

New York County Clerk's Index No. 154327/22

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New York Supreme Court  
Appellate Division: First Department

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Case No.:  
2024-00134

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

— 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-Respondents.*

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MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE*  
BRIEF IN SUPPORT OF RESPONDENTS/  
DEFENDANTS-RESPONDENTS

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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

-----X  
Glen Oaks Village Owners, Inc., et al., :  
Plaintiffs-Appellants, : Index No. 154327/22  
 : Case No. 2024-00134  
-against- : **Amended**  
 : **Notice of Motion**  
City of New York, et al., : **for Leave to File an**  
Defendants/Respondents : ***Amicus Curiae* Brief in**  
-----X **Support of Defendants**

**PLEASE TAKE NOTICE**, that upon the annexed affirmation of Michael Burger dated June 20, 2024, and the accompanying proposed *Amicus Curiae* Brief in Support of Defendants' Motion for Leave to Appeal to the New York State Court of Appeals, the undersigned will move this Court at the Appellate Division Courthouse, located at 27 Madison Avenue, New York, New York on July 1, 2024 at 10:00 A.M. or as soon thereafter as counsel may be heard, for an order granting leave to the Sabin Center for Climate Change Law to file a brief as an *amicus curiae* in support of Defendants. A copy of the affirmation of Michael Burger in support of this motion is annexed hereto as Exhibit A and the proposed *Amicus Curiae* Brief in Support of Defendants' Motion for Leave to Appeal to the New York State Court of Appeals is annexed hereto as Exhibit B. Defendants consent to the filing of a brief by the proposed *amicus*.

Dated: New York, New York

June 20, 2024

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By: Michael Burger

Michael Burger

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

-----X  
Glen Oaks Village Owners, Inc., et al., :  
Plaintiffs-Appellants, :  
 : Index No. 154327/22  
-against- : Case No. 2024-00134  
 :  
City of New York, et al., : **Affirmation of Michael Burger**  
 : **in Support of Motion for Leave**  
Defendants-Respondents : **to File an *Amicus Curiae* Brief**  
 : **in support of Defendants**  
-----X

MICHAEL BURGER, an attorney duly admitted to practice law before the courts of the State of New York, affirms the following under penalties of perjury pursuant to CPLR § 2106:

1. I am the Executive Director of proposed *amicus curiae*, the Sabin Center for Climate Change Law at Columbia University. I am familiar with all the facts and circumstances addressed herein. I submit this affirmation in support of proposed *amicus's* Motion for Leave to File an Amicus Curiae Brief in Support of Respondents/Defendants-Respondents.

2. Defendants-Respondents (the “City”) seek leave to file for appeal to the New York State Court of Appeals concerning a purely legal question that was remanded to the New York Supreme Court of New York County. The issue will ultimately determine the validity of New York City’s Local Law 97 of 2019. Local Law 97 is the City’s building performance standard that institutes progressively more stringent emissions reductions requirements from the City’s largest buildings.

3. Proposed *amicus* respectfully requests the Court's permission to participate in this proceeding as an *amicus*. Proposed *amicus* seeks to advise the Court on why the question presented in this case – whether New York State's Climate Leadership and Community Protection Act (CLCPA) preempts New York City's Local Law 97 – constitutes a novel legal issue of public importance worthy of being presented to the Court of Appeals.

4. Proposed *amicus* – the Sabin Center for Climate Change Law – is well-suited to advise the Court on legal issues relating to climate change and local climate action. As an academic research center that develops legal techniques to fight climate change, trains law students and lawyers in their use, and provides the public with up-to-date resources on key topics in climate law and regulation, the Sabin Center is recognized as a leading authority in climate change law. Particularly germane to this matter is the Sabin Center's expertise and extensive experience with city climate law, state and local preemption, and the Climate Leadership and Community Protection Act (CLCPA).

5. Granting *amicus* status to proposed *amicus* will not in any way delay or prejudice this proceeding. Proposed *amicus* seeks only to submit a brief in support of the City's Motion for Leave to Appeal to the New York Court of Appeals, which is attached as Exhibit B to the Notice of Motion.

6. **WHEREFORE**, the Sabin Center for Climate Change Law respectfully requests an order granting the Sabin Center for Climate Change Law leave to file an *Amicus Curiae* Brief in Support of Respondent/Respondents-Defendants Motion for Leave to Appeal to the New York State Court of Appeals.

Dated: New York, New York  
June 20, 2024

*Michael Burger*

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## EXHIBIT B



New York Supreme Court  
Appellate Division: First Department

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Case No.:  
2024-00134

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

— 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-Respondents.*

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Proposed Brief for *Amicus Curiae* In Support of  
Defendants-Respondents Motion for Leave to Appeal

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## CONSTITUTIONAL PROVISIONS



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## **Statement of Interest**

The Sabin Center for Climate Change Law at Columbia Law School (the “Sabin Center”) submits this amicus brief in support of the City of New York’s (the “City”) motion for leave to appeal to the New York State Court of Appeals (the “Court of Appeals”), and to advise this Court of the novel issue of significant public importance in New York State (the “State”), and throughout the United States, implicated by our State courts’ review of whether New York City’s Local Law 97<sup>1</sup> is preempted by the State’s Climate Leadership and Community Protection Act (CLCPA).<sup>2</sup>

The Sabin Center is an academic research center that develops legal techniques to fight climate change, trains law students and lawyers in their use, and provides the public with up-to-date resources on key topics in climate law and regulation. We have extensive experience with and expertise in city climate law and policy, specifically with respect to state preemption of local laws.<sup>3</sup> The Sabin Center also has significant expertise in the CLCPA, including an ongoing effort to track state milestones and objectives set out under the Act.<sup>4</sup>

The City’s motion for leave to appeal to the New York State Court of Appeals (the “Court of Appeals”) should be granted because the May 16, 2024 Decision and Order (the “Decision”) by the Supreme Court of the State of New York, Appellate Division, First Judicial Department (the “First Department”) raised the question of whether, in enacting the CLCPA, “the State has preempted the field” of greenhouse gas (GHG) emissions regulation. Decision at 2. The question

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<sup>1</sup> N.Y. City Local L. 97 (2019).

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

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

<sup>4</sup> *New York State Climate Law Tracker*, SABIN CENTER FOR CLIMATE CHANGE LAW, COLUMBIA LAW SCHOOL (last visited June 13, 2024), <https://climate.law.columbia.edu/content/new-york-state-climate-law-tracker>.

of whether Local Law 97, and by implication other municipal action to reduce GHG emissions, would be field preempted is both a novel legal question and one that occupies the highest echelon of public importance. Indeed, the science is clear: We are in a climate emergency,<sup>5</sup> and GHG emissions must be drastically reduced by the end of the decade to help avert the worst of climate change's potentially catastrophic impacts. Local governments in New York State and elsewhere have long been at the vanguard of climate policy innovation. Quickly resolving the purely legal question of field preemption would clarify which levels of government have the authority to enact laws that reduce GHG emissions. The impact of timely review by the Court of Appeals at this juncture would be to reduce uncertainty and reluctance by local governments around the state to take bold climate action now. Granting the City's motion for leave to appeal is warranted under these unique circumstances.

### **Preliminary Statement**

The Intergovernmental Panel on Climate Change (IPCC), a world-leading panel of scientific experts convened by the United Nations and the World Meteorological Organization, has made clear that the world must reduce GHG emissions from fossil fuel extraction and consumption as rapidly as possible to avoid the potentially catastrophic consequences of anthropogenic global warming and climate change.<sup>6</sup> The latest IPCC assessment report (AR6) determined that average global surface temperature had increased by 1.1°C as of 2019.<sup>7</sup> More recent data shows that

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<sup>5</sup> See New York City Council, Res. No. 864-A-2019 (2019) ("Resolution declaring a climate emergency and calling for an immediate emergency mobilization to restore a safe climate"); County of Ulster, N.Y., Res. No. 409 (2019) (Resolution declaring a climate emergency); Town of East Hampton, Res. 2021-329 (N.Y. 2021) (same); Village of Kinderhook, Resolution 2020-Climate Crisis (N.Y. 2020) (same); Westchester County, Res. No. 2021-180 (N.Y. 2021) (same); Town of Mamaroneck, Resolution: Climate Emergency Declaration (N.Y. 2021) (same); City of New Rochelle, Res. No. 2021-68 (N.Y. 2021) (same); Village of Hastings-on-Hudson, Res. No. 53:22 (N.Y. 2021) (same).

<sup>6</sup> IPCC, AR6 SYNTHESIS REPORT: CLIMATE CHANGE 2023 (2023) [hereinafter IPCC AR6 SR].

<sup>7</sup> *Id.*

2023 was the warmest year since 1850, averaging 1.54°C above pre-industrial levels.<sup>8</sup> To retain an acceptable chance of limiting warming to 1.5°C, consistent with the goals of the Paris Agreement, the IPCC has determined the planet’s GHG emissions must be reduced by approximately half by 2030.<sup>9</sup> In other words, the health of the planet and its current and future inhabitants depends on the rapid reduction of emissions *this decade*.

Already, climate change is having devastating adverse impacts on people and ecosystems across the planet and in New York State.<sup>10</sup> The CLCPA’s legislative findings recognized that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York.”<sup>11</sup> In the City, where the present case was brought, climate change risks include extreme heat events, drought, sustained sea level rise, and inland and coastal flooding.<sup>12</sup> The impacts of climate change often have a disproportionate adverse effect on marginalized groups like low income and communities of color.<sup>13</sup> Localities across New York State are experiencing similar adverse impacts.<sup>14</sup>

Local governments currently have unprecedented federal resources at their disposal to address the climate crisis. The federal Inflation Reduction Act (IRA) of 2022<sup>15</sup> mandates nearly-\$400

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

<sup>9</sup> IPCC AR6 SR, *supra* note 1, at 92.

<sup>10</sup> IPCC AR 6 SR, *supra* note 1, at 46; See *New York State Climate Impacts Assessment: Understanding and preparing for our changing climate*, NEW YORK STATE CLIMATE IMPACTS ASSESSMENT (2024), <https://nysclimateimpacts.org>.

<sup>11</sup> CLCPA §2(1) (2019).

<sup>12</sup> NEW YORK CITY PANEL ON CLIMATE CHANGE (NPCC), NPCC4: NEW YORK CITY CLIMATE RISK INFORMATION 2022 (2022).

<sup>13</sup> *Climate Change and Social Vulnerability in the United States*, U.S. ENV’T. PROTECTION AGENCY (Sept. 2021), <https://www.epa.gov/cira/social-vulnerability-report>.

<sup>14</sup> See *infra* S. II(B), discussing adverse impacts of climate change on New York communities.

<sup>15</sup> Public Law (United States) 117–169 (2022).

billion in direct spending<sup>16</sup> (with the exact amount depending on the uptake of tax credits)<sup>17</sup> on climate and clean energy. IRA programs enable direct grants<sup>18</sup> to local governments for clean energy projects and allow local governments to claim new tax credits as a cash payment,<sup>19</sup> for example. These programs have already funded local climate action planning in multiple regions of New York and will be most active in the next eight or so years. The time for local governments to take advantage of these federal resources is now.

Local Law 97 is the most ambitious local law to reduce greenhouse gas emissions in New York state; its success will act as a catalyst for local climate action across the state, and potentially nationwide. However, due to the Decision, Local Law 97's validity is currently shrouded in uncertainty. The law's uncertain status creates a risk of chilling much needed local municipal climate action across the state. A protracted period of litigation in which the question of field preemption undergoes multiple layers of judicial review could take several of the remaining years of this decade – a time during which the scientific community states emissions must be drastically reduced and in which IRA resources are available. Without swift resolution, New York's ability to achieve essential emissions reduction by the decade's end may very well be impossible, increasing climate impacts. Cities and other forms of local government in New York

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<sup>16</sup> *Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act's Investments in Clean Energy and Climate Action*, WHITE HOUSE v. 2 (Jan. 2023) at 5, <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>.

<sup>17</sup> See, e.g., *The Inflation Reduction Act: Here's what's in it*, MCKINSEY & CO. (Oct. 24, 2022), <https://www.mckinsey.com/industries/public-sector/our-insights/the-inflation-reduction-act-heres-whats-in-it#>.

<sup>18</sup> These include, without limitation, Climate Pollution Reduction Grants (Inflation Reduction Act § 60114), Assistance for Latest and Zero Building Energy Code Adoption (Inflation Reduction Act § 50131), Clean Heavy-Duty Vehicles (Inflation Reduction Act § 60106, Environmental and Climate Justice Block Grants (Inflation Reduction Act § 60201); and Investing in Coastal Communities and Climate Resilience (Inflation Reduction Act § 40001).

<sup>19</sup> Inflation Reduction Act § 13801; 26 U.S.C. § 6417 (2022).

State need and are ready to act on climate *now*, but require clarity from the Court of Appeals to do so.

The Sabin Center respectfully urges the Court to grant the City’s motion for leave to appeal because of the novelty and public importance embedded in the question to which the Court of Appeals should consider, to which it has not spoken: Whether New York State’s CLCPA preempts New York City’s Local Law 97.

## **Argument**

### **I. Standard of Review**

To determine whether to grant leave to appeal, courts in this State consider the novelty, importance to the public, complexity, and effect of the legal and public policy issues raised.

When courts grant leave to appeal, they do so because “the issues are novel or of public importance, present a conflict with prior decisions of this Court, or involve a conflict among the departments of the Appellate Division.” *City of New York v. 2305-07 Third Ave., LLC*, 35 N.Y.S.3d 69 (1st Dep’t 2016) (referencing the N.Y. Comp. Codes R. & Regs. tit. 22, § 500.22). *See also Sturman v. New York Cent. R. Co.*, 19 N.E.2d 679 (1939); *Town of Smithtown v. Moore*, 11 N.Y.2d 238 (1962); *Seawright v. Bd. of Elections in City of New York*, 150 N.E.3d 848 (2020). *See also* COURT OF APPEALS OF THE STATE OF NEW YORK: ANNUAL REPORT OF THE CLERK OF THE COURT: 2023, at 6 (2023). Of the three reasons for granting leave to appeal referenced by the Court in *City of New York*, the relevant one in the present case is whether the question presented is “novel or of public importance.”

**II. The Issue of Field Preemption is a Novel Legal Question that Will Have Important Consequences for Local Climate Action and Causes Significant Risk of Delay in Local Climate Policymaking.**

This case presents a novel legal question: whether the CLCPA field preempts Local Law 97. Decision at 2. The preemption question posed by the First Department is also one of tremendous public importance: Whether local governments in the State have the authority to take local climate action by enacting ordinances to reduce GHG emissions. To date, the Court of Appeals has not spoken on the issue of the relationship between state and local authority over GHG emissions controls. Resolving this question will have critical consequences for near-term and future decarbonization at the state and local level in New York.

Beyond the novelty and clear importance of the question presented is its urgency. As discussed above, the IPCC has set 2030 – a mere six years from now – as the time by which global GHG emissions must be halved if the global community is to have an acceptable chance of meeting the goals of the Paris Agreement.<sup>20</sup> Moreover, New Yorkers across the State are feeling the impacts of climate change now, and local governments are primed with federal funding from the IRA to respond in the coming years. The nature of the climate crisis underscores the urgency of the Court of Appeals’ resolution of the question of field preemption presented here.

Accordingly, the novelty of this case’s purely legal issue weighs heavily in favor of granting the City’s motion for leave to appeal for two reasons: (1) clarifying municipal authority to enact GHG reduction laws has significant public importance; (2) the expeditious resolution of this clarification of authority has significant public importance, both to avoid worsening impacts of

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<sup>20</sup> IPCC AR6 SR, *supra* note 1, at 92.

climate change on New Yorkers across the State and to allow local governments in the State to act on climate as quickly as feasible.

**A. Clarifying Municipal Authority to Enact Emission Reduction Laws has Significant Public Importance.**

Swiftly clarifying whether the CLCPA preempts local governments' duly-delegated municipal home rule authority with respect to emissions regulation has immense public importance. Under New York's constitution, every local government has the power to "adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to [10 specified subjects], whether or not they relate to the property, affairs or government of such local government." N.Y. Const. art. IX § 2(c). The 10 specified subjects relate to a local government's police power, including the power to enact laws with respect to the "safety, health and well-being" of residents. N.Y. Const. art. IX § 2(c)(10). The State Legislature also memorialized municipal home rule authority in statute, providing a grant of power similar to the state constitution. N.Y. Mun. Home Rule L. § 10. This broad power to enact local ordinances relating to residents' health and well-being is preempted when the state legislature has acted comprehensively in the same area (i.e., field preemption). *See Albany Area Builders Ass'n v. Town of Guilderland*, 546 N.E.2d 920 (1989).

The CLCPA has been hailed as a landmark national climate law, enacting the "country's most ambitious climate targets."<sup>21</sup> New York State has maintained that the CLCPA was not intended to chill climate action at the local level, but was designed to encourage and complement local

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<sup>21</sup> See, e.g., Jesse McKinley and Brad Plumer, *New York to Approve One of the World's Most Ambitious Climate Plans*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/2019/06/18/nyregion/greenhouse-gases-ny.html> and David Roberts, *New York just passed the most ambitious climate target in the country*, VOX (Jul. 22, 2019), <https://www.vox.com/energy-and-environment/2019/6/20/18691058/new-york-green-new-deal-climate-change-cuomo>.



action. As the Supreme Court noted in its decision upholding Local Law 97, the state has “repeatedly expressed its desire and intent to collaborate with the City and other local governments to abate GHG emissions.”<sup>22</sup> Governor Kathy Hochul recently said during a climate summit that “[c]limate change is a global crisis that demands a response from all fronts.”<sup>23</sup> On another recent occasion, in announcing newly certified “Climate Smart Communities”, Hochul emphasized that “New York State cannot tackle the climate crisis on its own...we applaud [] local governments for standing with us and taking action to reduce emissions...”<sup>24</sup>

Localities are key players in the state’s climate plans. The CLCPA’s Final Scoping Plan – a plan that details how the state will reach the CLCPA’s climate mandates – includes an entire chapter explaining the importance of local governments to meeting the requirements of the CLCPA, noting that they “have an important role to play in meeting Climate Act mandates” by “enact[ing] codes, develop[ing] projects, adopt[ing] policies, and regulat[ing] land use.”<sup>25</sup> More specifically, the Final Scoping Plan states that “compliance standards” for energy efficiency performance standards for larger buildings should “align with [] Local Law 97.”<sup>26</sup> The First Department’s decision calls into question the complementary relationship between the CLCPA, Local Law 97, and other municipal climate laws and policies across the State.

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<sup>22</sup> See *Glen Oaks Village Owners, Inc., et al. v. City of New York*, Index No. 154327/2022 (Sup. Ct. New York Cnty.), NYSCEF Docket No. 38.

<sup>23</sup> *Governor Hochul Announces Nearly \$300 Million Investment in Climate Resiliency During Major Address at The Vatican*, STATE OF NEW YORK (May 16, 2024), <https://www.governor.ny.gov/news/governor-hochul-announces-nearly-300-million-investment-climate-resiliency-during-major#:~:text=May%2016%2C%202024-,Governor%20Hochul%20Announces%20Nearly%20%24300%20Million%20Investment%20in%20Climate,Major%20Address%20at%20The%20Vatican&text=Governor%20Kathy%20Hochul%20today%20announced,Climate%20Crisis%20to%20Climate%20Resilience>.

<sup>24</sup> *Governor Hochul Announces 15 New Communities ‘Climate Smart’ Certified During Earth Week*, STATE OF NEW YORK (Apr. 25, 2024), <https://www.governor.ny.gov/news/governor-hochul-announces-15-new-communities-climate-smart-certified-during-earth-week>.

<sup>25</sup> NEW YORK STATE CLIMATE ACTION COUNCIL, FINAL SCOPING PLAN (2022), <https://climate.ny.gov/resources/scoping-plan/>.

<sup>26</sup> *Id.* at 189.

That a law's validity is uncertain is not always cause for significant concern. In this case, however, the question is critical. With the specter of field preemption, other local governments in New York that are considering or in the process of implementing climate policies to reduce GHG emissions may delay or cancel those plans. The cost of a denial of leave to grant appeal here would be increased uncertainty around local governments' ability to regulate to protect the health and welfare of residents in this state and a greater emissions output that stands to harm New Yorkers. In other words, granting the City's motion for leave to appeal is of significant public importance because it would clarify municipal authority regarding GHG emissions controls, thereby allowing for the essential climate action that the State and its localities need to implement.

**B. Timely Clarifying the Scope of Local Authority is of Significant Public Importance.**

The timing for the outcome of this case is also of the highest level of public importance. Climate change is already having adverse impacts on communities across New York.<sup>27</sup> The most important action that the State and local governments can take to address this challenge is to rapidly reduce GHG emissions. With most of the U.S. population living in urban areas,<sup>28</sup> legally-mandated reductions at the municipal level ripple outward, buttressing state, national, and international commitments to emissions reductions. Given the massive emissions reductions needed by 2030, the urgency to implement local climate action cannot be overstated.

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<sup>27</sup> See generally, *New York State Climate Impacts Assessment: Understanding and preparing for our changing climate*, NEW YORK STATE CLIMATE IMPACTS ASSESSMENT (2024), <https://nysclimateimpacts.org>.

<sup>28</sup> *2020 Census Urban Areas Facts*, U.S. CENSUS Bureau (updated June 2023), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2020-ua-facts.html> (noting that 80% of the United States' population lives within urban areas).

The risks associated with climate change already affect New Yorkers. According to the New York State Department of Environmental Conservation, New York communities along the Great Lakes stand to see more inland flooding, while municipalities on Long Island and adjacent to the lower Hudson River Valley now experience “worsening flooding, erosion, and storm surge.”<sup>29</sup> Extreme heat, too, is on the rise: according to the New York State Climate Impacts Assessments, heat waves across the state are projected to “occur more often and become more intense.”<sup>30</sup>

Specifically, the number of days with a heat index greater than 85°F, the number of days with a heat index greater than 95°F, and the maximum heat index are expected to increase substantially in all areas of the State.<sup>31</sup> Data shared by the New York State Department of Health projects increasing temperatures over the coming decades, with average summertime temperatures rising between four and ten degrees Fahrenheit (2.2 to 5.6°C) in New York State.<sup>32</sup>

Risks associated with extreme heat<sup>33</sup> are especially pronounced in urban areas across the state, where communities with dense populations, large buildings, and significant paved areas experience daytime temperatures of between one and seven degrees Fahrenheit (0.56° to 3.9°C)

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<sup>29</sup> *Climate Change Effects and Impacts*, N.Y. STATE DEP’T OF ENV’T CONSERVATION (last visited June 13, 2024), <https://dec.ny.gov/environmental-protection/climate-change/effects-impacts#:~:text=Other%20Impacts%20of%20Climate%20Change%20Around%20New%20York%20State&text=Increased%20precipitation%20is%20causing%20more,sections%20of%20the%20Hudson%20River>.

<sup>30</sup> See *supra* note 10, at Chapter 2, page 2.

<sup>31</sup> *Id.* at Chapter 2, pages 14-18.

<sup>32</sup> *Extreme Heat and Health in N.Y. State*, N.Y. STATE DEP’T OF HEALTH (last visited June 13, 2024), [https://www.health.ny.gov/environmental/weather/heat\\_story\\_map](https://www.health.ny.gov/environmental/weather/heat_story_map).

<sup>33</sup> Extreme heat, which is the leading cause of weather-related fatalities in the country, can lead to health impacts including heat exhaustion; heat stroke; increased risk and/or worsening of heart disease, asthma and chronic obstructive pulmonary disease (COPD); kidney damage; and more. See Terri Adams-Fuller, *Extreme Heat is Deadlier Than Hurricanes, Floods and Tornadoes Combined*, SCIENTIFIC AMERICAN (July 1, 2023), <https://www.scientificamerican.com/article/extreme-heat-is-deadlier-than-hurricanes-floods-and-tornadoes-combined/> and *Extreme Heat*, U.S. DEP’T OF HEALTH & HUMAN SERVS. (June 2024), <https://www.hhs.gov/climate-change-health-equity-environmental-justice/climate-change-health-equity/climate-health-outlook/extreme-heat/index.html#:~:text=Heat%20Affects%20Health%20in%20Many%20Ways&text=An%20increased%20risk%20of%20hospitalization,and%20even%20death>.

higher than in less dense areas.<sup>34</sup> Heat island impacts are felt in Albany,<sup>35</sup> Rochester,<sup>36</sup> Syracuse,<sup>37</sup> and other areas around the State, as well as New York City.<sup>38</sup> In many instances, neighborhoods with higher-than-average populations of low-income and/or of people of color are most impacted by urban heat impacts and a lack of measures to address them.<sup>39</sup>

In addition to GHG emissions, the combustion of fossil fuels also produces harmful co-pollutants like fine particulate matter (PM<sub>2.5</sub>) with serious negative health impacts<sup>40</sup> that “disproportionately and systemically affect people of color.”<sup>41</sup> The presence of significant GHG pollution (such as from carbon dioxide and methane) and local air pollutants like nitrogen oxides also creates ground-level ozone, the primary component of urban smog.<sup>42</sup> Ground-level ozone also creates significant health risks for people in urban areas, particularly in low-income communities and communities of color.

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<sup>34</sup> *Heat Island Effect*, U.S. ENV’T. PROTECTION AGENCY (June 6, 2024), <https://www.epa.gov/heatislands#:~:text=Heat%20islands%20are%20urbanized%20areas,as%20forests%20and%20water%20bodies>. Some estimates of the difference between surface temperatures in urban neighborhoods and surrounding areas are far higher. See, e.g., Nadja Popovich and Christopher Flavelle, *Summer in the City is Hot, but Some Neighborhoods Suffer More*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/interactive/2019/08/09/climate/city-heat-islands.html>.

<sup>35</sup> Katherine Kiessling, *Climate change challenges hit home in Capital Region*, TIMES UNION (Nov. 17, 2023), <https://www.timesunion.com/gives/article/climate-change-challenges-hit-home-capital-region-18443232.php>.

<sup>36</sup> Brett Dahlberg, *Rochester-area ‘heat islands’ make heat waves even worse*, WXXI NEWS (July 19, 2019), <https://www.wxxinews.org/health/2019-07-19/rochester-area-heat-islands-make-heat-waves-even-worse>.

<sup>37</sup> Carson Metcalf, *Urban heat island: Why Syracuse is warmer than the suburbs*, SPECTRUM NEWS 1 (Jul 19, 2021), <https://spectrumlocalnews.com/nys/central-ny/weather/2021/07/15/urban-heat-island--why-syracuse-is-warmer-than-the-suburbs>.

<sup>38</sup> Samantha Maldonado, *How Much Hotter Is NYC’s Heat Island Effect Making Your Neighborhood?*, THE CITY (July 26, 2023), <https://www.thecity.nyc/2023/07/26/heat-island-hot-map-temperature/>.

<sup>39</sup> Nadja Popovich and Christopher Flavelle, *Summer in the City is Hot, but Some Neighborhoods Suffer More*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/interactive/2019/08/09/climate/city-heat-islands.html>.

<sup>40</sup> Hiroko Tabuchi & Nadja Popovich, *People of Color Breathe More Hazardous Air. The Sources Are Everywhere*, N.Y. TIMES (Apr. 28, 2021), [https://www.nytimes.com/2021/04/28/climate/air-pollution-minorities.html?campaign\\_id=54&emc=edit\\_clim\\_20210505&instance\\_id=30276&nl=climate-fwd%3A&regi\\_id=80468628&segment\\_id=57295&te=1&user\\_id=20bec3df2a447a232b3717d8f1283332](https://www.nytimes.com/2021/04/28/climate/air-pollution-minorities.html?campaign_id=54&emc=edit_clim_20210505&instance_id=30276&nl=climate-fwd%3A&regi_id=80468628&segment_id=57295&te=1&user_id=20bec3df2a447a232b3717d8f1283332).

<sup>41</sup> Christopher W. Tessum et. al., *PM<sub>2.5</sub> pollutants disproportionately and systemically affect people of color in the U.S.*, SCIENCE ADVANCES (Apr. 28, 2021), <https://www.science.org/doi/10.1126/sciadv.abf4491>.

<sup>42</sup> *Ground-level Ozone Basics*, U.S. ENV’T. PROTECTION AGENCY (May 14, 2024), <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics>.

At the same time, the IRA presents an unprecedented opportunity for municipalities to pair local climate action with federal funding, and this funding is only available over the next eight or so years. Key IRA programs like the Climate Pollution Reduction Grants have already funded local climate action planning in the Albany-Schenectady-Troy,<sup>43</sup> Rochester,<sup>44</sup> New York-Newark-Jersey City,<sup>45</sup> and Buffalo-Cheektowaga<sup>46</sup> regions. Each of these plans contains objectives, strategies, and measures to curtail GHG emissions in the coming years. Meanwhile, the green bank programs of the IRA are designed to mobilize private capital over seven years<sup>47</sup> and the tax mechanism that allows local governments to collect tax credit amounts in cash expires at the end of 2032.<sup>48</sup> Leveraging IRA funding to implement local climate action presents an unprecedented opportunity for localities to rapidly reduce emissions, and they must do so as soon as possible.

Until there is a final decision on the question of CLCPA field preemption, municipalities across New York may remain in a holding pattern. The risk of a chilling effect based on the law's uncertainty goes well beyond the City and Local Law 97; it extends to all municipalities in New York, to existing and future climate laws. For example, a New York municipality considering enacting a building decarbonization law that leverages IRA funding may lose political incentive to do so. Similarly, the State may delay filling the regulatory gaps that could arise if field preemption is found in this case. Local governments must gain clarity as soon as possible as to

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<sup>43</sup> *Priority Climate Action Plan for the Capital Region: A Climate Action Plan to Reduce Greenhouse Gas Emissions*, CAPITAL DIST. REG'L PLANNING COMM'N AND CAPITAL REGION CLIMATE ACTION COLLABORATIVE (Mar. 1, 2024), [https://cdrpc.org/wp-content/uploads/2024/02/CPRG-Capital-Region-PCAP\\_2-21-24.pdf](https://cdrpc.org/wp-content/uploads/2024/02/CPRG-Capital-Region-PCAP_2-21-24.pdf).

<sup>44</sup> *Priority Climate Action Plan Genesee/Finger Lakes Region*, GENESEE/FINGER LAKES REG'L PLANNING COUNCIL (2024), <https://www.epa.gov/system/files/documents/2024-02/gfl-priority-climate-action-plan.pdf>.

<sup>45</sup> *New York City – Newark – Jersey City Metropolitan Statistical Area (NY-NJ MSA) Priority Climate Action Plan*, N.Y. CITY, N. JERSEY TRANSP. PLANNING AUTH. & N.Y. METRO. TRANSP. COUNCIL (2024), available at <https://ny-nj-msa-cprg-njtpa.hub.arcgis.com>.

<sup>46</sup> *Climate Action: Buffalo Niagara's Priority Climate Action Plan*, ONE REGION FORWARD (Mar. 2024), <https://www.epa.gov/system/files/documents/2024-02/buffalo-ny-msa-pcap.pdf>.

<sup>47</sup> *NCIF and CCIA Fast Facts*, U.S. ENV'T. PROTECTION AGENCY (Apr. 4, 2024), <https://www.epa.gov/greenhouse-gas-reduction-fund/ncif-and-ccia-fast-facts>.

<sup>48</sup> Inflation Reduction Act § 13801(a); 26 U.S.C. § 6417(d)(1)(E)(ii) (2022).

which levels of government possess authority to enact and implement emissions reductions laws. The Court of Appeals is able to provide just that solution, and it is urgent that it do so.

### **III. Conclusion**

For the reasons articulated above, the Sabin Center for Climate Change Law respectfully urges the Court to grant New York City's motion for leave to appeal to the New York State Court of Appeals. The preemption issue raised by the interplay between New York State's CLCPA and New York City's Local Law 97 is a purely legal question that has critical public importance. Resolving this matter will have significant implications for the ability of municipalities within New York State to enact effective local climate policies crucial to achieving the emissions reduction requirements of the CLCPA, necessary to mitigate the worst impacts of climate change and to take advantage of unprecedented federal resources currently available for implementation of their climate laws and policies. Prompt resolution of this issue is essential to provide the clarity needed to ensure that local, State, and global climate commitments are met on time, thereby safeguarding the climate and the health and well-being of current and future generations.

Dated: June 20, 2024

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