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18 **UNITED STATES DISTRICT COURT**
 19 **FOR THE EASTERN DISTRICT OF WASHINGTON**

20 JAMON RIVERA, an individual;
 INLAND NW AGC, a membership
 organization; SPOKANE HOME
 21 BUILDER'S ASSOCIATION, a

CASE NO.

COMPLAINT FOR DECLARATORY AND
 INJUNCTIVE RELIEF - 1
 Case No.

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1 nonprofit corporation; WASHINGTON
2 STATE ASSOCIATION OF UA
3 PLUMBERS, PIPEFITTERS AND
4 HVAC/R SERVICE TECHNICIANS, a
5 labor organization; CONDRON
6 HOMES LLC, a limited liability
7 company; PARAS HOMES LLC, a
8 limited liability company; GARCO
9 CONSTRUCTION INC., a for-profit
10 corporation, NATIONAL PROPANE
11 GAS ASSOCIATION, a national trade
12 association, CITIZEN ACTION
13 DEFENSE FUND, a nonprofit
14 corporation; AVISTA
15 CORPORATION; CASCADE
16 NATURAL GAS CORPORATION;
17 AND NORTHWEST NATURAL GAS
18 COMPANY,

19 Plaintiffs,

20 v.

21 WASHINGTON STATE BUILDING
CODE COUNCIL,

Defendant.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

1. In this action, Plaintiffs Jamon Rivera, Inland NW AGC, Spokane Homebuilder’s Association, Washington State Association of UA Plumbers, Pipefitters, and HVAC/R Service Technicians, Condron Homes LLC, Paras Homes, LLC, Garco Construction Inc., National Propane Gas Association, and Citizen Action Defense Fund (the “Homeowners, Builders, and Suppliers”), and Avista Corporation, Cascade Natural Gas Corporation, and Northwest Natural Gas Company (the “Utilities”), collectively the “Coalition,” seek declaratory and injunctive relief under federal law against enforcement of provisions of the Washington State Energy Code

1 that ban the use of natural gas appliances that are subject to regulation under the
2 federal Energy Policy and Conservation Act (“EPCA”).

3 2. Defendant Washington State Building Code Council has violated EPCA by
4 amending the Washington State Energy Code to outright ban the use of EPCA-
5 covered appliances in many cases.

6 3. By banning the use of EPCA-covered gas appliances, the Washington State
7 Energy Code interferes with commercial and consumer energy choice; jeopardizes
8 jobs; impairs commerce; and increases building and energy costs for Washington
9 residents and businesses.

10 4. The Washington State Energy Code has irreparably harmed the Coalition, as
11 homeowners and builders are already choosing to forgo gas services in light of the
12 Code’s restrictions on gas appliances.

13 5. This Court has authority to grant the relief sought under 28 U.S.C. §§ 1331,
14 2201, 42 U.S.C. § 1983, and 42 U.S.C. § 6306(c)(1).

15 **II. JURISDICTION AND VENUE**

16 6. Jurisdiction is proper because, under 42 U.S.C. § 6306(c), federal district courts
17 have express jurisdiction over suits brought by any adversely affected person
18 concerning state compliance with EPCA.

19 7. Venue in this Court is proper under 28 U.S.C. § 1391(b) because, among other
20 things, (i) the actions violating federal law stated in this Complaint impose injury in
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1 this District, where the Coalition members collectively reside, do business, and have
2 a substantial number of customers and would-be customers (individuals, businesses,
3 and others who would be customers if not for the Washington State Energy Code),
4 and (ii) the regulatory provisions at issue will be enforced here.

5 III. PARTIES

6 8. Plaintiff Jamon Riviera is an individual homeowner in Yakima, Washington
7 who has been deprived of energy choice to effectively heat his home at lower cost.

8 9. Plaintiff Inland Northwest Associated General Contractors (“Inland NW
9 AGC”) is a non-profit member organization that represents over 380 companies
10 involved in the construction industry throughout Eastern Washington.

11 10. Plaintiff Spokane Home Builders Association (“SHBA”) is a non-profit
12 member organization that represents over 750 member companies in the construction
13 industry in seven counties in Washington, including Spokane, Whitman, Pend Oreille,
14 Stevens, Ferry, Lincoln, and Grant.

15 11. Plaintiff Washington State Association of UA Plumbers, Pipefitters and
16 HVAC/R Service Technicians is a labor organization, consisting of six Washington
17 membership organizations including Plumbers and Steamfitters UA Local 44 which
18 represent workers in the plumbing, pipefitting, and HVAC trades in the Spokane area.

19 12. Plaintiff Condron Homes LLC is a limited liability corporation based in
20 Spokane, Washington that is engaged in the construction of new residential buildings.

1 13. Plaintiff Paras Homes LLC is a limited liability corporation based in Spokane,
2 Washington that is engaged in the construction of new residential buildings.

3 14. Plaintiff Garco Construction Inc. (“Garco”) is a Washington State for-profit
4 corporation that engages in residential, civil, and commercial construction. Garco is
5 based in Spokane, Washington with projects nationwide and throughout Washington.

6 15. Plaintiff National Propane Gas Association (“NPGA”) is a national trade
7 organization, representing the U.S. propane industry and approximately 2,400
8 members, including local Washington companies and co-ops. The NPGA has state
9 and regional affiliates across all 50 states.

10 16. Plaintiff Citizen Action Defense Fund is a non-profit corporation that works to
11 protect the economic rights of the citizens of Washington.

12 17. Plaintiff Avista Corporation (“Avista”) is a public utility that provides
13 electricity to 402,000 customers and natural gas to 368,000 customers across four
14 northwestern states, including Washington.

15 18. Plaintiff Cascade Natural Gas Corporation (“Cascade”) is a public utility that
16 provides natural gas to over 300,000 customers located in smaller, mostly rural
17 communities across Washington and Oregon.

18 19. Plaintiff Northwest Natural Gas Company (“NW Natural”) is a public utility
19 that provides natural gas distribution services to more than 770,000 customers across
20 the Pacific Northwest, including Washington.

1 20. Defendant Washington State Building Code Council (“SBCC”) is the
2 Washington state agency that establishes building code requirements for the state and
3 that adopted the amendments to the Washington State Energy Code at issue.

4 IV. RIPENESS

5 21. The claims asserted herein are ripe for review because Plaintiffs challenge the
6 facial validity of certain provisions of the Washington State Energy Code, thereby
7 raising a legal question. When a question is “predominantly legal,” there is generally
8 no need to await further factual development. *Pacific Gas and Electric Co. v. State*
9 *Energy Resources Conservation and Dev. Comm’n*, 461 U.S. 190, 201 (1983).

10 V. FACTUAL ALLEGATIONS

11 The Washington State Energy Code

12 22. In 2022, the SBCC adopted amendments to the Washington State Energy Code
13 designed to ban or substantially limit the use of gas appliances in many instances.

14 23. These amendments came in two stages. On April 22, 2022, the SBCC adopted
15 amendments to the Commercial Provisions of the Washington State Energy Code
16 (“Commercial Provisions”) that restrict the use of natural gas appliances in
17 commercial buildings. The amendments become effective July 1, 2023.

18 24. On November 4, 2022, the SBCC adopted amendments to the Residential
19 Provisions of the Washington State Energy Code (“Residential Provisions”) that
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1 restrict the use of natural gas appliances in residential buildings. These amendments
2 also become effective July 1, 2023.

3 25. The Commercial Provisions provide a “prescriptive compliance” pathway and
4 a “total building performance compliance” pathway. In general, the prescriptive
5 compliance pathway requires that each element of a building have a minimum
6 acceptable standard, whereas the performance pathway requires modeling the
7 building as a whole to predict energy usage and determine compliance with target
8 figures for site energy use and carbon emissions. Buildings must comply with one of
9 the two pathways. Section C401.2.

10 26. The Commercial Provisions’ prescriptive and total building performance
11 compliance pathways generally ban the use of natural gas appliances for heating,
12 ventilation, and air conditioning (“HVAC”) systems and water heating systems.
13 Section C403.1.4 (“HVAC heating energy shall not be provided by . . . fossil fuel
14 combustion appliances.”); Section C404.2.1 (“Service hot water shall be provided by
15 an electric air-source heat pump water heating (HPWH) system”); Table C407.2
16 (incorporating Section C403.1.4 and Section C404.2.1 into the total building
17 performance pathway’s mandatory requirements).

18 27. The Residential Provisions also provide a prescriptive compliance pathway
19 and a total building performance compliance pathway. Buildings must comply with
20 one of the two pathways. Section R401.2.

1 28. The Residential Provisions’ prescriptive and total building performance
2 compliance pathways generally require that water heating shall be provided by an
3 electric or gas heat pump system. Section R403.5.7 (“Service hot water in one- and
4 two-family dwellings and multiple single-family dwellings (townhouses) shall be
5 provided by a heat pump system.”); Table R405.2(1) (incorporating Section R403.5.7
6 into the total building performance pathway’s mandatory requirements). These
7 provisions ban gas-fired water heating systems that are not heat pumps, such as
8 conventional tanked gas water heaters, high efficiency condensing tanked water
9 heaters, and tankless/instant water heaters.

10 29. The Residential Provisions’ prescriptive compliance pathway likewise
11 requires that space heating shall be provided by an electric or gas heat pump system.
12 Section R403.13 (“Space heating shall be provided by a heat pump system.”). This
13 bans gas-fired space heating systems that are not heat pumps, such as gas-fired
14 furnaces.

15 30. The Washington State Energy Code generally imposes the above restrictions
16 on gas appliances in newly constructed buildings; the restrictions also apply to the
17 alterations of or additions to existing buildings.

18 31. The Washington State Energy Code broadly defines an “alteration” as “[a]ny
19 construction, retrofit or renovation to an existing structure other than repair or
20 addition. Also, a change in a building, electrical, gas, mechanical or plumbing system

1 that involves an extension, addition or change to the arrangement, type or purpose of
2 the original installation.” Section C202.1-A; Section R202.

3 32. The Washington State Energy Code defines an “addition” as “[a]n extension
4 or increase in the *conditioned space* floor area, number of stories, or height of a
5 building or structure.” *Id.* (emphasis in original).

6 33. The Commercial Provisions generally require that alterations and additions
7 comply with the Commercial Provisions’ restrictions on gas appliances for newly
8 constructed buildings. Section C503.4.6 (applying the Commercial Provisions’
9 restrictions on gas space heating appliances to alterations); Section C503.5 (applying
10 the Commercial Provisions’ restrictions on gas water heating appliances to
11 alterations); Section C502.2.4 (applying the Commercial Provisions’ restrictions on
12 gas space heating appliances to additions); Section C502.2.5 (applying the
13 Commercial Provisions’ restrictions on gas water heating appliances to additions).

14 34. Likewise, the Residential Provisions generally require that alterations and
15 additions comply with the Code’s restrictions on gas appliances for newly constructed
16 buildings. Section R503.1.2 (applying the Residential Provisions’ restrictions on gas
17 space heating appliances to alterations); Section R503.1.3 (applying the Residential
18 Provisions’ restrictions on gas water heating appliances to alterations); Section
19 R502.3.2 (applying the Residential Provisions’ restrictions on gas space heating
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1 appliances to additions); Section R502.3.3 (applying the Residential Provisions’
2 restrictions on gas water heating appliances to additions).

3 35. Thus, Sections C403.1.4, C404.2.1, Table C407.2, C502.2.4, C502.2.5,
4 C503.4.6, C503.5, R403.5.7, R403.13, Table R405.2(1), R503.1.2, R503.1.3,
5 R502.3.2, and R502.3.3 of the Washington State Energy Code (collectively,
6 “Appliance Restrictions”) ban gas appliances in many instances.

7 **The Washington Energy Code Harms Coalition Members**

8 36. Coalition members are suffering and will suffer a variety of harms as a result
9 of Defendant’s adoption of the Appliance Restrictions.

10 37. Beginning July 1, 2023, homeowners, businesses, and residential and
11 commercial builders will be prohibited from choosing gas appliances in many
12 instances due to the Appliance Restrictions, and as a result, these groups will be more
13 likely to forego gas service altogether, thus also harming suppliers.

14 38. The Appliance Restrictions are already causing irreparable harm to
15 homeowners, builders, and suppliers who are being forced to make costly changes to
16 their building and infrastructure plans now in order to account for Washington State’s
17 pending restrictions on certain types of appliances and energy use, which will become
18 effective in the very near future.

1 39. The Appliance Restrictions unnecessarily increase the costs of home and
2 commercial building, as well as ownership and maintenance, by eliminating effective
3 and available energy appliances for heating water and ambient air.

4 40. The Appliance Restrictions will also impair skilled workers specializing in the
5 installation, maintenance, and repair of gas-powered systems and appliances by
6 depriving them of jobs and their livelihood. Labor organizations representing these
7 workers will lose members.

8 41. The Appliance Restrictions have caused the Utilities harm through the erosion
9 of their customer base through the permanent loss of new customers over time.

10 42. The Appliance Restrictions harm Utilities' customers by increasing over time
11 the cost of gas service per customer. Absent the Utilities' ability to grow, they will
12 need to maintain the current gas system to ensure safety, reliability, and resiliency
13 based on revenue from their currently existing customers. Costs to maintain the
14 current gas system will be borne by fewer customers.

15 **The History of Federal Regulation of Appliance Energy Use**

16 43. The Washington State Energy Code impermissibly regulates the energy use of
17 natural gas appliances, which is an area that Congress directed the U.S. Department
18 of Energy ("DOE") to regulate through the adoption of federal energy efficiency
19 standards under EPCA. 42 U.S.C. § 6201 *et seq.*

1 44. EPCA was first passed in 1975 to create a comprehensive energy policy to
2 address the serious economic and national security problems associated with our
3 nation's continued reliance on foreign energy resources.

4 45. The original EPCA was designed to "(1) maximize domestic production of
5 energy and provide for strategic storage reserves of crude oil, residual fuel oil and
6 refined petroleum products; (2) . . . minimize the impact of disruptions in energy
7 supplies by providing for emergency standing measures; (3) provide for domestic
8 crude oil prices that will encourage domestic production in a manner consistent with
9 economic recovery; and (4) reduce domestic energy consumption through the
10 operation of specific voluntary and mandatory energy conservation programs." S.
11 Rep. No. 94-516, at 116-17 (1975).

12 46. Since 1975, Congress has amended EPCA several times, progressively moving
13 away from a laissez faire approach to appliance efficiency that relied upon consumers
14 to choose more efficient appliances, and towards binding federal energy efficiency
15 standards. Each amendment to EPCA further emphasized the federal government's
16 intent to regulate appliance energy use and efficiency, and further limited states'
17 abilities to set their own standards.

18 47. In its original form in 1975, EPCA's provisions regarding consumer appliances
19 focused on requiring labeling of appliances, reasoning that consumers would choose
20 more efficient appliances if they had access to accurate information about efficiency.

1 Thus, the statute required manufacturers to label their appliances and provided that
2 the Secretary of the Federal Energy Administration should utilize energy efficiency
3 standards if the labeling program proved ineffective. The legislative history makes
4 clear Congress’s intent at the time: “it is the Committee’s hope that voluntary efforts
5 by manufacturers and better consumer information will make energy efficiency
6 standards unnecessary; however, should the labeling program not suffice, energy
7 efficiency standards should be utilized to achieve the goals of the legislation.” H.R.
8 Rep. No. 94-340, at 95 (1975).

9 48. Originally, EPCA permitted significant state involvement in appliance
10 regulation. It allowed state regulations that differed from the federal regulations if the
11 state regulations were justified by a substantial state or local need, did not interfere
12 with interstate commerce, and were more stringent than the federal standard.

13 49. In 1978, Congress passed a range of statutes known as the National Energy
14 Act (“NEA”), which gave the federal government broader authority over energy
15 policy to ensure national security, decrease energy consumption, reduce dependency
16 on energy imports, generate a strategic petroleum reserve, and broadly develop
17 reliable sources of energy for sustained economic growth. *See* Julia Richardson and
18 Robert Nordhaus, *The National Energy Act of 1978*, 10 *Nat. Res. & Env’t* 62, 62-63
19 (1995). President Carter also created the federal DOE in 1977 to coordinate a federal
20 response to the nation’s energy problems.

1 50. One of these 1978 statutes passed as part of NEA was the National Energy
2 Conservation and Policy Act (“NECPA”). NECPA amended the 1975 EPCA. Rather
3 than relying exclusively on labeling, NECPA required DOE to prescribe minimum
4 energy efficiency standards for certain products. NECPA also strengthened the
5 preemption provisions in EPCA, allowing state regulations that were more stringent
6 than federal regulations *only* if the Secretary found there was a significant state or
7 local interest to justify the state’s regulation and the regulation would not unduly
8 burden interstate commerce.

9 51. Despite the NECPA’s new requirements, DOE did not initially adopt federal
10 minimum energy standards. Instead, it “initiated a general policy of granting petitions
11 from States requesting waivers from preemption. As a result, a system of separate
12 State appliance standards ha[d] begun to emerge and the trend [was] growing.” S.
13 Rep. No. 100-6, at 4 (1987).

14 52. In 1987, Congress responded by passing the National Appliance Energy
15 Conservation Act (“NAECA”). The purpose of the NAECA amendment was “to
16 reduce the regulatory and economic burdens on the appliance manufacturing industry
17 through the establishment of national energy conservation standards for major
18 residential appliances.” S. Rep. No. 100-6, at 1 (1987).

19 53. As the Senate recognized, varying state standards created “the problem of a
20 growing patchwork of differing state regulations which would increasingly

1 complicate [appliance manufacturers’] design, production and marketing plans.” S.
2 Rep. No. 100-6, at 4 (1987). Similarly, the reports about NAECA in the House of
3 Representatives make clear that the bill was “designed to protect the appliance
4 industry from having to comply with a patchwork of numerous conflicting State
5 requirements.” H.R. Rep. No. 100-11, at 24 (1987).

6 54. Thus, NAECA contained “two basic provisions:” “[t]he establishment of
7 Federal standards and the preemption of State standards.” S. Rep. No. 100-6, at 2
8 (1987). “In general, these national standards would preempt all State standards.” *Id.*

9 55. While states could seek permission to establish their own standards, “achieving
10 the waiver is difficult.” S. Rep. No. 100-6, at 2 (1987). It would require showing an
11 unusual and compelling local interest, and the waiver could not be granted if the “State
12 regulation is likely to result in the unavailability in the State of a product type or of
13 products of a particular performance class, such as frost-free refrigerators.” *Id.*
14 Congress intended to allow only “performance-based codes” that “authorize builders
15 to adjust or trade off the efficiencies of the various building components so long as an
16 energy objective is met.” *Id.* at 10–11. To avoid preemption, a state building code
17 provision must “establish ‘credits’ for various conservation measures, to provide, to
18 the greatest degree possible, one-for-one equivalency between the energy efficiency
19 of these differing measures and the credits provided for such energy efficiency.” *Id.*
20 at 11. The Senate chose this requirement “to assure that the credits for exceeding

1 Federal standards are even-handed and are not unfairly weighted resulting in undue
2 pressure on builders to install covered products exceeding Federal standards.” *Id.*

3 56. In 1992, Congress amended EPCA once more through the Energy Policy Act
4 of 1992. That amendment expanded the federal appliance program to include energy
5 efficiency standards for commercial and industrial appliances as well as consumer
6 appliances.

7 57. Thus, in its present form, EPCA covers both consumer and
8 commercial/industrial appliances, and it sets federal standards for the energy use and
9 efficiency of those products.

10 **EPCA’s Regulation of Consumer and Industrial Appliances**

11 58. Rather than allowing joint regulation by states and the federal government,
12 Congress has adopted a framework for EPCA in which the federal government sets
13 nationwide standards for the national markets for appliances, with only a very limited
14 role for states. In fact, EPCA expressly preempts state regulation of appliance energy
15 use and efficiency, with only narrow exceptions. The statute sets out specific
16 requirements that must be met to qualify for one of these narrow exceptions. In other
17 words, Congress meant to preempt the entire field of energy use by covered
18 appliances, leaving DOE to set nationwide standards and establishing detailed
19 conditions that state regulations must meet to avoid preemption.

1 59. EPCA’s energy efficiency and use regulations apply to “covered products.”
2 EPCA defines “covered products” for consumers as the types of products listed in
3 Section 6292 of the Act. 42 U.S.C. § 6291(2). Section 6292 in turn lists 19 types of
4 defined covered products, including “water heaters” and “furnaces.” *Id.* § 6292(a).
5 Section 6295 sets out the energy conservation standards for these covered products.

6 60. EPCA defines a “consumer product” as one “(A) which in operation consumes,
7 or is designed to consume, energy . . . and (B) which, to any significant extent, is
8 distributed in commerce for personal use or consumption by individuals[.]” *Id.* §
9 6291(1). The definition of a consumer product is “without regard to whether such
10 article of such type is in fact distributed in commerce for personal use or consumption
11 by an individual” *Id.* In other words, products which are regularly sold to
12 individuals may be classified as consumer products, regardless of whether a particular
13 *unit* of the product has been purchased by an individual or by a business.

14 61. The express preemption in EPCA’s consumer product regulations states that
15 “effective on the effective date of an energy conservation standard established in or
16 prescribed . . . for any covered product, no State regulation concerning the energy
17 efficiency, energy use, or water use of such covered product shall be effective with
18 respect to such product unless the regulation” falls within certain enumerated
19 exceptions. *Id.* § 6297(c).

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1 62. “Energy use” is defined as “the quantity of energy directly consumed by a
2 consumer product at point of use” *Id.* § 6291(4). “Energy” is defined as
3 “electricity, or fossil fuels.” *Id.* § 6291(3).

4 63. Thus, EPCA’s consumer standards preempt state regulations concerning the
5 quantity of electricity or fossil fuels consumed by appliances (including water heaters
6 and furnaces) which are regularly sold to individuals.

7 64. Similarly, EPCA also governs the energy efficiency and energy use of certain
8 commercial and industrial appliances. *Id.* § 6311-17.

9 65. Like EPCA’s consumer standards, the industrial standards explicitly
10 “supersede any State or local regulation concerning the energy efficiency or energy
11 use of a product for which a standard is prescribed or established” in the federal
12 statute. *Id.* § 6316(b)(2)(A).

13 66. “Energy use,” for the purposes of the industrial standards, is defined as “the
14 quantity of energy directly consumed by an article of industrial equipment at the point
15 of use. . . .” *Id.* § 6311(4). The definition of “energy” refers back to the definition in
16 the consumer standards in Section 6291: energy is “electricity, or fossil fuels.” *Id.* §§
17 6311(7), 6291(3).

18 67. EPCA also prescribes standards for various types of “industrial equipment,”
19 including “commercial package air conditioning and heating equipment,” “warm air
20 furnaces,” and several types of water heaters. *Id.* § 6311(2)(B). Those products are

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1 “industrial” rather than “consumer” if they are “distributed in commerce for industrial
2 or commercial use” to “any significant extent,” and do not qualify as consumer
3 products under that portion of the statute. *Id.* § 6311(2)(A).

4 68. Thus, EPCA’s standards for consumer products and industrial equipment
5 preempt state and local regulations concerning the quantity of electricity or fossil fuels
6 consumed by heating equipment, water heaters, and furnaces which are regularly sold
7 for residential, industrial, or commercial use.

8 69. As a result, EPCA preempts the Appliance Restrictions (Sections C403.1.4,
9 C404.2.1, Table C407.2, C502.2.4, C502.2.5, C503.4.6, C503.5, R403.5.7, R403.13,
10 Table R405.2(1), R503.1.2, R503.1.3, R502.3.2, and R502.3.3 of the Washington
11 State Energy Code), because these sections concern the quantity of fossil fuels
12 consumed by EPCA-covered gas space and water heating appliances which are
13 regularly sold for residential, commercial, and industrial use. EPCA also preempts
14 any other provisions of the Washington State Energy Code that ban or significantly
15 restrict the energy use of EPCA-covered products.

16 70. The Appliance Restrictions concern the quantity of natural gas consumed by
17 appliances in the buildings they regulate because in many instances they prohibit the
18 installation of EPCA-covered products. As a result, the Appliance Restrictions require
19 that *no* natural gas is used by such products, or effectively result in the use of no
20 natural gas by such products. Stated another way, these provisions effectively require

1 that the quantity of natural gas used in certain covered products is zero, when the
2 national standards promulgated by DOE specify levels of energy efficiency that are
3 based on different, non-zero levels of gas use by covered products.

4 71. The Homeowners, Builders, and Suppliers include individuals, companies, and
5 workers that purchase, install, and maintain qualified “consumer products” and
6 “industrial/commercial products” under EPCA, or provide supply services for these
7 products. The Utilities supply gas to appliances that qualify as “consumer products”
8 and as “industrial/commercial products” under EPCA. By banning the use of these
9 EPCA-covered products, the Appliance Restrictions harm the Coalition members, and
10 Washington residents and businesses, by impermissibly limiting energy choice.

11 **The Appliance Restrictions Do Not Qualify for EPCA’s Preemption**
12 **Exemption for Consumer Appliances**

13 72. EPCA contains only limited exceptions to the general rule of preemption. For
14 consumer appliances, a state or local regulation is not preempted if it “is in a building
15 code for new construction” and meets seven specific requirements. 42 U.S.C. §§
16 6297(c)(3), (f)(3). The regulation must meet *all seven* of these requirements to avoid
17 preemption. The seven requirements, taken together, are intended to allow only
18 performance-based codes that give builders choice about how to meet overall
19 efficiency or conservation objectives, ensuring an even-handed policy that does not
20 pressure builders to choose one type of appliance over another. *See* S. Rep. 100-6, at
21 10–11 (1987).

1 73. The Appliance Restrictions relating to consumer products do not meet all
2 seven requirements listed in Section 6297(f)(3), and thereby fail to avoid preemption.
3 For example, the first requirement is that “[t]he code permits a builder to meet an
4 energy consumption or conservation objective for a building by selecting items whose
5 combined energy efficiencies meet the objective.” 42 U.S.C. § 6297(f)(3)(A). The
6 Appliance Restrictions do not meet this requirement, because they do not set an
7 “energy consumption or conservation objective for a building” that allows a builder
8 to select items that, in combination, meet the objective. Instead, in many instances,
9 the builder cannot select *any* space heating or water heating appliances that use natural
10 gas, no matter the energy use or efficiency of those particular appliances.

11 74. The second requirement to avoid preemption is that “[t]he code does not
12 require that the covered product have an energy efficiency exceeding the” federal
13 EPCA standards in section 6295, absent a state waiver. *Id.* § 6297(f)(3)(B). The
14 Appliance Restrictions do not meet this requirement, because they prohibit in many
15 instances the use of gas appliances that meet federal energy efficiency standards.

16 75. The third requirement is that “[t]he credit to the energy consumption or
17 conservation objective allowed by the code for installing covered products having
18 energy efficiencies exceeding [the federal EPCA standards in section 6295] is on a
19 one-for-one equivalent energy use or equivalent cost basis.” *Id.* § 6297(f)(3)(C). The
20 Appliance Restrictions do not meet this requirement, because they do not give credit

1 “on a one-for-one equivalent energy use . . . basis” for products that are more efficient
2 than the federal standards require. In fact, Sections C403.1.4, C404.2.1, R403.13, and
3 Tables C407.2 and R405.2(1) in many instances ban the use of EPCA-covered
4 consumer products.

5 76. The fifth requirement is that “[i]f the code sets forth one or more optional
6 combinations of items which meet the energy consumption or conservation objective,
7 for every combination which includes a covered product the efficiency of which
8 exceeds [federal energy efficiency standards for consumer products], there also shall
9 be at least one combination which includes such covered product the efficiency of
10 which does not exceed such standard or level by more than 5 percent, *except that at*
11 *least one combination shall include such covered product the efficiency of which*
12 *meets but does not exceed such standard.”* *Id.* § 6297(f)(3)(E). Here, the Appliance
13 Restrictions do not contain any combination where builders can install EPCA-covered
14 gas space heating and water heating appliances that meet applicable EPCA efficiency
15 standards.

16 **The Appliance Restrictions Do Not Qualify for EPCA Preemption Exemption**
17 **for Industrial Appliances**

18 77. Similar to the consumer product standards, EPCA contains only limited
19 exceptions to the default rule of preemption of state regulations concerning the energy
20 use or efficiency of industrial appliances. 42 U.S.C. § 6316(b)(2)(B).

1 78. To avoid preemption, a state building code regulation must “not require that
2 the energy efficiency of such product exceed the applicable minimum energy
3 efficiency requirement in amended ASHRAE/IES Standard 90.1” *Id.* §
4 6316(b)(2)(B)(i).

5 79. The Appliance Restrictions do not meet this requirement, because in many
6 instances they ban EPCA-covered industrial appliances, even when they meet the
7 efficiency standards in ASHRAE/IES Standard 90.1.

8 **VI. CAUSE OF ACTION**

9 **COUNT ONE: FEDERAL PREEMPTION BY**
10 **THE ENERGY POLICY AND CONSERVATION ACT**

11 80. Plaintiffs re-allege the preceding paragraphs as though set forth fully herein.

12 81. The Appliance Restrictions concern the energy efficiency and energy use of
13 appliances in newly constructed buildings, including consumer and industrial
14 appliances covered by EPCA.

15 82. The Appliance Restrictions do not fall within the exceptions to preemption in
16 EPCA because:

- 17 a. They do not permit builders to select items whose combined energy
18 efficiencies meet an objective for total energy consumption but rather
19 require use of a particular category of items (such as heat pumps);
- 20 b. They do not give credit on a one-for-one basis for all appliances whose
21 energy efficiency exceeds the federal standards, insofar as they give no

1 credit for (and indeed ban) the use of EPCA-covered natural gas
2 appliances, no matter their efficiency; and/or

3 c. They ban EPCA-covered natural gas appliances, even when they meet
4 the federal efficiency standards.

5 83. The Appliance Restrictions of the Washington State Energy Code are therefore
6 preempted by the federal EPCA.

7 84. There is no set of circumstances under which the Appliance Restrictions would
8 be valid.

9 85. There is no plain, speedy, and adequate remedy at law to protect the rights of
10 Plaintiffs. Plaintiffs will be irreparably and substantially harmed if the Appliance
11 Restrictions become effective and are enforced.

12 86. There will be no significant harm to Defendant from an injunction, because
13 Defendant has no legitimate interest in enforcing invalid regulations. The balance of
14 harms thus favors injunctive relief.

15 87. An injunction is also in the public interest. The public interest is not served by
16 enforcing invalid regulations. Moreover, EPCA embodies a strong public interest in
17 the uniform, national regulation of energy conservation and use policy, which is
18 undermined by conflicting state regulation of these matters, as found in the Appliance
19 Restrictions.

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1 88. Plaintiffs accordingly request that the Court declare that the Appliance
2 Restrictions are preempted by EPCA and enjoin Defendant from enforcing the
3 preempted Appliance Restrictions.

4 **VII. PRAYER FOR RELIEF**

5 89. WHEREFORE, Plaintiffs pray for relief as follows:

6 90. For a permanent injunction enjoining Defendant from enforcing or attempting
7 to enforce the Appliance Restrictions;

8 91. For a declaratory judgment, pursuant to 28 U.S.C. § 2201(a) and § 1331, that
9 the Appliance Restrictions are preempted by federal law because they concern the
10 energy use of appliances covered by EPCA and are therefore void and unenforceable;

11 92. For costs of this suit, including reasonable attorney's fees; and

12 93. For such other and further relief as the Court may deem just and proper.

13 Respectfully submitted,

14 May 22, 2023.

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21 COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF - 25
Case No.

132285.0009/9391455.1

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