

## Publications

### **Oil and Gas Alert: Local Initiative Power is Limited by the Home Rule Amendment: City of Broadview Heights Community Bill of Rights is Invalid**

#### **Related Industries**

Energy, Utilities, Oil and Gas

#### **CLIENT ALERT | 3.4.2016**

The Eighth District Court of Appeals recently struck down the Broadview Heights Community Bill of Rights as an invalid exercise of home rule authority. The Community Bill of Rights, also known as Article XV of the City Charter, banned new oil and gas drilling and limited operation of current wells in the city. It also made it illegal to challenge Article XV as preempted by state law.

With its decision in *Mother's Against Drilling in our Neighborhood v. State of Ohio*, released March 3, 2016, the Eighth District Court of Appeals found:

- "[T]he 'people's' ability to enact local law is limited to those rights afforded to the municipality and is subject to the restrictions of the home rule amendment under Article XVIII, Section 3 of the Ohio Constitution." (Paragraph 26.)
- "[W]e find the trial court's reliance on *Morrison [v. Beck Energy Inc., 143 Ohio St.3d 271, 2015-Ohio-485]* and the application of the doctrine of preemption to be appropriate. Applying the three-part test set forth in *Morrison*, this court first finds that Article XV's ban on oil and gas drilling is a clear exercise of the City's police power . . . we find that R.C. Chapter 1509 is a general law . . . we find that Article XV's ban on new or expanding drilling of oil and gas wells directly conflicts with R.C. Chapter 1509's state regulatory scheme." (Paragraphs 27, 28, 29.)

Applying the analytical framework laid out in *Morrison*, the Court concluded that Article XV is "an invalid exercise of the City's home rule authority, and is therefore preempted by R.C. 1509." (Paragraph 30.)

Because Article XV is similar to citizen's initiatives presented in other cities and counties across Ohio, the decision in this case provides important guidance on the limits of initiative power, and the application of long-standing jurisprudence on home rule, including the recent *Morrison* decision.

A PDF of the decision is available [here](#).

For more information about the *MADION* decision or ballot initiatives, contact Lisa Babish Forbes (216.479.6105), Aaron Williams (216.479.6180) or your Vorys lawyer.