

# Battle Continues Against Fracking Near Schools

**Nick Cahill, Courthouse News Service, 12-18-15**

SACRAMENTO - A father fighting California laws that allow fracking near schools will appeal the dismissal of his case against the state's oil regulator, his attorneys said.

Sacramento Superior Court Judge David Brown dismissed Rodrigo Romo's lawsuit against the Gov. Jerry Brown and the Division of Oil, Gas & Geothermal Resources on Nov. 30. He found that Romo failed to prove that his and thousands of other minority children are intentionally harmed by laws that allow fracking near public schools.

Judge Brown was not persuaded by Romo's disparate-impact discrimination argument and granted the state's demurrer motion, with leave to amend.

"However, as the complaint alleges that plaintiffs and other children of color are already disproportionately impacted by the effects of the private entities which operate oil and gas wells nearby, the failure of the defendants to completely eliminate the existing disparate impact by enacting yet more regulations even more beneficial to the children of color, fails to state a cause of action against defendants," Brown wrote.

Romo claims his two children have suffered from severe asthma and epileptic attacks since fracking operations began just 1,200 feet from their elementary school in Kern County. His attorneys argued in court that disproportionate numbers of Latino students are affected by nearby fracking operations, including those at Romo's children's school, which has 86 percent Latino enrollment.

At issue is California Senate Bill 4 , which has no setback clause for new oil and gas wells. Romo claims that violates the anti-discrimination provisions of California government code section 11135, which prohibits government agencies from discriminating on the basis of race, religion or sex.

Of the 32 states that allow fracking, 21 have setback clauses, including Texas and Alabama.

Romo's attorney Madeline Stano, with the Center on Race, Poverty & the Environment, said California fracking laws are severely underlitigated and that Brown erred by dismissing the case.

Stano said there was "a lot to chew on" for Judge Brown, and that he focused on policy considerations outside the scope of the state's demurrer.

"It was a tremendous error to rule on those grounds, and simply out-of-scope premature," Stano told Courthouse News.

Despite the setback, Stano said, Romo was able to share his family's story about a serious and growing health problem and begin the process of fixing California's fracking regulations.

"Rodrigo was really successful in educating the public and holding Gov. Brown and the agency accountable under a really serious issue," Stano said.

Stano cited a November lawsuit accusing Los Angeles of rubber-stamping drilling applications and fast-tracking environmental reviews. According to that complaint, from Youth for Environmental Justice, drilling sites in minority neighborhoods are hundreds of feet closer to schools, playgrounds and parks than sites in other neighborhoods.

Romo's appeal "highlights Gov. Brown's hypocrisy in allowing fracking pollution to harm some of the most vulnerable Californians," Stano said.

"We're not the environmental leader that the governor is grandstanding in Paris about," Stano said.

The parties will go through mandatory mediation in the Third Appellate District. Stano said that Romo and his daughters are excited that they may be in court with the governor.

"Stranger things have happened, I guess," Stano said.