IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CLEAN ENERGY CHOICE COALITION, NFP Plaintiff, v. VILLAGE OF OAK PARK, ILLINOIS Defendant.	)	No. 1:25-cv-04353 Hon. Franklin U. Valderrama

Memorandum* of *Amici Curiae*
Sierra Club, Oak Park Climate Action Network,
Chicago Environmental Justice Network, and
Respiratory Health Association
in support of Defendant's Motion for Summary Judgment

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* No party's counsel authored the attached *amicus curiae* memorandum in whole or in part, and no party or its counsel contributed money to fund the preparation or submission of the attached *amicus curiae* memorandum. *See* FRAP 29(a)(4).

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STATEMENT OF INTEREST

Amici are four organizations with interests in preserving the public health and climate benefits of the Village of Oak Park (the "Village")'s all-electric new construction ordinance ("Ordinance") and similar policies beyond Oak Park. The Oak Park Climate Action Network ("OPCAN") is an unincorporated volunteer group of over 130 Oak Park residents that was deeply involved in the development and passage of the Ordinance. Motion for Leave to File *Amicus* Memorandum, ECF No. 36, at 3-4. Sierra Club is a grassroots national nonprofit environmental organization that has members in Oak Park. *Id.* at 1-3, 7. The Chicago Environmental Justice Network ("CEJN"), and Respiratory Health Association ("RHA") are Chicago-based nonprofit organizations that advocate for policies to equitably advance pollution-free buildings and address the public health harms of gas combustion in the Chicago area, including Oak Park. *Id.* at 4-5.

Amici's members in Oak Park will directly benefit from the Ordinance's public health benefits. *Id.* at 2-3, 5-7. *Amici* have advocated for enactment of the Ordinance, and for policies to reduce health-harming pollution from buildings in the greater Chicago area, throughout Illinois, and across the country. *Id.* at 2-7. Additionally, *Amicus* Sierra Club is a party or *amicus* in multiple active cases that involve similar legal issues to those presented here. *Id.* at 3. The undersigned *amici* have an interest in ensuring that federal law is not misinterpreted to thwart the ability of the Village, or other localities and states, to safeguard their residents through legitimate exercises of legislative authority.

INTRODUCTION AND SUMMARY OF ARGUMENT

There is an established scientific basis and growing public understanding that methane-gas-burning appliances inside our homes, schools, and workplaces are making us sick. While the

wide-ranging health impacts attributable to emissions from gas appliances were first recognized decades ago, more recent studies have uncovered the true extent and severity of the connection. It is now indisputable that gas appliances are a leading source of both indoor and outdoor air pollution. In response, states and localities—including the Village—have acted on public concern and exercised their legislative authority to transition buildings away from combusting fossil fuels to abate the health, climate, and air quality impacts of gas appliances.

This pollution causes serious harm, including lung diseases such as asthma and chronic obstructive pulmonary disease, as well as cardiovascular disease, cognitive deficits, cancer, and death. Children living in homes with gas stoves are 42 percent more likely to experience asthma symptoms.[1] Nearly 13 percent of childhood asthma nationwide is attributable to gas stove use.[2]

Plaintiff's expansive reading of the Energy Policy and Conservation Act ("EPCA")'s preemptive reach would completely negate the Village's firmly-established authority to reduce air pollution that harms public health, pursuant to its valid police powers. EPCA's text and structure do not support Plaintiff's reading of EPCA's preemptive provisions, which would not only frustrate the Village's efforts to transition from fossil fuels to clean energy, but also infringe upon traditional state authority over public health and pollution control without the clear Congressional direction required to do so. As such, Defendant's Motion for Summary Judgment should be granted and Plaintiff's Motion for Summary Judgment should be denied.

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[1] Weiwei Lin et al., *Meta-Analysis of the Effects of Indoor Nitrogen Dioxide and Gas Cooking on Asthma and Wheeze in Children*, 42 Int'l J. Epidemiology 1728 (Dec. 2013), *available at* https://doi.org/10.1093/ije/dyt150.

[2] Talor Gruenwald et al., *Population Attributable Fraction of Gas Stoves and Childhood Asthma in the United States*, 20 Int'l J. Env't Rsch. & Pub. Health 75 (2023), *available at* https://doi.org/10.3390/ijerph20010075.

ARGUMENT

I. Gas Combustion Emits Harmful Pollutants that Degrade Both Indoor and Outdoor Air Quality and Threaten Public Health.

The primary driver of building emissions is the combustion of fossil gas for uses such as space heating, water heating, and cooking. This gas combustion emits nitrogen dioxide ("NO_2"), particulate matter ("PM"), and other air pollutants that contaminate indoor air, especially when emitted from unvented appliances like gas stoves. When they are vented to the outdoors, these pollutants contribute to ambient air pollution, including through formation of ground-level ozone or "smog"—a pollutant for which the Chicago area is in nonattainment of federal air quality standards. The Village's Ordinance will reduce indoor and outdoor air pollution by supporting the construction of all-electric buildings, which do not directly emit any combustion pollution.

Termed "natural gas" by industry, the blend of chemicals that is piped into homes and other buildings across the country is primarily composed of methane.[3] The chemical byproducts of combusting gas include the greenhouse gas carbon dioxide, as well as NO_2,[4] PM, carbon monoxide, volatile organic compounds such as formaldehyde,[5] and ozone, which is formed through interactions between other pollutants. Exposure to these pollutants has been increasingly

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[3] Drew R. Michanowicz *et al.*, *Home Is Where the Pipeline Ends: Characterization of Volatile Organic Compounds Present in Natural Gas at the Point of the Residential End User*, 56 ENV'T SCI. & TECH. 10258, 10258 (June 2022), *available at* https://pubs.acs.org/doi/10.1021/acs.est.1c08298 (identifying 296 volatile organic compounds aside from methane in cooking gas samples); Eric D. Lebel *et al.*, *Composition, Emissions, and Air Quality Impacts of Hazardous Air Pollutants in Unburned Natural Gas from Residential Stoves in California*, 56 ENV'T SCI. & TECH. 15828 (Oct. 20, 2022), *available at* https://pubs.acs.org/doi/pdf/10.1021/acs.est.2c02581.

[4] "Nitrogen Dioxide (NO_2) is one of a group of highly reactive gases known as oxides of nitrogen or nitrogen oxides (NOx). Other nitrogen oxides include nitrous acid and nitric acid. NO_2 is used as the indicator for the larger group of nitrogen oxides." U.S. EPA, *Basic Information about NO2*, *available at* https://www.epa.gov/no2-pollution/basic-information-about-no2#What%20is%20NO2 (last updated July 10, 2025).

[5] U.S. EPA, *What are combustion products?*, *available at* https://www.epa.gov/indoor-air-quality-iaq/what-are-combustion-products (last updated Dec. 4, 2024); U.S. EPA, *Facts About Formaldehyde*, https://www.epa.gov/formaldehyde/facts-about-formaldehyde (last updated July 7, 2025).

and more conclusively linked to higher rates of respiratory and cardiovascular illnesses, such as childhood asthma, as well as reduced lung function and premature death.[6] The negative health outcomes associated with gas stoves disproportionately affect communities of color,[7] and in the Chicago area, this disparity is especially stark.[8] That these pollutants are generated—and often linger—indoors raises even greater concerns for public welfare, given that U.S. residents spend nearly 90% of their time indoors.[9] Gas stoves also leak unburned gas containing carcinogenic pollutants, such as benzene, into homes at a near-constant rate, even when they are turned off.[10]

Particulate Matter. Particulate matter is another form of air pollution generated by gas combustion that poses a unique threat to human health.[11] $PM_{2.5}$, or fine particulate matter, refers to inhalable particles with diameters that are 2.5 micrometers and smaller, and thus easily

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[6] Andee Krasner et al., *Cooking with Gas, Household Air Pollution, and Asthma: Little Recognized Risk for Children*, 83 J. ENV'T HEALTH 8, 14 (Apr. 2021), *available at* *https://www.proquest.com/docview/2505418593?sourcetype=Scholarly%20Journals*.

[7] Yannai Kashtan et al., *Nitrogen dioxide exposure, health outcomes, and associated demographic disparities due to gas and propane combustion by U.S. stoves,* 10 SCI. ADV. at 2 (2023), *available at* https://www.science.org/doi/10.1126/sciadv.adm8680.

[8] *See* City of Chicago*, Air Quality and Health Report* (2020), *available at* https://www.chicago.gov/content/dam/city/depts/cdph/statistics_and_reports/Air_Quality_Health_doc_FINALv4.pdf.

[9] U.S. EPA, *The Inside Story: A Guide to Indoor Air Quality*, *available at* https://www.epa.gov/indoor-air-quality-iaq/inside-story-guide-indoor-air-quality (last updated May 23, 2025); Neil E. Klepeis et al., *The National Human Activity Pattern Survey (NHAPS): A Resource for Assessing Exposure to Environmental Pollutants*, 11 J. EXPOSURE ANALYSIS & ENV'T EPIDEMIOLOGY 231, 242 (2001), *available at* https://pubmed.ncbi.nlm.nih.gov/11477521/; *see also* U.S. EPA, *Report to Congress on Indoor Air Quality Volume II: Assessment and Control of Indoor Air Pollution* (Aug. 1989), *available at* https://nepis.epa.gov/Exe/ZyPDF.cgi/9100LMBU.PDF?Dockey=9100LMBU.PDF.

[10] *See* Eric D. Lebel et al., *Methane and NOx Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, 56 ENV'T SCI. TECH. 2529, 2534 (2022), *available at* https://pubs.acs.org/doi/10.1021/acs.est.1c04707 (research results showing that "most stoves and associated nearby piping leak some methane continuously"); Michanowicz *et al.*, *supra* n.3, at 10266 (finding benzene and other carcinogenic pollutants in gas samples from home kitchens); Yannai S. Kashtan et al., *Gas and Propane Combustion from Stoves Emits Benzene and Increases Indoor Air Pollution*, 57 ENV'T SCI. & TECH. 9653 (2023), *available at* https://pubs.acs.org/doi/10.1021/acs.est.2c09289.

[11] National Ambient Air Quality Standards for Particulate Matter, 62 Fed. Reg. 38652, 38653–54 (July 18, 1997).

penetrate the defenses of our lungs.[12] $PM_{2.5}$ is mainly produced by "combustion processes and by atmospheric reactions of various gaseous pollutants."[13] Exposure to $PM_{2.5}$ pollution has been linked to premature mortality; heart attacks, strokes, worsening of chronic heart failure, and sudden cardiac death; impaired fetal and childhood lung function development; acute and chronic decreases in lung function; respiratory infections; respiratory emergency department visits, hospitalizations, and deaths; and the development and exacerbation of asthma.[14] Even short-term exposure "is likely causally associated with mortality from cardiopulmonary diseases, increased hospitalization and emergency department visits for cardiopulmonary diseases, increased respiratory symptoms, decreased lung function, and changes in physiological indicators for cardiovascular health."[15] While $PM_{2.5}$ is a byproduct of cooking on both electric and gas stoves, emissions from gas stoves can be two times higher than from electric stoves.[16] There is no safe level of $PM_{2.5}$ exposure.[17] Concerningly, the health harms of $PM_{2.5}$ emissions tend to fall disproportionately on people of color, who are exposed to approximately 90 percent more ambient $PM_{2.5}$ pollution from residential gas combustion nationwide than are whites.[18]

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[12] *Id.* at 38654.

[13] National Ambient Air Quality Standards for Particulate Matter, 71 Fed. Reg. 61144, 61146 (Oct. 17, 2006).

[14] Clean Air Fine Particle Implementation Rule, 72 Fed. Reg. 20586, 20586-87 (Apr. 25, 2007). *See also* U.S. EPA, *Health and Environmental Effects of Particulate Matter (PM): Health Effects*, *available at* https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm (last updated May 23, 2025).

[15] Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC), 72 Fed. Reg. 54112, 54128 (Sept. 21, 2007).

[16] Tianchao Hu et al., *Compilation of Published $PM_{2.5}$ Emission Rates for Cooking, Candles and Incense for Use in Modeling of Exposures in Residences*, LBNL-5890E, 11 (Aug. 2012), *available at* https://indoor.lbl.gov/publications/compilation-published-pm25-emission.

[17] U.S. EPA, *Integrated Science Assessment (ISA) for Particulate Matter* ES-23 (Dec. 2019), *available at* https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=347534.

[18] Christopher W. Tessum et al., *$PM_{2.5}$ Polluters Disproportionately and Systemically Affect People of Color in the United States*, 7 Sci. Advances eabf4491, supplementary data file S2 (2021), https://doi.org/10.1126/sciadv.abf4491.

Nitrogen Dioxide. The U.S. Environmental Protection Agency ("EPA") has long recognized that NO_2, a prevalent pollutant from gas combustion, can cause asthma.[19] Even short-term NO_2 exposure can cause impaired lung function, respiratory symptoms, inflammation of the airway, and asthma exacerbations requiring hospitalization.[20] Exposure to NO_2 is also linked to chronic obstructive pulmonary disease, cardiovascular effects, diabetes, cancer, and reproductive harms.[21] As EPA recognized in 2008, "homes with gas cooking appliances have approximately 50% to over 400% higher NO_2 concentrations than homes with electric cooking appliances."[22] Indeed, scientists at the Lawrence Berkeley National Laboratory demonstrated that up to 70% of residents living in homes with unvented[23] gas cooking appliances are exposed to NO_2 concentrations that exceed the National Ambient Air Quality Standard (EPA's outdoor limit) of 100 parts per billion.[24] Outdoors, NO_2 pollution also contributes to the formation of $PM_{2.5}$ and ozone.[25]

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[19] National Primary and Secondary Ambient Air Quality Standards, 36 Fed. Reg. 8186 (Apr. 30, 1971).
[20] Primary National Ambient Air Quality Standards for Nitrogen Dioxide, 75 Fed. Reg. 6474, 6479-80 (Feb. 9, 2010).
[21] U.S. EPA, *Integrated Science Assessment (ISA) For Oxides of Nitrogen – Health Criteria* at 1-17, 1-22 to 1-30, 5-55 (Jan. 2016), *available at* https://assessments.epa.gov/isa/document/&deid=310879.
[22] U.S. EPA, *Integrated Science Assessment for Oxides of Nitrogen – Health Criteria* at 2-38 (July 2008), *available at* https://assessments.epa.gov/isa/document/&deid=194645#downloads.
[23] Even exhaust ventilation of gas cooking appliances has proved to be less effective at reducing pollution than previously thought. *See* Nat'l Ctr. for Healthy Hous., *Studying the Optimal Ventilation for Environmental Indoor Air Quality* at 3 (Apr. 2022), *available at* https://nchh.org/resource-library/report_studying-the-optimal-ventilation-for-environmental-indoor-air-quality.pdf (emissions monitoring in Chicago and New York homes found no significant reduction in NO_2 from ventilation and 13% to 44% reductions in other contaminants).
[24] Jennifer M. Logue et al., *Pollutant Exposures from Natural Gas Cooking Burners: A Simulation-Based Assessment for Southern California*, 122 ENV'T HEALTH PERSPECTIVES 43, 47, 49-50 (Jan. 2014), *available at* https://pmc.ncbi.nlm.nih.gov/articles/PMC3888569/; U.S. EPA, Review of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen, 83 Fed. Reg. 17226, 17226-27 (Apr. 18, 2018).
[25] U.S. EPA, *Basic Information about NO2*, *supra* n.4.

Carbon Monoxide. According to EPA, homes with gas-burning appliances have higher carbon monoxide levels than those without.[26] Carbon monoxide poisoning results in more than 400 deaths and over 100,000 emergency department visits in the United States annually.[27] Carbon monoxide exposure is also linked to respiratory illnesses and neurological impairment.[28]

Cancer-Causing Compounds. In addition to the byproducts of fossil fuel burning that have been understood for decades, newer research indicates that gas combustion also releases semi-volatile organic compounds known as polycyclic aromatic hydrocarbons (PAHs),[29] as well as volatile organic compounds, such as formaldehyde[30] and benzene.[31] For instance, a 2022 study of Boston's gas supply revealed the presence of 296 volatile organic compounds, including 21 hazardous air pollutants.[32] All of these pollutants are linked to cancer and, thus, no safe level of exposure can be recommended. For instance, long-term exposure to benzene can lead to blood disorders and, according to the American Cancer Society, is linked to higher rates of cancer, including leukemia and other blood cancers. Short-term exposure to benzene can also cause "drowsiness, dizziness, headaches, tremors, confusion, and/or unconsciousness."[33]

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[26] U.S. EPA, *Carbon Monoxide's Impact on Indoor Air Quality*, *available at* https://www.epa.gov/indoor-air-quality-iaq/carbon-monoxides-impact-indoor-air-quality (last updated Aug. 12, 2025).
[27] U.S. Ctrs. for Disease Control & Prevention, *Carbon Monoxide Poisoning*, *available at* https://www.cdc.gov/carbon-monoxide/about/index.html (last updated Apr. 17, 2024); *see also* Jason J. Rose *et al.*, *Carbon Monoxide Poisoning: Pathogenesis, Management, and Future Directions of Therapy*, 195 Am. J. Respiratory & Critical Care Med. 596 (2017), *available at* https://www.atsjournals.org/doi/full/10.1164/rccm.201606-1275CI.
[28] U.S. EPA, *Integrated Science Assessment (ISA) for Carbon Monoxide* 2-5 (Jan. 2010), *available at* https://assessments.epa.gov/isa/document/&deid=218686#downloads.
[29] U.S. Ctrs. for Disease Control & Prevention, *Polycyclic Aromatic Hydrocarbons (PAHs) Fact Sheet* (Nov. 2009), *available at* https://www.epa.gov/sites/default/files/2014-03/documents/pahs_factsheet_cdc_2013.pdf.
[30] U.S. EPA, *supra* n.9.
[31] Michanowicz et al., *supra* n.3 at 10266; Kashtan *et al.*, *supra* n.10.
[32] Michanowicz et al., *supra* n.3 at 10258.
[33] Am. Cancer Soc'y, *Benzene and Cancer Risk*, *available at* https://www.cancer.org/cancer/risk-prevention/chemicals/benzene.html (last revised Feb. 1, 2023).

Given the robust body of scientific literature evidencing these harms, leading national health organizations are recognizing the immense public health risks associated with gas combustion, particularly from gas appliances. In June 2022, the American Medical Association found that the "use of a gas stove increases household air pollution and the risk of childhood asthma and asthma severity; which can be mitigated by reducing the use of the gas cooking stove, using adequate ventilation, and/or using an appropriate air filter."[34]

In July 2022, the American Lung Association published a report synthesizing its literature review of the impacts of indoor residential gas combustion, finding that gas appliance emissions degrade indoor air quality, resulting in worse asthma symptoms and reduced lung function in children and other vulnerable populations.[35] In November 2022, the American Public Health Association adopted a policy acknowledging the scientific evidence linking gas stove emissions and negative health effects and called on regulatory agencies and policymakers to enact measures to abate gas appliance emissions.[36]

Fossil fuel combustion in buildings is a major source of outdoor air pollution as well. According to data from EPA's National Emissions Inventory, combusting fossil fuels in buildings releases over 250,000 tons per year of carbon monoxide, over 460,000 tons of NOx,

[34] Am. Med. Ass'n, *Informing Physicians, Health Care Providers, and the Public that Cooking with a Gas Stove Increases Household Air Pollution and the Risk of Childhood Asthma D-135.964*, Res. 439, A-22 (2022), *available at* https://policysearch.ama-assn.org/policyfinder/detail/gas%20stove?uri=%2FAMADoc%2Fdirectives.xml-D-135.964.xml.
[35] Am. Lung Ass'n, *Literature Review on the Impacts of Residential Combustion, Final Report* (July 2022), *available at* https://www.lung.org/getmedia/2786f983-d971-43ad-962b-8370c950cbd6/ICF_Impacts-of-Residential-Combustion_FINAL_071022.pdf.
[36] Am. Pub. Health Ass'n, *Gas Stove Emissions Are a Public Health Concern: Exposure to Indoor Nitrogen Dioxide Increases Risk of Illness in Children, Older Adults, and People with Underlying Health Conditions* (Nov. 8, 2022), *available at* https://www.apha.org/Policies-and-Advocacy/Public-Health-Policy-Statements/Policy-Database/2023/01/18/Gas-Stove-Emissions.

and more than 15,000 tons of $PM_{2.5}$ nationwide.[37] The consequences of these emissions on ambient air quality are significant and harmful.

Ozone. Ground-level ozone is a highly reactive gas that is formed by interactions between nitrogen oxides and volatile organic compounds, which are emitted by gas-burning equipment and other sources, in the presence of heat and sunlight.[38] The Chicago area is in "serious" nonattainment of EPA's health-based National Ambient Air Quality Standards for ozone, which means Illinois has consistently failed to maintain safe, healthy air quality in Chicago and surrounding areas.[39] There is, therefore, a high risk that the Village's residents are breathing unsafe levels of air pollutants.

Ozone exposure, even over a short time period, is linked to chronic conditions affecting the respiratory, cardiovascular, reproductive, and central nervous systems, as well as premature mortality.[40] Ozone exposure is also associated with increased asthma attacks, emergency room visits, hospitalization, and medication for asthma.[41] While the health impacts of ozone are ubiquitous, certain populations are at an increased risk, including people with asthma, children, people over the age of 65, and outdoor workers.[42]

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[37] Data from U.S. EPA, *2017 National Emissions Inventory (NEI) Data*, *available at* https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data#dataq.
[38] U.S. EPA, *What is Ozone?, available at* https://www.epa.gov/ozone-pollution-and-your-patients-health/what-ozone# (last updated June 20, 2024).
[39] U.S. EPA, *Illinois Nonattainment/Maintenance Status for Each County by Year for All Criteria Pollutants*, *available at* https://www3.epa.gov/airquality/greenbook/anayo_il.html (last updated Aug. 31, 2025).
[40] U.S. EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* 1-5, Tbl. 1-1 (Feb. 2013), *available at* https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=511347 [hereinafter "2013 Ozone Integrated Science Assessment"].
[41] U.S. EPA, *Policy Assessment for the Reconsideration of the Ozone National Ambient Air Quality Standards: External Review Draft Version 2* at 3-22 to 3-27 (Mar. 2023), *available at* https://www.epa.gov/naaqs/ozone-o3-standards-policy-assessments-current-review.
[42] U.S. EPA, *supra* n.40 at 2-30.

Rewiring America, an organization that shares data and tools to help Americans cost-effectively electrify buildings, recently published a study finding that replacing fossil fuel appliances that vent outdoors (*i.e.*, space and water heaters and clothes dryers) with electric appliances nationwide would produce $40 billion in annual public health benefits—including 3,400 fewer premature deaths, 1,300 fewer hospital admissions and emergency room visits, and 220,000 fewer asthma attacks.[43] Specifically in Illinois, Rewiring America found that outdoor air pollution from residential buildings accounts for 888 premature deaths per year.[44] Similarly, RMI has found that residential and commercial fuel combustion in Illinois is responsible for 1,120 early deaths and $12.6 billion in health impacts each year.[45] In the Chicago nonattainment area, RMI found that combustion appliances emit 13% of all NOx—three times as much as power plants—and expose communities of color to 24% more ambient $PM_{2.5}$ than whites.[46]

II. Building Emissions Cause Harmful Climate Pollution, Prompting State and Local Legislation to Protect Health and Safety.

In addition to degrading indoor and outdoor air quality, buildings are a significant source of greenhouse gas emissions contributing to climate change. This climate pollution impedes the Village's ability to meet its emissions reduction targets, and has state-wide, national, and international repercussions, as those emissions worsen the climate crisis. As described above, gas combustion in the Village's building sector releases the greenhouse gas carbon dioxide, and methane—an even more potent greenhouse gas—also leaks from gas distribution pipes that

[43] Rewiring America, *Breathe Easy* (Dec. 2024), *available at* https://a-us.storyblok.com/f/1021068/x/f03d441bd0/breathe-easy-report-rewiring-america.pdf.
[44] Rewiring America, *Bringing Infrastructure Home: A 50-State Report on U.S. Home Electrification* at 41 (June 2021), https://www.rewiringamerica.org/research/bringing-infrastructure-home-report.
[45] RMI, *Fact Sheet: All-Electric Buildings: A Health Priority for Illinois* at 1 (June 2023), https://rmi.org/insight/state-level-building-electrification-factsheets/.
[46] Talor Gruenwald *et al.*, *How Air Agencies Can Help End Fossil Fuel Pollution from Buildings* at 11, RMI (2021), https://rmi.org/insight/outdoor-air-quality-brief/.

supply buildings with this fuel. A staggering 70% of the Village's greenhouse gas emissions come from the building sector alone.[47]

In 2021, acknowledging the myriad harms posed by climate change and the need to accelerate emission reductions, the Illinois General Assembly passed the Climate and Equitable Jobs Act, which requires Illinois to reach 100% clean energy by 2050 and reduce emissions from other sectors, including exploring strategies to "significantly expand the percentage of net-zero housing and net-zero buildings in the community."[48] On August 1, 2022, the Village adopted the more ambitious "Climate Ready Oak Park" Plan, which resolves to reduce its greenhouse gas emissions by 60% by 2030 and reach net-zero emissions by 2050.[49] In support of this goal, the Village emphasized that "[c]limate change presents many interrelated dangers to human and ecosystem health, food and water supply, and transportation and energy reliability" and "[r]esearch shows that people who are already vulnerable, including lower-income and other marginalized communities, are more likely to be harmed by a climate disaster."[50]

Noting that emissions from residential and commercial buildings alone generate 70% of Oak Park's total greenhouse gas emissions,[51] the Village passed the Ordinance as a key step toward "achiev[ing] community-wide net zero greenhouse gas emissions by 2050."[52] The Ordinance, by requiring reduced greenhouse gas emissions from newly constructed buildings in Oak Park, is a critical tool for effectuating the objectives in both local and state climate laws.

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[47] Village of Oak Park, *Climate Ready Oak Park, Community Sustainability, Climate Action & Resilience Plan* (adopted Aug. 1, 2022), *available at* https://storymaps.arcgis.com/stories/b4f6e9bdfd864b31b28072156d6d6bcf.
[48] Ill. Pub. Act 102-0662 § 15-15(e)(6) (2021).
[49] Village of Oak Park, *supra* n.47.
[50] *Id*.
[51] *Id*.
[52] *Id*.; Village of Oak Park, *Building Electrification*, *available at* https://engageoakpark.com/electrification (last visited Sept. 30, 2025).

The Village's clear approach to improving indoor and outdoor air quality and meeting statutory greenhouse gas emissions reduction targets rests upon reducing gas combustion in buildings. This court should ensure the Village—and similarly situated state and local governments—retain the ability to enact laws pursuant to their valid police powers to protect their residents' health and safety.

III. Regulating Air Pollution from Buildings Falls Squarely Within the Village's Traditional Police Powers, which EPCA Does Not Preempt.

For the reasons stated in Defendants' Memorandum, the Ordinance at issue is not preempted by EPCA, as is clear from the statute's plain language, structure, and legislative history. EPCA is chiefly concerned with setting energy efficiency standards for appliances, whereas the Ordinance is aimed at reducing emissions from buildings. Such regulation of air pollution does not "concern[] the energy efficiency [or] energy use" of EPCA-covered equipment, 42 U.S.C. § 6297(c), but instead falls within the Village's traditional police powers in the area of health and safety regulations. This conclusion follows from a straightforward reading of the statute's text for the reasons described in Defendants' Memorandum, which are sufficient to grant summary judgment for the Village. Additionally, the Court should apply a presumption against preemption in this case, which reinforces the conclusion that EPCA does not preempt the Ordinance and provides a clear basis for distinguishing this case from *California Restaurant Association v. Berkeley*, 89 F.4th 1094 (9th Cir. 2024).

When analyzing express preemption provisions, the Seventh Circuit applies a presumption against preemption in areas of traditional state regulation. *Laborers' Pension Fund v. Miscevic*, 880 F.3d 927, 931 (7th Cir. 2018) (quoting *Trs. of the AFTRA Health Fund v. Biondi*, 303 F.3d 765, 775 (7th Cir. 2002)); *Staffing Servs. Ass'n of Ill v. Flanagan*, 2025 U.S. Dist. LEXIS 97744 at *9 (N.D. Ill. 2025). The Ninth Circuit expressly did not apply any

presumption against preemption in *California Restaurant Association*, and a concurring opinion observed that this approach was compelled by Ninth Circuit precedent in "a deeply troubled area of law." *Cal. Restaurant Ass'n*, 89 F.4th at 1101, 1107 (O'Scannlain, J., concurring). Specifically, the Ninth Circuit has interpreted the Supreme Court's notoriously cryptic decision in *Puerto Rico v. Franklin California Tax-Free Trust,* 579 U.S. 115 (2016), to prohibit use of a presumption against preemption when interpreting express preemption provisions. *Cal. Restaurant Ass'n*, 89 F.4th at 1108, 1111 (O'Scannlain, J., concurring). The Seventh Circuit has not read *Franklin* so categorically, and after that decision it continued to apply the presumption to express preemption provisions in areas of traditional state regulation. *See Laborers' Pension Fund*, 880 F.3d at 931, 933-34 (applying the presumption to 29 U.S.C. § 1144(a)'s express preemption provision in the area of family law). The Seventh Circuit declined to apply a presumption against preemption in *Ye v. GlobalTranz Enterprises*, 74 F.4th 453, 465 (7th Cir. 2023) (citing *Franklin*, 579 U.S. at 125), but that case did not involve an area of traditional state regulation. *Ye,* 74 F.4th at 460 (declining to find that the case involved traditional safety authority).[53] *See also Lupian v. Joseph Cory Holdings LLC*, 905 F.3d 127, 131 n.5 (3d Cir. 2018) (noting that because *Franklin* did not involve an area of traditional state regulation, the Third Circuit continues to apply the presumption in such cases).[54] Thus, under Seventh Circuit precedent, this Court must presume that express preemption provisions do not disrupt traditional state authority.

[53] *Accord City of Columbus v. Ours Garage & Wreckers Serv.*, 536 U.S. 424, 439 (2002) (contrasting "States' economic authority over motor carriers of property," which is preempted by the provision at issue in *Ye*, with "the preexisting and traditional state police power over safety").

[54] Notably, an approach similar to *Lupian* was suggested by Judge O'Scannlain in his *CRA* concurrence, but Ninth Circuit precedent rendered it unavailable to him. *Cal. Restaurant Ass'n*, 89 F.4th at 1110 (O'Scannlain, J., concurring). This approach is also consistent with the Supreme Court's post-*Franklin* affirmations that Congress must use "exceedingly clear language if it wishes to significantly alter the balance between federal and state power." *Sackett v. EPA*, 598 U.S. 651, 679 (2023) (citation omitted).

That presumption applies here, because the Ordinance is a valid exercise of the Village's traditional police power to regulate public health and safety. The Seventh Circuit has explained that "great judicial deference is owed to the legislative judgment" in cases where Illinois uses its "police power authority to regulate matters of health and safety." *Sutker v. Ill. State Dental Soc.*, 808 F.2d 632, 635–36 (7th Cir. 1986). And "[e]nvironmental regulation has long been recognized as an historic police power of the states." *Nat'l. Solid Wastes Mgmt. Ass'n v. Killian*, 918 F.2d 671, 676 (7th Cir. 1990) (cleaned up) (quoting *Huron Cement Co. v. City of Detroit*, 362 U.S. 440, 442 (1960)). The Illinois Constitution grants broad powers in these areas to local governments, such as the Village. *See Quilici v. Morton Grove*, 695 F.2d 261, 268 (7th Cir. 1982) ("Illinois home rule units [local governments] have expansive powers to govern as they deem proper . . ."). As set forth above, the Ordinance is fundamentally an environmental and public health regulation. As such, it falls squarely within the Village's traditional police powers, and this Court must apply a presumption against preemption.

In short, even though EPCA's plain language, statutory structure, and legislative history clearly show the Ordinance is not preempted, the Seventh Circuit's presumption against preemption creates an even higher bar—which the Plaintiffs fail to clear. As the *California Restaurant Association* concurrence acknowledged, applying the presumption in that case would have led the court to select the available "narrow" construction of the preemption provision, and to conclude that "EPCA does not preempt the Ordinance." *Cal. Restaurant Ass'n*, 89 F.4th at 1110 (O'Scannlain, J., concurring).

Indeed, a district court within the Ninth Circuit recently concluded that even under *California Restaurant Association*'s reasoning, EPCA does not preempt emission reduction regulations. *Rinnai America Corp. v. S. Coast Air Quality Mgmt. Dist.*, C.D. Cal. No. CV 24-

10482 (C.D. Cal. July 22, 2025), slip op. at 9 ("[T]here is no reason to believe that Congress ever intended or even contemplated that the EPCA would preempt emission regulations designed to combat air pollution."). That conclusion is consistent with Congress's careful preservation, in the Clean Air Act, of states' and localities' traditional authority to address outdoor air pollution, including emissions from combustion appliances. *See, e.g.*, 42 U.S.C. § 7401(a)(3) (finding that "air pollution control at its source is the primary responsibility of States and local governments"); 42 U.S.C. § 7416 (preserving states' right to adopt "(1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution"); *see also* 47 Fed. Reg. 29231 (Jan. 7, 1986) (EPA approving local emission standards for furnaces in California's Clean Air Act State Implementation Plan); 75 Fed. Reg. 20112, 20133 (Apr. 16, 2010) (U.S. Department of Energy recognizing that local emission standards for water heaters are valid, even though they can affect these appliances' efficiency). In sum, EPCA cannot reasonably be read to preempt the Ordinance and other important local exercises of police power to protect health and safety.

CONCLUSION

The undersigned *amici* urge this Court to uphold the Village of Oak Park's right to protect its residents and their environment by reducing the unsafe, unhealthy pollution stemming from gas combustion. For the reasons stated above, *amici* request this Court grant Defendant's Motion for Summary Judgment and deny Plaintiff's Motion for Summary Judgment.

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Respectfully Submitted,

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