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## Fracking rules: Who decides?

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Posted: Thursday, July 31, 2014 9:44 am | Updated: 9:29 am, Mon Aug 4, 2014.

Miranda C. Spencer, Shalereporter.com | 2 comments

When New York's highest court affirmed last month that [municipalities can ban fracking](#) within their borders, I predicted that "[home rule](#)" -- the legal concept on which the decision was based -- would provide a tactical role model for communities nationwide.

Goldman Prize-winning attorney Helen Slottje, who helped refine the home-rule principle, [told me she agrees](#) it is an important tool. But she cautioned, "Every state is different, so legal strategy will vary both at the state and local level. We are currently working in...California, New Mexico, and even in Texas on the best way to use a strategy similar to ours, though it may not be an exact replica."

Indeed, home-rule based local laws can just as easily be overturned. The city of Longmont, Colo., which established a fracking ban in 2012, [recently lost a suit](#) brought by the Colorado Oil and Gas Association and others. In that case, the judge affirmed the state's right to prevail in decisions regarding the energy industry. The town may or may not appeal the ruling, but the local environmentalists who spearheaded the ban say they plan to.

Other fracking foes believe statewide ballot initiatives will be more powerful. And in that, they have taken a leaf from Pennsylvania. Come November, Coloradans will likely get to vote on whether to amend the state constitution to more strictly regulate (though not forbid) fracking. Initiative 88 would add [an environmental bill of rights](#) similar to the Commonwealth's. (See Section 27.)

Of course, an environmental bill of rights has hardly slowed fracking in the Keystone State. And while the overturning last year of [portions of Act 13](#) which had limited local challenges to the industry, was symbolically important, to date only [17 Pennsylvania communities](#) have official bans or freezes on fracking.

The latest set of rules coming out of Pennsylvania's Office of Oil and Gas Management, which manages the environmental impact of fracking, will take the constitutional rights to clean air and water and local control into account, [according to this summary](#). But they will still be predicated on the state's pre-eminence in regulating energy development. In contrast, Colorado's Initiative 88 would allow local governments the right to create stronger environmental safeguards than the state's. That would set a significant precedent.

One of the more surprising campaigns [is going on in Texas](#). The 121,000 residents of Denton, home to some 270 gas wells, will vote this fall on a grassroots ballot initiative to ban fracking within city limits. If approved, the ban will be the first of its kind in the fossil-fuel-laden Lone Star State.

Such a ban may "embolden" fracking opponents in other municipalities, Texas oil

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Miranda C. Spencer, a researcher with the online news sites Environmental Health News and The Daily Climate, is a freelance journalist and media critic based in the New York metro area. Her writing over the past 25 years, including eight magazine cover stories, has appeared in The Daily Climate, Extra! (the journal of FAIR), E magazine, American Forests, and many other publications. Miranda's investigative work has been honored by Project Censored. Her website is [Red Panda Communications](#).



Suzie Gilbert is a writer, a state and federally licensed wild bird rehabilitator, and the founder of Flyaway, Inc., a non-profit organization dedicated to the rescue, rehabilitation and release of injured and orphaned wild birds. She has written an award-winning environmental column for Taconic News Media, and has published the children's book "Hawk Hill" (Chronicle Books, 1996), and her memoir "Flyaway" (HarperCollins, 2009.) Her articles and opinion pieces have appeared in various

and gas regulator Barry T. Smitherman told the Texas Tribune. Probably. But it will still be a David-versus-Goliath battle. Even 100 potential Dentons won't easily tame the powerful and entrenched Texas energy industry, which in [practice is minimally regulated](#).

Meanwhile, the legal reality of ["split estate" complicates](#) anti-fracking activists' chance of success. In Colorado, Pennsylvania, Texas and other states, the rights to surface land and the minerals beneath can be owned by separate parties. For that reason, any controls on fracking will continue to be fought out in courtrooms. Companies might steer away from places they're not wanted, but only if they don't already own a stake in that ground.

Still, it will be fascinating to watch the outcome of these ballot initiatives. Will the will of the people prevail?

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newspapers, including the Washington Post. She blogs for "The Crooked Wing" and "10,000 Birds" and has been profiled in both the New York Times and on Andrew C. Revkin's New York Times blog, Dot Earth.



Tara's academic work and pursuits are focused on eco-feminism and ethics. Tara has been featured on AOL's Patch.com as a weekly columnist, Moxie Momma, exploring social concerns and parenting strategies. Writing articles on lifestyle, entertainment and local travel, Tara has been a regular contributor to the Bethlehem, Hellertown and Upper Saucon Patch. As a research and investigative journalist, Tara's work is regularly featured in the Elucidator Magazine. A specialist in the technical fields of psychology, philosophy and theology, Tara also teaches classes on Ethics and Moral Dilemmas, Death and Dying, World Religions, and Introduction to Philosophy.



Mike Butler serves as Executive Director of Consumer Energy Alliance (CEA) Mid-Atlantic, where he leads activities to educate and engage consumers of energy from every sector of the economy - large industrial natural gas users, small business, retail owners, hospitals, transportation, and local consumers. By focusing on the importance of responsibly accessing available natural resources and the need for stable energy prices for business, agriculture, manufacturing, and other energy consumers, CEA Mid-Atlantic aims to expand productive, sensible discussion on energy policy across the region. Prior to joining CEA Mid-Atlantic, Butler served as Finance Director for the re-election effort of U.S. Senator Bob Casey. After leading efforts to raise over \$16 million for the Senator's campaign, Mike's was named to PoliticsPA's "Top Operatives of 2012." Additionally Mike served as District Director for Congressman Jason Altmire, Finance Director for Dan Onorato for Governor, and fundraiser for State Treasurer Rob McCord.



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Miranda Spencer posted at 9:52 am on Tue, Aug 5, 2014.

Posts: 56

Update! Anti- and pro-fracking ballot initiatives in Colorado will be pulled in light of Governor's compromise move. From the LA Times: <http://www.latimes.com/nation/politics/politicsnow/la-pn-colorado-deal-fracking-ballot-20140804-story.html#page=1>

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Miranda Spencer posted at 11:55 am on Thu, Jul 31, 2014.

Posts: 56

Sorry about the missing link. The story about Denton, Texas's proposed fracking ban can be found here: <http://bit.ly/1ISKDBN>

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