

## COLORADO SUPREME COURT STRIKES DOWN YOUTH CLIMATE ACTIVIST SUIT

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On January 14, 2019, the Colorado Supreme Court issued a ruling in an environmental lawsuit brought by a group of young climate activists against the Colorado Oil and Gas Conservation Commission over whether the Commission is required to bar permits for projects that would adversely impact human health or contribute to climate change. Siding with the Colorado Oil and Gas Conservation Commission, the Colorado Supreme Court overturned a state appellate court's ruling in favor of the environmental activists and found that the laws governing the Commission did not allow for such strict requirements.

The dispute arose in 2013 when the group of environmental activists petitioned the Commission to add the proposed rule, which would have precluded it from issuing any permits for the drilling of an oil and gas well "unless the best available science demonstrates, and an independent, third-party organization 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." The Commission opened the proposed rule to public comment and held a hearing on the proposal before unanimously voting against it.

Following this, the youth activists challenged the Commission's decision in the Denver District Court, where the American Petroleum Institute and the Colorado Petroleum Association intervened as defendants. Plaintiffs argued that "the Commission's order was arbitrary and capricious, an abuse of discretion, and otherwise contrary to law." The district court, however, upheld the Commission's decision against the rule finding that "the pertinent statutory language is clear and requires the Commission to 'strike a balance between the regulation of oil and gas operations and protecting public health, the environment, and wildlife resources.'" Plaintiffs appealed and, in a split decision, the appellate court reversed the district court's ruling. Shortly after, the Colorado Supreme Court granted certiorari and the case was once again examined.

In determining whether the lower courts made the correct decision regarding the agency's refusal to engage in rulemaking, the Colorado Supreme Court applied the framework from *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43-(1984), found that the language of the statute governing the Commission was ambiguous and reasonably susceptible to multiple interpretations and, thus, turned to the act's statutory and legislative history to interpret its pertinent provisions. The court looked to the circumstances and intent behind both the statute's original construction as well as the various amendments that have been added to it over the years. One amendment in particular, passed in 2007, stuck out to the court due to the specific language establishing that it is in the public interest to "foster the *responsible, balanced* development" of oil and gas. Citing this, the court asserted that this history reflects "a legislative intent to promote multiple policy objectives, including the continued development of oil and gas resources and the protection of public health and the environment, without conditioning one policy objective on the satisfaction of any other." The court concluded that, because the Commission's decision to decline to engage in rulemaking was consistent with the applicable provisions of the act and its own authority to decide how best to marshal its resources, there was no abuse of discretion.

The environmental attorneys at Bick Law LLP will continue to monitor the development of high-profile cases such as this and their potential impacts on businesses across the country.

