

California Restaurant Association v. City of Berkeley

*Continuing Opportunities for Building Codes to Drive Deep
Decarbonization and Energy Efficiency*

Prepared for: 2024 ACEEE Summer Study in Buildings

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This is not legal advice!

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Agenda

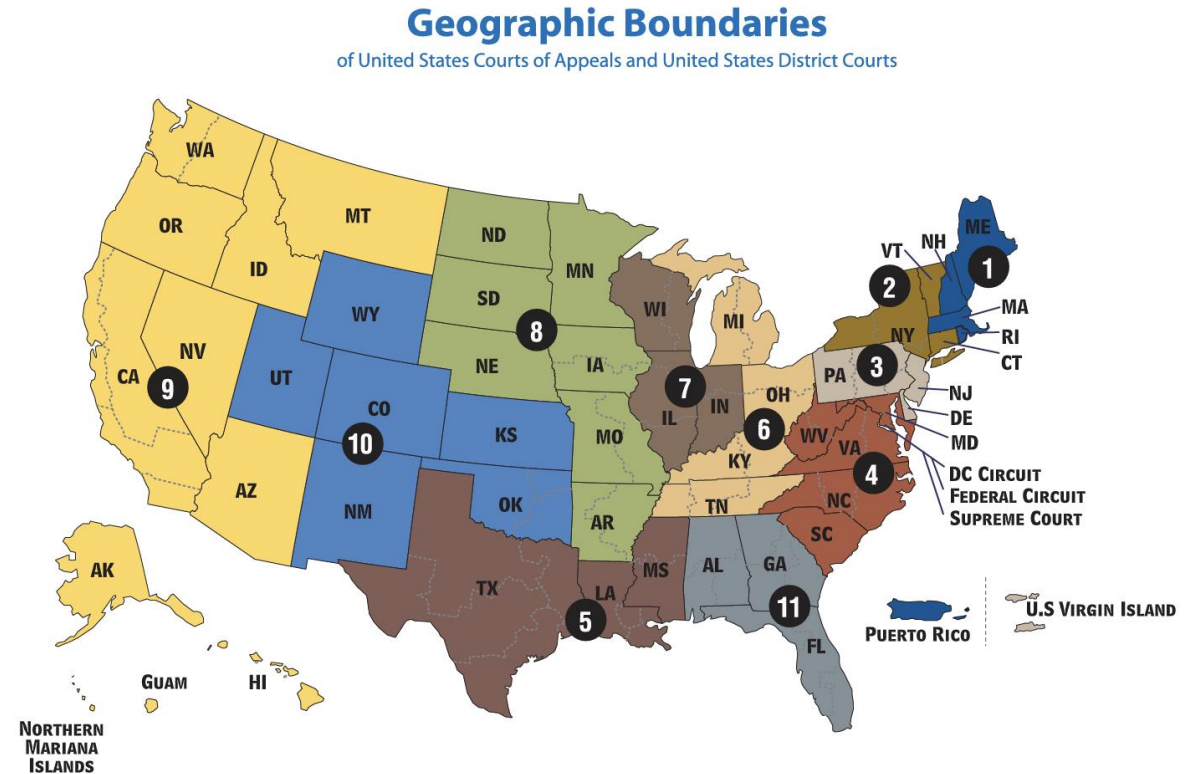
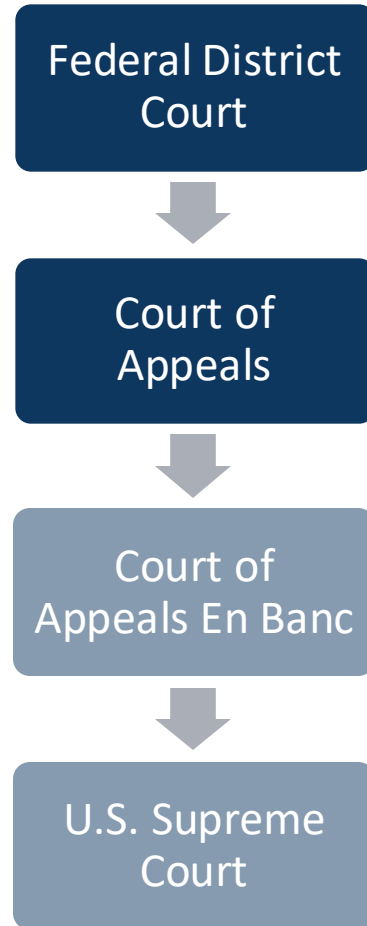
1. Legal Primer
2. Overview and Implications of *California Restaurant Association v. City of Berkeley*
3. Post-CRA Options for Decarbonizing Building Codes
4. Further Research



5-Minute Law School

Sorry, this isn't going to get you past the bar exam

A brief explanation of the federal courts



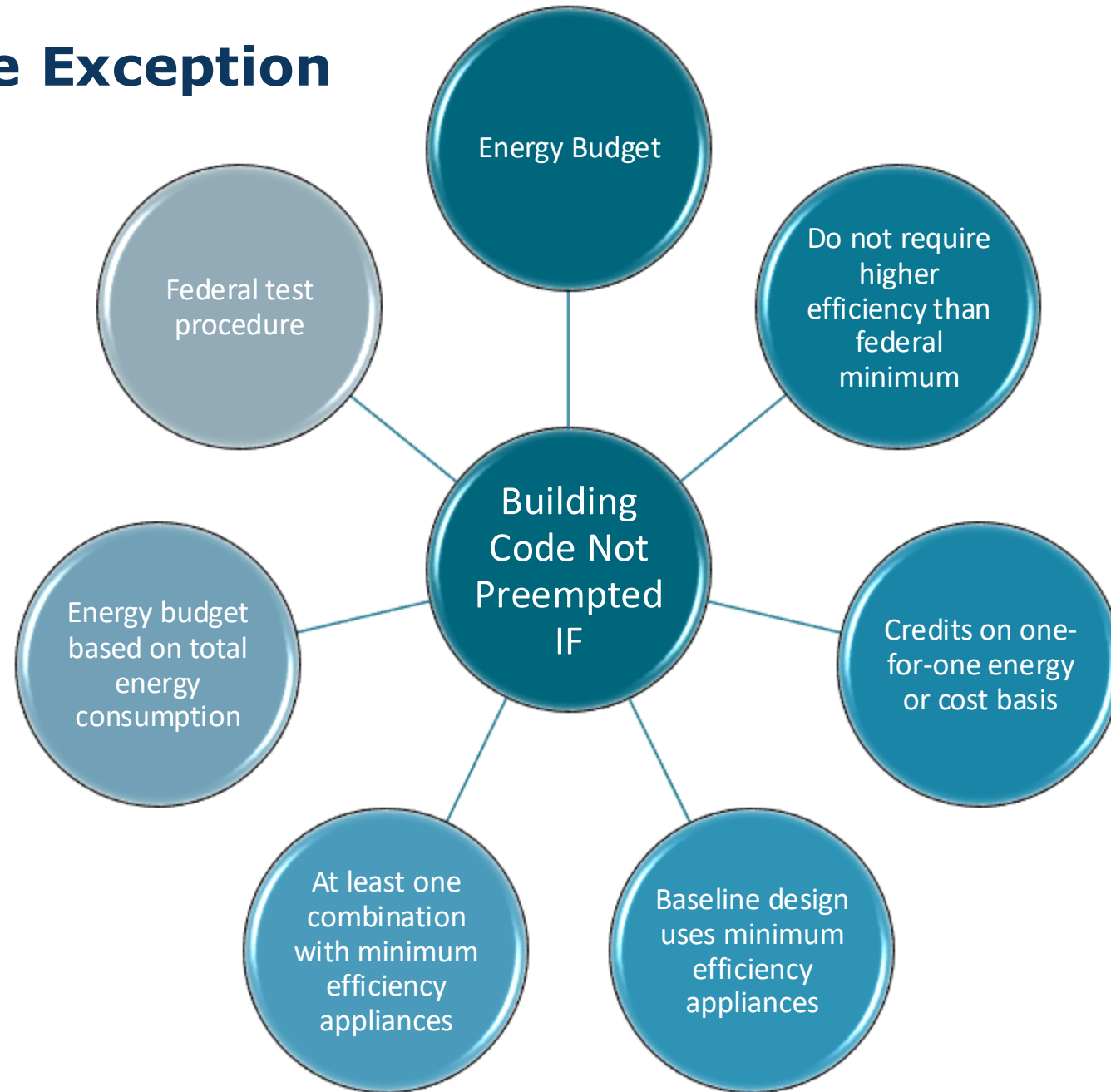
Preemption under the Energy Policy & Conservation Act



- Preemption happens when a state touches an appliance that is “covered” by DOE (either by statute or with an efficiency standard)
- States cannot require testing or reporting that is inconsistent with the DOE test procedure
- States cannot adopt a product label that differs from the FTC-required label.
- States cannot make any standards when there is a federal standard for the product.



Building Code Exception



California Restaurant Association v. City of Berkeley

Summary of the Case and Its Implications

Appeals Court rules Berkeley's ordinance is preempted



Immediate Impacts

- Berkeley settled the case.
- Only states and local governments in the Ninth Circuit are bound by the ruling.
- Affects similar statutes to Berkeley's.
- More lawsuits challenging similar laws in other jurisdictions.



Long-Term Implications

No
presumption
against
preemption

Slippery slope

Authority void

Conflicting
interpretations



Decarbonizing Building Codes

Options after the Ninth Circuit ruling

Site Energy with Efficiency Credits



Pros:

- Aligns with preemption exception to provide one-for-one equivalency on an energy use basis.
- Takes advantage of inherent efficiencies of heat pumps compared to gas products.
- Disincentivizes gas due to increased construction costs from credits needed for equivalency.
- Easy to understand.

Cons:

- Builds from existing heat pump baseline.
- Does not apply to buildings that lacked adequate modeling to support it.
- Does not capture all fossil fuel sources.

Source Energy with Time-Dependent Cost of Energy

Pros:

- Aligns with energy budget and cost requirements for building code exception to preemption.
- Assesses energy costs from cradle-to-grave.
- Can be tightened each year to limit the available additional efficiency for gas, resulting in higher costs for gas buildings to comply with standards.

Cons:

- Complicated.
- Does not mandate electrification.



All-Electric Reach Codes



Pros:

- *California Restaurant Association* did not evaluate the building code exception to preemption.
- A plausible argument that these all-electric local regulations comply with the building code exception.

Cons:

- Lack of a pathway for minimally efficient gas appliances creates legal uncertainty.
- Communities have raised objections to these rules.

Electric Space- and Water-Heating Reach Codes

Pros:

- Can plausibly comply with the building code exception to preemption.
- Addresses community and restaurant concerns, especially around cooking and fireplaces.

Cons:

- Lack of a pathway for minimally efficient gas appliances creates legal uncertainty.
- Does not achieve full building decarbonization.



Source Energy Reach Codes



Pros:

- For CA jurisdictions, aligns with the state energy metric, smoothing the path for CEC approval.
- Both all-electric and mixed-fuel designs allowed, but all-electric designs are lower cost to construct.

Cons:

- Complicated.
- Requires significant analysis to determine appropriate margins.
- Does not mandate all-electric buildings.

Other Policy Tools

Building Performance Standards



Taxes



What's Next?

Areas for Further Research

- 🏠 Evaluating construction costs of all-electric versus fossil-fuel building
- 🏗️ Additional legal challenges to building codes under EPCA
- 🌡️ Emissions-based building and appliance standards

Thank you
