

In “Tragic” Decision, Top Ohio Court Takes Away Local Power to Ban Fracking

'The fact that communities cannot stop harmful industrial activities is tragic,' says environmentalist

By [Deirdre Fulton](#)

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Ohio anti-fracking activists. (Photo: Frack Free Ohio/Facebook)

In a blow to anti-fracking campaigners across the state, the Ohio Supreme Court said this week that the authority to regulate oil and gas drilling activities—and therefore, to ban fracking within municipal borders—lies with the state as opposed to cities, towns, or counties.

As the *Akron Beacon Journal* [put it](#): “The decision takes local control of drilling away from communities and supports the state as the continued main overseer of drilling.”

Several Ohio cities, including Athens, Oberlin, and Mansfield, have passed similar ordinances to ban fracking—some as [recently as November 2014](#)—that may now be rendered moot by the court’s decision.

By a 4-3 vote, the justices [ruled](#) (pdf) that the state has “exclusive authority” over shale-extraction activities and that cities and counties can neither ban nor regulate fracking through zoning laws or other restrictions.

The decision came in a case brought by an Akron suburb against Beck Energy Corp., which received a state-required permit from the Ohio Department of Natural Resources in 2011 to drill a traditional well on private property in the northeast city of Munroe Falls. The city sued, saying the company illegally evaded local ordinances.

The state’s top court [rejected](#) Munroe Falls’ assertion that it was validly exercising ‘home rule,’ which lets communities enact local rules and regulations as long as they don’t conflict with general state law. The court found Munroe Falls’ ordinances amounted to an exercise of ‘police power,’ not self-government, and conflicted with state regulations first enacted in 2004.

[According to](#) the *Columbus Dispatch*:

Local governments’ home-rule powers stop short of the wellhead—overridden by the authority that lawmakers gave to the Ohio Department of Natural Resources to license and regulate the location of wells, the court’s majority ruled.

The ruling was a victory for oil and gas producers, who no longer face local

regulations, and a defeat for local governments that sought to protect residents from what they see as potential dangers from fracking.

At least one of the dissenting judges agreed that the victor in the court's decision was the fossil fuels industry.

"Let's be clear here," Justice William O'Neill [wrote](#) in his dissenting opinion. "The Ohio General Assembly has created a zookeeper to feed the elephant in the living room. What the drilling industry has bought and paid for in campaign contributions they shall receive. The oil and gas industry has gotten its way, and local control of drilling-location decisions has been unceremoniously taken away from the citizens of Ohio."

Environmentalists and local government officials both expressed dismay at the decision.

"It's really sad and tragic for the citizens of Ohio," Vanessa Presak, president of the Network for Oil and Gas Accountability and Protection, told the *Beacon Journal*. "The fact that communities cannot stop harmful industrial activities is tragic."

Athens mayor Paul Wiehl echoed those concerns, [telling](#) *The Post* that it was unfair for the state to void Athens' ban. "I guess that means the voice of the people doesn't matter," Wiehl told the independent, student-run newspaper. "We said 'We want local control,' and then they take it away."

However, the court's decision "was very close," notes local activist Roxanne Groff, a member of the Athens County Fracking Action Network, in an email to *Common Dreams*.

"Justice [Terrence] O'Donnell in his decision does give thought to the constitutional rights of local governance," she added. "Hopefully this decision will ignite local governments to fight back by demanding that our lawmakers restore those rights."

In Ohio, fracking has been directly [linked](#) to an uptick in earthquakes. A spill and fire at a fracking well in mid-2014 forced evacuations and [befouled](#) a creek, resulting in dead crayfish, minnows, and smallmouth bass. And at the end of 2014, about 25 families in the eastern part of the state were [unable to live](#) in their homes for three days because of an out-of-control natural-gas leak at a nearby fracking well.

Associated Press [reports](#) that the Ohio case "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."

Across the United States, [attempts](#) to [stymie the fracking boom](#) on the local level have met with [mixed results](#).

In July, New York's highest court ruled that local governments can outlaw fracking, but in 2013, a Pennsylvania court said towns can regulate it but not outright ban it. Towns in Texas and California also [banned fracking](#) in last year's election, but Texas officials have [refused](#) to allow it to be enforced.

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