

## ENERGY, UTILITIES, OIL & GAS ALERT

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### Ohio Supreme Court Strikes Municipality's Ordinances that Conflict with State Laws on Oil and Gas Operations

By *Mike Traven*

In a split 4-3 decision, the Ohio Supreme Court issued today a much-anticipated decision in State ex rel. Morrison v. Beck Energy, Slip Op. 2015-Ohio-485, a case addressing whether state law preempts municipalities from adopting and enforcing certain local ordinances regulating oil and gas exploration and production. In a divided opinion, a majority of the Supreme Court determined that five different ordinances of the City of Munroe Falls were invalid and unenforceable because they “discriminate[d] against, unfairly impede[d], or obstruct[ed] oil and gas activities and production operations that the state has permitted under R.C. Chapter 1509.” Id. ¶ 34.

This is a significant ruling benefiting the oil and gas industry in the State of Ohio. Ohio Revised Code Chapter 1509 was adopted by the General Assembly in 2004 to provide “uniform statewide regulation” of oil and gas production within Ohio and to repeal “all provisions of law that granted or alluded to the authority of local government to adopt concurrent requirements with the state.” Id. ¶ 3 (citation omitted). In so doing, R.C. 1509.02 provides the Ohio Department of Natural Resources (“ODNR”) with “sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations” within Ohio. Id. ¶ 4 (quoting R.C. 1509.02). R.C. 1509.02 further prohibits local government from exercising powers “in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under” R.C. 1509.02. Id.

The Supreme Court’s lead opinion was written by Justice Judith French and was joined by Chief Justice Maureen O’Connor and Justice Sharon Kennedy, with Justice Terrence O’Donnell concurring in the judgment only. In her opinion, Justice French re-affirmed that ODNR has “sole and exclusive authority” under R.C. 1509.02 to regulate certain oil and gas operations, and that the five local ordinances at issue were invalid because they “prohibit what R.C. 1509.02 allows: state-licensed oil and gas production within Munroe Falls.” Id. ¶ 25. In so doing, the Supreme Court held that local governments lack the authority to issue their own local permits or licenses regulating oil and gas drilling and production, holding that R.C. 1509.02 grants ODNR with exclusive authority to regulate “‘all aspects’ of the location, drilling, and operation of oil and gas wells, including ‘permitting relating to those activities.’” Id. ¶ 30 (quoting R.C. 1509.02). Thus, the Court held that Ohio law does not “allow for the kind of double licensing” that would have existed if the local ordinances at issue were enforceable. Id. at ¶33.

Justice O’Donnell’s concurring opinion agreed that the five Munroe Falls ordinances conflicted with R.C. 1509.02, but he wrote separately “to emphasize the limited scope of [the Court’s] decision: our holding is limited to the five municipal ordinances at issue in this case.” Id. at ¶ 38. “This appeal does not present the question of whether R.C. 1509.02 conflicts with local land use ordinances that address only the traditional concerns of zoning laws, such as ensuring compatibility with local neighborhoods, preserving property values, or effectuating a municipality’s long-term plan for development, by limiting oil and gas wells to certain zoning districts without imposing a separate permitting regime applicable only to oil and gas drilling.” Id. According to Justice O’Donnell, “it remains to be decided whether the General Assembly intended to wholly supplant all local zoning ordinances limiting land uses to certain zoning districts without regulating the details of oil and gas drilling expressly addressed by R.C. Chapter 1509.” Id. at ¶ 39.

Justice Judith Ann Lanzinger authored a dissenting opinion, which was joined by Justices Paul Pfeifer and William O’Neill, who each authored their own separate dissenting opinions. Justice Lanzinger expressed her belief that the local ordinances at issue did not conflict with R.C. 1509.02 because they could have been interpreted as co-existing with R.C. 1509.02. Id. at ¶ 52. Justice Pfeifer wrote separately to express his belief that state law left “some space for local control,” id. ¶ 50, and Justice O’Neill wrote separately to express his view about the results of the majority’s decision: “What the drilling industry has bought and paid for in campaign contributions they shall receive. The oil and gas industry has gotten its way, and local control of drilling-location decisions has been unceremoniously taken away from the citizens of Ohio.” Id. ¶ 76.

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