

No. 25-5129

In the United States Court of Appeals
For the Ninth Circuit

RINNAI AMERICA CORPORATION et al.,

Plaintiffs-Appellants,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT,

Defendant-Appellee,

PEOPLE'S COLLECTIVE FOR ENVIRONMENTAL JUSTICE et al.,

Intervenors-Defendants-Appellees.

On Appeal from the United States District Court for the
Central District of California, 2:24-cv-10482-PA-PD

**BRIEF OF *AMICUS CURIAE* THE PRIME MOVER INSTITUTE
IN SUPPORT OF PETITION FOR REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Ninth Circuit Rule 26.1-1, The Prime Mover Institute states that it is a nonprofit corporation, that it has no parent corporation, and that no publicly held corporation owns 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE*¹

As its name suggests, the Prime Mover Institute defends the engines that power industrial civilization—machines such as the internal-combustion engine, the gas turbine, and the boilers at issue here. The Prime Mover Institute advocates for sound energy and environmental policies through regulatory engagement, education, and litigation. The Prime Mover Institute has an interest in this case because the panel’s decision greenlights state efforts to ban gas appliances used by millions of Americans, and will have broader repercussions for efforts to ban the internal-combustion engine.

¹ No party’s counsel authored this brief in whole or in part, and no one other than *amicus* contributed money intended to fund preparing or submitting the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under the Energy Policy and Conservation Act (“EPCA”), the Department of Energy has promulgated “numerous regulations to make home appliances more expensive and less useful.” *Mississippi v. Dep’t of Energy*, No. 24-60529, 2026 WL 2320839, at *1 (5th Cir. Aug. 11, 2026). But all of that federal regulation at least comes with a preemption catch: “no State regulation concerning the ... energy use ... of such covered product shall be effective.” 42 U.S.C. § 6297(c); *see also id.* § 6316(b)(2) (similar for industrial equipment). The phrase “energy use” is defined to include the quantity of fossil fuel used by appliances, such as natural gas. *Id.* § 6291(3)–(4). Water heaters and boilers are “covered products.” *Id.* §§ 6291(2), (23), (25), (27), 6292(a)(4), (5), (11); ER-10.

In June 2024, the South Coast Air Quality Management District (the “Air District”) banned gas-fired water heaters, boilers, and process heaters that emit more than zero oxides of nitrogen (“NO_x”). *See* S. Coast AQMD R. 1146.2.² Combusting fossil fuel such as natural gas inevitably yields at least some NO_x, so no regulated appliance meets the standard. ER-13. Rule 1146.2 therefore “effectively bans

² Rule 1146.2 applies to units with a heat input capacity that does not exceed 2 million British thermal units per hour. S. Coast AQMD R. 1146.2(b). The Air District estimates this covers over one million units. ER-106.

the use of covered gas fueled boilers and water heaters.” *Id.* In other words, the Air District’s “zero emissions” mandate requires appliances that use no natural gas. *Id.*

Under the text of EPCA and *California Restaurant Ass’n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. 2024), this is an easy case. As *California Restaurant* observed, EPCA’s text “would no doubt preempt an ordinance that directly prohibits the use of covered natural gas appliances.” *Id.* at 1107. A law directly mandating the use of zero gas in covered gas applications would therefore be preempted. *Id.* And “States and localities can’t skirt the text of broad preemption provisions by doing *indirectly* what Congress says they can’t do *directly*.” *Id.* at 1107. Therefore, a ban on gas appliances is preempted even when a state attempts a “more circuitous route.” *Id.* at 1098. That includes using the label “zero emissions” (i.e., electric only) to ban gas appliances.

Under the panel’s decision, however, states can ban gas appliances (and any other fossil-fuel fired appliances) as long as they say “zero emissions” instead of “zero gas.” *Rinnai Am. Corp. v. S. Coast Air Quality Mgmt. Dist.*, No. 25-5129, 2026 WL 1912093, at *11 (9th Cir. July 2, 2026) (zero-emissions rule does not “say anything about” gas). And *California Restaurant* is now effectively limited to “cities like Berkeley” —every state and air quality district that has to comply with the Clean Air Act is exempt. *Id.* at *12.

Rehearing en banc is warranted. First, the panel majority’s reading of EPCA conflicts with the best reading of the text, *California Restaurant*, and Supreme Court precedent explaining that preemption analysis turns on a state law’s operative effect, not its labels. Second, the panel majority remarkably claims a “conflict” with the Clean Air Act through a mistaken reading of the Clean Air Act’s directive to include “all reasonably available control measures” in a state nonattainment implementation plan. The panel’s assumption that the gas ban is *legally compelled* by the Clean Air Act has no basis in law, the record, or the parties’ briefs, and would federally mandate state gas bans. Third, the panel’s decision will have devastating consequences for ordinary Americans. The decision invites state bans of a vast range of home and commercial gas-fired appliances, from furnaces to stoves and everything else, and supplies a template for evading EPCA’s similar preemption of state laws “related to fuel economy standards” for automobiles too. 49 U.S.C. § 32919(a). The petition should be granted.³

³ The panel’s alternative holding misconstrues the complaint’s use of the word “facial” as seeking relief as to products not covered by EPCA. *See* Plaintiffs–Appellants’ Petition for Rehearing En Banc 17–18, Dkt. 74-1 (“PFR”). That misreading would at most require granting the plaintiffs narrower relief, not affirming the district court. *See* Fed. R. Civ. P. 54(c) (courts “should grant the relief to which each party is entitled, even if the party has not demanded that relief”). Prime Mover Institute accordingly doesn’t address this alternative holding.

ARGUMENT

I. THE PANEL’S DECISION CONFLICTS WITH TEXT, PRECEDENT, AND CONSTITUTIONAL PRINCIPLE

The Supremacy Clause, U.S. Const. art. VI, cl. 2, “creates a rule of decision”: judges “must not give effect to state laws that conflict with federal laws.” *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015). The text of the Supremacy Clause further “suggests that courts should not strain to find ways to reconcile federal law with seemingly conflicting state law.” *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 622 (2011) (plurality op.); *see also* Caleb Nelson, *Preemption*, 86 Va. L. Rev. 225, 290–303 (2000). This rule of decision is central to the Framers’ constitutional order. Without it, “the world ... would have seen the authority of the whole society everywhere subordinate to the authority of the parts; it would have seen a monster in which the head was under the direction of the members.” The Federalist No. 44, at 287 (James Madison) (Clinton Rossiter ed., 1961).

It is a longstanding principle of constitutional interpretation that “[w]hat cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023); *Passenger Cases*, 48 U.S. (7 How.) 283, 458 (1849) (“It is a just and well-settled doctrine established by this court, that a State cannot do that indirectly which she is forbidden by the Constitution to do directly.”).

Accordingly, “the Supremacy Clause cannot be evaded by formalism.” *Haywood v. Drown*, 556 U.S. 729, 742 (2009).

The same principle goes for federal preemption statutes, which after all, operationalize the Supremacy Clause—they are “Laws of the United States ... made in Pursuance” of the Constitution. U.S. Const. art. VI, cl. 2. “Pre-emption is not a matter of semantics. A State may not evade the pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute’s intended operation and effect.” *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 636 (2013). “Even the most detailed and explicit federal preemption statute still needs an anti-circumvention principle.” Richard A. Epstein & Michael S. Greve, *Conclusion: Preemption Doctrine and Its Limits*, in *Federal Preemption: States’ Powers, National Interests* 309, 314 (Richard A. Epstein & Michael S. Greve eds., 2007). After all, enterprising state officials have powerful incentives to evade federal limits on their authority. *Id.* Numerous cases “teach” this “lesson.” *Cal. Rest. Ass’n*, 89 F.4th at 1106–07 (citing cases). As *California Restaurant* explains: “States and localities can’t skirt the text of broad preemption provisions by doing *indirectly* what Congress says they can’t do *directly*.” *Id.*

That teaching should have been dispositive here. EPCA prohibits “State regulation concerning ... energy use.” 42 U.S.C. § 6297(c). As *California Restaurant*

explains, this “expand[s] preemption beyond direct or facial regulations of covered appliances.” *Cal. Rest. Ass’n*, 89 F.4th at 1103. So “EPCA would no doubt preempt an ordinance that directly prohibits” gas appliances because such a ban effectively mandates zero gas. *Id.* at 1107. Under basic principles of preemption jurisprudence, the Air District therefore cannot accomplish that same prohibited end by labeling a ban “zero emissions” as opposed to zero gas.

The panel majority takes the very opposite approach to federal preemption. Unlike *California Restaurant*, the majority focuses on what the state rules “say,” as opposed to what they do or “concern[.]” *Rinnai Am. Corp.*, 2026 WL 1912093, at *11 (zero-emissions rule does not “say anything about” gas). As the panel emphasizes, the Air District’s rule does not “say anything about how much or what type of energy an appliance can consume provided that the emissions requirement is met.” *Id.* The key word is “say.”

The panel majority’s focus on the Air District’s “framing” of the ban as zero emissions as opposed to zero gas allows states to “make a mockery of [EPCA’s] preemption provision.” *Nat’l Meat Ass’n v. Harris*, 565 U.S. 452, 464 (2012). It makes EPCA turn on “semantics.” *Wos*, 568 U.S. at 636. Or more bluntly, making EPCA preemption turn on whether the state says zero emissions or zero gas

“amounts to a test of whether the legislature has a stupid staff.” *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1025 n.12 (1992).

Under basic anti-evasion principles, the Air District’s use of the label “zero emissions” as opposed to “zero gas” is irrelevant. Courts should not “exhibit a naïveté from which ordinary citizens are free.” *Trump v. Cook*, 146 S. Ct. 2234, 2249 (2026). What matters is that, in operation, “the emissions requirement” *cannot* be “met,” as the panel majority did not dispute, so it’s a gas ban. *Rinnai Am. Corp.*, 2026 WL 1912093, at *11. The Air District’s air quality purpose is irrelevant, because EPCA doesn’t include exceptions for well-intentioned gas bans. *See Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 105–07 (1992).

The panel decision sees only a difference in degree between a ban and a feasible emissions standard. As the panel puts it, even a “non-zero” standard will “equally ban some gas appliances (namely, those that cannot meet that non-zero standard).” *Rinnai Am. Corp.*, 2026 WL 1912093, at *12. EPA made a similar argument in *West Virginia v. EPA*, 597 U.S. 697, 728 (2022). But as the Supreme Court recognized, a standard that cannot be met by the regulated source—here, gas-fired water heaters and boilers—is of “an entirely different kind” from ordinary, feasible emission-performance standards. *Id.* To borrow from *West Virginia*, there is an “obvious difference between (1) issuing a rule that may end up causing an incidental

loss” in market share, “and (2) simply announcing what the” quantity of gas appliances should be—here, zero. *Id.* at 731 n.4. A 20-ppm NO_x limit is a performance standard that gas appliances can meet; it regulates a byproduct of combustion and leaves gas consumption untouched. A limit no gas appliance can meet effectively prescribes a maximum quantity of gas—zero. The former is an emissions-performance standard with incidental price effects on appliances; the latter is an energy-use regulation in emissions garb, designed not to improve performance but to mandate “a switch from” natural gas to electricity. *Id.* at 729. The panel glides past this “obvious difference.” *Id.* at 731 n.4.

Indeed, EPCA itself distinguishes between ordinary regulations that incidentally burden sales of covered gas appliances and regulations that would result in the “unavailability” of a covered appliance “type” or its useful “performance characteristic,” such as the instantaneous gas-fired water heaters banned by the Air District here. 42 U.S.C. § 6295(o)(4); *id.* § 6313(a)(6)(B)(iii)(II)(aa); *see also Am. Gas Ass’n v. Dep’t of Energy*, 157 F.4th 476, 500 (D.C. Cir. 2025) (Rao, J., dissenting) (discussing this requirement), *cert. granted, judgment vacated*, No. 25-879, 2026 WL 1640863 (U.S. June 8, 2026). EPCA’s text therefore recognizes a meaningful difference between product bans and mere incidental effects.

II. THE CLEAN AIR ACT DOESN'T MANDATE THE GAS BAN

To evade *California Restaurant*, the panel invokes the “presumption” against repealing a prior federal law by implication. *Rinnai Am. Corp.*, 2026 WL 1912093, at *9. The panel majority claims that EPCA’s preemption provision, as interpreted by the plaintiffs, would repeal the Clean Air Act. *Id.* at *9. Specifically, the panel focuses on the Clean Air Act’s requirement that nonattainment areas (areas that do not meet EPA’s ambient air quality standards) adopt “all reasonably available control measures” in a state implementation plan. *Id.* at *6, *8 (quoting 42 U.S.C. § 7502(c)(1)). The panel assumes that the ban is such a “control measure[],” and then concludes that interpreting EPCA to prohibit the Air District’s rule would impliedly repeal this Clean Air Act legal mandate. *Id.* at *8.

Why did the panel conclude that the Air District’s gas ban qualifies as a mandatory “reasonably available control measure[],” 42 U.S.C. § 7502(c)(1), that must be adopted as part of the Air District’s state implementation plan? The panel doesn’t say. The Air District never claimed as much in its response brief, nor did the intervenors. The panel seems to have come up with this idea on its own. Unsurprisingly, as can happen when judges depart from our system of adversarial presentation, the panel is wrong. The gas ban is not a legally required “reasonably available control measure.”

The Clean Air Act’s “cooperative federalism” approach mandates much, but does not micromanage states as the panel majority imagines. For the most part, under the Clean Air Act, EPA sets air quality goals, and states decide how to meet them. *See Ohio v. EPA*, 603 U.S. 279, 284 (2024). States, for example, can use traditional command-and-control regulation or “economic incentives such as fees, marketable permits, and auctions of emissions rights.” 42 U.S.C. § 7410(a)(2)(A). With few exceptions, “EPA has no authority to question the wisdom of a State’s choices of emission limitations.” *Ohio*, 603 U.S. at 284 (quotation marks omitted).

One exception applies to nonattainment areas. These areas must adopt “all reasonably available control measures” to come into attainment. 42 U.S.C. § 7502(c)(1). But that requirement doesn’t swallow the Clean Air Act’s general rule of flexibility. It has limits.

First, preempted state rules are not “reasonably available control measures.” To qualify for approval in a state implementation plan, let alone to be a required “available control measure,” a state measure must first be “enforceable.” 42 U.S.C. § 7410(a)(2)(A), (E). As this Court has held, among other things, “the *state*” must have the “authority ... to carry out the” state plan. *California Dump Truck Owners Ass’n v. Nichols*, 784 F.3d 500, 508 (9th Cir. 2015). EPA, accordingly, cannot approve a measure if it is preempted by federal law. *Id.* at 510. That is why the state must

assure EPA that its measures are “not prohibited by any provision of Federal or State law.” 42 U.S.C. § 7410(a)(2)(E)(i). The Clean Air Act, in other words, says that preempted state laws *cannot* be used to satisfy a state’s Clean Air Act obligations. Or to put it differently, preempted measures are not “available” to the state. 42 U.S.C. § 7502(c)(1).

The panel dismisses the Clean Air Act’s core enforceability requirement by labeling the required assurance a “catchall provision” and “general language” that does not supply the “clear and manifest” text to justify an implied repeal of the Clean Air Act. *Rinnai Am. Corp.*, 2026 WL 1912093, at *9. This misses the point: EPCA and the Clean Air Act do not conflict in the first place. The Clean Air Act tells states to adopt rules to clean up their air, but only if the rules are not preempted by federal law. Gas appliance bans are preempted by EPCA, so they are not required, or even allowed, by the Clean Air Act. Rather than harmonize statutes to make each fully effective, as it should, the majority misreads the Clean Air Act to create a supposed conflict and discard EPCA preemption by judicial diktat. That was wrong, and worse, it opens the door to profound distortions of the Clean Air Act throughout this circuit.

Even setting aside this threshold problem, the gas ban is not a “reasonably available control measure” for several other reasons.

To start, EPA has never approved the Air District’s gas ban, let alone said that the gas ban is mandatory. *See* PFR at 13; *see also EPA-Approved South Coast AQMD Regulations in the California SIP*, <https://www.epa.gov/air-quality-implementation-plans/epa-approved-scaqmd-regulations#xi> (last visited Aug. 19, 2026).⁴ And that’s a problem for the panel. “The Congress’s choice of the phrase ‘reasonably available’ clearly bespeaks its intention that the EPA exercise discretion in determining which control measures must be implemented.” *Sierra Club v. EPA*, 294 F.3d 155, 162 (D.C. Cir. 2002). Accordingly, whether the gas ban is *legally required* as a reasonably available control measure is a question that requires EPA’s “considered judgment” in the first instance, not a court’s. *Cf. Monsanto Co. v. Durnell*, 146 S. Ct. 2001, 2011 (2026). The judiciary is not well-equipped to declare such a policy-laden conclusion *de novo*, as the panel did here.

Especially so without briefing, as the panel did here. In its response brief, the Air District never argued that the ban is a “reasonably available control measure” or what EPA calls “RACM.” The Air District has said the opposite. When the Air

⁴ The Bay Area district submitted its gas-appliance ban for EPA approval in 2024. 89 Fed. Reg. 94,633 (Nov. 29, 2024). But the Bay Area didn’t contend that the Clean Air Act required the ban, *id.*, and EPA never approved it following commenters’ preemption objections. *See, e.g.*, Comment submitted by Rinnai America Corporation 5–7, *available at* <https://www.regulations.gov/comment/EPA-R09-OAR-2024-0417-0010>.

District submitted its “RACM” demonstration to EPA for the 2015 smog standard, *see* 40 C.F.R. § 51.1312(c), the Air District concluded that the prior 2018 version of Rule 1146.2 “meets the RACM.” S. Coast Air Quality Mgmt. Dist., *Appendix VI-A: RACM Demonstration, in 2022 Air Quality Management Plan* at VI-A-42 (Dec. 2022), <https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/final-2022-aqmp/appendix-vi.pdf?sfvrsn=12>. So even the Air District doesn’t think that the new rule is a mandatory “reasonably available control measure.”

For good reason. The gas ban would not satisfy the criteria to qualify as a reasonably available control measure. As the Air District explains:

The U.S. EPA’s long-standing interpretation of the RACM provision is that nonattainment air districts should consider all candidate measures that are available and technologically and economically feasible to implement within the nonattainment areas ... and that a state must adopt measures for an area only if those measures are technologically and economically feasible and will advance the attainment date by, at a minimum, one year or are necessary for reasonable further progress (RFP) for the area.

Id. at VI-A-2.

Obviously, a rule for gas-fired appliances that no gas appliance can meet is not “technologically and economically feasible.” *Id.* So it is not a “reasonably available control measure.” Holding otherwise would be “alarming,” as it would send “States into a regulatory freefall in which they must either adopt infeasible emission control

measures or else face severe, escalating sanctions.” *Comm. for a Better Arvin v. EPA*, No. 24-7270, 2026 WL 2251528, at *8 (9th Cir. Aug. 5, 2026) (Bress, J., dissenting) (dissenting from holding that a separate Clean Air Act requirement compels infeasible rules).

Nor has the Air District shown, through modeling, that the gas ban would advance attainment with the 2015 smog standard by at least one year, as required by EPA to qualify as a reasonably available control measure. The Air District projects that by 2037—the Basin’s deadline for complying with the smog standard, SER-29—the ban will reduce NO_x emissions by 2.4 tons per day. SER-19. That compares to a baseline of “184 tons per day of NO_x” in 2037. SER-40. So the gas ban accounts for only 1.3% of total NO_x. Or alternatively, the Air District’s projected “carrying capacity”—the maximum quantity of NO_x that the Air District projects will allow it to meet the standard in 2037—is 60 tons of NO_x per day. SER-40. The gas ban is only 4% of that carrying capacity. Given the negligible share of emissions addressed by the ban, it is very unlikely that smog modeling would show that the ban will advance attainment by at least a year.⁵ This is further complicated by the non-linear

⁵ The panel majority claims that “emissions from appliances account for almost 20 percent of all emissions *from the stationary sources the District regulates*.” *Rinnai Am. Corp.*, 2026 WL 1912093, at *8 (emphasis added). That is misleading. Appliances account for 19 percent of NO_x from “*residential and commercial combustion stationary*

(footnote continued on next page)

chemistry of photochemical smog: in some areas of the Basin, such as the urban core of Los Angeles, the Air District's focus on eliminating NO_x could actually exacerbate smog, not reduce it.⁶

In short, the panel majority's casual assumption that the ban is a legally mandatory "reasonably available control measure" under the Clean Air Act is wrong at every level. "What [the panel majority] describe[s] as a conflict boils down to nothing more than a policy preference on the [Air District's] part" for banning anything that uses fossil fuels. *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 304 (2003). "Such administrative preferences cannot be the basis for" disregarding EPCA. *Id.* Difficulty in complying with two or more federal laws and prohibitions at once is ubiquitous. Such a difficulty may justify waivers, extensions, amendments, or other policy responses from the political branches, but it doesn't license judicial departures from legal text.

sources," not all stationary sources. SER-31 ¶ 36 (5.6 / 29.6 tpd) (emphasis added). And stationary sources account for only 20 percent of projected 2037 Basin NO_x, with 80 percent of NO_x coming from mobile sources like heavy-duty trucks. SER-40–41.

⁶ See Elyse A. Pennington et al., *An Updated Modeling Framework to Simulate Los Angeles Air Quality — Part 1: Model Development, Evaluation, and Source Apportionment*, 24 Atmospheric Chemistry & Physics 2345, 2359 (2024) ("The urban core of LA demonstrates NO_x-saturated behavior; NO_x reductions lead to O₃ increase.")

Because the Clean Air Act doesn't compel the gas ban, the panel's "presumption" is just a "presumption against preemption" of state law in disguise. As *California Restaurant* holds, that "thumb on the scale" is improper. 89 F.4th at 1101; *see also PLIVA, Inc.*, 564 U.S. at 622 (plurality op.); *see also Nelson, supra*, 86 Va. L. Rev. at 290–303 (original understanding doesn't support a presumption against preemption).

III. THE PANEL'S DECISION IS IMPORTANT

The panel decision will have vast implications for the American economy, allowing—indeed, mandating—state gas bans labeled as “zero emissions” standards.

The costs will be borne primarily by households and small businesses stretched thin by regulation and taxes. The Air District's analysis predicts an annual average compliance cost in the Air District alone of nearly \$100 million from 2026 through 2057. ER-107. But the Air District's gas ban is just the beginning of this “voyage of discovery.” *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 328 (2014). The Air District has already announced its belief that it must ban every useful machine that uses fossil fuels, as long as some semblance of a zero-emission (i.e., electric) replacement is commercially available. *See* ER-5. Residents can therefore wave goodbye to their other covered gas appliances, including gas stoves, gas furnaces, and gas clothes dryers. The Air District will shift that demand onto an electric grid already

so strained that the State’s grid operator called for ten consecutive days of emergency conservation during a single September 2022 heat event, Cal. Indep. Sys. Operator, *Summer Market Performance Report for September 2022*, at 12 (2022), <https://www.caiso.com/Documents/SummerMarketPerformanceReport-forSeptember2022.pdf>, and where residential electricity costs roughly twice the national average, U.S. Energy Info. Admin., *Electric Power Annual* tbl. 2.10 (2025) (31.97 cents per kilowatt-hour against a 16.48-cent national average), <https://www.eia.gov/electricity/annual/pdf/epa.pdf>.

Indeed, because the panel decision applies through this circuit, every state and air quality district in nonattainment (California has several) can ban covered gas products by using the label “zero emissions.” And the panel decision supplies a template for attempts to evade preemption under EPCA in other jurisdictions. As the panel observes, “[o]ver 60 other cities and counties in California, as well as states such as Colorado and Maryland, are likewise considering policies for zero emissions appliances.” *Rinnai Am. Corp.*, 2026 WL 1912093, at *8. Indeed, according to the panel’s illogic, such state gas bans may even be *legally mandated* by the Clean Air Act.

Nor is this preemption-evasion trick limited to appliances. To ban new gasoline or diesel motor vehicles and mandate electric instead, for example, California also uses the “zero emissions” label. *See, e.g.*, Cal. Code Regs. tit. 13, § 1963.6.

EPCA separately forbids state laws “related to fuel economy standards” for automobiles, including laws that effectively require infinity fuel economy (i.e., electric only). 49 U.S.C. § 32919(a). Indeed, the United States has brought suit to enjoin such a California policy. *See* Complaint, *United States v. Cal. Air Res. Bd.*, No. 26-cv-00847-DJC-SCR, Dkt. 1 (E.D. Cal. filed Mar. 12, 2026), *available at* <https://www.justice.gov/opa/media/1430886/dl?inline>. Under the panel’s illogic, however, California’s decision to use the label “zero emissions” as opposed to zero gas is all but dispositive.

CONCLUSION

The petition for rehearing en banc should be granted.

Dated: August 24, 2026

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FOR THE NINTH CIRCUIT

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