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PREEMPTION - WEST VIRGINIA

City of Weirton v. SWN Production Company, LLC

Supreme Court of Appeals of West Virginia - June 3, 2026 - S.E.2d - 2026 WL 1584498

Natural gas production company filed petition for writ of certiorari challenging city board of zoning appeals' (BZA) denial of conditional use permit for oil and gas extraction activities and filed separate declaratory judgment action against city asserting that city's zoning ordinance was preempted by state environmental statutes.

The Circuit Court consolidated the actions, dismissed the declaratory judgment complaint finding no conflict between city's zoning ordinance and state law, and affirmed the board's denial of the conditional use permit. Company appealed.

The Intermediate Court of Appeals reversed dismissal of the declaratory judgment complaint, and subsequently dismissed the certiorari appeal. Company and city both appealed.

The Supreme Court of Appeals held that:

- City zoning ordinances were not preempted by state statutes regulating production of oil and natural gas, and
- Intermediate Court of Appeals lacked jurisdiction to hear appeal of decision on company's petition for writ of certiorari.

Statutes regulating production of oil and natural gas did not preempt city's zoning ordinance regulating oil and gas drilling in its entirety; there was no repugnancy in ordinance creating an irreconcilable conflict, but rather, the overlap in regulation of same activity created false conflict resulting from city, its zoning board, and Department of Environmental Protection's (DEP) legitimate pursuit of their delegated goals.