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Colorado Supreme Court Issues Win for Oil and Gas Industry

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The Colorado Supreme Court on January 14 issued an opinion thought to be favorable to Colorado's oil and gas industry.

In [Colorado Oil and Gas v. Martinez](#), the court reversed a split decision of the Colorado Court of Appeals and determined that the Colorado Oil and Gas Conservation Commission properly rejected a rule-making proposal by a group of environmental advocates that would have precluded the Commission from issuing oil and gas well drilling permits "unless the best available science demonstrates, and an independent, third-party organization confirms, that drilling can occur in a manner that does not cumulatively, with other actions, impair Colorado's atmosphere, water, wildlife, and land resources, does not adversely impact human health, and does not contribute to climate change."

The Commission has no such express requirement, and the court found that the Commission had no implicit statutory or regulatory authority to condition permitting new oil and gas drilling on a finding of no cumulative adverse impacts to public health and the environment. The court further interpreted the Colorado Oil and Gas Conservation Act to require the Commission to focus instead on fostering the development of oil and gas resources within the state, and in doing so, prevent and mitigate significant adverse environmental impacts to the extent necessary to protect public health, safety, and welfare—but only after taking into consideration overall cost-effectiveness and technical feasibility, under its authority to regulate oil and gas operations.

The court's opinion is already being heralded by members of the oil and gas industry as a victory for Colorado and the promotion of new oil and gas development. The opinion likely also signals a "business as usual" approach to the issuance of permits by the Commission.

Environmental advocates are likely to take the battle to the Capitol, with a sitting Democratic governor and where Democrats now have control of both the State house and senate in the Colorado General Assembly.

While the court's decision focused on the Commission's authority, it remains to be seen whether the opinion will have any resonance outside of Colorado as to whether climate change might be considered a factor in granting individual oil and gas permits.

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Article By [Gary C. Davenport](#)
[Patrick G. Compton](#)[Harry Weiss](#)
[Ballard Spahr LLP](#) [Legal Alerts](#)

[Environmental, Energy & Resources](#)
[Colorado](#)