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Does the 9th Circuit's Rejection of Berkeley, CA's Municipal Gas Ban Spell Doom for Massachusetts' Own Gas-Banning "Demonstration Program"? - Pierce Atwood

We bring to your attention this post by our colleague Randy Rich of Pierce Atwood's Energy Infrastructure Group on the 9th Circuit's decision earlier this week in *California Restaurant Association v. City of Berkeley*, No. 21-16278. The court decided that the federal Energy Policy and Conservation Act, 42 U.S.C. § 6297(c), preempts the City of Berkeley's ordinance banning natural gas piping within newly constructed buildings. Interestingly, the Commonwealth of Massachusetts was part of a group of states that filed an amicus brief urging the 9th Circuit to find no federal preemption and thus uphold the Berkeley ordinance.

Although the 9th Circuit's decision isn't legally binding here, we wonder how it will affect efforts to ban the use fossil fuels in the Commonwealth. Section 84 of Chapter 179 of the Acts of 2022 (pdf) authorizes the Mass. Department of Energy Resources (DOER) to establish a demonstration program allowing 10 cities and towns to adopt general or zoning bylaws prohibiting the use of fossil fuels in new buildings or for major renovations. DOER recently issued draft regulations for this program; the comment period ended on February 10, 2023 and we expect to see regulations issued in the coming months. The City of Cambridge is one of the 10 municipalities included in the program and the City of Boston has expressed interest in joining the group.

Will there be an effort to bring a case asserting that the federal Energy Policy and Conservation Act preempts the Mass. demonstration program? We'll keep you posted.

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