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Preserving Local and Municipal Autonomy — While Expanding Opportunities for Natural Gas in the Commonwealth

Pennsylvania (population 12.4 million) is home to 2,562 separate township and municipal governments today, more than the states of California (pop. 36.9 million), Texas (24.7 million), New York (19.5 million), and Florida (18.5 million). And that’s not necessarily a bad thing. Strong local governments are a critical component in delivering basic services for residents of the Commonwealth. After all, the closer the government is to the people, the more responsive and accountable it will be.

But if local government is where everything begins in our state, sometimes it’s where it all comes to an end as well. Unfortunately, vague statute and conflicting court rulings have created a scenario in which two or three officials from a single township or municipality in the Commonwealth can effectively deny responsible energy exploration from taking place in the area — even if that decision stands in direct contravention of existing state law.

“No ordinances or enactments adopted...[shall] impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act...The Commonwealth, by this enactment, hereby preempts and supersedes the regulation of oil and gas wells as herein defined.”

— Pennsylvania Oil and Gas Act of 1984
(amended in 1992)

All Politics is Local?

Among shale states, PA sets the pace for volume of local governments.

	Number of Township, Municipal Governments	Governments, Per County (or Parish)
Pennsylvania	2,562	38.2
Ohio	2,246	25.5
Michigan	1,775	21.4
New York	1,547	24.9
Texas	1,209	4.8
Oklahoma	594	7.7
Arkansas	502	6.7
Louisiana	303	4.7

Source: U.S. Census, 2007 (latest data available)

The Problem

It can take months — and even years — to pass important legislation in Pennsylvania, and equally as long to approve and implement state regulations that cover a range of critical activities. Frankly, that’s the way the system was set up to work.

But consider this: Tonight, a local government body in Pennsylvania can pass an ordinance that effectively eliminates the ability of landowners and businesses to develop clean-burning natural gas resources on their property. Even though the process for passing a new ordinance requires a brief notice and public hearing, the decision is generally made by a majority vote of a board of supervisors — or two people in many municipalities.

The Solution

The General Assembly should amend the Oil and Gas Act and the Municipalities Planning Code to clarify the role of local zoning ordinances in the management of land uses associated with oil and gas exploration, production and gathering. The amendments should make clear that any use of land associated with these activities is a permitted use in all zoning districts and in every municipality.

Such an amendment would go a long way toward ensuring the Commonwealth’s natural gas reserves can be developed in a safe, orderly and efficient way — all while preserving the right of municipalities to impose a variety of reasonable conditions on land use permitted within their jurisdictions, including lot size, coverage, access, and landscaping and safety features, just to name a few.

In the Zoning: One Day, Two Different Decisions from PA Supreme Court

Independent Oil and Gas Association of Pennsylvania vs. Salem Township

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Ruling: “In view of the Ordinance’s focus solely on regulating oil and gas drilling operations...we agree with the common pleas court’s conclusion that each of the oil and gas regulations challenged in Appellees’ complaint is preempted by the Oil and Gas Act and its associated administrative regulations.”

Translation: State law — specifically, the Municipal Planning Code, and the Oil and Gas Act — is best-equipped and the most appropriate tool to regulate the conditions and limitations of energy exploration in the Commonwealth.

Huntley & Huntley, Inc. vs. Borough Council of the Borough of Oakmont

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Ruling: “Therefore, we... conclude that... Section 602’s reference to ‘features of oil and gas well operations regulated by this act’ pertains to technical aspects of well functioning and matters ancillary thereto (such as registration, bonding, and well site restoration) rather than the well’s location”.

Translation: Plainly put, townships may prohibit energy exploration. Unfortunately, this abusive use of zoning authority could deny landowners the economic benefit of developing their natural gas, while also denying the public the benefits of producing this clean, American resource.