

In the Supreme Court of Ohio

STATE OF OHIO ex rel. JACK MORRISON, JR., Law Director,
 City of Munroe Falls, Ohio, et al.,
 Plaintiffs-Appellants,
 v.
 BECK ENERGY CORPORATION, et al.,
 Defendants-Appellees.

) Case No. 13-0465
)
) On Appeal from the Ninth Appellate
) District Court of Appeals
) (Case No. 25953)
)
)
)
)
)
)

MEMORANDUM IN OPPOSITION TO JURISDICTION OF
 APPELLEES BECK ENERGY CORPORATION AND JOSEPH WILLINGHAM

Jack Morrison, Jr. (0014939)
 Thomas M. Saxer (0055962)
 Thomas R. Houlihan* (0070067)
 *Counsel of Record
 AMER CUNNINGHAM CO., L.P.A.
 159 S. Main Street, Suite 1100
 Akron, Ohio 44308-1322
 Telephone: (330) 762-2411
 Facsimile: (330) 762-9918
 Houlihan@Amer-law.com

Counsel for Plaintiffs-Appellants
 Munroe Falls

Barbara A. Tavaglione (0063617)
 9191 Paulding Street NW
 Massillon, Ohio 44646
 Telephone: (330) 854-0052
 bartavaglione@gmail.com

Counsel for Amicus Curiae People's Oil
 and Gas Collaborative - Ohio

John K. Keller* (0019957)
 *Counsel of Record
 VORYS, SATER, SEYMOUR AND PEASE LLP
 52 East Gay Street
 P.O. Box 1008
 Columbus, Ohio 43216-1008
 Telephone: (614) 464-6400
 Facsimile: (614) 464-6350
 jkkeller@vorys.com

Counsel for Defendants-Appellees
 Beck Energy Corporation and Joseph
 Willingham

FILED
 APR 22 2013
 CLERK OF COURT
 SUPREME COURT OF OHIO

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OPPOSING JURISDICTION	1
STATEMENT OF THE CASE AND FACTS	5
ARGUMENT	8
<i>Appellants' Proposition of Law No. 1:</i>	
R.C. Chapter 1509 does not divest municipalities of their power to enact and enforce zoning laws	9
<i>Appellees' Counter-Proposition of Law:</i>	
Revised Code Chapter 1509 is a general law that grants the Ohio Department of Natural Resources the sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations throughout Ohio	9
<i>Appellants' Proposition of Law 2:</i>	
Municipal ordinances do not conflict with Ohio's oil and gas drilling laws at R.C. 1509.02 when local ordinances require the beneficiary of a permit issued under R.C. 1509.02 to submit information to the municipality to allow the municipality to protect the interests of its residents	11
<i>Appellees' Counter-Proposition of Law:</i>	
Municipal ordinances that attempt to regulate the permitting and location of oil and gas wells are in direct conflict with R.C. Chapter 1509	11
CONCLUSION	14
CERTIFICATE OF SERVICE	16

STATEMENT OPPOSING JURISDICTION: THIS CASE DOES NOT RAISE MATTERS OF GREAT GENERAL OR PUBLIC INTEREST AND DOES NOT PRESENT A SUBSTANTIAL CONSTITUTIONAL QUESTION

The only possible issue of great general or public interest in this case has already been decided by the General Assembly. It made the public policy determination that "[t]he regulation of oil and gas activities...requires uniform statewide regulation" and that the Ohio Department of Natural Resources, Division of Oil and Gas Resources Management, has "sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state."

R.C. 1509.02(a). Appellant City of Munroe Falls nevertheless contends that it should have the right to regulate the permitting, location, and spacing of oil and gas wells and production operations within its borders and, thus, the power to prohibit drilling that the State has permitted.

This Court should not and cannot override the General Assembly's policy choices at the behest of litigants. The City argues in this appeal that the development of Ohio's natural gas and oil resources should be regulated by local officials. The General Assembly rejected that approach when it enacted R.C. Chapter 1509 and replaced the confusing patchwork of inconsistent local regulations that had been hindering development of those resources. The City's disagreement with the General Assembly's choice should be directed to the General Assembly, not to this Court.

The only justiciable legal issue in this appeal is whether the City's drilling ordinances conflict with a general state law under the legal test for home rule authority that the Court has already addressed in several previous opinions. The Court of Appeals applied these settled legal principles and concluded that the City's drilling

ordinances impermissibly conflict with R.C. Chapter 1509. The conflict is evident from the plain language of R.C. 1509.02 and the City's claim that its ordinances prohibit drilling by Beck Energy that this state statute permits. This appeal raises no novel, unsettled, or salient legal or public issues:

- The City does not challenge the constitutionality of R.C. 1509.02 or any other provision of R.C. Chapter 1509;
- The City does not claim that the Court of Appeals applied the wrong legal test in its home rule analysis;
- The City does not argue that the home rule legal test needs further clarification by this Court;
- The City does not question the validity of Beck Energy's state drilling permit;
- The City does not challenge any aspect of the State's permit process or regulations;
- The City raises no issues related to horizontal shale drilling (so-called "fracking"), which is not involved in this case;
- The City does not question the need for regulation of Ohio's oil and gas resources.

Instead, the City simply argues that local authorities should do the regulating rather than the State of Ohio. As noted above, the General Assembly considered and rejected that argument when it enacted R.C. 1509.02, and the City should direct its arguments to that forum.

The facts relevant to this appeal are undisputed. Appellee Joseph Willingham leased the oil and gas rights to his property, located in the City of Munroe Falls, Ohio, to appellee Beck Energy Corporation. Beck Energy obtained a permit from the State of Ohio to drill a traditional, vertical gas well on Mr. Willingham's property. The City issued a Stop Work Order and filed this lawsuit for injunctive relief to prohibit Beck Energy from using its state-issued permit to drill the well unless it complies with City ordinances that

require, *inter alia*, a zoning certificate, a special construction permit, an excavation permit, thousands of dollars in fees and deposits, and a public hearing.

In an opinion that contains little legal analysis and simply assumes a "need for local regulation," the trial court held that none of the ordinances conflict with R.C. Chapter 1509 and that City officials have a right to prohibit drilling that the State specifically approved. (Order, at 4.) Beck Energy appealed the trial court's ruling, and the Court of Appeals reversed and remanded, holding that the City has no home rule authority to prohibit the drilling under settled principles of Ohio law.

All parties agree that the Court of Appeals applied the correct legal standard: a municipality has no home rule authority to enforce ordinances that exercise municipal police powers if the ordinances conflict with a general state law. The City did not dispute that its drilling ordinances are an exercise of its police powers, and it conceded that R.C. Chapter 1509 is a general law. (Opinion, at ¶¶ 57-58.) Accordingly, the issue before the Court of Appeals was whether the ordinances conflict with R.C. 1509.02.

In a carefully reasoned opinion that thoroughly analyzed and properly applied established home rule legal principles, the Court of Appeals held that the five drilling ordinances conflict with the statute by prohibiting drilling that it authorizes. Although the Department had already issued a permit that allowed Beck Energy to drill the well, the City ordinances imposed additional burdensome requirements that are duplicative, require approvals by various local officials, or are so time consuming that the state permit may expire. For example, City Ordinance 1329.03 mandates that no one "shall commence to drill a well for oil, gas, or other hydrocarbons" unless the City approves a zoning certificate and issues various municipal permits, which require special

applications, substantial fees and deposits, approvals by different local officials, and a public hearing.

The Court of Appeals agreed with the City that six right-of-way City ordinances do not conflict with R.C. 1509.02, which specifically leaves those matters to local officials: "Nothing in this section affects the authority granted to...local authorities in [R.C.] 723.01 or 4513.34...provided that the authority...shall not be exercised in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under this Chapter." R.C. 1509.02(a). Although the General Assembly expressly preserved reasonable local authority over municipal rights-of-way in the statute, it chose not to preserve local authority over drilling and other oil and gas operations. The Court of Appeals therefore held that: (1) the five City drilling ordinances (which require a zoning certificate, multiple municipal permits, a public hearing, thousands of dollars in fees and deposits before a gas well can be drilled) conflict with R.C. 1509.02 and are invalid, and (2) the six right-of-way ordinances do not conflict with the statute and are facially valid.

In reaching that decision, the Court of Appeals applied settled principles of Ohio law that need no further clarification by this Court. It articulated no new legal test or legal principle; there is no conflict among Ohio courts; and no constitutional question has been presented. Not surprisingly, this appeal has drawn no attention from the many organizations that regularly participate as amici curiae in gas and oil litigation in this Court. The only amicus in this appeal is a special-interest group that offers public policy arguments about local control that are more properly addressed to the General

Assembly. In short, this appeal raises no legal issues of great general or public interest that warrant the exercise of the Court's discretionary jurisdiction.

STATEMENT OF THE CASE AND FACTS

A. Relevant Facts.

Appellee Joseph Willingham owns several acres of property located within the municipal borders of appellant City of Munroe Falls. He leased the right to produce the natural gas under his property to appellee Beck Energy Corporation, and Beck Energy applied for a permit to drill a gas well from the Ohio Department of Natural Resources, Division of Mineral Resources Management, which was reorganized to form the Division of Oil and Gas Resources Management.

The State reviewed the application, inspected the property in the presence of City officials, and granted a drilling permit to Beck Energy. The permit was issued subject to seven pages of detailed terms and conditions, including 29 separate Urbanized Area Permit Conditions that impose site-specific requirements on Beck Energy, ranging from fencing, parking, and noise, to erosion, drainage, landscaping, and restoration of the premises. The validity of Beck Energy's state drilling permit has never been questioned by the City.

The State issued the permit pursuant to R.C. 1509.02(a), which gives it "sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state." Prior to the enactment of R.C. Chapter 1509, the regulation of gas and oil activities was left to a patchwork of inconsistent municipal ordinances. Producers had to comply with widely varying local requirements depending upon the location of the well. In addition, a municipality could enact

ordinances that were so onerous or time-consuming that they effectively precluded drilling for gas and oil within its borders that had been authorized in state permits. That appears to be what the City of Munroe Falls has attempted to do.

The General Assembly enacted R.C. 1509.02 in 1965 in response to the confusion, inefficiency, and delays in drilling that had resulted from this patchwork of local ordinances, and to ensure that the development of Ohio's gas and oil resources could not be held hostage by local officials. It has subsequently been amended on several occasions to fine-tune the regulatory process and to better accomplish the State's need for efficient and effective resource development.

State drilling permits are subject to comprehensive statutory regulations in R.C. Chapter 1509 that include: minimum distance restrictions on the locations of gas wells relative to property lines, dwellings, other buildings, and streets and roads (R.C. 1509.021); terms and conditions that make drilling operations safe, protect public and private water supplies, require fencing and screening, and mitigate noise (R.C. 1509.03); enforcement mechanisms to ensure compliance and to suspend drilling operations that threaten public safety or damage natural resources (R.C. 1509.04); and mandatory insurance and surety requirements (R.C. 1509.07).

After Beck Energy's well permit was approved by the State, the City issued a Stop Work Order and then filed this lawsuit for injunctive relief prohibiting any drilling on Mr. Willingham's property, based upon (1) the lack of a City zoning certificate; (2) the lack of a special municipal construction permit; (3) the lack of a permit required to "obstruct" City rights-of-way, due to the momentary presence of Beck Energy vehicles in the right-of-way as they move from the street onto Mr. Willingham's property; (4) the

lack of another municipal permit that is required for excavations on City streets, even though no such excavations were being made by Beck Energy; and (5) Beck Energy's failure to pay thousands of dollars to the City for related fees and deposits.

B. Course of Proceedings.

The trial court enjoined Beck Energy from conducting any drilling operations on Mr. Willingham's property unless and until it complied with all of the City's drilling and right-of-way ordinances. The trial court's opinion contains very little legal analysis but clearly expresses its preference for local regulation of oil and gas drilling. It agreed with Beck Energy that, under the established legal test for home rule authority, R.C. 1509.02 is a general statute and the City's ordinances are exercises of municipal police powers. However, it then concluded, with virtually no explanation, that the ordinances "do not concern the 'permitting, location, and spacing' of the desired well" and therefore do not conflict with the statute -- even though they require local permits before a well can be drilled. (Order, at 3.) The trial court invoked the same public policy considerations that the General Assembly rejected when it enacted R.C. Chapter 1509 and gave the State, rather than local officials, the exclusive authority to regulate oil and gas activities:

The ordinances were enacted to protect Munroe Falls residents' interests, and if defendants are allowed to flout these regulations, the city and its residents would suffer irreparable harm.... Ohio created a uniform system for the permitting of oil and gas wells throughout the state. It did not authorize drilling companies, permit-in-hand, to ignore any and all local regulation.

(*Id.*, at 4.)

The Court of Appeals reversed the trial court's ruling with respect to the City's five drilling ordinances. It found that these ordinances prohibit drilling activities on Mr. Willingham's land that the State has specifically permitted and therefore "undeniably

conflict" with R.C. 1509.02. (Opinion, at ¶ 74.) It also held that the six right-of-way ordinances do not necessarily conflict with R.C. 1509.02 because that statute expressly permits local authorities to exercise authority over matters related to streets and traffic, unless they do so "in a manner that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations regulated under this chapter." R.C. 1509.02(a).

Accordingly, the Court of Appeals reversed the trial court's ruling and remanded the case with instructions to enter judgment that the City's drilling ordinances "are preempted by state law and cannot be enforced against Beck Energy's drilling activity." (Opinion, at ¶ 76.) Beck Energy must comply with the City's right-of-way ordinances if its activities impact City rights-of-way, but the trial court warned the City that it "cannot enforce these...ordinances in a way that discriminates against, unfairly impedes, or obstructs oil and gas activities and operations." (*Id.*, at ¶¶ 74, 76.) (Opinion, at ¶ 76.) The City has now asked this Court to review the portion of the Court of Appeals decision that found a conflict between R.C. 1509.02 and its drilling ordinances.

ARGUMENT

The sole question presented by this appeal is whether the City's drilling ordinances are valid exercises of its home rule authority. This Court has established a clear legal test to "determine whether a provision of a state statute takes precedence over a municipal ordinance." *City of Canton v. State of Ohio* (2002), 95 Ohio St.3d 149, 151, 2002-Ohio-2005, ¶ 7.

A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power...and (3) the statute is a general law.

95 Ohio St.3d at 151; 2002-Ohio-2005 at ¶ 9. See also *Ohioans for Concealed Carry, Inc. v. City of Clyde* (2008), 120 Ohio St.3d 96, 99, 2008-Ohio-4605, ¶¶ 24-26 (same).

The City's five drilling ordinances do not survive this legal test for home rule authority. First, it has conceded since the outset of this litigation that the ordinances are exercises of its municipal police power. (See, e.g., Appellants' Mem. in Support of Jurisdiction, at 5.) Second, the trial court and the Court of Appeals both found that R.C. 1509.02 is a general law that operates with uniform application under the same circumstances and conditions, and the City did not argue otherwise until it appealed to this Court. As set forth below in response to the City's first Proposition of Law, R.C. 1509.02 is a general law for home rule purposes. Third, the City's drilling ordinances purport to prohibit Beck Energy from drilling a gas well that the State specifically permitted and therefore conflict with R.C. 1509.02, as set forth in response to the City's Second Proposition of Law.

Appellants' Proposition of Law No. 1:

R.C. Chapter 1509 does not divest municipalities of their power to enact and enforce zoning laws.

Appellees' Counter-Proposition of Law:

Revised Code Chapter 1509 is a general law that grants the Ohio Department of Natural Resources the sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations throughout Ohio.

The General Assembly enacted R.C. Chapter 1509 in 1965 to supersede the patchwork of local regulations that had thwarted full development of the State's oil and gas resources. See *Redman v. Ohio Dept. of Industrial Relations*, 75 Ohio St.3d 399 (1996). It refined this regulatory scheme in subsequent amendments, and R.C. Chapter

1509 now comprehensively regulates virtually every aspect of gas and oil production across the State, in order to ensure development of these resources while protecting public health, safety, and welfare.

The State issued a permit to Beck Energy pursuant to R.C. 1509.02(a), which provides in pertinent part:

There is hereby created in the department of natural resources the division of mineral resources management. **The division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state. The regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation, and this chapter and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operating of oil and gas wells within this state,** including site restoration and disposal of wastes from those wells. * * * *

(Emphasis added.) The statute plainly states the General Assembly's intention to adopt "uniform statewide regulation" of oil and gas operations "within this state" by creating a "comprehensive plan." It did not limit this regulatory framework to any group of individuals or to any geographical regions of the State. R.C. 1509.02 thus meets the legal definition of a general law, *i.e.*, it is "part of a statewide and comprehensive legislative enactment" that "appl[ies] to all parts of the state alike and operate[s] uniformly throughout the state," and "prescribe[s] a rule of conduct upon citizens generally." See *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus. See also *Smith Family Trust v. City of Hudson Board of Zoning and Building Appeals*, 9th Dist. No. C.A. 24471, 2009-Ohio-2557, 2009 Ohio App. Lexis 2251, ¶¶ 10-11, (holding that R.C. Chapter 1509 is "unquestionably a general law" that "prescribe[s] a rule of conduct upon citizens generally, and which operate[s] with general uniform

application throughout the state under the same circumstances and conditions"). No Ohio appellate court has reached a contrary conclusion.

The City now argues, for the first time, that R.C. 1509.02 is not a general law because it "only appl[ies] to half the state." (Mem. in Support of Jurisdiction, at 9.) *Compare* Court of Appeals Opinion, at ¶ 58 ("[t]he City concedes [R.C. 1509.02] is a general law"). The City relies on drilling permit data showing that no applications were filed in 2011 for the western half of the state, but Ohio has historically had oil and gas wells throughout the state. Ohio Department of Natural Resources, Division of Geological Survey, *Oil and Gas Fields Map of Ohio* (2004).¹ If further discoveries of oil and gas reserves or technological advancements increase the economic viability of production operations in western Ohio, they will be subject to exactly the same regulatory framework as other production operations. R.C. 1509.02 thus applies uniformly under similar conditions and circumstances, and the Court of Appeals correctly held that it is a general law.

Appellants' Proposition of Law 2:

Municipal ordinances do not conflict with Ohio's oil and gas drilling laws at R.C. 1509.02 when local ordinances require the beneficiary of a permit issued under R.C. 1509.02 to submit information to the municipality to allow the municipality to protect the interests of its residents.

Appellees' Counter-Proposition of Law:

Municipal ordinances that attempt to regulate the permitting and location of oil and gas wells are in direct conflict with R.C. Chapter 1509.

¹ Available at <http://www.dnr.state.oh.us/geosurvey/gen/map/map/tabid/7900/Default.aspx> (accessed April 17, 2013).

In its second proposition of law, the City argues that its drilling ordinances do not conflict with R.C. Chapter 1509, the remaining prong of the legal test for home rule authority. But a conflict exists for home rule purposes whenever "the ordinance prohibits that which the statute permits," *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶ 53, citing *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923), paragraph 2 of syllabus, and that is precisely the effect of the City's drilling ordinances. Indeed, the City filed this lawsuit on the grounds that its ordinances prohibit Beck Energy from drilling the state-permitted gas well on Mr. Willingham's property.

Ohio courts have consistently recognized that municipal ordinances that purport to invalidate state-issued permits are in conflict with state law. In *Village of Sheffield v. Rowland*, 87 Ohio St.3d 9, 12, 716 N.E.2d 1121 (1999), this Court found a conflict because the local ordinances prohibited the defendant from operating a facility that had been licensed by the State pursuant to R.C. Chapter 3714:

Upon compliance with the requirements of R.C. Chapter 3714 and the issuance of a license, the operator of a proposed construction and demolition facility is authorized to establish such a facility. R.C. 3714.06 (A). However, it is readily apparent that the Sheffield Village Codified Ordinances prohibit such a facility. Thus, the ordinances prohibit what the statute permits and are therefore in conflict with R.C. Chapter 3714.

Similarly, in *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St.3d 213, 217, 492 N.E.2d 797 (1986), this Court found that a city could properly monitor activities at a landfill operating under a State permit within the municipal borders, but it specifically noted that "if the instant city ordinance would have required that Fondessy apply for a city permit for construction or operation of its landfill, the city ordinance

would be directly in conflict with R.C. 3734.05 (d)(3) [which confers authority on the State to license landfills] and would be declared invalid." See also *Am. Fin. Servs. Assn. v. City of Cleveland*, 112 Ohio St.3d 170, 179, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 46 ("local ordinances that seek to prohibit conduct that the state has authorized are in conflict with the state statutes and are therefore unconstitutional").

The City's ordinances also conflict with R.C. Chapter 1509 because they usurp the State's exclusive statutory authority over matters that require uniform, state-wide regulation. As discussed above, the General Assembly has already decided oil and gas development "requires uniform statewide regulation" and a "comprehensive plan", and it gave the State "sole and exclusive authority" to regulate it. R.C. 1509.02. A conflict exists for home rule purposes when municipal ordinances are incompatible with "the uniform application of a statewide statutory scheme." *Am. Fin. Servs. Assn. v. City of Cleveland*, *supra*, at ¶ 43. See also *Viola Park, Ltd. v. City of Pickerington*, 5th Dist. Nos. 2006 CA 00017, 2006 CA 00030, 2007-Ohio-2900, 2007 Ohio App. Lexis 2669, ¶¶ 49-50, *appeal denied*, 115 Ohio St.3d 1473, 2007-Ohio-5735, 875 N.E.2d 627 (2007), in which the Court of Appeals struck down municipal ordinances that allowed recorded plats to be vacated for reasons that were not included in the State's uniform statutory scheme governing plats, because "there is a need for uniformity, state-wide, in the platting process."

The City's drilling ordinances conflict with state law in both ways. They prohibit Beck Energy from doing that which the State has permitted it to do, *i.e.*, drill a gas well on Mr. Willingham's property, and they are incompatible with the uniform application of the statewide statutory scheme. City Ordinances 1329.03, 1329.04, 1329.05, and

1329.06 require a special construction permit, an excavation permit, thousands of dollars in fees and deposits, and a public hearing before an oil or gas well can be drilled in the City, and Ordinance 1163.02 requires a zoning certificate before any related structure is placed on the property. Based on those ordinances, the City reserves to itself the right to deny the necessary certificates and permits and thus prohibit drilling operations. In this case, it issued a Stop Work Order to Beck Energy to prevent it from drilling the gas well on Mr. Willingham's property that the Department had permitted. A clear conflict exists for home rule purposes in these circumstances. *See Ohioans for Concealed Carry, supra.*

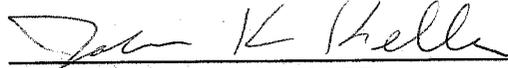
The Court of Appeals correctly found that the City's drilling ordinances prohibit drilling that the State has expressly permitted, and thus conflict with R.C. 1509.02, based on long-settled principles of Ohio law and binding precedent from this Court. Further review of this issue by the Court is unnecessary and would add nothing to Ohio jurisprudence.

CONCLUSION

This appeal raises no issues of great general or public interest and presents no constitutional questions. The City simply wants to go back to controlling their own piece of the patchwork of local regulations that preceded R.C. Chapter 1509. However, the Ohio General Assembly has made a public policy decision that the development of oil and gas resources in Ohio should be regulated at the state level rather than by local officials. The Court of Appeals applied settled principles of Ohio law, which need no further explanation by this Court, and properly found that the City's drilling ordinances

prohibit drilling that state law permits and therefore exceed the limits of its home rule authority. Appellants urge the Court to decline jurisdiction in this matter.

Respectfully submitted,



John K. Keller* (0019957)

**Counsel of Record*

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

Telephone: (614) 464-6400

Facsimile: (614) 464-6350

jkkeller@vorys.com

*Counsel for Defendants-Appellees
Beck Energy Corporation and Joseph
Willingham*

CERTIFICATE OF SERVICE

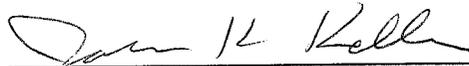
I hereby certify that a copy of the foregoing was served upon the following persons, by regular U.S. Mail on this 22nd day of April, 2013:

Jack Morrison, Jr.
Thomas M. Saxer
Thomas R. Houlihan
Amer Cunningham Co., L.P.A.
159 S. Main Street, Suite 1100
Akron, Ohio 44308-1322

*Counsel for Plaintiffs-Appellants
City of Munroe Falls*

Barbara A. Tavaglione
9191 Paulding Street NW
Massillon, Ohio 44646

*Counsel for Amicus Curiae
People's Oil and Gas Collaborative - Ohio*



John K. Keller

*Counsel for Defendants-Appellees
Beck Energy Corporation and Joseph
Willingham*