

HOW OUR BUILDINGS SHAPE US: AN ARGUMENT AGAINST PL 180'S PREEMPTION OF LOCAL GOVERNMENT CONTROL OVER GREEN BUILDING CODES IN INDIANA

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I. INTRODUCTION

"We shape our buildings; thereafter our buildings shape us."
– Winston Churchill¹

As our climate changes, our building practices must also change. Conventionally built infrastructure will deteriorate as natural disasters become more prevalent and severe. Additionally, built environments contribute to the worsening effects of climate change by generating over 40% of annual global carbon dioxide emissions.² Implementation of green building codes, which consider durability and sustainability in the materials, design, and components of construction, can lower the environmental impact from conventional buildings while creating resilience and protection from the effects of climate change.

In 2021, the Indiana General Assembly added Public Law 180 (PL 180) to Indiana's Home Rule statute, historically a statute which grants broad power for self-government to local communities. Instead, PL 180 preempts local Indiana governments at the state level, prohibiting them from requiring that their built environments be constructed with any energy-saving or -producing designs, components, or materials.³ Additionally, PL 180 reinforces Indiana's dependence on fossil fuel powered energy sources and delays our inevitable shift to renewable energy production, causing higher utility bills for Hoosiers and maintaining vulnerability to power outages. Rumored to be enacted for the benefit of gas and construction companies, PL 180 unnecessarily takes power from local Indiana governments to protect residents from the effects of climate change that are forecasted to become severely destructive in our near future.⁴

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1. *Churchill and the Commons Chamber*, UK PARLIAMENT, <https://www.parliament.uk/about/living-heritage/building/palace/architecture/palacestructure/churchill/#:~:text=Churchill%20insisted%20that%20the%20shape> [https://perma.cc/ME7Z-JQCF] (last visited Mar. 1, 2023).

2. *Why the Built Environment?*, ARCHITECTURE 2030, <https://architecture2030.org/why-the-building-sector/> [https://perma.cc/XS4Q-26M5] (last visited Mar. 9, 2023).

3. IND. CODE § 36-1-3-13 (2021).

4. Enrique Saenz, *New Law Restricts Local Government's Ability to Address Climate Change*, IND. ENV'T REP. (May 5, 2021), <https://www.indianaenvironmentalreporter.org/posts/new-law-restricts-local-governments-ability-to-address-climate-change#:~:text=Public%20Law%20180%2C%20as%20HB,based%20on%20the%20energy%20source.> [https://perma.cc/7FS7-P5H2]; see also *Indiana's Past and Future Climate: A Report from the Indiana Climate Change Impacts Assessment*, PURDUE UNIV. 1 (Mar. 1, 2018), <https://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=1000&context=climatetr> [https://perma.cc/PMN9-MYR4].

After the House of Commons Chamber was destroyed by bombing in World War II, Winston Churchill advocated for the Chamber to be rebuilt in an adversarial rectangular shape which encouraged debate between members of the House and caused them to “seriously weigh their commitments” before they crossed the floor.⁵ Churchill insisted that the shape of the Chamber should reflect strength and trust in their democratic system.⁶ He believed that the Chamber was more than just a structure; the Chamber symbolized human trust and resilience.

Similarly, Hoosiers should be able to trust that their built environment can provide durable shelter and protection in the face of severe storms, flooding, and other natural disasters. Hoosiers should also be able to trust that the Indiana General Assembly is acting in their best economic and environmental interest, not the financial interest of gas and construction companies. While many local Indiana governments have Climate Action Plans that will add more protections for their residents in the face of climate change, PL 180 restricts local Indiana governments from reaching their full potential to create trust and resilience in their built environments and protect Hoosier’s physical, financial, and environmental health.

This Note argues that PL 180 works against the historical purpose of building codes to protect the public, causes Indiana communities to be more vulnerable to the effects of climate change, and makes an empty promise of municipal self-government through Indiana’s Home Rule statute. First, this Note provides a brief historical background of American building codes and the current American trend to embrace green buildings codes or prohibit them through state preemption. Next, this Note discusses influence from utility and construction companies that induced the passage of PL 180 as well as the economic benefits that PL 180 provides to the law’s primary author. This Note then analyzes PL 180 as a burdensome policy to the economic and environmental health of Hoosiers and Indiana communities and asserts that PL 180 works against the historical purpose of Home Rule. Finally, this Note argues that the Indiana General Assembly must repeal PL 180 or limit it through a sunset clause, and then considers a possible challenge to PL 180 through the Privileges and Immunities Clause of the Indiana Constitution to restore constituent’s faith in our General Assembly’s commitment to legislate on behalf of Hoosiers’ concerns and not those of gas and construction companies.

5. Russel Smith, *Winston Churchill on How Our Buildings Shape Us*, RUSSELL’S INSPIRATION DAYBOOK (Apr. 24, 2018), <https://inspirationdaybook.wordpress.com/2018/04/24/winston-churchill-on-how-our-buildings-shape-us/> [<https://perma.cc/3E6E-KSU9>]. See also *Churchill and the Commons Chamber*, *supra* note 1.

6. Mark Petock, *More Than Structures? We are Creating Environments of Trust.*, AUTOMATED BLDG. (Aug. 2020), <http://automatedbuildings.com/news/aug20/articles/lynxspring/200721102909lynxspring.html> [<https://perma.cc/L7M9-CUF3>].

II. BACKGROUND

A. *What Makes a Building Code “Green”?*

Building codes reflect society’s expectation that our built environment should be safe for use and habitation.⁷ Building codes are laws that set minimum requirements for the design and construction of structural systems, heating and air conditioning, ventilation, electrical and natural gas systems, and other aspects of commercial buildings and residences.⁸

The first building codes appeared in the Code of Hammurabi.⁹ One code stated that if a “builder builds a house for someone, and does not construct it properly, and the house falls in and kills its owner, then that builder shall be put to death.”¹⁰ In the United States, devastating events like natural disasters and major fires influenced the adoption of building codes first by individual cities.¹¹ After the Great Chicago Fire of 1871, the Chicago City Council mandated the use of fire-resistant building materials, like brick and terra cotta, and banned the use of wood as a building material from the downtown Chicago area.¹² The 1906 San Francisco Earthquake caused legislators to consider seismic effects and implement earthquake engineering design in building codes.¹³ New York City mandated sprinkler systems and fire extinguishers in buildings after the 1911 Triangle Shirtwaist Factory Fire took hundreds of workers’ lives.¹⁴ Building codes evolved to protect the public after environmental disasters devastated built environments and destroyed thousands of lives and vast amounts of property.

7. Elizabeth A. Coker, *Building Codes: The Role They Can Play*, U.S. DEPT. OF HOUS. & URB. DEV. (Feb. 20, 2018), <https://www.huduser.gov/portal/pdredge/pdr-edge-firm-asst-sec-022018.html> [<https://perma.cc/2AL8-8BTT>].

8. *Understanding Building Codes*, NAT’L INST. OF STANDARDS & DEV. (June 16, 2022), <https://www.nist.gov/buildings-construction/understanding-building-codes> [<https://perma.cc/J49L-D5BV>].

9. Eugene J. Heady, *Construction Law – The History is Ancient!*, SMITH CURRIE, <https://www.smithcurrie.com/publications/common-sense-contract-law/construction-law-the-history-is-ancient/pdf/#:~:text=Hammurabi's%20Code%20was%20one%20of,shall%20be%20put%20to%20death> [<https://perma.cc/A7KV-WZNM>] (last visited Feb. 25, 2023).

10. *Id.*

11. Jim Rossberg & Roberto T. Leon, *Evolution of Codes in the USA*, NAT’L EARTHQUAKES PREVENTION PROGRAM 2-3, https://www.nehrp.gov/pdf/UJNR_2013_Rossberg_Manuscript.pdf [<https://perma.cc/9DAP-DH29>] (last visited Feb. 15, 2023).

12. Blair Kamin, *City Learned Lessons From its Catastrophes*, CHI. TRIBUNE (Apr. 28, 1992), <https://www.chicagotribune.com/news/ct-xpm-1992-04-28-9202070670-story.html> [<https://perma.cc/DW8G-8RND>].

13. *Evolution of Codes*, STAN. UNIV., <https://quake06.stanford.edu/centennial/tour/stop10.html> [<https://perma.cc/C79C-N2V7>] (last visited Feb. 15, 2023).

14. *U.S. Census Bureau History: The Triangle Shirtwaist Fire of 1911*, U.S. CENSUS BUREAU (Mar. 2016), https://www.census.gov/history/www/homepage_archive/2016/march_2016.html [<https://perma.cc/9M7Y-6WWK>].

American state and local governments mostly control building codes.¹⁵ The Federal Government does not set standards for state and local building codes, except for manufactured homes.¹⁶ Many states adopt statewide building codes but leave adoption of their code to the discretion of individual cities, counties, and townships.¹⁷ Consequently, many large cities follow their own building code, while rural areas of a state sometimes do not adopt any building codes.¹⁸ State and local governments model their building codes from regional “model codes” developed by two private organizations: the International Code Council and the National Fire Protection Association.¹⁹ Building code development was historically outsourced to private organizations because of the “fundamental belief” that the private sector can produce better standards, more efficiently, than the government.²⁰

The private organizations that write conventional building codes do not consider the environmental impact from construction or the built environment.²¹ Conversely, green building codes consider public safety from an additional perspective: structural resiliency that protects inhabitants from the effects of climate change.²² Green building refers to both the structure and construction processes that are environmentally responsible and resource efficient in the design, construction, operation, maintenance, and deconstruction of a building.²³

Green buildings improve upon conventional building materials’

15. *Understanding Building Codes*, *supra* note 8.

16. The U.S. Department of Housing and Urban Development (HUD) sets building standards for manufactured housing which preempt state and local building codes. Manufactured homes are built in a factory and transported in one or more sections to a plot of land. For more on HUD’s Manufactured Home Construction and Safety Standards, see *Proposed Updates to the Manufactured Home Construction and Safety Standards*, U.S. DEPT. OF HOUS. & URB. DEV., <https://www.hud.gov/OMHP#:~:text=HUD's%20Manufactured%20Housing%20Program%20is,and%20administration%20of%20dispute%20resolution> [<https://perma.cc/CGS6-C7QF>] (last visited Feb. 15, 2023).

17. Rossberg & Leon, *supra* note 11.

18. *Id.*

19. Cocke, *supra* note 7.

20. Rossberg & Leon, *supra* note 11.

21. Alexander C. Kaufman, *Cities Voted for Green Building Codes. Now Developers Want to End Voting.*, GRIST (Mar. 1, 2021), <https://grist.org/politics/minneapolis-building-codes-industry-backlash/> [<https://perma.cc/2TQT-YZEV>].

22. See *Green Building Standards*, U.S. ENV’T PROT. AGENCY, [https://www.epa.gov/smartgrowth/green-building-standards#:~:text=Buildings%20\(ASHRAE%20189.1\)-,A%20model%20code%20that%20contains%20minimum%20requirements%20for%20increasing%20the,and%20modular%20and%20mobile%20homes](https://www.epa.gov/smartgrowth/green-building-standards#:~:text=Buildings%20(ASHRAE%20189.1)-,A%20model%20code%20that%20contains%20minimum%20requirements%20for%20increasing%20the,and%20modular%20and%20mobile%20homes) [<https://perma.cc/LQJ8-MTNE>]; see also *Green Building Codes, Standards, and Rating Systems*, BLDG. WITH CHEMISTRY <https://www.buildingwithchemistry.org/building-future/green-building-codes-standards-rating-systems/> [<https://perma.cc/GK8P-LCQW>] (last visited Feb. 1, 2023).

23. *Green Building, Basic Information*, U.S. ENV’T PROT. AGENCY (Feb. 20, 2016), <https://archive.epa.gov/greenbuilding/web/html/about.html> [<https://perma.cc/YUL7-S3Z9>].

environmental impact by instead using sustainably manufactured materials.²⁴ Green building materials are often made from reutilized materials like recycled plastic, reclaimed wood, or recycled steel.²⁵ Some green buildings use natural materials like bamboo, straw, sheep's wool insulation, "hempcrete" (a concrete-like material made from hemp fibers), or "timbercrete" (a mix of sawdust and concrete).²⁶ Green buildings also consider resource conservation through devices like high-efficiency plumbing fixtures and water-efficient irrigation technologies.²⁷

Energy efficiency is a cornerstone of green building.²⁸ Green buildings use energy efficient appliances that use less power to accomplish the same task as a competing appliance.²⁹ For example, smart thermostats are an energy efficient alternative to manual thermostats because they connect to the internet and read weather forecasts to self-adjust indoor temperatures.³⁰ Tankless water heaters instantaneously provide hot water only as needed instead of tank water heaters that constantly use energy to keep gallons of water warm at all times.³¹ Thicker insulation helps to cut utility bills by 50% and significantly reduces carbon dioxide emissions from buildings.³² Some green buildings even cover uninsulated roofs with living plants, which can save up to 5% of heating energy in the winter and 33% of cooling energy in the summer.³³

24. Joseph G. Allen et al., *Green Buildings and Health*, 2 CURRENT ENV'T HEALTH REP. 250 (July 10, 2015), <https://link.springer.com/article/10.1007/s40572-015-0063-y#citeas> [<https://perma.cc/V46F-CMWU>].

25. *Id.*

26. *Id.*

27. *How to Increase Water Efficiency in Green Buildings?*, ONE ENERGY SYS., <https://www.1energysystems.com/water-efficiency-in-green-building/#:~:text=The%20core%20concepts%20of%20green,avoiding%20wastage%20of%20natural%20resources> [<https://perma.cc/H2U6-5Y48>] (last visited Feb. 1, 2023).

28. Emily Rabin, *Durability: A Key Component of Green Building*, GREENBIZ (Dec. 18, 2005), <https://www.greenbiz.com/article/durability-key-component-green-building> [<https://perma.cc/YT2S-LPCX>].

29. Jane Marsh, *The Top Energy Efficient Appliances*, ENV'T (July 11, 2022), <https://environment.co/the-top-energy-efficient-appliances/> [<https://perma.cc/VMG9-Y853>].

30. *Id.*

31. *Tankless Water Heaters v. Storage Tank Water Heaters*, GRAINGER (Feb. 17, 2022), https://www.grainger.com/know-how/equipment-information/kh-tankless-vs-storage-tank-water-heaters?gucid=N:N:PS:Paid:GGL:CSM-2296:AD9MJX:20511231&gclid=EA1aIQobChMIk5ak7rmx_QIV8ciUCR2fuw0JEAAYASAAEgLzSfD_BwE&gclidsrc=aw.ds [<https://perma.cc/7RTV-AL35>].

32. Karen Carstens, *Size and Thickness Do Matter, Say Housing-Insulation Makers*, POLITICO (May 27, 2003), <https://www.politico.eu/article/size-and-thickness-do-matter-say-housing-insulation-makers-2/> [<https://perma.cc/3L9A-3L66>].

33. *17+ Sustainable and Green Building Construction Materials*, CONSERVE ENERGY FUTURE, <https://www.conserve-energy-future.com/sustainable-construction-materials.php> [<https://perma.cc/N49M-ABP4>] (last visited Feb. 1, 2023).

Durability is another cornerstone of green buildings because they must withstand the effects of climate change.³⁴ Extreme temperatures, strong storms, flooding and other intense weather events cause conventional building materials to deteriorate, but green building materials are manufactured to withstand these events with minimal damage.³⁵ Green buildings consider durability in the siting of new buildings, so that they are built outside of floodplains and away from coastlines.³⁶ Green buildings consider internal moisture management, implementing exhaust systems where the most significant moisture sources are located, like kitchens and bathrooms.³⁷ Other durability considerations in the construction or retrofitting of buildings are thermal stressors which can cause building materials to contract and expand, degradation from ultraviolet rays, insect damage, and life cycle analyses of building materials so that builders can be sure they are using materials that do not wear out as quickly as competing materials.³⁸

Conventional building materials can negatively affect human health, while green buildings consider the effect of pollution and toxins on humans from building materials. Many conventional building materials contain chemicals which can lead to short- and long-term adverse health effects.³⁹ Conventional materials like concrete and certain types of paints and varnishes contaminate the environment and can cause illness because of the human and environmental consumption from their mining, extraction, production, treatment, transport, and installation processes.⁴⁰ Indoor air quality is especially affected by volatile organic compounds emitted from building materials, which have an adverse effect on the health of humans, especially humans that spend a lot of time indoors, like students and office workers.⁴¹ Short-term effects are skin allergies, eye irritation, throat irritation, or sneezing, while long term effects can manifest as asthma, cancer, or infertility.⁴² Some of these effects can even pass to the next generation in the form of autism, obesity, or hormonal disorders.⁴³ Green buildings that use

34. Rabin, *supra* note 28.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. Partisha Laskar, *Importance of Building Materials on Human Health*, LINKEDIN (Aug. 23, 2020), [linkedin.com/pulse/importance-building-materials-human-health-pratisha-laskar/?utm_medium=website&utm_source=archdaily.com](https://www.linkedin.com/pulse/importance-building-materials-human-health-pratisha-laskar/?utm_medium=website&utm_source=archdaily.com) [<https://perma.cc/4HEC-ABXT>].

40. *Non-Polluting Construction Materials*, SUSTAINABILITY FOR ALL, https://www.activesustainability.com/construction-and-urban-development/non-polluting-construction-materials/?_adin=02021864894 [<https://perma.cc/A3C6-DY4X>] (last visited Feb. 1, 2023).

41. Mateusz Kozicki & Adam Nieslochowski, *Materials Contamination and Indoor Air Pollution Caused by Tar Products and Fungicidal Impregnations: Intervention Research in 2014-2019*, NAT'L LIBR. OF MED. (July 23, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7435637/> [<https://perma.cc/SF9Y-P8RH>].

42. Laskar, *supra* note 39.

43. *Id.*

natural and sustainable materials can decrease or eliminate the negative health effects to humans caused by conventional building materials.

Additionally, studies show that buildings which incorporate green infrastructure like green roofs, ornamental living walls, or a surrounding landscape with trees or living plants have positive effects on human health.⁴⁴ People that live or work near areas with a higher concentration of green roofs have better mental health, heal more quickly after an illness, and are more productive at work.⁴⁵ Australian hospitals with interior and exterior living plant infrastructure reported reduced hospital stays by 8.5%, increased recovery time by 15%, and lowered need for pain medication by 22%.⁴⁶ Living plant infrastructure in buildings also improves indoor air quality, which is one of the top five environmental risks to human health.⁴⁷

Green building codes complement and expand the conventional building concerns of economy, utility, durability, and comfort.⁴⁸ While conventional and green buildings share a primary goal of public safety, green buildings consider additional layers of public safety: the protection of humans and the natural environment from pollution caused by buildings, within the broader context of how the built environment can protect humans from the worsening effects of climate change. By requiring durable, healthy, and sustainable materials, designs, and components, green building codes provide long-lasting benefits to human and environmental health.

B. What Is Happening with Green Building Codes Throughout the United States?

Building codes are an increasingly popular area of legal interest to gas and construction companies.⁴⁹ Gas companies losing profits through the transition to energy efficient homes and an increasing use of renewable energy sources are influencing state legislators to pass state preemption laws which preclude local governments from restricting the use of gas-powered appliances.⁵⁰ Similarly, construction companies are lobbying state legislators to preempt building code control at the state level so that local governments cannot require environmentally conscious building practices, which can require more expensive materials and

44. Sazan Rahman, *Green Buildings Can Reduce Temperatures by Up to 2C, Study Shows*, WORLD ECON. F. (Feb. 17, 2022), <https://www.weforum.org/agenda/2022/02/green-buildings-can-boost-productivity-well-being-and-health-of-workers> [https://perma.cc/39C3-M429].

45. *Id.*

46. *Id.*

47. *Id.*

48. *Green Building, Basic Information*, *supra* note 23.

49. See Kaufman, *supra* note 21; Rebecca Leber, *An “Attack on American Cities” is Freezing Climate Action in its Tracks*, VOX, (Sep. 29, 2021), <https://www.vox.com/22691755/gas-utilities-fight-electrification-preemption> [https://perma.cc/W4SH-7STQ].

50. *Id.*

specialized training for builders.⁵¹

The State of Arizona passed a building code preemption law in 2020.⁵² After California's CALGreen legislation, nearby natural gas companies noticed the fiscal impact from lower usage rates of natural gas.⁵³ Influenced by Southwest Natural Gas and its political action committees' campaign donations, Arizona Senate President, Karen Fann, and Speaker of the House, Rusty Bowers, introduced a bill that prohibited local governments from enacting building codes that would favor electricity over natural gas.⁵⁴ Their bill became law even though no Arizona cities or towns had even attempted to pass a local law requiring that any structures adhere to any sort of green building code at that time.⁵⁵ Additional states that have similarly passed building code preemption laws from the influence of gas and construction companies are Texas, Oklahoma, Kansas, and Tennessee, while fourteen other states are considering preemption bans.⁵⁶

Nevertheless, the City of Scottsdale, Arizona created a voluntary green building program designed to reduce the environmental impact of buildings.⁵⁷ Scottsdale's Green Building Program works around the state's building code preemption statute because it is *voluntary*; the city did not set green building code *requirements*. The City of Scottsdale gives cooperating builders the Green Building Program logo to display in their structures because the city believes that the logo will strengthen cooperating companies' environmental image. The city acknowledges that modern home buyers are more "savvy and demanding" when selecting environmentally conscious home products.⁵⁸ Scottsdale's voluntary program does not conflict with Arizona's state preemption statute but provides a pathway for environmentally conscious builders to follow.

Some states follow an opposite path by codifying green building codes. The State of California adopted the first and most robust statewide green building code in the United States in 2009.⁵⁹ The California Green Building Standards Code, or CALGreen, works to improve public health, safety, and general welfare through design and construction of residential and non-residential buildings.⁶⁰

51. *Id.*

52. Joan Fitzgerald, *Preemption of Green Cities in Red States*, PLANETIZAN (Sept. 7, 2021), <https://www.planetizen.com/blogs/114584-preemption-green-cities-red-states> [<https://perma.cc/K3WZ-D6QG>].

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *Invitation to Participate*, CITY OF SCOTTSDALE, <https://www.scottsdaleaz.gov/green-building-program/invitation> [<https://perma.cc/7KNM-7NDB>] (last visited Mar. 1, 2023).

58. *Id.*

59. California Green Building Standards Code, Tit. 24, Part 11 (2022, Act effective Jan. 1, 2023).

60. *CALGreen*, CAL. DEP'T OF HOUS. & DEV., <https://www.hcd.ca.gov/building-standards/calgreen#:~:text=CALGreen%20is%20California's%20first%20green,California%20Code%20of%20Regulations%20%E2%80%8C> [<https://perma.cc/3FVF-QSTP>] (last visited Mar. 1, 2023).

CALGreen does not preclude local California governments from enacting stricter green building regulations, however, by 2010, at least fifty California local governments did so.⁶¹ California's goal is to encourage positive environmental impact and sustainable construction practices through five categories: planning and design, energy efficiency, water efficiency and conservation, material conservation and resource efficiency, and environmental quality.⁶² CALGreen involves mandatory and voluntary practices for all buildings constructed after January 1, 2011, with provisions for both newly constructed buildings and alterations for existing buildings.⁶³ Additional states that have codified green building codes or standards are Colorado,⁶⁴ Virginia, Washington, and Oregon.⁶⁵

States are divided over the issue of building codes and how much control their local governments should have to enact their own building requirements. Further, interference from utility and construction companies has caused building codes throughout states to become a "battleground."⁶⁶ Indiana is one such battleground state.

III. LEGISLATIVE BACKGROUND AND ANALYSIS OF PL180, HOW PL 180'S POLICY HAS A NEGATIVE IMPACT ON INDIANA COMMUNITIES, AND POSSIBLE LEGAL SOLUTIONS

PL 180 was enacted in 2021 and added to Indiana's Home Rule Statute.⁶⁷ PL 180 provides that local units may not:

- (a) Require that new buildings be constructed, or existing buildings be retrofitted, with a particular component, design, or type of material because that component, design, or material has energy-saving or energy-producing qualities;
- (b) Prohibit the use of a particular component, design, or type of

61. Andrea Ward, *California Adopted Nation's First Statewide Green Building Code*, ARCHITECTURAL REC., (Feb. 9, 2010), <https://www.architecturalrecord.com/articles/5407-california-adopts-nation-s-first-statewide-green-building-code> [<https://perma.cc/LVW8-PZHN>].

62. *CALGreen*, *supra* note 54.

63. *Id.*

64. Calvin Hennick, *Regulatory Wins for Green Buildings in Three U.S. States*, U.S. GREEN BLDG. COUNCIL (Feb. 11, 2021), <https://www.usgbc.org/articles/regulatory-wins-green-building-three-us-states> [<https://perma.cc/DV3Z-S77G>]; Colorado has adopted green building standards, not green building codes. Building standards are voluntary requirements typically written in technical language for architects and builders, while building codes are law. *See Green Building Codes, Standards, and Rating Systems*, *supra* note 21.

65. Hennick, *supra* note 63; *see also Green Codes and Initiatives*, BLDG. INNOVATIONS DATABASE, <https://www.buildinginnovations.org/green-codes-initiatives/> [<https://perma.cc/95UF-6VQM>] (last visited Mar. 14, 2023).

66. David Iaconangelo, *Building Codes: The New Natural Gas Battleground?*, ENERGY WIRE (May 3, 2022), <https://www.eenews.net/articles/building-codes-the-new-natural-gas-battleground/> [<https://perma.cc/5W8S-DQC4>].

67. IND. CODE § 36-1-3-13 (2021).

- material in the construction of a building because the component, design, or material does not meet an energy saving standard;
- (c) Prohibit or restrict the purchase or use of vehicles or other machines based upon the type of energy that powers it;⁶⁸
 - (d) Prohibit the sale, installation, or use of natural-gas powered home heating equipment and home or outdoor appliances; or
 - (e) Enact codes, ordinances, or land use regulations that would stop utilities from selling, or customers from purchasing, liquid petroleum gas or other fuel based on the energy source.⁶⁹

PL 180 has wide-ranging subject matter, combining restrictions on building materials, designs, and components based on their energy-saving or -producing capabilities, restriction to prohibit natural gas powered appliances, restriction of vehicle sales based on their power source, and restriction of local land use ordinances based on the ability of customers to purchase or utilities to sell liquid petroleum gas.⁷⁰ Construction materials, vehicles, home appliances, and land use ordinances seem disconnected to be joined in one law; the connecting factor is that their sale, use, or installation is limited based on what kind of energy they use. More specifically, the law prohibits the sale, use, or installation of these components only if local governments work to require that they have energy-saving qualities. This Note focuses on PL 180's construction limitations but finds that home appliances and land use ordinances conveniently work into an overall preclusion of green building codes.

The passage of PL 180 was supported by Country Mark, Indiana/Michigan Power, the Indiana Energy Association, the Indiana Manufacturer's Association, and the Indiana Builder's Association.⁷¹ The law was also supported by the Indiana Chamber of Commerce, whose members use, trade, and invest in fossil fuels.⁷² Further, the Indiana Environmental Reporter has conjectured that the law was supported by members of the American Legislative Exchange Council (ALEC), a nonprofit organization that joins state legislators with experienced drafters, which can include lobbyists.⁷³ Critics point to ALEC's boilerplate language, present in PL 180, that has also turned up in energy and building code

68. Part (c) prohibits local governments from requiring that vehicles used or purchased in their jurisdiction have any energy saving attributes. For example, a local government cannot require that car dealerships in their jurisdiction only sell electric vehicles. The transportation sector accounted for 27% of U.S. greenhouse gas emissions in 2020, exceeding the electric power sector's emissions by 2%. However, the transportation sector is outside the scope of this Note. *See* DANIEL A. FARBER & CINNAMON P. CARLARNE, *CLIMATE CHANGE* L. 148, 291 (Foundation Press, 2nd ed. 2023).

69. *See* IND. CODE § 36-1-3-13 (2021); *see also* Saenz, *supra* note 4 (Saenz paraphrases PL 180 in an easy-to-read way in which it is displayed in this Note but is not the full text in the Indiana Code).

70. IND. CODE § 36-1-3-13 (2021).

71. Saenz, *supra* note 4.

72. *Id.*

73. *Id.*

preemption laws at the influence of ALEC in Kansas, Missouri, West Virginia, and several other states.⁷⁴

Rep. Jim Pressel, the primary author of the law, framed PL 180 as a short-term measure to aid Hoosiers during the Covid-19 Pandemic: “I think it’s very unfair to our constituents . . . to take away any source of energy that is . . . during a pandemic, the cheapest and most affordable way to heat your house.”⁷⁵ While Pressel describes the law as a pandemic protection, many pandemic protections were temporary and ended when Federal funding ceased or the state ended its public health emergency status,⁷⁶ unlike PL 180, a law that will be codified as Indiana law unless it is repealed by the legislature or successfully challenged in court.

Pressel’s reasoning may be more self-serving than a measure to help Hoosiers during a pandemic—Pressel was the president of the Indiana Home Builder’s Association in 2016, and is also a current member of the board of directors for a high school program regarding building trades.⁷⁷ Further, Rep. Pressel owns a construction business which primarily builds new residential homes and remodels old residential homes in Northwest Indiana.⁷⁸ Conveniently for Rep. Pressel, PL 180 precludes local Indiana governments from requiring that his business should construct or remodel homes according to any green building codes.

PL 180 is not a law to help Hoosiers during a pandemic; PL 180 is a law that insulates construction companies, like Rep. Pressel’s, from changing their building techniques or bearing extra expense to use environmentally conscious building materials, designs, and components. Further, at the behest of local utility companies, PL 180 reinforces Hoosiers’ dependence on fossil fuels as well as the

74. *Id.*; see also Kari Lydersen, *Indiana Lawmakers to Vote on Bill to Ban Local Heating Electrification Initiatives*, ENERGY NEWS NETWORK (Jan. 25, 2021), <https://energynews.us/2021/01/25/indiana-lawmakers-to-vote-on-bill-to-ban-local-heating-electrification-initiatives/> [<https://perma.cc/QR38-QY9E>].

75. *Id.*

76. The State of Indiana ended its public health emergency status resulting from the Covid-19 Pandemic on March 3, 2022. See Brandon Smith, *Gov. Holcomb Officially Ends Indiana’s Covid-19 Public Health Emergency*, WFYI (Mar. 3, 2022), <https://www.wfyi.org/news/articles/gov-eric-holcomb-officially-ends-indianas-covid-19-public-health-emergency> [<https://perma.cc/BJF5-A8J4>]. During the Covid-19 Pandemic, many Hoosiers were eligible to receive temporary emergency resources, such as rental assistance and additional SNAP benefits. The Indy Rent program stopped taking applications in 2022 when federal funding ended; see *IndyRent Assistance Portal*, CITY OF INDIANAPOLIS, <https://indyrent.org/> [<https://perma.cc/J8CN-9AN6>] (last visited Feb. 19, 2023). Additional SNAP benefits given during the Covid-19 pandemic ceased when the State ended its public health emergency status. See *SNAP Benefits – Covid-19 Pandemic and Beyond*, U.S. DEPT OF AGRIC. (Oct. 8, 2021), <https://www.fns.usda.gov/snap/benefit-changes-2021#:~:text=30%2C%202021.,permanently%20adjusted%20as%20of%20Oct> [<https://perma.cc/VNH7-ZYWT>].

77. *Jim Pressel*, IND. HOUSE OF REP. REPUBLICAN CAUCUS, <https://www.indianahousepublicans.com/members/general/jim-pressel> [<https://perma.cc/Y37R-LTE6>] (last visited Mar. 15, 2023).

78. *Id.*

money Hoosiers give to gas companies through the payment of their energy bills. Rep. Pressel's purported consideration for Hoosier's energy costs is merely cover for the protection of his own construction interests as well as the gas companies that influenced passage of the law.

A. PL 180's Impact on Indiana Communities

There is a misconception that Hoosiers are not concerned about the effects of climate change.⁷⁹ In a survey of about twelve hundred Hoosiers across the state, Indiana University found that over 80% of rural and urban residents believe that climate change is happening to some degree.⁸⁰ The environment ranks third out of the top four priorities for Hoosiers, after education and health care, respectively.⁸¹ Because Hoosiers are concerned about the effects of climate change in their communities, many local governments have enacted Climate Action Plans (with assistance from Indiana University's Environmental Resilience Institute), which describe specific strategies that communities will take to reduce their local greenhouse gas (GHG) emissions and adapt to climate change.⁸²

In Richmond, Indiana, over 80% of respondents to Richmond's climate action survey expressed concern about climate change and its future effects.⁸³ Richmond's Climate Action Plan associates five symbols attributed to certain provisions described as "co-benefits," beneficial side effects of pursuing a particular adaptation or mitigation strategy.⁸⁴ Some co-benefits consist of a "nature co-benefit" which improves the natural environment, an "economic co-benefit" which could manifest as cost savings or significant revenues, and a "health co-benefit" which could reduce or avert negative health effects, like

79. Molly Burhans et al., *How do Rural Hoosiers View Climate Change? Insights Towards Engagement and Policy Design*, IND. UNIV. ENV'T RESILIENCE INST. (2022), <https://eri.iu.edu/tools-and-resources/hoosier-life-survey/hls-rural-report-text-alternative.html> [https://perma.cc/J6FE-ZY4Q].

80. *Id.*

81. David Daugherty et al., *Attitudes and Opinions About Environmental Issues in Indiana*, ARIZ. STATE UNIV. MORRISON INST. FOR PUB. POL'Y (May 2020), <https://www.ninapulliamtrust.org/wp-content/uploads/2020/09/WEBSITE-Pulliam-Indy-Enviro-Survey-Report-2020-5-15-2020-1.pdf> [https://perma.cc/2NVM-CES3].

82. Other local units with climate action plans include Bloomington, Fort Wayne, Carmel, Indianapolis, Elkhart, Evansville, Gary, Goshen, Zionsville, and West Lafayette. Jonathan Hines, *Indiana Cities to Develop Climate Action Plans in Partnership With IU*, IND. UNIV. (Mar. 9, 2020), <https://news.iu.edu/stories/2020/03/iu/releases/09-indiana-cities-reduce-greenhouse-gases-resilience-cohort.html> [https://perma.cc/EAF7-U7XS].

83. *City of Richmond, Indiana Climate Action Plan*, Res. 9-2022, 2 (Aug. 31, 2022) <https://portal.laserfiche.com/Portal/DocView.aspx?id=166377&repo=r-979ae874&preview=ZzbKa7B> [https://perma.cc/2TYT-GEH2].

84. *Id.* at 9.

improved air quality or decreased heat stress.⁸⁵

The first approach to Richmond's plan is to adapt their built environment.⁸⁶ Richmond asks: "[h]ow can we strengthen infrastructure knowing that extreme temperatures and precipitation can be destructive to concrete, pavement, and other commonly used construction materials?"⁸⁷ Their strategies to address this problem include implementing programs that reduce heat impacts on buildings and adopting policies for post-flood repairs to damaged infrastructure.⁸⁸ Richmond also plans to evaluate how their local business community will be affected by increasing costs to recover from extreme weather events and higher insurance rates.⁸⁹ PL 180 precludes Richmond from requiring that homes and local businesses build or retrofit their buildings with green building materials; as a result, Richmond will continue to mitigate destructive climate events, spending local tax dollars on these issues in perpetuity, instead of being able to require green building codes which would provide a long-lasting foundation of protection and economic savings.

Richmond's plan also contains a provision for increasing renewable energy sources in their local energy portfolio and integrating renewable energy into land use and zoning codes.⁹⁰ Notably, Richmond's plan "*encourage[s]* alternative energy generation,"⁹¹ but PL 180 precludes Richmond from *requiring* alternative energy generation, storage, and distribution. PL 180 also precludes Richmond from adopting any land use ordinances which would stop utilities from selling, or customers from purchasing, liquid petroleum gas as their energy source instead of requiring the use of renewable energy.⁹² Richmond's Climate Action Plan and projected co-benefits will never reach their full potential for protection, economic savings, and health benefits if Richmond cannot fully implement their mitigation and adaptation strategies. Instead, Richmond and other Indiana communities will exist in a constant state of trying to mitigate and recover, rather than providing meaningful and reliable resilience to their built environments and residents through green building codes.

PL 180 unnecessarily stymies Indiana local governments' plans to fight climate change through environmentally conscious construction and energy production. Consequently, Indiana communities' plans to create resilience for their residents will never be fully realized and communities will never be able to provide the full protection they seek and which climate change commands. Sadly, PL 180 disincentivizes local Indiana governments from enacting climate change mitigation and adaptation efforts and sends a broader message that their state legislators are not on their side and may even preempt any climate action efforts

85. *Id.*

86. *Id.* at 2.

87. *Id.* at 12.

88. *Id.* at 20-21.

89. *Id.* at 23.

90. *Id.* at 3.

91. *Id.* (emphasis added).

92. IND. CODE § 36-1-3-13 (2021).

they attempt to implement. Most egregiously, PL 180 is a misuse of power by our legislators who will not act on constituents' concerns about the effects our state faces from climate change, and instead use their ability to create law to their own advantage at the environmental and economic detriment of Hoosiers and Indiana communities.

B. PL 180 Is a Burden to Indiana Communities' Environmental Health

PL 180 maintains the status quo for Indiana's current environmental health rankings: Indiana has the forty-sixth worst natural environment and forty-sixth worst air quality in the United States.⁹³ Indiana has the highest carbon footprint in the Industrial Midwest⁹⁴ and ranks eighth in the top ten states which emit the highest levels of GHG emissions.⁹⁵ Indiana has already been impacted by climate change through effects like heavy rainfall, extreme heat waves, and increasing disease-spreading insect populations like mosquitos.⁹⁶ By 2050, the number of extremely hot days will significantly increase in every Indiana county.⁹⁷ These issues are forecast to become worse as GHG emissions rise.⁹⁸

While conventional buildings contribute to over 40% of national GHG emissions, green buildings can reduce emissions significantly.⁹⁹ A 2014 UC Berkeley study found that buildings constructed to Leadership in Energy and Environmental Design (LEED) standards reduced their emissions by 50% due to efficient water consumption, 48% through reduced solid waste generation, and 5% from reduced transportation.¹⁰⁰ When buildings use less water, the emissions which result from the energy used to withdraw, treat and pump the water are reduced.¹⁰¹ Recycled and sustainably manufactured building materials cause less solid waste to end up in landfills, and reduced transportation of materials and solid waste to and from buildings lowers emissions from fuel consumption.¹⁰²

Indiana communities are denied a crucial opportunity to provide protection

93. Emily Hopkins, *Indiana Has a Pollution Reputation. Here's How Bad It Is.*, INDIANAPOLIS STAR (Apr. 24, 2018), <https://www.indystar.com/story/news/2018/04/19/how-bad-indianas-environment-actually-according/525003002/> [<https://perma.cc/44RN-P8S9>].

94. Saenz, *supra* note 4.

95. Sarah Bowman, *Scrub Hub: How Much of the U.S. Carbon Emissions Come From Indiana? (Hint: It's a Lot)*, INDIANAPOLIS STAR (Sept. 7, 2021), <https://www.indystar.com/story/news/environment/2021/09/07/indiana-carbon-emissions-ranking-among-highest-us/5683729001/> [<https://perma.cc/M2G7-PKCM>].

96. Burhans et al., *supra* note 79.

97. *See Indiana's Past and Future Climate*, *supra* note 4, at 3-4.

98. *Id.*

99. Christina Huynh, *How Green Buildings Can Help Fight Climate Change*, U.S. GREEN BLDG. COUNCIL (Mar. 1, 2021), <https://www.usgbc.org/articles/how-green-buildings-can-help-fight-climate-change> [<https://perma.cc/BS6Q-T9DL>].

100. *Id.*

101. *Id.*

102. *Id.*

and longevity to their environments without the ability to require a reduction in GHG emissions from their local built environments through green building codes. As our global climate rapidly and severely warms, state and local government initiatives can make a significant collective difference in the reduction of GHG emissions: “[t]he truth is that despite the large-scale, global impact of climate change . . . states and cities, not Washington D.C. . . . have most of the legal powers to prevent warming. . . .”¹⁰³ PL 180 precludes local Indiana governments from facilitating their powerful role in protecting our local, state, and global climate. Instead, PL 180 reinforces our current trajectory towards an uninhabitable climate by bolstering Indiana’s astonishing rate of GHG emissions through usage of conventional construction practices.¹⁰⁴

Additionally, PL 180 reinforces Indiana’s dependence on fossil fuel powered energy sources, historically an industry which has emitted the most GHG emissions than any other sector.¹⁰⁵ Gabriel Fillipelli, executive director of Indiana University’s Environmental Resilience Institute, said that PL 180 “delays the really critical inevitability of switching over to renewable, non-climate destructive energy sources.”¹⁰⁶ Our climate will never heal if we do not “dramatically” change how we generate and use electricity.¹⁰⁷ Indiana communities must make this switch to renewable energy as natural resources become scarcer and more expensive,¹⁰⁸ and GHG emissions from fossil fuel

103. Bill Ritter, *Why States and Cities Must Lead the Way on Climate Change*, WALL ST. J. (Apr. 26, 2016), <https://www.wsj.com/articles/BL-258B-6941> [<https://perma.cc/6TKJ-KLVM>].

104. A U.N. report published on Mar. 20, 2023 reveals that “nations will need to make an immediate and drastic shift away from fossil fuels to prevent the planet from overheating dangerously”; Brad Plumer, *World Has Less Than a Decade to Stop Catastrophic Warming*, U.N. Panel Says, N.Y. TIMES (Mar. 21, 2023), <https://www.nytimes.com/2023/03/20/climate/global-warming-ipcc-earth.html> [<https://perma.cc/GE8X-99G5>].

105. The energy sector has historically been the largest emitter of GHG emissions, though the transportation sector’s GHG emission surpassed the energy sector’s by 2% in 2020. See Farber & Carlarne, *supra* note 68.

106. Saenz, *supra* note 4.

107. *Importance of Renewable Energy in the Fight Against Climate Change*, WORLD WILDLIFE FUND (2015), <https://www.worldwildlife.org/magazine/issues/summer-2015/articles/importance-of-renewable-energy-in-the-fight-against-climate-change--3> [<https://perma.cc/8FVE-9LCE>].

108. See *Energy Prices Expected to Stay at Historic Highs Through 2023*, ENBRIDGE (July 27, 2022), <https://www.enbridge.com/projects-and-infrastructure/public-awareness/line-5-newsroom/energy-prices-expected-to-stay-at-historic-highs-through-2023> [<https://perma.cc/WR2N-J8P7>]; Heath Knakmuhs, *Inflation and Resource Scarcity Drove Electricity Rates Higher in 2021*, U.S. CHAMBER COM. GLOB. ENERGY INST. (April 12, 2022), <https://www.globalenergyinstitute.org/inflation-and-resource-scarcity-drove-electricity-rates-higher-2021> [<https://perma.cc/X2WK-JZKA>]. Utility prices have also been affected by the Russia/Ukraine War. See Suriya Jayanti, *Think the Energy Crisis is Bad? Wait Until Next Winter*, TIME (Oct. 31, 2022), <https://time.com/6226587/energy-crisis-next-winter/> [<https://perma.cc/6SBW-92D2>].

powered energy sources create untenable emissions levels.¹⁰⁹ However, PL 180 keeps Indiana communities from shifting to renewable energy sources, delaying our ability to become familiar and comfortable with renewable energy technologies and maintaining Indiana's significant contribution to global GHG emissions levels through fossil fuel powered energy sources.

Finally, PL 180 sets a discouraging tone for Indiana communities to effect meaningful changes to lower their environmental impact. PL 180 sends a message to local Indiana governments that they can expect their environmental efforts to be preempted by the state, especially when those efforts affect major corporations with close ties to Indiana legislators. Unlike Scottsdale's Green Building Logo, which the city believes will encourage interest in environmental consciousness, PL 180 precludes local governments from increasing visibility of environmental conservation through requirement of green building practices. Hoosiers know the truth is that our climate is dangerously changing, and we will be affected by catastrophic climate effects soon,¹¹⁰ but our legislature continuously denies opportunities to enact law or policy that reflect constituents' climate concerns.¹¹¹ Indeed, PL 180 demonstrates that our legislators actively work against their constituent's concerns about climate change.

C. PL 180 Is a Burden to Hoosiers' and Indiana Communities' Economic Health

PL 180 acts as an economic security for Rep. Pressel's home building business and gas and construction companies at increasing, long-term costs to Indiana residents and communities. PL 180 will cause Hoosiers to pay more for energy and building maintenance costs as natural resources become more scarce and conventional building materials deteriorate.¹¹² PL 180 also precludes Hoosier's properties from reaching their full property value potential since resilient homes boast higher values.¹¹³ Finally, PL 180 precludes local governments from attracting environmentally conscious businesses, an expense borne by Indiana residents and community economic development.

Green buildings are an important financial investment for Hoosier home and

109. Farber & Carlarne, *supra* note 68.

110. Hines, *supra* note 82.

111. The Indiana General Assembly has denied many environmental actions supported by Hoosiers. See Karl Schneider, *Youth-Driven Bill to Create Climate Task Force Dies in Senate — Again*, INDIANAPOLIS STAR (Feb. 27, 2023), <https://www.indystar.com/story/news/2023/02/27/indiana-climate-change-task-force-bill-gets-hearing-but-no-vote/69927018007/> [<https://perma.cc/6K4K-BBHS>]; Sarah Bowman & Karl Schneider, *These Bills Seek to Protect the Environment and Hoosiers' Health. They Die Every Year.*, INDIANAPOLIS STAR (Jan. 30, 2023), <https://www.indystar.com/story/news/environment/2023/01/30/indiana-general-assembly-ignores-environment-public-health-bills-year-after-year/69833407007/> [<https://perma.cc/KD26-YE3D>].

112. Knakmuhs, *supra* note 108.

113. ALICE C. HILL & LEONARDO MARTINEZ-DIAZ, *BUILDING A RESILIENT TOMORROW* 23, 213 (Oxford University Press, 2020).

business owners and Indiana communities.¹¹⁴ While green building materials can command higher prices in the building process, they provide significant long-term financial savings.¹¹⁵ Green building materials are more expensive than conventional building materials because they may be less readily available and construction may take longer and require specialized knowledge to work with green technologies and materials.¹¹⁶ However, the cost of green building materials is lowering as competition in the market and interest in green building grows.¹¹⁷ One study found that a structure built to achieve basic LEED certification costs only 0.8% more to build than a conventional building.¹¹⁸ Importantly, green buildings create significant long-term savings for Hoosiers and local governments through energy efficiency and lower maintenance costs which offset higher upfront costs.

MIT Technology Review predicts that energy demands for cooling will triple by 2050.¹¹⁹ Increased energy usage in Indiana homes and businesses will result in higher utility bills. In a 2020 survey, almost 30% of Indiana households go without food or medicine to pay their utility bill.¹²⁰ These households also received at least one disconnection notice or will keep their home at “unhealthy” temperatures to keep their utility bills low.¹²¹ Energy efficiency is a critical part of green building design that lowers residents’ utility bills. PL 180 disincentivizes energy efficiency: real estate developers are likely to install cheaper-for-them, less energy efficient appliances without a requirement to install environmentally conscious building components. This issue is precisely why local communities must be able to require green building codes. Otherwise, builders will choose materials, designs, and components that seem easier and less expensive for them to work with, at the long-term expense of Hoosiers.

Since green buildings are more durable than conventional buildings, they

114. Marc Karell, *Saving Green: The Financial Benefits of Green Buildings*, FM LINK (Dec. 2019), <https://www.fmlink.com/articles/saving-green-financial-benefits-green-buildings/#:~:text=Reduced%20Costs.&text=Many%20green%20updates%20prove%20to,cost%20savings%20year%20after%20year> [https://perma.cc/RKW8-GFZH].

115. *Green Buildings: What Are Green Buildings?*, PAC.NW.NAT’LLAB’Y, <https://www.pnnl.gov/explainer-articles/green-buildings#:~:text=Benefits%20of%20green%20buildings,reducing%20emissions%20and%20other%20waste> [https://perma.cc/CF9G-FG8J] (last visited Mar. 1, 2023).

116. *Id.*

117. Karell, *supra* note 114.

118. Charles Lockwood, *Building the Green Way*, HARV. BUS. REV. (June 2006), <https://hbr.org/2006/06/building-the-green-way> [https://perma.cc/QN7M-E43J].

119. *Green Building and Design: The Future of Sustainable Design*, OHIO UNIV. (July 20, 2022) <https://onlinemasters.ohio.edu/blog/green-building-and-design/> [https://perma.cc/D766-QJN3].

120. Rebecca Thiele, *How Many Hoosiers Are Getting Their Power Shut Off? A State Agency Wants More Info*, WFYI INDIANAPOLIS (July 7, 2022) <https://www.wfyi.org/news/articles/how-many-hoosiers-are-getting-their-power-shut-off-a-state-agency-wants-more-info> [https://perma.cc/WJ37-666H].

121. *Id.*

create less long-term maintenance costs.¹²² The savings from green buildings return the initial investment in green materials and construction; if a property owner initially pays for more durable construction materials and energy efficient appliances, they will experience the savings from those improvements perpetually.¹²³ Marc Karell, President of the energy and environmental consulting firm Climate Change & Environmental Services, describes the return on green building investment:

If a building owner saves, say, \$10,000 per year in electricity costs the first year after changes, the savings will not only be the same \$10,000 the next year, but actually more, as savings are based on a utility rate which only rises in time (how often do utilities lower their electric or gas rates?). The second year, the cost savings may well be \$10,300, and the third year, \$10,700, etc., for as many years as the technologies last. For LED lighting, that could mean seven to ten years or more; and all without having to do any additional efforts.¹²⁴

PL 180 precludes Hoosiers and Indiana communities from investing in the perpetual savings that green buildings provide. Consequently, Indiana residents will see increasing utility and structural maintenance costs as fossil-fuel-powered energy costs rise¹²⁵ and conventional building infrastructure deteriorates.¹²⁶ Further, Hoosiers who own homes not built or retrofitted according to green building practices will miss out on higher property values, since green single-family residences can command up to an estimated \$15,000 increase in home value.¹²⁷

Additionally, PL 180 detracts from environmentally conscious talent, business, and technology.¹²⁸ Hoosier Environmental Council Executive Director Jesse Kharbanda said, “This [law] will hamper the plans of any Indiana cities that might have aspired, for economic development, talent attraction and retention, and/or quality of life reasons, to be at the national forefront of being an all-around environmentally sustainable city.”¹²⁹ Branding is powerful; companies push environmental branding because many consumers care about the environmental impact of their purchasing power.¹³⁰ The City of Scottsdale, Arizona realized that green branding attracts customers to their Green Building Program when cooperative builders display their green logo.¹³¹ PL 180 disincentivizes companies who want to make an environmental impact from coming to Indiana

122. Rabin, *supra* note 28.

123. Karell, *supra* note 114.

124. *Id.*

125. Knakmuhs, *supra* note 108.

126. Rabin, *supra* note 28.

127. Hill & Martinez-Diaz, *supra* note 113.

128. Saenz, *supra* note 4.

129. *Id.*

130. *See* City of Scottsdale, *supra* note 57.

131. *Id.*

communities, an expense which is not borne by legislators, but directly borne by residents and communities. Through PL 180, our legislature has limited the types of economic development opportunities Indiana may attract, and instead has given that financial benefit to gas and construction companies. PL 180 reduces communities' ability to reduce costs from energy and building maintenance, while constraining avenues to invite new opportunities to stimulate their local economies.

*D. PL 180 Diminishes Indiana Communities' Resilience from
the Effects of Climate Change*

The U.S. Department of Health and Human Services defines community resilience as “the sustained ability of communities to withstand, adapt to, and recover from adversity.”¹³² The Department connects community resilience to human health, noting that health is a “key foundation” of community resilience because much of the Department’s purpose is in the “interest of human health and welfare.”¹³³ Communities are collectively healthier and more resilient when their residents are protected by durably built environments with reliable energy sources. However, PL 180 precludes Indiana communities from reaching their full potential to create resiliency by precluding them from requiring that homes and buildings be constructed or retrofitted through robust and sustainable green building codes.

Green buildings improve human health not only through use of materials which reduce or avert the effects of pollution from conventional materials, but also by protecting Hoosiers and communities through buildings constructed to withstand severe natural disasters.¹³⁴ Green buildings consider sea level rise, extreme temperatures, severe storms, and other climate risks that can deteriorate or destroy the structures that humans live and work in.¹³⁵ For example, newly constructed LEED certified buildings resilient from flooding are built with consideration of the 500-year floodplain, and existing LEED certified buildings below the 500-year floodplain develop a detailed flood plan with on-site supplies and modifications for electrical switches outside the reach of high water levels.¹³⁶ Heat resistant LEED certified structures provide external shade areas with access to water sources, implement drought-resistant plants that provide shade, and use

132. *Community Resilience*, U.S. DEP. OF HEALTH & HUMAN SERV. (June 9, 2015), [https://www.phe.gov/Preparedness/planning/abc/Pages/community-resilience.aspx#:~:text=Community%20resilience%20is%20the%20sustained,big%20part%20of%20overall%20resilience.\[perma.cc/2MD5-BK4P\]](https://www.phe.gov/Preparedness/planning/abc/Pages/community-resilience.aspx#:~:text=Community%20resilience%20is%20the%20sustained,big%20part%20of%20overall%20resilience.[perma.cc/2MD5-BK4P]).

133. *Id.*

134. *Design for Enhanced Resilience*, U.S. GREEN BLDG. COUNCIL, <https://www.usgbc.org/credits/enhancedresilience> [<https://perma.cc/6NLH-45TM>] (last visited March 13, 2023).

135. *Why Green Building is Synonymous with Resilience*, U.S. GREEN BLDG. COUNCIL, <https://www.usgbc.org/articles/why-green-building-synonymous-resilience> (last visited March 13, 2023) [<https://perma.cc/3DRJ-6LFC>].

136. *Design for Enhanced Resilience*, *supra* note 134.

high-reflectivity paving materials like concrete, a material more durable than asphalt or gravel.

Similarly, renewable energy sources are a characteristic of green buildings that can support resiliency by providing reliable power in the event of power outages caused by natural disasters.¹³⁷ As Indiana experiences more symptoms of climate change, energy derived from renewable sources like solar panels and wind turbines can maintain power to cooking appliances, medical equipment, or keep families warm during colder winters and cool during hotter summers. Renewable energy sources save lives: the Blue Lake Rancheria tribe in Northern California reported that their solar grid saved four tribal members' lives by powering essential medical devices during a multi-day power outage.¹³⁸

While renewable energy sources can save lives, green buildings can also help can help people heal faster, improve mental health, lower the need for pain medication, and improve indoor air quality.¹³⁹ As climate disasters become more severe — disasters able to destroy homes or leave residents stranded in their homes without power — Indiana communities must be able to help residents prevent as much harm as possible and recover from harm quickly.¹⁴⁰ Green buildings are a necessary step in saving lives, bouncing back, and creating meaningful community resilience.

Further, lower income communities are more susceptible to health-related effects of climate change from power outages and extreme heat waves.¹⁴¹ In Robert R.M. Verchick's book arguing that the Federal Government should assume a stronger regulatory role in managing natural infrastructure and public risk in our post-Hurricane Katrina world, he notes that “[c]atastrophe is bad for

137. Michael Panfil, *Resiliency +: Renewable Energy Can Boost Grid Resilience in Vulnerable New Jersey*, ENV'T. DEFENSE FUND (April 30, 2014), <https://blogs.edf.org/energy-exchange/2014/04/30/resiliency-renewable-energy-can-boost-grid-resilience-in-vulnerable-new-jersey/#:~:text=Renewable%20energy%20can%20increase%20energy,wake%20of%20a%20natural%20disaster> [https://perma.cc/YH3V-K8K7].

138. Alexander Dane & Katie Pastor, *3 Ways US Cities Are Investing in Clean Energy for Resilience*, WORLD RESOURCES INST. (June 16, 2020), <https://www.wri.org/insights/3-ways-us-cities-are-investing-clean-energy-resilience> [https://perma.cc/Q4HR-3ZBQ].

139. Rahman, *supra* note 41.

140. See Kaitlyn Radde, *Storms Across the U.S. Cause Deaths and Power Outages*, NPR (Mar. 4, 2023), <https://www.npr.org/2023/03/04/1161131706/storms-deaths-power-outages-extreme-weather-wind-snow> [https://perma.cc/SE2L-QLDA]; *Staggering Snowfall in California Leaves Residents Trapped for Days*, CBS NEWS (Mar. 2, 2023), <https://www.cbsnews.com/news/california-snow-winter-storm-residents-trapped/> [https://perma.cc/PL5P-A6UU]; Irina Ivanova, *Millions of Americans are Fleeing their Homes Because of Extreme Weather*, CBS NEWS (Feb. 14, 2023), <https://www.cbsnews.com/news/climate-change-displaced-millions-from-homes-extreme-weather-natural-disaster/> [https://perma.cc/4GFW-3YLP].

141. Kaiyu Sun, et al., *Passive Cooling Designs to Improve Resilience of Homes in Underserved and Vulnerable Communities*, SCIENCE DIRECT (Dec. 2021), <https://www.sciencedirect.com/science/article/abs/pii/S0378778821006678> [https://perma.cc/Z7GE-MNS9].

everyone. But it is especially bad for the weak and disenfranchised.”¹⁴² Verchick’s assertion is particularly true in relation to the effects of climate change.¹⁴³ PL 180 precludes local governments from requiring green building practices in communities where environmentally conscious construction could be lifesaving to those who cannot afford higher cooling and heating rates. For example, a study found that passive cooling measures, which operate without power, can be effective if the method is tailored to the particular building.¹⁴⁴ However, PL 180 prohibits local governments from requiring that buildings be built or retrofitted with any energy-saving design like passive cooling.

PL 180 precludes Indiana local governments from requiring that homes and built environments be constructed or retrofitted to protect Hoosiers’ lives or help them recover from the physical effects caused by severe weather and temperatures. In this way, PL 180 works against the historical purpose of building codes to protect the public; instead, the law makes communities vulnerable and unsafe to our increasingly dangerous climate, which could result in injury and death to Hoosiers. Indiana’s legislature has decreased communities’ ability to adapt, withstand, and recover from the effects of climate change for the benefit of industries which are directly making our climate more threatening.

E. PL 180 Undercuts the Historical Purpose of Home Rule Power

Local governments derive their power to control municipal and regulatory activities from the state in which they are located, usually through general statutes, constitutional provisions, or local charters.¹⁴⁵ One way states grant power to local governments is through constitutional or statutory Home Rule. Home Rule is generally celebrated as a state’s most meaningful grant of independence to its local governments, though there is great variation of Home Rule powers among states.¹⁴⁶ Home Rule grants local governments discretion over government form, structure, functions, fiscal, and regulatory matters, unless the state has specifically retained certain powers through statutory or constitutional preemption.¹⁴⁷ Proponents of Home Rule believe that effective local government depends on local autonomy from the state government, that local governments

142. ROBERT R.M. VERCHICK, *FACING CATASTROPHE: ENVIRONMENTAL ACTION FOR A POST-KATRINA WORLD* 104, 336 (Harvard University Press, 1st ed., 2010); *see also* Farber & Carlarne, *supra* note 68.

143. Farber & Carlarne, *supra* note 68.

144. Sun et al, *supra* note 141.

145. DANIEL L. MANDELKER ET AL., *STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM*, 95, 988 (2021).

146. Kate Leo Shaffner, *What is Home Rule? WHY?* (July 24, 2014) <https://why.org/articles/what-is-home-rule/> [<https://perma.cc/6VJ8-J9MA>]; *see also* *Home Rule in the Midwest*, IND. UNIV. PUB. POL’Y INST. (July 2010), https://ppidb.iu.edu/Uploads/PublicationFiles/PC_HmRules_Web.pdf [<https://perma.cc/4AUW-8VDM>].

147. Mandelker et al., *supra* note 145 at 108; *see also* *Home Rule in the Midwest*, *supra* note 145.

can best address their community's needs, and that the state legislature should focus on uniform statewide policies rather than specific local issues.¹⁴⁸ Home Rule gives authority to local governments to “evolve solutions” to local problems without seeking state approval.¹⁴⁹

The constitutional Home Rule movement developed in the late nineteenth century from a desire to provide local governments with autonomy in deciding matters of local importance and to preclude “governmental favoritism in the form of special privileges to favored private actors.”¹⁵⁰ The “urban reformers” who championed the Home Rule movement sought to protect the public from special state legislation influenced by private actors which created higher levels of local taxing and spending.¹⁵¹ The reformers deemed the special favors conferred by law to private actors as a burden on local units of a “particularly odious species.”¹⁵²

Indiana adopted its Home Rule statute from the Home Rule Act of 1980.¹⁵³ Under the Home Rule Act, Indiana local governments have broad authority to adopt any local law needed for “the effective operation of government as to local affairs.”¹⁵⁴ However, there is a long list of restrictions to local control, and local laws may be invalidated if they are preempted by a state law.¹⁵⁵ Critics assert that the Indiana General Assembly has not honored our Home Rule statute because legislators have continuously preempted local government power.¹⁵⁶

PL 180 is another example of state preemption which undercuts the historical purpose of Home Rule because the final adoption authority of building codes is commonly left to local governments.¹⁵⁷ Interestingly, while PL 180 includes a provision for control of vehicles, much of PL 180 controls building codes and the energy sources used in buildings, but the law was not placed in Indiana's Administrative Code where Indiana's minimum building codes are located.¹⁵⁸ Further, Indiana sets statewide minimum building codes but leaves control of

148. Susan Barnhizer Rivas, *The Indiana Home Rule Act: A Second Chance for Local Self-Government*, 16 IND. L. REV. 677, 704 (1983).

149. *Id.*

150. David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2293 (2003); *see also* Mandelker et. al, *supra* note 145, at 107.

151. Rivas, *supra* note 148.

152. *Id.*

153. IND. CODE § 36-1-3-1 (2022); *see also* *Home Rule in the Midwest*, *supra* note 143 (describing Indiana's Home Rule Act).

154. IND. CODE § 36-2-3-2 (2022).

155. IND. CODE §§ 36-1-3-8,5 (2022).

156. Some other issues preempted by the Indiana General Assembly are plastic bag bans, setting of local minimum wages, regulation of housing and agricultural operations, worker schedules, and “good neighbor” ordinances. *See* Joshua Claybourn, *Claybourn: In Defense of Hoosier Home Rule*, INDIANAPOLIS STAR (May 7, 2017), <https://www.indystar.com/story/opinion/2017/05/07/claybourn-defense-hoosier-home-rule/101289696/> [<https://perma.cc/ME7D-P4HS>].

157. Rossberg & Leon, *supra* note 11.

158. Indiana's minimum building codes are located in Title 675 of the Indiana Administrative Code.

building code adoption and enforcement to individual cities and towns.¹⁵⁹ In fact, many Indiana counties and cities have adopted their own building codes in their local laws.¹⁶⁰ PL 180's placement in Indiana's Home Rule statute, instead of our Administrative Code, reveals that Rep. Pressel and the legislators who passed the law were seeking control through preemption, not public safety through building code requirements. PL 180 is an example of the "odious" nature of state control that the Home Rule reformers worked against: a law which takes power from local governments and gives it to private companies, at the expense of individual residents and communities.¹⁶¹

IV. LEGAL SOLUTIONS TO PL 180

The Indiana General Assembly must repeal or place a sunset provision upon PL 180. A sunset provision would terminate the law at a certain point chosen by the legislature, potentially because PL 180 is not actually a pandemic protection, because fossil fuel powered energy source prices will become increasingly high, or because climate change will become more destructive to our built environment – all reasons that undermine PL 180's purported purpose. However, as the effects of climate change command a more urgent response and negatively affect our physical, economic, and environmental health, Hoosiers cannot wait for the Indiana General Assembly to repeal or place a termination point on the law.

Hoosier lawyers must instead challenge PL 180. An opportunity to challenge the law as unconstitutional may lie in the Privileges and Immunities Clause of the Indiana Constitution: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."¹⁶² In *Collins v. Day*, the Indiana Supreme Court enumerated the history of Article 1, Section 23 of the Indiana Constitution as well as the test to determine whether the state legislature has violated the clause.¹⁶³

Framers of the Indiana Constitution included the Privileges and Immunities

159. *Indiana Building Code, Permit, and Licensing Information*, PERMIT PLACE (Jan. 11, 2023), <https://permitplace.com/state/indiana-permit-building-code-and-licensing-information/#:~:text=Indiana%20state%20wide%20building%20codes,without%20plan%20review%20or%20inspection> [<https://perma.cc/FSP3-72GD>].

160. Some examples of Indiana municipal building codes are: The Consolidated City of Indianapolis' municipal building code, see *Building Standards and Procedures*, CITY OF INDIANAPOLIS, <https://www.indy.gov/activity/building-standards-and-procedures> [<https://perma.cc/Z5PG-AKK6>] (last visited Mar. 18, 2023); Richmond, IN's municipal building code, see Richmond City Code, Title XV, Ch. 150 (2021) [<https://perma.cc/76DA-UUAH>]; Allen County, IN created a Building Department to enforce their local building code, which was enacted for the "protection of life, limb, health, environment, public safety and welfare, and for the conservation of energy," see *Building Department*, ALLEN CNTY., IND., <https://www.allencounty.us/building-department> [<https://perma.cc/XC69-234A>] (last visited Mar. 18, 2023).

161. Barron, *supra* note 148.

162. IND. CONST. art. 1§, 23.

163. *Collins v. Day*, 644 N.E.2d 72 (Ind. 1994).

clause specifically to prohibit the legislature from giving favors or immunities involving the state's participation in commercial enterprises.¹⁶⁴ The clause was first discussed during the constitutional convention which met in late 1850 and early 1851, when the state had become "bankrupt" after issuing bonds that had greatly depreciated and "utterly ruined" the state's credit after the public works programs they were intended to finance had been left uncompleted.¹⁶⁵ The state then authorized private companies to finish the projects, issuing more bonds and levying taxes for counties, which caused "heavy and onerous debts" to many counties.¹⁶⁶ One month before he introduced Section 23, Monroe County delegate Daniel Read asserted:

Money making is not the business of the State If she sells out a monopoly for a *bonus*, the robbery upon the citizens is ordinarily still worse, as being paid for and sanctified by a right purchased from government. If the State becomes a partner with a few of her citizens, to the exclusion of others, offering the same terms, it is still a most odious and anti-republican principle¹⁶⁷

The Indiana Supreme Court found that during the years following the ratification of the 1851 Indiana Constitution, "Section 23 was often applied to invalidate enactments which, rather than granting special privileges, imposed special *burdens*."¹⁶⁸ Through a consideration of caselaw applying Section 23, the court found that no cases have declined to apply the section just because a statute created a special burden rather than a special privilege — this is because "implicit in an enactment that imposes an unequal burden is the grant of a special privilege or immunity to persons or classes exempted from the new burden."¹⁶⁹

Collins enumerates a test based on two requirements for statutes that grant unequal privileges or immunities to differing classes. First, the disparate treatment accorded by the statute must be reasonably related to inherent characteristics which distinguish the unequally treated classes.¹⁷⁰ The distinctions must involve something more than characteristics which serve to divide or identify the class; instead, there must be inherent differences in situations related to the subject matter of the statute which require, necessitate, or make expedient different or exclusive legislation with respect to the members of the class.¹⁷¹ Second, the preferential treatment must be uniformly applicable and equally available to all persons similarly situated.¹⁷² This prong of the *Collins* test requires that "any privileged classification must be open to all persons who share

164. *Id.* at 77.

165. *Id.* at 76.

166. *Id.* (quoting *Lafayette, M., B. R.R. Co. v. Geiger*, 34 Ind, 185, 206 (Ind. 1870)).

167. *Id.*

168. *Id.* at 77 (emphasis added).

169. *Id.*

170. *Id.* at 80.

171. *Id.* at 78.

172. *Id.*

the characteristics which distinguish and justify the classification.”¹⁷³ The court must give substantial deference to the legislature and balance the competing interests involved.¹⁷⁴ The burden of proof is upon the challenger “to negative every conceivable basis” which could support the classification.¹⁷⁵

In *Collins*, a farm worker who broke his leg while working was denied worker’s compensation because his employer had not agreed to provide worker’s compensation coverage under the Indiana Worker’s Compensation Act. The Act, enacted in 1915, explicitly excluded “farm or agricultural employees” from its coverage, and allowed those employers to choose whether or not they wanted to provide worker’s compensation to their employees.¹⁷⁶ The farm worker brought a Section 23 claim, contending that the agricultural exemption extended to a “special class of employers an immunity denied to the general class of employers.”¹⁷⁷ He also contended that the option for agricultural employers to be covered by or exempt from the Indiana Worker’s Compensation Act was a privilege denied to both a class of agricultural employees and to the general class of Indiana employers.¹⁷⁸

The court found that the inherent characteristics between the agricultural employees and employers and the general class of employers were reasonably related to the Act’s exemption.¹⁷⁹ The court also found that the exemption from worker’s compensation for agricultural employees was “uniformly applicable and equally available to all persons who are or may become agricultural employers.”¹⁸⁰

PL 180 creates a classification between building materials and appliances based on their energy source; the law protects non-energy saving components but does not protect energy-saving components. In granting a protective privilege to conventional materials and natural gas-powered appliances by creating a space where they may always be employed, the law places a burden on green building materials and electric powered appliances by allowing space for them to be banned. Consequently, the law creates security for companies which use conventional materials or implement natural gas-powered appliances, while creating a vulnerability for companies which implement green building practices

173. *Id.* at 79.

174. *Id.* at 79-80.

175. *Id.* at 80 (quoting *Johnson v. St. Vincent Hosp.*, 273 Ind. 374, 392 (Ind. 1980)).

176. *Id.* at 73; see also *Indiana Worker’s Compensation Insurance*, HARTFORD INS. GRP., <https://www.thehartford.com/workers-compensation/indiana#:~:text=Indiana%20Workers'%20Compensation%20Act,Act%20of%20Indiana%20in%201915.&text=The%20Act%20created%20a%20workers,recover%20and%20return%20to%20work> [https://perma.cc/V5K5-PGHD] (last visited Mar. 22, 2023) (describing the Indiana Worker’s Compensation Act).

177. *Collins*, 664 N.E.2d at 74.

178. *Id.* (*Collins* also asserted that the Indiana Supreme Court should apply the Fourteenth Amendment of the U.S. Constitution to his case, which the court declined to do, finding that Section 23 should be given independent interpretation.).

179. *Id.* at 81.

180. *Id.* at 82.

and electric appliances. Further, PL 180 creates a protected industry which incentivizes companies to manufacture and use the protected materials and appliances, creating an imbalance in the construction and appliance market. Producers are more likely to manufacture goods that are inherently protected than those that are vulnerable or less likely to be used.

Several Indiana construction companies specialize in green building: Lancia Homes, GH Homes, Fall Creek Homes, Cedar Street Builders, and Commodore Homes.¹⁸¹ These companies constitute a group of possible petitioners similarly situated to the protected construction companies, that endure a burden from PL 180 because of the security given to conventional construction companies that is denied to them. These companies are at risk to be banned from building in local communities, while other companies using conventional materials are not.

A petitioner must first demonstrate that the vulnerability that PL 180 creates for green construction companies and electric appliances is not reasonably related to the inherent characteristics of the class distinctions. There are not inherent differences in the construction and energy sources classified by PL 180 that require exclusive legislation. Conventional and green construction companies do the same things – build or retrofit structures. While green construction employees require different levels of training than conventional construction employees, extra training is counterbalanced with the protection and durability it ultimately provides to Hoosiers and Indiana communities from the effects of climate change. If construction companies take extra time or expense to learn to use green technologies and materials, their construction will last longer and be more protective. Further, unlike the difficulty that agricultural employers face in passing additional costs to consumers, both conventional and green construction companies directly pass their costs to property buyers.

Similarly, natural gas and electricity producers do the same thing – power appliances. PL 180 is an unnecessary preventative measure for a feared natural gas ban which no Indiana cities have attempted.¹⁸² In the broader national conversation about natural gas bans, states are not likely to apply the ban to homes already using natural gas appliances; they would only apply the ban to appliances in newly built homes.¹⁸³ Of course, because no Indiana cities have attempted to ban natural gas-powered appliances, we do not know what a potential Indiana ban would entail. Preventative legislation like PL 180 does not demonstrate any need for exclusive legislation or classification between energy sources that are both currently in use without any limitation.

Second, a petitioner must show that the preferential treatment PL 180 creates

181. *The Top 7 Sustainable Green Home Builders in Indiana*, ATTAINABLE HOME (Mar. 26, 2022), <https://www.attainablehome.com/the-top-7-green-home-builders-in-indiana/> [<https://perma.cc/YHJ9-Q6AP>].

182. *Id.*

183. Ty Roush, *U.S. Regulators and State Lawmakers Consider Banning Natural Gas Stoves—Here's Why*, FORBES (Jan. 11, 2023), <https://www.forbes.com/sites/tylerroush/2023/01/11/us-regulators-and-state-lawmakers-consider-banning-gas-stoves-heres-why/?sh=386078204e49> [<https://perma.cc/FZ7F-BVBT>].

is not uniformly applicable to all persons similarly situated. The protective privilege that PL 180 provides to conventional construction companies and natural gas-powered appliances is not open to companies which use green materials or implement electric appliances.

Finally, a petitioner must negate every “conceivable basis” for the law because the court will show substantial deference to the legislature.¹⁸⁴ The known reasons behind the passage of the law are maintaining a “cheaper” form of energy for Hoosiers during the Covid-19 Pandemic and preventative protections for natural gas.¹⁸⁵ Neither of these points create a reasonable basis for a protective classification for one group of construction companies or type of appliance over the other.

Rep. Pressel’s assertion that natural gas-powered appliances are cheaper for Hoosiers is becoming increasingly untrue as natural gas becomes more scarce and supply becomes limited through world events like the Russia/Ukraine war.¹⁸⁶ Additionally, the State of Indiana ended its public health emergency status resulting from the Covid-19 Pandemic on March 3, 2022.¹⁸⁷ If PL 180 is a law to protect Hoosiers during the Covid-19 Pandemic, then it should have been a temporary measure which ended with the conclusion of the public emergency status, like rental assistance or increased SNAP benefits.¹⁸⁸ The preventative measure taken through PL 180 because of the fear of the legislature with close ties to natural gas and conventional construction companies do not constitute a reasonable basis to offer them protection while creating a vulnerability for others.

Finally, Roger Horner offers a note for Hoosier lawyers filing environmental claims.¹⁸⁹ Rule 2.1 of the Model Rules of Professional Conduct advises: “in rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client’s situation.”¹⁹⁰ The legislative history and the substance of PL 180 provides moral, political, economic, environmental, and social arguments for Hoosiers and Indiana communities. PL 180 is an ethically questionable law because our legislature has chosen to support gas and construction companies at the expense of Indiana residents, and further, Rep. Pressel used his platform as an elected legislator to protect his business instead of his constituents. The law imposes a burden to communities’ financial health by forcing Hoosiers to pay higher utility bills and higher insurance rates and decreases property values. Hoosiers will

184. Collins, *supra* note 163 at 79.

185. Sarah Bowman & London Gibson, *Banning Natural Gas Would Cut Emissions. But Lawmakers Don’t Want That Happening in Indiana.*, INDIANAPOLIS STAR (Mar. 3, 2021), <https://www.indystar.com/story/news/environment/2021/03/03/indiana-general-assembly-tries-stop-cities-banning-natural-gas/4540329001/> [<https://perma.cc/Y724-JBWC>].

186. Knakmuhs, *supra* note 108.

187. *See supra* text accompanying note 76.

188. Bowman and Gibson, *supra* note 185.

189. Roger Horner, *Saving the World: How Municipal Lawyers Can Help in the Fight Against Climate Change*, MUN. LAW. 15, 35 (Jan 2023).

190. *Id.* at 15; *see also* Model Rules of Professional Conduct, Rule 2.1, Cmt. 2 (2023).

continue to suffer from the negative effects to their health and their environment from GHG emissions from conventional building infrastructure. Finally, PL 180 decreases our ability to survive and bounce back from the effects of climate change. Indiana residents will lose friends and family members — unnecessarily — without the ability for local governments to reach their full potential to protect their residents, especially in communities which are already the most vulnerable. These are all arguments that Hoosier lawyers should consider when challenging PL 180.

V. CONCLUSION

Building codes were enacted to provide safety for the public as they engaged with their built environments.¹⁹¹ Green building codes expand upon the historical purpose of conventional building codes by reflecting society's increasing need for protection and resilience in the face of the worsening effects of climate change.¹⁹² Extreme temperatures, flooding, severe storms, and disease-spreading mosquito populations are all necessary reasons to adopt green building codes, just as the 1871 Great Chicago Fire and the 1906 San Francisco Earthquake caused state legislators to act for the protection of their residents. The Indiana General Assembly must allow local Indiana governments to require green building codes in order to reduce the effects of a warming climate in their own localities and protect Hoosiers' lives. Indiana's built environments must reflect trust that our legislature is enacting laws for our benefit and protection, not for private companies. Winston Churchill was not likely thinking about climate change when he asserted that our buildings symbolize the strength of our democratic system, but his assertion that our buildings shape our ability to trust that our leaders will protect us still applies today.

191. Cocks, *supra* note 7.

192. *Green Building Standards*, *supra* note 22.