

*Court of Appeals
State of New York*

NORSE ENERGY CORP. USA,

Plaintiff-Appellant,

– v. –

TOWN OF DRYDEN and TOWN OF DRYDEN TOWN BOARD,

Defendants-Respondents.

APL-2013-00245

**AMICI CURIAE BRIEF OF MANHATTAN BOROUGH PRESIDENT
SCOTT M. STRINGER AND ELECTED OFFICIALS TO PROTECT
NEW YORK IN SUPPORT OF DEFENDANTS-RESPONDENTS**

ANDREW L. KALLOCH
OFFICE OF THE MANHATTAN
BOROUGH PRESIDENT
1 CENTRE STREET, 19TH FLOOR
NEW YORK, NY 10007
TELEPHONE: (212) 669-3872
FACSIMILE: (212) 669-4900

Attorney for Amici Curiae

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INTRODUCTION

This case presents the question of whether municipalities in New York State are preempted from using zoning to ban all activities related to the exploration for, and the production or storage of, natural gas and petroleum in their territory, including the use of high volume horizontal hydraulic fracturing, commonly known as “hydrofracking” or “fracking.”

Section I of this brief describes the importance of zoning for community-based planning and how, in most circumstances, municipalities are far better situated than the State to discern what land use is appropriate for their territory.

Section II explains how Home Rule provides municipalities with wide latitude to use zoning to address matters concerning the environment and the public health and how residents of the Town of Dryden were motivated by reasonable concerns about the effects of fracking on their community.

Section III argues that affirming local control over hydraulic fracturing does not prevent the State Legislature from expressly preempting municipal zoning power where it sees fit, in accordance with Home Rule, and that local zoning ordinances will not necessarily disrupt the development of industry statewide.

INTEREST OF AMICI CURIAE

Amicus Scott M. Stringer is the Manhattan Borough President, representing nearly 1.6 million Manhattan residents. The Charter-mandated responsibilities of

the Borough President include improving the quality of life in Manhattan by monitoring service delivery and proposing changes to policies affecting New Yorkers. N.Y.C. Charter § 82.

Borough President Stringer is greatly concerned about the risks associated with groundwater contamination caused by fracking, in part because the gas fields of the Marcellus Play are interwoven with the Catskill Watershed, which provides high quality water to over nine million people in the Greater New York City area.¹ At present, water flowing from the Catskills is so pure that it does not require filtration, a miracle of nature *and* conservation that saves New York City billions

¹ Risks and reports of groundwater contamination caused by fracking operations are at the forefront of public concern. The Environmental Protection Agency's 2004 study that concluded "there is very little risk that fracking can contaminate drinking water," was reopened by Congressional mandate in order to continue examining the relationship between hydraulic fracturing and groundwater contamination. Renewed study results are expected in 2014. In contrast with the EPA and other studies asserting the safety of hydrofracking operations, there have been several documented instances of contaminated groundwater and correlated negative health side effects experienced by residents in areas proximate to fracking operations, who may also be affected by associated oil and gas emissions. Academic research confirms some of the environmental concerns associated with hydrofracking, such as a 2010 Duke study that found very high methane concentrations in drinking water that was sourced from active drilling and extraction areas. *See, e.g.* U.S. Env'tl. Prot. Agency, EPA 816-R-04-003, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reserves*, Ch. 7 at 6 (2004), available at http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/wells_coalbedmethanestudy.cfm (accessed Nov. 18, 2013); H.R. Rep. No. 111-316, at 109 (2010) (Conf. Re.), available at <http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt316/pdf/CRPT-111hrpt316.pdf> (accessed Nov. 18, 2013); Elizabeth Burleson, *Cooperative Federalism and Hydraulic Fracturing: A Human Right to a Clean Environment*, 22 Cornell J.L. & Pub. Pol'y 289, 303 (2012); Valerie J. Brown, *Industry Issues: Putting the Heat on Gas*, 115 Env'tl. Health Perspectives 2, A76 (Feb. 2007); *see also* David Giller, Note and Comment, *Implied Preemption and Its Effects on Local Hydrofracking Bans in New York*, 21 J.L. & Pol'y 631, 642 (2013); Stephen G. Osborn, et al., *Methane Contamination of Drinking Water Accompanying Gas-well Drilling and Hydraulic Fracturing*, 106 Proc. Nat'l Acad. Sci. 8172, 8173 (2011), available at <http://www.nicholas.duke.edu/cgc/pnas2011.pdf> (accessed Nov. 18, 2013); Nathaniel R. Warner, et al., *Impacts of Shale Gas Wastewater Disposal on Water Quality in Western Pennsylvania*, 47 Env'tl. Sci. and Tech. 20, 11849-11857 (Oct. 2013).

of dollars in costs.² The obvious concern to residents of Manhattan (and the NYC-metro area writ large) is that this valuable water source may be irreparably compromised if hydraulic fracturing operations are allowed to occur nearby.³

As a result of this urgent threat to the public health and concerns about the effect of hydraulic fracturing on the environment, Borough President Stringer has strongly opposed fracking in the Catskill/Delaware watershed. In 2009, he issued a report detailing past instances of environmental degradation and public health complications that have been attributed to fracking and made a clear call for a ban on hydraulic fracturing within the watershed that supplies drinking water to New York City. Scott M. Stringer, *Uncalculated Risk: How Plans to Drill for Gas in Upstate New York Could Threaten New York City's Water System* (Feb. 2009), available at http://www.mbpo.org/uploads/policy_reports/UncalculatedRisk.pdf (accessed Dec. 10, 2013). In addition, the Borough President opposes the use of hydraulic fracturing throughout New York State unless and until comprehensive studies prove that the technique is safe to use.

² Patrick Siler, Note, *Hydraulic Fracturing in the Marcellus Shale: the Need for Legislative Amendments to New York's Mineral Resources Law*, 86 St. John's L. Rev. 351, 352-53 (2012).

³ NYC's Department of Environmental Protection (DEP) has also raised serious concerns about the impact of potential seismic activity on NYC's water supply infrastructure from fracking-related activities. New York City Department of Environmental Protection, *Comments on the Revised High-Volume Hydraulic Fracturing Regulations (November 30, 2012)*, (Jan. 7, 2013), available at http://www.nyc.gov/html/dep/pdf/natural_gas_drilling/revised_high_volume_hydraulic_fracturing_regulations_comments_letter_010713.pdf (accessed Dec. 8, 2013).

Lastly, the Borough President has significant interests in ensuring that this Court’s jurisprudence affirms New York City’s broad authority to regulate land use through community-driven zoning. The Charter provides the Borough President with a specific role in the Uniform Land Use Review Procedure (ULURP), a standardized procedure whereby applications affecting the land use of the city are publicly reviewed. N.Y.C. Charter § 197-c(g). During his eight years as Borough President, Mr. Stringer has used his position in ULURP to modify major projects to comport more closely with the needs of communities throughout Manhattan.⁴

Amicus Elected Officials to Protect New York (“EOPNY”) is a non-partisan, statewide coalition of over 800 current and former elected leaders representing towns, villages, cities, and counties across New York. The boards on which its members serve represent over 13.5 million New Yorkers, 70 percent of the state’s population, a significant number of whom live on or near potentially exploitable shale and rely on unfiltered drinking water from private water wells.

EOPNY was founded in June 2012 due to concerns over the potential effects of high volume hydraulic fracturing on the health, welfare, and economies of New York State municipalities. The coalition sent an open letter to Governor Andrew Cuomo, urging a continued moratorium on high volume horizontal hydraulic

⁴ Mr. Stringer’s term as Manhattan Borough President ends on December 31, 2013.

fracturing until comprehensive studies are complete and the extraction process has been proven safe for all New Yorkers. Members of EOPNY have witnessed sustained and unprecedented levels of community concern over fracking. Citizens' legitimate, evidence-based concerns and elected officials' own research have led to municipal action: as of November 22, 2013, 175 New York municipalities have acted to limit or delay fracking and its related operations via bans or moratoria.⁵

EOPNY has an interest in this case because local authority to apply land use restrictions to industrial activities, including oil and gas operations, is essential to the ability of coalition members to protect the people and property within the municipalities they represent.

Together, *amici* share the concerns of the residents of Dryden, whose grassroots effort resulted in a zoning resolution banning hydraulic fracturing within their town, and urge the Court to affirm the Third Department's decision.

STATEMENT OF FACTS AND OF THE CASE

The facts of the case are set forth in detail in the parties' briefs to this court. The basic facts are as follows.

As early as 2009, concerns about the risks of hydraulic fracturing contaminating ground and surface water supplies motivated Dryden residents to

⁵ *Current High Volume Horizontal Hydraulic Fracturing Drilling Bans and Moratoria in NY State*, available at: <http://www.fractracker.org/map/ny-moratoria/> (accessed Dec. 7, 2013).

prohibit fracking within town limits. A petition requesting such a ban collected over 1,500 resident signatures (over 10 percent of the Town's residents) and was presented to the Town Board in April 2011. *Anschutz Exploration Corp. v. Town of Dryden*, 35 Misc. 3d 450 (Sup. Ct. Tompkins Cty. 2012).

In August 2011, in response to these local concerns, Dryden's Town Board amended Article XXI § 2104 of the Town Zoning Ordinance to "prohibit the use of any land in the town for the exploration for, and extraction, storage, treatment and disposal of natural gas and/or petroleum, and all support activities," including the proposed use of hydrofracking to recover natural gas from underground shale deposits. *Id.*

Appellant's predecessor in interest, Anschutz Exploration Corporation, owned leases covering approximately 22,200 acres of land in Dryden.⁶ On September 16, 2011, Anschutz filed the instant Article 78 proceeding seeking a declaratory judgment invalidating the zoning amendment on the ground that it was preempted by New York's Oil, Gas and Solution Mining Law (OGSML). *See generally* N.Y. ECL 23-0301 et seq.

In February 2012, the Supreme Court, Tompkins County (Rumsey, J.), granted partial summary judgment to respondents, finding that the amendment to

⁶ As the case was on appeal to the Appellate Division, Third Department, Anschutz assigned two leases totaling 75 acres in the Town of Dryden to petitioner Norse Energy, which thereafter replaced Anschutz as petitioner. *Norse Energy Corp. USA v. Town of Dryden*, 108 A.D.3d 25, 28 n.2. (3d Dep't 2013).

the zoning ordinance was not preempted by the OGSML. *Anschutz Exploration Corp.*, 35 Misc. 3d 450.

On appeal, the Appellate Division, Third Department unanimously affirmed, holding that while the express preemption clause of the OGSML prevents municipalities from enacting laws or ordinances “relating to the regulation of the oil, gas and solution mining industries,” N.Y. ECL 23-0303 (2), the zoning ordinance at issue, “does not seek to regulate the details or procedure of the oil, gas and solution mining industries...[but] simply establishes permissible and prohibited uses of land within the Town for the purpose of regulating land generally.” *Norse Energy Corp. USA v. Town of Dryden*, 108 A.D.3d 25, 32 (3d Dep’t 2013).

Furthermore, the court held that while zoning ordinances such as that at issue in the instant matter will invariably have an “incidental effect” on industry, the state has clearly delegated authority to regulate the use of land through zoning laws is to local governments and nothing in the legislative history of the OGSML suggests that the Legislature intended to preempt this broad authority.⁷ *Id.* .

This Court granted leave to appeal on August 29, 2013.

⁷ The court added that in other circumstances, the Legislature has made its intent to preempt local zoning authority crystal clear. *Norse*, 108 A.D.3d at 35 n 7 (citing N.Y. ECL 27-1107 (expressly prohibiting local municipalities from requiring “any approval, consent, permit, certificate or other condition, *including conformity with local zoning or land use laws and ordinances*,” concerning the operation of hazardous waste facilities (emphasis added))).

ARGUMENT

I. MUNICIPAL ZONING IS A CRUCIAL TOOL FOR COMMUNITY-BASED PLANNING

Municipal control over land use decisions preserves the right of communities to shape their own neighborhoods as they see fit. While New York State’s review of hydraulic fracturing is ongoing and will affect the future of the industry through the Empire State, municipalities are far better situated to determine what land use is appropriate for their territory since they have local knowledge that may be overlooked as part of the broader statewide effort.

As this Court made clear in a case affirming New York City’s right to regulate the location of “adult establishments” through the zoning code, “One of the most significant functions of a local government is to foster productive land use within its borders by enacting zoning ordinances.” *DJL Rest. Corp. v. City of New York*, 96 N.Y.2d 91, 96 (2001). Similarly, in the case at bar, the lower court found that the rights of all members of a community and the public writ large can only be protected when “individual municipalities can determine whether drilling activities are appropriate for their respective communities.” *Norse*, 108 A.D.3d at 38; *see also Huntley & Huntley, Inc. v. Borough Council*, 600 Pa. 207, 225, 964 A.2d 855, 866 (Pa. 2009) (“while effective oil and gas regulation...may require the knowledge and expertise of the appropriate state agency, the...authorization of local zoning laws is provided in recognition of the **unique expertise of municipal**

governing bodies to designate where different uses should be permitted in a manner that accounts for the community’s development objectives, its character, and the suitabilities and special nature of particular parts of the community”) (internal citations omitted and emphasis added)).

Of course, municipal zoning authority is not without limit. Rather, communities “must consider regional needs and requirements when enacting a zoning ordinance.” *Gernatt Asphalt Prods. v. Town of Sardinia*, 87 N.Y.2d 668, 683 (1996).

Nevertheless, while local zoning decisions invariably have incidental effects on statewide or regional economic development plans, New York’s environmental laws have long supported local participation, even for matters that implicate a substantial state concern. The 1970 Local Environmental Protection Act’s statement of policy states, “local county or regional understanding of the importance of all aspects of the environment is necessary for the most balanced use of natural resources,” and that, “[l]ocal participation in planning activities which influence the ecological balance on the locality and therefore the state is important.” N.Y. ECL § 47-0103.

Indeed, this Court, through its interpretations of the OGSML and similar regulatory legislation, has consistently recognized that the distinct interests of the state and its municipalities can co-exist. *See e.g. Frew Run Gravel Products, Inc. v.*

Carroll, 71 N.Y.2d 126 (1987) (affirming local government’s right to ban mining in certain zoning districts and emphasizing the distinction between preemptive state law targeted at industrial regulation and valid local law determining permissible and prohibited land uses); *Gernatt*, 87 N.Y.2d at 683 (holding that the Mined Land Reclamation Law does not preempt a town’s authority to determine that mining should not be a permitted use of land within its borders).

Local control is particularly important in situations like the case at bar, where communities near potential fracking sites could shoulder the majority of negative externalities associated with drilling left unaddressed by higher-level regulation, including groundwater contamination, fugitive air emissions, methane gas leaks, radioactivity, and increased seismicity.⁸

Municipalities are uniquely equipped with the local knowledge necessary to quickly and flexibly respond to the needs of community members. Zoning is one way in which this power is exercised and this Court should continue to allow local governments wide latitude in exercising this authority in the absence of express restrictions to the contrary.

II. HOME RULE LAW SUPPORTS THE USE OF ZONING TO RESPOND TO ENVIRONMENTAL AND PUBLIC HEALTH CONCERNS ASSOCIATED WITH HYDRAULIC FRACTURING

Article IX of the New York State Constitution (the “Home Rule” clause)

⁸ For greater detail about hydrofracking and possible risks, see *Anschutz*, 35 Misc. 3d at 456-458.

provides for self-government in local affairs by delegating the power to adopt and amend local laws relating to its “property, affairs or government,” and for the “protection, order, conduct, safety, health, and well-being of persons or property therein,” that are not inconsistent with constitutional provisions or general law.⁹

While Home Rule powers are to be liberally construed, *see* N.Y. Const. art. IX § 3(c); N.Y. Mun. Home Rule § 51; N.Y. Stat. of Local Gov’ts § 20(5), the zoning power is not as broad as the state’s police power. Rather, it is restricted to the exercise of “legitimate zoning purposes,” as defined in § 263 of New York’s Town Law. *Golden v. Planning Bd. of Ramapo*, 30 N.Y.2d 359, 370 (1972).

Town Law § 263 states that zoning regulations must be “made in accordance with a comprehensive plan,” and be designed to, among other things, facilitate the “adequate provision of transportation, water, sewerage, schools, parks and other public requirements.” N.Y. Town L. § 263. In addition, zoning regulations should be made with reasonable consideration “as to the character of the district and its peculiar suitability for the particular uses, and with a view to...encouraging the most appropriate use of land throughout such municipality.” *Id.*

The zoning ordinance at issue in this case is clearly motivated by factors listed in § 263, including the provision of water and transportation. *See* Chip

⁹ *See* John R. Nolon, *The Erosion of Home Rule Through the Emergence of State-Interests in Land Use Control*, 10 Pace Envtl. L. Rev. 497, 505 (1993) (“[Home Rule’s] purpose is to permit local control over matters that are best handled locally and without state interference.”).

Brown, *North Dakota Went Boom*, N.Y. Times (Feb. 3, 2013), MM22 (“[oil] has raised rents, stressed roads, vexed planners and overwhelmed schools; it has polluted streams, spoiled fields and boosted crime”).

Research has linked fracking to dangerous levels of hydrocarbons, heavy metals, and other toxic materials, including radium, in drinking water sources. *See* n 1, *supra*. In Pennsylvania, environmental regulators found that oil and gas development damaged the water supplies for at least 161 Pennsylvania homes, farms, churches and businesses between 2008 and the fall of 2012. Laura Legere, *Sunday Times Review of DEP Drilling Records Reveals Water Damage, Murky Testing Methods*, Scranton Times-Tribune (May 19, 2013), available at: <http://thetimes-tribune.com/news/sunday-times-review-of-dep-drilling-records-reveals-water-damage-murky-testing-methods-1.1491547> (accessed Dec. 10, 2013).

In addition, a 2011 report from the New York State Department of Transportation found that the cost of increased heavy traffic could result in the need for repairs and reconstruction ranging from \$211 million to \$378 million annually, and that, “There is no mechanism in place allowing state and local governments to absorb these additional transportation costs without major impacts to other programs and other municipalities.” New York State Department of Transportation, *Transportation Impacts of Potential Marcellus Shale Gas Development* (Jun. 22, 2011), available at: <http://www.pressconnects.com/assets/>

[pdf/CB177299726.PDF](#) (accessed Dec. 7, 2013).

Taken together, the prospective dangers of fracking on land are so significant that in 2012, Nationwide Insurance determined that it would not cover damage to property under personal and commercial policies, concluding that “exposures presented by hydraulic fracturing are too great to ignore.” Mary Esch, *U.S. Insurer Won’t Cover Gas Drill Fracking Exposure*, BloombergBusinessweek (Jul. 12, 2012), available at: <http://www.businessweek.com/ap/2012-07-12/us-insurer-wont-cover-gas-drill-fracking-exposure> (accessed Dec. 7, 2013).

Not only does the instant ordinance motivated by enumerated factors in Town Law § 263, but unlike exclusionary zoning designed to maintain *residential* segregation, which this Court has repeatedly struck down, *see e.g. Golden*, 30 N.Y.2d 359; *Berenson v. New Castle*, 38 N.Y.2d 102 (1975); *Robert E. Kurzius, Inc. v. Upper Brookville*, 51 N.Y.2d 338 (1980); *Suffolk Housing Services v. Brookhaven*, 70 N.Y.2d 122 (1987); Dryden’s ordinance targets an *industrial* use based on reasonable—indeed, urgent—concerns about the environmental and public health consequences of hydraulic fracturing.

In contrast to case law barring the targeting of certain people for exclusion, this Court has long found that the use of zoning to exclude certain industrial uses is permissible since municipalities are “not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a

reasonable exercise of its police powers to prevent damage to the rights of others and to promote the interests of the community as a whole.” *Gernatt*, 87 N.Y. 2d at 684; *see also Rodgers v. Tarrytown*, 302 N.Y. 115, 121 (1951) (“the power of a village to amend its basic zoning ordinance in such a way as reasonably to promote the general welfare cannot be questioned”).

Given the continued uncertainty regarding the risks, effects, and concerns related to hydrofracking, the effort of the people of the Town of Dryden to limit the severe risks to their environment, health, and safety through the zoning code is clearly reasonable as a matter of fact and a matter of law.

III. THE EFFECT OF LOCAL BANS ON THE VIABILITY OF HYDRAULIC FRACTURING IN NEW YORK STATE IS NOT GERMANE TO THIS COURT’S PREEMPTION ANALYSIS

Lastly, Appellant’s assertion that the continued strength of municipal control over zoning regulations will threaten the viability of the natural gas industry in New York State is undermined by the fact that the natural gas industry has thrived even where courts have granted municipalities plenary authority over fracking within their borders. More importantly, even if the cumulative effects of municipal prohibitions do end up frustrating efforts to develop hydraulic fracturing in the Marcellus Play, such an outcome should not affect this Court’s preemption analysis since any such effect would be incidental and because the Legislature retains the authority to expressly limit municipal zoning in accordance with

Municipal Home Rule Law.

In Pennsylvania, which shares the Marcellus Play with New York, courts continue to interpret traditional zoning powers to permit exclusion of fracking. In 2009, the Pennsylvania Supreme Court held that the preemptive scope of Pennsylvania's Oil and Gas Act "does not prohibit municipalities from enacting traditional zoning regulations that identify which uses are permitted in different areas of the locality, even if such regulations preclude oil and gas drilling in certain zones." *Range Res. - Appalachia, LLC v. Salem Twp.*, 600 Pa. 231, 236, 964 A.2d 869, 872 (Pa. 2009) (citing *Huntley*, 600 Pa. 207, 964 A.2d 855).¹⁰

Despite this ruling, nearly 5,000 wells have been drilled in Pennsylvania since 2005, with natural gas production quadrupling between 2009-2011 alone.¹¹

In Texas, courts have long deferred to home rule by recognizing the authority of cities and towns to prohibit the drilling of oil wells from occurring within city limits. As the Civil Appeals Court of Texas ruled nearly 70 years ago in a case pitting the power of the Railroad Commission to regulate the production of oil and gas in the Lone Star State against local authority to limit drilling within

¹⁰ The Pennsylvania Legislature effectively overturned this decision by enacting Act 13 of 2012. 58 Pa.C.S. §§ 2301-3504. However, the provision of Act 13 limiting local zoning authority (58 Pa.C.S. § 3304) was recently struck down in *Robinson Twp. v. Commonwealth*, 52 A.3d 463 (Pa. Commw. Ct. 2012), and is now on appeal to the Pennsylvania Supreme Court.

¹¹ U.S. Energy Information Administration, *Horizontal Drilling Boosts Pennsylvania's Natural Gas Production*, (May 23, 2012), available at: <http://www.eia.gov/todayinenergy/detail.cfm?id=6390> (accessed Nov. 13, 2013).

city/town limits,

[T]he Legislature – in so delegating that authority to the Railroad Commission – did not thereby intend to nor accomplish the repeal of the fundamental law theretofore, as well as subsequently, existing, that **municipalities in Texas have, under the police power, authority to regulate the drilling for and production of oil and gas within their corporate limits, when acting for the protection of their citizens and the property within their limits**, looking to the preservation of good government, peace, and order therein.

Klepak v. Humble Oil & Refining Co., 177 S.W.2d 215, 218 (Tex. Civ. App. 1944) (emphasis added).

Despite this longstanding precedent, Texas continues to produce nearly 30 percent of total U.S. output.¹²

The experiences of Pennsylvania and Texas provide ample reason to believe that local limits on fracking need not disrupt the development of the industry in New York. Ultimately, however, the economic effect of local bans on the industry in the Empire State should not factor into this Court’s preemption analysis, since an affirmation of the lower court ruling by this Court will not limit the power of the State Legislature to expressly restrict the scope of municipal zoning laws, where it sees fit. *See* n 4, *supra*.

As the Supreme Court of Colorado said a generation ago in a case involving whether the state’s Oil and Gas Conservation Act preempted the land-use authority

¹² David Blackmon, *Texas Oil And Gas Numbers Fly Off The Charts*, Forbes (Aug. 7, 2013), available at: <http://www.forbes.com/sites/davidblackmon/2013/08/07/texas-oil-and-gas-numbers-fly-off-the-charts/> (accessed Nov. 13, 2013).

of Colorado counties,

While the governmental interests involved in oil and gas development and in land-use control at times may overlap, the core interests in these legitimate governmental functions are quite distinct...Given the rather distinct nature of these interests, we reasonably may expect that any legislative intent to prohibit a county from exercising its land-use authority over those areas of the county in which oil development or operations are taking place or are contemplated **would be clearly and unequivocally stated.**

Board of County Comm'rs of La Plata County v. Bowen/Edwards Assocs., Inc., 830 P.2d 1045, 1057 (Colo. 1992) (emphasis added).

Amici do not dispute Plaintiff-Appellant's contention that the State Legislature has the power to preempt local zoning in matters of substantial state concern, *see* Plaintiff-Appellant's Br. at 30, provided that the Legislature does so expressly and within the limits of the State Constitution's Home Rule provisions.

CONCLUSION

For the reasons cited above and those discussed in the briefs of Defendants-Respondents, *amici* urge the court to affirm the ruling of the Appellate Division, Third Department and uphold the right of local governments to prohibit hydraulic fracturing through zoning.

A handwritten signature in black ink, appearing to read 'A. Kalloch', written in a cursive style.

ANDREW L. KALLOCH
Office of the Manhattan Borough President
1 Centre Street, 19th Floor
New York, NY 10007
(212) 669-3872

Counsel for Amici Curiae