

Chairman Burlison, Ranking Member Frost, and Members of the Subcommittee:

My name is James R. Conde and I am a partner at Boyden Gray PLLC, a boutique law firm in Washington D.C. I am testifying on behalf of the Prime Mover Institute, a 501(c)(3) that advocates for policies that expand access to technologies that power the American standard of living, including gas-powered appliances owned by millions of American homeowners and businesses. I am here today to talk about the misguided push to ban gas appliances at all levels of the United States government: federal, state, and even local.

In today's networked home, American homeowners and businesses have a wide variety of choices in appliances, including the type of energy they use. Americans can heat their homes with a gas furnace or a heat pump, cook with a gas range or an electric stovetop, heat their water with gas or electricity, and dry their clothes with a gas or an electric dryer. Americans generally choose whatever combination of appliances works best for them, and often but not always, that means choosing natural gas.

Over the last decade, however, governments at all levels, including in my Montgomery County where I live and here in D.C., have been pulling every lever to squash fuel choice.

Start with the federal government's misuse of the Energy Policy and Conservation Act or EPCA. EPCA is an old law that dates back to President Ford and the oil crisis of the 1970s. In its current form, EPCA authorizes the Department of Energy to set energy conservation standards for a broad array of household and industrial appliances.

In recent years, the Department of Energy has misused this old law to pursue new goals. During the past presidential administration, the federal

agencies engaged in what they called a “whole of government effort” to address “the climate crisis.” In pursuit of this goal, as the Fifth Circuit recently explained, “the Biden Administration proposed numerous regulations to make home appliances more expensive and less useful.”¹

The most controversial example was perhaps the Department of Energy’s proposal in 2023 to effectively ban high-input gas stoves. But I’d like to use a different example to illustrate the Department’s misuse of EPCA: the Department’s rule banning non-condensing gas furnaces, which is still being litigated today.

If you are like me and millions of other Americans who live in an old home and use gas for heating, you probably own a non-condensing gas furnace. These furnaces are very efficient—about 80% efficient. And crucially for owners of old homes, these furnaces can vent their exhaust gases through an existing chimney, using natural draft.

Condensing furnaces are more efficient, about 95% efficient, because they pull additional heat from the exhaust gases. But condensing furnaces have a disadvantage for existing homes: they can’t use an existing chimney because condensed fumes won’t rise using natural draft. Instead, a condensing furnace requires installing a horizontal PVC vent and plumbing for the liquid condensate. For many Americans, such as those living in rowhomes, installing a PVC vent may be infeasible. For millions of others, it would require punching new holes through a wall, sacrificing storage space, or undertaking costly home renovations.

The Department of Energy nevertheless promulgated an energy standard that effectively banned non-condensing gas furnaces from the

¹ *Mississippi v. Dep’t of Energy*, No. 24-60529, 2026 WL 2320839, at *1 (5th Cir. Aug. 11, 2026).

market. The Department conceded that as a result of the rule, millions of Americans would be pushed to switch to electric heat pumps. Indeed, that was the goal, which the Department touted as a regulatory benefit of the regulation.

None of this is supposed to happen under EPCA. Congress wrote several guardrails into EPCA to protect choice. First, the Department of Energy cannot set standards that effectively mandate fuel switching because it is required to ensure its rules are technologically and economically feasible for gas appliances. 42 U.S.C. § 6295(o)(2), (q). Second, beyond this, the Department cannot set standards that effectively ban a class of products with distinct features that consumers find useful. 42 U.S.C. § 6295(o)(4). The rule mandating condensing gas furnaces violates at least this second requirement, if not the first. Venting through an existing chimney as opposed to a new, exterior vent, is obviously a useful feature, as the Department of Energy has now belatedly conceded in the litigation.

EPCA is also relevant to the state and local gas bans that we are discussing today. Here, EPCA has some simple words to say to states and localities: “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 term “concerning” is broad. And the phrase “energy use” is defined to include the quantity of fossil fuel used by appliances. *Id.* § 6291(3)–(4). As Judgeumatay explained in the Ninth Circuit’s pathbreaking *City of Berkeley* decision, this text preempts state and local efforts to ban gas appliances, directly or indirectly, including through the use of building codes. *California Restaurant Ass’n v. City of Berkeley*, 89 F.4th 1094 (9th Cir. 2024).

The Second Circuit recently disagreed with the Ninth Circuit, upholding New York’s building code directly banning gas appliances in most new buildings, setting up a test case for the Supreme Court.² I believe the Ninth Circuit is right and the Second Circuit wrong, but we will find out soon enough, maybe even this Supreme Court term.

The issue is certainly important. Many state and local governments have adopted similar building codes banning gas or fossil fuel appliances. That includes D.C., Montgomery County, Washington State, Colorado, and multiple local governments.

But local and state gas bans are spreading beyond building codes. The Air Districts in the South Coast and Bay Area of California have pioneered a new type of gas appliance ban that is now being considered by up to 60 state and local jurisdictions: “zero emissions” standards for gas appliances, including existing appliance replacements. Because combusting gas inevitably involves some minimal emissions, this is exactly the same as mandating appliances that use zero gas, which EPCA prohibits. Unfortunately, a Ninth Circuit panel recently upheld this evasion of EPCA and *City of Berkeley*. The Prime Mover Institute disagrees and filed an amicus brief in support of rehearing by the full court.

I look forward to your questions.

² *Mulhern Gas Co. v. Mosley / Ass’n of Contracting Plumbers of the City of New York v. City of New York*, Nos. 25-977 & 25-2041 (2d Cir. June 30, 2026).