

Summary

A new case from New York expands the power of state and local governments to mandate all-electric homes. A contrary case from California was poorly reasoned. The new decision is a victory for climate policy and also for state rights.

Three years ago, the Ninth Circuit [struck down](#) a Berkeley ordinance banning natural gas hookups for new buildings. The court said that the ordinance was preempted by a federal law regulating appliance efficiency. The Second Circuit has now reached the opposite conclusion about an NYC ordinance that basically bans fossil fuels in new buildings. The Second Circuit [opinion](#) zoomed in on the language of the federal law, which seems more in line with Supreme Court's current approach to statutory interpretation.

In overturning the Berkeley ban, the Ninth Circuit basically said that a ban on natural gas was basically a mandate to use electric stoves and furnaces. Because they use zero natural gas, the court thought, these mandates essentially required infinite "natural gas" efficiency. The problem with this reasoning is that it seems to have no stopping point. For instance, it seems to guarantee state approval for natural gas infrastructure to ensure that people will be able to get gas for furnaces and stoves. The same statute regulates water efficiency of appliances, and the court's reasoning might make it illegal for a state to ban lawn watering or car wash operation during a severe drought. The court clearly wanted to stop short of these results but [gave no guidance](#) about where to draw the line.

In contrast to the Ninth Circuit's impressionistic approach, the Second Circuit carefully dissected the language of the statutory preemption provision. That statute says that, once a federal standard has been issued for an appliance, "no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product." The court focused on the term "energy use," which seems open-ended. But when the court turned to the statutory definition of energy use, that turns out to mean a regulation of energy use means a standard applying to a type of appliance relating to its operating energy consumption. A ban on using natural gas doesn't concern how much energy a gas furnace uses to produce a given level of heat or how an electric furnaces energy efficiency compares with a gas furnace.

As the Second Circuit pointed out, the Ninth Circuit's broader reading could lead to

absurd results. For instance, New York bans kerosene heaters because of the fire risk. Yet, under the Ninth Circuit's reasoning, that ban equates to requiring infinite kerosene efficiency and is preempted by federal law. Congress obviously didn't understand the preemption provision to be that broad.

The Trump Administration has been on a [campaign](#) to gut appliance efficiency standards. It views Congress's decision to require those standards as an insult to consumer choice. The statute doesn't allow the government to abolish efficiency standards completely, but the Administration's goal is to make them so weak as to be meaningless. It would be especially ironic to give sweeping preemptive effect to standards that may themselves be essentially useless.