COLORADO OIL AND GAS CONSERVATION COMMISSION v. MARTINEZ

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Colorado Oil and Gas Conservation Commission v. Martinez examines whether the Colorado Oil and Gas Conservation Commission (Commission) acted within its authority to deny rulemaking regarding a rule proposed by a group of youth activists.  

Although the law on administrative deference is relatively straightforward, and agencies are granted wide deference from the courts, Martinez required the Colorado Supreme Court to examine the legislative history and construction of the Colorado Oil and Gas Conservation Act (Act) to determine the General Assembly’s intent for the Commission. Interestingly, after the Colorado Supreme Court issued its ruling, the General Assembly enacted a new bill, amending the provisions of the Act that the court in Martinez relied upon to reach its conclusion. This Article will provide a brief overview of the relevant law leading up to Martinez, discuss the case itself, and analyze the new bill enacted by the Colorado General Assembly.

I. LEGAL FOUNDATION AND BACKGROUND TO MARTINEZ

a. Administrative Deference Jurisprudence

Chevron v. Natural Resource Defense Council is the landmark deference case in modern-day administrative jurisprudence. In Chevron, the United States Supreme Court examined whether the Environmental Protection Agency’s interpretation of the Clean Air Act constituted a reasonable construction of the ambiguous statutory language. The Court ultimately articulated a two-part test and held that courts should afford deference to an agency’s interpretation of a statute when: (1) Congress has not spoken directly to the precise question at issue and (2) the agency’s interpretation is reasonable. This standard affords agencies wide deference in their interpretations of statutes.

The Supreme Court slightly narrowed its administrative deference analysis in United States v. Mead Corporation when it held that agencies are only entitled to

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2 Colorado Oil and Gas Conservation Commission v. Martinez, 433 P.3d 22, 24–25 (Colo. 2019); the Colorado Oil and Gas Conservation Commission is the state regulator for oil and gas development in Colorado.
4 Chevron, 467 U.S. at 840.
5 Id. at 843.
the deference outlined in Chevron when it appears that Congress delegated authority to the agency to create rules that act with the force of law.\textsuperscript{6}

Colorado courts utilize the two-part test advanced in Chevron.\textsuperscript{7} Additionally, the Colorado Administrative Procedure Act provides the courts with further guidance when examining administrative authority and the limits thereof.\textsuperscript{8}

The Colorado Administrative Procedure Act requires that a court must hold unlawful and set aside any agency action if the court finds the agency’s action to be arbitrary, capricious, or in excess of jurisdiction, authority, purpose, or limitation, an abuse of discretion, or otherwise contrary to law.\textsuperscript{9} This pro-deference standard worked to the benefit of the Commission in Martinez.

b. Colorado Oil and Gas Conservation Act

The Colorado Oil and Gas Conservation Act (Act) directs the Colorado Oil and Gas Conservation Commission to regulate the development and production of oil and gas resources in the state of Colorado.\textsuperscript{10} The Martinez court evaluated the Commission’s interpretation and actions under the Act.\textsuperscript{11} The court examined whether the language of the Act required the Commission to utilize a balancing test or a mandatory condition test that must be satisfied when the Commission engages in rulemaking.\textsuperscript{12} Sections 102, 105, and 106 of the Act contain the relevant language at issue in Martinez.\textsuperscript{13}

Section 102 of the Colorado Oil and Gas Conservation Act

Section 102(1)(a) of the Act is the legislative declaration and directs the Commission to: “(i) [r]egulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare, including protection of the environment and wildlife resources. . . .”\textsuperscript{14}

Furthermore, § 102(1)(b) of the Act directs the Commission to “permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the protection of public health, safety, and welfare, the environment, and

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\item \textsuperscript{6} United States v. Mead Corp., 533 U.S. 218, 226–27 (2001).
\item \textsuperscript{8} COLO. REV. STAT. § 24-4-206(7)(b) (2019).
\item \textsuperscript{9} Id.
\item \textsuperscript{11} Martinez, 433 P.3d at 24.
\item \textsuperscript{12} Id. at 26.
\item \textsuperscript{13} Id. at 28–29.
\end{itemize}
wildlife resources and the prevention of waste as set forth in sections 34-60-106(2.5) and (3)(a) . . ."\(^\text{15}\)

Section 105 of the Colorado Oil and Gas Conservation Act

Section 105(1) of the Act provides the Commission with the “power to make and enforce rules, regulations, and orders pursuant to [the Act], and to do whatever may be reasonably necessary to carry out the provisions of this article.”\(^\text{16}\)

Section 106 of the Colorado Oil and Gas Conservation Act

Section 106(2)(d) of the Act dictates that the Commission may regulate “oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, . . . , taking into consideration cost-effectiveness and technical feasibility.”\(^\text{17}\)

The primary point of contention in Martinez was whether the language found in the aforementioned sections of the Act require the Commission to balance new development of oil and gas resources with environmental and public-health safety concerns or whether the language requires the Commission to condition new development of oil and gas resources on a finding of no adverse environmental and public-health safety impacts.\(^\text{18}\) Furthermore, to add to the ambiguity, the Act also contains the phrases “consistent with,” “subject to,” and “balances” throughout the Act.\(^\text{19}\) The lack of a clear, consistent use of these phrases within the Act creates further interpretation issues.

II. COLORADO OIL AND GAS CONSERVATION COMMISSION V. MARTINEZ

Colorado Oil and Gas Conservation Commission v. Martinez examines whether the Colorado Oil and Gas Conservation Commission acted within its authority when it denied rulemaking regarding a rule proposed by a group of youth activists (Respondents).\(^\text{20}\) After examining the legislative history and the intent of the Act, the Colorado Supreme Court held that the Commission acted within its authority to decline to engage in rulemaking.\(^\text{21}\)

a. Facts in Martinez

A group of youth activists proposed a rule (Proposed Rule) to the Commission that conditioned the Commission’s ability to issue oil and gas development permits on

\(^{15}\) Id. at § 102(b) (emphasis added).

\(^{16}\) Id. at § 105.

\(^{17}\) Id. at § 106(2)(d).

\(^{18}\) Martinez, 433 P.3d at 26.


\(^{20}\) Martinez, 433 P.3d at 24–25.

\(^{21}\) Id. at 25.
its determination that the “best available science demonstrates, and an independent third-party confirms, that drilling can occur in a manner that does not cumulatively, with other actions, impair Colorado’s atmosphere, water, wildlife, and land resources, does not adversely impact human health, and does not contribute to climate change.” Essentially, the Commission would be prohibited from issuing a drilling permit unless it could prove, and a third-party could confirm, that the oil and gas development would not adversely impact the environment. The Respondents based their proposed rule on the “Public Trust Doctrine,” and the assertion that “hydraulic fracturing is adversely impacting human health.”

The Commission declined to engage in rulemaking to consider the Proposed Rule because: (1) the Proposed Rule would require the Commission to “readjust the balance” provided by the Colorado General Assembly in the Colorado Oil and Gas Conservation Act by conditioning new development on a finding of no cumulative adverse impact; (2) the Commission and the Colorado Department of Public Health and Environment were already addressing the underlying concerns of the Proposed Rule; and (3) the Commission concluded that other priorities took precedence because the Commission and the Colorado Department of Public Health and Environment were already working to address the health issues regarding new oil and gas development. The Commission’s primary contention in denying the Proposed Rule is that conditioning new oil and gas development on a finding of no cumulative adverse impact, as the Proposed Rule suggests, would be outside the Commission’s statutory authority.

b. Procedure

After receiving the order from the Commission, the Respondents challenged the order in the Colorado District Court arguing that the Commission’s order was “arbitrary and capricious, an abuse of discretion, and otherwise contrary to law.” Respondents asserted that the phrase “in a manner consistent with” used in the Act’s legislative declaration indicates a mandatory condition to protect the environment and public rather than the balancing test that the Commission asserts. The district court, relying on Chevron, disagreed and ruled in the Commission’s favor, concluding that the statutory language is clear and unambiguous. As a result, the

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22 Id.
23 Id. at 26.
24 Id. at 25.
25 See id. (discussing how 2/3 of the Commission’s reasons for denying rulemaking were due to the lack of jurisdiction or authority).
26 Martinez, 433 P.3d at 26.
28 Martinez, 433 P.3d at 26.
district court held that the Commission must balance oil and gas development with public health and environmental interests.29

Respondents appealed the district court’s ruling, and the appellate court, relying on the Act’s language, held that the phrase “in a manner consistent with” modifies “development, production, and utilization” but not the provisions of the Act that deal with environmental protection.30 As a result, the appellate court considered the protection of public health and environment to be a “condition that must be fulfilled” when developing new oil and gas projects, and thus ruled in favor of the Respondents.31

The Commission appealed to the Colorado Supreme Court.32 There, the majority first concluded that the relevant language in the Act is ambiguous because it is susceptible to multiple, reasonable interpretations, as evidenced by the fact that the two lower courts arrived at two different interpretations.33 As a result, the court examined the legislative history and statutory construction of the Act to determine the intent of the General Assembly.34 Ultimately, the court held that the Commission acted within its granted authority when it declined to engage in rulemaking, and it reversed the appellate division’s judgment.35

c. The Court’s Reasoning: Legislative History of the Colorado Oil and Gas Conservation Act

In its examination of the legislative history of the Act, the court first highlighted the fact that the Act operated for three decades with the primary purpose to “foster, encourage and promote the development, production and utilization of the natural resources of oil and gas in the state of Colorado” before the Colorado General Assembly amended the Act in 1985 to expressly include public health and safety concerns.36 Similarly, in 1994, and again in 2007, the General Assembly expressed concern for public health, safety, and environmental protections and amended the Act to reflect these concerns.37 From this history, the court concluded that the legislative intent was for the Commission to pursue multiple policy goals.38

Next, the court turned to the testimony of the legislators who sponsored the introduction of the aforementioned amendments to the Act.39 The testimony of these former state legislators tended to prove that the addition of public health and

29 Id.
30 Id. at 26–27.
31 Id. at 26–27.
32 Id. at 26.
33 Id. at 29.
34 Id. at 30.
35 Id. at 33.
36 Id. at 30.
37 Id.
38 Id.
39 Id.
environmental aspects to the Act were to give the oil and gas industry “the ability to not just advance the industry, as they’ve done in the past, but to also deal with public health, safety, welfare, those kind of issues.”  

Relying on the history of the Act and the testimony from the former legislators who supported the Act, the Martinez court concluded that the legislative intent was not to permit the Commission to condition the developing new oil and gas projects on a finding of no adverse health impacts; nor did the statutory language of the Act create the balancing test asserted by the Commission. Instead, the court relied on the language found in the Act to conclude that the Commission must: (1) “foster the development of oil and gas resources, protecting and enforcing the rights of owners and producers” and (2) “in doing so, [] prevent and mitigate significant adverse environmental impacts to the extent necessary to protect public health, safety, and welfare, but only after taking into consideration cost-effectiveness and technical feasibility.”

d. The Court’s Reasoning: Statutory Construction and Language

In its examination of the statutory language, the court first pointed to § 105 and § 106 of the Act, which provide the Commission with the authority to regulate public health, safety, welfare, and environmental concerns in the development of oil and gas resources. The court concluded that the legislature intended for the Commission to consider health and environmental concerns by including the language: “regulate oil and gas operations so as to prevent and mitigate significant adverse [health and environmental concerns] . . . to the extent necessary to protect health, safety, and welfare . . . taking into consideration cost-effectiveness and technical feasibility.” Based on this language, the court reasoned that the legislature did not intend to preclude any adverse impacts to the environment.

Second, the court reasoned that the Act’s legislative declaration, § 102, indicates the General Assembly’s intent for the Commission to pursue multiple policy goals. The court pointed to the fact that § 102 of the Act contains numerous Commission directives, which would indicate the intention for numerous policy objectives, none of which are to be conditioned upon a finding of no adverse impacts. The court concluded that the words “in a manner consistent with” and

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40 Id. at 31 (quoting the testimony of Representative Jerke, who sponsored the introduction of a bill that included the amendments to the Act).
41 Id.
42 Id.
43 Id.
46 Martinez, 433 P.3d at 31.
47 Id. at 31–32.
48 Id.
“protection of the environment and wildlife resources” in the legislative declaration of the Act, along with the legislative history and testimony from sponsoring legislators, establish that the intent of the General Assembly “was not to create a condition precedent to further oil and gas development. Rather, its intent was to minimize adverse impacts to public health and the environment while at the same time ensuring that oil and gas development, production, and utilization could proceed in an economical manner.”

III. COLORADO GENERAL ASSEMBLY AMENDS THE COLORADO OIL AND GAS CONSERVATION ACT

The court in Martinez used the language and history of the Act to reject both parties’ arguments and held that the Commission is not required to balance development of the industry with environmental safety, nor is it required to condition the development of oil and gas resources on environmental and safety concerns. Instead, the Commission is required to pursue the two policy objectives separately—promote the development of oil and gas resources and minimize adverse impacts to the environment and public health. However, in April 2019, in what appears to be a direct response to the holding in Martinez, the Colorado General Assembly enacted legislation that amended the Act and changed the language of the sections that the Martinez court relied on for its conclusion. Amendments made to § 105 were inconsequential, but § 102 and § 106 of the Act were both heavily amended.

a. Amended Version of Section 102

The court in Martinez points to § 102 of the Act to conclude that the General Assembly intended for the Commission to pursue multiple policy objectives. The language, “in a manner consistent with” and “protection of the environment and wildlife resources” created the requirement that the Commission minimize adverse health impacts while also developing oil and gas projects. The amended § 102 dispenses with this language. Additionally, the amended version of § 102 expressly states that it is the intent of the Act to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production “subject to the protection of public safety, and welfare, the environment, and wildlife resources.”

This new construction eliminates the phrase “... consistent with the protection of...”

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49 Id. at 32.
50 Id.
51 Id. at 31.
54 Martinez, 433 P.3d at 31–32.
55 Id.
57 Id.
This appears to reinforce the holding in *Martinez* because the Commission must accomplish both the development of natural gas and the protection of public safety.

b. Amended Version of Section 106

In reaching its conclusion, the court in *Martinez* also pointed to § 106 of the Act as evidence of the General Assembly’s intention for the Commission to consider health and environmental concerns and the development of oil and gas resources. The court relied on the particular language of § 106(2)(d) of the Act that dictates that the Commission may “regulate oil and gas operations so as to prevent and mitigate significant adverse [health and environmental concerns] . . . to the extent necessary to protect health, safety, and welfare . . . taking into consideration cost-effectiveness and technical feasibility.” In the new bill, the General Assembly completely repeals § 106(2)(d) of the Act and replaces it with § 106(2.5)(a), which states the Commission shall “regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations.” This new construction eliminates any mention of cost-effectiveness or technical feasibility and instead requires the Commission to regulate oil and gas resources in a “reasonable manner to protect and minimize adverse impacts . . . .” The new construction clearly states that the Commission “shall protect against adverse [impacts].”

IV. THE OIL AND GAS CONSERVATION COMMISSION GOING FORWARD

These new additions appear to clear up the ambiguous portions of the Act. For example, the repeal of § 106(2)(d) and addition of § 106(2.5)(d), as quoted above, indicates the General Assembly’s intent for the Commission to consider the adverse impacts of oil and gas development while developing oil and gas resources. The General Assembly’s intent is also noticed in other parts of the new bill. For example, the addition of C.R.S § 25-7-109(10) encourages the addition of more stringent regulations involving gas and chemical leak detection and emissions monitoring. The addition of C.R.S. § 29-20-104 increases the regulatory power afforded to local governments, specifically allowing them to regulate the surface

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59 *Martinez*, 433 P.3d at 31.
62 Id.
63 Id.
64 Id.
65 Id.
impacts of oil and gas operations in a “reasonable manner” to address matters like land use and location of facilities, and to minimize adverse impacts to public health, safety, welfare, and the environment.\textsuperscript{66} Furthermore, the title of the bill also sheds light on the General Assembly’s intent with the inclusion of the words “additional public welfare protections regarding the conduct of oil and gas operations” in the title.\textsuperscript{67}

In sum, the additions to the Act and similar legislation make it clear that the General Assembly intended to clarify what was at issue in \textit{Martinez}—the Commission is to consider the adverse impacts of oil and gas development when regulating the oil and gas industry.\textsuperscript{68} However, it is also evident that the General Assembly reserved the Commission’s ability to pursue the development of oil and gas resources. The amended sections of the Act still allow the Commission to permit each oil and gas resource in Colorado to “produce up to its maximum efficient rate of production . . .”\textsuperscript{69}

\textbf{V. CONCLUSION}

The court in \textit{Martinez} concluded that the Commission was to: (1) “Foster” the development of oil and gas resources and (2) “in doing so, [] prevent and mitigate significant adverse environmental impacts to the extent necessary to protect public health, safety, and welfare, but only after taking into consideration cost-effectiveness and technical feasibility.”\textsuperscript{70} As noted above, the General Assembly removed any mention of cost-effectiveness or technical feasibility within the act.\textsuperscript{71} Therefore, it appears that the General Assembly intended to bring the two policy considerations to equal weight. Before, the Commission was to consider health and environmental impacts only after taking into consideration the technical and cost feasibility.\textsuperscript{72} Now, with no mention of technical or cost feasibility, the Commission must simply “prevent and mitigate significant adverse environmental impacts to the extent necessary to protect public health, safety, and welfare” while permitting the production of oil and gas resources up to its maximum potential.\textsuperscript{73} As a result, if \textit{Martinez} was to be decided today, the court would likely arrive at the same conclusion that the Commission must pursue multiple policy objectives—but now the Commission would need to give more weight to the prevention of significant adverse environmental impacts in its regulations of oil and gas resources in the state of Colorado.

\textsuperscript{66} Id.
\textsuperscript{67} Id.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} Martinez, 433 P.3d at 31.
\textsuperscript{72} Martinez, 433 P.3d at 31.