



## Local Law 97 Not Pre-Empted: The Song Remains the Same

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In a recent Court of Appeals decision, Plaintiff, Glen Oaks Village Owners, Inc. (“**Glen Oaks**”), claimed that Defendant, City of New York, the City’s Department of Buildings, and the Commissioner of the Department of Buildings (“**City**”), implementation of Local Law No. 97 of 2019 was preempted by the State’s subsequently enacted Climate Leadership and Community Protection Act (“**Climate Act**”), a month later. Plaintiff argued that the Climate Act highlighted the State’s intent to legislate the entire field of greenhouse gas regulation, thereby displacing the City’s authority in its entirety. The City moved to dismiss the claim for failure to state a cause of action.

In ongoing efforts to combat climate change, Local Law No. 97 was enacted in May of 2019 to address climate change at the municipal level by requiring covered buildings to achieve a minimum 40% reduction in greenhouse gas emissions citywide by 2030, and 80% in 2050 (relative to city-wide emission values surveyed in 2005). The local law additionally established methods to calculate building emissions, while also creating an administrative office to oversee compliance. Subsequently, in June of 2019, the State’s legislature passed the Climate Act, adopting similar measures intended to significantly reduce greenhouse gas emissions. The goal of the Climate Act was to reduce greenhouse gas emissions from all anthropogenic sources, with an incremental target of at least 40% reduction in climate pollution by 2030. The Climate Act also creates a Climate Action Counsel, an advisory group made up of 22 members with relevant expertise, providing the Council a 2-year period to prepare a scoping plan containing recommendations for attaining statewide greenhouse gas emissions limits. In contrast to Plaintiff’s claim, the City argues that the Climate Act preserves the authority of state entities to adopt emission measures, and even offers a savings clause, providing that nothing in the act will 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, safety, and the environment.

Initially, the New York Supreme Court dismissed Plaintiff’s claim for failure to establish preemption. However, the Appellate Division amended the judgement, reasoning that the City had not shown the Climate Act left room for local greenhouse gas legislation. The case thus reached the Court of Appeals to resolve whether the Climate Act impliedly preempted the field.

The Court of Appeals rejected Plaintiff’s claim of field preemption. Rather than demonstrating an intent to preempt the field of regulating greenhouse gas emissions, the Climate Act recognizes that local government plays an important role, preserving rather than excluding local efforts. Therefore, the Climate Act’s broad, aspirational language does not demonstrate a legislative desire for across-the-board uniformity. The Court recognizes that the Climate Act is a wide-ranging, statewide effort to address climate change, but is not so broad and so detailed in scope as to preclude all local regulation in the area at large, especially, in this case, where the local law would only further the state’s policy interests.

The Court of Appeals held that the Climate Act neither expressly nor impliedly intended to preempt local regulation of greenhouse gas emissions. Local Law No. 97 stands as a valid exercise of municipal authority, operating in harmony

with the State's climate policies. The decision underscores the complimentary roles of state and local governmental authority in addressing climate change, affirming that the Climate Act does not displace Local Law No. 97 though field preemption.