

New York Court of Appeals Upholds Local Zoning Restrictions on Oil and Gas

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On June 30, 2014, the New York Court of Appeals ruled that under the “**Home Rule**” principle, towns may ban **oil and gas production activities**, including but not limited to **hydraulic fracturing**, through the use of **local zoning laws** in the case of [*Wallach v. Town of Dryden*](#). The Court ruled that as currently written, the state **Oil, Gas and Solution Mining Law** (OGSML) does not preempt the home rule authority of municipalities to regulate land use through zoning.

The Court applied a three part test for preemption which established that state preemption of home rule is analyzed through:

1. The plain language of the supersession clause
2. The statutory scheme as a whole
3. The relevant legislative history.

The Court held that the OGSML supersession clause did not satisfy any of the three criteria to be able to preempt the local zoning laws.

The Court then examined whether or not a municipality could, through the use of zoning, totally ban the exploitation of oil and gas. The Court held that a municipality is not obliged to permit the exploitation of natural resources if that limitation is a reasonable exercise of its police powers. The Court noted that the New York State Legislature could revise the OGSML to specifically preempt home rule and zoning regulations.

This case further emphasizes the difficult environment for oil and gas development in New York, which has had a statewide moratorium on hydraulic fracturing for several years.

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