ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 8, 2026

Case No. 26-7050

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF HOME BUILDERS OF THE UNITED STATES, *et al.*,
Appellants,

v.

DISTRICT OF COLUMBIA,
Appellee.

On Appeal from the United States District Court
for the District of Columbia, No. 1:24-cv-02942-ACR

BRIEF OF *AMICI CURIAE* ENERGY AND ENVIRONMENTAL LAW PROFESSORS IN SUPPORT OF APPELLEE

DENISE GRAB (NO. 55763)
ELIAS VAN EMMERICK*
JULIA E. STEIN (NO. 65402)
Frank G. Wells Environmental Law Clinic
UCLA School of Law
405 Hilgard Avenue
Los Angeles, CA 90095
Tel: (310) 206-4033
grab.elc@law.ucla.edu

July 24, 2026

Counsel for Amici Curiae

**Admitted only in California; practicing under the supervision of D.C. Circuit Bar members*

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

I. Parties and *Amici*

Except for the following, all parties, intervenors, and *amici curiae* appearing before this Court are listed or referenced in the Brief for the Appellee the District of Columbia (filed July 17, 2026): *Amici* William Boyd, Lincoln Davies, Daniel A. Farber, Sharon Jacobs, Alexandra Klass, Joshua C. Macey, Heather Payne, Melissa Powers, Jim Rossi, David B. Spence, and Shelley H. Welton.

II. Ruling Under Review

The ruling under review is the Memorandum Opinion and Order dated March 26, 2026, entered by Judge Ana C. Reyes below. *National Association of Home Builders of the United States, et al. v. District of Columbia*, No. 24-cv-02942, 2026 WL 837674 (D.D.C. Mar. 26, 2026).

III. Related Cases

Amici are not aware of any related cases in this Court. There are two cases pending in other Courts of Appeals that raise similar issues: *Maryland Building Industry Association, Inc. v. McIlwain*, No. 26-1552 (4th Cir.) and *National Association of Home Builders of the U.S. v. Montgomery County*, No. 26-1449 (4th Cir.)

RULE 29 STATEMENTS

Amici certify that all parties in this proceeding have consented to the filing of this amicus brief.

Pursuant to Fed. R. App. P. 29(a)(4)(E), undersigned counsel for *Amici* states that no party or party's counsel authored this brief in whole or in part, and no other person besides *Amici* or their counsel contributed money intended to fund preparing or submitting the brief.

Pursuant to D.C. Cir. R. 29(d), undersigned counsel for *Amici* state that a separate brief is necessary due to *Amici*'s distinct expertise and interests. *Amici* are expert professors engaged in the study and teaching of energy and environmental law and policy. No other *amici curiae* appearing in this case share these perspectives or expertise, as far as *Amici* are aware. Accordingly, *Amici*, through counsel, certify that filing a joint brief would not be practicable.

/s/ Denise Grab
DENISE GRAB
July 24, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

CONSTITUTIONAL PROVISIONS

LEGISLATIVE HISTORY

OTHER AUTHORITIES

GLOSSARY OF ABBREVIATIONS

EPCA	Energy Policy and Conservation Act
FERC	Federal Energy Regulatory Commission
NAECA	National Appliance Energy Conservation Act of 1987
NECPA	National Energy Conservation Policy Act of 1978
PUC	Public Utilities Commission

AMICI CURIAE'S STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE

Amici Curiae ("*Amici*") are among the nation's preeminent professors engaged in the study and teaching of energy and environmental law and policy. They are leading experts in fields including energy regulation; federalism and its application to energy and environmental law; and federal, state, and local utility regulation. *Amici* have produced a large body of award-winning scholarly work on these subjects, including leading casebooks on energy, environmental, and constitutional law. They have an interest in ensuring that cases like this are decided based on a full understanding of the implications for the balance of federal, state, and local power in utility regulation, and this brief helps clarify these issues for the Court.

Amici are identified below. Their affiliations are provided to demonstrate their expertise and interest; this brief contains *Amici*'s own analysis, not that of their institutions.

William Boyd is the Michael J. Klein Chair and Professor of Law and Faculty Co-Director of the Emmett Institute on Climate Change and the Environment at the University of California, Los Angeles (UCLA) School of Law, and a Professor at the UCLA Institute of the Environment and Sustainability. Dr. Boyd has served as a consultant to the U.S. Department of Energy, the National Renewable Energy Laboratory, the Joint Institute for Strategic Energy Analysis, the California Independent System Operator, and the Center for the New Energy Economy. He holds a Ph.D. in Energy & Resources from the University of California, Berkeley and a J.D. from Stanford Law School.

Lincoln Davies is a Professor of Law and the Co-Director of the Wallace Stegner Center for Land, Resources & The Environment at the University of Utah S.J. Quinney College of Law. Davies previously served as Dean of The Ohio State University Michael E. Moritz College of Law. He holds a J.D. from Stanford Law School.

Daniel A. Farber is the Sho Sato Professor of Law and the Faculty Director of the Berkeley Center for Law, Energy & the Environment at the University of California, Berkeley School of Law. He has published over 200 scholarly articles, essays, and books, primarily on energy, the environment, and the U.S. Constitution. Prof. Farber holds a J.D. from the University of Illinois College of Law.

Sharon Jacobs is a Professor of Law at the University of California, Berkeley School of Law. Prof. Jacobs' award-winning research focuses on the structure of energy regulation at the federal and state level, and she was a practicing energy regulatory attorney before joining the academy. She holds a J.D. from Harvard Law School.

Alexandra Klass is the James G. Degnan Professor of Law at the University of Michigan Law School. Professor Klass previously served as deputy general counsel for energy efficiency and clean energy demonstrations at the U.S. Department of Energy and as a member of the Minnesota Governor's Advisory Council on Climate Change. She holds a J.D. from the University of Wisconsin Law School.

Joshua C. Macey is a professor of law at Yale Law School. Prior to his appointment at Yale Law School, Macey served as an Assistant Professor of Law at the University of Chicago Law School. Macey has also won the Morrison Prize — awarded to the "most impactful sustainability-related legal academic paper published in North America during the previous year" — for three consecutive years. Professor Macey holds a J.D. from Yale Law School and an M.Sc. from the London School of Economics.

Heather Payne is the Carter C. Kissell Professor in Law at The Ohio State University Moritz College of Law. Professor Payne's scholarship focuses on regulatory frameworks and governance. She has also won the Morrison Prize. Professor Payne earned a J.D. from the University of North Carolina School of Law.

Melissa Powers is a Jeffrey Bain Faculty Scholar and Professor of Law at Lewis & Clark Law School. Melissa is also the founder of the Green Energy

Institute at Lewis & Clark Law School, an organization that designs policies to transition to a zero-carbon energy system. Melissa received her JD, magna cum laude, from Lewis & Clark Law School.

Jim Rossi is the Judge D.L. Lansden Chair in Law at Vanderbilt University Law School. He has served as a consultant or expert witness for the Federal Energy Regulatory Commission, the Administrative Conference of the United States, and various state regulatory commissions. Prof. Rossi holds an LL.M. from Yale Law School and a J.D. from the University of Iowa College of Law.

David B. Spence is the Rex G. Baker Centennial Chair in Natural Resources Law at the University of Texas at Austin School of Law, and Professor of Law & Regulation and Professor of Energy Law at the University of Texas at Austin McCombs School of Business. Dr. Spence works on long-term research projects with the University of Texas's Energy Institute, Harvard Law School, Duke University, and other institutions. He holds a Ph.D. in Political Science from Duke University and a J.D. from the University of North Carolina School of Law.

Shelley H. Welton is a Presidential Distinguished Professor of Law and Energy Policy at the University of Pennsylvania Carey Law School and the University of Pennsylvania Kleinman Center for Energy Policy. Dr. Welton's research focuses on energy governance, including state and local energy regulation and energy federalism. She holds a Ph.D. in law from Yale Law School, a J.D.

from New York University School of Law, and an M.P.A. in environmental science and policy from the School for International and Public Affairs at Columbia University.

SUMMARY OF ARGUMENT

Appellants' reading of Energy Policy and Conservation Act ("EPCA") preemption conflicts with Congress's historical commitment to local control of utility distribution. The Clean Buildings Act is a building code that regulates on-site fuel combustion, something that falls well within the District's police power to protect public health. *See, e.g.*, *Firemen's Ins. Co. of Washington, D.C. v. Washington*, 483 F.2d 1323, 1327-28 (D.C. Cir. 1973) (discussing the delegation by Congress to the District of police powers necessary "for the protection of lives, limbs, health, comfort and quiet of all persons" residing in the District). Appellants' proposed reading of EPCA would not only interfere with local governments' traditionally held police powers, though that alone is a drastic enough impact to reject this reading. Appellants' argument would also upend a century of federalist utility regulation in the United States. It is this consequence that we focus on in this brief.

Authority over utility regulation has been shared between federal, state, and local regulators for nearly a century. Since the inception of federal utility regulation, Congress has adhered to the same fundamental organizing principle: The federal government regulates wholesale sales of energy in interstate commerce, while state and local governments regulate retail sales and local distribution infrastructure (among other things). These jurisdictional lines were first established in the Federal Power Act of 1935, ch. 687, pt. II § 201(a), 49 Stat. 847, 847 (codified at 16 U.S.C. § 824) and the Natural Gas Act of 1938, ch. 556 § 1(b), 52 Stat. 821, 821 (codified at 15 U.S.C. § 717(b)), and have not been altered since. The distinctive federalist system created by these statutes—which allocates control over local distribution to the states—lies at the heart of utility regulation in the United States.

Appellants' proposed reading of EPCA's preemption clause, 42 U.S.C. § 6297(c), would fundamentally alter this structure. It would strip state and local governments of the ability to make decisions about local gas distribution and use that they have been making since energy utilities first arose. As EPCA does not grant the federal government the authority to regulate utility infrastructure, Appellants' interpretation of the preemption clause would simultaneously create a regulatory gap that no government would be able to fill without congressional intervention. In order to avert these dire effects, this Court should reject Appellants' interpretation and affirm the district court's decision.

ARGUMENT

I. Congress Has Firmly and Repeatedly Affirmed State and Local Governments as the Regulators Responsible for Local Distribution Infrastructure

A. State and Local Governments Have Regulated Local Distribution Since the Inception of Utility Regulation

State and local governments have had authority over local utilities for as long as energy infrastructure has existed. Regulation of the gas and electric industries originated at the municipal level in the nineteenth century. Utilities were granted municipal franchises, which gave them the right to build infrastructure and operate within particular cities. *See, e.g.*, Werner Troesken, *Regime Change and Corruption. A History of Public Utility Regulation* 260-61, *in* CORRUPTION AND REFORM: LESSONS FROM AMERICA'S ECONOMIC HISTORY (2006, Edward L. Glaeser and Claudia Goldin, eds.). In the early twentieth century, states began creating public utility commissions ("PUCs") tasked with setting appropriate rates for retail utility sales. By 1930, every state but Delaware had adopted the PUC model. *See* William Boyd & Ann E. Carlson, *Accidents of Federalism: Ratemaking and Innovation in Public Utility Law*, 63 UCLA L. REV. 810, 823 (2016). These state PUCs initially regulated all utility activities within their state. Yet as utilities grew and became increasingly interconnected, the Supreme Court found that the dormant Commerce Clause barred state regulation of some utility activities affecting interstate commerce, such as interstate energy transmission and sales of energy at wholesale. *See Pennsylvania v. West Virginia*, 262 U.S. 553, 596 (1923); *Missouri v. Kan. Nat. Gas Co.*, 265 U.S. 298, 307 (1924); *Pub. Utils. Comm'n of R.I. v. Attleboro Steam & Elec. Co.*, 273 U.S. 83, 89–90 (1927); *E. Ohio Gas Co. v. Tax Comm'n of Ohio*, 283 U.S. 465, 470–71 (1931).

In identifying states' lack of authority to regulate interstate transactions, these decisions affirmed state control over retail sales and the local distribution system that delivers energy to retail consumers. *See, e.g.*, *E. Ohio Gas,* 283 U.S. at 471 ("[T]he furnishing of gas to consumers…by means of distribution plants…is not interstate commerce, but a business of purely local concern exclusively within the jurisdiction of the state."). For wholesale energy sales and transmission in interstate commerce, however, these decisions created a regulatory void, termed the "*Attleboro* gap." *See, e.g.*, Jim Rossi, *The Brave New Path of Energy Federalism*, 95 TEX. L. REV. 399, 409-10 (2016); Matthew R. Christiansen & Joshua C. Macey, *Long Live the Federal Power Act's Bright Line*, 134 HARVARD L. REV. 1360, 1371-72 (2021).

Congress closed that gap by enacting the Federal Power Act of 1935 and the Natural Gas Act of 1938. These twin statutes tasked the Federal Power Commission (today's Federal Energy Regulatory Commission, or "FERC") with regulating wholesale sales and transportation of electricity and natural gas in interstate commerce. At the same time, both statutes explicitly recognized and left alone pre-existing state authority to regulate retail sales and local distribution. What resulted was a distinctive dual structure of regulation with a clear division of labor between the federal government and the states. *See* 16 U.S.C. § 824(b) (giving the Federal Power Commission authority to regulate "the transmission of electric energy in interstate commerce and [] the sale of electric energy at wholesale in interstate commerce," but leaving "any other sale of electric energy" or "facilities used in local distribution" to the states); 15 U.S.C. § 717(b) (regulating "the transportation of natural gas in interstate commerce, [and] the sale in interstate commerce of natural gas for resale," but not "any other transportation or sale of natural gas or [] the local distribution of natural gas"); *see also* Boyd & Carlson, *Accidents of Federalism*, 63 UCLA L. Rev. at 822-30 (reviewing the history of congressional action in power regulation and noting Congress's continued respect for the jurisdictional split between federal and state spheres). In effect, these statutes were adopted to address the gaps in regulation created by the increasingly interstate aspects of electricity and natural gas. But in both statutes, Congress left untouched the longstanding authority of states and local governments to regulate local distribution.

In the more than eighty years since the passage of the Natural Gas Act and Federal Power Act, Congress has faithfully maintained this federalist system. In fact, Congress has affirmatively acted to safeguard state and local control over distribution infrastructure. When a Supreme Court decision placed certain intrastate natural gas pipelines under federal jurisdiction, in *Fed. Power Comm'n v. E. Ohio. Gas Co.*, 338 U.S. 464 (1950), Congress responded by amending the Natural Gas Act to ensure that jurisdiction over those lines remained "exclusively in the States, *as always has been intended*." S. Rep. No. 83-817 at 2 (1953) (emphasis added); *see also* Act of Mar. 27, 1954, ch. 115, 68 Stat. 36 (codified at 15 U.S.C. § 717(c)) (overturning *East Ohio Gas* and declaring the affected pipelines to be "matters primarily of local concern and subject to regulation by the several States"). Even as Congress changed other areas of utility regulation, it never departed from its "unbroken recognition" of state and local authority over distribution. *Gen Motors Corp. v. Tracy*, 519 U.S. 278, 304 (1997).

The federal judiciary's interpretation of the Federal Power Act and the Natural Gas Act comports with Congress's intent to leave utility distribution in the hands of state and local governments. *See, e.g.*, *Fed. Energy Regul. Comm'n v. Elec. Power Supply Ass'n*, 577 U.S. 260, 266-67 (2016) ("[T]he [Federal Power] Act…maintains a zone of exclusive state jurisdiction…[for] retail sales of electricity (*i.e.*, sales directly to users)."); *ONEOK, Inc. v. Learjet, Inc.*, 575 U.S. 373, 384-85 (2015) ("As we have repeatedly stressed, the Natural Gas Act 'was drawn with meticulous regard for the continued exercise of state power, not to handicap or dilute it in any way.'" (quoting *Panhandle E. Pipe Line Co. v. Pub.*

Serv. Comm'n of Ind., 332 U.S. 507, 517-18 (1947))); *Gen. Motors Corp.*, 519 U.S. at 292 ("Congress's purpose in enacting the [Natural Gas Act] was to fill the regulatory void created by the Court's earlier decisions…, while at the same time leaving undisturbed the recognized power of the States to regulate all in-state gas sales directly to consumers."); *Panhandle E. Pipe Line Co. v. Mich. Pub. Serv. Comm'n*, 341 U.S. 329, 334 (1951) ("Direct sales for consumptive use were designedly left to state regulation [by the Natural Gas Act]."); *S. Coast Air Quality Mgmt. Dist. v. Fed. Energy Regul. Comm'n*, 621 F.3d 1085, 1091 (9th Cir. 2010) ("[T]he Natural Gas Act specifically exempted from federal regulation the 'local distribution of natural gas.'" (quoting 15 U.S.C. § 717(b))).

B. Congress Has Explicitly Delegated Police Powers Analogous to Those of a State to the Local District of Columbia Government, Including Control over Gas Distribution and Building Codes

The system of utility regulation that has been in place for nearly a century grants state governments authority over all aspects of distribution. That includes the retail rates utilities are allowed to charge customers, the siting and management of distribution infrastructure, and the safe operation thereof.

Although the District of Columbia ("the District") is not a state, Congress took affirmative steps to ensure that utility regulation in the District would operate similarly to the approach in states. Congress has original legislative authority over the District of Columbia, *see* U.S. Const. Art. I, § 8, and initially Congress bore the responsibility of regulating distribution within the District. The first natural gas utility to serve the District, the Washington Gas & Light Company, was granted a franchise pursuant to federal legislation in 1848. *See* An Act to Incorporate the Washington Gas Light Company, 9 Stat. 722, 723 (1848) (Congress gave Washington Gas "full power and authority to manufacture, make, and sell gas . . . to be used for the purpose of lighting the city of Washington…."). Congress soon found itself unprepared to address local utility questions, and upon a request by President Taft passed a bill to create a public utilities commission for the District. Law Creating the Public Utilities Commission of the District of Columbia, Pub. L. No. 62-451, 37 Stat. 974 (1913); William Howard Taft, President of the United States, Fourth Annual Message, State of the Union Written Message (Dec. 3, 1912) ("One of the most crying needs in the government of the District is a tribunal or public authority for the purpose of supervising the corporations engaged in the operation of public utilities"), *available at* https://www.presidency.ucsb.edu/documents/fourth-annual-message-16. That Commission, today's Public Service Commission, fulfilled the role that state public utility commissions were playing in states throughout the country. The Commission was empowered to oversee utility rates, and order the "improvements and extensions of the works, wires, poles, lines, conduits, ducts, and other reasonable devices, apparatus, and property of gas corporations and electrical corporations." 37 Stat. 974 at 986. Congress thus harmonized the District's method of utility regulation with that seen throughout the country by assigning control to a local commission.

While that Commission was originally created and overseen by Congress, it would not remain so. In 1973, the Home Rule Act delegated authority over utility regulation to the Council of the District of Columbia. District of Columbia Pub. L. 93-198, 87 Stat. 774 (1973). In doing so, Congress reaffirmed its commitment to a federalist system of utility regulation. The District of Columbia exemplifies this commitment perhaps more so than any other jurisdiction, precisely because Congress affirmatively chose to delegate authority over distribution that it originally held.

The authority delegated to the Public Service Commission was not limited to merely overseeing rates or infrastructure construction. The Commission is empowered to impose such additional conditions on service as it deems in the public interest. *See* D.C. Code § 34-1101(b) ("The Commission may prescribe terms and conditions upon a grant of an application for a certificate of present and future public convenience and necessity as the Commission, in its discretion, decides are necessary to further the present and future public convenience and necessity."). For example, the Commission, under authorization of the Council of the District of Columbia, may order the removal of infrastructure it deems hazardous to life or property. *See* 15 D.C. Municipal Regs. § 2302.1 ("Whenever the Commission finds a particular facility to be hazardous to life or property, it shall require the person, firm, or corporation operating the facility to take all measures necessary to remove the hazards.”).

Congress’s decision to delegate this authority reflects its unwillingness to exercise the police powers that have traditionally been reserved to local governments. This extends to the authority to set building codes, which have long been viewed as an exercise of states’ police powers. As with utility regulation, Congress was initially tasked with setting these standards for the District of Columbia in the absence of a state government. *See, e.g.*, An Act to Regulate Height of Buildings in the District of Columbia, Pub. L. No. 55-322 (1899). Here too, however, Congress delegated that authority to the Council of the District of Columbia in the Home Rule Act of 1973. *See* Pub. L. No. 93-198 § 302, 87 Stat. 774 (1973). Congress, even when given the chance, did not seek to exercise power over local matters such as distribution networks or building codes. EPCA should not be read to implicitly repeal the authority over utility and building regulation that Congress deliberately and explicitly chose to delegate to the District.

II. Appellants’ Reading of EPCA Would Upend Congress’s Federalist System of Utility Regulation

Appellants’ reading of EPCA’s preemption provisions would eliminate much of the traditional role of state and local governments in regulating local utility distribution, in direct opposition to the “unbroken recognition of [] state regulatory authority" over local distribution that has existed since before the Natural Gas Act of 1938 and that was expressly preserved in that statute. *Gen. Motors Corp.,* 519 U.S. at 304-05.

Appellants' proposed reading prohibits any state or local action that would affect the type of energy available to a building. Appellants rely on the provision that "no State regulation concerning the energy efficiency, energy use, or water use of [a] covered product shall be effective with respect to that product." Opening Brief of Appellants 16 (hereinafter "Appellants' Br.") (quoting 42 U.S.C. § 6297(c)). Appellants argue that, since the Clean Buildings Act seeks to "ban any appliances that use more than zero gas energy," this act clearly concerns the "energy use" of EPCA-covered appliances. Appellants' Br. at 21. As such, Appellants argue that "EPCA would no doubt preempt an ordinance that directly prohibits the use of covered natural gas appliances in new buildings." *Id.* at 22. To make this argument, Appellants claim that the Act's prohibition of on-site fuel combustion is functionally equivalent to setting the maximum energy use of EPCA-covered gas appliances at zero, "as it prohibits any appliance that is designed to use more than zero gas energy." *Id.* at 18.

Taking Appellants' argument to its logical conclusion, this reading of EPCA would preempt any local government action that would affect the amount or type of energy appliances can use. That includes local governments' traditional authority to safely manage local distribution infrastructure. If the District's Public Service Commission orders a gas line shut off because it is "hazardous to life or property," *see* 15 D.C. Mun. Regs. § 2302.1, that would similarly concern the "energy use" of EPCA-covered appliances. Appellants' Br. at 21. Health regulations designed to prevent carbon monoxide poisoning by prohibiting the installation of unvented room heaters into bedrooms, could similarly be preempted as concerning "energy use." *See* 2017 D.C. Fuel Gas Code § 303.3. This reading of EPCA, then, would remove local governments' long-held authority to regulate utility distribution infrastructure altogether.

This outcome would turn the federalist system of utility regulation Congress has sought to maintain for nearly a century squarely on its head. Under Appellants' reading, state and local governments would lose the authority to order the removal of hazardous or malfunctioning utility equipment, if doing so would change the type of energy available to customers. They would lose the power to engage in routine safety shut-offs in order to complete maintenance or repairs. State and local governments would be deprived of the responsibilities over energy distribution they have held since public utility service began in the United States, in direct contradiction of Congress's chosen federalist system of regulation.

III. Appellants' Reading of EPCA Would Create a Regulatory Void in Contradiction of Congress's Intent

Appellants' argument implies that in passing EPCA Congress chose to do away with the basic structure of federalism that has animated natural gas regulation for almost a century, while failing to provide a substitute regulator for the authority it is taking from state and local governments. This not only disrupts the basic scheme of utility regulation that Congress created, but also creates a new regulatory gap—the opposite of what Congress has said it intended.

The regulatory authority created by the section of EPCA at issue in this case is limited to setting appliance-specific energy conservation standards. *See* 42 U.S.C. § 6295(a) (creating "[f]ederal energy conservation standards applicable to covered products" and authorizing "amended or new energy conservation standards" only); 42 U.S.C. § 6313 (creating appliance standards and authorizing new standards for covered products, but authorizing no additional regulatory action). If Appellants' reading is correct, EPCA eliminates the ability of local governments to manage local gas distribution, but neglects to grant that authority to anyone else. The Department of Energy is not equipped to act as the nation's gas line repairman. As a result, EPCA would eliminate *all* regulation of gas distribution.

If Appellants have their way, no government could regulate the types of energy a home or business could use. No government could require the removal of hazardous or malfunctioning infrastructure from distribution networks. No government could order the shut-offs necessary to complete routine repairs. Under this reading of EPCA, such decisions could only be made if Congress created a new set of federal authorities that would oversee the distribution infrastructure connected to each building, on each street of each city in the country. As the history of utility regulation in the District of Columbia shows, this is the opposite of what Congress intended. Congress was tasked with doing this on the scale of just one city prior to 1913, yet it chose to delegate that authority to the District's Public Service Commission, and in 1973, to the Council of the District of Columbia. There is no reason to believe Congress, in passing EPCA, developed an appetite to control these decisions not just for the District, but for every locality in the nation.

The creation of such a regulatory gap would directly contradict Congress's intent to "impose a comprehensive regulatory system on the transportation, production, and sale" of natural gas to prevent the existence of any regulatory "no-man's land." *Fed. Power Comm'n v. Transcon. Gas Pipe Line Corp.*, 365 U.S. 1, 28, 19 (1961). It has consistently been Congress's intent that any shortfall in federal power be made up by state jurisdiction and vice versa. *See, e.g.*, *Elec. Power Supply Ass'n*, 577 U.S. at 289 ("Some entity must have jurisdiction to regulate each and every practice that takes place in the electricity markets….");

Mich. Pub. Serv. Comm'n, 341 U.S. at 333 ("In the absence of federal regulation [of the sale and distribution of natural gas], state regulation is required in the public interest."). Thus, the gap that results from Appellants' reading, in which the state is preempted from regulating while no federal agency has authority to regulate, fundamentally contradicts Congress's intended regulatory scheme.

The history of EPCA's amendments confirms that Congress never intended the scope of EPCA's preemption provision to reach beyond appliance efficiency standards. Two EPCA amendments provide the core language relevant to this case: the National Energy Conservation Policy Act of 1978 ("NECPA"), which preempted "requirement[s] respecting energy use or energy efficiency of a type (or class) of covered products," Pub. L. 95-619, § 424(a)(2), 92 Stat. 3206, 3264, and the National Appliance Energy Conservation Act of 1987 ("NAECA"), which tweaked this language to its current form, preempting "regulation[s] concerning the energy efficiency or energy use of [a] covered product." Pub. L. 100-12, § 7, 101 Stat. 103, 118.

The legislative record indicates that Congress had no intention to expand EPCA preemption beyond appliance conservation standards in either law—and certainly not far enough to reach core areas of local decision-making over gas distribution and use. The justification behind NECPA's preemption was that "compliance with all state *standards* would be very costly." S. Rep. No. 95-409, at

39 (1977) (emphasis added); *see also* H.R. Rep. No. 95-1751, at 117 (1978) (Conf. Rep.) ("Both the House and Senate [versions of NECPA] modified EPCA to establish a period of automatic preemption of State standards prior to the establishment of a Federal standard."). NAECA's amendments, meanwhile, were intended to "follow[] substantially the preemption requirements in [NECPA]." H.R. Rep. No. 100-11, at 23 (1987) (Conf. Rep.); *see also* 133 Cong. Rec. 3070 (1987) (statement of Sen. Johnston) (sponsor's description of NAECA as having "two basic principles": "to establish efficiency standards" and "to preempt State efficiency standards"). Thus, the language changes in both amendments were meant to continue the preemption of state appliance standards, not to fundamentally alter the scope of EPCA preemption.

Congress gave no indication that its amendments to NECPA and NAECA were intended to expand the scope of EPCA preemption beyond energy efficiency standards. There is certainly no sign that it expected the amendments to remove a large swathe of state and local authority over natural gas distribution.

CONCLUSION

Appellant's interpretation would radically expand EPCA preemption, creating a regulatory void in a system Congress meant to be seamless and threatening core areas of state and local power, including basic health and safety regulations. This Court should join the growing group of courts holding that EPCA preemption does not extend beyond appliance conservation standards to threaten the ability of localities to protect their residents. *See Ass'n of Contracting Plumbers v. City of New York*, No. 25-977, 2026 WL 1871692 (2nd Cir., June 30, 2026); *Nat'l Ass'n of Home Builders of the U.S. v. Montgomery County*, No. 8:24-cv-03024, 2026 WL 817322, at *7 (D. Md. Mar. 25, 2026); *Rinnai America Corp. v. South Coast Air Quality Mgmt. Dist.*, No. 25-5129, 2026 WL 1912093 (9th Cir., July 2, 2026) (holding that the *CRA v. Berkeley* decision does not extend to air quality regulations that could prevent the sale of covered appliances). *Amici* therefore urge the Court to reject Appellant's interpretation and uphold the district court's decision.

Respectfully submitted,

/s/ Denise Grab
DENISE GRAB (NO. 55763)
ELIAS VAN EMMERICK*
JULIA E. STEIN (NO. 65402)
Frank G. Wells Environmental Law Clinic, UCLA School of Law
405 Hilgard Avenue
Los Angeles, CA 90095
(310) 206-4033
grab.elc@law.ucla.edu

July 24, 2026

Counsel for Amici Curiae

**Admitted only in California; practicing under the supervision of D.C. Circuit Bar members*

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitations set forth in D.C. Cir. R. 32(e)(3) and Fed. R. App. P. 29(a)(5) because this brief contains 4774 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1). The foregoing brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ Denise Grab
DENISE GRAB
July 24, 2026

CERTIFICATE OF SERVICE

I hereby certify that, on this 24th day of July, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the Court's CM/ECF system, which constitutes service on all parties and parties' counsel who are registered ECF filers.

/s/ Denise Grab
DENISE GRAB