

“aggrieved” parties the power to initially challenge a local ordinance with the Public Utility Commission, an administrative body of the executive branch which is given the power to determine whether the zoning regulation complies with the mandates of Act 13. This process of review for a challenge to the validity of a local zoning ordinance is entirely unique and designed exclusively for the oil and gas industry so that it may initially appear before the Public Utility Commission, an administrative body, rather than a judicially independent avenue which otherwise applies in all other scenarios and citizens pursuant to the MPC.

155. Furthermore, prior to any challenge brought by an “aggrieved” party, a municipality may submit its ordinance to the Public Utility Commission for review so that the administrative body may determine whether the ordinance conforms to the mandates of Act 13. During this review process, municipalities have neither a forum nor a medium in which to advocate their position before the Public Utility Commission and explain why their respective zoning ordinances are constitutionally sound. Regulation of the oil and gas industry is the only municipal zoning activity that may be prematurely reviewed in the foregoing manner and then subject to an advisory opinion. To compound the problem, this advisory opinion will likely later be invoked by parties seeking to challenge an ordinance, and used as a catalyst to invoke the sanction of attorney’s fees that may be imposed upon municipalities for non-compliance.

156. The “special law” also serves to treat municipalities differently. Municipal Petitioners are municipalities with yearly operating budgets ranging from several hundred thousand dollars to an excess of ten (10) million dollars.

157. Municipalities that cannot afford to absorb the prospective of paying excessive attorney’s fees and costs, as is now possible under § 3307, a figure that may bankrupt a smaller municipality, will take less chances and may be forced to be more lenient in its laws. By contrast,

a more affluent municipality may be more aggressive and protective with its regulations as it can better absorb a potential award of attorney's fees and costs.

158. By way of illustration of Act 13's "special" treatment of industry in contrast to local municipal oversight, a company involved in oil and gas midstream operations, a compressor station operator, has written one of the Petitioners, Cecil Township, a letter on how life will be under Act 13. *See*, MarkWest Letter to Cecil Twp., attached hereto as Exhibit 44.

159. In 2011, the operator was denied a special exception in a I-1 area to construct a compressor station as it was determined by the Zoning Hearing Board that the proposed use was not compatible in an I-1 light industrial zone. The issue is currently on appeal. Industry now writes to remind the Township that the Commonwealth disagrees with its analysis of non-compatible uses and the use is now permitted under Act 13. The operator requested a permit and made sure to remind the Township that failure to do so as directed could be met with the sanction of attorney's fees.

160. No other industry could draw upon state law as an impetus to threaten such obvious financial harm to dissuade a municipality from doing what it believes valid, let alone override zoning decisions and designations.

161. The legislature has not provided any constitutional justification for this classification made in Act 13 and the differing treatment between oil and gas drillers and essentially all other industries. Accordingly, Act 13 constitutes a "special law" in violation of the equal protection principles embodied in Article III, Section 32 of the Pennsylvania Constitution.

C. Notification to Public Drinking Water Systems - § 3218.1

162. Section 3218.1 provides that, "[a]fter receiving notification of a spill, the department shall, after investigating the incident, notify any public drinking water facility that could be affected by the event that the event occurred ..." As a result of this provision,

potentially affected public drinking water facilities will be notified by the Pennsylvania Department of Environmental Protection (the “DEP”) in the event an oil and gas driller spills any of its hazardous contaminants on land or into water.

163. By the terms of the Act, no other notifications to any other drinking water sources are required after a spill and possible contamination. The Act creates an unconstitutional distinction between public drinking water supplies and private water wells in violation of equal protection principles. By way of illustration, a recent spill of 480 gallons of diesel fuel was not reported to the local municipality or nearby residents, potentially jeopardizing water supplies, children and farm animals. *See, Diesel Spill Polluted Greene County Waterway*, attached hereto as Exhibit 45.

164. The General Assembly has failed to provide any legitimate basis for the distinction between public and private drinking water supplies. While public drinking water has the benefit of receiving notification of a spill, it is also already routinely tested to ensure compatibility with drinking water standards. As a result, there are no special circumstances or need that would justify public drinking water supplies receiving the benefit of notification to the exclusion of private water wells. Quite the contrary, it is private water wells which can in fact demonstrate a special need for notification. Private water wells are neither publicly monitored nor routinely tested and are far more susceptible to contamination. As the majority of drilling is ongoing in more rural areas serviced by private water sources, the rationale for this exception suggests “special” treatment, different from all other uses in a municipality.

165. As municipalities may have laws that mandate reporting of all spills by all other industries to nearby residents and the municipality itself, consistent with its obligation pursuant to MPC § 10604 that, “provisions of zoning ordinances shall be designed to promote, protect and facilitate any or all of the following ... the provision of a safe, reliable and adequate water supply

for domestic, commercial, agricultural or industrial use,” municipalities face the risk that such laws would now be preempted by Act 13. This provision bears no rational basis to any legitimate public interest and serves to violate § 10604.

166. Act 13 creates a distinction which is entirely arbitrary – the need for public water sources to receive notification of spills and not private water sources is not unique. This sort of special privilege afforded to a selected group rests on an entirely artificial and arbitrary distinction in violation of Article III, Section 32. *See, Laplacca v. Philadelphia Rapid Transit Co.*, 108 A. 612 (Pa. 1919).

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1602 and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional violation of Article III, Section 32 of the Pennsylvania Constitution;
- II. For a decree to permanently enjoin future application of Act 13; and
- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT V – DECLARATORY JUDGMENT

Robinson Township et al. v. Commonwealth of Pennsylvania et al.

- V. Petitioners seek a declaration that Act 13 is an unconstitutional taking for a private purpose and an improper exercise of the Commonwealth’s eminent domain power in violation of Article I, Sections 1 and 10 of the Pennsylvania Constitution.**

167. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

168. Section 3241 of Act 13, entitled “eminent domain,” states that, “[e]xcept as provided in this subsection, a corporation empowered to transport, sell or store natural gas or manufactured gas in this Commonwealth may appropriate an interest in real property located in a

storage reservoir or reservoir protective area for injection, storage and removal from storage of natural gas or manufactured gas in a stratum which is or previously has been commercially productive of natural gas.”

169. The United States and Pennsylvania Constitutions mandate that private property can only be taken to serve a public purpose. *In re Opening Private Rd. for Benefit of O’Reilly*, 5 A.3d 246 (Pa. 2010). Private property cannot be taken for the benefit of another private property owner. *Kelo v. City of New London*, 545 U.S. 469 (2005).

170. The Pennsylvania Supreme Court has maintained that to satisfy this obligation of serving a “public purpose,” the public must be the primary and paramount beneficiary of any taking. *In re Opening Private Rd. for Benefit of O’Reilly*, 5 A.3d 246, 258 (Pa. 2010). In considering whether a primary public purpose was properly invoked, the Pennsylvania Commonwealth Court has looked for the “real or fundamental purpose” behind a taking. *In re Opening a Private Rd. for Benefit of O’Reilly Over Lands of (a) Hickory on Green Homeowners Ass’n & (b) Mary Lou Sorbara*, WL 1709846 (Pa. Commw. Ct. 2011) (on remand from the Pennsylvania Supreme Court). Stated otherwise, the true purpose must primarily benefit the public. *Id.*

171. The question that must be asked is what public purpose is being served by the appropriation of an interest in real property by a corporation for the storage of natural gas? If such is deemed a “public purpose,” then any oil and gas corporation by analogy should have the right by use of eminent domain powers to acquire real property for the placement of above-ground storage of natural gas, including the use of storage tanks.

172. Moreover, Section 3241 is inconsistent with the limitations on the use of eminent domain under the Property Rights Protection Act. 26 Pa. C.S.A. § 201 *et seq.* Pursuant to the Act, except as set forth in § 204(b), the exercise by any condemnor of the power of eminent

domain to take private property in order to use it for private enterprise is prohibited. Specifically, the appropriation of an interest in real property by a corporation for the storage of natural gas is not listed as an exception under § 204(b).

173. Because it cannot be justified on the basis of any paramount public purpose, Section 3241 of Act 13 facilitates an unconstitutional taking of private property for a private purpose in violation of Article I, Sections 1 and 10 of the Pennsylvania Constitution.

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1602 and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional taking in violation of Article I, Sections 1 and 10 of the Pennsylvania Constitution;
- II. For a decree to permanently enjoin future application of Act 13; and
- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT VI – DECLARATORY JUDGMENT

Robinson Township et al. v. Commonwealth of Pennsylvania et al.

- IV. Petitioners seek a declaration that Act 13 unconstitutionally violates Article I, Section 27 of the Pennsylvania Constitution by denying municipalities the ability to carry out their constitutional obligation to protect public natural resources.**

174. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

- 175. Article I, Section 27 of the Pennsylvania Constitution states the following:

The people have a right to clean air, pure water, and to the preservation of natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.

Pa. Const. Art. I, Sec. 27 (the "Environmental Rights Amendment").

176. Each governmental body has a role in implementing Article I, Section 27.
177. The Environmental Rights Amendment obligates municipalities to protect the environment.
178. Municipalities, as agents of the Commonwealth, share duties as trustees to conserve and maintain Pennsylvania's public natural resources for the benefit of its citizens. *United Artists Theater Circuit v. City of Philadelphia*, 635 A.2d 612, 620 (Pa. 1993).
179. "[M]unicipal agencies have the responsibility to apply the Section 27 mandate as they fulfill their respective roles in planning and regulation of land use, and they, of course, are not only agents of the Commonwealth, too, but trustees of the public natural resources as well ..." *Community College of Delaware County v. Fox*, 342 A.2d 468, 482 (Pa. Commw. 1975).
180. Act 13 violates the Pennsylvania Constitution because it prevents municipalities from carrying out their constitutional obligations under the Environmental Rights Amendment.
181. Act 13 eliminates the central role municipalities must play in protecting the health, safety, and welfare of their communities.
182. Act 13 essentially requires a municipality to allow industrial uses in non-industrial areas with little ability to protect the surrounding resources and community.
183. The Act also deprives municipalities of any meaningful role in state permitting, including eliminating municipalities' rights to appeal DEP permitting decisions for oil and gas well permits. (Sec. 3215(d)).
184. As the Pennsylvania Supreme Court found in *Payne v. Kassab*, 468 Pa. 226, 361 A.2d 263 (1976):

There can be no question that the Amendment itself declares and creates a public trust of public natural resources for the benefit of all the people (including future generations as yet unborn) and that the Commonwealth is made the trustee of said resources, commanded to conserve and maintain them. No implementing legislation is needed to enunciate these

broad purposes and establish these relationships; the amendment does so by its own Ipse dixit.

But merely to assert that one has a common right to a protected value under the trusteeship of the State, and that the value is about to be invaded, creates no automatic right to relief. The new amendment speaks in no such absolute terms. The Commonwealth as trustee, bound to conserve and maintain public natural resources for the benefit of all the people, is also required to perform other duties, such as the maintenance of an adequate public highway system, also for the benefit of all the people. See Sections 11 and 13(a) of Act 120, 71 P.S. 511, 513(a). ***It is manifest that a balancing must take place....***

Payne v. Kassab, 468 Pa. 226, 246, 245, 361 A.2d 263 (1976) (emphasis added); see *Del-AWARE, Unlimited, Inc. v. Commonwealth Dep't of Env'tl. Res.*, 508 A.2d 348 (Pa. Commw. Ct. 1986); *Pa. Env'tl. Mgt. Serv., Inc. v. Commonwealth Dep't of Env'tl. Res.*, 503 A.2d 477, 479-80 (Pa. Commw. Ct. 1986).

185. The General Assembly has denied Pennsylvania municipalities the ability to strike a balance between the development of minerals and “the preservation of the natural, scenic, historic and esthetic values of the environment.”

186. The General Assembly has denied Pennsylvania municipalities the ability to strike a balance between the development of minerals and “the preservation of the natural, scenic, historic and esthetic values of the environment.”

187. The Pennsylvania Supreme Court has unequivocally recognized that municipalities have a duty to protect the environment:

Whatever affects the natural environment within the borders of a township or county affects the very township or county itself. Toxic wastes which are deposited in the land irrevocably alter the fundamental nature of the land which in turn irrevocably alter the physical nature of the municipality and county of which the land is a part. It is clear that when land is changed, a serious risk of change to all other components of the environment arises. Such changes and threat of changes ostensibly conflict with the obligations townships and counties have to nature and the quality of life. ... Aesthetic and environmental well-being are important aspects of the quality of life in our society, *and a key role of local*

government is to promote and protect life's quality for all of its inhabitants.

[A]mong the responsibilities of local government is the protection and enhancement of the quality of life of its citizens. Indeed, it is a constitutional charge which must be respected by all levels of government in the Commonwealth.

Franklin Tp. v. Com., Dept. of Environmental Resources, 500 Pa. 1, 452 A.2d 718, 721-22 (1982) (emphasis added); *see also*, *Community College of Delaware County v. Fox*, 20 Pa. Commw. 335, 342 A.2d 468 (1975) (holding that the Department of Environmental Resources could not consider aspects of planning and zoning, and did not have the authority to withhold a permit on non-statutory environmental and land use criteria; instead, these are the concern and responsibility of municipal agencies).

188. Act 13 cuts off municipalities from playing their constitutionally mandated role in environmental protection and leaves a gap in regulatory protection that is contrary to dictates of the Environmental Rights Amendment.

189. Consistent with the requirements of the Environmental Rights Amendment, state law has long mandated and authorized an active role for municipalities in utilizing zoning ordinances and other local regulations to protect their communities' natural, cultural and historic resources.

190. For instance, the Municipalities Planning Code ("MPC") mandates that zoning ordinances "shall be designed . . . to promote, protect and facilitate . . . practical community development and proper density of population; . . . the provisions of adequate light and air, . . . the provision of a safe, reliable and adequate water supply for domestic, commercial, agricultural or industrial use, . . . as well as preservation of the natural, scenic and historic values in the environment and preservation of forests, wetlands, aquifers and floodplains"). 53 P.S. § 10604(1). The MPC further requires that, "[z]oning ordinances shall protect prime agricultural

land andshall provide for protection of natural and historic features and resources”); 53 P.S. §10603 (g)(1), (2). In addition, the MPC gives municipalities the authority to enact ordinance “provisions to promote and preserve prime agricultural land, environmentally sensitive areas and areas of historic significance,” 53 P.S. §10603(c)(7); and to “include provisions regulating the siting, density and design of residential, commercial, industrial and other developments in order to assure the availability of reliable, safe and adequate water supplies to support the intended land uses within the capacity of available water resources”). 53 P.S. §10603 (d); see also, 35 P.S. § 4012(a) (“Nothing in [the Air Pollution Control Act] shall prevent counties, cities, towns, townships or boroughs from enacting ordinances with respect to air pollution which will not be less stringent than the provisions of this act, or the Clean Air Act . . .”).

191. Compliance with Act 13 will require municipalities to act in conflict with their state statutory and regulatory obligations to utilize zoning to protect their high quality streams, prime farmland, limited water supplies, critical environmental areas, historic resources, the Appalachian Trail and designated Wild and Scenic rivers. *See* 25 Pa. Code § 9.126(a) (“Actions at the Commonwealth level are not able to provide fully for the protection of watersheds with high quality streams. The power to control land use directly is mainly in the hands of local governments.”); 25 Pa. Code § 9.114(b) (“Land use controls ... shall be in support of environmentally sensitive land policy planning at all levels of governments”); 5 Pa. Code § 9.155 (a) (recognizing the central role local governments play in addressing the problems of regions with limited water supply”); 25 Pa. Code § 9.201(b) (“the implementation of critical areas policies must be a responsibility shared by State, regional, county and municipal agencies”); 37 Pa.C.S.A. § 102 (recognizing the role of local governments in carrying out state historic preservation policies); 64 P.S. § 804 (requiring municipalities to enacting zoning ordinance provisions “to preserve the natural, scenic, historic and esthetic values of the [Appalachian Trail]

and to conserve and maintain it as a public natural resource”); 35 P.S. § 6018.401, et seq., 25 Pa. Code §§ 269a.21-269a.50 (applicants for hazardous waste treatment and disposal facilities must demonstrate compliance with local land use standards; DEP is obligated to consult with other governmental agencies in making a determination as to whether significant environmental harm may occur from an applicant’s proposed siting of such a facility); see also, the National Wild & Scenic Rivers Act of 1968, 16 U.S.C.A. §§ 1271--1287 and the Pennsylvania Scenic Rivers Act, 32 P. S. §§ 820.21--820.29; see also, 4 Pa. Code § 1.472(a)(3), (a)(5), (a)(7), (a)(9), Final River Management Plan, p. 29, 24 (to avoid federal land acquisition through eminent domain municipalities must implement and enforce “comprehensive plans and land use regulations ... for protection of the land and water resources of the river and the river corridor”).

192. If industrial drilling operations take place in a “recharge” area which serves as the source of water for a given community, municipalities are powerless to protect the water source should a spill or other contamination occur. A recharge area is where water, after rainfall, snowfall or another precipitation event occurs, enters the ground, becoming groundwater where it then seeps through spaces between particles of unconsolidated material or through networks of fractures and openings in consolidated rocks making its way down to the aquifer. As this water travels from the recharge area to the aquifer, it comes in contact with minerals from the rock and sand it flows through as well as contaminants that have been spilled or released into the soil from drilling operations. As a result, water coming into contact with contaminants in a recharge area undergo chemical and physical changes. Given that groundwater movement can take hours or years depending upon the depth of the aquifer, if the water comes into contact with volatile organic chemicals (VOCs) which are used extensively in oil and gas operations, many VOCs do not degrade quickly and can remain in groundwater and the aquifer for years and even decades.

Therefore, it is imperative that private water supplies, like springs and wells, which people depend upon for domestic use be protected.

193. Act 13 prevents Municipal Petitioners from carrying out their constitutional obligations as trustees of our public natural resources.

194. As trustees, Municipal Petitioners have a fiduciary obligation to ensure that all decisions affecting trust resources meet the requirements of the Environmental Rights Amendment.

195. Municipal Petitioners have a duty to evaluate the immediate and long-term impacts, both discrete and cumulative, on each element of the public trust resources and on the public's right to future enjoyment of these resources.

196. Act 13 has taken away municipalities' ability to act on evaluations of the potential impacts of oil and gas operations as it relates to municipal zoning districts, and has thereby denied Municipal Petitioners the ability to carry out these constitutional obligations.

197. Each aspect of "oil and gas operations" presents risks. Prior to Act 13, municipalities could have addressed these risks and carried out their constitutional mandates through zoning provisions that address local community development objectives, local natural resources and existing land uses. Act 13 eliminates municipalities' ability to carry out their constitutional mandates as illustrated below:

a. *Well location assessment operations, including seismic testing*

- i. Before gas drilling begins, well location assessment must occur to determine where oil and natural gas deposits are located such that extraction can be optimized.
- ii. Seismic testing is commonly employed, and can involve two different methods. One method involves using small explosive charges dropped

into holes drilled in the ground, which are then set off and create vibrations. A second method involves large seismic vibration trucks, which use a metal plate device to create vibrations. These vibrations allow for the mapping of underground deposits.⁸

- iii. Vibrations can negatively affect nearby water wells and structures if seismic testing is conducted in close proximity, especially if charges are used. Also, as the trucks are quite large and can weigh around 50,000 pounds,⁹ damage to farmfields and forested areas can result if the trucks are used off-road and land-clearing is necessary.
- iv. Before Act 13, municipalities could have carried out their constitutional mandates and mitigated these impacts by:
 - (1) requiring greater setbacks from homes, business, and historic properties than in industrial areas to lessen the impact and distraction of vibrations;
 - (2) creating a historic district overlay, where seismic testing is limited; or
 - (3) limiting seismic activity in areas subject to landslides, because of steep slopes, or subsidence, because of undermining.
- v. Act 13 requires municipalities to allow well and pipeline location assessment operations in all zoning districts, so long as it complies with laws governing explosives. Well location assessment must be allowed as a use permitted by-right, and municipalities are prohibited from increasing the 300 foot setback applicable to such operations. As a result, under Act

⁸ <http://www.naturalgas.org/naturalgas/exploration.asp>

⁹ “Seismic Testing: What’s it All About?” <http://extension.psu.edu/naturalgas/webinars/recorded/seismic-testing-what2019s-it-all-about/dennis-langlois-january-19-2012-powerpoint/view>

13, a municipality retains almost no ability to mitigate the impacts of such operations.

b. *Wellsite preparation and drilling operations*

- i. Natural gas well sites develop in different stages and are, on average, several acres in size. Prior to the start of operations, land must be cleared for access roads, the well pad, and any ancillary operations, impacting local forested areas and prime farmland.
- ii. Drilling entails twenty-four (24) hour operation of sizeable drilling rigs accompanied by numerous diesel engines to provide power to the site.
- iii. Unconventional drilling, including operations in the Marcellus Shale, relies on the combination of horizontal drilling technology and hydraulic fracturing technology. Unlike conventional vertical drilling and low pressure well stimulation, operations in the Marcellus and other unconventional formations rely on slick water, high volume, high pressure hydraulic fracturing and horizontal drilling, raising concerns given the different nature of the operations.
- iv. The construction and use of each well pad, as well as the construction and use of associated pits, roadways, pipelines and other related structures and land use changes, result in localized soil disturbances and compaction, erosion and sediment pollution of waterbodies, nonpoint and point source pollution, and stormwater runoff, which can contaminate local agricultural lands with industrial pollutants and threaten local drinking water sources

not only for humans, but also livestock and companion animals.¹⁰ As two examples:

- (1) A Spring 2011 Duke University study found systematic evidence of methane contamination of drinking water from gas extraction activities in at least three areas of Pennsylvania where gas drilling has been occurring for several years. This peer reviewed study found potentially explosive levels of methane in private drinking water wells located in active gas extraction areas where the gas wells were within one kilometer of the water wells. The isotopic “signature” of the methane found in drinking water pointed to thermogenic methane sources more so than biogenic sources. Thermogenic materials are from deep geologic zones such as the Marcellus Shale, while biogenic methane is produced from sources much closer to the surface.
 - (2) On May 17, 2011, the Pennsylvania Department of Environmental Protection fined Chesapeake Energy \$1.1 million dollars for contaminating well water and causing a tank fire during well drilling operations.¹¹ Chesapeake’s improper casing and cementing of wells allowed natural gas to seep into groundwater, contaminating the water supply of 16 families.
- v. Prior to Act 13, municipalities could have carried out their constitutional mandates by using zoning tools to address the intensity of these

¹⁰ Michelle Bamberger & Robert E. Oswald, *Impacts of Gas Drilling on Human and Animal Health*, New Solutions, 2012, at 54-61.

¹¹“ DEP Fines Chesapeake Energy More Than \$1 Million,”

<http://www.portal.state.pa.us/portal/server.pt/community/newsroom/14287?id=17405&typeid=1>; “Pennsylvania fines Chesapeake Energy \$1.1 million,” <http://www.businessweek.com/ap/financialnews/D9N9C7981.htm>.

operations, as well as their impacts on neighborhoods, agricultural operations, and local resources. These tools included:

- (1) Allowing extractive uses, including drilling operations, as uses permitted by-right only in industrial districts, and as conditional uses or prohibited in others. This is based on the often-continuous nature of such operations, and the noise, light, dust, emissions, and potential for leaks, blowouts, and explosions. An example could include conditional use approval for drilling operations in agricultural districts with standards designed to “encourage the continuity, development and viability of agricultural operations.” Section 603(h).
 - (2) More protective setbacks to decrease the risk of harm to livestock, agricultural water supplies, and crops;¹²
 - (3) Overlay districts to protect prime agricultural soils where they are located in the municipality;
 - (4) Resource protection districts, such as groundwater protection zones, or conservation districts, where development could be particularly damaging to important local resources;
 - (5) Historic district overlays, to provide added protection for historic properties and landmarks without burdening an entire zoning district.
- vi. Now, under Act 13, municipalities must allow drilling operations in every single zoning district as a use permitted by-right, including residential districts. The Act leaves no meaningful authority for a municipality to protect residential districts.

¹² See Michelle Bamberger & Robert E. Oswald, *Impacts of Gas Drilling on Human and Animal Health*, New Solutions, 2012, at 71.

c. *Hydraulic fracturing and well completion*

- i. Once the full length of the well is drilled, small explosive charges are set off at the end of the well to blow holes in the production casing so that fracturing fluid can be introduced to the shale. A mixture of millions of gallons of water, fine sand (or another type of “proppant”), and tons of different chemicals, including many carcinogenic, toxic and hazardous substances, are injected into the perforated casing. This is done at pressures high enough to rupture the shale formation and create fractures from which the trapped natural gas can flow into the production casing and flow up the well to the surface.
- ii. This fluid flows back to the surface, in addition to highly salty water from the formation itself, which must be stored and managed onsite until it can be transported for offsite treatment and disposal. This process may take several weeks and is extremely noisy, can require hundreds of heavy tanker-trucks going to and from the site twenty-four (24) hours a day.
- iii. Once all the wells have been fractured and casing is completed, flaring typically will occur, which will result in an open flame for up to several weeks in duration.
- iv. The final pad may have a number of features such as wellheads, condensate tanks, vapor destruction units with open flames, pipelines, and metering stations. The final well site may still be more than one (1) acre. All of these items require ongoing truck traffic and maintenance for the life of the site.

- v. As some municipalities have several different layers of shale, i.e., the Marcellus, Utica, and Upper Devonian, this well drilling, fracturing, and completion process can be repeated several times, tripling the industrial activities. Moreover, companies may return to rework existing wells, or to drill more on the pad.
- vi. These operations pose risks to property, health, and local resources due to the threat of spills and also loss of control that can result in fracturing fluids and other drilling material spraying onto adjacent property, livestock fields, and local waterways. An April 2011 incident resulted in thousands of gallons of fluid flowing from the well into a tributary of the Susquehanna River.¹³
- vii. High-volume hydraulic fracturing also can require anywhere from hundreds to one thousand tanker truck trips to a wellsite. These trucks are used to transport the millions of gallons of water and thousands of gallons of chemicals needed for such operations. The increased truck traffic presents a major risk of serious vehicular accidents as these large trucks travel down rural roads never designed to handle such traffic.
- viii. Prior to Act 13, municipalities could have carried out their constitutional mandates and mitigated these impacts by limiting the districts in which operations could be located, which could decrease localized exposure to dust, noise, chemical emissions, and the potential for property damage due to blowouts. Zoning has also provided municipalities with a way to direct drilling operations into areas of the municipality more capable of handling

¹³ Pittsburgh Post-Gazette, "Bradford County shale well spews fluids," available at <http://old.post-gazette.com/pg/11111/1140850-503-0.stm>

heavy truck traffic, such as areas directly off a main highway. A municipality could also require more protective setbacks from schools, hospitals, and nursing homes, where the potential for adverse health impacts could be greater.

- ix. Now, under Act 13, these operations must be permitted by-right in every zoning district, with no meaningful ability to protect the character of residential neighborhoods, and citizens' health, safety, and property from such operations. The Act's setbacks allow a several acre wellsite, including hydraulic fracturing operations, to be 500 feet from an existing building, regardless of the neighborhood or surrounding land uses. Oil and gas pipelines and access roads can be directly next to a building. The Act prevents municipalities from increasing any of these setbacks, regardless of the risks posed in a particular location.

d. *Impoundments*

- i. Similarly, wastewater impoundments, store millions of gallons of fluids that include a mixture of chemicals, such as benzene, toluene, ethylbenzene, and xylene ("BTEX"); microbiocides; glycols; glycol ethers; and petroleum products, some of which are carcinogenic.¹⁴ Flowback water, brought to the surface in the hydrofracking process, and formation or "produced" water, will contain these additives and other potential contaminants. These chemicals become more concentrated as

¹⁴ New York State Dept. of Env't'l Conservation, Revised Draft Supplemental Generic Environmental Impact Statement, Chapter 5, at 5-46 through 5-66, http://www.dec.ny.gov/docs/materials_minerals_pdf/rdsgeisch50911.pdf ("NY DEC Revised DSGEIS Ch. 5").

water evaporates from an open impoundment, and open impoundments can release VOCs into the air.¹⁵

- ii. Impoundments containing flowback water, produced water, and other constituents such as drilling mud and cuttings pose a serious health risk to livestock, humans, and companion animals that come into contact with the water. For instance, peer reviewed reports document that tears in wastewater impoundments have lead to soil contaminated with strontium, chloride, sulfate, and sodium and the loss of livestock.¹⁶
- iii. Prior to Act 13, municipalities could have carried out their constitutional mandates and mitigated against these harms by:
 - (1) Requiring wider setbacks from impoundments to decrease the risk of harm to livestock, agricultural water supplies, and crops;¹⁷
 - (2) Utilizing overlay districts to protect prime agricultural soils where they are located in the municipality;
 - (3) Prohibiting impoundments in residential and agricultural districts; or
 - (4) Directing impoundments into district near main highways, to prevent heavy truck traffic in residential areas.
- iv. Now, under Act 13, municipalities must allow impoundments as uses permitted by-right in every zoning district so long as the impoundment is 300 feet from an existing building. A municipality is prohibited from increasing this setback, even if a greater setback is warranted due to the

¹⁵ Michelle Bamberger & Robert E. Oswald, *Impacts of Gas Drilling on Human and Animal Health*, New Solutions, 2012, at 71.

¹⁶ Michelle Bamberger & Robert E. Oswald, *Impacts of Gas Drilling on Human and Animal Health*, New Solutions, 2012, at 64-66.

¹⁷ Michelle Bamberger & Robert E. Oswald, *Impacts of Gas Drilling on Human and Animal Health*, New Solutions, 2012, at 71.

presence of highly-populated residential neighborhoods, agricultural areas with livestock operations, or important groundwater resource areas.

e. Processing Plants

- i. Natural gas processing facilities are used to refine natural gas into “pipeline quality” gas that can be transported via a transmission line.¹⁸ natural gas processing facility is essentially a refinery for natural gas before it can be transported in a transmission line.¹⁹
- ii. The entire refining process can include desulphurization, nitrogen extraction, methane removal, and fractionation, which is the separation of natural gas liquids. Processing requires a number of chemicals as well, including amines, which are used to remove sulfur from the gas, solvents, and refrigerants.²⁰ Processing facilities may also contain condensate tanks and evaporators.
- iii. Natural gas processing facilities pose a risk of fire and explosion, and of contamination to surrounding soils, local streams, and groundwater resources. They also create a source of noise and light that can disturb adjacent property owners, as well as livestock operations.
- iv. In addition, processing facilities are a significant source of emissions.
- v. Before Act 13, municipalities could carry out their constitutional mandates and mitigate against these risks by, for instance:

¹⁸ <http://www.arcticgas.gov/sites/default/files/documents/2006-eia-ng-processing.pdf>, at 3.

¹⁹ See photos at http://www.naturalgas.org/naturalgas/processing_ng.asp

²⁰ “Natural Gas Processing: The Crucial Link Between Natural Gas Production and its Transportation to Market,” <http://www.arcticgas.gov/sites/default/files/documents/2006-eia-ng-processing.pdf>, at 4.

- (1) prohibiting processing facilities in agricultural districts to “encourage the continuity, development and viability of agricultural operations.” Section 603(h); and
 - (2) imposing greater setbacks from processing plants, particularly from adjoining lots.
- vi. Act 13 removes this ability and consequently, a processing facility can be built up to 200 feet from an adjoining lot owner, regardless of whether that lot is residential, agricultural, or commercial.
- f. Further, Act 13 assumes that all municipalities maintain agricultural districts that are separate from residential districts. However, for instance, Nockamixon Township has both a “Residential/Agriculture” (“R/A”) and “Residential” district. The Act is silent on how municipalities like Nockamixon are to apply Act 13’s sharp distinction between residential and agricultural districts.
- g. *Compressor Stations*
- i. Compressor stations are most commonly large buildings sited on several acres of land that gather gas from multiple wells,²¹ remove impurities such as water, and compress the gas for pipeline transport²² through the use of gas-powered engines or turbines, or electric motors.²³

²¹ New York State Dept. of Env’tl Conservation, Revised Draft Supplemental Generic Environmental Impact Statement, Chapter 5, at 5-142, http://www.dec.ny.gov/docs/materials_minerals_pdf/rdsgeisch50911.pdf (“NY DEC Revised DSGEIS Ch. 5”).

²² Pipeline and Hazardous Materials Safety Administration, “Compressor Stations,” <http://primis.phmsa.dot.gov/comm/NGCompressor.htm>.

²³ New York State Dept. of Env’tl Conservation, Revised Draft Supplemental Generic Environmental Impact Statement, Chapter 6, Part A, at 6-107, http://www.dec.ny.gov/docs/materials_minerals_pdf/rdsgeisch6a0911.pdf (“NY DEC Revised DSGEIS Ch. 6”).

- ii. Dehydrators remove water vapor from the gas, typically by using a chemical such as tri-ethylene glycol.²⁴
- iii. If the gas is “wet,” meaning it has hydrocarbons present, separators and condensate tanks may be necessary. Separators remove brine²⁵ and condensate from the gas, which is typically water and a mix of hydrocarbons.²⁶ The separator divides the natural gas and other vapors from the condensate, which drops into a condensate tank.²⁷
- iv. Condensates are composed of aromatic hydrocarbons such as benzene, toluene, xylene and ethyl-benzene (“BTEX”). *See*, Exhibit 13.
- v. Likewise, compressor stations release aromatic organic chemicals into the air and also release benzene, toluene along with other volatile organic compounds. *See*, Exhibit 13.
- vi. Consequently, these operations create a high risk for leaks and spills to neighboring properties, including farms, homes, preserved open spaces, and commercial businesses.
- vii. They also pose a fire and explosion hazard as illustrated by compressor station fires in 2011 in Bedford and Washington Counties.²⁸

²⁴ NY DEC Revised DSGEIS Ch. 5, at 5-140; George Jugovic Jr., Regional Director, Pa. Dept. of Env't'l Protection Southwest Regional Office, Presentation at Fayette County Marcellus Shale Task Force Meeting, at 15, <http://gaspgh.org/wp-content/uploads/2011/01/Fayette-County-Marcellus-Jugovic-3.pdf>.

²⁵ NY DEC Revised DSGEIS Ch.5 at 5-139 to 5-140.

²⁶ NY DEC Revised DSGEIS Ch. 6, Part A, at 6-104 to 6-105,

²⁷ *Id.*

²⁸ Bedford County incident: <http://stateimpact.npr.org/pennsylvania/jp/natural-gas-compressor-station-fire-forces-evacuations/>; <http://tribune-democrat.com/local/x57155641/BREAKING-NEWS-Natural-gas-compressor-station-fire-forces-evacuations-near-Bedford-County-Maryland-line>; others: <http://old.post-gazette.com/pg/11285/1181540-100.stm>; <http://marcellusdrilling.com/2011/03/cause-of-fire-at-markwest-compressor-station-in-western-pa-was-faulty-water-heater/>

- viii. Noise and vibrations can also present problems for nearby homeowners, in addition to livestock operations, as illustrated by a compressor station in Herrick Township located among nine homes.²⁹
- ix. Prior to Act 13, municipalities could have carried out their constitutional mandates and mitigated against these risks by:
 - (1) Allowing compressor stations as uses permitted by-right only in industrial districts.
 - (2) Prohibiting compressor stations in residential districts.
 - (3) Prohibiting or permitting as a conditional use in agricultural districts.
 - (4) Requiring that compressor stations, if permitted as conditional uses in commercial districts, meet noise standards for industrial uses that maintain the character of the neighborhood.
 - (5) Establishing setbacks from lot lines and buildings that protect adjacent property owners and their operations should a fire, explosion, or leak occur.
- x. Act 13 removes this ability from municipalities. Act 13 requires compressor stations as uses permitted by-right in agricultural and industrial districts, and as conditional uses in all other districts including residential areas. It also prevents municipalities from applying noise standards to compressor stations even though all other industrial uses must abide by such standards if placed in a commercial area. Act 13 also prevents municipalities from increasing setbacks to protect adjacent

²⁹ "Residents Complain of Location of Compressor Station in Herrick Township," <http://thedailyreview.com/news/residents-complain-of-location-of-compression-station-in-herrick-township-1.1289456>

property owners, even where 750 feet is insufficient to prevent vibrations from rattling nearby homeowners.

198. Municipal Petitioners, as trustees, have a reasonable basis to conclude that the use of land within their communities for oil and gas operations will cause degradation and diminution of trust resources.

199. Act 13 deprives municipalities of their ability to carry out their obligations as trustees and to protect trust resources, and thereby violates Article I, Section 27 of the Pennsylvania Constitution.

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1602 and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional violation of Article I, Section 27 of the Pennsylvania Constitution;
- II. For a decree to permanently enjoin future application of Act 13; and
- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT VII – DECLARATORY JUDGMENT

Robinson Township et al. v. Commonwealth of Pennsylvania et al.

VII. Petitioners seek a declaration that the delegation of powers to the Pennsylvania Public Utility Commission in Act 13, Section 3305 is an unconstitutional breach of the doctrine of Separation of Powers of Government.

A. Section 3305(a) of Act 13 is an unconstitutional violation of the separation of powers of government because it allows an agency of the executive branch of government to play an integral role in the crafting of legislation.

200. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

201. Act 13 fundamentally upsets the notions of Separation of Powers and Checks and Balances that have been the hallmark of the government of the United States and the Commonwealth of Pennsylvania since the 1780's, with the legislature in charge of making laws, the executive overseeing enforcement and the judiciary responsible for interpretation. *Wayman v. Southard*, 23 U.S. 1 (1825). Each branch of government has its own unique powers that are not shared with other branches. *Citizens' Savings and Loan Ass'n v. City of Topeka*, 87 U.S. 655 (1874).

202. Zoning is a uniquely legislative act. *Best v. Zoning Board of Adjustment of the City of Pittsburgh*, 393 Pa. 106, 111, 141 A.2d 606, 610 (1958). Just as enactments of the Pennsylvania General Assembly are presumed to be constitutionally valid, the legislative enactments of municipalities, ordinances, are also presumed to be constitutionally valid. *Bilbar Construction Co. v. Easttown Township Bd. of Adjustment*, 393 Pa. 62, 71, 141 A.2d 851, 856 (1958).

203. Pursuant to the doctrine of the Separation of Powers between branches of government, only the judicial branch of government is entrusted with making determinations regarding the constitutionality of legislation. *In re Investigation by Dauphin County Grand Jury, September 1938*, 332 Pa. 342, 352-53, 2 A.2d 804, 807 (1938). Because the legislative branch of government possesses the sole power to draft laws, and these laws are presumed to be constitutionally valid, legislative bodies have no legal right or standing to seek an advisory opinion regarding legislation from another branch of government without the existence of a dispute regarding the legislation. *Township of Whitehall, v. Oswald*, 400 Pa. 65, 68-69, 161 A.2d 348, 349-50 (1960) (stating that advisory opinions "encourage legislative irresponsibility").

204. Act 13 violates the Separation of Powers doctrine because it vests the Pennsylvania Public Utility Commission, an executive agency of the Commonwealth of

Pennsylvania, with the authority to provide municipalities with advisory opinions regarding the validity of proposed ordinances. Section 3305 of Act 13 states:

(a) Advisory opinions to municipalities

1. A municipality may, *prior to the enactment* of a local ordinance, in writing, *request the commission to review a proposed local ordinance* to issue an opinion on whether it violates the MPC, this chapter or Chapter 32 (relating to development).
2. Within 120 days of receiving a request under paragraph (1), the commission shall, in writing, *advise the municipality* whether or not the local ordinance violates the MPC, this chapter or Chapter 32.
3. An opinion under this subsection shall be advisory in nature and not subject to appeal.

205. As clearly set forth in *Bilbar Construction Co. and Township of Whitehall*, the system of government in the United States and in the Commonwealth of Pennsylvania does not allow legislative bodies to seek advisory opinions from other branches of government regarding legislation.

206. Although Section 3305(a) of Act 13 is unconstitutional on its own, Section 3305(a) is merely part of a broader, unconstitutional scheme, whereby the Pennsylvania General Assembly has deliberately created a dynamic in which the executive branch of government effectively drafts legislation.

207. If Municipal Petitioners enact ordinances or enforce ordinances that are contrary to Act 13, monetary sanctions may be imposed upon them:

a. If the court determines that the local government enacted or enforced a local ordinance with *willful or reckless disregard of the MPC*, this chapter or Chapter 32 (relating to development), it may *order the local government to pay the plaintiff reasonable attorney fees* and other reasonable costs incurred by the plaintiff in connection with the action.

Act 13, at § 3307(1).

208. Read together, Sections 3305(a) and 3307(1) of Act 13 effectively force municipalities to surrender their legislative functions to the executive branch of government. As caretakers of citizens' tax dollars, Municipal Petitioners do not want to be forced to transfer these public funds to opponents' private law firms if Municipal Petitioners lose an ordinance challenge, which may subject to Municipal Petitioners to personal liability for breaching fiduciary duties.

209. Section 3305(a) of Act 13 allows the Public Utility Commission to pass judgment on draft ordinances, but these determinations are not subject to appeal. As such, if the Public Utility Commission advises a municipality that its ordinance is not in conformance with the MPC and/or Act 13, the municipality may either change the ordinance according to the directive of the executive branch agency or refuse to enact the ordinance and be subject to a court challenge, wherein the Public Utility Commission's finding could be entered as evidence of the municipality's willful or reckless disregard of the MPC or Act 13.

210. Conversely, if a municipality enacts an ordinance without seeking the advice of the Public Utility Commission and a court determines that the ordinance is contrary to the MPC and/or Act 13, the municipality's failure to present the draft ordinance to Public Utility Commission would undoubtedly be used as evidence of the municipality's reckless conduct.

211. In sum, Sections 3305(a) and 3307(1) of Act 13 function as a unified scheme wherein Municipal Petitioners are left with no choice but to surrender their legislative functions to the edicts of an executive branch agency, the Pennsylvania Public Utility Commission. Neither the United States Constitution nor the Pennsylvania Constitution condones such a result. *See, Bilbar Construction Co.; Twp. of Whitehall.*

B. Section 3305(a) of Act 13 is an unconstitutional violation of the separation of powers of government because it vests the executive branch of government with the power to determine the constitutionality of laws.

212. As noted *supra*, only the judicial branch of government has the power to make determinations regarding the constitutionality of legislative enactments. *In re Investigation by Dauphin County Grand Jury, September 1938*, 332 Pa. 342, 352-53, 2 A.2d 804, 807 (1938); *First Judicial Dist. of Pennsylvania v. Pennsylvania Human Relations Commission*, 556 Pa. 258, 727 A.2d 1110, 1112 (1999); *Commonwealth v. Mockaitis*, 575 Pa. 5, 824 A.2d 488, 499 (2003).

213. Despite this well-settled principle of law, Act 13 vests the Pennsylvania Public Utility Commission with the power to decide the constitutionality of municipal legislative ordinances, in Section 3305(b):

(b) Orders.

(1) An owner or operator of an oil or gas operation, or a person residing within the geographic boundaries of a local government, who is aggrieved by the enactment or enforcement of a local ordinance ***may request the commission to review the local ordinance of that local government to determine whether it violates the MPC, this chapter or Chapter 32.***

(2) Participation in the review by the commission shall be limited to parties specified in paragraph (1) and the municipality which enacted the local ordinance.

(3) Within 120 days of receiving a request under this subsection, ***the commission shall issue an order to determine whether the local ordinance violates the MPC, this chapter or Chapter 32.***

(4) An order under this subsection shall be subject to de novo review by the Commonwealth Court. A petition for review must be filed within 30 days of the date of service of the commission's order. The order of the commission shall be made part of the record before the court.

Act 13, Section 3305(b) (emphasis added).

214. The mandates in Section 3305(b) of Act 13 represent the Pennsylvania General Assembly's fundamental misunderstanding of the purpose and extent of the zoning power. Whereas the MPC provides municipalities with guidance regarding the necessary considerations

before zoning ordinances may be enacted, these requirements are not rooted in the MPC; they are a codification of *constitutional requirements and standards*.

215. Accordingly, because the power to zone is based on protection of constitutional rights, any challenge to the provisions in a zoning ordinance is necessarily constitutional in nature, because a legislature cannot constitutionally enact any zoning ordinance that is not a proper use of the sovereign's police power and does not benefit the health, safety, morals and general welfare of the community. *Village of Euclid, Ohio v. Ambler Realty, Co.* 272 U.S. 365, 47 S.Ct. 114 (1926).

216. Therefore, a challenge to a zoning ordinance that is presented to the Pennsylvania Public Utility Commission would not merely be limited to whether the ordinance violated the MPC and/or Act 13. Instead, the challenge would require the Pennsylvania Public Utility Commission, an executive branch agency, to pass judgment as to the *constitutionality* of the law. This is not permissible and is a violation of the doctrine of separation of powers. *In re Investigation by Dauphin County Grand Jury, September 1938*, 332 Pa. 342, 352-53, 2 A.2d 804, 807 (1938); *First Judicial Dist. of Pennsylvania v. Pennsylvania Human Relations Commission*, 556 Pa. 258, 727 A.2d 1110, 1112 (1999); *Commonwealth v. Mockaitis*, 575 Pa. 5, 824 A.2d 488, 499 (2003).

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1602 and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional violation of the separation of powers principle embodied in the Pennsylvania Constitution;
- II. For a decree to permanently enjoin future application of Act 13; and
- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT VIII – DECLARATORY JUDGMENT

Robinson Township et al. v. Commonwealth of Pennsylvania et al.

VIII. Petitioners seek a declaration that the delegation of powers to the Pennsylvania Department of Environmental Protection in Act 13, Section 3215(b)(4) allowing the agency to grant waivers without defined standards is an unconstitutional breach of the doctrine of Separation of Powers embodied in the Pennsylvania and United States Constitutions.

217. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

218. Section 3215(a) of Act 13 provides in part that, “...the well operator shall be granted a variance from the distance restriction upon submission of a plan identifying the additional measures, facilities or practices as prescribed by the department to be employed during well site construction, drilling and operations.”

219. Section 3215(b) provides additional limitations in terms of purported minimum setbacks for well sites and disturbed areas from “solid blue lined stream, spring or body of water” and from “wetlands.” *See*, Act 13, § 3215(b)(1)-(3). However, Section 3215(b)(4) then provides, “The department shall waive the distance restrictions upon submission of a plan identifying additional measures, facilities or practices to be employed during well site construction, drilling and operations necessary to protect the waters of this Commonwealth. The waiver, if granted, shall include additional terms and conditions required by the department necessary to protect the waters of this Commonwealth.” *Id.* at § 3215(b)(4).

220. As described above, Chapter 33 of Act 13 relates to oil and gas operations and local ordinances. Section 3304, entitled “Uniformity of local ordinances” provides, in addition to essentially requiring that oil and gas operations be permitted in all zones, the maximum setbacks that local ordinances can specify for oil and gas operations.

221. The broad delegation provided for in Section 3215(b)(4) is an unconstitutional delegation of legislative powers to an executive administrative agency in violation of the non-delegation doctrine.

222. The non-delegation doctrine is rooted in Article I of the U.S. Constitution and Articles II, IV, and V of the Pennsylvania Constitution which vests legislative powers in the legislative branches. A law that combines executive authority with the functions of the legislature eliminates the checks and balances built into the Constitution, thereby violating the separation of powers principle.

223. Specifically, Article II, § 1 of the Pennsylvania Constitution provides that “[t]he legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.”

224. By legislative act, there must be some “intelligible principle to which the person or body authorized to take action is directed to conform.” *Mistretta v. U.S.*, 488 U.S. 361, 372 (1989). The court must step in where the legislature has, “...failed to articulate any policy or standard that would serve to confine the discretion of the authorities to whom Congress had delegated power.” *Id.* at 374.

225. The Pennsylvania Supreme Court has similarly stated that, “[i]t is a well-settled maxim that under our theory of the separation of powers of government, the legislative, judicial and executive, the powers of each branch must be preserved to it; the legislature cannot delegate its powers to enact laws directly or indirectly to any other body or government agency.” *Wilson et ux. v. School Dist. of Philadelphia et al.*, 195 A. 90, 93 (Pa. 1937). The General Assembly must set adequate standards and guidelines for the agency delegated to execute or administer a law. *Blackwell v. Com. State Ethics Com’n*, 567 A.2d 630, 637 (Pa. 1989). The “prohibition

against delegation of legislative powers requires that the basic policy choices be made by the General Assembly.” *Id.* (emphasis in original).

226. “It is axiomatic that the Legislature cannot constitutionally delegate the power to make law to any other branch of government or to any other body or authority.” *Eagle Environmental II, L.P. v. Commonwealth of Pennsylvania, Department of Environmental Protection*, 584 Pa. 494, 517, 884 A.2d 867, 880 (2005) (internal quotations and citations omitted). Although the Legislature may confer authority and discretion in connection with the execution of the law “[t]he principal limitations on this power are twofold: (1) the basic policy choices must be made by the Legislature; and (2) the legislature must contain adequate standards which will guide and restrain the exercise of the delegated administrative functions.” *Id.*

227. Section 3215 grants to Operators *the right* to obtain a variance from the distance restrictions (e.g. “shall be granted a variance....” and “[t]he department shall waive the distance requirements” *See supra.*). However, despite the fact that the Department has *no choice but to grant* the variance of these distance restrictions, Act 13 wholly fails to specify how far into these minimum distance requirements the Department of Environmental Protection can allow an operator to encroach and what specific safeguards or standards need to be met. To be certain, requiring “submission of a plan identifying additional measures, facilities or practices to be employed...necessary to protect the waters of this Commonwealth” as the only requirement for the grant of the waiver or variance does not supply any guidance whatsoever relative to how much the distance requirement can be reduced or what measures need to be employed to protect surrounding citizens or waterways.

228. Thus, under the “guidance” of Act 13, so long as an Operator says it will protect the waters of the Commonwealth, the Department, which *must* allow the Operator to encroach upon the minimum distance requirements, can conceivably allow the Operator to encroach upon

the setback to the point of nullifying it; the Operator could construct its well site within ten (10) feet of a building, stream, spring, body of water or wetland without trying to meet any specific standards. This essentially obviates the need to comply with a setback.

229. Section 3215(b)(4) fails to set forth any guiding standards or policy initiatives with which to limit the discretion of the Pennsylvania DEP. While the law states that the DEP shall grant waivers, it is entirely unclear what will be deemed “necessary” to protect the water of the Commonwealth. It is likewise unclear as to what “additional terms and conditions” should be required for the protection of Commonwealth waters. As a result, the DEP will be permitted to make legislative policy judgments otherwise reserved for the General Assembly.

230. The practical application of Act 13 demonstrates not only that it is internally inconsistent and contradictory, but that it wholly fails to provide adequate guidance to the Department for purposes of enforcing and administering the law. This results in the Department having *de facto* legislative power and ability to make basic policy choices regarding distance requirements and therefore violating the non-delegation doctrine of the Pennsylvania Constitution.

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1602 and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional violation of the non-delegation doctrine embodied in the United States and Pennsylvania Constitutions;
- II. For a decree to permanently enjoin future application of Act 13; and
- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT IX- VAGUENESS

Robinson Township et al. v. Commonwealth of Pennsylvania et al.

IX. Petitioners seek a declaration that Act 13 is unconstitutionally vague because its setback provisions and requirements for municipalities fail to provide the necessary information regarding what actions of a municipality are prohibited.

231. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

232. “A law may be unconstitutionally vague and thus violate the Due Process Clause of the United States Constitution if it fails to provide the necessary information such that an ordinary citizen could understand what conduct is prohibited.” *Eagle Environmental II, L.P.*, 584 Pa. at 517, 884 A.2d at 881.

233. As set forth above, Act 13 sets forth distance requirements for oil and gas well sites and related operations from buildings, streams, springs, bodies of water and wetlands, but allows for the reduction of these distance requirements and requires the Department of Environmental Protection to allow such reductions with unfettered discretion. *See supra*.

234. Additionally as described above, Act 13 mandates these distance requirements for municipalities, requiring that any local zoning ordinance governing oil and gas operations strictly comply with the same. Act 13, § 3304(b).

235. However, Act 13 wholly fails to provide any meaningful information or guidance to municipalities with regard to when to grant a waiver or variance of the distance requirements pursuant to Section 3215(a) and (b).

236. Where an Operator seeks and receives its mandatory waiver of the distance requirements from the Department of Environmental Protection, it is reasonable to conclude that the Operator actually intends to install or construct its well site or related facilities within that distance requirement. For a municipality that has in place an ordinance that complies with Act 13, § 3304, the question then becomes what procedure is required. Included here would be the

questions of whether the Operator also has to seek a variance from the distance requirements set forth in the local ordinance; whether the municipality has to treat the Department's grant of waiver or variance as an automatic waiver or variance of the local ordinance; and whether the municipality will be given time in addition to the strict 30-day period prescribed by Section 3304(b)(4) for a municipality to issue a permit for permitted uses by right.

237. Act 13 is silent on these very practical and very real questions despite the fact it provides for significant punishment to a municipality that does not comply with its requirements. The result is that it is unclear as to what actions are prohibited and what actions are allowed such that municipalities will necessarily be kept from performing their duties to protect the health, safety, welfare and morals of their communities. These failures render Act 13 unconstitutionally vague and invalid.

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1061(b)(2) and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional violation of the Due Process Clause of the United States Constitution;
- II. For a decree to permanently enjoin future application of Act 13; and
- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT X – VAGUENESS

Robinson Township et al. v. Commonwealth of Pennsylvania et al.

- X. Petitioners seek a declaration that Act 13 is unconstitutionally vague because its timing and permitting requirements for municipalities fail to provide the necessary information regarding what actions of a municipality are prohibited.**

238. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

239. “A law may be unconstitutionally vague and thus violate the Due Process Clause of the United States Constitution if it fails to provide the necessary information such that an ordinary citizen could understand what conduct is prohibited.” *Eagle Environmental II, L.P.*, 584 Pa. at 517, 884 A.2d at 881.

240. Section 3304(b)(4) requires that “[i]n order to allow the [sic] for the reasonable development of oil and gas resources, a local ordinance:...(4) Shall have a review period for permitted uses [by right] that does not exceed 30 days for complete submissions or that does not exceed 120 days for conditional uses.”

241. Section 3304(b)(5.1), as set forth above in full (*supra*, ¶ 47), requires that municipalities allow: well sites and impoundments in all districts as permitted uses by right; compressor stations as permitted uses by right in agricultural and industrial zones and as conditional uses in all other zones; and natural gas processing plants as permitted uses by right in industrial zones and conditional uses in agricultural zones. On its face, Act 13 requires municipalities to “permit” all of these activities within the time constraints provided.

242. Regardless of whether a particular use is defined as a permitted use by right or a conditional use within a particular zone, if that use contemplates subdivision and land development, in all instances the municipality is required to undertake procedures pursuant to the Subdivision and Land Development Act (“SALDO”), (Article V of the Pennsylvania Municipal Planning Code) to ensure that the actual plans and construction of the use satisfy these requirements. *See* Article V of the MPC. Procedures for permitting pursuant to the SALDO are statutorily required to ensure the health, safety, welfare and morals of the community with regard to all land development within the municipality. *See id.* This is especially important for intense industrial uses that include large structures and significant modifications to the land. Oil and gas

operations, by all accounts, **are intense industrial uses**. For instance, the natural gas processing plant located in Houston, Pennsylvania occupies a 100-acre site. *See* Exhibit 12.

243. Procedures under the SALDO require the approval of the Board of Supervisors in order for a Zoning Officer to approve or “permit” the application, which in turn requires a public meeting in which the applicant demonstrates compliance with the SALDO and allows the Board of Supervisors to determine the same. *See* Article V of the MPC. However, pursuant to well-settled existing law, the governing authorities of a municipality, including the board of supervisors and the planning commission, are only required to meet once per month. *See*, 53 P.S. § 65603. Under the timing constraints of Act 13, these governing bodies will be required to meet multiple times in excess of their monthly meeting to handle the significant amount of applications for well sites, impoundments, compressor stations and processing plants that can be expected, substantially increasing the cost to taxpayers. Considering that municipalities in areas of heavy drilling, such as Mt. Pleasant Township, which has hundreds of wells drilled before the implementation of Act 13, the number of applications and the time, cost and burden on municipalities can be expected to increase exponentially under the industry-friendly Act 13. As such, the time, expense, and burden of having to comply with the requirement that a permit be issued within 30 days for a permitted use by right and within 120 days for a conditional use is wholly unrealistic.

244. Finally, in all circumstances under the SALDO, a Board of Supervisors has the ability to deny the application for failing to meet the requirements of the law. Likewise, an aggrieved individual has the right to appeal the Board’s decision in approving or denying the application under the SALDO. *See*, Article V of the MPC.

245. The SALDO process itself consists of several stages with different levels of planning and review involved. To fit such layered procedures within a limited specific time

constraint is a near impossibility. Where some of Municipal Petitioners' Boards generally meet only once a month, a thirty (30) day timeframe for issuance of the permit would effectively void the entire SALDO process. Because the logistics are unrealistic, it is unclear to Municipal Petitioners whether the terms of Act 13 are meant to preempt the SALDO process, and grant the oil and gas industry an exemption from compliance with those provisions. Accordingly, Act 13 is unconstitutionally vague.

246. Thus, in placing an inflexible 30-day time period to permit certain oil and gas operations within the municipality, Act 13 wholly fails to address the actual requirements and procedures necessary and required for a municipality to comply with before approving even uses defined as "permitted." In doing so, Act 13 places the municipality in the untenable position of either attempting to comply with Act 13 by issuing the permit within the express time constraints, or to violate the statutory—and constitutionally required—procedures it is required to follow **for every single other use**.

247. As with other practical considerations and effects that the General Assembly wholly failed to consider with this special law for the oil and gas industry, Act 13 is entirely silent upon what it means for a municipality to "permit" these industrial uses. The necessary and inevitable result of this is that municipalities are left to either follow the procedural requirements imposed upon them by statute for every single use and risk violating Act 13—and face the severe sanctions it imposes—or purportedly comply with Act 13 and ignore these procedural requirements necessary for municipality's actions in zoning to be constitutional.

248. Act 13 is therefore unconstitutionally vague and therefore invalid under the Due Process Clause of the United States Constitution.

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1061(b)(2) and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional violation of the Due Process Clause of the United States Constitution;
- II. For a decree to permanently enjoin future application of Act 13; and
- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT XI – DECLARATORY JUDGMENT

Mehernosh Khan, M.D., v. Commonwealth of Pennsylvania et al.

- XI. Petitioners seek a declaration that Act 13 is an unconstitutional “special law” in violation of Article III, Section 32 of the Pennsylvania Constitution which restricts health professionals’ ability to receive and disclose critical diagnostic information when dealing solely with information deemed proprietary by the natural gas industry.**

249. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

250. The General Assembly, through Section 3222.1(b)(11) of Act 13 created an unconstitutional special law that is solely applicable to and only favors the natural gas industry. Section 3222.1(b)(11) imposes restrictions on health professionals’ abilities and obligations to disclose critical diagnostic information necessary for medical treatment solely because such information has been deemed by the natural gas industry as “proprietary” or a “trade secret.” The General Assembly has singled out the natural gas industry for special treatment and protection not afforded to any other industry:

If a health professional determines that a **medical emergency** exists and the **specific identity and amount of any chemicals** claimed to be a trade secret or confidential proprietary information are necessary for emergency treatment, the vendor, service provider or operator shall immediately disclose the information to the health professional upon a verbal

acknowledgment by the health professional that the **information may not be used for purposes other than the health needs asserted** and that the health professional shall maintain the information as **confidential**. The vendor, service provider or operator may request, and the health professional **shall provide** upon request, a written **statement of need** and a **confidentiality agreement** from the health professional as soon as circumstances permit, in conformance with regulations promulgated under this chapter.

Act 13, § 3222.1(b)(11).

251. Chemicals, including products with multiple chemical compounds and so called “proprietary or trade secret substances,” are used daily in a wide spectrum of occupations and industries throughout Pennsylvania. The widespread use of chemicals in a myriad of daily activities can result in human exposure with adverse health effects that may result in disease, illness, and the exacerbation of pre-existing conditions in a person.

252. To prevent such illnesses from occurring, companies in the business of manufacturing chemical products are required to create Material Safety Data Sheets (MSDS) that identify each chemical component of the product it is selling. Within that MSDS sheet, a chemical product manufacturer is required to list not only the toxicity of each chemical constituent that makes up the product, but also all of the known adverse health effect, of each chemical component. *See*, OSHA Law & Regulations, Hazard Communication Standard, attached hereto as Exhibit 46.

253. In practical effect, under the Hazard Communication Laws promulgated by the Occupational Safety and Health Administration, for example, an employer must provide copies of, or access to, every MSDS for every product used or found in that work place so that proper worker precautions, health and safety protections, and disclosures are made. *See*, Exhibit 46. In the event that a human exposure to any of these chemicals results in an adverse health effect, the worker has information available to him regarding his exposures to share with his treating physicians.

254. The sharing of this information between patient and doctor is not only critical to determine what the disease is, but is equally as important to share between treating physicians, like emergency room doctors, and specialists to afford a patient competent medical care and treatment.

255. In order for a physician to completely and properly treat a patient, it is imperative that a physician make a proper and correct diagnosis of the ailment. To do so, a doctor must consider all of the patient's symptoms as well as his/her occupational, social, medical, and environmental history to perform what is known as a differential diagnosis. A differential diagnosis is a process by which a doctor "rules in" or takes into consideration and then "rules out" specific illness or disease process based upon a full disclosure of all of a patient's symptoms, prior medical history, as well as occupational and environmental exposures.

256. Once a differential diagnosis is made, a doctor, in order to give competent medical care, must perform what is known as a differential etiology. In this process, a doctor is required to "rule in" and then "rule out" all possible causes of the patient's disease or illness. It is critically imperative when performing a differential etiology that the doctor has complete information regarding all of the patient's past medical, social, occupational and environment exposure history to properly determine the source or cause of the patient's illness or disease.

257. Many times, in particular with exposure induced diseases, an emergency room doctor or primary care physician must, in order to properly and competently diagnose and treat a patient, refer such a patient to a specialist like an occupational or environmental physician or toxicologist, doctors trained to diagnose and treat patients with illnesses and diseases resulting from chemical exposures in the workplace and living environments. In that referral relationship, the emergency room doctor or primary care physician must share with the specialist his/her

knowledge of the patient's exposures including any and all chemical exposures whether they are proprietary or not in order for the specialist to competently diagnose and treat that patient.

258. A physician's ability to share not only diagnostic test results, like MRIs, x-rays, or blood tests, but a patient's history of exposure to specific chemicals and the dose and duration of the patient's exposure to those chemicals, even if only qualitative, is not only necessary to properly treat and diagnose a patient but is an essential tool of practicing competent medicine. It is for this reason alone that many hospitals, doctors' offices, and treating institutions have computerized all patients' files so they can be accessed by all of the patient's doctors in order to accurately and consistently share critical patient specific information to properly treat each individual patient.

259. As such, without complete information, such as a full chemical exposure history, a doctor could very easily improperly diagnose and treat a patient, making his/her illness worse not better, and thus, opening himself up to a claim of medical malpractice.

260. Pennsylvania law re-emphasizes the importance of openness among health professionals in the process of evaluating and treating illness by imposing numerous affirmative duties on health professionals to ensure that critical and essential information related to the treatment of human illnesses is shared and readily available:

- a. Physicians are **required** to keep medical records that:
 - i. Accurately, legibly, and **completely** reflect the evaluation treatment of the patient. 49 Pa. Code §16.95(a);
 - ii. Must contain clinical information pertaining to the patient that has been accumulated by the physician or the physician's agents. 49 Pa. Code §16.95(c);
 - iii. Must contain diagnoses, findings, or results of pathologic or clinical laboratory examination, radiology examination, medical and surgical treatment and other therapeutic procedures. 49 Pa. Code §16.95(d);
- b. Healthcare practitioners have an obligation to report certain diseases, infections and medical conditions, including cancer. 28 Pa. Code §27.21a(b)(2);

- c. Practitioners regulated by the Pennsylvania Board of Medicine are subject to disciplinary action if the offer, undertake or agree to treat a disease by a secret method, procedure treatment or medicine or by refusing to disclose the means, method, or procedure that the practitioner has treated a human condition to the Board of Medicine upon demand of the Board. 49 Pa. Code §16.61(a)(12);
- d. Practitioners regulated by the Pennsylvania Board of Medicine are subject to discipline if they fail to act in such a manner as to present an immediate and clear danger to public health or safety. 63 P.S. §422.41(9).

261. Knowledge and the sharing of information has been the keystone to the development of medical knowledge and treatment techniques for centuries. In fact, **Pennsylvania laws** impose mandatory obligations on health professionals to report their findings in their medical records, thereby sharing with other health care professionals. 35 P.S. §§ 563.1-563.13. *See*, Pennsylvania Record Keeping Requirements, attached hereto as Exhibit 47. Section 3222.1(b)(11) of Act 13 prohibits health professionals from making **any** disclosure of information that they receive regarding chemicals that the natural gas industry deems as “proprietary” or “trade secrets” **even when such a disclosure is necessary to treat a particular patient or to protect public health.** *See*, Act 13 §3222.1(b)(11). Under Section 3222.1(b)(11) of Act 13, health professionals are prohibited from sharing with other physicians any knowledge that they have gained from disclosures by the natural gas industry related to “proprietary” substances or “trade secrets” for any purpose other than treating an emergent condition. *Id.*

262. Thus, under Act 13, an emergency room doctor who sees a patient with a suspected chemically induced disease who is provided by the industry with a disclosure of the chemicals the patient was exposed to would be prohibited from practicing competent medicine as he would not be permitted to share that disclosed chemical exposure information with the specialist he is referring the patient to in order to receive the proper medical care.

263. Moreover, Act 13 only requires the dissemination of trade secret or proprietary chemical information from the industry in “emergency” situations, this restriction again, forces doctors to practice irresponsible and dangerous medicine.

264. According to the list of chemical additives used in the hydraulic fracturing process that the industry has disclosed, many of them contain toxic, hazardous, and cancer causing agents like benzene. Benzene has been rated a Class I carcinogen by the International Agency for Research on Cancer (IARC), the cancer research arm of the World Health Organization (WHO). Obtaining a rating of a Class I carcinogen by IARC means that it has been determined by physicians around the world, through shared information, human and animal studies that a particular chemical causes cancer in human beings. Benzene has been rated a Class I carcinogen primarily on its ability to cause leukemia, in particular acute myeloid leukemia (AML), according to IARC’s monograph on benzene. However, as demonstrated by IARC’s research, benzene does not cause cancer in an “emergency situation” or within hours or days of exposure. Rather, benzene’s ability to cause leukemia may manifest itself over a period of years, sometimes within five years and sometimes as long as twenty years after a person’s initial exposure to it.

265. Under Act 13, a patient presenting a doctor with symptoms of AML would not do so under an “emergency” situation given the number of years it takes to develop the disease after a patient’s first exposure. As such, under Act 13, that patient’s doctor would be unable, even upon request to obtain “trade secret or proprietary” information regarding the chemicals the patient was exposed to determine if the patient’s AML was caused by exposure to oil and gas hydraulic fracturing products. Thus, the ability of the doctor to perform half of his required medical analysis, the differential etiology, what caused the patient’s AML, is eliminated.

266. The ability to determine the cause of the patient's AML, in this example, is paramount to practicing competent medicine because if the doctor determines the cause to be benzene in a propriety chemical used in the oil and gas industry, and the patient is still working or living near and being exposed to that oil and gas source of benzene, the doctor needs to know that information to recommend the greatest deterrent for reoccurrence and exacerbation of that AML, removal of the patient from the exposure source, benzene in that proprietary oil and gas hydraulic fracturing product.

267. Act 13, strips physicians of their ability to practice competent medical care and in turn opens them up to unintentionally committing malpractice by not being afforded the ability to obtain all proprietary and/or trade secret chemical information simply because a patient does not present with symptoms that rise to the level of an immediate or "emergency" situation.

268. As such, with respect to human medical conditions potentially related to or caused by exposure to chemicals deemed "trade secrets" or "proprietary" by the natural gas industry, the Pennsylvania General Assembly has decreed that there will be no body of medical knowledge developed through the interchange of ideas between health professionals, health professionals have no right to access such "trade secrets" or "proprietary" information in a non-emergent situation and that health professionals are not permitted to use any knowledge or experience they have gained treating one patient exposed to such substance to diagnose and assist another patient in a similar situation.

269. Section 3222.1(b)(11) of Act 13 requires health professionals to disregard general ethical duties and affirmative regulatory and statutory obligations and hide information that they have gained solely because it was produced by an industry favored by the General Assembly.

270. The numerous ethical, regulatory, and statutory obligations of health professionals that are apparently no longer applicable to situations involving potential exposure to a chemical

deemed a “trade secret” or “proprietary” by the natural gas industry exemplify how Section 322.1(b)(11) of Act 13 is a special law.

271. As noted *supra*, the General Assembly is permitted to make distinctions between members in a class if such designation is based on manifest peculiarities that distinguish a subgroup from the general class. *Appeal of Ayars* 122 Pa. 266, 281, 16 A. 356, 363 (1889). However, when the General Assembly makes a distinction between members of a class that is artificial and arbitrary, such legislation is an unconstitutional special law. *See*, Pa. Const. Art. 3 § 32; *See, Commonwealth v. Puder*, 261 Pa. 129, 136, 104 A. 505, 506 (1918).

272. The artificiality of the distinction between the natural gas industry and all other educational, commercial and industrial users of chemicals is readily apparent when one analyzes Section 3222.1(b)(11) of Act 13 in conjunction with the aforementioned list of health professionals’ obligations. For decades, humans have developed medical conditions as a result of exposure to chemical substances and health professionals have had affirmative duties and obligations to make record of this information have shared it with colleagues. Now, despite this history, the General Assembly, in an effort to promote and protect the natural gas development industry, has prescribed a regime of rules and regulations, manifested through Section 3222.1(b)(11) of Act 13 that apply **only** to that particular industry despite the fact that “trade secrets” or chemical exposure is not unique to this industry. *LaPlacca v. Philadelphia Rapid Transit Co.*, 265 Pa. 304, 308, 108 A. 612, 613. (Pa. 1919).

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1602 and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional violation of Article III, Section 32 of the Pennsylvania Constitution;
- II. For a decree to permanently enjoin future application of Act 13; and

- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT XII – DECLARATORY JUDGMENT

Mehernosh Khan, M.D., v. Commonwealth of Pennsylvania et al.

- XII. Petitioners seek a declaration that Act 13’s restriction on health professionals’ ability to disclose critical diagnostic information is an unconstitutional violation of the single-subject rule enunciated in Article III, Section 3 of the Pennsylvania Constitution.**

273. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

274. The expressed purpose of Act 13, as prominently displayed on the cover of its predecessor, House Bill 1950, was to amend Title 58 (Oil and Gas) of the Pennsylvania Consolidated Statutes.

275. Section 3222.1(b)(11) of Act 13 imposes restrictions upon health professionals’ ability to disclose and share information related to medical treatment.

276. Health professionals are regulated under Title 35 of the Pennsylvania Consolidated Statutes and the subjects of restrictions on health professionals in their care of patients is wholly different than amendment of statutes related to oil and gas development.

277. Because section 3222.1(b)(11) of Act 13 promulgates statutory restrictions on health professionals who are not within the regulatory scheme of Title 58, the Act violates the single-subject requirement of Article III, Section 3 of the Pennsylvania Constitution.

WHEREFORE, pursuant to Pa. R. Civ. Pro. 1602 and the Declaratory Judgments Act, 42 Pa.C.S.A. § 7532, *et seq.*, Petitioners respectfully demand judgment in their favor and against the Defendants as follows:

- I. For a decree declaring and adjudging that Act 13 is an unconstitutional violation of Article III, Section 3 of the Pennsylvania Constitution;

- II. For a decree to permanently enjoin future application of Act 13; and
- III. For such other relief as the Court may deem just and proper, including attorneys fees and costs.

COUNT XIII – PRELIMINARY INJUNCTION

Robinson Township et al. v. Commonwealth of Pennsylvania et al.

278. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

279. Act 13 is an unconstitutional legislative enactment in violation of the Pennsylvania and United States Constitution.

280. The issuance of a preliminary injunction is necessary to prevent immediate and irreparable harm to Petitioners that cannot be compensated by monetary damages alone.

281. Petitioners will be significantly irreparably injured by enforcement of the Act as it will cost considerable money to amend ordinances, change zoning districts and revise entire comprehensive plans of the Municipal Petitioners. Additionally, Act 13 places a burden upon Petitioners to either act in violation of the U.S. and Pennsylvania Constitutions or statutory law. Petitioners face the possibility of attorney fees and costs, and potential civil liability from taxpayers and residents. The harm to the Petitioners is immediate, and the Petitioners have no other lawful means with which to stay the enactment of Act 13 which is unconstitutional.

282. These injuries cannot be quantified and the Petitioners have no adequate remedy at law regarding the same.

283. The injunctive relief sought by the Petitioners will not result in greater harm to the Defendants than would be suffered by the Petitioners if the injunctive relief is not granted.

284. Granting the Petitioners the request preliminary injunctive relief is in the public interest.

285. By virtue of the foregoing, the Petitioners have demonstrated a likelihood of success on the merits and that a balance of the equities favors the issuance of a preliminary injunction against Defendants to stay enactment of the unconstitutional legislation.

WHEREFORE, Petitioners, respectfully requests this Honorable Court:

- I. Enter a Preliminary Injunction enjoining enactment of Act 13;
- II. Award the Petitioners any further relief, including attorneys' fees and costs, as this Court deems just and proper.

COUNT XIV – PERMANENT INJUNCTION

Robinson Township et al. v. Commonwealth of Pennsylvania et al.

286. All other paragraphs of this Petition are incorporated by reference as though set forth fully herein.

287. Act 13 is an unconstitutional legislative enactment in violation of the Pennsylvania and United States Constitution which will be enforced as law in the foreseeable future.

288. The issuance of a mandatory permanent injunction is necessary to prevent immediate and irreparable harm to Petitioners that cannot be compensated by monetary damages alone.

289. Petitioners will be significantly irreparably injured by enforcement of the Act as it will cost considerable money to amend ordinances, change zoning districts and revise entire comprehensive plans of the Municipal Petitioners. Act 13 places a burden upon Petitioners to either act in violation of the U.S. and Pennsylvania Constitutions or statutory law. Furthermore, Petitioners face the possibility of attorney fees and costs, and potential civil liability from taxpayers and residents. The harm to the Petitioners is immediate, and the Petitioners have no other lawful means with which to stay the enactment of Act 13 which is unconstitutional.

290. These injuries cannot be quantified and the Petitioners have no adequate remedy at law regarding the same.


291. The injunctive relief sought by the Petitioners will not result in greater harm to the Defendants than would be suffered by the Petitioners if the injunctive relief is not granted.

292. Granting the Petitioners the request permanent injunctive relief is in the public interest.


WHEREFORE, Petitioners, respectfully requests this Honorable Court:

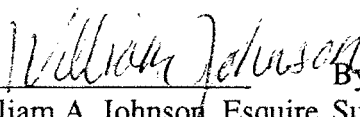

- I. Enter a Permanent Injunction enjoining enactment of Act 13;
- II. Award the Petitioners any further relief, including attorneys' fees and costs, as this Court deems just and proper.

Respectfully submitted,

By: 
John M. Smith, Esquire
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Jennifer Fahnestock, Esquire
Pa. I.D. No. 311650
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Counsel for Petitioners

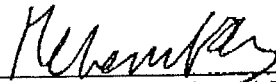
By: 
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wajohnsonesq@yahoo.com 435 West 116th Street
Counsel for Petitioners New York, New York 10027
Counsel for Petitioners

VERIFICATION

I, Mehernosh Khan, M.D., have read the foregoing **PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.




Mehernosh Khan, M.D.

3/28/2012

VERIFICATION

I, Deron Gabriel, have read the foregoing **PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

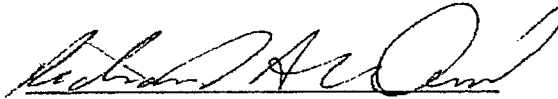


Deron Gabriel
Council President,
Township of South Fayette

VERIFICATION

I, Township Manager of the Township of Robinson, have read the foregoing **PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

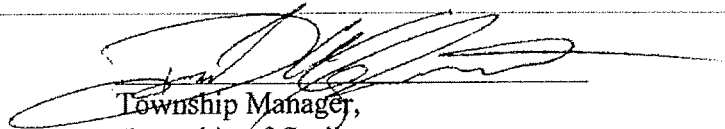
A handwritten signature in black ink, appearing to read "Richard A. [unclear]", is written over a horizontal line.

Township Manager,
Township of Robinson

VERIFICATION

I, Township Manager of the Township of Cecil, have read the foregoing **PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

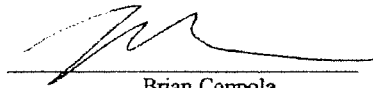


Township Manager,
Township of Cecil

VERIFICATION

I, Brian Coppola, have read the foregoing **PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

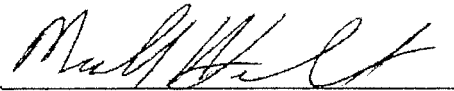


Brian Coppola

VERIFICATION

I, Michael A. Silvestri, Manager of Peters Township, have read the foregoing
**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF.** The statements therein are
correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904
relating to unsworn falsification to authorities, which provides that if I make knowingly false
statements, I may be subject to criminal penalties.

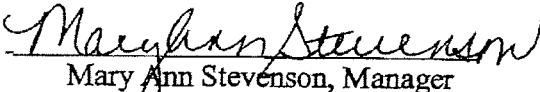
A handwritten signature in black ink, appearing to read "Michael A. Silvestri", written over a horizontal line.

Michael A. Silvestri, Manager
of Peters Township

VERIFICATION

I, Mary Ann Stevenson, Manager of Mt. Pleasant Township, have read the foregoing
**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF.** The statements therein are
correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa.C.S. §4904
relating to unsworn falsification to authorities, which provides that if I make knowingly false
statements, I may be subject to criminal penalties.


Mary Ann Stevenson, Manager
of Mt. Pleasant Township

VERIFICATION

I, David M. Ball, have read the foregoing **PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

David M Ball 03-28-12
David M. Ball

CERTIFICATE OF SERVICE

I, John M. Smith, do hereby certify that a true and correct copy of the foregoing Petition for Review in the Nature of a Complaint for Declaratory Judgment and Injunctive Relief was served via United States Certified Mail on this 29th day of March 2012, to the following:

Commonwealth of Pennsylvania
c/o Linda L. Kelly, Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

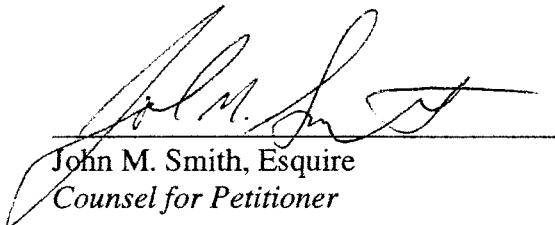
Pennsylvania Public Utility Commission
c/o Robert F. Powelson, Chairman
400 North Street, Keystone Building
Harrisburg, PA 17120

Robert F. Powelson
Pennsylvania Public Utility Commission
Chairman
400 North Street, Keystone Building
Harrisburg, PA 17120

Office of the Attorney General of Pennsylvania
16th Floor, Strawberry Square
Harrisburg, PA 17120

Linda L. Kelly
Attorney General, Commonwealth of
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16th Floor, Strawberry Square
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Michael L. Krancer
Pennsylvanian Department of Environmental
Protection, Secretary
400 Market Street
Harrisburg, PA 17120

Pennsylvania Department of the
Environmental Protection
c/o Michael L. Krancer, Secretary
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