



Ninth Circuit Reverses City of Berkeley Ban on New Natural Gas Hookups in Buildings

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On Monday, April 17, 2023, the United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”) decided *California Restaurant Association v. City of Berkeley*, which ruled that the Energy Policy and Conservation Act (EPCA) preempts a City of Berkeley, California (“Berkeley”) 2019 ordinance prohibiting the installation of natural gas piping within newly constructed buildings. The court’s holding turned on its interpretation of “energy use” within the statute’s preemption clause, particularly the “energy use” of certain natural gas appliances covered by the statute and subject to energy efficiency standards set by the federal government. It held that Berkeley could not bypass the statute’s preemption clause by banning the natural gas piping within buildings rather than banning the natural gas products themselves. Rather, the city’s ban on natural gas hookups for new construction constituted a regulation of the “energy use” of the covered products. By hiding “energy use” regulations in building codes, the city effectively was doing indirectly what Congress prohibited them from doing directly.

The case, which dates from a November 2019 lawsuit filed against Berkeley by the California Restaurant Association after the ordinance was passed, can now move forward after a federal district court in California dismissed the trade association’s EPCA and related state law claims. It is of national importance because several states and municipalities have bans or are considering bans of natural gas infrastructure that are modeled after the Berkeley ordinance. A number of *amici* participated in the proceeding, including the U.S. government, which had argued for a narrower reading of the EPCA that would have allowed the Berkeley ordinance to stand. Other *amici* included states and municipalities aligned with Berkeley, as well as trade associations representing natural gas utilities and natural gas appliance manufacturers. While

the decision provides a pathway to challenge building code gas bans in other cities and states, it is not likely to stop certain states and municipalities from seeking ways to limit the use of natural gas within their borders. It merely takes the fight further upstream. The court is careful to clarify that states maintain their rights to regulate natural gas distribution under the Natural Gas Act even if the EPCA limits building codes that prevent the operation of natural gas appliances in buildings.

Categories



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