

Building Decarb Law: What Recent Court Decisions Mean for Building Policy

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ABSTRACT

The gas industry and its allies have brought legal challenges to an increasingly wide range of building decarbonization policies—from building performance standards, to clean air regulations, to building codes. This has led to confusion for local and state governments and building decarbonization advocates, with the increasing possibility of a patchwork of decisions shifting the legal landscape from jurisdiction to jurisdiction. It has also led policymakers to explore options to avoid preemption under the Energy Policy and Conservation Act (EPCA).

This paper provides an EPCA preemption overview for non-lawyers, with an up-to-date look at recent major decisions and cases. It discusses legal options for local jurisdictions to support electrification, as well as the legal questions involved in other building decarbonization efforts facing challenge and what guidance the courts have given on the preemption guardrails for jurisdictions looking to act.

The paper is intended to help jurisdictions and advocates navigate a rapidly changing legal landscape with the likelihood of continued legal challenges from those opposed to transitioning away from health-harming gas appliances. It also looks beyond the existing challenges to what lawsuits may be ahead, potential Congressional action, and how jurisdictions should think about policymaking in the face of legal uncertainty.

Introduction

Buildings are one of the largest sources of greenhouse gas emissions in the United States, and their direct emissions come primarily from the burning of natural gas for heating, cooking, and other uses (U.S. EPA 2022).¹ This combustion of natural gas also affects indoor air quality, emitting hazardous pollutants such as nitrogen dioxide, carbon monoxide, and benzene—the same pollutants emitted in cigarette smoke (Public Health Law Center 2024). Many state and local governments are understandably seeking to curb emissions from the building sector to protect public health and tackle climate change.

The fossil fuel industry has often opposed these policies, and where they have been enacted, has pursued litigation attempting to overturn them. This litigation found its first successful effort in the 2023 *California Restaurant Association v. Berkeley* (“*Berkeley*”) decision, which has spawned a wide range of attempts to sue other building decarbonization efforts. These lawsuits are based on legal arguments around EPCA preemption. The paper below will walk through building decarbonization policy options that state and local governments may wish to pursue, and the current EPCA preemption risks for those policies based on court decisions as of the date of this writing in June 2026.

¹ Specifically, buildings had higher greenhouse-gas emissions than any of the other three economic sectors measured by EPA (industry, transportation, and agriculture) in 2022. Just under half (43%) of those buildings’ emissions came from direct emissions such as onsite combustion, and about three-quarters (78%) of those direct emissions came from gas combustion (U.S. EPA 2022).

EPCA 101

EPCA is a federal law that creates energy-efficiency standards for many consumer and industrial appliances, including water heaters, space heaters, and consumer stoves. (EPCA, § 6295(e)-(f), (h)). EPCA authorizes the U.S. Department of Energy (DOE) to make those standards more stringent and to create new standards.

EPCA also “preempts” certain state and local regulations, meaning that it prevents those regulations from taking effect. Specifically, EPCA provides that “no State regulation concerning the energy efficiency, energy use, or water use of” a product covered by EPCA “shall be effective with respect to such product,” with some exceptions (EPCA, § 6297(b)-(c)). Until recently, the scope of this preemption was generally understood to be state and local energy efficiency standards—the same sort of regulations that EPCA created at the federal level—in the interest of not requiring manufacturers to make different appliances for each state market.

However, a 2023 decision by a three-judge panel of the Ninth Circuit Court of Appeals interpreted the preemption provisions in EPCA much more broadly. The case, *California Restaurant Association v. City of Berkeley*, involved an ordinance passed by Berkeley, CA that would have effectively prevented the use of gas appliances in most new buildings in the city. The panel found that, by preventing the use of gas appliances, the ordinance effectively “concern[ed] the energy use” of those appliances, and would therefore be preempted under EPCA (*Berkeley*, 89 F.4th at 1098-99; EPCA, § 6297(c)). Thus, within the scope of the Ninth Circuit’s jurisdiction—Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, the Northern Marianas, Oregon, and Washington—governments cannot directly prohibit the use of gas appliances that are covered by EPCA unless an exception applies.²

The City of Berkeley asked the Ninth Circuit to reconsider the panel decision. While that failed, the effort resulted in a dissent, authored by Judge Michelle Friedland and joined or supported by ten other Ninth Circuit judges (*Berkeley*, 89 F.4th at 1119-26). The Friedland dissent laid out a more traditional and limited understanding of EPCA preemption and “urge[d] any future court that interprets [EPCA] not to repeat the panel opinion’s mistakes” (*Berkeley*, 89 F.4th at 1119). Specifically, the Friedland dissent treats “energy use” as a technical term, referring to the amount of energy an appliance will generally use in performing a specific task or operating for a specific time period. Under this interpretation, whether an appliance can be used in a specific place is irrelevant; its “energy use” is tested and assigned as part of the manufacturing process and is constant throughout its lifecycle. While no court is required to follow the dissent’s reasoning, several courts have done so, as described below.

The *Berkeley* decision has led to a new wave of litigation testing many building decarbonization and related laws for potential EPCA preemption with the courts. The decisions so far have opposed or limited the Ninth Circuit’s reasoning. No court other than the Ninth Circuit has yet applied the logic of *Berkeley* to preempt a law, while four lower courts have rejected the *Berkeley* reasoning outright, and two lower courts have declined to expand *Berkeley*’s reasoning to preempt other types of regulation (Takemura 2026). But each of those decisions has been appealed, and there are a number of other cases pending. Thus, the legal landscape remains dynamic. The remainder of this paper discusses the impact of *Berkeley* and

² State and local governments may still prohibit the use of appliances that are not covered by EPCA. San Francisco, for example, prohibits the installation of gas or propane infrastructure in new buildings or extensively renovated buildings unless that infrastructure is installed solely to serve EPCA-covered appliances (S.F. Building Code, §§ 106A.1.17, 202).

subsequent cases on different types of policies.

Overview of Policy Options and Legal Status

The legal landscape of EPCA preemption remains dynamic. This is primarily due to the impact of the *Berkeley* decision, discussed above, the scope of which is still under debate among legal observers and in the courts. Many cases challenging state and local building-decarbonization policies have been filed since the *Berkeley* decision, primarily by industry actors that seek to expand its scope. However, there is some initial indication that this litigation is leading to court decisions limiting, rather than expanding, *Berkeley*'s influence. (See Table 1, following the conclusion, for a summary table of the status of EPCA preemption arguments for each of these policies.)

Gas Prohibitions

The poster child for federal preemption of building-decarbonization policy is the prohibition on gas infrastructure passed by the City of Berkeley in 2019, discussed above. Because of that case, the outlook for gas prohibitions depends heavily on location: state and local governments that are subject to the Ninth Circuit's jurisdiction likely cannot enforce such regulations. Many have since repealed those ordinances, sometimes replacing them with other decarbonization-focused rules (e.g., L.A. City Council 2025; Miranda 2025; WSBCC 2024). Other governments have left those laws on the books and simply stopped enforcing them. This led recently to a suit by the U.S. Department of Justice against two California cities that took this approach; the case did not proceed, however, as the U.S. abandoned the litigation after the cities rescinded or amended the unenforced code language (*Morgan Hill* 2026; Ali-Ahmad 2026).

Outside of the Ninth Circuit's jurisdiction, however, gas prohibitions may remain viable. New York State, for example, recently amended its building code to prohibit the use of fossil fuels in buildings constructed after a certain date (*Mulhern Gas* 2025, 798 F. Supp. 3d at 310-11). A federal court upheld those amendments last year, explicitly disagreeing with the Ninth Circuit panel's interpretation of EPCA preemption and adopting elements of the Friedland dissent (*Mulhern Gas* 2025). That case is now on appeal to the Second Circuit, which recently held oral argument on the case (*Mulhern Gas* 2026). Similar policies have been adopted elsewhere, three of which have been upheld in the respective district court and subsequently appealed (*NAHB v. Montgomery County* 2026; *NAHB v. D.C.* 2026; *Plumbers* 2025) and two of which have been challenged but have not yet received a substantive ruling (*Oak Park* 2025; *Denver* 2024).

Building Codes

Building codes are sets of standards to which buildings must be constructed; energy codes are the subset of building codes specifically designed to address energy use. Energy codes are generally set at the state level, and states typically base their codes on the standards published every three years by the International Code Council and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), with amendments or additions.

Some state and local governments have amended their building codes to prohibit, or effectively prohibit, the use of fossil-fuel appliances. These are addressed in "Gas Prohibitions," above. But other code amendments can have the effect of encouraging electrification, either

directly or indirectly by promoting energy efficiency.

EPCA specifically exempts energy codes from preemption so long as those codes meet specific requirements. For the relevant industrial appliances, the code cannot require the appliance to be more efficient than the applicable ASHRAE standard for that appliance (EPCA, § 6316(b)). For consumer appliances, there is a more complicated seven-factor test for exemption from preemption for certain flexible energy codes (EPCA, § 6297(f)). Specifically:

1. The code must set a specific energy-efficiency goal, and allow the builder to select measures to meet that goal;
2. The code must not require any specific appliance to meet more stringent standards than EPCA requires;
3. If the builder does decide to use an appliance that is more efficient than EPCA requires, they must get credit against efficiency requirements elsewhere in the code on a “one-for-one...basis”;
4. If the code evaluates proposed buildings against a baseline design, that design cannot include appliances that are more efficient than EPCA requires;
5. If the code allows builders to use different packages of efficiency measures, there must be at least one package in which no appliances are more efficient than EPCA requires, and for every package that requires an appliance to be more than 5% more efficient than EPCA requires, there must be a package that allows the appliance to be less than 5% more efficient;
6. The energy-efficiency goal that the energy code uses must be given in terms of energy consumption or cost; and
7. The code must test the energy use of appliances using the same procedures as are used for EPCA efficiency regulations.

In sum, state and local governments can create a flexible energy code with a stringent standard, so long as that standard allows for at least one option that does not require appliances to be more efficient than EPCA requires and credits the use of higher-efficiency appliances properly. Under such codes, builders can use highly efficient appliances, such as heat pumps, or achieve equivalent efficiency through other means, such as by tightening the building envelope. Energy codes can also include provisions that promote electrification without prohibiting the use of gas appliances.³

In Washington State, which is in the Ninth Circuit and so bound by the *Berkeley* decision, a collection of home builders, gas utilities, and building trade unions sued the Washington State Building Code Council (WSBCC) over its new flexible building codes. The codes set minimum energy efficiency credit targets that new residential construction can meet through a combination of measures including a more efficient building envelope, more efficient ventilation, high efficiency HVAC equipment, efficient water heating, renewable energy installation, and efficient appliances.⁴ The court dismissed the challenge on procedural grounds and it is now on appeal to the Ninth Circuit (*Rivera v. Anderson* 2024).

³ In theory, all-electric codes could also be protected from preemption under the same exemptions (PHLC 2025a, 13-24). No court has yet ruled on the application of these exemptions to all-electric codes.

⁴ PHLC provided a legal analysis arguing that the flexible approach was not EPCA preempted, meeting the seven-factor EPCA exemption (PHLC 2023).

Building Performance Standards

Whereas building codes and gas prohibitions target new or substantially renovated buildings, many governments seek to reduce the emissions, energy use, or other impacts of existing buildings. Building performance standards (BPSs) are one increasingly common approach for doing so. A BPS requires covered buildings to hit certain performance targets, such as a specified amount of energy use or greenhouse-gas emissions per square foot. These targets generally decline over time, ensuring steady improvement at a rate that allows building owners to get the required work done efficiently (IMT 2025).

BPSs are not building codes and do not prohibit the use of any appliances, or even regulate the energy use of any specific appliance. They are therefore more resistant to legal challenges modeled after the theory in *Berkeley* (Carpenter-Gold 2024). That has not stopped challengers from trying, however: three challenges have been brought against BPSs since the *Berkeley* case (*MBIA* 2026; *Elizabeth Condo.* 2025; *Colorado Apartment Association v. Ryan* 2024).

In one of these cases, a recent district-court opinion sheds some light on how courts may treat BPS policies. In *Maryland Building Industry Association v. McIlwain* (“*MBIA*”), a District of Maryland judge upheld Maryland’s Building Energy Performance Standards (BEPS) against an EPCA challenge. The BEPS require reductions in the greenhouse gas emissions of covered buildings, with a target of net-zero emissions in 2040. They also allow building owners to pay an “alternative compliance fee” in lieu of eliminating their greenhouse-gas emissions. Judge Deborah Boardman—who has both this case and the case challenging Montgomery County’s BPS—found that the BEPS were not covered by EPCA’s preemption clause because they neither regulated EPCA-covered appliances nor required building owners to use appliances “whose efficiencies exceeded federal standards” (*MBIA*, 2026 WL 946235, at *11, *17). Judge Boardman also noted that she did not need to determine whether to adopt *Berkeley*, because even under the 2040 net-zero requirement, the BEPS would not prohibit the use of fossil-fuel appliances because owners could always pay the alternative compliance fee instead of eliminating their emissions (*MBIA* at *19).

However, Judge Boardman also left BPS proponents with some words of warning. Her *MBIA* opinion cautioned that her analysis does not necessarily apply to a standard that capped the energy use of a building, instead of its greenhouse-gas emissions (*MBIA* at *16 n.14). In addition, Judge Boardman issued a related order in *Elizabeth Condominium Association v. Montgomery County* (“*Elizabeth Condominium*”), the case challenging Montgomery County’s BPS. Montgomery County’s BPS sets targets for buildings’ energy use per square foot—their energy use intensity (EUI). The *Elizabeth Condominium* order strongly suggested that Judge Boardman might treat the Montgomery County BPS differently from the state’s policy, presumably because of its use of EUI. However, the parties have agreed to put that case on hold until the appeal of the Maryland BEPS case, as well as *National Association of Home Builders v. Montgomery County*, which addresses Montgomery County’s all-electric code, are resolved.

The upshot of these developments is that BPS policies based on energy-use intensity may face EPCA preemption challenges different from those raised in the *Berkeley* opinion. Essentially: that an EUI-based BPS, by capping the overall energy usage of a building, comes too close to regulating the energy use of individual appliances in the building. There are strong counterarguments, including that EUI reductions on this scale can generally be achieved while using minimally efficient appliances, and that applying this logic in other cases would eliminate

other regulations such as noise limits and electric safety codes (we have made these arguments in, e.g., PHLC 2025b). It is too early to determine which arguments will be successful in the courts, but those working on BPS policy will likely want to follow these cases closely to assess the preemption risk of different policy choices.

Appliance Emissions Standards

In addition to being a source of greenhouse gas emissions, fossil-fuel combustion also emits a wide variety of other pollutants that are harmful to human health (PHLC 2024a). For this reason, fossil-fuel equipment has been regulated to reduce air pollution for over fifty years (American Lung Association 2024). State and local governments are the primary actors in this area; the federal Clean Air Act sets pollutant targets but leaves the states responsible for figuring out how to meet them (Congressional Research Service 2025). When regulations on appliances' air pollution are tight enough that switching to electric appliances is the most convenient means of compliance, building decarbonization becomes a co-benefit (e.g., SCAQMD 2024, p.4-4).

Two local regulators in California—the Bay Area Air District and the South Coast Air Quality Management District (SCAQMD)—have passed rules requiring the elimination of nitrogen-oxide emissions from certain appliances. These will likely result in the large-scale electrification of covered appliances (e.g., Bay Area Air District 2023, pp.2-3; SCAQMD 2024, p.4-4). In *Rinnai America Corp. v. SCAQMD* (“*Rinnai*”), a group of industry actors challenged the SCAQMD’s regulation, arguing that it would effectively prohibit the use of some EPCA-covered appliances and is therefore preempted by EPCA as that law is interpreted in *Berkeley* (*Rinnai* 2025). Because the SCAQMD is within the Ninth Circuit’s jurisdiction, review of its rules is required to follow *Berkeley*. However, the reviewing court determined that *Berkeley* did not apply to air-pollution regulations—at least, not when they are required by the federal Clean Air Act (*Rinnai* 2025). The *Rinnai* plaintiffs have appealed this decision, returning the question of EPCA preemption to the Ninth Circuit for the first time since the *Berkeley* ruling.

Whatever the result, the Ninth Circuit’s decision in *Rinnai* will likely have a significant impact on the ability of state and local governments to regulate air pollution. The court will almost certainly need to decide whether stringent air-pollution regulations can be preempted by EPCA. If the court decides that they can be, this would create potential vulnerability for every air-pollution regulation that applies to EPCA-covered appliances. If the court decides otherwise—likely by deciding that *Berkeley* does not apply to at least some air-pollution regulations—zero-emissions appliance standards that effectively require electrification may proliferate. There are, of course, limitations that the Ninth Circuit could put on either outcome; for example, the court could decide that only air-pollution regulations that completely eliminate a potential fuel source are preempted, or that only regulations that are required by the Clean Air Act are protected. But either limitation could open the doorway to many new challenges to existing regulations (for the former) or regulatory pathways (for the latter).

Fuel Emissions Standards

Instead of banning appliances outright, some jurisdictions are limiting the types of fuels that can be burned in new construction – an approach designed to improve air quality while encouraging a shift toward cleaner electric technologies.

In *Association of Contracting Plumbers v. City of New York* (“*Plumbers*”), industry

groups and a plumber labor union challenged New York City’s Local Law 154 of 2021, a building emissions law that prohibits, in most new construction, the combustion of fuels that emit 25 kilograms or more of carbon dioxide per 1 million British thermal units of heat (N.Y.C. Admin. Code, §§ 24-177.1, 28-506.1). The plaintiffs argued that this effectively bans the use of high-emitting fossil fuels—such as gas and heating oil—in newly constructed buildings, and that it should be treated as regulating the “energy use” of covered appliances under EPCA, thereby making it preempted by federal law (*Plumbers 2023*).

Local Law 154 differs from the ordinance invalidated in the *Berkeley* decision because it targets fuels based on emissions rather than specific infrastructure, and it regulates combustion rather than the installation of fuel systems (N.Y.C. Admin. Code, § 24-177.1). Because the case arose in the Second Circuit’s jurisdiction, the district court was not required to follow the Ninth Circuit’s EPCA interpretation.

The district court rejected the plaintiff’s argument, distinguishing fuel-combustion limits from appliance efficiency standards, with the court concluding that EPCA does not “concern” energy use or efficiency within the meaning of its preemption clause (*Plumbers 2023*). The decision preserves local authority to regulate emissions from fuel combustion even when the practical result is large-scale electrification.

The implications of the Second Circuit’s decision in *Plumbers* could be substantial. If upheld on the argument that Local Law 154 differs from the ordinance in *Berkeley*, the decision provides a doctrinal pathway for state and local governments to adopt zero-emission fuel standards in new construction without directly regulating appliance efficiency. Such standards can function as powerful decarbonization tools, accelerating electrification while avoiding EPCA preemption. Conversely, if appellate courts extend *Berkeley*’s broader interpretation of EPCA to fuel emissions limits, this would further restrict local efforts to phase out fossil fuels in buildings. The outcome will shape the scope of municipal authority in reducing building-sector emissions through fuel standards rather than appliance regulation.

Disclosure

States are also experimenting with a different approach to reducing building-related pollution: informing consumers directly about potential health risks. Some jurisdictions are requiring warning labels and disclosures at the point of sale to help buyers understand the indoor air impacts of certain appliances.

In *Association of Home Appliance Manufacturers v. Weiser* (“*Weiser*”), the plaintiff challenged Colorado House Bill 25-1161, a novel state law requiring air-quality disclosures on gas stoves before sale. The statute mandates that retailers affix a warning label reading “Understand the air quality implications of having an indoor gas stove” to display models and include a QR code or link to a state health department webpage with information on the health impacts of gas-fueled cooking appliances (C.R.S. § 25-5-1602). For online sales, the disclosure content must be posted on the product listing. Retailers who fail to comply can face claims under the Colorado Consumer Protection Act.

Unlike the other cases discussed here, this case does not claim that the regulation is preempted under EPCA. Instead, the plaintiffs argue that the disclosure requirement constitute compelled speech in violation of the First Amendment because they force manufacturers and retailers to convey a government-mandated message about health risks the plaintiffs contend is

controversial and not supported by scientific consensus, going beyond providing neutral product information and instead endorse a public-health claim with which they disagree.⁵

The outcome of *Weiser* will shape the extent to which states may rely on mandatory health disclosures to address indoor air pollution from fossil-fuel appliances. If upheld, Colorado’s labeling requirement would confirm that governments may require factual, point-of-sale disclosures about air-quality impacts without violating the First Amendment, creating a scalable model for consumer-facing climate and health transparency policies. Such authority would allow jurisdictions to influence market behavior indirectly through information rather than prohibition, potentially accelerating electrification through informed consumer choice. If the court invalidates the statute as impermissible compelled speech, disclosure-based approaches to building decarbonization may face significant constitutional constraints, shaping how far states can go in using disclosure to address indoor air pollution and climate impacts.

Other Ideas

Thermal Energy Networks. Thermal Energy Networks (TENs)—shared underground piped-fluid loops that allow multiple buildings to connect individual heat pumps for heating, cooling, and hot water—represent a building decarbonization strategy that sits entirely outside the EPCA debates discussed throughout this paper. A TEN delivers a thermal medium rather than fuel, and the buildings it serves still use their own covered appliances to condition their spaces (Camargo et al. 2024). State legislatures can support TENs development by authorizing utilities to own and operate thermal networks, permitting gas utilities to repurpose existing rights-of-way and infrastructure for thermal-service delivery, and directing public utility commissions to evaluate TENs as alternatives to conventional gas-system investments (BDC 2026). Public utility commissions can require utilities to study TENs through pilot programs, integrated resource planning processes, or non-pipeline alternatives proceedings. Local governments can support TEN development through zoning, district-energy planning, utility-franchise agreements, permitting incentives, and by encouraging or requiring network-ready design in large developments, campuses, or redevelopment districts. The Building Decarbonization Coalition has collected legislation from thirteen states on this subject, primarily focused on enabling or encouraging utility regulators to permit the conversion of gas networks to TENs (BDC n.d.).

From a legal perspective, TENs appear substantially less vulnerable to EPCA preemption than many of the policies discussed above. As discussed, recent litigation has focused on whether state and local governments may regulate, restrict, or effectively eliminate the use of EPCA-covered appliances. Courts have been asked to determine whether gas prohibitions, all-electric building codes, building performance standards, appliance-emissions regulations, and fuel-combustion standards impermissibly “concern” appliance energy use under EPCA. TENs, by contrast, operate upstream of those decisions by shaping the infrastructure available to serve buildings. Because TENs neither prohibit any appliance nor set any efficiency standard, they present no plausible preemption basis under any interpretation courts have adopted—including *Berkeley*, which held preemption applies when a regulation effectively prevents use of a covered appliance. TENs can also be authorized through existing state public utility frameworks,

⁵ For an extensive discussion of First Amendment doctrine on “compelled speech” in the context of health disclosures for commercial tobacco, see PHLC 2024b, 10-13.

allowing gas utilities to transition from delivering combustible fuel to delivering a thermal medium, preserving their infrastructure role while eliminating combustion-driven emissions.

Gas Distribution Networks—Future of Gas, Integrated Resource Planning. One of the most legally promising and underutilized strategies for building decarbonization lies not in regulating appliances, but in exercising authority over gas distribution infrastructure itself (PHLC 2025c). Because EPCA preemption applies only to regulations concerning covered appliances, gas pipelines and distribution networks fall entirely outside of its reach, placing gas distribution policy squarely within traditional state and local authority (e.g., *Berkeley*, 89 F.4th at 1103-04, 1117). State public utility commissions can deny certificates of public convenience and necessity for new gas main extensions, require least-cost planning analyses that account for the stranded-asset risks of long-lived gas infrastructure investments and the declining long-term demand forecasts associated with electrification trends.

Where gas utilities seek to replace aging distribution pipes, regulators can require utilities to demonstrate that replacement is consistent with a long-term decarbonization trajectory, rather than simply approving replacement as a matter of routine. State or local governments can use zoning, permitting, and rights-of-way authority to decline to authorize new gas server extensions in greenfield developments or major redevelopment areas. None of these actions regulate the energy use of any EPCA-covered appliance; they instead regulate the upstream infrastructure decisions that determine whether gas appliances are a practical option at all. By shaping the economics and feasibility of gas infrastructure, these policies can accelerate the market conditions for electrification without crossing into EPCA-regulated territory.

A particular tool within this framework is requiring gas utilities to conduct integrated resource planning (IRP). Traditionally applied to electric utilities, IRP requires a utility to evaluate the full range of resources capable of meeting projected customer needs at least cost over a long-term planning horizon. These requirements can compel utilities to model declining long-term demand scenarios driven by electrification, assess the stranded-asset risk of new or replacement infrastructure investments, and evaluate non-pipeline alternatives such as energy efficiency, electrification incentives, and other substitutes for conventional gas distribution expansion. Several states, including Massachusetts, Colorado, and California, have begun requiring or exploring gas utility IRPs, and the results have been striking: utilities required to conduct long-term demand modeling have struggled to justify the economics of continued infrastructure investment under scenarios consistent with state climate goals. By institutionalizing this planning requirement, commissions can shift the burden onto utilities to affirmatively demonstrate that new or replacement gas infrastructure is prudent, rather than treating expansion as a default.

Another option at least thirteen state utility commissions have initiated is “Future of Gas” dockets to explore lower-carbon futures for heating. These diverse dockets explore topics such as gas planning, clean heat alternatives to gas, and gas infrastructure recovery.

On the Horizon: Congressional Action and Federal Enforcement

EPCA Congressional Update

As discussed above, the recent concerns over state and local authority for building-decarbonization policies come from a federal court's interpretation of EPCA's statutory language. But the U.S. Congress has the power to change federal preemption outright. One bill, H.R. 3699 (named the "Energy Choice Act"), would preempt a far broader set of state and local regulations than even the *Berkeley* case.

H.R. 3699 would block any state or local action "that prohibits or limits, or has the effect of prohibiting or limiting the connection, reconnection, modification, installation, transportation, distribution, expansion, or access to an energy service based on the type or source of energy that is sold in interstate commerce" (H.R. 3699 2026, § 2). This would drastically curtail the power of state or local governments to implement virtually any of the policies that are discussed in this paper. All-electric code requirements would be clearly preempted, as would any other regulations, such as emissions standards, that would result in less fossil-fuels burned. Even voluntary policies to encourage electrification, such as subsidies, could be swept in, since they would have "the effect of...limiting" the use of fossil fuels.⁶

The prospects for H.R. 3699 are uncertain as of this writing. However, the support it has received so far indicates that the consensus in favor of local control over energy regulation may be slipping. State and local governments, as well as advocates, may need to make an affirmative case for the importance of their regulatory powers.

Federal Preemption Enforcement

Another recent development in EPCA preemption is the increasing involvement of the U.S. Department of Justice (DOJ) in targeting state and local authority. This appears to be implementation of Executive Order 14260, which directed the DOJ to compile state laws "burdening" energy use that may be preempted by federal law, and then to "take all appropriate action to stop" the enforcement of those laws (Executive Order 14260 2025, § 2).

The DOJ has initiated two cases against local governments on an EPCA-preemption theory. In *U.S. v. Morgan Hill* ("*Morgan Hill*"), also discussed above, the DOJ sued two Californian cities, asking the court to declare their gas prohibitions ineffective and prevent the cities from enforcing them (although the cities had reportedly stopped enforcing the ordinances before the case was filed, Ali-Ahmad 2026). Both cities simply rescinded or amended their ordinances before the litigation progressed, leading the DOJ to withdraw the case.

Subsequently, in *U.S. v. Morris Township* ("*Morris*"), the DOJ brought a case against a New Jersey township (Morris 2026). Because Morris Township is not in the Ninth Circuit, the *Berkeley* decision does not control this case, and Morris Township appears committed to defending its ordinance; as of this writing, the township has indicated that it plans to file a motion to dismiss the case, which the cities in *Morgan Hill* did not do. It is therefore far more likely that the *Morris* litigation will result in a court decision.

The DOJ has also asserted itself in cases where it is not a party. In *National Association of Home Builders v. Montgomery County*, the DOJ filed a brief supporting the county in the last

⁶ H.R. 3699 could also strip state and local governments of a number of other core authorities that are only tangentially related to building decarbonization (Carpenter-Gold 2026).

few days of the Biden Administration; the DOJ then withdrew that brief two months later, under the Trump Administration (PHLC 2026). In that case, as well as in *Plumbers and National Association of Home Builders v. D.C.*, the DOJ also filed an *amicus curiae* brief arguing against the local regulations (United States 2026a; United States 2026b; United States 2025).⁷ This is a reversal of the position the DOJ had expressed in an *amicus curiae* brief filed in the *Berkeley* case (e.g., United States 2025, 2).

It is difficult to predict the effectiveness of these interventions. The DOJ is ordinarily a powerful force in litigation, but the massive cuts to the DOJ over the past year may limit this advantage (e.g., Lee and Schonfeld 2025). The point at which DOJ's participation may be most relevant is in convincing the Supreme Court to take cases: the opinion of the Solicitor General—the DOJ officer responsible for litigation before the Supreme Court—on whether the Supreme Court should take a case continues to be influential (Elwood 2026).

What does this mean? Advice for jurisdictions

The gas industry is actively suing local governments, trying to block building decarbonization efforts where they can or to chill future efforts by other state and local governments. Yet despite the litigation surge, many policy paths remain open to decarbonize buildings. Local jurisdictions will want to assess their appetite for risk when considering new policies, as some options are more untested or present more risk than others. This will also likely be a rapidly evolving legal landscape in the years to come, with the potential for conflicting decisions that will have varying impacts depending on location.

Currently, the lowest-risk policies are those that do not prevent the use of any particular type of energy at the building level. Controlling where fossil fuels are available at the distribution level, codes and regulations that encourage electrification without requiring it, and developing alternative energy approaches such as TENs are all low-risk approaches. The regulation of appliance emissions, which state and local governments have been doing for decades, is also low-risk, with the risk increasing somewhat if the standard would make certain types of fuel impossible to use. Challenges against the regulation of emissions or energy use at the building level, such as through a BPS, also appear unlikely to succeed at this juncture, though their success may partially depend on specific policy elements.

Fortunately, organizations like the Public Health Law Center stand ready to provide legal technical assistance to advocacy groups and state and local governments in developing building decarbonization laws to minimize litigation risk. We've also provided the table below as a quick reference to assess policy options. We attempt to categorize the risk of each policy, with high risk indicating there is existing legal precedent against that approach, moderate risk meaning there is no current adverse precedent but there is active litigation and policy design decisions should be made accordingly to reduce risk where possible, and low risk meaning we are not currently concerned about EPCA preemption. With any of these options, we encourage

⁷ An “*amicus curiae*” brief is a brief filed by a person or group that is not a party in the case, but has a particular perspective that it believes it would be helpful to the court in ruling on the case. These briefs have additional limitations not present in party briefs, and courts frequently ignore them, but they can occasionally affect a court's ruling or approach to a case.

jurisdictions to seek legal counsel before pursuing a new building decarbonization policy given the fluidity of the EPCA legal landscape.

Table 1. EPCA Litigation Summary Table (as of June 2026)

Policy	Summary	EPCA Preemption Risk	Active Litigation?	Court Rulings
Gas Prohibition	Prohibit new gas infrastructure	High in 9th Cir.; moderate elsewhere	Yes	Preempted (9th Cir.)
All-Electric Codes	Energy code requiring electric	High in 9th Cir.; moderate elsewhere	Yes	Not preempted (N.D.N.Y., D.D.C. & D. Md., all on appeal)
Flexible Codes	Energy code incentivizing electric	Low to moderate, depending on stringency	Yes	None
Disclosure	Require warning or other labels on gas appliances	Low (but some risk under First Amendment)	Yes	None
BPS	Set deadlines for existing buildings to meet a performance standard	Moderate	Yes	Not preempted (D. Md., on appeal)
Appliance Stds.	Use Clean Air Act to regulate emissions from appliances	Low to moderate, depending on stringency	Yes	Not preempted (C.D. Cal., on appeal)
Fuel Emissions Stds.	Set emissions standards based on fuel type	High in 9th Cir.; moderate elsewhere	Yes	Not preempted (S.D.N.Y., on appeal)
Gas Distribution	Use state or local authority to restrict gas infrastructure	Very low	No	None
TENs	Incentivize or require thermal energy networks	Very low	No	None

References

Ali-Ahmad, A. 2026. Trump Administration Sues Morgan Hill, Petaluma over Local Natural Gas Bans. San Francisco, CA: KQED. www.kqed.org/news/12068858/trump-administration-sues-morgan-hill-petaluma-over-local-natural-gas-bans.

- American Lung Association. 2024. Clean Air Timeline. Washington, D.C.: American Lung Association. www.lung.org/policy-advocacy/healthy-air-campaign/healthy-air-resources/clean-air-timeline.
- Association of Home Appliance Manufacturers v. Weiser*. 2025. No. 25-cv-2417, 2025 WL 4642378 (D. Colo. Dec. 19, 2025).
- Bay Area Air District. 2023. Proposed Amendments to Rules 9-4 and 9-6: Final Staff Report. baaqmd.gov/~media/dotgov/files/rules/reg-9-rule-4-nitrogen-oxides-from-fan-type-residential-central-furnaces/2021-amendments/documents/20230307_fsr_rules0904and0906-pdf.pdf.
- BDC (Building Decarbonization Coalition). Last visited June 11, 2026. Thermal Energy Networks (TENs). buildingdecarb.org/resource-library/tens-state-leg.
- Berkeley (Cal. Restaurant Association v. City of Berkeley)*. 2024. 89 F.4th 1094 (9th Cir. 2024).
- Colorado Apartment Association v. Ryan*. 2024. No. 24-cv-1093 (D. Colo. filed Apr. 22, 2024).
- C.R.S. (Colorado Revised Statutes). lexisnexis.com/hottopics/colorado/.
- Camargo, A.M., J. Silber-Byrne, A. Schulman, and Z. Magavi. “The Future of Heat: Thermal Energy Networks as an Evolutionary Path for Gas Utilities Toward a Safe, Equitable, Just Energy Transition.” In *Proceedings of the 2024 ACEEE Summer Study on Energy Efficiency in Buildings*. Washington, DC: ACEEE. buildingdecarb.org/wp-content/uploads/The-Future-of-Heat-Thermal-Energy-Networks-as-an-Evolutionary-Path-for-Gas-Utilities-Toward-a-Safe-Equitable-Just-Energy-Transition.pdf.
- Carpenter-Gold, D. 2024. The Tortured Arguments Department. St. Paul, MN: Public Health Law Center. publichealthlawcenter.org/commentary/240502/5/2/24-tortured-arguments-department-corporate-landlords-flimsy-challenge.
- . 2026. H.R. 3699 is an Assault on Local Power, Safety, and Affordability. Los Angeles, CA: Daily Journal. dailyjournal.com/articles/389766-h-r-3699-is-an-assault-on-local-power-safety-and-affordability.
- Congressional Research Service. 2025. Cooperative Federalism and the Clean Air Act: EPA’s Good Neighbor Interstate Air Pollution Rule. Washington, D.C.: Congressional Research Service. congress.gov/crs-product/LSB11309.
- Denver (Restaurant Law Center v. City and County of Denver)*. 2024. No. 24-cv-1862 (D. Colo. filed July 3, 2024).
- Elizabeth Condo. (Elizabeth Condominium Association v. Montgomery County)*. 2025. No. 25-cv-1019 (D. Md. filed Mar. 27, 2025).

- Elwood, J. 2026. No Invitation Necessary: When the Solicitor General Weighs In Unsolicited. Bethesda, MD: SCOTUSBlog. scotusblog.com/2026/02/no-invitation-necessary-when-the-solicitor-general-weighs-in-unsolicited/.
- EPCA (Energy Policy and Conservation Act of 1975). 42 U.S.C. §§ 6201 *et seq.*
- Executive Order 14260. 2025. 90 Fed. Reg. 15513. federalregister.gov/documents/2025/04/14/2025-06379/protecting-american-energy-from-state-overreach.
- H.R. 3699. 2026. congress.gov/bill/119th-congress/house-bill/3699/text.
- IMT (Institute for Market Transformation). 2025. What Defines a Building Performance Standard (BPS)? Washington, DC. imt.org/resources/what-defines-a-building-performance-standard-bps/.
- L.A. City Council (Council of the City of Los Angeles). 2025. Ord. No. 188716. cityclerk.lacity.org/onlinedocs/2022/22-0151_Ord_188716_dated_9-3-25.pdf.
- Lee, E., and Z. Schonfeld. 2025. Justice Department Stretched Thin in Trump Litigation Onslaught. Washington, D.C.: The Hill. thehill.com/regulation/court-battles/5176198-federal-justice-department-firings/.
- MBIA (Maryland Building Industry Ass’n, Inc. v. McIlwain)*. 2026. No. 25-cv-113, 2026 WL 946235 (D. Md. Apr. 2, 2026).
- Miranda, M. Sacramento Rolls Back All-Electric Building Law Passed Just Years Ago. Sacramento, CA: Sacramento Bee. sacbee.com/news/local/article313007086.html.
- Morgan Hill (U.S. v. City of Morgan Hill)*. 2026. No. 26-cv-56 (N.D. Cal. filed Jan. 5, 2026).
- Mulhern Gas Co. v. Mosley*. 2025. 798 F. Supp. 3d 304 (N.D.N.Y. 2025).
- . 2026. No. 25-2041 (2d Cir. argued Jan. 30, 2026).
- NAHB v. D.C. (Nat’l Ass’n of Home Builders v. District of Columbia)*. 2026. No. 24-cv-2942, 2026 WL 837674 (D.D.C. Mar. 26, 2026).
- NAHB v. Montgomery County (Nat’l Ass’n of Home Builders v. Montgomery County)*. 2026. No. 24-cv-3024, 2026 WL 817322 (D. Md. Mar. 26, 2026).
- N.Y.C. Admin. Code (New York City Administrative Code). codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAadmin/.
- Oak Park (Clean Energy Choice Coalition, NFP v. Village of Oak Park)*. 2025. No. 25-cv-4353 (N.D. Ill. filed Apr. 22, 2025).
- PHLC (Public Health Law Center). 2023. Memo to Jonny Kocher, RMI. St. Paul, MN: Public Health Law Center. publichealthlawcenter.org/sites/default/files/resources/PHLC-WA-Code-EPCA-Preemption.pdf.

- . 2024a. Cooking with Smoke. St. Paul, MN: Public Health Law Center. publichealthlawcenter.org/sites/default/files/resources/Cooking-With-Smoke.pdf.
- . 2024b. Regulating Tobacco Marketing. St. Paul, MN: Public Health Law Center. publichealthlawcenter.org/sites/default/files/resources/First-Amendment-Primer.pdf.
- . 2025a. Brief of *Amicus Curiae* Public Health Law Center in Support of Defendant's Combined Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment. *National Ass'n of Home Builders v. District of Columbia*, No. 24-cv-2942 (D.D.C. filed June 24, 2025). publichealthlawcenter.org/sites/default/files/case/NAHB-v-DC-PHLC-Amicus.pdf.
- . 2025b. Brief of *Amicus Curiae* Public Health Law Center, Inc., in Support of Montgomery County, Maryland's Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment. *Elizabeth Condo. Ass'n v. Montgomery County*, No. 25-cv-1019, Dkt No. 34 (D. Md. filed July 24, 2025). publichealthlawcenter.org/sites/default/files/case/Elz-PHLC-Amicus.pdf.
- . 2025c. Legal Levers to Promote Building Electrification: Primer for Policymakers and Advocates. publichealthlawcenter.org/sites/default/files/resources/Legal-Levers-to-Promote-Building-Electrification.pdf.
- . 2026. *National Association of Home Builders et al. v. Montgomery County (2024)*. St. Paul, MN: Public Health Law Center. publichealthlawcenter.org/litigation-tracker/national-association-home-builders-et-al-v-montgomery-county-2024.
- Plumbers (Ass'n of Contracting Plumbers v. City of New York)*. 2025. No. 23-cv-11292, 2025 WL 843619 (N.D.N.Y. Mar. 18, 2025).
- Rinnai (Rinnai America Corp. v. South Coast Air Quality Management District)*. 2025. No. 24-cv-10482, 2025 WL 2427844 (C.D. Cal. July 22, 2025).
- Rivera v. Anderson*. 2024. No. 2:24-cv-00677, 2025 WL 606212 (W.D. Wash. Feb. 25, 2025).
- SCAQMD (South Coast Air Quality Management District). 2024. Proposed Amended Rule 1146.2 Final Staff Report. aqmd.gov/docs/default-source/Agendas/Governing-Board/2024/2024-Jun7-026.pdf.
- S.F. Building Code (San Francisco Building Inspection Commission Code). 2025. codelibrary.amlegal.com/codes/san_francisco/latest/sf_building/.
- Takemura, A. 2026. Local Policies to Get Buildings off Gas Keep Winning in Court. New York City: Canary Media. canarymedia.com/articles/electrification/local-policies-buildings-winning-court.
- United States. 2025. Brief for the United States as *Amicus Curiae* Supporting Appellants. *Association of Contracting Plumbers v. City of New York*, No. 25-977, ECF No. 26.1 (2d Cir.

filed Aug. 7, 2025). publichealthlawcenter.org/sites/default/files/case/US-Amicus-Brief-Plumbers-v-NYC.pdf.

———. 2026a. Brief for the United States as *Amicus Curiae* Supporting Appellants and Reversal. *National Association of Home Builders v. Montgomery County*, No. 26-1449, ECF No. 36 (4th Cir. filed June 2, 2026). storage.courtlistener.com/recap/gov.uscourts.ca4.182305/gov.uscourts.ca4.182305.36.0.pdf.

———. 2026b. Brief for the United States as *Amicus Curiae* Supporting Appellants and Reversal. *National Association of Home Builders v. D.C.*, No. 26-7050, ECF No. 2178881 (D.C. Cir. filed June 15, 2026). storage.courtlistener.com/recap/gov.uscourts.cadc.43050/gov.uscourts.cadc.43050.01208860806.0.pdf.

U.S. EPA (U.S. Environmental Protection Agency). 2025. “Commercial and Residential Sector Emissions.” epa.gov/ghgemissions/commercial-and-residential-sector-emissions.

WSBCC (Washington State Building Code Council). 2024. Adopted Changes to the Energy Code for EPCA Concerns, Link to CR103 Forms. sbcc.wa.gov/news/adopted-changes-energy-code-epca-concerns-link-cr103-forms.