

Bond Case Briefs

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ENVIRONMENTAL - COLORADO

Weld County Colorado Board of County Commissioners v. Ryan

Supreme Court of Colorado - October 16, 2023 - P.3d - 2023 WL 6799975 - 2023 CO 54

County brought action challenging rules adopted by Air Quality Control Commission to minimize emissions of certain pollutants from oil and gas wells.

The District Court dismissed action for lack of standing. County appealed. The Court of Appeals affirmed. County filed petition for certiorari.

The Supreme Court held that:

- County's claims were "legally protected," but
- County did not establish injury in fact.

County's claims were "legally protected," as required for standing, in county's action challenging rules adopted by Air Quality Control Commission to minimize emissions of certain pollutants from oil and gas wells; Air Pollution Prevention and Control Act contained provision permitting judicial review, which was intended for parties, including counties, to be able to bring Administrative Procedure Act (APA) challenge to any final order or determination by Commission.

Supreme Court, on review of Court of Appeals' affirmation of trial court's dismissal for lack of standing of county's action challenging rules adopted by Air Quality Control Commission to minimize emissions of certain pollutants from oil and gas wells, would decline to consider county's theory that it suffered injury in fact because it was landowner with rights impacted by revisions at issue, where county did not plead such theory in its complaint or otherwise raise such theory in trial court.

Supreme Court, on review of Court of Appeals' affirmation of trial court's dismissal for lack of standing of county's action challenging rules adopted by Air Quality Control Commission to minimize emissions of certain pollutants from oil and gas wells, would decline to consider county's theory that it suffered injury in fact because it had associational standing on behalf of small well operators within county, although county's complaint contained allegation that Air Pollution Prevention and Control Act generally granted counties unique standing to represent interests of their constituents, where complaint contained no other factual allegations that supported associational standing, and county did not raise associational-standing theory before trial court.

County's allegation that rules would significantly increase costs of regulatory compliance for oil and gas operators within county, resulting in large percentage of county's wells being shut-in and thereby reducing county's tax revenue streams did not establish injury in fact required for standing, in county's action challenging rules adopted by Air Quality Control Commission to minimize emissions of certain pollutants from oil and gas wells; supposed harm to county's tax base flowed from speculation about future business decisions that third-party oil and gas operators might make in response to increased regulatory burden.

County's allegation that Air Quality Control Commission failed to give adequate priority to county's concerns as local government raising questions about economic impact of proposed rules as required by statute did not establish injury in fact required for standing, in county's action challenging rules adopted by Commission to minimize emissions of certain pollutants from oil and gas wells, although county alleged that it was given only ten minutes to testify during rulemaking hearing and that Commission ultimately adopted rules which were contrary to county's arguments; county's complaint lacked any factual allegation that its evidence was excluded from rulemaking hearing or that its arguments were otherwise ignored.

County's allegation that Air Quality Control Commission's methodology was flawed and that it permitted one party to file proposal after deadline for submitting proposals had passed and without sufficient time for other parties to react, in violation of Commission's procedural rules and therefore of Administrative Procedure Act (APA), did not establish injury in fact required for standing, in county's action challenging rules adopted by Commission to minimize emissions of certain pollutants from oil and gas wells; county's complaint contained little more than contention that Commission acted improperly, and did not state how Commission's allegedly unlawful action injured county beyond reducing time it had to respond to proposal.

County's allegation that rules infringed on its land use authority did not establish injury in fact required for standing, in county's action challenging rules adopted by Air Quality Control Commission to minimize emissions of certain pollutants from oil and gas wells; rules at issue had no bearing on use of land, as oil and gas producers could still operate anywhere under rules, but those operations were merely subject to increased inspections and emissions requirements.