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Federal Court in Colorado Bucks Trend on Preemption of Building Energy Mandates

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Building owners should not have to treat functioning, federally compliant equipment as obsolete simply because a state or city adopts a building-wide energy target.

That concern is central to a Colorado lawsuit in which four trade associations allege that state and local building-performance mandates intrude on the federal Energy Policy and Conservation Act's (EPCA) regulation of covered equipment. Supporting efficiency improvements does not mean owners must accept mandates that allegedly force premature replacement of federally compliant systems.

A September 30, 2026 ruling in ***Colorado Apartment Association et al. v. Ryan*** allows key portions of that challenge to proceed. The court did not hold the challenged standards preempted. But it rejected dismissal of the associations' energy-use-intensity claims, keeping open an important question for owners nationwide: whether governments can use building-wide energy mandates to accomplish what federal law prevents them from requiring directly of covered equipment.

The Challenge

The Colorado Apartment Association, Apartment Association of Metro Denver, Colorado Hotel and Lodging Association, Inc., and the Commercial Real Estate Development Association Colorado, previously known as NAIOP Colorado Chapter, brought challenged Colorado's state-level **Regulation 28** and Denver's local **Energize Denver** ordinance.

The challenged programs establish building-wide performance requirements for large buildings, using energy-use-intensity (EUI) targets, greenhouse-gas (GHG) intensity reductions, and alternative compliance pathways. The plaintiffs' central allegation is that targets function as equipment mandates when owners cannot realistically comply without replacing federally regulated systems before the end of their useful lives.

Owners should distinguish the requirements challenged in the lawsuit from current compliance obligations. Denver has since updated its rules, most recently effective August 27, and issued revised technical guidance on September 1. A building's applicable deadlines and available adjustments require a separate review; the litigation is not a substitute for that analysis.

The plaintiffs argued that both programs conflict with EPCA, which sets federal efficiency standards for covered consumer and commercial products and preempts certain state and local requirements concerning their energy efficiency or energy use. Although the Colorado and Denver

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programs nominally regulate buildings, the plaintiffs argue the programs indirectly impose energy-use limits so stringent that owners will be forced to replace EPCA-compliant equipment before the end of its useful life.

A Building-Wide Label Does Not End the Preemption Inquiry

On a motion to dismiss by Denver and Colorado, the key question for the court was what it means for a state or local requirement to be "concerning" the energy use or energy efficiency of an EPCA-covered product.

The court agreed with the defendants that the challenged provisions do not expressly refer to covered products merely because appliances operate inside regulated buildings. But, noting recent decisions by the Second and Ninth Circuit, it cautioned that laws which rely on an appliance's energy use or consumption as a "mechanism for regulation" may still trigger EPCA's preemption provision.

Applying that lens, the court concluded that the plaintiffs had plausibly alleged that mandated building-wide energy reductions could fall within EPCA's preemptive reach. For owners and trade associations, the significance is that the inquiry does not necessarily stop at the building envelope: it can examine whether the targets effectively require changes to the energy use or efficiency of federally covered equipment. The court allowed that theory to proceed at the pleading stage; it did not hold building-wide EUI standards categorically unlawful.

The owner-side argument is straightforward. If a mandate functions as a covered-equipment requirement within EPCA's preemptive scope, describing it as a building-performance standard should not place it beyond federal law's reach. Whether the evidence establishes that conflict remains unresolved.

The GHG Dismissal Defines the Limits of This Ruling

Not every claim survived. While the court allowed the plaintiffs' challenges to the EUI compliance mechanisms to go forward, the plaintiffs also argued that Colorado's GHG intensity cap was simply an energy cap by another name. The court disagreed. Relying on Maryland and District of Columbia EPCA decisions, it found that the plaintiffs had failed to plausibly distinguish Colorado's GHG provisions from the "net zero" building emissions standards those courts held were outside the scope of EPCA preemption. That dismissal is a meaningful limit on the associations' success. It does not eliminate the surviving EUI challenges or establish that every emissions-based mandate is insulated from EPCA. For owners, the distinction underscores the importance of identifying the particular compliance requirement being challenged and explaining its connection to covered equipment.

How the Decision Compares to the Ninth and Second Circuit Cases

The Colorado case presents a related but distinct question from the new construction restrictions addressed in the Ninth Circuit's *Berkeley* decision and the Second Circuit's New York decision: how EPCA applies when building-wide performance targets allegedly compel changes to covered equipment in existing buildings. Those competing appellate readings matter, but Colorado is not simply a midpoint between them.

In ***California Restaurant Association v. City of Berkeley***, the Ninth Circuit struck down a ban on natural-gas piping in new construction. The Ninth Circuit looked past the regulation's formal label and found that its practical effect impermissibly reaches federally regulated energy use. (For more on the *Berkeley* decision, see **here**.) The Colorado decision similarly focuses on the practical effect of the

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building performance standards that allegedly pressure owners to replace EPCA-covered equipment.

But the Colorado decision is narrower, both procedurally and substantively. Procedurally, it resolves only a motion to dismiss and is not a final judgment. Substantively, it declines to extend its reasoning to GHG limits, as discussed above.

The Second Circuit went the other way in ***Association of Contracting Plumbers of the City of New York v. City of New York***, declining to follow *Berkeley* and holding that New York State and City fossil-fuel restrictions for new buildings were not preempted because they did not set standards for the amount of energy covered products use, but rather restricted the use of those products by consumers. That narrower reading remains a substantial obstacle to broader preemption arguments. For owners challenging EUI mandates, the task is to establish why the particular requirements regulate covered equipment's energy use rather than merely restricting a category of equipment. (For more on the *City of New York* decision, see **here**.)

Another adverse decision deserves attention. In *Rinnai America Corp. v. South Coast Air Quality Management District*, decided July 2, the Ninth Circuit upheld zero-NOx appliance standards adopted to achieve federal air-quality requirements under the Clean Air Act. The majority distinguished *Berkeley* and also concluded that the facial challenge failed because the rule reached some equipment outside EPCA's coverage. *Rinnai* limits the suggestion that practical pressure to replace gas equipment alone establishes preemption. The surviving Colorado EUI claims instead focus on mandated energy reductions, not appliance-emissions standards adopted under the Clean Air Act framework.

As of October 20, *Berkeley* remains in place following denial of rehearing *en banc*. The Second Circuit denied rehearing *en banc* on August 26, and the reported deadline to seek US Supreme Court review is November 24, absent an extension. For owners making capital plans, the competing interpretations mean that a mandate's legal durability cannot be assumed merely because it pursues building efficiency or emissions reductions.

Takeaways

The Colorado ruling preserves a meaningful avenue for challenging building-wide energy mandates that allegedly operate as requirements for federally covered equipment. The strongest owner-side case will connect the legal theory to building-level facts: existing equipment, its remaining useful life, the mandated reductions, available compliance measures, and the practical consequences of each compliance pathway. A menu of alternatives does not, by itself, answer whether those alternatives avoid the alleged conflict with federal law. Groups like trade associations can help develop that record across building types and member portfolios, while documenting concrete member injuries and addressing standing. Finally, owners should also distinguish litigation strategy from compliance obligations: this ruling is not a final preemption judgment or permission to disregard applicable requirements.

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