COLORADO COURT OF APPEALS 2 East 14th Avenue Denver, Colorado 80203	
Appeal from Larimer County District Court The Honorable Gregory M. Lammons Case No. 13CV31385	
Appellant: **CITY OF FORT COLLINS, COLORADO** **v.** **Appellee:** **COLORADO OIL AND GAS ASSOCIATION**	▲COURT USE ONLY▲
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AMICUS BRIEF OF AMERICAN PETROLEUM INSTITUTE

CERTIFICATE OF COMPLIANCE

I hereby certify that this Amicus Curiae brief complies with the requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This brief complies with C.A.R. 28(g).

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I. INTRODUCTION

This case is the latest in a series of cases in which Colorado home-rule municipalities have sought to ban or substantially limit oil and gas-related activities within their borders. Each time a Colorado court has been presented with the issue of whether a home-rule municipality can ban or substantially limit certain types of oil and gas activities that are otherwise permitted under state law, the court has overturned the municipal ordinance.[1] The courts' rationales have been consistent, in line with Colorado's preemption doctrines, and should be upheld. Home-rule municipalities in Colorado enjoy broad legislative authority over issues of purely local concern. But that authority is not absolute. Where matters of state-wide or mixed local and state interest are concerned, home-rule municipalities' legislative authority is limited by Colorado's preemption doctrines, which provide that a municipality may not ban activities that are allowed by state law.

In the present case, this Court is confronted with the novel question of whether Colorado's preemption doctrines apply to temporary moratoria on certain types of oil and gas operations the same as they would apply to total bans of such operations. The Court should answer this question in the affirmative and provide

[1] *See, e.g., Colorado Oil & Gas Ass'n v. City of Longmont*, Case No. 13CV63 (the Boulder County District Court, on motions for summary judgment, overturning Longmont's Article XVI Charter Amendment banning hydraulic fracturing on the grounds that it was preempted by the Colorado Oil and Gas Conservation Act because both the state and local governments have an interest in regulating oil and gas activities and Longmont's ban was in operational conflict with state law) (Case No. 14CA1759 on appeal to this Court)*; Colorado Oil & Gas Ass'n v. City of Lafayette*, Case No. 13CV31746 (the Boulder County District Court, on the Colorado Oil and Gas Association's motion for summary judgment, overturning Lafayette's Ballot Measure 300, banning all oil and gas extraction within the city, on the same grounds) (Case No. 14CA2007 on appeal to this Court).

much-needed guidance to both the lower courts and Colorado's cities and towns as to the scope of home-rule legislative authority. In addition, oil and gas companies, the wide variety of firms that serve as vendors to the industry, and Coloradans employed by these businesses need to know where and how they are allowed to operate. An opinion from this Court addressing to what extent, if at all, home-rule municipalities can regulate hydraulic fracturing will go a very long way toward cultivating regulatory consistency and economic stability in Colorado.

II. ISSUES PRESENTED FOR REVIEW

A. Whether Colorado's Preemption Doctrines May Be Applied To Municipal Ordinances Enacting Temporary Moratoria.

B. Whether Fort Collins' Moratorium On Hydraulic Fracturing Is Preempted By State Law.

III. STATEMENT OF THE CASE

The citizens of Fort Collins, Colorado, a home-rule municipality, passed an ordinance placing a five-year moratorium on using hydraulic fracturing in oil and gas wells and storing waste within the City's boundaries (the "Moratorium"). The Colorado Oil and Gas Association (the "Association") challenged the Moratorium, claiming it is preempted by the comprehensive state statutes and regulations governing oil and gas development in the state. Fort Collins defended the Moratorium as a proper exercise of its municipal land-use regulatory authority. The District Court for Larimer County, in an order on motions for summary judgment, applied Colorado's preemption doctrines and properly determined that

Fort Collins' Moratorium was preempted by the Colorado Oil and Gas Conservation Act because the Moratorium prohibits activities that state law expressly authorizes, thus presenting an operational conflict. *Order Granting Plaintiff's Motion for Summary Judgment on First Claim for Relief and Denying Defendant's Cross-Motion for Summary Judgment*, R. CF, p.p. 495-503.

The District Court's application of Colorado's operational conflict preemption doctrine to invalidate the Moratorium should be upheld. Colorado's preemption doctrines make clear that Colorado's home-rule municipalities may not enact ordinances that present operational conflicts with state laws in matters of mixed state and local concern. There is no meaningful legal distinction between a temporary moratorium and a permanent ban where the ultimate effect of a moratorium or ban is to disallow activities that are legal under state law. The only distinction between a temporary moratorium and a permanent ban is duration, which is inconsequential to a preemption analysis.

This Court should uphold the District Court's order and further clarify that a moratorium and a ban are analyzed identically under Colorado's preemption doctrines when matters of mixed state and local interest are concerned. To hold otherwise would be to put form (the duration of the ban) over function (banning an otherwise lawful activity) and inject uncertainty into Colorado's well-established preemption law. As Colorado's municipalities increasingly seek to assert more

local control over oil and gas operations, they, along with companies operating within the state and the lower courts, are in need of this Court's guidance on the limits of home-rule legislative authority.

IV. INTEREST OF AMICUS CURIAE

The American Petroleum Institute ("API") is a national trade association that represents over 625 companies involved in all aspects of the oil and natural gas industry, including companies operating in Colorado. API's members include producers, refiners, suppliers, and pipeline operators, as well as service and supply companies that support all segments of the oil and natural gas industry. API and its members are dedicated to protecting the environment, while at the same time economically developing and supplying energy resources for consumers. API's members carry out operations for safe and environmentally responsible exploration and production of natural gas, crude oil, and associated liquids, including production via the use of hydraulic fracturing. API is also the worldwide leading standards-making body for the oil and natural gas industry. Accredited by the American National Standards Institute, API has issued approximately 600 consensus standards governing all segments of the oil and gas industry, including standards and recommended practices on well construction and hydraulic fracturing.

API submits this amicus curiae brief in support of the Colorado Oil and Gas Association as a means to protect the cognizable interests of its Colorado members. Specifically, API seeks to protect the economic and business rights and interests of its members and the oil and natural gas industry as a whole, as well as to protect its members' experiential and intellectual resources in Colorado. Upholding Fort Collins' Moratorium would endanger the employment base that API's members rely upon to develop and maintain their oil and gas exploration and related businesses. In addition, upholding the Moratorium would create legal precedent that would reduce or terminate the ability to extract oil and gas in and around some Colorado municipalities, forcing oil and gas companies and their vendors to scale back their businesses. This result would also be to encourage a patchwork of inconsistent and contradictory local and state laws, rendering it difficult or impossible for API's members to conduct their normal business activities.

V. STANDARD OF REVIEW

The issue of whether the District Court erred in granting or denying a motion for summary judgment is a question of law that an appellate courts reviews de novo. *Pierson v. Black Canyon Aggregates, Inc.*, 48 P.3d 1215, 1218 (Colo. 2002).

VI. ARGUMENT

A. Colorado's Preemption Doctrines Should Be Applied To Municipal Moratoria The Same As They Would Be Applied To Permanent Bans.

Colorado's preemption doctrines have been applied in a variety of legislative contexts, but this case presents an issue of first impression: whether Colorado's preemption doctrines may be applied to a municipal moratorium. API respectfully urges this Court to rule that there is no "moratorium exception" to Colorado's preemption doctrines, for the reasons discussed below.

1. *Colorado's Home-Rule Cities and Towns Do Not Enjoy Unfettered Power to Regulate All Activities Occurring Within Their Boundaries*.

Colorado's home-rule municipalities are subdivisions of the state endowed with legislative authority over all "local and municipal matters." *See* Colo. Const. art. XX, § 6. They may "legislate in areas of local concern that the state General Assembly traditionally legislated in . . . [they] have plenary authority over issues solely of local concern . . . ." *Webb v. City of Black Hawk*, 295 P.3d 480, 486 (Colo. 2013). Article XX, Section 6 of Colorado's Constitution provides a list of powers belonging to home-rule municipalities, including the right to "legislate upon" and control such things as municipal officers and agencies, municipal courts, municipal election procedures, issuance of municipal bonds, and assessment of municipal taxes. Colo. Const. art. XX, § 6. All of these powers concern municipal-level governance. As explained by the Colorado Supreme

Court, "the overall effect of the [home rule] amendment was to grant to home rule municipalities the power the legislature previously had and to limit the authority of the legislature with respect to *local and municipal affairs* in home rule cities . . . Although the legislature continues to exercise authority over matters of statewide concern, a home rule city pursuant to Article XX is not necessarily inferior to the General Assembly with respect to *local and municipal matters*." *Fraternal Order of Police, Colorado Lodge No. 27 v. City and Cnty. of Denver*, 926 P.2d 582, 587 (Colo. 1996) (emphasis added) (*citing Bd. of Cnty. Comm'rs v. City of Thornton*, 629 P.2d 605, 609 (Colo.1981)).

In addition to their plenary authority over matters of purely local concern, the Colorado legislature has delegated to municipalities the power to establish and enforce zoning regulations. The Colorado Local Government Land Use Control Enabling Act grants local governments the authority to plan for and regulate surface uses of land and their localized impacts. *See* C.R.S. §§ 29-20-101 *et seq.*; *Droste v. Bd. of Cnty. Comm'rs of County of Pitkin*, 159 P.3d 601, 605–07 (Colo. 2007). Permissible municipal exercises of land use authority under the Local Government Land Use Control Enabling Act include planning for and regulating the use of land by "regulating development and activities in hazardous areas, protecting land from activities that would cause immediate or foreseeable material damage to significant wildlife habitat, and enacting regulations to provide for the

orderly use of land and protection of the environment in a manner consistent with constitutional rights." *Colo. Mining Ass'n v. Bd. of Cnty. Comm'rs of Summit Cnty.*, 199 P.3d 718, 729 (Colo. 2009). Again, this authority is limited to local zoning and land use issues and their localized impacts.

Taken together, Article XX, Section 6 and the Local Government Land Use Control Enabling Act grant home-rule municipalities only the authority to regulate in areas of purely local concern. What the Constitution and the Act do not do is grant home-rule municipalities unchecked power to regulate—and potentially ban—*any and all* perceived undesirable activities occuring within their borders. Colorado's preemption doctrines, most recently described in *Webb v. City of Black Hawk*, act as a necessary check on home-rule municipalities' legislative authority where matters of mixed state and local interest are concerned. 295 P.3d 480, 493 (Colo. 2013) ("Black Hawk does not have authority, in a matter of mixed state and local concern, to negate a specific provision the General Assembly has enacted in the interest of uniformity.").

For example, Colorado courts have held that home-rule municipalities generally do not have authority to ban land use-related activities that are allowed under state law, such as bicycling on municipal roads, certain oil and gas development activities, and certain mining activities. *Id.; Voss v. Lundvall Bros., Inc.*, 830 P. 2d 1061, 1069 (Colo. 1992); *Colo. Mining Ass'n*, 199 P.3d at 734 (in

each instance, applying Colorado's preemption doctrines to overturn municipal enactments that conflicted with state laws). These decisions make it clear that home-rule municipalities have exclusive legislative authority over purely local issues, including land-use and zoning matters ("the exercise of zoning authority for the purpose of controlling land use within a home-rule city's municipal borders is a matter of local concern"), *Voss* 830 P.2d at 1064-1065, but also that this authority is limited by Colorado's preemption doctrines when the subjects of regulation extend beyond purely local interests.

2. *There Is No Meaningful Legal Distinction Between a Ban and a Moratorium For Purposes of Applying Colorado's Preemption Doctrines*.

When applying Colorado's preemption doctrines to municipal ordinances, there is no exception carved out for municipal moratoria. The District Court in this case was correct to apply Colorado's preemption doctrines to Fort Collins' Moratorium. *See Order* CF, pp. 495-503. The District Court noted that no Colorado appellate court has expressly analyzed whether a temporary moratorium enacted by a home-rule municipality, as compared to a permanent ban, is subject to Colorado's longstanding preemption doctrines. *Id.* However, the District Court's conclusion, that the analysis does not differ from that of a premanent ordinance, was correct. *See id.* A moratorium *is* a total ban, even if for a finite period of time; there is no legal distinction between a moratorium and a ban during the time

the moratorium is in effect. Once enacted, both a moratorium and a ban become part of a municipality's charter or code and take immediate legal effect. The only distinction between a moratorium and a ban is one of fact—its duration—rather than law. There is no reason to treat them differently for purposes of applying Colorado's preemption doctrines.

Fort Collins argues that municipal-level moratoria should always be upheld as proper exercises of municipal zoning authority, implying that they are somehow exempt from Colorado's preemption doctrines. *See City of Fort Collins' Opening Brief*, at 14-16. To support this assertion, Fort Collins relies on cases upholding municipal moratoria as against takings claims rather than preemption claims. The prevailing case upholding a municipality's authority to enact development moratoria is *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg. Planning Agency*, 535 U.S. 302 (2002) ("*Tahoe-Sierra*"). In *Tahoe-Sierra*, the Supreme Court analyzed the impacts of Lake Tahoe's temporary moratoria on development of properties around the lake. *See generally*, *Tahoe-Sierra*, 535 U.S. 302. The Court's analysis focused on whether the moratoria effected a regulatory taking of property without just compensation in violation of the Fifth Amendment. *Id.* at 336. The Court noted that moratoria are "used widely among land-use planners to preserve the status quo while formulating a more permanent development strategy", and a moratorium that is reasonable in scope and duration does not

necessarily constitute a regulatory taking. *Id.* at 337. The Court's holding is inapplicable in a preemption context, however, because whether an ordinance effects a regulatory taking is not dispositive of whether the ordinanance is preempted by state law.

Colorado cases upholding moratoria as valid exercises of municipal regulatory power have done so through analyses of regulatory takings and municipal zoning authority rather than preemption. *See, e.g., Droste*, 159 P.3d 601 (upholding a moratorium on land use permit applications affecting sensitive environmental areas and significant wildlife habitats); *Williams v. City of Central*, 907 P.2d 701 (Colo. App. 1995) (upholding a ten-month municipal moratorium on special use permits while the city studied the impacts of its growing gaming district). In *Droste* and *Williams*, the subjects of the moratoria—local zoning isuses—were well within the municipalities' legislative authority because zoning issues are purely local issues. Comprehensive regulation of hydraulic fracturing, however, is not a purely local zoning issue within a municipality's legislative authority.

A takings analysis differs from a preemption analysis in several important respects. First, a constitutional takings claim and a preemption analysis emanate from different constitutional provisions. A takings claim is brought under the Fifth Amendment to the U.S. Constitution. *Tahoe-Sierra*, 535 U.S. at 305. A

preemption claim is brought under Article XX of the Colorado Constitution, a municipal ordinance, and any conflicting state statute. *City of Black Hawk*, 295 P.3d at 482-83. Second, the relief sought in connection with a takings claim (just compensation or invalidation of the ordinance as unconstitutional) differs from the relief sought by a preemption claim (invalidation of the municipal ordinance as preempted by state law). In essence, a takings analysis focuses on whether an ordinance impermissibly conflicts with a private property owner's desired use of their property, while a preemption analysis focuses on whether a municipal ordinance impermissibly conflicts with state law. This Court should decline to import a takings analysis into Colorado's well-established preemption doctrines.

This Court should affirm that there is no municipal moratorium exception to Colorado's preemption doctrines. While the duration of a moratorium has impacted prior courts' takings analyses, it has no impact on Colorado's preemption doctrines. *See, e.g.*, *Deighton v. City Council of Colorado Springs*, 902 P.2d 426, 429 (Colo. App. 1994) (holding that, "[while] a 'stop gap' zoning moratorium of temporary and reasonable duration may be a useful procedure in local government land use planning . . . such a moratorium must be instituted under and in accordance with applicable law"; in other words, its duration is not dispositive of its legality). As the District Court correctly stated, "A city can no more pass a preempted ordinance that lasts five years than it can pass a preempted ordinance

that lasts indefinitely." *Order* CF, p.p. 502. Applying Colorado's preemption doctrines to permanent bans but not moratoria would erroneously elevate form (the duration of the ban) over function (banning a lawful activity).

Adopting Fort Collins' proposed holding—that municipal-level moratoria are not subject to Colorado's preemption doctrines—would leave courts with no legal standard to apply when the subject of a moratorium plainly conflicts with state law. Courts would be precluded from analyzing whether a moratorium of *any* duration is preempted by state law. This "moratorium exception" would end up swallowing the rule; it would undermine the fundamental purpose of Colorado's preemption doctrines, which is to delineate the spheres of legislative authority of state and local governments. This Court should hold that, if the ultimate result is that a lawful activity like hydraulic fracturing is banned by a municipality, even for finite period, it should be subject to Colorado's preemption doctrines the same as would be a ban.

B. Fort Collins' Hydraulic Fracturing Moratorium Is Preempted By State Law Because It Cannot Be Harmonized With State Law (Operational Preemption)

Because there is no meaningful legal distinction between a moratorium and a ban in applying Colorado's preemption doctrines, the next step is to evaluate whether Fort Collins' Moratorium is preempted by state laws governing oil and gas operations. There are three ways in which home-rule municipalities' legislative

authority can be limited by state law: (1) through express preemption; (2) through implied preemption; or (3) through operational conflict preemption. *Bd. of Cnty. Comm'rs v. Bowen/Edwards Assocs., Inc.*, 830 P.3d 1045, 1056-57 (Colo. 1992). Express preemption of a municipal enactment occurs when the language of a state statute indicates the General Assembly's intent to supersede all local authority over the subject matter. *Id.* at 1056. Preemption may be implied if the state statute does not expressly state but still evinces a legislative intent to completely occupy a given field by reason of a dominant state interest. *Id.* at 1056-57. Last, in a matter of mixed state and local concern—like regulating the impacts of hydraulic fracturing—local law may be preempted where its operational effect would conflict with the application of the state statute. *Id.* at 1057.

In *Voss*, the Colorado Supreme Court analyzed four key factors and determined that oil and gas development activities are matters of mixed state and local concern, subject to an operational premeption analysis. 830 P.2d at 1066-67. Those four factors are: (1) whether there is a need for statewide uniformity of regulation; (2) whether the municipal regulation has an extraterritorial impact; (3) whether the subject matter is one traditionally governed by state or local government; and (4) whether the Colorado Constitution specifically commits the particular matter to state or local regulation. *Id.* at 1067. Those same four factors,

applied to this case, inevitably lead to the conclusion that the regulation of the impacts of hydraulic fracturing is a matter of mixed state and local concern.

The Court held that the first *Voss* factor, the need for statewide uniformity, weighed heavily in favor of state preemption of a municipal ban because the nature of oil and gas formations make generalizations about extraction methods (like a blanket ban on hydraulic fracturing) difficult to implement and would result in waste of mineral resources. *Id.* As to the extraterritorial impact of a ban on oil and gas operations, the Court stated that a total ban "affects the ability of nonresident owners of oil and gas interests in pools that underlie both the city and land outside the city to obtain an equitable share of production profits in contravention of one of the statutory purposes of the Oil and Gas Conservation Act." *Id.* at 1067-68 "Furthermore, the regulation of oil and gas development and production has traditionally been a matter of state rather than local control." *Id*. Finally, though the Colorado Constitution does not commit oil and gas development to either state or local control, the Court urged that a home-rule municipality can exercise control over activities within its borders "under its zoning authority *only* to the extent that the local ordinance does not materially impede the significant state goals expressed in the state statute." *Id.* at 1068 (emphasis added). There are no significant distinctions between a ban on oil and gas development, as in *Voss*, and a temporary ban on one method of oil and gas development, as in the present case. This Court

should follow the Supreme Court's reasoning under the *Voss* factors and analyze Fort Collins' Moratorium under an operational preemption analysis.

Significantly, all of the courts that have been called upon to analyze whether the regulation of oil and gas development is a matter of state, local, or mixed state and local concern have concluded that it is a matter of mixed state and local concern. *See Voss*, 830 P.2d at 1064-1065 ("[o]ur case law has recognized that the exercise of zoning authority for the purpose of controlling land use within a home-rule city's municipal borders is a matter of local concern . . . [t]he state [also] has an interest in oil and gas development and operations [which] . . . finds expression in the Oil and Gas Conservation Act."); *Bowen/Edwards*, 830 P.3d at 1058 ("There is no question that the efficient and equitable development and production of oil and gas resources within the state requires uniform regulation of the technical aspects of [production, however] the state's interest in oil and gas activities is not . . . patently dominant over a county's interest in land-use control . . . ."); *Order Granting Motions for Summary Judgment*, Case No. 13CV63 (Colo. Dist. Ct. July 24, 2014) at *13 (Longmont's hydraulic fracturing ban case) ("While the Court appreciates the Longmont citizens' sincerely-held beliefs about risks to their health and safety, the Court does not find this sufficient to completely devalue the State's interest, thereby making the matter one of purely local interest . . . [regulating hydraulic fracturing is a] matter of mixed local and state interest."), attached as

Exhibit A); *Order Granting Motion for Summary Judgment*, Case No. 13CV31746 (Colo. Dist. Ct. Aug. 27, 2014) at *10 (Lafayette's drilling ban case) ("The Court does not disagree that protection of public health, safety, and welfare and protection of the environment are legitimate matters of local concern . . . they are [not] matters of *exclusively* local concern.") (emphasis in orig.), attached as Exhibit B. There is no reason to treat Fort Collins' hydraulic fracturing Moratorium any differently than these other moratoria and bans.

When the subject matter of a municipal ordinance implicates both state and local concerns, it is necessary to determine whether an operational conflict exists between the state and local regulations such that the local ordinance materially impedes the state regulation. *Town of Carbondale v. GSS Properties, LLC*, 169 P.3d 675, 679-80 (Colo. 2007). An operational conflict is particularly apparent where "the home-rule city's ordinance authorizes what state statute forbids, or forbids what state statute authorizes." *City of Black Hawk*, 295 P.3d at 492. Fort Collins' Moratorium does exactly what *Black Hawk* describes—it forbids hydraulic fracturing, which is an activity that is authorized by state statute. The Colorado Oil and Gas Conservation Act expressly grants the Colorado Oil and Gas Conservation Commission the authority to regulate and permit the "shooting and chemical treatment of wells", which includes hydraulic fracturing. C.R.S. § 34-60-106(2). The Commission's Rules also authorize and regulate the disclosure of

chemicals used in hydraulic fracturing and the storage and disposal of waste products generated during oil and gas exploration and production activities. *See* Colo. Code Regs. 404-1:205A; 404-900 Series.

When "local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations . . . gives rise to operational conflicts . . . local regulations yield to the state interest." *Town of Frederick v. North American Resources Co.*, 60 P.3d 758, 765 (Colo. App. 2002). A wholesale ban on hydraulic fracturing constitutes an "imposition of technical conditions on wells" that is not imposed under state regulations, because state laws and regulations allow wells to be hydraulically fractured. The Moratorium cannot be harmonized with state law. Fort Collins' Moratorium thus "materially impedes" state laws and regulations allowing hydraulic fracturing, and is preempted.

On a broader level, the stated purpose of the Colorado Oil and Gas Conservation Act is to promote the statewide public interest in:

> Foster[ing] the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources . . . Protect[ing] the public and private interests against waste in the production and utilization of oil and gas . . . Safeguard[ing], protect[ing], and enforce[ing] the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each such owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom; and . . . Plan[ning] and manage[ing] oil

> and gas operations in a manner that balances development with wildlife conservation in recognition of the state's obligation to protect wildlife resources . . . .

C.R.S. § 34-60-102. As the Boulder District Court noted in its order on Longmont's hydraulic fracturing ban, "[t]here is no way to harmonize[sic] Longmont's fracking ban with the stated goals of the Oil and Gas Conservation Act." *Order Granting Motions for Summary Judgment*, Case No. 13CV63 at *16; *see also Voss*, 830 P.2d at 1068-69 ("If a home-rule city, instead of imposing a total ban . . . enacts land-use regulations applicable to various aspects of oil and gas development and operations . . . and if such regulations do not frustrate and can be harmonized with the development and production of oil and gas in a manner consistent with the stated goals of the Oil and Gas Conservation Act, the city's regulations should be given effect."). There is no way to harmonize Fort Collins' Moratorium with the stated goals of the Oil and Gas Conservation Act, which include the prevention of waste, the production and utilization of oil and gas, and enforcing the correllative rights of owners and producers. The Moratorium would cause waste to occur by mandating suboptimal drilling practices; it would prohibit the production and utilization of oil and gas from wells that are more productive through the use of hydraulic fracturing; and it would endanger the correllative rights of owners and producers. The Moratorium is preempted by state law and must be overturned.

VII. CONCLUSION

This case embodies a clear example of when Colorado's preemption doctrines should operate to limit the legislative authority of home-rule municipalities. The state of Colorado has a strong overriding interest in the uniform regulation of oil and gas operations. That interest will not be served by allowing a patchwork of municipal-level regulations to develop. Home-rule municipalities may not step into the General Assembly's shoes and outlaw activities the legislature has deemed lawful, even for a finite period of time. Colorado's home-rule municipalities need clear guidance from this Court on the limits of their legislative authority so that both municipalities and industry can anticipate how the laws will be applied, and how to comply with them. Accordingly, API respectfully requests that this Court overturn Fort Collins' hydraulic fracturing moratorium.

Respectfully submitted this 13th day of March, 2015.

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