



2. The Colorado Oil and Gas Conservation Commission (the “Commission”) is the state agency responsible for administering the Act and for, among other things, protecting public health, safety and welfare, environment, and wildlife resources.

3. The City of Longmont is a home rule city. Its municipal charter includes Article XVI, which is a voter-approved ballot initiative.

4. Our Health, Our Future, Our Longmont (“Our Longmont”) is a community organization organized by residents of Longmont and registered with the Colorado Secretary of State. Our Longmont spearheaded the passage of Question 300 and was an intervening defendant in a lawsuit filed to prohibit the enforcement of Article XVI. As a community organization, Our Longmont represents the interests of Longmont residents who are affected by the Colorado Supreme Court’s outdated interpretation of the Act preventing local government regulation of hydraulic fracturing within local government boundaries.

5. Food & Water Watch (“FWW”) is a national, non-profit, public-interest consumer advocacy organization focused on protecting the fundamental human rights of our communities to clean water, safe food, and a livable climate. FWW was an intervening defendant in a lawsuit filed to prohibit the enforcement of Article XVI. FWW represents members within the City of Longmont and broader Colorado who are affected by the Colorado Supreme Court’s outdated interpretation of the Act preventing effective local government regulation of hydraulic fracturing within local government boundaries.

### **JURISDICTION AND VENUE**

6. The Court has personal and subject matter jurisdiction over this proceeding pursuant to §§ 13-51-105 and 13-51-106, C.R.S. (2019), and Rule 57 of the Colorado Rules of Civil Procedure.

7. Venue in this district is proper pursuant to Rule 98(a) of the Colorado Rules of Civil Procedure as it is an action affecting real property situated in Boulder County and residents’ rights who also are located in the City of Longmont, Boulder County.

### **FACTUAL ALLEGATIONS**

#### **Article XVI and Operational Conflict**

8. On November 6, 2012, citizens of the City of Longmont passed Question 300, which involved a ban on fracking activities within the city limits. According to the Boulder County Clerk and Recorder’s Office, Question 300 was passed by an overwhelming margin – 59.94% to 40.06%.<sup>1</sup>

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<sup>1</sup> <https://assets.bouldercounty.org/wp-content/uploads/2017/06/2012-general-election-results.pdf>

9. Question 300 was codified in Longmont’s Municipal Charter as Article XVI. The people of Longmont made a number of findings with respect to the process of hydraulic fracturing:

*The people of Longmont seek to protect themselves from the harms associated with hydraulic fracturing, including threats to public health and safety, property damage and diminished property values, poor air quality, destruction of landscape, and pollution of drinking and surface water.*

*The people of Longmont have determined that the best way to safeguard our inalienable rights provided under the Colorado Constitution, and to ensure the “protection of public health, safety, and welfare, including protection of the environment and wildlife resources” as provided under the Colorado Oil and Gas Act, is to prohibit hydraulic fracturing and the storage and disposal of its waste products within the City of Longmont.<sup>2</sup>*

10. Upon passage of Question 300, and inclusion into Longmont’s Municipal Charter as Article XVI, a lawsuit was brought by the Colorado Oil and Gas Association, Top Operating Company, and the Commission challenging Article XVI alleging, among other things, that banning hydraulic fracturing within its city limits was in operational conflict with the Act. A declaratory judgment and an injunction prohibiting the City of Longmont from enforcing its own municipal charter was sought.

11. The district court allowed Our Longmont and FWW to intervene as a defendants in the case.

12. On July 24, 2014 the Boulder County District Court found that the City of Longmont’s Article XVI was in operational conflict with state law, granted the declaratory judgment, and enjoined the City of Longmont from enforcing Article XVI.

13. Article XVI was not struck down as unconstitutional. As a voter approved charter amendment, it remains as part of the Longmont Municipal Charter.<sup>3</sup>

14. In its analysis enjoining the City of Longmont from enforcing Article XVI, the district court made a curious observation:

*The Court recognizes that some of the case law described above may have been developed at a time when public policy strongly favored the development of mineral resources. Longmont and the environmental groups, the Defendant-Intervenors, are essentially asking this Court to establish a public policy that favors protection from health, safety, and environmental risks over*

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<sup>2</sup>[https://library.municode.com/co/longmont/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTXVIILOPUHESAWEA\\_C\\_16.IPU](https://library.municode.com/co/longmont/codes/code_of_ordinances?nodeId=PTICH_ARTXVIILOPUHESAWEA_C_16.IPU)

<sup>3</sup> *Id.*

*the development of mineral resources. Whether public policy **should** be changed in that manner is a question for the legislative or a different court.*

*Id.* at p. 13. (Emphasis added).

15. On May 2, 2016, the Colorado Supreme Court affirmed this Court's decision to enjoin the City of Longmont from enforcing Article XVI because it was in operational conflict with the Act. *City of Longmont v. Colo. Oil and Gas Ass'n*, 369 P.3d 573, 585 (Colo. 2016)

16. The law and public policy have now substantially changed.

### **Passage of SB 19-181 Now Allows for Enforcement of Article XVI**

17. On April 16, 2019, the Colorado General Assembly passed and Governor Jared S. Polis signed into law SB 19-181, which went into immediate effect.

18. SB 19-181 changes public policy by now favoring protection of public health, safety, welfare, environment and wildlife resources over oil and gas development. The Act now expressly states:

(1)(a) It is declared to be in the public interest *and the Commission is directed to:*

(I) *Regulate* the development *and* production of the natural resources of oil and gas in the state of Colorado in a manner *that protects* public health, safety, and welfare, including protection of the environment and wildlife resources.

§ 34-60-102(1)(a)(I) (emphasis added).

19. SB 19-181 also gives enormous power to local governments to regulate oil and gas operations such as, among other things, regulating surface impacts of oil and gas operations, land use authority such as location and siting of oil and gas facilities. §§ 29-20-104(1)(h), (h)(I)-(VI).

20. SB 19-181 also expressly assures that local governments can adopt stricter and more protective regulations than state requirements:

Local governments and state agencies, including the Commission and agencies listed in Section 34-60-105(1)(b), have *regulatory authority* over oil and gas development, including as specified in Sections 34-60-105(1)(b). ***A local government's regulations may be more protective or stricter than state requirements.***

§ 34-60-131 (emphasis added).

21. Moreover, the State and Local Governments are mandated to “minimize adverse impacts” from oil and gas operations. SB 19-181 defines “Minimize adverse impacts” as follows:

*(5.5) “Minimize adverse impacts” means, to the extent necessary and reasonable to protect public health, safety, and welfare, the environment, and wildlife resources, to:*

*(a) Avoid adverse impacts from oil and gas operations; and*

*(b) Minimize and mitigate the extent and severity of those impacts that cannot be avoided.*

§ 34-60-103(5.5)(a)-(b).

22. For the purposes of this Complaint, Our Longmont and FWW offers this chart, for the Court’s convenience. This chart identifies the language of the Act when the Supreme Court’s decisions in *City of Longmont v. Colo. Oil and Gas Ass’n*, 369 P.3d 573 (2016), and *City of Fort Collins v. Colorado Oil and Gas Ass’n*, 369 P.3d 586 (2016) were announced. The chart also identifies the substantial changes to the Act by SB 19-181:

<b>Pre-SB 19-181</b>	<b>Post-SB 19-181</b>
<p>§ 34-60-102 - Legislative Declaration:</p> <p>(1)(a) It is declared to be in the public interest to:</p> <p style="padding-left: 40px;">(I) Foster 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.</p> <p>(b) It is not the intent nor the purpose of this article to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article to permit each oil</p>	<p>§ 34-60-102 – Legislative Declaration</p> <p>(1)(a) It is declared to be in the public interest and the commission is directed to:</p> <p style="padding-left: 40px;">(I) Regulate the development and production of the natural resources of oil and gas in the state of Colorado in a manner that protects public health, safety, and welfare, including protection of the environment and wildlife resources.</p> <p>(b) It is neither the intent nor the purpose of this article 60 to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article 60 to permit each oil and gas pool in Colorado to</p>

<p>and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of health, safety, welfare, including protection of the environment and wildlife resources, and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of the common source of oil and gas, so that each common owner and producer may obtain a just and equitable share of production therefrom.</p>	<p>produce up to its maximum efficient rate of production, subject to the protection of health, safety, welfare, including protection of the environment and wildlife resources and the prevention of waste as set forth in section 34-60-106 (2.5) and (3)(a), and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of a common source of oil and gas, so that each common owner and produce may obtain a just and equitable share of production from the common source.</p>
<p>§ 29-20-104 – Power of local governments</p> <p>(1)(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.</p> <p>Subsections (1)(h)(I)-(VI) and (2)(a)-(c) did not exist.</p>	<p>§ 29-20-104 – Power of local governments</p> <p>(1)(h) Regulating the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, and welfare and the environment. Nothing in this subsection (1)(h) is intended to alter, expand, or diminish the authority of local governments to regulate air quality under section 25-7-128. For purposes of this subsection (1)(h), “Minimize adverse impacts” means, to the extent necessary and reasonable, to protect public health, safety, and welfare and the environment by avoiding adverse impacts from oil and gas operations and minimize and mitigating the extent and severity of those impacts that cannot be avoided. The following matters are covered by this subsection (1)(h):</p> <ul style="list-style-type: none"> <li>(I) Land use;</li> <li>(II) The location and siting of oil and gas facilities and oil and gas locations, as those terms are defined in section 34-60-103(6.2) and (6.4);</li> <li>(III) Impacts to public facilities and services;</li> <li>(IV) Water quality and source, noise,</li> </ul>

	<p>vibration, odor, light, dust, air emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security, and traffic and transportation impacts;</p> <p>(V) Financial securities, indemnification, and insurance as appropriate to ensure compliance with the regulations of local government; and</p> <p>(VI) All other nuisance-type effects of oil and gas development; and</p> <p>(i) Otherwise planning and orderly use of land and protection of the environment in a manner consistent with constitutional rights.</p> <p>(2) To implement the powers and authority granted in subsection (1)(h) of this section, a local government within its respective jurisdiction has the authority to:</p> <p>(a) Inspect all facilities subject to local government regulation;</p> <p>(b) Impose fines for leaks spills, and emissions; and</p> <p>(c) Impose fees on operators or owners to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and enforce local governmental requirements.</p>
<p>34-60-103 – Definitions</p> <p>Within the definition of “Waste”, (11)(b), (12)(b), or (13)(b) did not exist.</p>	<p>34-60-103 – Definitions</p> <p>(11) “Waste”, as applied to gas:</p>

	<p>(b) Does not include the nonproduction of gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission.</p> <p>(12) “Waste”, as applied to oil:</p> <p>(b) Does not include the nonproduction of oil from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission.</p> <p>(13) “Waste”, in addition to the meanings as set forth in subsections (11) and (12) of this section:</p> <p>(b) Does not include the nonproduction of oil or gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission.</p>
<p>§ 34-60-131 did not exist.</p>	<p>§ 34-60-131 – No land use preemption</p> <p>Local governments and state agencies, including the Commission and agencies listed in section 34-60-105(1)(b), have regulatory authority over oil and gas development, including as specified in section 34-60-105(1)(6). <b><i>A local government’s regulations may be more protective or stricter than state requirements.</i></b></p>

23. This side-by-side comparison of the Act when *Longmont* and *Fort Collins* cases were decided and the Act as it now looks after SB 19-181 was signed demonstrates the Colorado General Assembly gave substantial regulatory authority to local governments. In fact, entire sections were created to provide local governments substantial regulatory authority over oil and gas operations.

24. In the plain language of the statute, the Colorado General Assembly did not prohibit local governments from enacting bans or moratoria. In fact, § 34-60-131 is entitled “No land use preemption.”

25. The Act establishes a floor and not a ceiling. “In construing a statute, courts strive to give effect to the intent of the legislature and adopt the statutory construction that best effectuates the purpose of the legislative scheme, looking first to the plain language of the statute.” *Spahmer v. Gullette*, 113 P.3d 158, 162 (Colo. 2005).

26. The language found in SB 19-181, and the power given to local governments to regulate oil and gas operations within their jurisdictions, supports that Article XVI of Longmont’s Municipal Charter is no longer in operational conflict with the Act.

### **PROPRIETY OF DECLARATORY RELIEF**

27. The Colorado Uniform Declaratory Judgements Act provides, in pertinent part, that: “Any person... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question or construction or validity arising under the... statute ordinance, contract, or franchise and obtain a declaration of rights, statute or other legal relations thereunder.” § 13-51-106; *see* C.R.C.P. 57.

28. Our Longmont members are residents of the City of Longmont who are adversely affected by the Court’s decision to enjoin the enforcement of Article XVI. They also were the proponents of Question 300 and were intervening defendants in the *Longmont* case.

29. FWW represents the interests of its members who are residents of the City of Longmont who are adversely affected by the Court’s decision to enjoin the enforcement of Article XVI. It was an intervening defendant in the *Longmont* case.

30. With City of Longmont voters overwhelming approving Question 300, and its placement in the Municipal Charter as Article XVI, Our Longmont and FWW have standing and interest in the enforcement of Article XVI now that SB 19-181 has been passed into law and Article XVI is no longer in operational conflict with or preempted by the Act.

31. Our Longmont members and FWW members, who are Longmont voters, and who approved Question 300 have a right to minimize the adverse impacts of the oil and gas industry within the limits of the City of Longmont through local regulations, which may include a ban in its Municipal Charter.

32. The controversy is one upon which the judgment of this Court will effectively operate and upon which a judicial determination will have the force and effect of a final judgment regarding the rights of the parties under applicable law. No possible interpretation of the plain language of the Act, as amended by SB 19-181, would result in finding that Article XVI is in operational conflict with the Act or otherwise preempted by state law, rule, or regulation.

33. Our Longmont members and FWW members as residents of the City of Longmont have suffered injury and are exposed to future injury to their real property interests and their health,

safety, and welfare, the environment, and wildlife resources if the City of Longmont is not allowed to enforce Article XVI.

34. Accordingly, a real and substantial controversy exists between the parties for which declaratory relief is appropriate. *Bd. of County Comm'ners, La Plata County v. Bowen/Edwards*, 830 P.2d 1045, 1053 (Colo. 1992)(en banc).

### **FIRST CLAIM OF RELIEF**

(Declaratory Judgment – Article XVI Is Not In Operational Conflict With or Preempted By State Law and Must be Enforced)

35. Our Longmont and FWW incorporate each allegation of the preceding paragraphs as though fully set forth herein.

36. For the protection of the public health, safety, welfare, environment, and wildlife resources, Article XVI is a voter-approved ballot initiative that was incorporated into the City of Longmont's Municipal Charter. Article XVI prohibits hydraulic fracturing operations and the storage or disposal of associated exploration and production wastes within city limits.

37. The Act, as amended by SB 19-181, gives substantial authority to local governments to regulate oil and gas operations within their jurisdictions.

38. The Act, as amended by SB 19-181, does not prohibit local governments from enacting bans or moratoria in order to minimize adverse impacts if it is reasonable and necessary to protect public health, safety, welfare, environment, and wildlife resources. Longmont voters have enacted Article XVI as a reasonable and necessary means to protect themselves and the environment from the adverse impacts of hydraulic fracturing.

39. Our Longmont and FWW seek a declaratory judgment that Article XVI is not in operational conflict with state law nor is it preempted by state law, rule, or regulation.

40. Our Longmont and FWW seek a declaratory judgment that Article XVI must be enforced by the City of Longmont as mandated by Longmont voters.

41. Our Longmont and FWW seek a permanent injunction enjoining the State of Colorado or its agencies from prohibiting the City of Longmont from enforcing Article XVI of its Municipal Charter.

### **PRAYER FOR RELIEF**

WHEREFORE, Our Longmont and FWW respectfully request:

1) That the Court declare that Article XVI of the Home Rule City Charter of Longmont:

- A. is not in operational conflict with state law;
- B. is not preempted by the Act and the Commission's regulations.
- 2) That the Court permanently enjoin the State of Colorado or its agencies from prohibiting the City of Longmont to enforce Article XVI.
- 3) Attorney's fees and costs.
- 4) That the Court grant such further relief as may be just and proper.

Respectfully submitted this 14<sup>th</sup> day of January, 2020.

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