

## Transporting Fracking Waste Through Connecticut

By: Janet Kaminski Leduc, Senior Legislative Attorney  
December 1, 2017 | 2017-R-0299

### Issue

Can the legislature pass a law that prohibits the transportation of fracking waste through Connecticut?

The Office of Legislative Research is not authorized to provide legal opinions or legal advice, and this report should not be construed as such.

### Summary

Enacting a law that prohibits or restricts transportation of fracking waste through the state may raise Commerce Clause issues under the U.S. Constitution.

### Commerce Clause

The Commerce Clause gives Congress the power to regulate commerce among the states (U.S. Const. Art. I, § 8). It has also been held to mean that states cannot pass laws that improperly burden or discriminate against interstate commerce. Under the so-called “dormant” Commerce Clause doctrine, a law that does not discriminate on its face, supports a legitimate state interest, and only incidentally burdens interstate commerce, is constitutional unless the burden is excessive in relation to local benefits.

### *Fracking*

*Fracking, also known as hydraulic fracturing, is the process of pumping fluid into or under the surface of the ground to create fractures in rock for the exploration, development, production, or recovery of natural gas. It does not include drilling or repairing a geothermal water well or any other well drilled or repaired for drinking water purposes ([CGS § 22a-472](#)).*

In *City of Philadelphia v. New Jersey* (98 S.Ct. 2531 (1978)), the U.S. Supreme Court found the New Jersey Waste Act was unconstitutional because it violated the Commerce Clause. The act prohibited importing most solid or liquid waste that originated or was collected outside the state's territorial limits. The Court said that a state may not attempt "to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade."

## **Additional Information**

For additional information about fracking waste, see the following OLR reports:

[2015-R-0178](#), Connecticut's Fracking Waste Moratorium

[2014-R-0016](#), Transport, Storage, and Disposal of Fracking Waste

JKL:cmg