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Court Upholds Ohio's Power to Regulate Oil and Gas Drilling.

COLUMBUS, Ohio — Certain local zoning laws aimed at limiting fracking can't be used to circumvent the state's authority over oil and gas drilling, a fiercely divided Ohio Supreme Court ruled Tuesday.

In a 4-3 decision with three written dissents, the high court said that the home rule clause of Ohio's constitution doesn't allow a municipality to block drilling activities otherwise permitted by the state.

The decision came in a case brought by the Akron suburb of Munroe Falls against Beck Energy Corp. over a 2004 state law that gives Ohio "sole and exclusive authority" to regulate the location of wells.

Beck received a state-required permit from the Ohio Department of Natural Resources in 2011 to drill a traditional well on private property in Munroe Falls. The city sued, saying the company illegally sidestepped local ordinances.

The lawsuit has been closely watched nationally, raising a question in cities and towns where lucrative oil and gas is trapped in underground shale: Can regulations put in place by states eager for the jobs and tax revenues that come with drilling trump local restrictions on hydraulic fracturing, or fracking, that communities are enacting to protect against haphazard development.

Writing for the court's majority, Justice Judith French said, "The issue before us is not whether the law should generally allow municipalities to have concurrent regulatory authority, but whether (the law) and Home Rule Amendment do allow for the kind of double license at issue here. They do not."

Chief Justice Maureen O'Connor and Justice Sharon Kennedy joined her in determining that Munroe Falls' particular drilling restrictions constituted an exercise of police power — not the local self-government that's protected under home rule.

"Here, the city's ordinances do not regulate the form and structure of local government," French wrote. "Instead, they prohibit — even criminalize — the act of drilling for oil and gas without a municipal permit."

Beck Energy attorney John Keller said the company was pleased but not surprised with the decision.

"This is an area which is, and should be, highly regulated," he said. "The question is not should it be regulated, the question is should it be regulated by people that have the expertise to regulate it or by the local officials who just simply don't have that expertise."

Three justices — Paul Pfeifer, Judith Lanzinger and William O'Neill — dissented in the decision.

"Let's be clear here. The Ohio General Assembly has created a zookeeper to feed the elephant in the living room," wrote O'Neill. "What the drilling industry has bought and paid for in campaign

contributions they shall receive.”

In their dissents, both Lanzinger and Pfeifer said they saw room for the state and local laws to live side-by-side. Lanzinger noted that the high court has regularly ruled that state laws written to preempt local laws can’t divest a community of its constitutional home-rule protections.

Justice Terrence O’Donnell opted to concur on the opinion in judgment only. Munroe Falls attorney Tom Houlihan said that means that the court was divided 3-1-3 on the legal reasoning behind Tuesday’s decision.

“It’s obviously a very complicated and difficult case,” he said. “None of the reasons got a majority of votes, which could be carefully read by future courts that there’s still a role for local zoning in the oil and gas field. I’m hopeful that is the case.”

By THE ASSOCIATED PRESS

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