

APL-2024-00106

To be argued by:
PHILIP J. LEVITZ
10 minutes requested

State of New York
Court of Appeals

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

Plaintiffs-Respondents,

v.

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

Defendants-Appellants.

BRIEF FOR AMICUS CURIAE STATE OF NEW YORK

BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
PHILIP J. LEVITZ
*Senior Assistant Solicitor General
of Counsel*
JENNIFER C. SIMON
Assistant Attorney General

LETITIA JAMES
*Attorney General
State of New York*
Attorney for Amicus Curiae State
of New York
28 Liberty Street
New York, New York 10005
(212) 416-6325
(212) 416-8962 (f)
philip.levitz@ag.ny.gov

Dated: December 31, 2024

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT AND INTEREST OF AMICUS	1
ARGUMENT	4
THE STATE’S CLIMATE ACT DOES NOT PREEMPT COMPLEMENTARY LOCAL EFFORTS LIKE NEW YORK CITY LOCAL LAW 97	4
A. The Climate Act Does Not Preempt Local Law 97.....	4
1. The Climate Act makes clear that complemen- tary local laws like Local Law 97 are not preempted, but rather expressly preserved.	5
2. The scoping plan mandated by the Climate Act and other state implementation materials expressly embrace Local Law 97.	8
3. Plaintiffs’ preemption arguments misunder- stand the Climate Act.	13
B. Local Law 97 Is Critical to Achieving the Climate Act’s Mandated Emissions Reductions and Protecting the State’s Economy, Health, and Environment.....	17
CONCLUSION.....	20

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Garcia v. New York City Dept. of Health & Mental Hygiene</i> , 31 N.Y.3d 601 (2018)	5, 15
<i>Jancyn Mfg. Corp. v. County of Suffolk</i> , 71 N.Y.2d 91 (1987)	15, 17
<i>Police Benevolent Assn. of the City of New York, Inc. v. City of New York</i> , 40 N.Y.3d 417 (2023)	16
 Laws	
Ch. 106, 2019 N.Y. Laws 3358	7-8, 13, 18
 Environmental Conservation Law	
§ 75-0103	5-7
§ 75-0107	5
§ 75-0109	6-7
 Miscellaneous Authorities	
N.Y. State Climate Action Council, <i>Energy Efficiency and Housing Advisory Panel</i> (Sept. 16, 2020), https://climate.ny.gov/-/media/Project/Climate/Files/2020-09-16-Energy-Efficiency-and-Housing-Advisory-Panel-Presentation.pdf	12
N.Y. State Climate Action Council, <i>New York State Climate Action Council Scoping Plan</i> (2022), https://climate.ny.gov/-/media/Project/Climate/Files/NYS-Climate-Action-Council-Final-Scoping-Plan-2022.pdf	passim
N.Y. State Climate Smart Communities, Certification Actions, PE6 Action: Green Building Ordinance (n.d.), https://climatesmart.ny.gov/actions-certification/actions/#open/action/69	10

Miscellaneous Authorities	Page(s)
N.Y. State Department of Environmental Conservation & N.Y. State Energy Research and Development Authority, <i>New York Cap-and-Invest (NYCI) Pre-Proposal Stakeholder Outreach: Preliminary Scenario Analyses</i> (Jan. 2024), https://capandinvest.ny.gov/-/media/Project/CapInvest/Files/2024-01-26-NYCI-Preproposal-Analysis-Webinar.pdf	12
N.Y. State Department of Public Service & N.Y. State Energy Research and Development Authority, <i>Draft Clean Energy Standard Biennial Review</i> (July 1, 2024), https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Programs/Clean-Energy-Standard/A0019490000C313A126877CFFAA2B0C.pdf	17
Order Adopting Terms of a Joint Proposal, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service, NYSPSC Case No. 22-S-0659 (Nov. 16, 2023), https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=%7B2055D98B-0000-CC11-8720-DA8B58617619%7D	12
Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a National Grid NY for Gas Service, NYSPSC Case 19-G-0309 (Aug. 12, 2021), https://documents.dps.ny.gov/public/MatterManagement/MatterFilingItem.aspx?FilingSeq=271988&MatterSeq=59676	12-13

PRELIMINARY STATEMENT AND INTEREST OF AMICUS

In the decision below, the Appellate Division, First Department, erroneously held that New York City’s Local Law 97 of 2019, adopted to reduce greenhouse gas emissions emanating from large buildings, could be preempted by the State’s enactment of the Climate Leadership and Community Protection Act (“Climate Act”) later the same year. The State of New York submits this brief as amicus curiae in support of defendants-appellants. The Appellate Division’s preemption ruling is wrong because the emissions reductions required by Local Law 97 are complementary to—and play a crucial role in achieving—the emissions reduction mandates established by the State’s Climate Act to combat the detrimental effects of climate change.

The State’s understanding of the Climate Act as outlined in this brief is informed by several state agencies that have played essential roles in developing, administering, and enforcing the statute, including the Department of Environmental Conservation (NYSDEC), the Energy Research and Development Authority (NYSERDA), and the Public Service Commission (NYSPSC). Those

agencies and the State at large have important interests in ensuring that the Climate Act is properly interpreted as encouraging, rather than preempting, local efforts like Local Law 97 to reduce harmful emissions. In addition to their general interest in proper interpretation of their own law, the State and its agencies also have a specific interest in ensuring that local efforts like Local Law 97 continue to support the statewide emissions reduction mandates embodied in the Climate Act. These critical pollution reduction efforts serve to protect the economy, public health, and environment of the State, as the Climate Act intended.

As the State's experience makes clear, the Appellate Division's decision should be reversed. The text and purpose of the State's Climate Act strongly support the conclusion that the statute was intended not to preempt—but rather to *embrace*—complementary local efforts like Local Law 97 that seek to reduce emissions. The Climate Act undisputedly lacks any express preemption provision. Quite the contrary, the statute includes a savings clause expressly preserving the applicability of local laws like Local Law 97. And the statute intentionally avoids the sort of detailed regulatory scheme

that could preempt the field. The statute instead establishes mandated statewide emissions reduction levels, while leaving to experts the task of developing a detailed scoping plan to satisfy those mandates—utilizing, among other things, local efforts like Local Law 97.

Indeed, the Climate Act’s ambitious emissions reduction mandates rely heavily on support from the emissions reductions required by Local Law 97. The ruling on appeal thus seriously threatens the State’s ability to meet its statewide emissions reduction mandates—with potentially detrimental consequences. And the preemption issue in this appeal has implications not only for Local Law 97, but also for other local efforts to reduce emissions. Affirmance of the decision below might prompt preemption challenges to other local emissions reduction efforts across the State—further complicating the State’s ability to reach the Climate Act’s critical emissions reduction mandates.

ARGUMENT

THE STATE’S CLIMATE ACT DOES NOT PREEMPT COMPLEMENTARY LOCAL EFFORTS LIKE NEW YORK CITY LOCAL LAW 97

The relevant background is set forth in the City’s opening brief and the decisions below. The State files this amicus curiae brief to confirm that the State’s Climate Act encourages and does not preempt local participation in the State’s emissions reduction efforts through Local Law 97 and otherwise. Accordingly, the decision below declining to dismiss plaintiffs’ preemption claim should be reversed to avoid detrimental consequences to the State and its residents.

A. The Climate Act Does Not Preempt Local Law 97.

The State’s Climate Act was not intended to preempt Local Law 97—as the City correctly argues and as Supreme Court, New York County correctly determined (Record on Appeal (R.) 14-17). To the contrary, the State intended to embrace local efforts like Local Law 97 as an essential part of achieving the Climate Act’s ambitious emissions reduction mandates. The Climate Act’s encouragement—rather than preemption—of local government actions to reduce emissions is clear from the text and context of the Climate Act itself, from the scoping plan mandated by the statute, and from numerous

reports and other documents prepared by state agencies in connection with implementing the statute.

1. The Climate Act makes clear that complementary local laws like Local Law 97 are not preempted, but rather expressly preserved.

It is undisputed that there is no express preemption clause in the Climate Act. And plaintiffs do not assert conflict preemption. Plaintiffs assert only purported field preemption. But field preemption applies when a state statute establishes a “detailed regulatory scheme” demanding “state-wide uniformity” that precludes local regulation. *See Garcia v. New York City Dept. of Health & Mental Hygiene*, 31 N.Y.3d 601, 618 (2018) (quotation and alteration marks omitted). The State established nothing of the sort in the Climate Act. In fact, the Climate Act intentionally avoided enacting any detailed regulatory scheme. Instead, the statute set out broad emissions reduction mandates, ECL § 75-0107, while inviting stakeholders from across the state and its localities, including local governments, to devise and implement creative and diverse solutions to achieve those mandates, *see id.* § 75-0103. And the Climate Act left

to experts on a Climate Action Council the task of developing a detailed scoping plan to satisfy the mandates. *See id.*

Specifically, the Legislature established a Climate Action Council consisting of twenty-two members, with the Commissioner of the NYSDEC and the President of NYSERDA designated as co-chairpersons. *Id.* § 75-0103(1), (4). The Climate Action Council was, among other things, entrusted with the task of creating a scoping plan with recommendations to attain the statewide emissions limits established in the Climate Act. *Id.* § 75-0103(11), (13). And the regulations NYSDEC promulgates pursuant to the Climate Act must “[r]eflect, in substantial part, the findings of the scoping plan prepared” by the Climate Action Council. *Id.* § 75-0109(2)(c).

The Climate Act specifically directed the Climate Action Council to embrace efforts at all levels of government—including local efforts like Local Law 97—to support its emissions reduction mandates. In particular, the statute provided that the Climate Action Council “shall identify existing climate change mitigation and adaptation efforts at the federal, state, *and local levels*,” so that it could “make recommendations regarding how such policies may

improve the state’s efforts.” *Id.* § 75-0103(16) (emphasis added). The Climate Act also required the Climate Action Council to “[c]onsider all relevant information pertaining to greenhouse gas emissions reduction programs” in “other states, regions, *localities*, and nations.” *Id.* § 75-0103(14)(a) (emphasis added). And the statute specifically required the Climate Action Council to convene an advisory panel on land use and local government. *Id.* § 75-0103(7). The regulations NYSDEC promulgates pursuant to the Climate Act also must be developed in consultation with “municipal corporations.” *Id.* § 75-0109(1). The Legislature would not have directed the Climate Action Council to identify, consider, and make recommendations about local government actions to reduce emissions if such actions were entirely preempted by the statute.

Moreover, the Climate Act has an express savings clause, specifying 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”—like Local Law 97. Ch. 106, § 11, 2019 N.Y.

Laws 3358, 3372 (emphasis added). That savings clause makes explicit that the statute is preserving, not preempting, application of local laws like Local Law 97.

2. The scoping plan mandated by the Climate Act and other state implementation materials expressly embrace Local Law 97.

Consistent with the Climate Act’s mandate, the State’s scoping plan issued by the Climate Action Council places substantial reliance on local efforts to reduce greenhouse gas emissions—including Local Law 97. See N.Y. State Climate Action Council, *New York State Climate Action Council Scoping Plan* (2022) (“Scoping Plan”). The scoping plan repeatedly emphasizes the critical role that local government action will play in achieving the Climate Act’s goals, further confirming that preemption of such local actions was not intended.

For example, in the scoping plan, the Climate Action Council recognized that “[t]ransformative, challenging, and potentially disruptive levels of effort are required across all sectors” to achieve the Climate Act’s emissions reduction mandates. Scoping Plan 120. Accordingly, the Climate Action Council’s scoping plan expressly

relies on the efforts of “[l]ocal governments in every region of the State—small, large, urban, rural, and suburban,” which will “contribute directly to meeting the requirements and goals of the Climate Act.” *Id.* at 396. Indeed, the scoping plan is explicit that “[p]artnership with local governments is a keystone of the State’s clean energy, adaptation and resilience, and greenhouse gas (GHG) emissions mitigation strategies.” *Id.*

The State’s scoping plan further recognizes that local governments “are well positioned to have a far-reaching impact on community action” to support the Climate Act’s goals, “because of their authority to enact codes and regulate land use and their leadership at the local level.” *Id.* at 18. The plan explains that “[l]ocal governments are on the frontlines of addressing climate change,” and “[l]ocal leaders are the most well-equipped to understand community needs and are uniquely positioned to take action that will reduce GHG emissions.” *Id.* at 426. And the scoping plan also embraces local participation in state programs such as Climate Smart Communities, which incentivize localities to implement their

own climate-friendly policies, including green building ordinances. *Id.* at 397.¹

The importance of local government action is perhaps nowhere more apparent than in the buildings sector: the single largest source of emissions statewide. *See id.* at 48. As the scoping plan explains, the transition from fossil fuels to electrification in buildings—which Local Law 97 facilitates—is critical to achieving the Climate Act’s emissions reduction mandates, and localities have traditional authority over building codes. *See id.* at 55.

Accordingly, the State’s scoping plan repeatedly emphasizes an expectation that local governments will support emissions reduction efforts in the buildings sector—including through Local Law 97. Specifically, the scoping plan recommends that the State help “facilitate cost-effective implementation” of Local Law 97. *Id.* at 251. And the scoping plan recommends that the State ultimately adopt a statewide energy efficiency standard for large buildings

¹ *See* N.Y. State Climate Smart Communities, [Certification Actions, PE6 Action: Green Building Ordinance](#) (n.d.). (For sources available online, URLs appear in the Table of Authorities. All websites were last visited December 31, 2024.)

that “align[s] with New York City’s Local Law 97.” *Id.* at 189. The scoping plan’s repeated reliance on Local Law 97 is further evidence that the Climate Act did not seek to preempt such local laws.

In addition to its reliance on Local Law 97 in particular, the scoping plan also recognizes other ways that the State expects local governments to act as partners in reducing emissions from buildings. For instance, the scoping plan recognizes local governments as key stakeholders in the effort to decarbonize the gas system, including in buildings, in light of their authority to adopt and enforce building codes, *id.* at 352-53; includes a recommendation that the State support local code enforcement by providing additional funding for such enforcement, *id.* at 187; and highlights New York City’s Local Law 154, which sets carbon dioxide emissions limits that will effectively prohibit fossil fuel combustion equipment for heating, hot water, and most appliances in new construction, *id.* at 185.

The scoping plan is also not the only document that the State has issued in implementing the Climate Act that emphasizes the

importance of Local Law 97. For instance, the Climate Action Council and state agencies like NYSDEC and NYSERDA have expressly relied on Local Law 97 in conducting data modeling of emissions reductions—and have highlighted Local Law 97 as a key factor in reaching the statutory mandates in the buildings sector. *See, e.g.*, N.Y. State Climate Action Council, *Energy Efficiency and Housing Advisory Panel* 15 (Sept. 16, 2020); NYSDEC & NYSERDA, *New York Cap-and-Invest (NYCI) Pre-Proposal Stakeholder Outreach: Preliminary Scenario Analyses* 19 (Jan. 2024). Indeed, the state Public Service Commission has described Local Law 97 as “integral to the State’s ability to meet [Climate Act] mandates.” Order Adopting Terms of a Joint Proposal at 20, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Steam Service, NYSPSC Case No. 22-S-0659 (Nov. 16, 2023). The Commission also has factored Local Law 97 into utility rate orders. *See, e.g., id.*, at 18-21; Order Approving Joint Proposal, as Modified, and Imposing Additional Requirements at 172-73, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The

Brooklyn Union Gas Company d/b/a National Grid NY for Gas Service, NYSPSC Case 19-G-0309 (Aug. 12, 2021). These state agencies’ repeated reliance on Local Law 97 as a key factor in implementing the State’s Climate Act makes crystal clear that the State could not have intended to preempt Local Law 97.

3. Plaintiffs’ preemption arguments misunderstand the Climate Act.

Plaintiffs err in contending (Br. for Pls.-Resp’ts (Br.) at 26-33)—and the Appellate Division erred in concluding (R. 882)—that the Climate Act’s savings clause preserving the application of other “applicable federal, state, or local laws or regulations,” Ch. 106, § 11, 2019 N.Y. Laws at 3372, could be read to exclude greenhouse gas emissions reduction laws like Local Law 97. Indeed, the § 11 savings clause specifically includes “requirements for protecting public health or the environment”—like Local Law 97—among the local laws it preserves. According to plaintiffs, the fact that the Climate Act has a separate clause further preserving “the existing authority of [] state entit[ies] to adopt and implement greenhouse gas emissions reduction measures,” Ch. 106, § 10, 2019 N.Y. Laws at 3372, somehow means that § 11 implicitly excluded greenhouse

gas emissions reduction measures. But that is plainly not what the State intended.

For all the reasons explained in the City’s briefs (Opening Br. at 35-44; Reply at 3-12), sections 10 and 11 can only reasonably be harmonized with the statute as a whole if they are each understood to serve the purpose that the whole statutory scheme reflects: ensuring that all available sources of state, local, and other authority are utilized for reducing emissions to meet the Climate Act’s ambitious mandates. Plaintiffs have proffered no plausible explanation for why the State would include a savings clause that—sub silentio—excludes the very greenhouse gas emissions reduction measures that are the central goal of the statute. And the State did no such thing.

Plaintiffs also err in their contention (Br. at 33-39) that the Climate Act’s legislative findings and history indicate that the statute was intended to have preemptive effect because they referred to the statute as “comprehensive.” When properly read in context, these references can only be read to describe the broad scope of the Climate Act’s ambitions—not any attempt to displace complementary local efforts. Moreover, as this Court has explained, even when

“the State has enacted a relatively comprehensive statutory scheme,” there is no preemption of complementary local regulation where, as here, the state statute “reflect[s] the state legislature’s recognition that municipalities play a significant role” in the statutory scheme. *Garcia*, 31 N.Y.3d at 620. And the absence of preemptive intent is particularly clear where, as here, although the state statute has “expansive” goals, “any desire for across-the-board uniformity” in reaching those goals is absent from the statute. *See Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 98-99 (1987).

Plaintiffs misunderstand the Climate Act in suggesting (*see, e.g.*, Br. at 36-39) that allowing local efforts like Local Law 97 to operate simultaneously with the Climate Act would undermine the state statute. Local Law 97 is complementary to the Climate Act because it supports the Climate Act’s emissions reduction mandates. To be sure, a local law that conflicted with any Climate Act requirement or imposed an obstacle to the State’s ability to meet the Climate Act’s emissions reduction mandates likely would be preempted. But Local Law 97 does not. To the contrary, Local Law 97 requires further steps toward achieving the Climate Act’s goal

of reducing building emissions. Although Local Law 97 requires certain emissions reductions that are not currently required statewide, there is no benefit to requiring statewide uniformity at the expense of permitting localities that are willing and able to take further steps. And that is why the Climate Act requires no such statewide uniformity.

Plaintiffs also are incorrect to contend (Br. at 42-43) that Local Law 97 is “inconsistent” with, and therefore preempted by, the Climate Act. The only inconsistency plaintiffs assert is Local Law 97’s prohibition of conduct that is otherwise permitted under the Climate Act. But, as this Court recently explained in rejecting a preemption argument similar to plaintiffs’ argument here, “local laws will often ‘prohibit something permitted elsewhere in the state’—indeed, “[t]hat is the essence of home rule.” *Police Benevolent Assn. of the City of New York, Inc. v. City of New York*, 40 N.Y.3d 417, 426 (2023) (quoting *People v. Cook*, 34 N.Y.2d 100, 109 (1974)). “A local law is invalid because it prohibits that which state law allows ‘only where the [l]egislature has shown its intent to preempt the field.’” *Id.* (quoting *Vatore v. Commissioner of Consumer*

Affairs of City of N.Y., 83 N.Y.2d 645, 651 (1994)); accord *Jancyn*, 71 N.Y.2d at 100. And, for all the reasons discussed, the Legislature has shown no such intent here.²

B. Local Law 97 Is Critical to Achieving the Climate Act’s Mandated Emissions Reductions and Protecting the State’s Economy, Health, and Environment.

As the Climate Action Council and multiple state agencies responsible for implementation of the Climate Act have recognized (see *supra* at 8-13), the reduction in greenhouse gas emissions from buildings that is required by Local Law 97 is essential to reaching the emissions reduction mandates embodied in the Climate Act. Local Law 97 is thus critical to protecting the economy, public

² Plaintiffs are also wrong to suggest (Br. at 19, 36) that Local Law 97 should be blocked because the State’s energy grid purportedly will be unable to meet the Climate Act’s 2030 renewable energy target. As an initial matter, the report cited in the article on which plaintiffs rely does not say that the State will be unable to meet its target—it merely references a number of challenges the State faces in doing so. See New York State Dep’t of Pub. Serv. & NYSERDA, *Draft Clean Energy Standard Biennial Review* 53-55 (July 1, 2024). In any event, those challenges only underscore the need for robust and wide-ranging support for the State’s emissions reduction efforts, including through local efforts like Local Law 97.

health, and environment of the State—and particularly its most vulnerable communities—from the potentially devastating effects of climate change. As the State’s legislative findings in the Climate Act make clear, greenhouse gas emissions and resulting climate change have had detrimental consequences in the State. Those harmful consequences include (among others) increasing severity and frequency of extreme weather events, rising sea levels, exacerbated air pollution, and increasing incidence of infectious disease and other negative health outcomes. Reducing emissions in accordance with the Climate Act’s mandates—substantially aided by local efforts like Local Law 97—will help counteract such devastating consequences. *See* Ch. 106, § 1, 2019 N.Y. Laws at 3358-61.

Given the need for rapid and widespread emissions reductions to meet the Climate Act’s ambitious mandates, the State cannot afford to have critical local supporting efforts such as Local Law 97 blocked. Nor can the State afford to have a cloud hanging over such efforts while lengthy litigation proceeds on remand if this Court does not dismiss plaintiffs’ preemption claim now. Delay in final resolution of plaintiffs’ claim would interfere with the State’s ability

to effectively plan its statewide emissions reduction efforts, because the State would not know whether it can rely on Local Law 97 in reducing emissions, or whether it needs to attempt to find alternatives. Likewise, a wide range of other stakeholders, like the City, the construction and building improvement industries, electric and gas utilities, clean energy businesses, real estate interests, and building owners and residents would be unable to effectively plan their own efforts to reduce emissions while complying with the law. And there is no reason for such delay in resolving this litigation because the preemption question here is a question of law that can and should be decided at the motion-to-dismiss stage.

Moreover, prompt dismissal of the complaint is of even greater statewide importance because, so long as the complaint remains pending, it could affect not just Local Law 97, but also other local efforts on which the Climate Act and its scoping plan depend. If this Court allows plaintiffs' preemption claim to proceed, other plaintiffs may be tempted to challenge other local efforts to support the State's emissions reduction goals on preemption grounds, and localities may be chilled from pursuing new efforts to support those goals.

The impediments to all these local efforts would further complicate the State's ability to reach its critical emissions reduction mandates.

CONCLUSION

This Court should reverse the Appellate Division in relevant part and dismiss plaintiffs' implied preemption claim.

Dated: December 31, 2024
New York, New York

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
Attorney for Amicus Curiae

By: _____
PHILIP J. LEVITZ
Senior Assistant Solicitor General

28 Liberty Street
New York, NY 10005
(212) 416-6325

BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
PHILIP J. LEVITZ
Senior Assistant Solicitor General
of Counsel
JENNIFER C. SIMON
Assistant Attorney General

AFFIRMATION OF COMPLIANCE

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.13(c)(1), Philip J. Levitz, an attorney in the Office of the Attorney General of the State of New York, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, the brief contains 3,388 words, which complies with the limitations stated in § 500.13(c)(1).

Philip J. Levitz