

Second & Ninth Circuit Federal Preemption Rulings Fragment Building Electrification Legal Landscape

by J. Michael Showalter and Samuel A. Rasche

In *Association of Contracting Plumbers v. City of New York*, the U.S. Court of Appeals for the Second Circuit ruled that the federal Energy Policy and Conservation Act (EPCA) does not preempt state and local laws which prohibit fossil fuel-powered appliances in new construction. That June 30, 2026 ruling conflicts with a 2023 Ninth Circuit decision, *California Restaurant Association v. City of Berkeley* (CRA), which held EPCA preempts a city building code banning new natural gas hookups in buildings.

The split between the Second and Ninth Circuits became even more complicated just two days later when, on July 2, 2026, a divided three-judge Ninth Circuit panel refused to follow *CBA* and held EPCA did *not* preempt a California air quality district's rule banning home appliances that emit nitrogen oxides. *Rinnai America Corp. v. SCAQMD*.

State and Local Actions. In recent years, state and local governments have adopted building electrification measures aimed at reducing emissions. Among these are limits or bans on the use of fossil-fuel-burning appliances in homes and other buildings. The restaurant association's successful challenge to Berkeley's hookup ban in *CRA* led to the first federal circuit court application of EPCA's broad preemption provision. EPCA sets minimum federal efficiency standards for certain appliances.

However, courts outside the Ninth Circuit have not followed suit, and federal district courts have recently upheld a [Maryland county's ordinance](#) requiring all-electric appliances in new buildings and a [Washington, D.C., law](#) requiring new buildings to meet net-zero emissions (effectively prohibiting gas-powered appliances).

Second Circuit Decision. The Second Circuit became the second federal appellate court to rule on the preemption issue. In separate lawsuits, unions and trade associations challenged a pair of New York State and New York City laws that, in effect, prohibit the installation of fossil-fuel-burning appliances in new construction. Both federal district courts rejected the plaintiffs' EPCA preemption argument, and the Second Circuit consolidated the cases on appeal.

The Second Circuit affirmed both district courts, holding that EPCA sets the energy efficiency of the appliance itself, as determined by manufacturers through test procedures, before it reaches consumers. As a result, local laws governing the use of an appliance by consumers are beyond the scope of EPCA and are not preempted.

J. Michael Showalter is a Partner, and **Samuel A. Rasche** is an Associate, with ArentFox Schiff LLP in the firm's Chicago, IL office.

The Ninth Circuit Reverses Course. In *Rinnai America Corp.*, a divided Ninth Circuit panel affirmed a district court's holding that EPCA did not preempt a South Coast Air Quality Management District rule that mandates zero emissions of nitrogen oxide from all stationary sources, including appliances. Distinguishing *CRA*, the *Rinnai* majority held that the rule did not concern "energy use" under the EPCA but rather regulated air emissions under the Clean Air Act's regional ozone limits. In a strongly worded dissent, Judge Lee argued that Congress intended EPCA's preemption clause to be read broadly and that *CRA* should control.

Takeaways. The growing divergence among federal courts underscores a broader trend. Energy transition initiatives increasingly are being shaped not only through legislation and regulation but through preemption litigation. For developers, manufacturers, utilities, investors, and building owners, the decision highlights the increasingly fragmented regulatory landscape governing building electrification. Absent U.S. Supreme Court review, project planning will require different approaches depending on jurisdiction, and stakeholders should continue to evaluate how state and local requirements interact with federal energy regulations and long-term capital planning.