

John Fognani and Jamie Jackson for Law360: High Court Ban On Fracking Bans Could Set Precedent

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On May 2, 2016, the Colorado Supreme Court issued two anticipated opinions that are important to the oil and gas industry in Colorado. These same opinions could well be precedent for similar efforts pending in a number of states where local governmental entities are trying to rein in fracking on a variety of bases, ranging from alleged health issues and traffic and noise control all the way to earthquakes believed to be caused by fracking.

Specifically, the court affirmed district court decisions that held fracking bans implemented by two Colorado cities, Longmont and Fort Collins, were preempted by state law and therefore invalid and unenforceable. The court's preemption analysis centered on the protection of correlative rights of oil and gas mineral estate owners from the slippery slope of widespread fracking bans, and the near universal use of fracking in oil and gas development in Colorado — a practice which is heavily regulated by the Colorado Oil and Gas Conservation Commission (COGCC). While preemption doctrine varies from state to state, the Colorado court's recognition of these issues might well prove persuasive to other courts confronting the same or similar issues.

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