This week, as part of the Frank G. Wells Clinic in Environmental Law, Cara Horowitz, Julia Stein, and I filed an *amicus curiae* brief on behalf of seven law professors in the Ninth Circuit case *California Restaurant Association v. City of Berkeley*, in which the California Restaurant Association (CRA), an industry association, is challenging a Berkeley ordinance barring natural-gas piping in most new buildings.

Our clients are leading experts in energy and environmental law: William Boyd, who teaches here at UCLA, Dan Farber at UC Berkeley, Sharon Jacobs at University of Colorado Boulder, Jim Rossi at Vanderbilt, David Spence at UT Austin, Shelley Welton at University of South Carolina and UPenn, and Hannah Wiseman at Penn State.

A bit of background on the case: In July 2019, the Berkeley city council voted to restrict natural gas lines in most new construction, in order to protect the health and safety of the city's residents, as well as to transition their communities away from natural-gas infrastructure.

Before the ordinance went into effect, CRA filed a lawsuit against Berkeley, pointing to the federal Energy Policy and Conservation Act (EPCA), which creates national efficiency standards for some appliances. EPCA provides that "no State regulation concerning the energy efficiency, energy use, or water use of [a] covered product shall be effective with respect to such product." CRA says that this preemption provision means that Berkeley can't decide not to allow natural-gas infrastructure connections to new buildings.

Berkeley's ordinance doesn't say anything about the "energy efficiency, energy use, or water use" of any appliances—it just says that the city's natural-gas infrastructure can't be extended to new buildings (in most cases). But according to CRA, that doesn't matter, because the ordinance could have the downstream effect of keeping the occupants of new buildings from installing gas appliances. This, CRA argues, "concern[s]" the "energy use" of those hypothetical appliances by eliminating one type of energy that they could use—namely, natural gas—and is therefore preempted.

Our brief explains that reading EPCA so broadly would have enormous implications for state and local control over utilities, especially utility distribution—moving energy or water from larger transmission lines, through local infrastructure, and ultimately to the end user. As we note, the distribution of utility infrastructure has always been in the control of state and local governments, and Congress has

carefully preserved that local control even when the federal government has regulated other portions of the utility system, such as in the Natural Gas Act of 1938 and Federal Power Act of 1935.

Under CRA's logic, cities and states wouldn't be able to control where new utility infrastructure gets built, or do anything to remove access to it. State and local governments could be forced to approve new utility connections, and would be barred from taking public safety actions, such as cutting off dangerous appliances, shutting down electric lines to prevent wildfires, and stopping lower-priority water usage during droughts. Since there is no structure in place for the federal government to take control of distribution infrastructure—EPCA doesn't provide one, which is further indication that it wasn't meant to preempt state and local regulations in this area—CRA's reading would leave a wide gap in a key area of utility regulation.

That's what the law professors we represent have to say: Congress took pains to leave local utility distribution to state and local governments in every other instance. There would be serious consequences to eliminating that authority. And there is no indication in EPCA's text or history that Congress meant to remove that authority. The legislative record bears this out, showing no intention on Congress's part of eliminating state or local control over utility distribution, just a desire to preempt state conservation standards that would directly compete with the federal standards that EPCA created.

A number of other amicus briefs have been filed in the case to in support of Berkeley's position, from the U.S. Department of Energy; a coalition of eight states and two cities; the National League of Cities League of California Cities, and California State Association of Counties; two professional chefs; and San Francisco Physicians for Social Responsibility and Climate Health Now. We trust that the Ninth Circuit will agree with these powerful arguments and reject the dangerous reading that CRA is pushing.