

House Bill 20-1070

**A BILL FOR AN ACT**

CONCERNING A REQUIREMENT THAT A LOCAL GOVERNMENT THAT INTERFERES WITH OIL AND GAS OPERATIONS COMPENSATE PERSONS DAMAGED BY THE INTERFERENCE.

**Testimony on Behalf of The Colorado Alliance of Mineral and Royalty Owners (CAMRO)**

Local government entities with planning and zoning authority would do well for themselves to support this bill. In abandoning its power of pre-emption in order to give local government expanded authority over oil and gas operations, the state legislature put those governments first in the line of fire for regulatory takings lawsuits. The legislature was ill advised by keep it in the ground advocates when they wrote law that implies oil and gas development as nuisance.

It is true that over the past decades courts have issued opinions that undermine the plain language of the fifth amendment to the US constitution. Police power at the state and federal levels gradually ate away at the concept that taking a citizen's property for public use required just compensation.

In the 1922 Pennsylvania Coal Vs Mahon decision the court recognized that a regulatory restriction on the use of property is a taking of private property. It tempered this with if a regulation goes "too far" it will be recognized as a taking, and further tempered its decision with this statement. "Government could hardly go on if to some extent values incident to property could not be diminished without paying for such change in the general law"

At this point in history state and federal authorities began to incrementally devise policy and law that increased police power and undermined the fifth amendment. This is certainly evident in parts of SB-181. The most egregious is that part that defines waste as not waste, and undermines the entire concept of conservation of the oil and gas resource.

In the 2019 session the US Supreme Court decided the Rosemary Knick v the Township of Scott Pennsylvania case. In its majority decision Justice Roberts upended decades of stare decisis. The Court's Williamson County Regional planning Commission V Hamilton Bank of Johnson City decision which mandated that takings suits be exhausted first in state courts was overturned. Suits can now be brought directly to US District court. Also rendered moot was the San Remo hotel decision which stated that if you lost in state court you were banned from federal courts. It is highly unlikely that a federal court would find that a century of regulated oil and gas development would suddenly become a nuisance. Especially in light of the federal government responsibility to develop its own lands.

I leave you with this statement excerpted from Knick in the concurrence to Roberts written by Justice Thomas. He was responding to an amicus written by the federal government.

**A "purported exercise of the eminent-domain power" is therefore "invalid" unless the government "pays just compensation before or at the time of its taking." If this requirement makes some regulatory programs "unworkable in practice", so be it—our role is to enforce the Takings Clause as written.**

Neil Ray  
President, CAMRO