



Written by [David Kelly](#) on April 21, 2023

Federal Appeals Court Strikes Down Berkeley's Natural Gas Ban

The Biden administration's war against fossil fuels took a direct hit when a federal appeals court ruled unanimously this week that the Energy Policy and Conservation Act ([EPCA](#)) preempts the City of Berkeley, California's 2019 [regulation](#) prohibiting the installation of natural-gas piping in new buildings.

The U.S. Court of Appeals for the Ninth Circuit ruling on [California Restaurant Association v. City of Berkeley](#) found that the city's ordinance illegally circumvented federal law "concerning the energy use of many natural gas appliances, including those used in household and restaurant kitchens." Berkeley's ordinance didn't ban gas appliances, just the piping in newly constructed buildings, thus making the use of gas appliances in such buildings impossible.



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A few months after the ordinance went into effect in January 2020, the California Restaurant Association (CRA) filed a federal lawsuit challenging Berkeley's law banning new natural gas hookups. A lower court ruled in favor of Berkeley in July 2021, but the CRA appealed, leading to this week's ruling. Berkeley [reportedly](#) has announced its intent to appeal the court's decision to the U.S. Supreme Court.

In response to the court's ruling, the CRA released the following [statement](#):

"The Ninth Circuit has unanimously affirmed the central issue in this case: local ordinances cannot override federal law," said California Restaurant Association President and CEO Jot Condie. "Cities and states are not equipped to regulate the energy use or energy efficiency of appliances that businesses and homeowners have chosen; energy policy and conservation is an issue with national scope and national security implications. This ordinance, as well as the solution it seeks, is an overreaching measure beyond the scope of any city.

"Natural gas appliances are crucial for restaurants to operate effectively and efficiently, as they allow for a wide variety of cuisines and innovations in the restaurant industry. Cities and states cannot ignore federal law in an effort to constrain consumer choice, and it is encouraging that the Ninth Circuit upheld this standard."

Energy Wire [reported](#):



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Sarah Jorgenson, a managing partner at Reichman Jorgensen Lehman & Feldberg LLP who represented the association in the case, said in an email the decision “sets an important precedent for future cases, especially with other cities and states considering restrictions on natural gas, and it prevents a patchwork of disparate regulations and protects consumer choice.”

The ruling handed a victory to the fossil fuel industry, which has been under fire by green energy advocates seeking to ban gas appliances since the Biden administration [reportedly](#) considered a nationwide ban in January. A study published then by [Environmental Science & Technology](#) cited disturbing carbon dioxide emissions from gas stoves. [According](#) to the *New York Post*, “U.S. gas stoves are putting 2.6 million tons (2.4 million metric tons) of methane — in carbon dioxide equivalent units — into the air each year.”

With this week’s ruling, groups such as the Sierra Club are now pushing for President Biden to take federal action to ban gas appliances.

The Washington Free Beacon [reported](#):

Gloria Smith, a managing attorney at the liberal environmental group Sierra Club, [suggested](#) Tuesday that the Biden administration take federal action to “alleviate legal scrutiny of city-level gas restrictions,” including through nationwide bans on gas appliances. Local gas bans, Smith said, don’t “need to be an issue for the courts”—instead, Biden could take the advice of the Sierra Club and other leading green groups, 26 of which [petitioned](#) the Biden administration last year to ban gas-powered furnaces and water heaters and set “performance standards” that would restrict gas stove use.

The court’s ruling will have a major impact on cities and towns nationwide that have or are seeking to pass legislation banning the use of natural gas. The CRA [stated](#),

Cities and states should not be permitted to overrule energy decisions that affect the country as a whole. The panel’s unanimous decision that Berkeley’s ban on natural gas piping is preempted by EPCA sets an important precedent for future cases, especially with other cities considering similar bans or restrictions on the use of natural gas.

Although this could be construed a victory for the fossil fuel industry, the reason for the court’s decision, summarized in the CRA’s conclusion that “local ordinances cannot override federal law,” is faulty, as construction codes and modes of energy are constitutionally not within the purview of the federal government.



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