



Federal Court Dismisses Challenge to Oil and Gas Unitization Statute

On Wednesday, September 7, 2022, Judge John Preston Bailey of the federal District Court for the Northern District of West Virginia granted a motion to dismiss a lawsuit challenging the validity of Senate Bill 694, West Virginia's new oil and gas unitization statute. The statute authorizes the West Virginia Oil and Gas Conservation Commission to issue orders authorizing certain oil and gas interests to be included in what are known as development units, even without the consent of the interest owner, under very narrow circumstances.

Plaintiffs, who owned mineral interests in property that could potentially be subject to the unitization procedure in SB 694, sought to prevent the statute from becoming effective by claiming that the law, among other things, allows the unconstitutional taking of private property without just compensation in violation of both the United States Constitution and the West Virginia Constitution. Plaintiffs also argued that the statute deprived them of due process in the taking of their property in violation of the Fifth and Fourteenth Amendment of the United States Constitution. The Court dismissed the challenge because (1) the plaintiffs lacked standing and (2) Governor Jim Justice, the sole defendant, has sovereign immunity under the Eleventh Amendment.

With respect to standing, the Court held that the plaintiffs failed to satisfy any of the three requirements: (1) an injury-in-fact; (2) that was traceable to the statute; and (3) that could be redressed by the Court. According to Judge Bailey, the plaintiffs did not suffer an injury in fact because their tract has not been unitized, and no operator has even applied to unitize their mineral tracts under SB 694. Second, the alleged injury is not traceable to the Governor's conduct because the Governor has no power to enforce SB 694. Finally, plaintiffs failed to show that a favorable ruling against the Governor would provide any redress. To establish standing, a plaintiff must meet all three factors, but here plaintiffs failed to meet a single one.

The Court further held that, even if the plaintiffs had standing, sovereign immunity under the Eleventh Amendment shields the Governor from liability. In general, the Eleventh Amendment prevents states from being sued in federal court without their consent, and this includes state officials being sued in their official capacity. The exception to this general rule allows for suit against a state official when the state official has the ability to enforce the law in question. Here, the Court ruled that Governor Justice has no authority to enforce SB 694 because the law does not specifically allocate any authority to the Governor. Plaintiffs claim that the Governor has the general duty to ensure laws are faithfully executed, and by appointing members of the West Virginia Oil and Gas Conservation Commission, the Governor ensures the law is enforced. The Court pointed to numerous cases, however, which find that sovereign immunity cannot be overcome by (1) the Governor's general duty to enforce the laws of a state; or (2) the appointment power enjoyed by a Governor.

While the Court dismissed the plaintiffs' claims, it also granted plaintiffs leave to amend the Complaint by September 20, 2022. The plaintiffs indicated in the briefing on the Motion to Dismiss that they intended to include the West Virginia Oil and Gas Conservation Commission as a defendant. So we anticipate that a new challenge to SB 694 will be filed that names the Commission as a defendant. Plaintiffs also indicated in briefing that they do in fact own unitized mineral interests. Naming the Commission as a defendant coupled with identifying the plaintiffs' unitized mineral interests will likely overcome the grounds for dismissal cited by the Court in its order.

Please contact either of the following attorneys to learn more: Austin Rogers at arogers@babstcalland.com or 681.265.1368 or Robert Stonestreet at rstonestreet@babstcalland.com or 681.265.1364.

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CONTACT

AUSTIN D. ROGERS

ARogers@babstcalland.com
681.265.1368

ROBERT M. STONESTREET

RStonestreet@babstcalland.com
681.265.1364

Charleston, WV

Suite 1000
300 Summers Street
Charleston, WV 25301
681.205.8888

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