

Environment & Energy

Fracking Ban Survives Challenge From Pennsylvania GOP Senators

By Zach Bright

Sept. 16, 2022, 2:25 PM

- Suit said commission lacked authority for moratorium
 - Lawmakers lack standing, Third Circuit says
-

A challenge against the Delaware River Basin Commission's regional fracking ban in an appeal from Pennsylvania lawmakers was struck down Friday by the US Court of Appeals for the Third Circuit.

Republican state Sens. Gene Yaw and Lisa Baker, the Pennsylvania Senate Republican Caucus, and local municipalities lacked standing to challenge the fracking ban and had no injuries alleged as Article III of the US Constitution demands, the court found in a precedential opinion that affirmed a decision from the US District Court for the Eastern District of Pennsylvania.

The ruling was a win for environmental groups and Democratic state senators who intervened in support of the commission's decision.

The Delaware River Basin Commission placed a moratorium on fracking in 2010 because it "poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the [Basin's] water resources," the opinion said. Fracking involves extracting oil and gas from rock by injecting high-pressure mixtures of water, sand or gravel, and chemicals.

The plaintiffs alleged that the commission's ban violated the Constitution's Takings Clause, illegally exercised eminent domain, and exceeded the commission's authority outlined in the Delaware River Basin Compact. That interstate group includes Delaware, New Jersey, New York, and Pennsylvania.

The court said that state lawmakers couldn't redress their concerns through court, citing the US Supreme Court's 1997 decision in *Raines v. Byrd*, which found that "individual members lack standing to assert the institutional interests of a legislature."

Municipalities who were plaintiffs—Damascus and Dyberry townships and Wayne and Carbon counties—also lacked standing because they only experience hypothetical or conjectural economic injuries, the court said. None was "actual and imminent," the court said, citing a quote in another Supreme Court decision, *Spokeo, Inc. v. Robins*.

The court's decision was narrow. While the plaintiff-appellates in this case lack standing as trustees of the state constitution's environmental rights amendment, the court noted that the ban could still be challenged under Article III of the US Constitution by another party.

The opinion added that outside the legal system, Pennsylvania lawmakers could lobby the commission to reverse course and amend the compact with member states.

Judge Julio M. Fuentes wrote the opinion.

Kleinbard LLC represented the Republican senators, caucus, and municipalities. Damascus and Dyberry Townships were also represented by Jeffrey Treat of Honesdale, Pa. Newman Williams PC also represented Carbon County.

Warren Environmental Counsel LLC and LeVan Muhic Stapleton LLC represented Delaware River Basin Commission.

The case is *Yaw, et al. v. Delaware River Basin Comm'n, et al.*, 3d Cir., 21-02315, 9/16/22.

To contact the reporter on this story: Zach Bright at zbright@bloombergindustry.com

To contact the editor responsible for this story: Renee Schoof at rschoof@bloombergindustry.com

Documents

Opinion
[Opinion](#)

Topics

fracking
surface water
standing
takings

© 2022 The Bureau of National Affairs, Inc. All Rights Reserved