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Following Denton Fracking Ban, Texas Oil And Gas Association Requests Injunction

By [ERIC AASEN \(/PEOPLE/ERIC-AASEN\)](#) • NOV 5, 2014

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Denton voters passed a fracking ban Tuesday night.

DOUALY XAYKAOTHAO / KERA NEWS

The Texas Oil and Gas Association filed a request for injunctive relief in Denton County District Court Wednesday following the passage of the Denton fracking ban.

The association says a fracking ban (<http://keranews.org/post/denton-voters-approve-fracking-ban-wide-margin>) is inconsistent with state law and violates the Texas Constitution.

The association says the courts should decide whether Denton voters had authority under state law to enact a ban on hydraulic fracturing.

Denton made history Tuesday night, becoming the first city in Texas to ban fracking within city limits. The vote passed 59 percent to 41 percent, to the surprise of even the supporters of the ban.

The Texas Oil and Gas Association says in a statement:

“The Texas Oil & Gas Association (TXOGA) is disappointed to see voters in Denton pass a ban on hydraulic fracturing. Many of the wells in Denton cannot be produced without hydraulic fracturing, so a ban denies many mineral interest owners the right to gain value from their property, despite the state’s public policy in favor of developing natural resources.”

The statement continues: “The Texas Legislature has vested extensive regulatory power over oil and natural gas development in the Railroad Commission of Texas and the Texas Commission on Environmental Quality (TCEQ). While home-rule cities like Denton may certainly regulate some aspects of exploration and drilling, TXOGA does not believe that they may enact ordinances that outlaw conduct, like hydraulic fracturing, that has been approved and regulated by state agencies such as the Railroad Commission or TCEQ.”

Read more about the fracking ban here. (<http://keranews.org/post/denton-voters-approve-fracking-ban-wide-margin>)

The Texas Tribune reports: (<http://www.texastribune.org/2014/11/05/denton-fracking-ban-sees-first-lawsuit/>)

The litigation was expected, and several state lawmakers have also promised to fight the ban in the statehouse.

Texas law says the state intends its mineral resources to be “fully and effectively exploited,” but courts have said the power is not absolute. The Railroad Commission has jurisdiction over all oil and gas wells in the state, with authority to adopt “all necessary rules for governing and regulating persons and their operations.” Local governments have the right to impose reasonable health and safety restrictions, and the Legislature has granted most Texas cities, including Denton, the power to “regulate exploration and development of mineral interests.”

A key question is where fracking falls on that spectrum.

Legal experts say Texas courts tend to favor oil and gas interests. But they suggest Denton could make a compelling argument that a fracking ban would not wipe out all options to drill.

Read the filing

Texas Oil & Gas Association Petition Against the City of Denton Regarding Fracking Ban (<https://www.scribd.com/doc/245633353/Texas-Oil-Gas-Association-Petition-Against-the-City-of-Denton-Regarding-Fracking-Ban>)

CAUSE NO. 14-08933-431

TEXAS OIL AND GAS ASSOCIATION, § IN THE DISTRICT COURT OF
Plaintiff, §
vs. §
CITY OF DENTON, § DENTON COUNTY, TEXAS
Defendant. §
§
§
§
§
§
§
§

ORIGINAL PETITION

The Texas Oil and Gas Association (“TXOGA”) files this declaratory action and request for injunctive relief against the City of Denton, on the ground that a recently-passed City of Denton ordinance, which bans hydraulic fracturing and is soon to take effect, is preempted by Texas state law and is therefore unconstitutional.

I. INTRODUCTION

This case concerns a significant question of Texas law: whether a City of Denton ordinance that bans hydraulic fracturing is preempted by the Constitution and laws of the State of Texas. The ordinance, approved by voters at the general election of November 4, 2014, exceeds the limited authority of home-rule cities and represents an impermissible intrusion on the

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