

# FEDERALISM IN Action

## Fracking

Since horizontal hydraulic fracking ushered in a new economic boom for the state, the question of regulation has loomed large. Which level of government should regulate fracking? The federal government has a wide range of laws that could limit fracking-related pollution, including the Clean Air Act and the Clean Water Act. Elected officials in Texas, whose state economy was poised to win big from fracking, have consistently held that the federal government should not regulate fracking, and they have spent millions suing the U.S. Environmental Protection Agency (EPA). Other states landed on the opposite side of the coin and filed an intent to sue the EPA for failing to regulate methane emissions from fracking, which they charged was a violation of the Clean Air Act. In response, in 2016 the EPA released new regulations designed to decrease methane emissions at oil and gas sites, which the agency estimates account for 30 percent of all methane emissions in the country. Texas attorney general Ken Paxton responded with a new suit against the EPA, calling the emissions standards “a

gross demonstration of federal overreach.”<sup>i</sup> State officials worried about the effect of regulations on the oil and gas industry, since the recent success of the Texas economy was largely driven by the boom.

While the federal and state governments engaged in a near-decade battle over who should regulate the oil and gas industry, Texas city governments joined the fray. Should local governments be able to adopt laws that limit fracking? In 2014, almost 60 percent of citizens in Denton voted to ban fracking within the city limits. Citizens in Denton worried about air quality, water quality, and noise pollution. In the 84th legislative session, state politicians responded by adopting a bill that preempts any local regulations and asserts the state’s exclusive jurisdiction to regulate the oil and gas industry. According to the Texas Municipal League, more than 300 Texas cities adopted some local ordinances regulating oil and gas, mostly limiting how close rigs could be put to homes and schools but also including twenty-nine cities that barred fracking within city limits.<sup>ii</sup> Citizens in Denton were surprised to find they could not adopt local ordinances to limit or ban fracking. After Tom Phillips, a lawyer for the oil and gas industry (and former chief justice of the Texas Supreme Court), informed the city council that they would likely be sued, council members voted to repeal the ban.

The question of local control over fracking is both a legal one and a question of tradition. Texas has long championed local control over centralized policy. The 1876 Texas Constitution showed a clear preference for local over state control. When Texans amended the state’s constitution to

allow for home rule, the goal was to protect local control and give cities more freedom to adopt ordinances that reflect the values of their residents. Governor Greg Abbott, who signed the fracking bill into law, talks about the state needing to “get out of the way” in other policy areas and allow “genuine local control” rather than “one-size-fits-all solutions [that] are pushed down from the top.”<sup>iii</sup>

- Should the state have the authority to override local fracking laws? Why or why not?
- How might the federal government’s establishment of standards regarding fracking-related pollution be described as an “overreach” of its powers? How might federal standards be justified?

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i James Osborne, “Texas Sues EPA over Methane Emissions Crackdown,” *Houston Chronicle*, August 1, 2016, <http://www.houstonchronicle.com/business/article/Texas-suing-EPA-over-methane-crackdown-9008109.php> (accessed August 1, 2016).

ii Jim Malewitz and Ryan Murphy, “See How Local Drilling Rules Vary Across Texas,” *Texas Tribune*, March 27, 2015, <https://www.texastribune.org/2015/03/27/see-how-local-drilling-rules-vary-across-texas> (accessed July 27, 2016).

iii Greg Abbott, guest columnist, “Strengthening Local Control of Our Schools,” *Waco Tribune-Herald*, May 1, 2014, <http://www.wacotrib.com/opinion/columns/guest-columns/greg-abbott-guest-columnist-strengthening-local-control-of-our-schools/article.6681ccfo-e415-5347-beea-cd8cagb28517.html> (accessed July 26, 2016).