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New York and Colorado Confirm Local Governments' Rights to Ban Fracking

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On Monday, June 30, the highest courts in both New York and Colorado confirmed local municipalities' rights to regulate land use within their jurisdictions. The New York State Court of Appeals upheld two towns' bans on shale gas drilling, including hydrofracking, holding that the state's "Oil, Gas and Solution Mining Law (OGSML) does not preempt the home rule authority vested in municipalities to regulate land use."

The Colorado Supreme Court also paved the way for ballot initiatives that propose to amend the state's constitution to provide local governments with the authority to enact laws regulating oil and gas development that are more restrictive than state law.

The approved initiative would provide for mandatory set-backs between drilling rigs and occupied buildings, allow municipalities to ban hydraulic fracking, and create an Environmental Bill of Rights. Several of the approved initiatives propose similar, but slightly different, language, giving the proponents an opportunity to choose to move forward with the initiatives most appealing to voters.