Voluntary Codes and Standards

Washington's 2030 Challenge: Regulating Around Preemption

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This material was developed under the auspices of the Penn Program on Regulation using federal funds under awards 70NANB15H343 and 70NANB15H344 from the National Institute of Standards and Technology (NIST), U.S. Department of Commerce. Any statements, findings, conclusions, and recommendations are those of the individual authors and do not necessarily reflect the views of the Penn Program on Regulation, the University of Pennsylvania, NIST, or the U.S. Department of Commerce.

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Cary Coglianese and Alexandra Johnson*

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I. Washington's 2030 Challenge

In May 2009, the Washington state legislature passed Senate Bill 5854, securing the state's position as among the first in the nation to implement legislation in response to the "2030 Challenge." This challenge, a national framework first developed by a nonprofit organization of architects and then endorsed by the American Institute of Architects, has sought to achieve significant reductions in greenhouse gas emissions from buildings across the United States by the year 2030.[1] In response, the state legislature in Washington called for changes to its administrative building code that would achieve at least 70 percent reduction in energy use by 2031.[2]

Under the new legislation, the Washington State Building Code Council—a state administrative agency—would need to make periodic changes to the state's building code to put

* The authors thank Andy Coopersmith, Neharika Goyal, Kat Hefter, Laura Hinnenkamp, and Lily Moran for their assistance with the preparation of this case study. This case study was prepared both to stand on its own and to serve as a companion to the case study, "AlbuquerqueGreen: Regulating Climate Change at the Local Level," prepared by Cary Coglianese, Alexandra Johnson, and Shana Starobin.

[1] S.B. 5854, 61st Legislature, Reg. Sess. (Wash. 2009), https://lawfilesext.leg.wa.gov/biennium/2009-10/Pdf/Bills/Session%20Laws/ Senate/5854-S2.SL.pdf?cite=2009%20c%20423%20%C2%A7%204. The legislation is codified at Rev. Code Wash. § 19.27A, available at https://app.leg.wa.gov/rcw/default.aspx?cite=19.27A. On the 2030 Challenge generally, see Architecture 2030, *About Us*, ARCHITECTURE 2030 (last visited Mar. 15, 2019), https://architecture2030.org/about/. *See also* Washington State Building Code Council, Washington State Energy Code: Progress Toward 2030 9 (Oct. 8, 2020) (draft based on 2018 report), https://sbcc.wa.gov/sites/default/files/2020-10/Draft%2005%202018%20Report_changes%20from%20100820_r.pdf ("The AIA's Architecture 2030 Challenge was adopted in 2009 by the Washington State Legislature.")

[2] S.B. 5854, § 5. *See also* Architecture 2030, *2030 Challenge-Inspired Legislation,* ARCHITECTURE 2030 (last visited Mar. 15, 2019), https://architecture2030.org/2030_challenges/adopters/adopters_govt_state/. The stated goal was to have in place a state building code by 2030 that would mandate the construction of new buildings that used 70 percent less in their annual net energy compared with the amount allowed for buildings constructed under the 2006 version of the state's building code.

the state on a path toward meeting the 2030 Challenge.[3] The Council took immediate steps by making revisions to the state's 2009 edition of its building code that required a 15 percent reduction in annual net energy consumption from new building construction compared with a baseline of the 2006 edition of the state building code.[4] The Council's changes were to take effect on July 1, 2010.

II. The State's 2009 Building Code

Even without the passage of new legislation, state building codes are ordinarily updated to keep them current with new technologies and best practices related to building design and construction. In most states, these codes are based heavily on standards developed by industry and professional organizations and other nongovernmental standard-setting organizations, which are also regularly updated. The National Fire Protection Association, for example, develops standards for fire safety. The American Society for Heating, Refrigeration and Air Conditioning creates standards for the very type of equipment included in its name. And the International Code Council (ICC)—a major nongovernmental standard-setting organization in the building sector—has developed a series of comprehensive codes governing all facets of buildings, including an International Energy Conservation Code (IECC).

Because the codes and standards developed by these and other nongovernmental organizations are not themselves directly binding on anyone, they are commonly referred to as "voluntary codes and standards." But when these standards are officially incorporated into public law by legislative or administrative bodies, they become binding law. Often they are incorporated merely by referring to them by name, without actually reproducing their text in the binding law—a practice known as incorporation by reference. The practice of incorporating private standards by reference into government regulations is quite common at all levels of government. The federal regulatory code, for example, contains over 24,000 provisions that have incorporated nongovernmental standards across a wide array of regulatory issues.[5] All 50 states and the District of Columbia have adopted at least some of the provisions from the ICC's voluntary building codes.[6]

Building code provisions—and the underlying voluntary provisions on which they are based—are said to vary with each other by being either "prescriptive" or "performance-based."[7]

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[3] The Washington State Building Council is situated within the state's Department of Enterprise Services. *See* Rev. Code Wash. § 19.27.070, https://app.leg.wa.gov/rcw/default.aspx?cite=19.27.070; Washington State Building Code Council, https://www.sbcc.wa.gov/.

[4] The Council adopted the 2009 version of the state building code in August 2009, and it filed it for publication in January 2010. WSR 10-03-115 (Jan 20, 2010), https://lawfilesext.leg.wa.gov/law/wsr/2010/03/10-03-115.htm.

[5] This number is as of 2016. *See* NIST, Standards Incorporated by Reference (SIBR) Database, https://sibr.nist.gov/ (last visited Aug. 20, 2022).

[6] International Code Council (ICC), *About ICC*, ICC (last visited October 30, 2018), https://www.iccsafe.org/about-icc/overview/about-international-code-council/. A nonprofit organization of over 64,000 members, the ICC develops several types of model codes and standards for sustainable, affordable, and resilient buildings. These codes are developed through a consensus process, which—among other tenets—allows anyone to submit a code change proposal or appeal an action of a code committee, requires evidence of a committee vote on each proposal, and mandates that one-third of each committee's members are public safety officials (i.e., government employees in the realm of public safety). *See also* International Code Council, *Code Development Process*, ICC (last visited October 30, 2018), https://www.iccsafe.org/codes-tech-support/codes/code-development/.

[7] Such terminology is used here simply because it is what is commonly used by professionals in the field. But distinguishing standards that are so-called prescriptive from those that are so-called performance-based can be misleading. After all, even a performance standard *prescribes* that regulated entities meet the required level of performance. Moreover, sometimes what are considered to be prescriptive standards are simply highly specified and

By prescriptive standards, professionals in the building code field usually mean standards that detail precisely what action needs to be taken or the precise products or product features that must be used for a particular application. Because prescriptive standards lay out well-specified actions or technologies that builders need to take or use, they are often said to be easier for builders to follow. They may also at times be simpler for building inspectors to ascertain whether an entity is in conformity with the standard. By contrast, performance standards define the goalposts, such as by setting an objective in terms of a percentage reduction in energy use, without specifying exactly how to reach that objective. Performance standards allow for flexibility on the part of the covered entities to find their own actions that meet the specified objective while potentially also saving time, money or other resources.[8]

Although government officials frequently give deference to the expertise of standard-setting organizations such as the ICC, they can and often do adapt the provisions of voluntary codes and standards to meet local conditions or preferences. As a result, government-imposed building codes may include standards that are more or less stringent than the what the model codes specify, or they may address aspects of construction otherwise left unaddressed by model codes. The Washington State Building Code Council, for example, has incorporated into its official building code a variety of provisions developed by the ICC, including its model energy code, but it also included state-specific amendments and provisions.

The passage of building-related legislation can provide another reason for state building code officials to depart from the provisions in model codes and develop their own bespoke building code provisions. Following the Washington legislature's adoption of its overall target of a 70 percent reduction in building energy consumption by 2031, the State Building Code Council adopted amendments in 2009 to its building code in an effort to start moving the state toward the legislature's ambitious goal. Specifically, the Council added a new requirement for builders to meet, starting in 2010: They needed to ensure that new buildings would achieve an additional 15 percent reduction in annual net energy consumption relative to the baseline of compliance with the 2006 code.

About a 7 percent reduction would be met by complying with the same basic parameters contained in the existing code, just ones that the Council tightened in 2009. The existing code had allowed builders to comply with its requirements through three methods—or what it deemed "pathways"—and each of these remained in the updated code.

A prescriptive pathway spelled out exactly the type of equipment, materials, and building practices need to be used. The specifics of these prescriptive rules were tightened in 2009 to require equipment, materials, and building practices that would deliver a 7 percent improvement over the prescriptive requirements contained in the 2006 edition of the building code.

A more flexible performance pathway allowed builders to make adjustments in their construction of the building's "envelope" or shell, such as by boosting insulation in an attic while reducing it in the walls.[9] But under this "envelope tradeoff performance pathway," a builder still

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inflexible performance standards. For a discussion of terminology about standards and regulations, see Cary Coglianese, *Introduction to Voluntary Codes and Standards: A Teaching Guide and Resources*, https://pennreg.org/codes-standards/wp-content/uploads/sites/4/2022/08/Coglianese-Introduction-VCS-Teaching-Guide.pdf. *See also* National Academies of Sciences, Engineering, and Medicine, DESIGNING SAFETY REGULATIONS FOR HIGH-HAZARD INDUSTRIES, https://doi.org/10.17226/24907.

[8] For a full discussion of performance standards, largely in the context of government-established regulations, see Cary Coglianese, *The Limits of Performance-Based Regulation*, 50 U. MICH. J.L. REFORM 525 (2017).

[9] Bldg. Indus. Ass'n of Wash. v. Wash. State Bldg. Code Council, 2011 U.S. Dist. LEXIS 12316, *9 (W.D. Wash. 2011).

had to follow prescriptive requirements for all other facets of a building, such as its heating and cooling systems.[10]

The final, and most flexible, performance pathway allowed builders to make tradeoffs across any and all facets of a building, such as by installing more insulation in its envelope in exchange for using a less efficient heating and cooling system—or vice versa. Under this last pathway, the builder would need to use approved computer simulation software to demonstrate that it could achieve energy efficiency on par with a building that complied with all the prescriptive standards.

Under the updated code, starting in 2010 any builder pursuing the last and most flexible pathway would not only have to achieve a level of energy efficiency equivalent to the tightened prescriptive standards, but it would also have to come up on its own with other ways to achieve an additional 8 percent reduction in energy use. In this way, builders pursuing the full flexibility pathway would meet the new code's mandatory goal of a 15 percent reduction.

For builders instead following the prescriptive pathway or the envelope-tradeoff pathway, the Council added a new Chapter 9 to the building code that outlined 13 options that could be taken to achieve the required additional 8 percent energy reduction. Builders needed to select from the list of 13 options, each associated with a set of points or credits assigned to it. These options varied in what they required but they often built upon each other; builders could mix and match as needed to reach the minimum number of required credits. Of the 13 options, 7 pertained to the building's envelope, such as insulation; 4 concerned the heating and cooling equipment; and the remaining 2 called for increased efficiency of other energy-consuming devices.

As a result, builders could choose to comply by picking and choosing from various possibilities for different heating or air conditioning equipment, ventilation structures, water heating systems, dwelling unit sizes, and uses of renewable energy, among other options. By earning the required number of credits, a builder would demonstrate that it had achieved the additional 8 percent reduction in energy use.

It was this last requirement—that builders pick and choose from a list of options—that proved most controversial. In May 2010, the major construction trade association in the state—the Building Industry Association of Washington—joined with 9 construction companies to file a lawsuit against the Council in federal district court, arguing that the new provisions in Chapter 9 mandated a level of energy efficiency that exceeded federal standards and were preempted by federal energy efficiency legislation.[11] The Council—joined by two local and two national environmental groups—argued that Chapter 9 was not preempted by federal standards because it qualified for exemption that the very same federal energy efficiency legislation allowed.

III. Preemption and Federal Energy Efficiency Standards

The industry challengers grounded their objections in the Supremacy Clause of the U.S. Constitution.[12] As the clause's name itself indicates, "federal law is supreme in case of a conflict

[10] *Id*.

[11] Energy Policy and Conservation Act (EPCA) of 1975 (Pub.L. 94-163, 89 Stat. 871), 94th Cong. (1975); as amended by the National Appliance Energy Conservation Act (NAECA) of 1987 (Pub.L. 100-12, 101 Stat. 103), 100th Cong. (1987) and the Energy Policy Act (EPACT) of 1992 (Pub.L. 102-486, 106 Stat. 2776), 102nd Cong. (1992).

[12] U.S. Const., art. 6, cl. 2.

with state law."[13] A long series of Supreme Court decisions over the years "have identified three different types of preemption—'conflict,' 'express,' and 'field'—but all of them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted."[14]

The industry challengers made an "express" preemption argument. They pointed to Section 6297 of Title 42 of the U.S. Code, which contains a "general rule of preemption" for federal energy efficiency standards for appliances and other products: "[N]o State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product." The rest of Section 6297—which spans more than 3,500 words—contains a variety of specific rules for specific types of products as well as an overall exemption from the general rule of preemption.

Section 6297 is part of a larger statutory framework that has built up over the years and which has led to the establishment of federal energy efficiency standards for major appliances and heating and air conditioning equipment used in new buildings. This statutory framework grows out of a series of pieces of energy legislation that Congress has adopted over decades, including the Energy Policy and Conservation Act (EPCA) of 1975,[15] the National Energy Conservation and Policy Act (NECPA) of 1978,[16] and the Energy Policy Act (EPACT) of 1992.[17]

It is common for federal statutes to contain preemption rules, and the rationale for them is evident when it comes to product standards. A federal standard provides uniformity that allows manufacturers to take advantage of economies of scale, creating products that can be sold anywhere in the United States. Products would be more costly to make if manufacturers had to develop different designs to meet varying requirements in a patchwork of potentially conflicting federal and state standards. Section 6297's preemption rule reflects this policy rationale.

Yet at the same time, both Section 6297 and other parts of federal energy law recognize the important role for states in regulating buildings and promoting energy efficiency. To further these goals, the federal government has repeatedly encouraged states to adopt and provide support for the implementation of energy conservation codes. Section 6833(e), for example, authorizes the federal government to provide grants to states "to improve and implement State residential and commercial building energy efficiency codes."[18]

To accommodate states' interest in setting energy efficiency building standards, Section 6297 allows for an exception to its general rule of preemption. A state's building code will be deemed not to conflict with federal energy efficiency standards provided it meets seven criteria listed in the federal statute.[19] Taken together, these criteria generally emphasize giving builders

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[13] Murphy v. Nat'l Collegiate Athletic Ass'n, 138 S. Ct. 1461, 1479 (2018).
[14] *Id*. at 1480.
[15] Energy Policy and Conservation Act (EPCA) of 1975 (Pub.L. 94-163, 89 Stat. 871), 94th Cong. (1975).
[16] National Energy Conservation and Policy Act (NECPA) of 1978 (Pub.L. 95-619, 92 Stat. 3206), 95th Cong. (1978).
[17] Energy Policy Act (EPACT) of 1992 (Pub.L. 102-486, 106 Stat. 2776), 102nd Cong. (1992). https://afdc.energy.gov/files/pdfs/2527.pdf.
[18] 42 U.S.C. § 6833(e). In addition, another section of the Energy Policy and Conservation Act recognizes that states incorporate the provisions of nongovernmental standard-setting organizations' model codes, as it calls for a process of coordination between the federal Energy Department and state building officials over residential energy standards contained in a model code issued by the Council of American Building Officials. 42 U.S.C. § 6833(a)(5).
[19] In addition to allowing for an exception when the criteria discussed in the text are met, Section 6297 also provides for a process by which states may petition for a waiver of preemption from the Energy Department. 42 U.S.C. § 6297(d). For a general discussion of the importance of both waivers and exceptions in regulatory law, see Cary Coglianese, Gabriel Scheffler, and Daniel E. Walters, *Unrules*, 73. STAN. L. REV. 885 (2021).

options for complying with the state code that do not necessarily demand using appliances or heating and air conditioning equipment that exceed federal efficiency standards. One criterion, for example, holds that if part of a state's code calls for products with energy efficiency in excess of federal standards, the code must contain at least an equal number of alternative options for compliance that can be satisfied by products that meet, but do not exceed, federal standards.[20]

When the Washington State Building Code Council worked on updating its state building code in 2009, it benefited from the opportunity to learn from the experience of another Western jurisdiction that saw its energy efficient building code wind up in court on preemption grounds. The city of Albuquerque, New Mexico, adopted a green building code in 2007 that landed the city in federal court facing industry charges that the new code effectively required heating and air conditioning equipment that was more energy efficient than federal standards. Although the city allowed for other ways to meet its new code provisions other installing equipment that exceeded federal standards, the district court judge viewed these alternatives as effectively a "penalty" imposed on builders "for selecting products that meet, but do not exceed, federal energy standards."[21] Agreeing with the industry challengers, she issued a preliminary injunction in 2008 that put a halt to the enforcement of the city's green building code.

Albuquerque city officials conceded that they had not given preemption concerns much consideration when they were developing their new building code. As a result, they learned the hard way about preemption when they saw their efforts halted in court. Officials in Washington state, on the other hand, had the opportunity to learn from Albuquerque and tried to take preemption more explicitly into account in developing the state code.

IV. The Washington Building Code on Trial

In defending the 2009 building code front of Judge Robert Bryan in the federal courthouse in Washington, Washington state officials argued that they had satisfied all seven criteria in Section 6297, qualifying for the exception from the general rule of preemption. The building industry plaintiffs conceded that the state's building code satisfied three of the seven criteria for an exception from federal preemption. But pointing to Chapter 9's list of additional measures to meet an 8 percent reduction, they challenged the state's claim to have met the other four criteria. As states only can qualify for the exception if they meet all seven criteria, the builders argued that the state code was preempted. They asked the court to enjoin the state from enforcing Chapter 9.

Among the four challenged criteria, the most stark was the one found in Section 6297(f)(3)(B), which holds that the state code must "not require that [an appliance or piece of equipment covered by a federal standard] have an energy efficiency exceeding the applicable [federal] energy conservation standard."[22] Some of the options for additional action listed in Chapter 9 definitely called for equipment that required greater energy efficiency than required under federal law, such as "high efficiency" heating and air conditioning systems and "high efficiency water heating." Other options, though, did not, such as controlling for air leakage or adding insulation. The industry groups argued that since some of these other alternatives on the

[20] 42 U.S.C. § 6297(f)(3)(E).
[21] Air Conditioning, Heating & Refrigeration Inst. v. City of Albuquerque, No. 08-633 MV/RLP, 2008 U.S. Dist. LEXIS 106706, at 30 (D.N.M. Oct. 3, 2008).
[22] 42 U.S.C. § 6297(f)(3)(B).

list were not always viable in some parts of the state, and were anywhere more expensive than the options that exceeded federal standards, Chapter 9 functionally required builders to use products which exceeded federal standards.[23]

Judge Bryan took notice that federal law not only contains a preemption rule but that it "also contains provisions which encourage states to adopt energy conservation codes."[24] He also reasoned that the proper test to apply could not be whether some of the options in Chapter 9 conflicted with federal standards. Rather, to prevail against industry's facial challenge to the Washington code, the state "need[ed] 'merely needed to identify a possible set' of conditions not in conflict with federal law."[25] He ruled that Chapter 9 not only never expressly required the use of equipment that exceeded federal standards, but it also did not functionally require this use either. Moreover, even if it did, he rejected the industry's argument because "[t]he text of the exemption provision [in Section 6297] does not include the terms 'functionally' or 'effectively' require."[26]

As the judge saw it, the state had satisfied the core criteria for an exception from preemption because it did "not require" the use of equipment that exceeded federal standards. All it did was provide options from which builders could choose. And when considering the other three other disputed criteria for the preemption exception, Judge Bryan also ruled for the defendants. At the end of the proceedings, Washington State met all the requirements to qualify for an exception and the judge dismissed the industry's legal challenge.

V. Industry Appeals

The building industry appealed. In the Ninth Circuit Court of Appeals, the industry challengers disputed the state's qualification for two of the seven criteria needed to receive an exception to federal preemption. One of these two was the criterion in Section 6297(f)(3)(B): the state could not require the use of an appliance or piece of equipment that exceeded federal energy efficiency standards. Yet again, the builders argued that because some of the options on Chapter 9's list conflicted with federal standards, and because the other options were more expensive, "they are therefore being 'required' to use products that exceed the federal standards."[27]

As with the trial court, the panel of judges on the appeals court started by recognizing that Congress both authorized uniform federal energy efficiency standards but also to continue to allow states to regulate building construction. As Judge Mary Schroeder noted in writing for the court, Congress recognized "that state and local building codes have a major impact on energy consumption."[28] Balancing this recognition with the economic reasons for uniform federal standards—and hence preemption of conflicting state standards—Congress had given states the opportunity to receive an exception from preemption under specified conditions.

One of these conditions was that the state could not require that builders use equipment that exceeded federal efficiency standards. The appellate court took "require" literally: "intended

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[23] As the district court opinion explained, the industry argued that Chapter 9 "'functionally' requires that they use products which exceed federal efficiency standards because the other options are often more expensive." Bldg. Indus. Ass'n of Wash. v. Wash. State Bldg. Code Council, 2011 U.S. Dist. LEXIS 12316, at *25 (W.D. Wash. 2011).
[24] *Id.* at *4.
[25] *Id.* at *18 (citing California Costal Comm'n v. Granite Rock Co., 480 U.S. 572, 593 (1987)).
[26] *Id.* at *38.
[27] Bldg. Indus. Ass'n of Wash. v. Wash. State Bldg. Code Council, 683 F.3d 1144, 1145 (9th Cir. 2012).
[28] *Id*. at 1148.

compulsion backed by force of law."[29] It pointed to the definition of "require" in Webster's Third New International Dictionary: "impose a compulsion or command," "demand," "enjoin, command, or authoritatively insist."[30]

And then the appeals court looked to the Washington building code. The code gave options: "Builders can choose. They do not have to use higher efficiency products."[31] To add emphasis, the appeals court observed: "The Washington Building Code itself does not command, demand, or insist that builders select higher efficiency options."

Beyond the text of the statute, the court addressed a legislative history argument that industry raised. The builders pointed to a sentence in a House committee report that said Section 6297(f)(3)(B) was meant to keep states from "expressly or effectively" requiring higher efficiency equipment.[32] The builders argued that "Congress wanted to bar states from adopting building codes that exert even indirect economic pressure to install higher efficiency options."[33]

Judge Schroeder's opinion replied to this argument by stating that economic costs in the private marketplace simply could not form the basis for determining what the state code "required":

> Congress was concerned…with the content of a regulation that was within state or local control. The market costs of products fluctuate outside the control of those who promulgate the codes. Congress cannot preempt market costs. The fact that certain options may end up being less costly to builders than others does not mean the state is, expressly or effectively, requiring those options.[34]

The only way a state could indirectly or effectively require use of a product that exceeded federal standards would be "if the code itself imposed a penalty for not using higher efficiency products."[35] But the court of appeals concluded that "the Washington Building Code itself imposes no additional costs on builders."[36]

Judge Schroeder's opinion also pointed to a U.S. Supreme Court decision from 2005 in the case of *Bates v. Dow Agrosciences*.[37] There, the Court confronted an argument that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempted state common law products liability claims. FIFRA had imposed specific labeling and packaging requirements for pesticides. It contained a preemption clause that disallowed any state law that would "impose or continue in effect any requirements for labeling or packaging in addition to or different from those [that FIFRA] required."[38] In that case, industry had convinced the Fifth Circuit Court of Appeals that FIFRA preempts state common law claims against pesticide manufacturers for inadequate labeling.[39] But the Supreme Court reversed, reasoning that just because an adverse jury verdict "might 'induce' a

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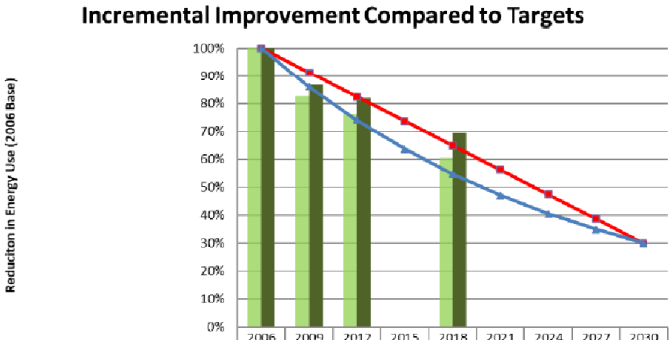
[29] *Id.* at 1151.
[30] *Id.*
[31] *Id.*
[32] *Id.* (citing H.R. Rep. 100-11 at 26 (1987)).
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.* at 1152.
[37] Bates v. Dow Agrosciences LLC, 544 U.S. 431, 125 S. Ct. 1788, 161 L. Ed. 2d 687 (2005).
[38] 7 U.S.C. § 136v(b).
[39] Dow Agrosciences LLC v. Bates, 332 F.3d 323 (5th Cir. 2003).

pesticide manufacturer to change its label," this did not mean that the common law "should be viewed as a requirement."[40]

Judge Schroeder's opinion analogized from the *Bates* decision: "Even though verdicts on state tort claims might create economic incentives to reach the outcome otherwise forbidden … those incentives do not 'require[]'" anything of manufacturers.[41] For this same reason, the Washington state building code satisfied the criterion for an exception "because it does not create any penalty or legal compulsion to use higher efficiency products."[42] The trial court, in other words, had not erred. The court of appeals also upheld the lower court against all the other challenges that industry raised on appeal.

In the end, the state's building code survived all the legal arguments thrown up against it in court. As the Figure 1 shows, it went on to move the state forward toward meeting the ambitious objectives spelled out by the state legislature when it originally accepted the Washington 2030 Challenge.

Figure 1: Relative Energy Efficiency of the Washington State Building Code, 2006-2018[43]



	2006	2009	2012	2015	2018	2021	2024	2027	2030
Residential	100%	82.7%	76.1%		60.5%				
Commercial	100%	86.8%	82.0%		69.6%				
Target: 8.75 % savings compared to the 2006 WSEC	100%	91%	83%	74%	65%	56%	48%	39%	30%
Target: 14% savings compared to each previous code	100%	86%	74%	64%	55%	47%	41%	35%	30%

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[40] Bates v. Dow Agrosciences, 544 U.S. at 443-44.
[41] Bldg. Indus. Ass'n of Wash. v. Wash. State Bldg. Code Council, 683 F.3d at 1152.
[42] *Id.*
[43] Washington State Building Code Council, *supra* note 1, at 2.