

## Chapter 1

# The Pennsylvania Supreme Court’s *Robinson Township* Decision and the Pennsylvania Environmental Rights Amendment

**Robert L. Burns, Jr.<sup>1</sup>**  
*Buchanan Ingersoll & Rooney PC*  
 Pittsburgh, Pennsylvania

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<sup>1</sup> The opinions set forth in this chapter are those of Mr. Burns alone. The assistance of the following individuals should be noted: Celia Franklin, Esq., Megan Haines, Esq., Heather Hurst, Esq., Mercedes Bugallo, Raul Mendoza and Sydney Normil.

## § 1.01. Introduction and Background of the Act 13 Challenge.

On December 19, 2013, the Pennsylvania Supreme Court handed down a long-awaited decision in *Robinson Township, Washington County v. Commonwealth*,<sup>2</sup> affirming in part and reversing in part the Pennsylvania Commonwealth Court’s decision<sup>3</sup> regarding the constitutionality of various provisions of Act 13 of 2012<sup>4</sup> which amended and revised the Pennsylvania Oil and Gas Act<sup>5</sup> (hereinafter the “*Robinson Twp.* decision”). In an opinion by Chief Justice Ronald Castille, a divided majority of the Pennsylvania Supreme Court found “several challenged provisions” of Act 13, including the provisions providing for zoning uniformity in Section 3304,<sup>6</sup> to be unconstitutional.<sup>7</sup>

A plurality of the Pennsylvania Supreme Court comprised of Chief Justice Castille and Justices McCaffery and Todd, based its ruling on application of the Pennsylvania Environmental Rights Amendment (hereinafter the PAERA).<sup>8</sup> Justice Baer, who concurred in the ultimate ruling, but not the application of the PAERA, ruled that various portions of Act 13 violated substantive due process.<sup>9</sup> The plurality’s decision examined at length the history and application of the PAERA in Pennsylvania jurisprudence.

Petitioners initiated the case through a Petition for Review in the original jurisdiction of the Pennsylvania Commonwealth Court filed in March 2012, shortly after Gov. Tom Corbett signed Act 13 into law.<sup>10</sup> Petitioners included several municipalities and municipal officials; an environmental-

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<sup>2</sup> *Robinson Twp., Washington County v. Commw.*, 83 A.3d 901 (Pa. 2013).

<sup>3</sup> *Robinson Twp. v. Commw.*, 52 A.3d 463 (Pa. Commw. Ct. 2012).

<sup>4</sup> 58 Pa. Con. Stat. § 2301 *et seq.* (hereinafter “Act 13”).

<sup>5</sup> Pennsylvania Oil and Gas Act of 2012, 58 Pa. Cons. Stat. § 2301 *et seq.* (2012).

<sup>6</sup> 58 Pa. Con. Stat. § 3304 (2012).

<sup>7</sup> *Robinson Twp.*, 83 A.3d 901, 913.

<sup>8</sup> *Robinson Twp.*, 83 A.3d 901 (citing Pa. Const. art. I, § 27).

<sup>9</sup> *Robinson Twp.*, 83 A.3d 901, 1001 (Baer, J., concurring). It should be noted that dissenting opinions were filed by Justice Saylor, *Robinson Twp.*, 83 A.3d 90, 1009 (Saylor, J., dissenting), and Justice Eakin, *Robinson Twp.*, 83 A.3d 90, 1014 (Eakin, J., dissenting). Then-Justice Orié Melvin did not participate in the appeal.

<sup>10</sup> Petition for Review, *Robinson Twp. v. Com.*, 52 A.3d 463 (Pa. Commw. Ct. 2012) (No. 284 MD 2012).

ist and an environmental group; and a physician.<sup>11</sup> On July 26, 2012, the commonwealth court issued its decision finding two provisions of Act 13 to be unconstitutional on grounds different than those of the Pennsylvania Supreme Court.<sup>12</sup> Specifically, the commonwealth court held that the statewide land use regime set out in Section 3304<sup>13</sup> of Act 13 violated substantive due process provisions in the Pennsylvania and United States Constitutions.<sup>14</sup> The court also found Section 3215(b)(4),<sup>15</sup> which provided for waivers from setbacks from water bodies and wetlands, to be an unconstitutional delegation of authority and discretion to the Pennsylvania Department of Environmental Protection (PADEP).<sup>16</sup>

This chapter will consider the PAERA and its historic application, the provisions of Act 13 challenged by petitioners, the commonwealth court's decision, and the appeal of the commonwealth court's ruling to the Pennsylvania Supreme Court.

### **§ 1.02. Environmental Rights Amendment.**

The *Robinson Twp.* plurality opinion relied upon and discussed at length Article I, § 27 of the Pennsylvania Constitution in its decision.<sup>17</sup> The PAERA is a relatively unique provision in Pennsylvania constitutional jurisprudence. Only a few states, such as Rhode Island<sup>18</sup> and Montana,<sup>19</sup> have similar environmental rights amendments.

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<sup>11</sup> *Robinson Twp.*, 52 A.3d 463 *supra* nn. 2-3, 468 nn. 2-3.

<sup>12</sup> *Id.* at 463.

<sup>13</sup> 58 Pa. Cons. Stat. § 3304 (2012). Section 3304, in relevant part, provides that “[i]n addition to the restrictions contained in sections 3302 (relating to oil and gas operations regulated pursuant to chapter 32) and 3303 (relating to oil and gas operations regulated by environmental acts), all local ordinances regulating oil and gas operations shall allow for the reasonable development of oil and gas resources.”

<sup>14</sup> *Robinson Twp.*, 52 A.3d 463, 484-85.

<sup>15</sup> 58 Pa. Cons. Stat. § 3215(b)(4) (2012).

<sup>16</sup> *Robinson Twp.*, 52 A.3d 463, 493.

<sup>17</sup> Pa. Const. art. I, § 27.

<sup>18</sup> R.I. Const. art. I, §§ 16, 17.

<sup>19</sup> Mont. Const. art. II.