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**Delaware Riverkeeper Network, Municipalities, and Pennsylvania Physician  
Prevail in PA Supreme Court on Act 13, Municipal Preemption Law  
Gas Industry Takeover Law thrown out by State's Highest Court**

**Pittsburgh PA** - The PA Supreme Court has ruled Act 13 is unconstitutional on the grounds that it violates the Environmental Rights Amendment to the Pennsylvania Constitution. Notably, the Court stated, ““As the citizens illustrate, development of the natural gas industry in the Commonwealth unquestionably has and will have a lasting, and undeniably detrimental, impact on the quality of these core aspects [life, health, and liberty: surface and ground water, ambient air, etc.] of Pennsylvania’s environment, which are part of the public trust.” Opinion at 117.

Additionally, the Court stated, ““By any responsible account, the exploitation of the Marcellus Shale Formation will produce a detrimental effect on the environment, on the people, their children, and future generations, and potentially on the public purse, perhaps rivaling the environmental effects of coal extraction.” Opinion at 118.

The Decision and concurring opinion can be found at:

<http://www.delawariverkeeper.org/resources/Reports/Opinion%20J-127A-D-2012oajc.pdf>

<http://www.delawariverkeeper.org/resources/Reports/Concurring%20Opinion%20J-127A-D-2012co.pdf>

The Pennsylvania Supreme Court has ruled that Act 13 violates the Pennsylvania Constitution. In doing so, the Court struck down the shale gas industry's effort to force every municipality in the state to allow gas drilling and related industrial operations in every zoning district. The Court's decision upholds the ability of local governments to protect their local communities and natural resources through zoning. Chief Justice Castille authored the historic majority opinion. Justices Todd, McCaffrey and Baer joined in the result.

Justices Castille, Todd, and McCaffrey held that the provisions violate Article I, Section 27 of the Pennsylvania Constitution – the Environmental Rights Amendment. Justice Castille stated that “we agree with the citizens that, as an exercise of the police power, Sections 3215(b)(4) and (d), 3303, and 3304 are incompatible with the Commonwealth's duty as trustee of Pennsylvania's public natural resources.” In discussing Section 3304's uniform zoning provisions, Justices Castille, Todd, and McCaffrey agreed that the provisions “sanctioned a direct and harmful degradation of the environmental quality of life in these communities and zoning districts.” They also concluded that the Act forced some citizens to bear “heavier environmental and habitability burdens than others” in violation of Section 27's mandate that public trust resources be managed for the benefit of all the people.

Justice Baer concurred in finding Act 13 unconstitutional, agreeing with the Commonwealth Court's reasoning. Justice Baer stated that the provisions “force municipalities to enact zoning ordinances, which violate the substantive due process rights of their citizenries.” He further noted “Pennsylvania's extreme diversity” in municipality size and topography and that zoning ordinances must “give consideration to the character of the municipality,” among other factors, which Act 13 did not.

“The Court has vindicated the public's right to a clean environment and our right to fight for it when it is being trampled on. Today the environment and the people of Pennsylvania have won and special interests and their advocates in Harrisburg have lost. This proves the Constitution still rules, despite the greedy pursuits of the gas and oil industry. With this huge win we will move ahead to further undo the industry's grip of our state government,” said Maya van Rossum, the Delaware Riverkeeper.

“This is a great historic victory for local democracy, for public health, and for the health of our environment. The shale gas industry overreached, greedily wanting to operate without

respecting local concerns and without playing by the same set of rules everyone else has to play by. The Corbett Administration and the General Assembly went along with it and tried to give away our rights to the gas industry. The Supreme Court has made it clear that what they were trying to do violates our state Constitution. It's a great day for the Constitution and the people of the Commonwealth", said Jordan Yeager, counsel for the plaintiffs.

"The gas industry tried to take over every inch of every municipality in Pennsylvania for drilling, regardless of the zoning rights of local governments and the residents they represent. The industry and their backers in Harrisburg overreached when they thought they could literally takeover the state, turning it into one big drilling and gas infrastructure site. We fought this law because it was illegal and because it spelled ruin for public health and the environment, even though we, as plaintiffs, didn't have nearly the resources our powerful and well-funded opponents had. This proves, when you have the law and environmental rights on your side, it's worth fighting and you can win," said Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network.

The Pennsylvania Supreme Court also reversed Commonwealth Court's finding that the Delaware Riverkeeper Network lacked standing in this case. Specifically, the court found that DRN's members engendered "a substantial and direct interest in the outcome of the litigation premised upon the serious risk of alteration in the physical nature of their respective political subdivisions and the components of their surrounding environment. This interest is not remote." Opinion at 21-22. Furthermore, the court also found that Maya van Rossum, as the Executive Director of the Delaware Riverkeeper Network, also has standing in her official capacity to represent the membership's interests." Opinion at 22. The ruling therefore sets important precedent for what immediate interest or harm environmental organizations and their members need to demonstrate in order to properly establish standing.

Additionally, in a reversal of the findings of the Commonwealth Court, the Pennsylvania Supreme Court found that Dr. Khan satisfies standing requirements. The court noted that "existing jurisprudence permits pre-enforcement review of statutory provisions in cases in which petitioners must choose between equally unappealing options and where the third option, here refusing to provide medical services to a patient, is equally undesirable." Opinion at 25. In other words, provisions of Act 13 put Dr. Khan in the untenable and objectionable position of choosing between violating Act 13's confidentiality agreement and "violating his legal and ethical obligations to treat a patient by accepted standards, or not taking a case and refusing a patient medical care." Id.

Therefore, Dr. Khan's interests were indeed "substantial and direct...not remote," and conferred standing. Opinion at 26. The Court remanded Dr. Kahn's case to the Commonwealth Court for further proceedings.

**Background:**

Seven municipalities, Delaware Riverkeeper Network, and Dr. Mehernosh Khan filed a legal pleading in Commonwealth Court on March 29, 2012 challenging Act 13, also known as HB1950, which was signed into law by Governor Corbett on February 14, 2012. The municipalities are: Township of Robinson, Washington County; Township of Nockamixon, Bucks County; Township of South Fayette, Allegheny County; Peters Township, Washington County; Township of Cecil, Washington County; Mount Pleasant Township, Washington County; and the Borough of Yardley, Bucks County. Act 13 amends the Pennsylvania Oil and Gas Act, preempting municipal zoning of oil and gas development. It also establishes an impact fee on natural gas. The named Appellants are the Commonwealth of Pennsylvania; Pennsylvania Public Utility Commission ("PUC"); Office of the Attorney General of Pennsylvania; and the Pennsylvania Department of Environmental Protection ("DEP").

The Petitioners argued that Act 13 is an unconstitutional violation of: 1) Article I, Section 1 of the Pennsylvania Constitution; 2) Section 1 of the 14<sup>th</sup> Amendment to the United States Constitution; 3) Article III, Section 32 of the Pennsylvania Constitution; 4) Article I, Section 27 of the Pennsylvania Constitution; 5) Article III, Section 3 of the Pennsylvania Constitution; 6) Due Process Principles; and 7) The Doctrine of Separation of Powers. The legal challenge was considered essentially important for the Appellees because Act 13 guts local zoning of gas and oil operations and endangers public health, natural resources, communities and the environment.

On July 26, 2012 the Commonwealth Court declared the statewide zoning provisions in Act 13 unconstitutional, null, void and unenforceable. The Court also struck down the provision of the law that required DEP to grant waivers to the setback requirements in Pennsylvania's Oil and Gas Act. On October 17, 2012 the Pennsylvania Supreme Court heard argument that Pennsylvania's Act 13 is unconstitutional, unjustly supersedes all local ordinances related to oil and gas operations, extinguishes municipal zoning of these operations, and exposes the public and the environment to pollution and degradation from these activities. Attorneys for the case appeared before the Court, which heard the Commonwealth's appeal of the Commonwealth Court's

declaration that overturned the municipal preemption provisions and environmental waiver provisions of Act 13.

The Court has been deliberating the case since argument was heard more than a year ago.

Original Petitioners in Legal Challenge

Township of Robinson, Washington County  
Township of Nockamixon, Bucks County  
Township of South Fayette, Allegheny County  
Peters Township, Washington County  
Township of Cecil, Washington County  
Mount Pleasant Township, Washington County  
Borough of Yardley, Bucks County  
Delaware Riverkeeper Network and the Delaware Riverkeeper  
Dr. Mehernosh Khan

Municipalities represented by Natural Resources Defense Council as Friends of the Court

Wilkins Township, Allegheny County  
East Finley Township, Washington County  
Tinicum Township, Bucks County  
Municipality of Murrysville, Westmoreland County  
Municipality of Monroeville, Allegheny County  
Borough of Bell Acres, Allegheny County  
City of Bethlehem, Northampton and Lehigh Counties

Other Amicus Briefs filed in support of Commonwealth Court decision

Pennsylvania Chapter of the American Planning Association  
Pennsylvania State Association of Boroughs  
Pennsylvania State Association of Township Supervisors  
Pittsburgh City Council  
Mountain Watershed Association  
Trout Unlimited

Nonprofit organizations represented by Earthjustice as Friends of the Court

Berks Gas Truth  
Brockway Area Clean Water Alliance  
Clean Air Council  
Clean Water Action  
Damascus Citizens for Sustainability  
Earthworks, Environmental Defense Fund  
Gas Drilling Awareness Coalition of Luzerne County PA  
Group Against Smog and Pollution  
Pennsylvania Division of the Izaak Walton League  
League of Women Voters of Pennsylvania  
Lehigh Valley Gas Truth, Local Authority Western PA

Marcellus Outreach Butler  
Marcellus Protest  
PennEnvironment  
Responsible Drilling Alliance  
Sierra Club  
Thomas Merton Center  
Westmoreland Marcellus Citizen's Group

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