court faulted Plaintiffs for not "identif[ying] an inconsistency on which to base an inference of preemption." R.16. The trial court also overlooked

that Plaintiffs *did* identify such an inconsistency, in that the CLCPA did not proscribe Plaintiffs' conduct—but Local Law 97 does, and subjects it to severe penalties.[3]

Plaintiffs timely appealed, and, after oral argument, the First Department reversed the trial court's dismissal of Plaintiffs' preemption claims. R.882. In so holding, the First Department rejected the City's overbroad reading of the CLCPA's savings clause for "other" local laws, explaining that "one could conclude, as plaintiffs do," that the CLCPA's savings clause for localities excludes Local Law 97. *Id*. The City then sought leave to appeal, which the First Department granted. R.878–79.

JURISDICTIONAL STATEMENT

Plaintiffs do not dispute the City's jurisdictional statement. *See* City Br. 21. This Court has jurisdiction pursuant to CPLR 5602(b)(1).

[3] The trial court also rejected Plaintiffs' due process challenges, R.22–31, and claim that Local Law 97 constitutes an improper tax, R.18–19. Plaintiffs did not appeal the dismissal of the tax claim. Although Plaintiffs challenged the trial court's dismissal of the due process claim, the First Department affirmed that portion of the trial court's decision. R.883–84.

ARGUMENT

I. THE FIRST DEPARTMENT CORRECTLY REINSTATED THE PREEMPTION CLAIM AND REMANDED TO THE TRIAL COURT.

The First Department correctly reversed the trial court's dismissal of Plaintiffs' preemption claim. As Plaintiffs argued, the CLCPA's text, findings, and legislative history plainly evince the State's intent to occupy the field of greenhouse-gas-regulation for the entire State. The City, in turn, urges the Court to ignore the rules of statutory construction and ignore Plaintiffs' well-pleaded allegations. And, like the trial court, the City implies fault in Plaintiffs' failure to show an *express inconsistency* between Local Law 97 and the CLCPA. Because no such showing is necessary under the correct test—and because in any event Local Law 97 *is* (or at minimum, could be) inconsistent with the CLCPA in that it prohibits conduct that the Legislature declined to proscribe—the First Department properly reinstated the preemption claim. This Court should affirm.

A. This appeal involves the unremarkable question of whether Plaintiffs alleged sufficient facts to survive a motion to dismiss.

As a preliminary matter, the City misstates the issue on appeal. The First Department did not rule on the merits of Local Law 97, or, more broadly, the appropriate level of local environmental legislation. Rather, Plaintiffs' appeal presented the narrow question of whether Plaintiffs adequately *alleged* that the "Legislature made clear its intent to preempt the field of greenhouse-gas emissions

regulation from the CLCPA's legislative history and comprehensive structure." *Glen Oaks Vill. Owners, Inc. v. City of N.Y.,* No. 2024-00134, NYSCEF No. 5, Pls. Opening Br. 6. All the First Department needed to determine was whether Plaintiffs had a cause of action, "not whether [they] stated one." *Siegmund Strauss,* 104 A.D. 3d at 403. The First Department correctly found that Plaintiffs' allegations cleared this low bar.

Still—citing a case involving a motion to dismiss a criminal indictment for lack of evidence—the City insists that field preemption is a "purely legal" issue that must be definitively decided at the pleading stage. City Br. at 48 (citing *People v. Deegan*, 69 N.Y.2d 976, 979 (1987)). But that's not true. That preemption is a question of law does not preclude a trial court from making that decision on the basis of a well-developed record. Indeed, the U.S. Supreme Court has recognized that, in evaluating preemption questions, "courts may have to resolve subsidiary factual disputes that are part and parcel of the broader legal question." *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 317 (2019) (citation omitted); *cf. Corrado v. Metro. Transit Auth.*, 2014 WL 49152147, at *20 (Sup. Ct. N.Y. Cnty. Sept. 26, 2014) ("[W]hether or not ... preemption applies in a case is a mixed question of law and fact." (citation omitted)).

The City's brief only underscores the need for further proceedings on remand. At the same time as it urges a decision now on the pleadings, the City relies on the

advisory council's post-enactment statements and its scoping plan as purported evidence of the enacting Legislature's intent. City Br. 31–34. The City also relies on the State's *amicus* brief, submitted in support of the City's motion for leave to appeal, which takes the additional step of asserting that the CLCPA "does not preempt local participation in the State's emissions reduction efforts through Local Law 97." *Glen Oaks Vill. Owners, Inc. v. City of N.Y.*, No. 2024-00134, NYSCEF No. 19, State Br. 3. Neither the State's nor the advisory council's post-enactment statements can overcome Plaintiffs' well-pleaded allegations of legislative intent at this juncture—not least because these statements appeared *for the first time* only on appeal and, in the State's case, after the First Department's decision.

The City cannot have it both ways. It cannot bypass discovery and summary-judgment proceedings while relying on evidence outside the pleadings that it mentions for the first time on appeal. There was nothing novel in the First Department's decision to remand the preemption claim for further development before the trial court. *Jancyn Mfg. Corp. v. Cnty. of Suffolk*, 71 N.Y.2d 91, 97 (1987) (resolving preemption at summary judgment); *Dougal v. Cnty. of Suffolk*, 102 A.D.2d 531, 532 (2d Dep't 1984) (rendering preemption decision after trial).[4] That fact alone warrants denial of the City's motion.

[4] The City dismisses the procedural postures of *Jancyn* and *Dougal* as mere happenstance. City Br. 49. But the point remains that courts can—and do—resolve

B. The Legislature evinced its intent to preempt local laws regulating greenhouse-gas emissions.

The New York State Constitution's "home rule" provision authorizes local governments to "adopt and amend local laws" so long as those laws are "not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government." N.Y. Const., art. IX, § 2(c)(i). Preemption applies both in "cases of express conflict between local and State law and in cases where the State has evidenced its intent to occupy the field." *Albany Area Builders,* 74 N.Y.2d at 377.

In the latter cases—known as field preemption—the "intent to pre-empt need not be express." *Consol. Edison Co. of N.Y. v. Town of Red Hook*, 60 N.Y.2d 99, 105 (1983). Instead, "[i]t is enough that the Legislature has impliedly evinced its desire" to occupy a certain field. *Id.* Field preemption "may be [inferred] from a declaration of State policy by the Legislature or from the fact that the Legislature has enacted a comprehensive and detailed regulatory scheme in a particular area." *Id*. Both scenarios apply here.

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questions of preemption after discovery, whether on summary judgment, *Jancyn*, 71 N.Y.2d at 97, or after trial, 102 A.D.2d at 532.

1. The CLCPA's text confirms the State's intent to occupy the field of regulating greenhouse-gas emissions.

a. Beginning with the text, the First Department correctly held that Sections 10 and 11 may be read to reflect a considered decision by the Legislature *not* to authorize municipalities to simultaneously regulate in this space by imposing its own statewide greenhouse-gas-emissions laws. Specifically, Section 10 states, "Nothing in this act shall limit the existing authority of a *state* entity to adopt and implement *greenhouse gas emissions* reduction measures." CLCPA § 10 (emphasis added). Having just preserved any other authorities that State—but not local—entities may have to regulate greenhouse-gas emissions, the Legislature preserved local authorities in the next section, but only with respect to "other" laws, with no mention of regulating greenhouse-gas emissions. Section 11 thus states, "Nothing 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." *Id.* § 11 (emphasis added). Read together, these provisions show the Legislature's intention to separate greenhouse-gas emissions reduction measures, which it viewed as requiring a state-level regime, from other public-health and environmental rules, which localities may impose.

The City contends that Section 11 lets localities impose any greenhouse-gas emissions limits they choose. City Br. 24–25. As the City sees it, Local Law 97

falls within the ambit of Section 11's "other" laws because regulating greenhouse-gas emissions will improve "public health" and "the environment." *Id.* But whether the more general language of Section 11 could be given a broad enough reading to encompass laws imposing greenhouse-gas emissions limits if Section 11 existed in a vacuum is irrelevant.

It does not exist in a vacuum, and it must be read in harmony with the rest of the law the Legislature enacted—including Section 10. *See Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 36 (2012) ("[T]he first rule of … statutory interpretation is: Read on."). A straightforward application of this Court's "well-established rules of statutory construction" makes clear that the Legislature—consistent with its intent to preempt the field—purposely excluded "greenhouse-gas emissions" from Section 11's savings clause. *Colon v. Martin*, 35 N.Y.3d 75, 78 (2020). Because "a statute must be construed as a whole," it follows that "its various sections must be considered together and with reference to each other." *Id.* (cleaned up). And "where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded." *Id.* (quoting McKinney's Cons. Laws of NY, Book 1, Stat. § 240); *see also DeNigris v. Smithtown Cent. Sch. Dist.*, 193 N.Y.S.3d 175, 180 (2d Dep't 2023) (when comparing two sections of a statute,

"the inclusion of a particular thing … implies an intent to exclude other things not included." (citations omitted)).

Section 10 thus evinces the Legislature's intent to allow only *state* entities to "adopt and implement greenhouse gas emissions reductions measures." *See Colon*, 35 N.Y.3d at 78. Moreover, the express mention of "greenhouse gas emissions reductions measures" in Section 10, juxtaposed with its absence from Section 11 and Section 11's references to "other" measures, shows that the Legislature intended to reserve to *State* entities statewide authority to regulate those emissions. *See id.* Had the Legislature wanted to allow localities to adopt and implement their own greenhouse-gas-emissions measures, it would have been a simple matter to add "or local" after "state" in Section 10—or, for that matter, to add a reference to greenhouse-gas-emissions regulation in, or at the very least remove the word "other" from, Section 11. The combination of these two sections makes unmistakably clear that the Legislature knew how to preserve different authorities of State and local governments and expressly chose *not* to preserve local governments' authority to regulate greenhouse-gas emissions. *See Woodbury Heights Ests. Water Co., Inc. v. Vill. of Woodbury*, 975 N.Y.S.2d 101, 105 (2nd Dep't 2013) (finding persuasive indicia of the Legislature's intent to preempt local laws limiting removal of groundwater where "the statutory procedure for obtaining a certificate of extension does not require the water-works corporation to obtain the consent or permission of

the municipality where it was originally incorporated, *an omission which we must conclude the Legislature intended*.") (emphasis added)).

In this same vein, principles of statutory construction also dictate that "whenever there is a general and a specific provision in the same statute, the general applies only where the particular enactment is inapplicable." *Perlbinder Holdings, LLC v. Srinivasan*, 27 N.Y.3d 1, 9 (2016). So, however Section 11's more general language could be interpreted in the absence of Section 10 is irrelevant—Section 10 explains exactly what the Legislature thought about the specific subject of greenhouse-gas emission reduction measures.

b. The City goes to great lengths to overcome this plain reading of Sections 10 and 11. To start, the City argues that "[n]othing in this act" at the beginning of Section 11 *includes* Section 10, so Section 10 cannot be a carveout of Section 11. City Br. 36. But that runs afoul of another "familiar canon of statutory construction," which counsels that "no part" of a statute "should be considered meaningless or superfluous." *Grich v. Wood & Hyde Leather Co., Inc.*, 74 A.D. 2d 183, 184 (3d Dep't 1980) (citations omitted). Instead, a court must "assume[] that every provision of a statute was intended to serve some useful purpose." *Id.* As discussed, the City posits that Section 11's reference to "other" laws that protect public health and the environment includes laws (like Local Law 97) that set greenhouse-gas emissions limits. City Br. 24, 26. But if the City were correct, Section 10's specific saving of

"greenhouse gas emissions reduction measures" for state entities would be nothing more than surplusage. *See* CLCPA § 10. The only way to read Sections 10 and 11 in harmony is as the Legislature intended: preserving for itself the authority to regulate greenhouse-gas emissions statewide, while ensuring that the CLCPA is not read to displace *other* local requirements that do not impose greenhouse-gas emissions reduction measures.

The City next argues that Section 10's reservation of a state entity's power to "adopt and implement greenhouse gas emissions measures" is incompatible with Section 8's requirement that state agencies "promulgate greenhouse gas emissions regulations." City Br. 40-41. But that argument is just as flawed, and for the same reason. The City does not explain why Section 10—which the City claims is a broader reservation of power anyway—cannot *encompass* a State agency's responsibility for regulating greenhouse gas emissions. *Id.* at 40. Worse still, the City (again) ignores the most natural reading of these provisions, which is simply that the Legislature reserved its exclusive *regulatory* authority without displacing other State entities' abilities to reduce greenhouse-emissions through additional *State* actions.

The City also posits that Plaintiffs' interpretation "does not compute" when tested against Section 11's reference to "other applicable federal and state laws." City Br. 37. But the correct interpretation of this clause turns on "applicable." And

federal laws are necessarily "applicable" because they cannot be preempted by state laws. U.S. Const. Art. VI, Cl. 2. Similarly, this provision makes clear that general State laws remain applicable—thus harmonizing with the reservation of state power in Section 10. But local laws are "applicable" only to the extent they are not preempted. *See* CLCPA § 11.

The City's reliance on the last-antecedent rule, meanwhile, goes too far. City Br. at 41. This canon of construction is not absolute—qualifying phrases "will *generally* be construed to refer to the last antecedent in the context, unless some compelling reason appears why it should not be so construed." *Colon*, 35 N.Y.3d at 79 (emphasis added). Here, that compelling reason is the juxtaposition of two saving clauses, back to back, that clarify which powers are reserved to the state and which may be exercised by other entities.

Next, the City warns that Plaintiffs' reading "requires drawing an artificial and untenable distinction" between greenhouse-gas emissions reduction measures and public health and environmental laws. City Br. 42. The City envisions a parade of horribles in which Plaintiffs' interpretation of the CLCPA would preempt "all manner of environmental laws or regulations [that] bear on greenhouse gas emissions." *Id.* But nowhere do Plaintiffs contend that the Legislature did anything of the kind. Plaintiffs' preemption claim is that, by enacting "a comprehensive regulatory program to reduce greenhouse gas emissions," the Legislature intended

to fully occupy the field of greenhouse-gas emission limits. R.64 ¶ 120; *see also* ¶¶ 120–50, 193–202. Although many laws may "bear on" greenhouse-gas emissions, City Br. 42, the CLCPA preempts only local laws that impose "greenhouse gas emission reduction measures." *See* CLCPA § 10.

And, despite faulting Plaintiffs for relying on supposedly artificial distinctions, the City proffers several of its own. For example, the City argues that Sections 10 and 11 cannot be read together because the two provisions do not "mirror each other." City Br. 40. The City offers no authority for the absurd proposition that, to read a statute as a whole, provisions must use identical, or even parallel, language. In any event, the City's insistence that Section 10's use of "greenhouse house gas emissions reduction measures" has a "more general meaning" also means that the phrase includes regulations.

Finally, the City argues that the CLCPA's references to "any" and "all" *State* agencies indicate that "the responsibility for fighting climate change should be broadly shared" with local governments. City. Br. 43. That makes no sense. Where the CLCPA mandates agency action, it does so exclusively at the State level—Section 8 expressly requires various *State* agencies to "promulgate greenhouse gas emissions regulations" to achieve the CLCPA's "statewide" emissions limits, and Section 7 requires "[a]ll *state* agencies" to "assess and implement strategies to reduce their greenhouse gas emissions." CLCPA §§ 7–8 (emphasis added); *see*

R.70–71 ¶¶ 145–150. The City does not explain why the CLCPA's emphasis on State-level action suggests an equal regulatory role for localities. The answer for that is clear—the CLCPA does *not* envision parallel regulation in this narrow area of greenhouse-gas emissions regulations.

2. The CLCPA's findings and legislative history further corroborate the Legislature's preemptive intent.

Beyond the text, the Legislature's preemptive intent is clear both from the CLCPA's findings and the statute's legislative history.

First, the CLCPA's legislative findings state that the statute "will build upon" the Legislature's previous efforts to mitigate greenhouse-gas emissions "by creating a comprehensive regulatory program to reduce greenhouse gas emissions" across the state. CLCPA § 1.[5] The CLCPA's legislative findings also confirm that localities have no role in regulating greenhouse-gas emissions in New York State. The Legislature expressly contemplates a complementary role for local governments in regulating climate-related *labor standards*, noting the "strong state interest in setting a floor statewide for labor standards, but allowing and encouraging individual agencies *and local governments* to raise standards." CLCPA § 1(11) (emphasis added). Once again, the Legislature makes no similar statement with respect to greenhouse-gas emissions. This, too, demonstrates that had the Legislature wished

[5] In construing a statute, legislative findings are "entitled to great weight." *De Milia v. State*, 412 N.Y.S. 2d 953, 956 (Sup. Ct. N.Y. Cnty. 1978) (citation omitted).

to allow "individual agencies and local governments" to "raise [greenhouse-gas-emissions] standards" above those authorized under the CLCPA, it knew how to do that—and chose not to.

And numerous public officials, including then-Governor Cuomo, hailed the CLCPA as a *comprehensive* piece of environmental legislation. Assembly Speaker Carl Heastie, for instance, praised the Legislature for enacting "comprehensive legislation to address and mitigate climate change." R.69 ¶ 141. Similarly, the CLCPA's lead sponsor lauded the law for taking "such a comprehensive and proactive approach" to addressing climate change. R.69 ¶ 142. The Court of Appeals has found similar statements in a policy declaration, *see, e.g.*, *Robin v. Inc. Vill. of Hempstead*, 30 N.Y.2d 347, 350 & n.1 (1972), and by state officials at the time of a law's enactment, *see, e.g.*, *People v. Diack*, 24 N.Y.3d 674, 683 (2015), regarding the comprehensive nature of a state law to be persuasive evidence of field preemption. While the City responds by pointing to the contemporaneous statements of other state lawmakers as evidence of the CLCPA's so-called '"all hands on deck' approach," City Br. 34, that, at minimum, only underscores the magnitude of the trial court's error in weighing the persuasiveness of the CLCPA's legislative history and various public statements at this early stage—particularly given its duty to

"accord the plaintiff[s] *every possible* favorable inference." *Sassi*, 154 N.Y.S.3d at 292 (citation omitted; emphasis added).[6]

Second, the CLCPA is itself "both comprehensive and detailed." *People v. De Jesus*, 54 N.Y.2d 465, 469 (1981). Even the City conceded below that the "CLCPA intends to *lead* to regulations that control GHG emissions" to "ensure the attainment of the statewide [greenhouse-gas] emission limits." R.115. To be sure, in enacting the CLCPA, the Legislature chose to create a regime that vests significant authority in expert agencies to determine what specific greenhouse-gas-emissions standards are appropriate in given instances instead of directly setting those standards itself. But that the Legislature chose to regulate the field in this manner—perhaps inspired by the success of the similar, process-driven programs preceding the CLCPA, *see, e.g.*, R.48 ¶ 50—does not negate its intent to occupy the field in the first place. To the contrary, the State may desire to occupy a field specifically so that it may delegate the regulation of that field to the entities it chooses. *See, e.g.*, *Robin*, 30 N.Y.2d at 350 (refusing to question the wisdom of *how* a state statute regulated abortions where there was "no doubt that the State has reserved to itself regulation of … the performance of abortions in particular").

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[6] The City's reliance on the State's post-enactment statements carries even less weight, City Br. 31, because "post-enactment statements … are generally irrelevant." *Whitehead v. Pine Haven Operating LLC*, 222 A.D.3d 104, 108 n. 2201 N.Y.S.3d 697 (3d Dep't 2023) (cleaned up).

Local Law 97's ill-conceived, blunt-force square-footage-based limits amply demonstrate the pitfalls of non-expert legislators attempting to directly set emissions limits. Likewise, the State's recent acknowledgement that its energy grid will not be capable of meeting its 2030 energy goals underscores the need for a single coordinating voice.[7] But as the City would have it, Plaintiffs should be penalized for failing to convert to renewable energy under Local Law 97 even though the State's supporting energy grid will rely on non-renewable energy sources. To avoid such absurd results—and financially depleting building owners' ability to even assist the State in reaching its goals—the Legislature adopted a comprehensive (or, as the City refers to it, an "all hands on deck") approach that preserves the State's authority to steer the ship.

Moreover, the CLCPA is not the sort of merely aspirational law that might be less likely to reflect preemptive intent by the Legislature. To achieve its ambitious goals, the CLCPA lays out no fewer than fourteen deadlines for regulators to take steps necessary to achieve certain targets, as well as deadlines for the targets themselves. R.65 ¶ 126. The CLCPA also authorizes state-level enforcement, directing the state Department of Environmental Conservation ("DEC") to "promulgate rules and regulations to ensure compliance with the statewide emissions reduction limits." CLCPA § 4. The CLCPA further instructs the DEC to consider

[7] *See supra* n2.

establishing a "mandatory registry and reporting system" to obtain greenhouse-gas-emissions data "exceeding a particular threshold." R.66-67 ¶ 131. Such detailed provisions "evince[] the Legislature's intent to preempt the field of [greenhouse-gas emissions.]" *Chwick*, 81 A.D.3d at 171 (state's detailed and comprehensive scheme for regulating firearms impliedly preempted local ordinance banning deceptively colored handguns); *see also Ba Mar, Inc. v. Cnty. of Rockland*, 164 A.D.2d 605, 612-13 (2d Dep't 1991) (state evinced its intent to preempt the field of mobile home legislation by enacting a "comprehensive and detailed regulatory scheme" that, among other things, required mobile park homeowners to file annual registrations with the State).

As a final note, the Legislature's preemptive intent "may be [inferred] from the nature of the subject matter being regulated … including the need for State-wide uniformity in a given area." *Albany Area Builders*, 74 N.Y.2d at 377 (roadway funding); *see also Chwick*, 81 A.D.3d at 171 (firearms); *Robin*, 30 N.Y.2d 347 (practice of medicine). For instance, in *Cohen v. Board of Appeals of Vill. of Saddle Rock*, this Court of Appeals found a statewide law setting a uniform standard for zoning-area variances preempted local zoning laws in large part because a uniform standard "had clear advantages," namely that "[p]roperty owners and zoning practitioners around the state will benefit from a better understanding of the standards for a variance." 100 N.Y.2d 395, 402 (2003). In so holding, the Court

observed that "in this critical area of overlap between state and local authority, traditional respect for the primacy of state interest requires that the will of the Legislature prevail over the desires of each individual locality." *Id.* at 403.

So, too, here. The CLCPA governs an area of public importance that is best served by statewide coordination and uniformity. Allowing different counties and cities to depart from the State's comprehensive regime and have different greenhouse-gas-emissions limits—based on different metrics, applicable to different types of buildings, and enforced in different ways—will make it more difficult for the State to define and achieve its statewide goals, and will (as discussed) ultimately lead to absurd results.

Moreover, the Legislature expressly acknowledged that "[c]limate change especially heightens the vulnerability of disadvantaged communities," and thus concluded that "[a]ctions undertaken by New York [S]tate to mitigate greenhouse gas emissions should prioritize the safety and health of disadvantaged communities." CLCPA § 1(7). Permitting individual localities to regulate greenhouse-gas emissions on their own undermines the State's desire and ability to "control potential regressive impacts of future climate change mitigation and adaption policies on these communities." *Id.* And, by establishing clear, uniform goals and providing a mechanism for local input via advisory panels, R.66 ¶ 130, the Legislature increases the likelihood of buy-in from people like Plaintiffs to assist the State in achieving its

goals (as has proven true under past, voluntary programs). But even assuming localities have an interest in setting different emissions limits, as in *Cohen*, "traditional respect for the primacy of state interest," 100 N.Y.2d at 403, weighs in favor of effectuating the Legislature's intent: preemption in the field of greenhouse-gas emissions.

C. The City cannot overcome Plaintiffs' well-pleaded allegations of legislative intent.

The City errs in its efforts to characterize the Legislature's expressed desire to collaborate with local governments (through, for example, advisory panels that deal, *inter alia*, with "land-use and local government," R.66 ¶ 130) as a barrier to preemption. R.17; City Br. 27. To the contrary, courts have rejected the idea that reference to locally applicable laws or regulations negates preemption. *Ba Mar*, 164 A.D.2d at 614 (rejecting contention that a provision referring to existing laws negated preemptive intent and concluding instead that the provision simply "[e]nsur[ed] that ancillary concerns … are met, [and are] unobtrusive to State goals"). State law can contemplate a role for local governments in achieving *the State's* goals and still preempt local laws. In *De Jesus*, for example, the court considered the fact that the Alcoholic Beverage Control Law created local alcoholic control boards as evidence of preemptive intent because it showed the Legislature "impos[ing] its own direct controls at the local level." 54 N.Y.2d at 469; *see also Dougal*, 102 A.D.2d at 533 (observing that by giving "localities detailed instructions

concerning the procedures to be employed in implementing the ban on 'drug-related paraphernalia,'" the state statute left "no room for local ordinances to operate"). And, here, the City's voluntary programs aided the State's efforts for over a decade.

The City relies heavily on *Garcia v. N.Y.C. Dep't of Health & Mental Hygiene*, 31 N.Y.3d 601, 620 (2018), City Br. 27, but that case does not counsel otherwise. In *Garcia*, the court held that the State's public health law did not preempt the field of mandatory school vaccinations—and therefore did not preclude the city's board of health from requiring certain vaccines—because the relevant statutes required the state health department to "encourage and assist municipalities" in maintaining local immunization programs. *Garcia*, 31 N.Y.3d at 618-19. In so holding, the *Garcia* Court emphasized that the Legislature had, in prior legislation, recognized the city board's authority to regulate vaccines. *Id.* at 620–21. In that circumstance, "it would be difficult to reconcile the state legislature's repeated explicit recognition of the Board's independent vaccination requirements when amending Public Health Law § 2614, with an intent to implicitly repeal the Board's authority." *Id.*

Here, however, the City does not identify any similarly explicit recognition by the Legislature of the City's authority to set greenhouse-gas emissions limits. Instead, the City repeatedly cites the *advisory council's* statements about "the importance of complementary municipal regulation," City Br. 32, as well as the

conduct of other state agencies, City Br. 33. The Court's role, however, is "to discern and apply the will of the *enactors*." *Sedacca v. Mangano*, 18 N.Y.3d 609, 615 (2012) (cleaned up; emphasis added). That makes sense: an enactment may be the result of hard-fought legislative compromise concerning how far and how fast to proceed in addressing an issue. *See, e.g.*, *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987) ("[N]o legislation pursues its purposes at all costs."). The views of unelected bodies developed years later cannot undo the Legislature's own view as enacted in the statute.

To be sure, as the City emphasizes, the *Jancyn* court found the implementing state body's view on preemption "significant." City Br. 33 (quoting *Jancyn Mfg. Corp. v. Cnty. of Suffolk*, 71 N.Y.2d 91, 99 (1987)). But in *Jancyn*, the Court of Appeals was considering a statute in which "any desire for across-the-board uniformity" was "entirely absent." *Jancyn*, 71 N.Y.2d at 98. Here, the circumstances could not be more different: the Legislature expressly recognized that it was dealing with a worldwide problem. The Legislature found that "industrialized *countries* must reduce their greenhouse gas emissions," highlighted the "concerted *global* effort to combat climate change" represented by the Paris Agreement, and concluded that "[a]ction undertaken by New York … will encourage other jurisdictions to implement *complementary* greenhouse gas reduction strategies." CLCPA §1 (2) & (3) (emphases added). In light of the global scale of the problem

and the plain need for sweeping action, the Legislature's decision to undertake statewide regulation instead of allowing the State's subdivisions to set their own limits—however impractical or out of step with one another they may be—is just the type of "across-the-board uniformity" missing in *Jancyn.*

Finally, the City repeatedly seeks to cast Plaintiffs' preemption argument as repeal by implication. City Br. 28. Citing *Jancyn*, the City emphasizes the absence of a provision in the CLCPA that "limits localities' authority to regulate in the field of greenhouse gas emissions in any way." *Id*. (citing 71 N.Y.2d at 99). Because the City's scheme is supposedly "complementary," the City argues that the CLCPA cannot preempt it. City Br. 2. But field preemption does not require express inconsistency. So long as a "local law intrudes into an area covered by the state regulatory scheme, even minor local variations are invalid." *Mayor of City of N.Y.*, 4 Misc. 3d at 159. Given the CLCPA's text, legislative findings, and comprehensive structure, Plaintiffs need not allege any express inconsistency between the statutes—the Legislature's intent to occupy the field of greenhouse-gas emission regulation is enough.

Still, Local Law 97 *is* inconsistent with the CLCPA. Where a local law's "extension of the principle of the state law … results in a situation where what would be permissible under the state law becomes a violation of the local law, the latter law is unauthorized." *Wholesale Laundry Bd. of Trade, Inc. v. City of N.Y.*, 234 N.Y.S.2d

862, 865 (1st Dep't 1962) (local law raising minimum wage preempted because it disallowed the lower minimum wage that state law permitted); *see also F. T. B. Realty Corp. v. Goodman*, 300 N.Y. 140, 147-48 (1949) (finding a local law "inconsistent" with state law because it "imposed prerequisite 'additional restrictions' upon the right of a landlord to evict a tenant from an apartment in the city"). Local Law 97's mandatory emissions limits prohibit conduct that the CLCPA permits. No amount of "[s]emantic exercises in this connection [can] change the concept." *Wholesale Laundry*, 234 N.Y.S.2d at 865.

Finally, there is no merit to the City's attempt to foment concern that recognizing field preemption means that the City cannot help the State achieve its goals. City Br. 26. The State may collaborate with local governments while preserving its own legislative authority. Indeed, as the City repeatedly points out, the CLCPA safeguards local concerns by, for example, directing the advisory council to convene a subcommittee on local government and consider information relevant to localities. *Id.* at 27. That the City would prefer to unilaterally dictate its own emissions limits rather than collaborate with the State in the State's process under the CLCPA does not mean that collaboration is impossible.

CONCLUSION

For the foregoing reasons, the Court should affirm the First Department's reinstatement of Plaintiffs' preemption claim and remand to the trial court.

Dated: November 14, 2024
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NEW YORK STATE COURT OF APPEALS
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Dated November 14, 2024

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