IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 63 MAP 2012

ROBINSON TOWNSHIP, Washington County, Pennsylvania, BRIAN COPPOLA, Individually and in his Official Capacity as Supervisor of Robinson Township, TOWNSHIP OF NOCKAMIXON, Bucks County, Pennsylvania, TOWNSHIP OF SOUTH FAYETTE, Allegheny County, Pennsylvania, PETERS TOWNSHIP, Washington County, Pennsylvania, DAVID M. BALL, Individually and in his Official Capacity as Councilman of Peters Township, TOWNSHIP OF CECIL, Washington County, Pennsylvania, MOUNT PLEASANT TOWNSHIP, Washington County, Pennsylvania, BOROUGH OF YARDLEY, Bucks County, Pennsylvania, DELAWARE RIVERKEEPER NETWORK, MAYA VAN ROSSUM, the Delaware Riverkeeper, and MEHERNOSH KAHN, M.D.,

v.

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA PUBLIC UTILITY COMMISSION, ROBERT F. POWELSON, in his Official Capacity as Chairman of the Public Utility Commission, OFFICE OF THE ATTORNEY GENERAL, LINDA L. KELLY, in her Official Capacity as Attorney General of the Commonwealth of Pennsylvania, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION and MICHAEL L. KRANCER, in his Official Capacity as Secretary of the Department of Environmental Protection,

Appeal of: PENNSYLVANIA PUBLIC UTILITY COMMISSION, Robert F. Powelson, in his Official Capacity as Chairman of the Public Utility Commission and PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION and Michael L. Krancer, in his Official Capacity as Secretary of the Department of Environmental Protection

---

BRIEF OF *AMICUS CURIAE* AMERICAN PETROLEUM INSTITUTE IN SUPPORT OF APPELLANTS

Appeal from the order of Commonwealth Court at No. 284 MD 2012 dated July 26, 2012.

Harry M. Ng
Vice President, General Counsel
and Corporate Secretary
Ben Norris
Counsel
American Petroleum Institute
1220 L Street, N.W.
Washington, D.C. 20005

Quin M. Sorenson*
Pa. Id. No. 91526
Joseph R. Guerra
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005

Attorneys for Amicus Curiae

* Counsel of Record

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

CONSTITUTION AND STATUTES

OTHER AUTHORITIES

STATEMENT OF INTEREST

The American Petroleum Institute ("API") is a national trade association representing more than 500 companies involved in all aspects of the oil and natural gas industry. America's oil and natural gas industry comprises more than 7.7% of the U.S. economy, supports 9.2 million domestic jobs, delivers more than $86 million a day in revenue to the U.S. government, and since 2000 has invested more than $2 trillion in U.S. capital projects to advance all forms of energy, including alternative. API's member companies include natural gas producers, processors, suppliers, pipeline operators, and service and supply companies. API's members have invested billions of dollars in Pennsylvania in order to develop the natural gas found buried deep within the Marcellus Shale.

Gas extraction, especially from shale formations, is creating jobs, spurring local spending, and generating millions of dollars in tax revenue for the Commonwealth, thereby playing a key role in Pennsylvania's recovery from the economic downturn. In 2010, natural gas companies paid over $1.6 billion in lease and bonus payments to Pennsylvania landowners, and, by 2020, the natural gas industry is expected to provide a total economic impact of $20.2 billion and 256,000 jobs for the Commonwealth, with more than $2 billion in state and local tax revenues. Timothy J. Considine, *et al.*, The Pennsylvania Marcellus Natural Gas Industry: Status, Economic Impacts and Future Potential (July 20, 2011). The Governor's Marcellus Shale Advisory Commission Report confirms the significant role of shale gas extraction in Pennsylvania's economy:

> The development of vast natural gas resources trapped beneath more than half of Pennsylvania has created tens of thousands of new jobs, generated billions of dollars in tax and lease revenues for the Commonwealth and its citizens, infused billions of additional dollars in bonus lease and royalty payments to landowners, and significantly expanded access to clean, affordable energy sources for residential, commercial and industrial customers.

The Governor's Marcellus Shale Advisory Commission Report, p. 7 (July 22, 2011).[1] It was projected that the impact fees generated by Act 13 would have exceeded $650 million over the next three years.[2]

API's members have a significant investment in developing natural gas across the Commonwealth. As part of the surge in natural gas development associated with production from the Marcellus shale, vast property interests have been acquired, correspondingly large investments have been made, thousands of employees have been hired, and materials, equipment and other resources have been deployed across the Commonwealth. The natural gas industry is playing a key role in Pennsylvania's recovery from the economic downturn by creating jobs.

Because Act 13 provides for uniform and predictable rules governing both the rights and responsibilities of many of API's member companies engaged in shale gas development in Pennsylvania, those members, and API itself, have a direct and immediate interest in the constitutionality of Act 13.

BACKGROUND

The Marcellus Shale is a geological formation that "underlies approximately two-thirds of Pennsylvania and is believed to hold trillions of cubic feet of natural gas." Defs. Mem. of Law in Supp. of Prelim. Objs. at 3. A natural resource of such scope presents the opportunity for great economic development, with attendant societal benefits. Development of such a resource, however, also poses challenges.

---

[1] The Governor's Marcellus Shale Advisory Commission Report http://files.dep.state.pa.us/PublicParticipation /MarcellusShaleAdvisory Commission/ MarcellusShaleAdvisoryPortalFiles/MSAC_Final_Report.pdf (last visited August 30, 2012).

[2] Press Release, Pennsylvania Office of the Governor, *Governor Corbett Signs Historic Marcellus Shale Law* (Feb. 14, 2012), *available at* http://www.governor.state.pa.us/portal/server.pt?open=18&objID=1224373&mode=2 (last visited May 6, 2012).

As the Commonwealth has explained, Act 13 "is the General Assembly's considered response to the challenges of environmental protection and economic development that come with the commercial development of" this resource. In Act 13, the Generally Assembly sought to balance "varied and competing interests" through a single, integrated law that addresses "health, safety, environmental and economic concerns" in a comprehensive and coherent manner. *Id.* at 1. The Act does so by, among other things, "strengthening environmental protections for Commonwealth waters, instituting an impact fee (the proceeds of which will benefit many of the Petitioners . . .), and providing statewide uniformity and predictability in the creation and enforcement of laws that regulate the oil and gas industry." *Id.* at 1-2.

Because the Marcellus Shale does not correspond to municipal boundaries, Act 13 overrides local ordinances that prohibit all natural gas development, and instead requires municipalities to allow for the "reasonable development" of oil and gas resources in accordance with various standards set out in the Act. *See* 58 Pa.C.S. § 3304. Act 13 thus both preserves and expands the former Oil and Gas Act's preemption of local ordinances, *see id.* §§ 3302, 3303, and mandates uniformity among municipal ordinances regulating oil and gas operations. *Id.* § 3304. Such ordinances must treat oil and gas operations (other than activities at impoundment areas, compressor stations and processing plants) as permitted uses in all local zoning districts. *Id.* The Act gives municipalities 120 days from its effective date to review their zoning ordinances and, if necessary, amend them to comply with Act 13's standards. *Id.* § 3309.

At the same time, Act 13 includes a number of provisions designed to strengthen environmental protections and minimize the impact of gas operations within and around municipalities. For example, the Act increases well-setback distances for buildings, private wells, public drinking water systems, streams, rivers, ponds and other water bodies. *Id.* § 3215.

It provides for public input on well permit applications, and mandates that the Department of Environmental Protection ("DEP") consider comments from municipalities on such applications. *Id.* § 3212. Act 13 likewise mandates that DEP consider the impacts of gas operations on various public resources before it may grant a permit. *Id.* § 3215(c). The Act also imposes land restoration, water protection, and corrosion control requirements on well operators, *id.* §§ 3216-18, and authorizes DEP enforcement of these and other requirements, including through permit revocation, assessment of civil fines and penalties, and injunctive relief, *id.* §§ 3251-3262. Under Act 13, a violation of any permit requirement or regulation or order is deemed a public nuisance, *id.* § 3252, and the state retains the right to seek judicial relief to abate nuisances or pollution or to enforce rights under the common law and statutes, *id.* § 3257.

In addition, the Act authorizes counties to collect an "impact fee" to benefit, in part, municipalities affected by unconventional natural gas wells. The collection and distribution of such fees is performed by the Pennsylvania Public Utility Commission ("PUC"). *Id.* §§ 2301-2381. A municipality, however, can become ineligible to receive such fees if the PUC, the Commonwealth Court, or this Court issues an order finding that a local ordinance of the municipality violates the requirements of the Act. *Id.* § 3308.

ARGUMENT

I. NONE OF THE PETITIONERS HAS STANDING TO BRING THIS SUIT.

The Commonwealth Court properly ruled that the non-municipal petitioners lack standing. Its determination that the municipalities (and their officers) have standing to assert the claims at issue in this case, however, rests on fundamental misunderstandings concerning the nature of municipal authority.

Municipalities are mere extensions of the state itself, created to carry out the functions of local government. They exist at the will of the state and possess only those powers the state

confers on them. In light of these basic principles, it has long been held that municipalities lack standing to assert the claims of their residents against the state. These same principles dictate that municipalities have no standing to challenge state laws that directly alter, expand or abolish municipal powers. In ruling otherwise, the Commonwealth Court relied on cases recognizing municipal standing where a municipality challenges a state law that does ***not*** alter its powers, but instead burdens the municipality's ability to discharge the powers the state has conferred on it. In that circumstance, it is both logical and consistent with the basic structure of government to recognize municipal standing: the municipality is simply seeking to vindicate the powers the state has given it, not challenging an alteration of those powers.

By contrast, the Commonwealth Court's standing decision in this case contravenes fundamental principles of government. Because municipalities are utterly dependent on the state for all of their powers, they can have no duty or power to challenge a state decision to modify those powers. Lacking any power or duty to resist alterations of their authority, municipalities can have no "substantial interest" in maintaining those powers, and thus no standing to challenge state laws altering them. Municipal officials have no greater authority than municipalities themselves, and thus likewise lack standing to bring such a challenge. The Commonwealth Court's contrary conclusions should therefore be reversed.

A. The Municipal Petitioners Have No Power Or Duty To Resist Alterations Of Their Authority, And Thus Have No Substantial Interest In Maintaining—Or Standing To Challenge Laws That Alter—Their Authority.

A party has standing if he or she has a "substantial, direct, and immediate interest in the outcome of the litigation." *Fumo v. City of Philadelphia*, 972 A.2d 487, 496 (Pa. 2009). An interest is substantial if it "surpasses that of all citizens in procuring obedience to the law"; it is direct "if there is a causal connection between the asserted violation and the harm complained

of"; and it is immediate "if that causal connection is not remote or speculative." *Id.* (internal quotation marks and citation omitted).

It has long been recognized that a "municipality has no standing to assert the claims of its citizens against the Commonwealth." *City of Pittsburgh v. Commonwealth*, 535 A.2d 680, 682 (Pa. Commw. Ct. 1987). Significantly, the Commonwealth Court did not rest this ruling on the simple and straightforward proposition that a municipality's interest cannot "surpass" the interests of the citizens whose rights it seeks to advocate. Instead, the Court based its ruling on the more fundamental proposition that "a municipality is merely a creature of the sovereign created for the purpose of carrying out local government functions." *Id.* Thus, in *City of Pittsburgh*, the city lacked standing to challenge the tax law at issue in that case ***not*** because its interest was no greater than the interest of others, but because it could have no interest at all in the outcome of the litigation: protecting citizens from assertedly unconstitutional state laws is simply not a power or duty that the state vests in municipalities to enable them to "carry[] out local government functions." That ruling, which this Court implicitly endorsed in *City of Philadelphia v. Commonwealth*, 838 A.2d 566 (Pa. 2003) (distinguishing Philadelphia's standing from the theory of standing rejected in *City of Pittsburgh*), directly parallels the United States Supreme Court's holding that states have no standing to sue to protect their citizens from federal laws, because "it is no part of [the state's] ***duty or power*** to enforce [its citizen's] rights in respect of their relations with the federal government." *Massachusetts v. Mellon*, 262 U.S. 447, 485-86 (1923) (emphasis added).

It is likewise no part of the "duty or power" of municipalities to challenge laws that alter their powers. Indeed, the existence of any such duty or power is fundamentally incompatible with the very nature of municipalities, which are entirely dependent upon the will of the state for

their very existence. Municipalities are mere "agents of the state," and "the extent of their powers [is] determined[] by the legislature, and subject to change, repeal or total abolition ***at its will***. They have no vested rights in their offices, their charters, the corporate powers, or even their corporate existence." *Commonwealth v. Moir*, 49 A. 351, 352 (Pa. 1901) (emphasis added). Indeed, the state's power and control over a municipality is so complete that it "may change or modify [a municipality's] internal arrangements[] or destroy its very existence[] ***with the mere breath of arbitrary discretion***." *Id.* (emphasis added). Thus, this Court has explained that there are no inherent powers "which must be left to the local government"; as a result, the legislature always has the "authority to amend [municipal] charters, ***enlarge or diminish their powers*** . . . overrule their legislative action . . . and even ***abolish them altogether in the legislative discretion***." *Pittsburgh's Petition*, 66 A. 348, 352 (Pa. 1907) (emphasis added); *see also City of Philadelphia v. Schweiker*, 858 A.2d 75, 84 (Pa. 2004) (municipalities "have no inherent powers of their own" and instead "posses only such powers of government as are expressly granted to [them] and as are necessary to carry the same into effect") (internal quotation marks and citation omitted).[3]

Because of their total and perpetual dependence on the will of the state, municipalities can have no power, much less a duty, to challenge the state's alteration of their powers. By definition, the existence of such a municipal power is completely incompatible with the state's ability to "change or modify [a municipality's] internal arrangements[] or destroy its very existence[] ***with the mere breath of arbitrary discretion***." *Moir*, 49 A. at 352 (emphasis added).

---

[3] This is equally true of home rule municipalities. The Home Rule Amendment provides that a municipality with a home rule charter "may exercise any power or perform any function ***not denied . . . by the General Assembly at any time***." Pa. Const., art IX, § 2 (emphasis added). The legislation implementing this constitutional amendment reflects the same limitation. *See* 53 Pa.C.S.§ 2961 (home rule municipality "may exercise any power or perform any function ***not denied . . . by statute***") (emphasis added). *See also Schweiker*, 579 Pa. at 611, 858 A.3d at 87 (legislature "retains express constitutional authority to limit the scope of any municipality's home rule governance").

Thus, absent an express grant of authority to contest a state-mandated change to its corporate structure or powers, a municipality necessarily lacks any such authority. Because it has no power to challenge an alteration of its powers, a municipality likewise has no "substantial interest" in maintaining its powers. It can thus have no standing to challenge their alteration.[4]

A simple example illustrates these principles and their operation. Suppose, with the advent of commercial aviation, that the state required all municipalities encompassing or adjacent to airports to adopt building height restrictions and other zoning ordinances to ensure, in accordance with federal aviation guidelines, that planes could takeoff and land safely. Suppose further that these requirements altered the comprehensive zoning plans of some municipalities and interfered with the development rights and legitimate investment expectations of some property owners. Residents directly affected by these restrictions (or the resulting airport operations) would likely have standing to sue for any economic damages they sustain. But an affected municipality would have had no power (and thus no standing) to assert the property rights of such residents to enjoin the operation of this law. Similarly, it would have had no power (and thus no standing) to sue to enjoin the alteration of its zoning powers.

The same is true here. Act 13 expands the former Oil and Gas Act's preemption of local ordinances, *see* 58 Pa.C.S. §§ 3302, 3303, and mandates uniformity among municipal ordinances regulating oil and gas operations, *id.* § 3304. In both respects, Act 13 modifies the zoning authority of municipalities. The mere fact that, to comply with Act 13, the Municipal Petitioners must "take specific action[s]" that they believe are unconstitutional, and that they will lose

[4] In *Moir*, this Court recognized that courts "are not the guardians of the rights of the people of the state, except as those rights are secured by some constitutional provision which comes within the judicial cognizance." 49 A. at 353. Thus, state citizens may have a basis for suing to enjoin an unconstitutional alteration of municipal powers to the extent that modification affects their substantial interest. But municipalities cannot assert such claims on behalf of their residents. *City of Pittsburgh*, 535 A.2d at 682.

revenues made available by Act 13 if they fail to take these actions, *Robinson Twp. V. Pennsylvania*, ___A.3d ___, No. 284, 2012 WL 3030277, at *7 (Pa. Commw. Ct. 2012), cannot confer standing on them. None of these facts changes the essential reality that the Municipal Petitioners have no "duty or power" to challenge modifications of their zoning powers. They therefore cannot have standing to challenge such modifications in court.[5]

B. The Principle that Municipalities Have Standing To Challenge Laws That Indirectly Affect Their Operations Does Not Apply To Laws That Directly Modify Or Abolish Municipal Powers.

In reaching its contrary result, the Commonwealth Court relied on two cases—*City of Philadelphia v. Commonwealth*, 575 Pa. 542, 838 A.2d 566 (Pa. 2003), and *Franklin Township v. Department of Environmental Resources*, 452 A.2d 718 (Pa. 1982)—for the proposition that municipalities have standing "when aspects of [a] state law have particular application to local governmental functions." *Robinson Twp.*, 2012 WL 3030277 at *6. These cases, however, announce no such sweeping proposition, which, if taken literally, would accord municipalities standing to challenge all laws altering their powers. Instead, in both of these cases, the laws at issue did not ***alter*** the municipalities' powers or duties. Rather, these laws addressed other matters and, in doing so, burdened the municipalities' exercise of their ***unaltered*** powers and duties. This Court's recognition that the municipalities had standing to challenge these indirect burdens does not support the conclusion that the Municipal Petitioners have standing to challenge Act 13's express alteration of their zoning powers.

---

[5] The impropriety of the standing ruling below is underscored—and exacerbated—by the fact that the Municipal Petitioners have no rights under Article I, Section 1 of the Pennsylvania Constitution, which is the predicate for three of the four claims on which they prevailed. *See Commonwealth v. E. Brunswick Twp.*, 956 A.2d 1100, 1007-09 (Pa. Commw. Ct. 2008) (Article I of the Pennsylvania Constitution sets forth a Declaration of the Rights of individual citizens, not the rights of municipal corporations"). Although a "zone of interests" analysis is not dispositive of standing, *Johnson v. Am. Standard*, 8 A.3d 318, 333 (Pa. 2010), there is something plainly amiss about a ruling that permits municipalities to invoke a constitutional provision that operates as a ***restraint on their powers*** in order to challenge legislative actions that, as a matter of law, they have no authority resist.

In *City of Philadelphia*, this Court undertook a detailed and discriminating analysis of the law at issue, Act 230, and found that it "affect[ed] city governmental functions relative to collective bargaining, budget management, and urban renewal." 838 A.2d at 579. The first two impacts flowed from Act 230's repeal of provisions that (1) required arbitrators "to take into account the City's existing five-year [fiscal] plan and its ability to pay" for increased salary and benefits when resolving bargaining disputes between the City and its police and firefighters, and (2) authorized judicial review to ensure compliance with this requirement. *Id.* at 578. Because such labor expenses affected a quarter of the City's annual operating budget, repeal of these provisions meant the City's costs "will no longer be subject to reliable estimation and control." *Id.* That, in turn, significantly interfered with the ability of the Pennsylvania Intergovernmental Cooperation Authority (PICA) "to perform its obligations under [a] cooperation agreement in existence between PICA and the City." *Id.*

With respect to the City's urban renewal efforts, Act 230 required that, whenever contract amounts for such projects exceeded $100,000, the contracting businesses were subject to a 200% bonding requirement. The bonding requirement would thus interfere with the City's ongoing renewal efforts "by effectively disqualifying a number of the small contractors with whom the City could otherwise conduct business." *Id.* at 579. After describing these precise impacts of Act 230 on the City, this Court held that "the City's interests, ***as delineated above***, are sufficient to provide the City with standing to bring the present action." *Id.* (emphasis added).

As the foregoing discussion makes clear, none of the aspects of Act 230 that affected the City's governmental functions—and thus afforded it standing to sue—***altered or modified the City's powers or duties***. Act 230 did not preempt or abolish, in whole or in part, the City's power to engage in collective bargaining or urban renewal. Instead, Act 230 regulated

businesses, arbitrators and courts, and these aspects of the law incidentally burdened the City's ability to exercise its ***unaltered*** powers to engage in collective bargaining and urban renewal.

Similarly, in *Franklin Township*, this Court held that the town had standing to challenge a permit for a solid waste disposal and/or processing facility issued by the Department of Environmental Resources (DER). The Court noted that the town had the duty to protect and enhance the environment, 452 A.2d at 721, and that the Solid Waste Management Act, which had empowered DER to issue the permit, had not altered or abolished that duty. To the contrary, this Court took pains to note that an amendment to that Act statutorily affirmed the "direct and substantial interest local governing bodies have in the character and quality of the environment." *Id.* at 722; *see also id.* at 723 (Roberts, J., concurring) (noting that, "[t]hroughout the Solid Waste Management Act . . . there is evidence[] [of] legislative concern for the protection of the interests of local governments"). Thus, just as in *City of Philadelphia*, the law at issue did not abolish, restrict or modify the municipality's duties or powers. Because the legislature had left that duty intact—and affirmed its continued existence—the town had the power to challenge an administrative action it deemed inconsistent with local environmental protection, and thus had standing to sue.

In short, in neither of these cases did the Court permit a municipality to challenge a state law that "affected" its functions by altering, expanding or abolishing its powers. When a law leaves a municipality's duties and powers unaltered, and simply burdens or impairs the municipality's ability to discharge those duties or exercise those powers, it is both logical and consistent with the basic structure of government to assume that the legislature intended to allow the municipality to sue to vindicate those duties and powers. Indeed, the ability of municipalities to do so ensures that any conflict between two legislative policies (*i.e.*, those reflected in the

grant of municipal powers and those reflected in a later law burdening those powers) is resolved through litigation, which is the traditional means of resolving disputes over legislative intent. For all the reasons discussed above, however, the fundamental nature of municipal authority—and the legislature's complete discretion to alter or abolish municipal powers—precludes the existence of any municipal duty or power to resist or challenge state laws that alter or restrict municipal powers. Because municipalities have no duty or power to challenge such laws, they cannot have standing, or a substantial interest that entitles them to sue to enjoin such laws. The Commonwealth Court's contrary conclusion should therefore be reversed.

C. The Municipalities Do Not Have Standing Under Either Of The Alternative Theories The Commonwealth Court Advanced.

The Commonwealth Court's standing ruling likewise cannot be sustained on the alternative grounds the court offered. The Commonwealth Court stated that:

> even if the interest of the litigant was not direct or immediate, the municipalities' claims that they are required to pass unconstitutional zoning amendments are inextricably bound with those of the property owners' rights whose property would be adversely affected by allowing oil and gas operations in all zoning districts as a permitted use when even the Commonwealth admits that property owners affected by such a permitted use would have standing to bring a challenge to the constitutionality of Act 13.

Robinson Twp. 2012 WL 3030277 at *7. This statement appears to be an alternative finding that the Municipal Petitioners have standing under the reasoning of cases such as *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975), and *Philadelphia Facilities Mgmt. Corp. v. Biester*, 431 A.2d 1123 (Pa. Commw. Ct. 1981), both of which the Commonwealth Court cited several pages earlier in its decision. *See Robinson Twp.*, 2012 WL 3030277 at **4-5 (citing same). These alternative theories, however, are unavailing.

The decision in *William Penn Parking* is entirely inapposite. There, this Court found that parking operators had a direct and substantial interest in challenging a tax imposed on patrons of

their garages, because the tax was levied on the operators' transactions with their customers and caused the operators pecuniary harm. 346 A.2d at 289. This Court further found that the operators' interest was sufficiently "immediate" because, while the tax fell on customers, its effect on the operators was "removed from the cause by only a single short step." *Id.* Here, by contrast, the reason the Municipal Petitioners lack standing is not because their interests are too remote or speculative. Instead, it is because they have no duty or power to challenge alterations of their powers, and thus have no legitimate "interest" at all.

Insofar as the Commonwealth Court relied on "third-party" standing principles set forth in *Biester*, that theory likewise fails. First, whatever the propriety of allowing one litigant to assert the rights of another may be as a general matter, it is settled that a municipality cannot "assert the claims of its citizens against the Commonwealth." *City of Pittsburgh*, 535 A.2d at 682. Second, and in all events, as the Commonwealth Court itself acknowledged, third-party standing requires a showing that "'there is some obstacle to the third party's assertion of his own right.'" *Robinson Twp.*, 2012 WL 3030277 *5 (quoting *Biester*, 431 A.2d at 1131-32). The Commonwealth Court made no finding that property owners adversely affected by the zoning amendments that Act 13 mandates could not sue to enforce their own rights. Nor could it have done so. The Municipal Petitioners made no such claim in their standing allegations. *See* Petn. ¶¶ 44-51. And, as we explain below, adversely affected property owners can bring "as applied" challenges to Act 13 and the zoning amendments it mandates.

D. The Municipal Council Members Do Not Have Standing.

The Commonwealth Court likewise erred in concluding that the two municipal council members have standing to sue "in their official capacities." *Robinson Twp.*, 2012 WL 3030277 *7. In asserting such standing, these two petitioners relied on *Zemprelli v. Daniels*, 436 A.2d 1165 (Pa. 1981) and *Ritter v. Commonwealth*, 548 A.2d 1317 (1988), *aff'd* 521 Pa. 536, 557

A.2d 1064 (Pa. 1989) (per curiam). *See* Petn. ¶ 46. Neither case, however, supports their claim. Nor do they have standing under the Commonwealth Court's theory that they are "being required to vote for zoning amendments they believe are unconstitutional." *Robinson Twp.*, 2012 WL 3030277 *7.

In *Zemprelli* and *Ritter*, legislators were found to have "legislative standing" based on their showings that (1) they had "legal rights and duties . . . as legislators," *Ritter*, 548 A.2d at 1319, to vote on certain matters (legislation in *Ritter*; executive appointments in *Zemprelli*), and that (2) alleged irregularities in the legislative process interfered with, or diluted, their voting rights. *See Ritter*, 548 A.2d at 1318-19 (suspension of normal House rules to pass bill that improperly contained multiple subjects, including provisions that had not been reported out of committee); *Zemprelli*, 436 A.2d at 1166-67 (appointment was approved under an improper calculation of the necessary Senate "majority"). Unlike the legislators in *Ritter* and *Zamprelli*, however, the municipal officials here have no "right and duty" to vote against ordinance amendments mandated by state law. Just as the municipalities themselves have no duty or power to resist the state's plenary and discretionary authority to alter municipal powers, *supra* at § __, the officers of those municipalities have no "legislative duties or powers" to cast votes to resist such state-mandated alterations.

Suppose that, with the invention of the telephone, the state decided to facilitate telephone service by prohibiting municipalities from regulating the construction and placement of telephone poles and wires other than by prohibiting their placement in existing roads. A municipal officer who believed greater regulation was necessary would have had no "legal rights and duties . . . as [a municipal officer]," *Ritter*, 548 A.2d at 1319, to vote for ordinances that would impose additional restrictions. Because the municipality itself would lack power to adopt

such ordinances, the ability to vote for such ordinances would not be a power or duty of any officer of the municipality. Such a municipal official would thus have no standing to sue to invalidate the state-law ban on such ordinances. The result is no different simply because Act 13 mandates the adoption of certain municipal ordinances, rather than prohibits the adoption of ordinances. In both cases, the officer lacks "legal rights and duties" as a municipal officer, *id.*, to do something inconsistent with state law.

The Commonwealth Court nevertheless found that the two municipal council members have standing to challenge Act 13 because that law forces them to cast votes for ordinances "they believe are unconstitutional." *Robinson Twp.*, 2012 WL 3030277 *7. The Commonwealth Court cited no authority from this Court recognizing such a basis for standing. Moreover, while federal courts have recognized standing based on allegations of coerced violations of a constitutional oath, they have required a showing that the state officials who refuse to comply with laws they deem unconstitutional are faced with (1) removal from office ***and*** (2) a loss of public funds their agencies or communities were entitled to independent of the law at issue. *See Bd. of Educ. v. Allen*, 392 U.S. 236, 241 n.5 (1968); *Bd. of Educ. v. New York State Teachers Ret. Sys.*, 60 F.3d 106, 112 (2d Cir. 1995). Here, the municipal council members do not "contend that any actual threat has been made to remove them from their positions" if they fail to adopt conforming ordinance amendments. *New York State Teachers Ret. Sys.*, 60 F.3d at 112. Nor could they, as Act 13 imposes no such penalty. That failure alone defeats standing under a "coerced violation" theory.

In addition, the council members have not alleged that failure to adopt conforming ordinance amendments will expose their communities to a loss of funds they were already receiving and were entitled to receive independent of Act 13. Instead, the Municipal Petitioners

have alleged that they will be injured by the loss of impact fees that, under their view of the law, should not exist at all, because the municipalities' authority to collect such fees is created by a statute that the municipalities claim is unconstitutional. This is an untenable theory of standing. In a proper lawsuit, plaintiffs seek relief that will ***remedy*** their alleged injury, not relief that ***causes*** the very injury they rely on to establish standing. This obvious incongruity simply underscores that the council members have no "substantial interest" in maintaining a fee-collection authority that they themselves claim was conferred by an unconstitutional law. Accordingly, they have no standing under any theory recognize by this Court or the federal courts.

* * *

For all of the foregoing reasons, the Commonwealth Court's conclusion that the Municipal Petitioners and two council members have standing should be reversed. Because, as the lower court correctly held, no other petitioner has standing, this case should be dismissed in its entirety.

II. ACT 13 IS CONSTITUTIONAL.

Even if any petitioner had standing to challenge Act 13—and none does—the statute is plainly valid. The changes in local zoning ordinances that Act 13 mandates "'must be presumed constitutionally valid unless a challenging party shows that [they are] unreasonable, arbitrary, or not substantially related to the police power interest that [they] purport[] to serve.'" *In re Realen Valley Forge Greenes Assocs.*, 838 A.2d 718, 728 (Pa. 2003) (citation omitted). This difficult burden is made even heavier by two other principles of constitutional review.

First, Act 13 is not a zoning ordinance, but a state statute. As such, its constitutionality must be upheld "unless it 'clearly, palpably, and plainly violates constitutional rights.'" *In the Interest of F.C. III*, 2 A.3d 1201, 1221 (Pa. 2010) (citation omitted). "All doubts are to be

resolved in favor of finding that [it] passes constitutional muster." *DePaul v. Commonwealth*, 969 A.2d 536, 545 (Pa. 2009) (citation omitted). Second, Municipal Petitioners have brought a facial challenge. It may well be that individual property owners can show, in future "as-applied" challenges, that the actual impact of zoning amendments on their particular properties violates their constitutional rights. *See infra*, § II.C. But a facial challenge is "the most difficult challenge to mount successfully," because it requires a showing either that "no set of circumstances exist under which the statute would be valid," or that its "constitutional deficiency is so evident that proof of actual unconstitutional applications is unnecessary." *Clifton v. Allegheny Cnty.*, 969 A.2d 1197, 1222-23 & n.37 (Pa. 2009).

Petitioners did not satisfy these stringent standards. Act 13 strikes a balance between the Commonwealth's broad and competing interests in economic growth, environmental protection, public safety, and protection of property rights. Although individual citizens, individual municipalities or individual judges might choose a different balance, the balance the General Assembly chose cannot be deemed "clearly, palpably, and plainly" "unreasonable, arbitrary, or not substantially related to" the various interests the law seeks to advance. Indeed, the Commonwealth Court made no such finding.

Instead, the Commonwealth Court invalidated Act 13 by refusing to consider whether the law properly balances competing societal interests, and instead judging its validity based solely on whether it advances one of those interests—*i.e.*, the protection of property rights. This attempt to narrow the rationales that can justify an exercise of the state's police power is improper. Contrary to the Commonwealth Court's view, this Court's decision in *Huntley & Huntley, Inc. v. Council of Oakmont*, 964 A.2d 855 (Pa. 2009), does not limit the societal interests that can sustain Act 13 as a legitimate exercise of the police power; instead, that

decision simply interpreted the statutory standard for preemption under § 602 of the Oil and Gas Act. Nor are comprehensive plans under the Municipalities Planning Code a constitutional benchmark for assessing the validity of zoning amendments required by Act 13. The fact that Act 13 mandates deviations from existing comprehensive zoning plans may give rise to valid "as applied" challenges by individual property owners in the future, but that fact plainly does not establish that "no set of circumstances exist under which the statute would be valid." *Clifton*, 969 A.2d 1197, 1222-23 & n.37.

A. Act 13 Is Constitutional Because It Strikes A Reasonable Balance Between Competing Societal Interests And Is Thus Substantially Related To The Various Police Power Interests It Seeks To Advance.

As noted earlier, Act 13 "is the General Assembly's considered response to the challenges of environmental protection and economic development that come with the commercial development of" the Marcellus Shale. Defs. Mem. of Law in Supp. of Prelim. Objs. at 3. In Act 13, the Generally Assembly sought to balance "varied and competing interests" by integrating "health, safety, environmental and economic concerns in the appropriate development of this natural resource." *Id.* at 1. It thus "strengthen[ed] environmental protections for Commonwealth waters, institut[ed] an impact fee (the proceeds of which will benefit many of the Petitioners . . .), and provid[e] statewide uniformity and predictability in the creation and enforcement of laws that regulate the oil and gas industry." *Id.* at 1-2.[6]

[6] Indeed, the General Assembly itself made clear that Act 13 seeks to balance competing economic, social and environmental interests. Section 3202 declares that the Act's purposes are to:

> (1) Permit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens.
> (2) Protect the safety of personnel and facilities employed in coal mining or exploration, development, storage and production of natural gas or oil.
> (3) Protect the safety and property rights of persons residing in areas where mining, exploration, development, storage or production occurs.
> (4) Protect the natural resources, environmental rights and values secured by the Constitution of Pennsylvania.

The zoning changes that Act 13 mandates are an indispensable component of this integrated response to interrelated economic, social and environmental issues. Because the Marcellus Shale does not correspond to municipal boundaries, Act 13 overrides local ordinances that prohibit all natural gas development, and requires municipalities to allow for the "reasonable development" of oil and gas resources in accordance with various standards set out in § 3304(b)(1) through (b)(11). *See* 58 Pa.C.S. § 3304. At the same time, Act 13 seeks to minimize the impact of this development both on the environment and on residential communities in a variety of ways, including by mandating increased well setback distances; allowing public and municipal input in the well permitting process; imposing land restoration, water protection, corrosion control, and disclosure requirements on well operators; and providing for enforcement of these and other requirements by a variety of agencies using a variety of enforcement tools, including permit revocation, civil fines and penalties, injunctive relief, and statutory and common law abatement actions. In addition, as noted, the Act authorizes the collection and distribution of impact fees to affected municipalities. *Id.*

Where, as here, broad and legitimate societal interests are in tension, the legislature must strike some kind of balance. Precisely because any balance struck between competing interests will inevitably displease some members of society, the legislature's judgment must be respected—and upheld as constitutional—unless it is "clearly, palpably, and plainly" unreasonable or arbitrary, or not substantially related to the societal interests it seeks to promote. No such conclusions can be made with respect to Act 13. The Act is a comprehensive, integrated, and reasoned response to competing societal interests that plainly seeks to serve the state's legitimate interests in promoting economic development, protecting the environment,

---

58 Pa.C.S. § 3202.

ensuring public safety, and respecting property rights. The very fact that it strikes a balance between these interests—rather than promoting just one interest at the complete expense of the others—confirms that it is not "clearly, palpably, and plainly" unreasonable or arbitrary. Indeed, the Commonwealth Court itself did not find that Act 13 failed to advance the foregoing interests, nor did it find that the balance the General Assembly struck between these interests was clearly arbitrary or unreasonable. The absence of such findings should have been fatal to petitioners' constitutional claims.

Nevertheless, the Commonwealth Court invalidated Act 13 by dismissing three of the four interests that the General Assembly sought to balance as irrelevant and assessing Act 13's validity based solely on whether it advanced the last of these competing interests, *i.e.*, the protection of private property rights. This narrow focus was plainly improper.

B. The Commonwealth Court Improperly Narrowed The Rationales That Can Justify An Exercise Of The Police Power That, Like Act 13, Seeks To Advance Multiple Competing Societal Interests.

Relying on this Court's decision in *Huntley & Huntley, Inc. v. Council of Oakmont*, 964 A.2d 855 (Pa. 2009), the Commonwealth Court stated that the validity of Act 13 must be judged solely on whether it advances the police power interest of protecting property rights. Specifically, the court stated that the purposes that the General Assembly set forth in § 3202 of the Act, *see* note 5, *supra*, "are sufficient to have the state exercise its police powers to promote the exploitation of oil and gas resources," but insofar as the Act requires amendments of local zoning ordinances, this "involves a different exercise of police power" which "must be normally justified on the basis that [the ordinance amendments] are in accord with the comprehensive plan [each municipality has adopted], not to promote oil and gas operations." *Robinson Twp.*, 2012 WL 3030277 *14 (citing *Huntley*) *see also id.* at 15 ("[b]ecause the changes required by [Act 13] do not serve the police power purpose of the local zoning ordinance, relating to consistent and

compatible uses in the enumerated districts of a comprehensive zoning plan, any action by the local municipality required by the provisions of Act 13 would violate substantive due process as not in furtherance of its zoning police power"). This theory is wrong for two reasons. *Huntley* announces no such rule, and the police power interests underlying zoning laws are, in all events, not as limited as the Commonwealth Court believed.

Far from announcing a general rule that state laws that mandate changes in local zoning ordinances can be sustained only if they are substantially related to the interests underlying comprehensive municipal zoning plans, *Huntley* involved a pure question of statutory interpretation—*i.e.*, the scope and meaning of the Oil and Gas Act's express preemption provision. That provision stated that:

> No ordinances or enactments adopted pursuant to [the Municipal Planning Code or Flood Plain Management Act] shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas well operations regulated by this act or that *accomplish the same purposes as set forth in this act.*

Huntley, 964 A.2d at 858 (quoting 58 P.S. § 601.602) (emphasis altered). In the course of interpreting the italicized prong of this preemption standard, this Court explained that, as a general matter, zoning ordinances do not "accomplish the same purposes as" the Oil and Gas Act, because "they deal with all potential land uses and generally incorporate an overall statement of community development objectives that is not limited solely to energy development." Id. at 865. The Court also noted that the intent underlying Oakmont's ordinances served "police power objectives relating to the safety and welfare of its citizens, encouraging the most appropriate use of land throughout the borough, conserving the value of property, minimizing overcrowding and traffic congestion, and providing adequate open spaces." Id. Based on this analysis, the Court concluded that Oakmont's zoning ordinances were not preempted.

This discussion was not—and indeed, could not have been—a determination that the constitutionality of a law that mandates zoning ordinance amendment must be justified solely on the basis "that they are in accord with [an existing] comprehensive plan." *Robinson Twp.*, 2012 WL 3030277 *14. Instead, the Court was simply determining the scope of the preemption provision before it. In concluding that the purposes of Oakmont's zoning ordinances and the Oil and Gas Act were different, this Court plainly did not limit the rationales that can be used to justify municipal zoning ordinances, much less state laws that mandate amendments to such ordinances.

In fact, in *In re Realen Valley Forge Greenes Associates*, this Court recognized that zoning ordinances can be enacted "to protect and preserve the public health, safety, morality, and welfare." 838 A.2d at 727. The community's "welfare" is a broad concept that is universally understood to include interests in economic growth as well as environmental, recreational, aesthetic and other interests. *See generally* Yokley, *Zoning Law and Practice*, § 2-1, at 2-3 and § 3-2, at 3-4 (4th ed. 2008) (the police power "is not rigid and fixed, but in its very nature it must be somewhat elastic in order to meet changing and shifting conditions" and enable the state "to order the affairs of the people so as to serve the common social and economic needs"). Thus, in evaluating zoning ordinances, courts must consider whether they are substantially related to the range of legitimate interests they seek to serve, not simply to the precise interests embodied in an existing comprehensive plan.

Indeed, it is particularly improper—and apparently unprecedented—to limit the rationales that can sustain the constitutionality of a state ***statute*** that seeks to serve large and competing societal interests on a state-wide basis. Exploitation of a natural resource that underlies two-thirds of the state presents significant economic potential as well as environmental and other

challenges. These interests, moreover, are inescapably intertwined. The economic growth from such resource development can promote (and has already created) prosperity in communities across the state, spawning ancillary economic opportunities, driving up housing values, and generating revenue for the Commonwealth. But failure to regulate the externalities of such growth can cause the opposite effects. Act 13 reflects a reasonable effort to manage resource development in a way that responsibly balances the benefits and risks. The constitutionality of such a comprehensive and integrated scheme cannot be determined by considering the extent to which it is substantially related to just one of the interests it seeks to advance, while ignoring the other important interests it seeks to promote. Simply put, given the presumption of constitutional validity and the highly deferential standards that apply to facial challenges, a law that seeks to balance competing societal interests of the sort addressed by Act 13 can be invalidated only if the General Assembly has struck a balance that is "clearly, palpably, and plainly" unreasonable or arbitrary. As we have shown, Act 13 plainly passes muster under this test.

The Commonwealth Court tried to bolster its contrary reasoning by asserting that,

> [i]f the Commonwealth-proffered reasons are sufficient [to sustain the law], then the Legislature could make similar findings requiring coal portals, tipples, washing plants, limestone and coal strip mines, steel mills, industrial chicken farms, rendering plants and fireworks plants in residential zones for a variety of police power reasons advancing those interests in their development. It would allow the proverbial "pig in the parlor instead of the barnyard."

Robinson Twp., 2012 WL 3030277 *14. This purported rationale for refusing to consider the full range of interests that justify Act 13 fails for at least two reasons.

First, this reasoning rests on a false dichotomy. According to the Commonwealth Court, the constitutionality of laws such as Act 13 rests either on a showing (1) that they are substantially related to the interests that underlie comprehensive zoning plans or (2) that they are

substantially related to the state's interest in economic development. Both of these choices, however, represent false extremes. Because a great many economic activities of state-wide concern implicate, among other things, the state's interests in safety and environmental protection, the validity of laws addressing such matters requires a showing that they are substantially related to the range of underlying states interests, not just one of those interests. Indeed, a state law that required municipalities to allow rendering plants and fireworks plants in residential areas could well be deemed "clearly, palpably, and plainly" unreasonable or arbitrary, because there is no geological or other reason that such facilities cannot be located in industrial zones (as there is in the case of the Marcellus Shale), and thus the state's interest in economic development could not justify a law that completely ignored its interest in protecting the environment and promoting safe and economically stable residential communities.

Second, the Commonwealth Court's parade of horribles ignores the legal as well as practical protections against the types of laws it hypothesizes. Laws requiring municipalities to allow rendering and fireworks plants to be built and operated in residential communities would almost certainly give rise to well-founded "as applied" substantive due process challenges by neighboring property owners. *See infra* § II.C. In fact, the risk of damages awards against the state itself—along with the likely political backlash against legislators who vote for such laws—make it highly unlikely as a practical matter that such laws would ever be adopted.

In short, the fanciful parade of horribles the Commonwealth Court posited provides no justification for judging the constitutional validity of Act 13 based solely on the extent to which it is substantially related to the protection of property interests, while completely ignoring the other important societal interests the Act seeks to promote.

C. The Commonwealth Court Improperly Treated Comprehensive Plans Under The Municipalities Planning Code As The Constitutional Standard For Assessing The Validity Of Zoning Amendments Mandated by Act 13.

In a closely related variant of the foregoing rationale, the Commonwealth Court effectively treated consistency with existing comprehensive zoning plans as the dispositive test for substantive due process purposes. Thus, the court found that § 3304 of Act 13 "violates substantive due process" because it is "a requirement that zoning ordinances be amended in violation of the basic precept that '[l]and-use restrictions designate districts in which only compatible uses are allowed and incompatible uses are excluded.'" *Robinson Twp.*, 2012 WL 3030277 *15 (citation omitted); *see also id.* (§ 3304 is "irrational because it requires municipalities to allow [in] all zones [natural gas operations]"). This reasoning, too, is deeply flawed. A zoning amendment's inconsistency with a comprehensive zoning plan is not, *ipso facto*, violative of substantive due process.

In both historical and constitutional terms, "zoning is a relatively new exercise of power over the property of individuals, a power formerly considered to constitute an unwarranted invasion of private rights in property." Yokley, *Zoning Law and Practice*, § 3-4, at pp. 3-7 – 3-8. The first comprehensive zoning ordinance was not adopted until 1916, by New York City. Mandelker, *Land Use Law* at 1 (3d ed. 1993). Comprehensive zoning, therefore, is not ***required*** by the constitution. To the contrary, since the United States Supreme Court's seminal decision upholding a comprehensive zoning scheme in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), comprehensive zoning has been recognized as constitutionally ***permissible.*** *See* Yokley, *Zoning Law and Practice*, § 3-7, at pp. 3-14 – 3-15.

Thus, the fact that Act 13 mandates ordinance amendments that are inconsistent with existing comprehensive zoning plans does not, in and of itself, violate substantive due process. Comprehensive zoning plans exist not because municipalities would violate the constitutional

rights of their residents by failing to adopt such plans; they exist because ***the state itself authorized*** and required them to adopt such plans under the Municipalities Planning Code. Act 13 is thus one state law requiring municipalities to amend ordinances authorized and required under another state law.

Because a law that mandates zoning ordinance amendments that alter or deviate from existing comprehensive zoning plans does not, without more, violate the constitution, the Commonwealth Court's finding of a substantive due process violation necessarily rests on the theory that such alterations or deviations impermissibly upset the legitimate reliance interests of property owners who have purchased property based on the expectation that their homes and businesses would continue to be governed and protected by such plans, or future amendments consistent with those plans. This reasoning, however, founders on the fact that this lawsuit involves a facial, rather than an as-applied, challenge to Act 13.

As this Court noted in *In re Realen Valley Forge Greenes Associates*, the substantive due process inquiry involves "a balancing of landowners' rights against the public interest sought to be protected by an exercise of the police power." 838 A.2d at 728. Such balancing simply cannot be done in the abstract, or on an aggregated basis. Instead, it requires concrete facts about the actual impact of a zoning amendment on actual properties. Indeed, Act 13's setback, public input, environmental protection, and impact fee provisions are all designed to ***minimize*** the impact of natural gas development on private property owners. Until Act 13 is implemented, therefore, the balancing required under the substantive due process inquiry simply cannot occur.

Moreover, in light of Act 13's various mechanisms for blunting the impact of natural gas development on private property owners, it is impossible to conclude that "no set of circumstances exist under which the statute would be valid," or that its "constitutional deficiency

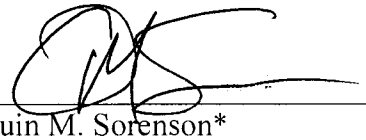
is so evident that proof of actual unconstitutional applications is unnecessary." *Clifton*, 969 A.2d at 1222-23 & n.37. Indeed, any attempt to reach such conclusions would improperly "rest on speculation" and require "premature interpretation of [the statute] on the basis of [a] barebones record[]." *Id.* at 1223 n.37 (internal quotation marks omitted). Thus, while there may well be individual cases in which the legitimate reliance interests of property owners, and their resulting investment-backed expectations, provide a basis for a well-founded, as-applied substantive due process challenge, the resolution of such claims must await individual—and factually supported—claims. The various mechanisms the state adopted to avoid such harms, however, preclude a finding that Act 13 is unconstitutional in all of its applications.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the Commonwealth Court.

August 31, 2012

Respectfully submitted,



Quin M. Sorenson*
Pa. Id. No. 91526
Joseph R. Guerra
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 736-8000
Fax: (202) 736-8711
qsorenson@sidley.com
jguerra@sidley.com

Attorneys for Amicus Curiae
American Petroleum Institute

Harry M. Ng
Vice President, General Counsel
and Corporate Secretary
Ben Norris
Counsel
American Petroleum Institute
1220 L Street, N.W.
Washington, D.C. 20005
Tel: (202) 682-8251
Fax: (202) 682-8033

* Counsel of Record

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Brief of *Amicus Curiae* American Petroleum Institute in Support of Appellants was served this 31st day of August, 2012 by first-class U.S. mail addressed as follows:

John M. Smith
Smith Butz, LLC
125 Technology Drive, Suite 202
Bailey Center I, Southpointe
Canonsburg, PA 15317

Jonathan M. Kamin
Goldberg, Kamin & Garvin LLP
1806 Frick Building
Pittsburgh, PA 15219

Jordan B. Yeager
Curtin & Heefner LLP
Heritage Gateway Center
1980 South Eaton Road, Suite 220
Doylestown, PA 18901

William A. Johnson
23 East Beau Street
Washington, PA 15301

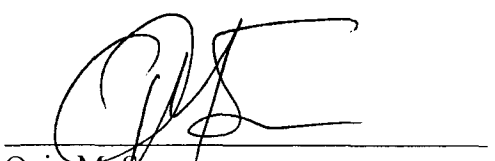
Susan J. Kraham
Columbia University School of Law
435 West 116th Street
New York, NY 10027

Howard G. Hopkirk
Senior Deputy Attorney General
Pennsylvania Office of Attorney General
Litigation Section
15th Floor, Strawberry Square
Harrisburg, PA 17120

James J. Rohn
Mathew H. Haverstick
Conrad O' Brien PC
1500 Market Street
Centre Square, West Tower, Ste. 3900
Philadelphia, PA 19102-1021

Devin J. Chwastyk
McNees, Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Robert A. Jackel
3614 Baring Street, Apt. 4
Philadelphia, PA 19104



Quin M. Sorenson