

<p>SUPREME COURT, STATE OF COLORADO</p> <p>Colorado State Judicial Building 2 East 14th Avenue, Suite 300 Denver, Colorado 80203</p>	
<p>Colorado Court of Appeals Case Number 16CA0564 Opinion by Judge Fox; Judge Voght concurring; Judge Booras dissenting</p> <p>City and County of Denver District Court No. 14CV32637 Judgment by Judge J. Eric Elliff</p> <p>Petitioner/Appellee/Defendant: Colorado Oil and Gas Conservation Commission</p> <p>and</p> <p>Intervenors/Petitioners/Appellees American Petroleum Institute and Colorado Petroleum Association</p> <p>v.</p> <p>Respondents/Appellants: Xiuhtezcatl Martinez, Itzcuahtli Roske-Martinez, Sonora Brinkley, Aerielle Deering, Trinity Carter, and Emma Bray, minors appearing by and through their legal guardians Tamara Roske, Bindi Brinkley, Eleni Deering, Jasmine Jones, Robin Ruston, and Diana Bray.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorney for <i>Amicus Curiae</i> the Board of County Commissioners of Adams County, Colorado</p> <p>Heidi Miller, #33923 Adams County Attorney</p> <p>Jeffery P. Robbins, #26649 Goldman, Robbins, Nicholson & Mack, P.C. 679 E. 2d Avenue, Suite C P. O. Box 2270 Durango, CO 81302 Phone No.: (970) 259-8747 Fax No.: (970) 259-8790</p>	<p>Case Number: 2017SC297</p>
<p style="text-align: center;"><i>AMICUS CURIAE</i> BRIEF OF THE BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY, COLORADO, IN SUPPORT OF THE RESPONDENTS/APPELLANTS</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The amicus brief complies with the applicable word limit set forth in C.A.R. 29(d).

It contains 2,504 words.

The amicus brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

/s/ Jeffery P. Robbins

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The Board of County Commissioners of Adams County, State of Colorado respectfully submits its Amicus Curiae Brief under C.A.R. 29.

INTEREST OF THE AMICUS CURIAE

The Board of County Commissioners of Adams County, Colorado is the governing body of a Colorado county, which is a political subdivision of the state of Colorado. The County, as a local government entity, is charged with protecting the public health, safety, and welfare of its residents. *See* § 30-11-101(2), C.R.S.; *see also* § 29-20-104(1)(d) and (h) C.R.S. The Colorado Oil and Gas Conservation Commission (“COGCC” or “Commission”) is the state administrative entity charged with regulating oil and gas development. The County has land use regulatory authority over oil and gas development. *See* § 30-28-101 *et. seq.*, C.R.S.; § 29-20-101 *et. seq.*, C.R.S.; *Board of County Commissioners of La Plata County v. Bowen/Edwards*, 830 P.2d 1045, 1056 (Colo. 1992). Oil and gas development is a mixed issue of state and local concern. *See Fort Collins v. Colo. Oil and Gas Ass’n.*, 369 P.3d 586, 591 (Colo. 2016). As a result, the County’s land use authority over oil and gas development is affected by the manner in which the COGCC carries out its statutory rule-making and permitting duties concerning oil and gas development.

The County’s interest in this matter is current as it recently renewed and updated its land use regulations over oil and gas development. Also, the County

and the COGCC have uniquely entered into a Intergovernmental Agreement allowing the County to hire an employee who is trained by the COGCC and undertakes oil and gas well inspections to ensure compliance with COGCC and County regulations. Based upon the foregoing, the County has a significant interest in this litigation.

STATEMENT OF THE CASE

Based on clear and unambiguous language in the Colorado Oil and Gas Conservation Act, Sections 34-60-101 to -130, C.R.S. (2016) (the “Act”), the court of appeals held that the COGCC has the authority to consider a proposed rule promoting public health and protecting the environment. This holding is properly premised upon the current dual mandates of the COGCC to protect public health and safety as it also fosters and gas development. This Court should affirm the appellate ruling because it is well-reasoned and neither changes existing law nor conflicts with prior decisions of other appellate divisions or this Court.

ARGUMENT

The Court of Appeals properly interpreted the express language of the Oil and Gas Conservation Act and properly understood that the Commission has authority to enact a rule promoting public health and protecting the environment.

This case allows this Court to properly interpret the legislative direction the General Assembly has provided the COGCC with regard to its regulation of the oil and gas industry through the initial enactment of and later amendments to the Oil

and Gas Conservation Act. Originally, the Act directed the COGCC to foster and promote oil and gas development. However, through recent amendments to the Act, the General Assembly has shifted the original emphasis from the singular policy goal of promoting oil and gas development to regulating that development in a manner that preserves the goals of public health, safety, welfare and the environment. Laws 1994, S.B.94-177, § 2, eff. June 2, 1994; Laws 2007, Ch. 312, § 1, eff. July 1, 2007; Laws 2007, Ch. 320, § 2, eff. May 29, 2007.

Because of this recent legislative direction, the Respondents requested the COGCC to promulgate rules to “protect the health and safety of Colorado’s residents and the integrity of Colorado’s atmospheric resource and climate system, water, soil, wildlife, other biological resources, upon which all Colorado citizens rely for their health, safety, sustenance, and security.” *See* R. Administrative Record (“AR”), p. 00852. The Respondents argued that, pursuant to the Act, the Commission had a statutory duty to protect the public’s health, safety, and welfare, as well as protect the environment and wildlife resources, when regulating oil and gas development. R. AR, p. 00894, 00898–900.

The Commission denied the Respondent’s request to amend its rules in a manner to protect the public health while regulating the development of oil and gas resources. As noted by the Court of Appeals:

The Commission interpreted section 34-60-102(1)(a)(I) as requiring a balance between oil and gas production and public health, safety, and welfare. The Commission concluded that Petitioners' suggested interpretation would have required the Commission to readjust the balance crafted by the General Assembly under the Act, and is therefore beyond the Commission's limited grant of statutory authority.

Martinez v. Colo. Oil and Gas Conservation Comm'n, 2017 WL 1089556 (Colo. App. 2017), ¶ 17 ("COA Opinion").

The Court of Appeals determined that the Commission's interpretation of its statutory mandate was incorrect. Rather than requiring a balance between public health and oil and gas development, the Court determined that fostering balanced development is in the public interest when that balanced development is completed subject to the protection of public health, safety, and environmental and wildlife impacts. COA Opinion, ¶ 20; *see also Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913, 925 (Colo. 1997) (recognizing that the Act's purposes are "to encourage the production of oil and gas in a manner that protects public health and safety and prevents waste").

The Court of Appeals decision is consistent with the statutory mandate of Oil and Gas Conservation Act and should not be overturned. First, the Act states that the COGCC is to "foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including

protection of the environment and wildlife resources.” C.R.S. § 34-60-102(1)(a)(I). The Commission based its denial of Respondent’s requests upon an interpretation that this language required there to be a “balance” between oil and gas resource development, on the one hand, and protection of public health and safety, on the other hand. COA Opinion, ¶ 17. But this interpretation avoids the plain meaning of the legislative mandate handed to the COGCC by the General Assembly.

The Appellate Court’s decision was correctly premised on two points. First, the term “balanced” modifies the nouns that follow it: “development, production and utilization.” *Id.*; see also *Double D Manor, Inc. v. Evergreen Meadows Homeowners’ Ass’n*, 773 P.2d 1046, 1048 (Colo. 1989) (an adjective modifies a noun that follows it). Not only is that the proper method for construction of the sentence, as the Appellate Court noted in a footnote, “balanced” “development, production and utilization” was always a predominant focus of the Legislature as it sought to protect against unnecessary waste, on the one hand, against preservation of correlative rights, on the other hand. COA Opinion, ¶ 20.

As was noted earlier, the Act initially focused the Commission on fostering and promoting oil and gas development, with no mention of public health or environmental policy goals. It was only in the 1994 amendments to the Act that the General Assembly brought public health and safety as being within the

COGCC mission. At that time, the Act was amended to require that oil and gas development be done “in a manner consistent with protection of public health, safety, and welfare.” C.R.S. Section 34-60-102(1)(a)(I); *Chase v. Colo. Oil & Gas Conservation Comm’n*, 284 P.3d 161, 166 (Colo. App. 2012). Thirteen years later, in 2007, the General Assembly again amended the COGCC mandate into its current version, by removing the terms “encourage and promote” oil and gas development and instead establishing that the Commission must “foster the responsible, balanced [resource] development.” Ch. 320, sec. 1, Section 34-60-102 2007 Colo. Sess. Laws 1357. Thus, the historic development of the current COGCC mandate establishes that when public health and safety were added to the COGCC’s mission, they were independent policy goals from development of the state’s natural resources. The Appellate Court understood this important historic point concerning the evolution of the COGCC’s mission.

The second point that the Appellate Court correctly made was to interpret the phrase “in a manner consistent with” to mean “subject to.” COA Opinion, ¶ 22. The Court held that the “clear language of the Act...mandates that the development of oil and gas in Colorado be regulated subject to protection of public health, safety, and welfare, including protection of the environment and wildlife resources.” COA Opinion, ¶ 30. The Court of Appeals properly interpreted the statute by relying on the plain meaning of the statute, by reading the statute as a

whole, and by looking properly to the legislative history and legislative declaration of the Act.

Of utmost importance is the fact that the Appellate Court did not rule on the merits of the Respondent's requested relief. On this point, it is important to point out the impacts of upholding the ruling below. The ruling below will not result in radical or sweeping changes in the COGCC mission, nor will it have drastic impacts as suggested by Petitioners. In fact, Governor Hickenlooper agreed by stating "[W]e believe the court of appeals' decision does not represent a significant departure from the commission's current approach. The commission already elevates public health and environmental concerns when considering regulating oil and gas operations." See <https://www.colorado.gov/governor/news/gov-hickenloopers-statement-martinez-case>. The ruling does not compel or mandate the COGCC take any particular action. It does not define levels of environmental protection that are or are not acceptable under the Act. It does not substitute its judgment for that of the COGCC, with regard to how the COGCC may implement this revised interpretation of its mission.

As a result, Adams County respectfully requests that this Court should uphold the Court of Appeals ruling and clarify that the COGCC regulation of oil and gas development should occur subject to protection of public health, safety, and welfare, including protection of the environment and wildlife resources. Then,

this Court should send the case back to the Commission so that it can use its judgment in consideration of the regulatory relief requested by the Respondents.

Finally, Adams County endorses the legal arguments advanced by the Local Governments' *Amicus Curiae* Brief in Support of Respondents' that supports the Court of Appeals ruling that the COGCC's mandate to regulate oil and gas development subject to protection of public health is not a change in Colorado law and is consistent with prior decisions of this Court and other divisions of the Court of Appeals.

CONCLUSION

For the reasons stated above, *Amicus Curiae* Board of County Commissioners of Adams County, Colorado respectfully assert that the Court should affirm the ruling below.

Respectfully submitted this 25th day of May, 2018.

County Attorney for Adams County, Colorado

/S/ Heidi Miller

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GOLDMAN, ROBBINS, NICHOLSON & MACK, P.C.

/S/ Jeffery P. Robbins

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Printed copy with the original signatures on file at the offices of Goldman, Robbins, Nicholson & Mack, P.C. in accordance with C.A.R. 30(f).

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of May, 2018, a true and correct copy of the foregoing was served *via* the CO Courts E-Filing System on the following:

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