

## **Crownover's vote betrays community - Denton Record-Chronicle (TX) - May 19, 2015 - page EDIT01**

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Denton's state Rep. Myra Crownover voted recently for House Bill 40, a piece of legislation that will kill Denton's fracking ban. Yes, the same ban her constituents overwhelmingly approved in the November election. Then she had the nerve to turn around and tell us HB 40 is actually in our best interests.

She's trying to pull the wool over our eyes. Once the voters of Denton understand what HB 40 really means, they might think twice next time they see her name on a ballot.

HB 40 doesn't just ban fracking bans. It threatens hundreds of local ordinances that protect health and safety, and it marks a sweeping and ominous shift in Texas law.

Rep. Crownover knows all this. She was hoping you wouldn't find out.

She wrote that HB 40 actually "strengthens the ability of cities to enact common sense regulation of oil and gas activities." For the first time, she continued, cities will have "specific authorization in state law to enact local ordinances."

She's hoping we won't know about the decades of common-law court rulings that have routinely upheld the constitutionality of municipal ordinances. There is no need for statutory recognition when the courts have provided ample grounds already for city authority.

The real import of HB 40 is that it puts the industry in charge of determining whether a local law is valid. HB 40 "expressly pre-empts" municipal ordinances unless they can pass a new test: They must be "commercially reasonable."

So it's not just that HB 40 prevents cities from regulating things they formerly could, like earthquake-inducing injection wells.

More than that: For the first time, local ordinances will be judged solely by the extent to which they might interfere with the oil and gas industry and its bottom line.

HB 40 will erase a tradition of 80 years. Since 1935, Texas courts have applied a different kind of reasonableness standard to local ordinances: not "commercially reasonable," but what we might call "community reasonable."

In case after case, the courts have ruled that local governments first and foremost are obligated to protect the health, safety, and welfare of their citizens. As a result, they have used a standard that defers to the judgment of the local community, not the dictates of a particular industry.

This is why cities have beaten the industry almost every time in the courts. The industry worked so hard on a legislative end-run precisely because they feared their political loss in November with the passage of **Denton's** ban would be compounded with another loss in the courts.

Rep. Crownover said that defending **Denton's** fracking ban "would almost certainly have been a losing battle." No one familiar with case law history of municipal oil and gas regulations in Texas could honestly say that.

Yes, HB 40 has been called "the **Denton** fracking bill," but this isn't about **Denton**. This is the culmination of years of frustration by an industry thwarted by a legal tradition that prioritizes community health over profit maximization. The industry only used the shock of the **Denton** ban as a lever to align the law with their interests. And Rep. Crownover was all too willing to help.

The community reasonable test begins with the presumption that a local ordinance provides prudent protections for citizens and sets a high bar for the industry to make a case that it goes too far.

The commercially reasonable test flips the script. It begins, not with health and safety, but with the bottom line. The test is simply: Can the industry make the profits it desires? This is the statutory rule that Rep. Crownover wants to pass off as good for communities.

Rep. Crownover has prioritized industry interests over community well-being. When HB 40 was up for a vote, she rejected every amendment that would have bolstered local control and public health. Let's not pretend this is somehow good for **Denton** or any other Texas town. Our representatives should vote their conscience, but they shouldn't deceive us as to where their true allegiance resides.

It's a sad irony that the recent gas well fire in **Denton** happened just days after HB 40 was approved. Having learned about such risks over the years, the city was finalizing a new ordinance that would have reduced the chances of this happening again. Now, like the ban, that ordinance is dead.

We need to bear witness to the fact a grass-roots democratic decision has been gutted solely on the basis of money and power. Together, we must also join in solidarity with the hundreds of communities across Texas that have been stripped of their local control.

It is time to elect legislators who believe in the reasonableness of the communities that they serve and not the rapaciousness of the industry that buys their votes.

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GUEST COLUMN

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