

# Clean Water for NC Re-files Suit Challenging NC Oil and Gas Commission's Authority to Block Local Ordinances

For release: December 15, 2015

As local governments across North Carolina continue to take action to protect their residents and resources from potential hydraulic fracturing ("fracking"), the right to enact local ordinances has become a focal point in the ongoing debate about future natural gas extraction in the state. In recent weeks, the Counties of Stokes, Rockingham and Lee, as well as the towns of Stoneville and Walnut Cove, have joined Anson and Chatham Counties and the cities of Creedmoor and Bakersville in passing local ordinances that temporarily prevent fracking activities from occurring in their jurisdictions.

In November, Clean Water for North Carolina and some of its members, including two local elected officials, sued the State of North Carolina, the NC Department of Environmental Quality and the NC Oil and Gas Commission. This lawsuit, an update of one filed in May against North Carolina, the then NC Mining and Energy Commission and the Department of Environment and Natural Resources, asks the North Carolina Superior Court to hold as unconstitutional the statute granting the Oil and Gas Commission the power to preempt local ordinances, as well as the way in which the General Assembly adopted changes to local governments' authority to enact oil and gas-related ordinances.

First, the plaintiffs challenge the General Assembly's granting of power to politically-appointed, regulatory Commissioners to block--or preempt--local government ordinances regulating oil and gas-related development. "Deciding whether a local government's ordinance has been pre-empted is a job for the North Carolina Courts, with all of the public and judicial accountability which the law places on judges," says Ryke Longest, Director of the Duke Environmental Law and Policy Clinic, and attorney for Clean Water for NC.

Second, the plaintiffs challenge the way in which the General Assembly stripped local governments of their right to regulate oil and gas development. During the final hours of the 2015 legislative session, new language was introduced into Senate Bill 119, the so-called "Technical Corrections" bill, and then approved just minutes before the session ended, with little or no notice to voting legislators and the public about the contents or impacts of the amended bill's provision. The plaintiffs allege that this tactic of "legislation by ambush" completely deprives North Carolinians of their right to instruct their legislators on how to vote on critical legislation.

Mayor Darryl Moss of Creedmoor, whose City Commission passed the state's first fracking ordinance, is particularly disturbed that the legislative proponents of fracking resorted to such tactics. "It simply reflects the complete lack of public interest in their actions that they didn't want the public, or even most legislators, to be able to see what they were doing. When we passed our ordinance in Creedmoor to protect ourselves from fracking, it was the result of

months of research and debate, always at public meetings, and that's how it's happening in towns and counties across the state.”

”People need to know they have a right to work with their local governments to enact reasonable protections from industries and practices with the potential to harm their health and safety, and local environment,” says Hope Taylor, Executive Director of Clean Water for North Carolina, based in Durham and Asheville. For over three years, based on the group’s extensive research on the harms that fracking could cause, Clean Water for NC has been working with the Duke Environmental Law & Policy Clinic to help local advocates promote the adoption of local protective ordinances. “The approaches have changed as state policies grew more aggressive, but we continue to operate in the belief that most people in North Carolina want to have the right to protect themselves through action taken by well-informed local officials. Those who call it fear-mongering are closing their eyes to the evidence that’s already accumulated.”

After years of working closely with other Chatham County citizens to implement protections for her county, Martha Girolami says, “There are good reasons for effective statewide regulations, but when that regulatory process becomes a tool to protect industry, instead of people and the environment, people will turn to the officials they connect with most directly and hold directly accountable—their local governments. I can’t allow my taxes to be used against me and my neighbors, to support a Commission that creates a weak statewide system of regulations and then allows that same pseudo-regulatory body to decide whether our local regulations will be allowed to stand.”

The plaintiffs state that they have been “irreparably harmed” by the General Assembly’s grant of judicial authority to the Oil and Gas Commission to preempt local ordinances, and they ask for the Court to declare the Commission’s authority unconstitutional under the “separation of powers” principle.

As a result of other suits filed challenging legislative appointments to various state commissions, the Superior Court has placed an injunction on the Department of Environmental Quality, thereby preventing it from issuing fracking permits. Pending the North Carolina Supreme Court’s decision on one of those cases, *McCrary v. Berger*, the Clean Water for NC case could be heard within the next few months and the permitting injunction could be made permanent or lifted.

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Full text of CWFNC filing and supporting documents are at this link:

[www.cwfnc.org/documents/CWFNC-Filing-Against-NC-NC-DEQ-and-NC-Oil-and-Gas-Commission.pdf](http://www.cwfnc.org/documents/CWFNC-Filing-Against-NC-NC-DEQ-and-NC-Oil-and-Gas-Commission.pdf)