

**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

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

**BRIEF OF *AMICUS CURIAE* THE NORTHERN WAYNE PROPERTY OWNERS  
ALLIANCE IN SUPPORT OF APPELLANTS**

---

Jeffrey J. Norton  
PA Attorney I.D. No. 39241  
Eckert Seamans Cherin & Mellott, LLC  
213 Market St., 8<sup>th</sup> Fl.  
Harrisburg, PA 17101  
(717) 237-6000  
jnorton@eckertseamans.com  
*Attorney for Amicus Curiae  
Northern Wayne Property Owners Alliance*

Received in Supreme Cou

SEP 4 2012

Middle

TABLE OF CONTENTS

**I. THE INTERESTS OF *AMICUS CURIAE*** ..... 1

**II. STATEMENT OF THE QUESTIONS PRESENTED** ..... 3

**III. STATEMENT OF JURISDICTION**..... 3

**V. STATEMENT OF SCOPE AND STANDARD OF REVIEW** ..... 3

**VI. STATEMENT OF THE CASE**..... 3

**VII. ARGUMENT**..... 4

**VIII. CONCLUSION** ..... 4

The Northern Wayne Property Owners Alliance submits this brief as *Amicus Curiae* in support of the appeals of the Appellants (the “Commonwealth Parties”) from the Commonwealth Court’s July 26, 2012 order declaring portions of Act 13 of 2012 (“Act 13”) facially unconstitutional.

## I. THE INTERESTS OF AMICUS CURIAE

The Northern Wayne Property Owners Alliance (the “Alliance”) was organized to serve as an advocate for landowners who were dealing with oil and gas producers in Susquehanna and Northern Wayne Counties, Pennsylvania. The Alliance has assisted in securing arrangements with oil and gas producers that protect property, community and the environment while providing informational support during natural gas exploration and production activities.

The property owners who make up the Alliance own more than 100,000 acres of land in Susquehanna County and northern Wayne County. The Alliance’ has more than 1,300 members, who represent a wide array of backgrounds and professions, including physicians and nurses, university professors, regulators, lawyers, geologists, teachers, conservationists, business owners, and agricultural specialists. These professionals are trained in and committed to the preservation and management of real property in that region of Pennsylvania

Over the past four years, Alliance members have made themselves knowledgeable on the issues presented by natural gas drilling in their geographic area of concern, including geology, natural gas, gas drilling, and leasing issues. Alliance members have collected data and information regarding the operations of the oil and gas industry from across the country; have interviewed leading academic, research, and industry experts; have attended seminars on gas drilling with speakers from the Pennsylvania Department of Environmental Protection, as well as

industry, legal and scientific experts from some of our finest universities; toured various active drilling sites; and listened carefully to the arguments presented by drilling opponents.

The Alliance property owner members have committed to signing a lease for natural gas drilling only if surface waters and fresh-water aquifers in the two counties would not be adversely affected. The Alliance, after the investigation described above, concluded that gas drilling could be conducted safely with a responsible energy company as our partner.

The Alliance supports the local zoning provisions of Act 13 because they protect private property owners from the threat of tactics such as exclusionary zoning, unreasonable setbacks, unreasonable noise regulations, confiscatory fees, and other restrictions that prevent property owners from benefiting from natural gas exploration and production. The Alliance is further concerned that these tactics are or will be applied to oil and gas extraction while not being applied to other commercial and industrial activities. The Alliance believes that the local zoning provisions of Act 13 reflect a fair balance between competing interests that will allow natural gas exploration and production in a manner, and in locations, that are conducive to economic and community development and protective of the environment.

## **II. STATEMENT OF THE QUESTIONS PRESENTED**

The Alliance adopts the Statement of the Questions as set forth in Appellants' Brief.

## **III. STATEMENT OF JURISDICTION**

The Alliance adopts the Statement of Jurisdiction as set forth in Appellants' Brief.

## **IV. ORDERS IN QUESTION**

The Alliance adopts the statement of the Orders in Question as set forth in Appellants' Brief.

## **V. STATEMENT OF SCOPE AND STANDARD OF REVIEW**

The Alliance adopts the Statement of Scope and Standard of Review as set forth in Appellants' Brief.

## **VI. STATEMENT OF THE CASE**

The Alliance adopts the Statement of the Case as set forth in Appellants' Brief.

## VII. ARGUMENT

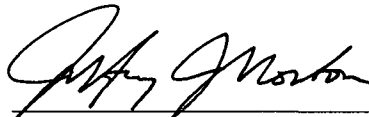
The Northern Wayne Property Owners Alliance incorporates and adopts by reference the Brief of Appellants, the Commonwealth Parties; and the *amicus* Briefs of the Pennsylvania Independent Oil and Gas Association, the Marcellus Shale Coalition, MarkWest Liberty Midstream & Resources, LLC, Penneco Oil Company, Inc., and Chesapeake Appalachia, LLC, and of the National Association of Royalty Owners.

## VIII. CONCLUSION

This Court should reverse the order of the Commonwealth Court granting the Appellees summary relief on Counts I-III and VIII and instruct the Commonwealth Court to enter summary relief for Appellants, the Commonwealth Parties, on those counts.

Respectfully submitted,

Date: September 4, 2012



---

Jeffrey J. Norton  
PA Attorney I.D. No. 39241  
Eckert Seamans Cherin & Mellott, LLC  
[jnorton@eckertseamans.com](mailto:jnorton@eckertseamans.com)  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
Direct: (717) 237-7192  
Fax: (717) 237-6019

Two Liberty Place  
50 South 16th Street - 22nd Floor  
Philadelphia, PA 19102  
Direct: (215) 523-7810

*Attorneys for Amicus Curiae  
Northern Wayne Property Owners Alliance*

**CERTIFICATE OF SERVICE**

I hereby certify that two true and correct copies of the foregoing Brief of *Amicus Curiae* in Support of Appellants was served this 4th day of September 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 116<sup>th</sup> Street  
New York, NY 10027

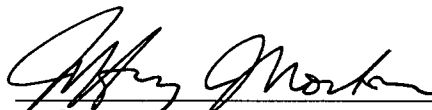
Howard G. Hopkirk  
Senior Deputy Attorney General  
Pennsylvania Office of Attorney General  
Litigation Section  
15th Floor, Strawberry Square  
Harrisburg, PA 17120

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

Christopher R. Nestor  
K&L Gates LLP  
17 North 2<sup>nd</sup> Street, 18<sup>th</sup> Floor  
Harrisburg, PA 17101-1507

  
\_\_\_\_\_  
Jeffrey J. Norton, Esq.