

Colorado Supreme Court Vindicates the Colorado Oil and Gas Commission: Recent Ruling In Favor of the Oil and Gas Industry

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In an important victory for Colorado's oil and gas industry, the Colorado Supreme Court unanimously supported the decision of the Colorado Oil and Gas Conservation Commission (the "Commission") to decline a rulemaking sought by environmental activists that could have eliminated new oil and gas drilling. The Commission, which has regulatory authority under the Colorado Oil and Gas Conservation Act, declined to act on a proposed rule that would have required oil and gas developers to prove that every future oil and gas development project, individually and cumulatively with other projects, had zero impact on the environment and public health, and would not contribute to climate change.

The Background

The *Colorado Oil and Gas Conservation Commission v. Martinez* case began in 2013 when environmental activists requested the Commission implement a rule that would have prohibited it from issuing any permits for the drilling of oil and gas wells "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."

After holding extensive hearings on the proposed rule, the Commission ultimately declined to consider it given that the state statutes under which the Commission regulates oil and gas development require it to balance certain considerations with other factors, including the responsible development of Colorado's oil and gas resources. The Commission was also addressing the activists' concerns in conjunction with the Colorado Department of Public Health and Environment.

While a Colorado district court affirmed the Commission's decision, a panel of the Colorado Court of Appeals reversed the district court's order in a split decision based on Commission's construction of the Colorado Oil and Gas Conservation Act.

The Decision

On January 14, 2019, the Colorado Supreme Court announced its decision in *Colorado Oil and Gas Conservation Commission v. Martinez*, 2019 CO 3, unanimously reversing the decision of the Court of Appeals, thereby affirming the Commission's rejection of the proposed rule. The Supreme Court relied primarily on the language of the Colorado Oil and Gas Conservation Act, C.R.S. §34-60-101 et seq., which directs the Commission to foster the development of oil and gas resources, protecting and enforcing the rights of owners and producers, and in doing so, to prevent and mitigate significant adverse environmental impacts to the extent necessary to protect public health, safety, and welfare - but only after taking into consideration cost-effectiveness and technical feasibility.

In addition, the Supreme Court found support in the Colorado Oil and Gas Conservation Act's statutory and



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legislative history. The Act's statutory history was initially entirely pro-development and later evolved to include environmental considerations. The Court also considered the Act's legislative history, particularly how sponsors of the latest amendments that added environmental factors to the Commission's balancing explained the amendments were not intended to halt all oil and gas production – which the proposed rule would have likely done.

What it means for your business

The proposed rule in *Martinez*, if adopted and implemented, might have caused a complete shut-down of Colorado's oil and gas industry. The Supreme Court's affirmance of the Commission's rejection of this proposed rulemaking establishes that Colorado's courts will not presume to direct agencies to implement such potentially significant regulatory proposals, but will defer to the political process to make any such changes to the state's regulatory landscape.

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