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

JAMON RIVERA, an individual;
INLAND NW AGC, a membership
organization; SPOKANE HOME
BUILDER’S ASSOCIATION, a
nonprofit corporation; WASHINGTON
STATE ASSOCIATION OF UA
PLUMBERS, PIPEFITTERS AND
HVAC/R SERVICE TECHNICIANS, a
labor organization; CONDRON
HOMES LLC, a limited liability
company; PARAS HOMES LLC, a
limited liability company; GARCO
CONSTRUCTION INC., a for-profit
corporation, NATIONAL PROPANE
GAS ASSOCIATION, a national trade
association, CITIZEN ACTION
DEFENSE FUND, a nonprofit
corporation; AVISTA
CORPORATION; CASCADE
NATURAL GAS CORPORATION;
AND NORTHWEST NATURAL GAS
COMPANY,

Plaintiffs,

v.

WASHINGTON STATE BUILDING
CODE COUNCIL;

KJELL ANDERSON, JAY ARNOLD,
TODD BEYREUTHER, JUSTIN
BOURGAULT, MICAH CHAPPELL,
ANTHONY DOAN, DAIMON
DOYLE, TOM HANDY, ROGER
HEERINGA, MATTHEW HEPNER,
CRAIG HOLT, TYE MENSER,
PETER RIEKE, KATY SHEEHAN,
CAROLINE TRAUBE, in their official
capacities,

Defendants.

No. 1:23-cv-03070-SAB

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

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

2. Defendants have violated EPCA by amending the Washington State Energy Code to outright ban the use of EPCA-covered appliances in many cases.

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

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

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II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as the Coalition asserts claims under federal law. Jurisdiction is also proper because, under 42 U.S.C. § 6306(c), federal district courts have express jurisdiction over suits brought by any adversely affected person concerning state compliance with EPCA.

6. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 57 and 65 of the Federal Rules of Civil Procedure.

7. This Court has personal jurisdiction over Defendant Washington State Building Code Council as it is a department of the government of the State of Washington and is headquartered in Olympia, Washington.

8. This Court has personal jurisdiction over all individually named Defendants as they are each residents of Washington, and the claims asserted arise out of Defendants' actions as members of the Washington State Building Code Council, all of which occurred within the state of Washington.

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

III. PARTIES

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

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

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

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

15 14. Plaintiff Condron Homes LLC is a limited liability corporation based in
16 Spokane, Washington that is engaged in the construction of new residential buildings.

17 15. Plaintiff Paras Homes LLC is a limited liability corporation based in Spokane,
18 Washington that is engaged in the construction of new residential buildings.

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

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

5 18. Plaintiff Citizen Action Defense Fund is a non-profit corporation that works to
6 protect the economic rights of the citizens of Washington.

7 19. Plaintiff Avista Corporation (“Avista”) is a public utility that provides
8 electricity to 402,000 customers and natural gas to 368,000 customers across four
9 northwestern states, including Washington.

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

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

16 22. Defendant Washington State Building Code Council (“SBCC”) is the
17 Washington state agency that establishes building code requirements for the state and
18 that adopted the amendments to the Washington State Energy Code at issue.

19 23. The individually named Defendants are members of the SBCC. Defendants are
20 sued in their official capacities.

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IV. RIPENESS

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

25. The Washington State Energy Code that Defendants originally adopted has an effective date of July 1, 2023. However, on June 7, 2023, the SBCC filed CR-103P forms purporting to delay the Code’s effective date to October 29, 2023.

26. Defendants lack statutory authority to postpone the effective date of the Washington State Energy Code they adopted, because such attempted postponement constitutes an amendment to the adopted Code that cannot take effect until the end of the legislative session in 2024. RCW 19.27.074(5)(c) (“All decisions to adopt or amend codes of statewide application shall be made prior to December 1 of any year and shall not take effect before the end of the regular legislative session in the next year.”).

V. FACTUAL ALLEGATIONS

The Washington State Energy Code

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

1 28. These amendments came in two stages. On April 22, 2022, Defendants
2 adopted amendments to the Commercial Provisions of the Washington State Energy
3 Code (“Commercial Provisions”) that restrict the use of natural gas appliances in
4 commercial buildings. The amendments as originally adopted have an effective date
5 of July 1, 2023.

6 29. On November 4, 2022, Defendants adopted amendments to the Residential
7 Provisions of the Washington State Energy Code (“Residential Provisions”) that
8 restrict the use of natural gas appliances in residential buildings. These amendments
9 as originally adopted also have an effective date of July 1, 2023.

10 30. By adopting the Commercial and Residential Provisions, Defendants have
11 directed their enforcement by local officials.

12 31. The Commercial Provisions provide a “prescriptive compliance” pathway and
13 a “total building performance compliance” pathway. In general, the prescriptive
14 compliance pathway requires that each element of a building have a minimum
15 acceptable standard, whereas the performance pathway requires modeling the
16 building as a whole to predict energy usage and determine compliance with target
17 figures for site energy use and carbon emissions. Buildings must comply with one of
18 the two pathways. Section C401.2.

19 32. The Commercial Provisions’ prescriptive and total building performance
20 compliance pathways generally ban the use of natural gas appliances for heating,
21 ventilation, and air conditioning (“HVAC”) systems and water heating systems.

1 Section C403.1.4 (“HVAC heating energy shall not be provided by . . . fossil fuel
2 combustion appliances.”); Section C404.2.1 (“Service hot water shall be provided by
3 an electric air-source heat pump water heating (HPWH) system”); Table C407.2
4 (incorporating Section C403.1.4 and Section C404.2.1 into the total building
5 performance pathway’s mandatory requirements).

6 33. The Residential Provisions also provide a prescriptive compliance pathway
7 and a total building performance compliance pathway. Buildings must comply with
8 one of the two pathways. Section R401.2.

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

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

3 36. The Washington State Energy Code generally imposes the above restrictions
4 on gas appliances in newly constructed buildings; the restrictions also apply to the
5 alterations of or additions to existing buildings.

6 37. The Washington State Energy Code broadly defines an “alteration” as “[a]ny
7 construction, retrofit or renovation to an existing structure other than repair or
8 addition. Also, a change in a building, electrical, gas, mechanical or plumbing system
9 that involves an extension, addition or change to the arrangement, type or purpose of
10 the original installation.” Section C202.1-A; Section R202.

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

14 39. The Commercial Provisions generally require that alterations and additions
15 comply with the Commercial Provisions’ restrictions on gas appliances for newly
16 constructed buildings. Section C503.4.6 (applying the Commercial Provisions’
17 restrictions on gas space heating appliances to alterations); Section C503.5 (applying
18 the Commercial Provisions’ restrictions on gas water heating appliances to
19 alterations); Section C502.2.4 (applying the Commercial Provisions’ restrictions on
20 gas space heating appliances to additions); Section C502.2.5 (applying the
21 Commercial Provisions’ restrictions on gas water heating appliances to additions).

1 40. Likewise, the Residential Provisions generally require that alterations and
2 additions comply with the Code’s restrictions on gas appliances for newly constructed
3 buildings. Section R503.1.2 (applying the Residential Provisions’ restrictions on gas
4 space heating appliances to alterations); Section R503.1.3 (applying the Residential
5 Provisions’ restrictions on gas water heating appliances to alterations); Section
6 R502.3.2 (applying the Residential Provisions’ restrictions on gas space heating
7 appliances to additions); Section R502.3.3 (applying the Residential Provisions’
8 restrictions on gas water heating appliances to additions).

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

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

14 42. Coalition members are suffering and will suffer a variety of harms as a result
15 of Defendants’ adoption of the Appliance Restrictions.

16 43. Homeowners, businesses, and residential and commercial builders will be
17 prohibited from choosing gas appliances in many instances due to the Appliance
18 Restrictions, and as a result, these groups will be more likely to forego gas service
19 altogether, thus also harming suppliers.

20 44. The Appliance Restrictions are already causing irreparable harm to
21 homeowners, builders, and suppliers who are being forced to make costly changes to

1 their building and infrastructure plans now in order to account for Washington State's
2 pending restrictions on certain types of appliances and energy use. Such plans can
3 take anywhere from months to years to finalize, meaning that homeowners and
4 builders must often spend substantial resources planning ahead to meet the
5 requirements of building code provisions that have been adopted but are not yet
6 effective.

7 45. The Appliance Restrictions unnecessarily increase the costs of home and
8 commercial building, as well as ownership and maintenance, by eliminating effective
9 and available energy appliances for heating water and ambient air.

10 46. The Appliance Restrictions will also impair skilled workers specializing in the
11 installation, maintenance, and repair of gas-powered systems and appliances by
12 depriving them of jobs and their livelihood. Labor organizations representing these
13 workers will lose members.

14 47. The Appliance Restrictions have caused the Utilities harm through the erosion
15 of their customer base through the permanent loss of new customers over time.

16 48. The Appliance Restrictions harm Utilities' customers by increasing over time
17 the cost of gas service per customer. Absent the Utilities' ability to grow, they will
18 need to maintain the current gas system to ensure safety, reliability, and resiliency
19 based on revenue from their currently existing customers. Costs to maintain the
20 current gas system will be borne by fewer customers.

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

2 49. The Washington State Energy Code impermissibly regulates the energy use of
3 natural gas appliances, which is an area that Congress directed the U.S. Department
4 of Energy (“DOE”) to regulate through the adoption of federal energy efficiency
5 standards under EPCA. 42 U.S.C. § 6201 *et seq.*

6 50. EPCA was first passed in 1975 to create a comprehensive energy policy to
7 address the serious economic and national security problems associated with our
8 nation’s continued reliance on foreign energy resources.

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

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

3 53. In its original form in 1975, EPCA's provisions regarding consumer appliances
4 focused on requiring labeling of appliances, reasoning that consumers would choose
5 more efficient appliances if they had access to accurate information about efficiency.
6 Thus, the statute required manufacturers to label their appliances and provided that
7 the Secretary of the Federal Energy Administration should utilize energy efficiency
8 standards if the labeling program proved ineffective. The legislative history makes
9 clear Congress's intent at the time: "it is the Committee's hope that voluntary efforts
10 by manufacturers and better consumer information will make energy efficiency
11 standards unnecessary; however, should the labeling program not suffice, energy
12 efficiency standards should be utilized to achieve the goals of the legislation." H.R.
13 Rep. No. 94-340, at 95 (1975).

14 54. Originally, EPCA permitted significant state involvement in appliance
15 regulation. It allowed state regulations that differed from the federal regulations if the
16 state regulations were justified by a substantial state or local need, did not interfere
17 with interstate commerce, and were more stringent than the federal standard.

18 55. In 1978, Congress passed a range of statutes known as the National Energy
19 Act ("NEA"), which gave the federal government broader authority over energy
20 policy to ensure national security, decrease energy consumption, reduce dependency
21 on energy imports, generate a strategic petroleum reserve, and broadly develop

1 reliable sources of energy for sustained economic growth. *See* Julia Richardson and
2 Robert Nordhaus, *The National Energy Act of 1978*, 10 *Nat. Res. & Env't* 62, 62-63
3 (1995). President Carter also created the federal DOE in 1977 to coordinate a federal
4 response to the nation's energy problems.

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

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

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

3 59. As the Senate recognized, varying state standards created “the problem of a
4 growing patchwork of differing state regulations which would increasingly
5 complicate [appliance manufacturers’] design, production and marketing plans.” S.
6 Rep. No. 100-6, at 4 (1987). Similarly, the reports about NAECA in the House of
7 Representatives make clear that the bill was “designed to protect the appliance
8 industry from having to comply with a patchwork of numerous conflicting State
9 requirements.” H.R. Rep. No. 100-11, at 24 (1987).

10 60. Thus, NAECA contained “two basic provisions:” “[t]he establishment of
11 Federal standards and the preemption of State standards.” S. Rep. No. 100-6, at 2
12 (1987). “In general, these national standards would preempt all State standards.” *Id.*

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

1 the greatest degree possible, one-for-one equivalency between the energy efficiency
2 of these differing measures and the credits provided for such energy efficiency.” *Id.*
3 at 11. The Senate chose this requirement “to assure that the credits for exceeding
4 Federal standards are even-handed and are not unfairly weighted resulting in undue
5 pressure on builders to install covered products exceeding Federal standards.” *Id.*

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

10 63. Thus, in its present form, EPCA covers both consumer and
11 commercial/industrial appliances, and it sets federal standards for the energy use and
12 efficiency of those products.

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

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

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

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

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

1 68. “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 69. 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 70. Similarly, EPCA also governs the energy efficiency and energy use of certain
8 commercial and industrial appliances. *Id.* § 6311-17.

9 71. 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 72. “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 73. 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
21 “industrial” rather than “consumer” if they are “distributed in commerce for industrial

1 or commercial use” to “any significant extent,” and do not qualify as consumer
2 products under that portion of the statute. *Id.* § 6311(2)(A).

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

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

15 76. The Appliance Restrictions concern the quantity of natural gas consumed by
16 appliances in the buildings they regulate because in many instances they prohibit the
17 installation of EPCA-covered products. As a result, the Appliance Restrictions require
18 that *no* natural gas is used by such products, or effectively result in the use of no
19 natural gas by such products. Stated another way, these provisions effectively require
20 that the quantity of natural gas used in certain covered products is zero, when the
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1 national standards promulgated by DOE specify levels of energy efficiency that are
2 based on different, non-zero levels of gas use by covered products.

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

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

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

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1 79. 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 80. 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 81. 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
21 “on a one-for-one equivalent energy use . . . basis” for products that are more efficient

1 than the federal standards require. In fact, Sections C403.1.4, C404.2.1, R403.13, and
2 Tables C407.2 and R405.2(1) in many instances ban the use of EPCA-covered
3 consumer products.

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

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

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

20 84. To avoid preemption, a state building code regulation must “not require that
21 the energy efficiency of such product exceed the applicable minimum energy

1 efficiency requirement in amended ASHRAE/IES Standard 90.1” *Id.* §
2 6316(b)(2)(B)(i).

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

6 **VI. CAUSE OF ACTION**

7 **COUNT ONE: FEDERAL PREEMPTION BY**
8 **THE ENERGY POLICY AND CONSERVATION ACT**

8 86. Plaintiffs re-allege the preceding paragraphs as though set forth fully herein.

9 87. The Appliance Restrictions concern the energy efficiency and energy use of
10 appliances in newly constructed buildings, including consumer and industrial
11 appliances covered by EPCA.

12 88. The Appliance Restrictions do not fall within the exceptions to preemption in
13 EPCA because:

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

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

3 89. The Appliance Restrictions of the Washington State Energy Code are therefore
4 preempted by the federal EPCA.

5 90. There is no set of circumstances under which the Appliance Restrictions would
6 be valid.

7 91. Therefore, by adopting the Appliance Restrictions of the Washington State
8 Energy Code, the SBCC and the individually named Defendants are committing
9 ongoing violations of federal law.

10 92. There is no plain, speedy, and adequate remedy at law to protect the rights of
11 Plaintiffs. Plaintiffs are irreparably and substantially harmed by the Appliance
12 Restrictions.

13 93. There will be no significant harm to Defendants from an injunction, because
14 Defendants have no legitimate interest in adopting for enforcement invalid
15 regulations. The balance of harms thus favors injunctive relief.

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

21

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

4 **VII. PRAYER FOR RELIEF**

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

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

9 98. For a permanent injunction enjoining the effectiveness of the Appliance
10 Restrictions and prohibiting Defendants from maintaining the Appliance Restrictions
11 or substantially similar provisions as part of the Washington State Energy Code;

12 99. For costs of this suit, including reasonable attorney's fees; and

13 100. For such other and further relief as the Court may deem just and proper.

14 Respectfully submitted,

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1 July 5, 2023.

2 LANE POWELL PC

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2023, I electronically filed and served the foregoing with the Clerk of the Court using the CM/ECF System to the following:

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