

[J-34A&B-2016][M.O. - Todd, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ROBINSON TOWNSHIP, WASHINGTON : No. 104 MAP 2014
COUNTY, PENNSYLVANIA, BRIAN :
COPPOLA, INDIVIDUALLY AND IN HIS : Appeal from the Order of the
OFFICIAL CAPACITY AS SUPERVISOR : Commonwealth Court at Docket No.
OF ROBINSON TOWNSHIP, TOWNSHIP : 284 MD 2012, dated July 17, 2014.
OF NOCKAMIXON, BUCKS COUNTY, :
PENNSYLVANIA, TOWNSHIP OF : ARGUED: March 9, 2016
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, MEHERNOSH KHAN, :
M.D. :

v. :

COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA PUBLIC UTILITY :
COMMISSION, GLADYS M. BROWN, IN :
HER OFFICIAL CAPACITY AS :
CHAIRMAN OF THE PUBLIC UTILITY :
COMMISSION, OFFICE OF THE :
ATTORNEY GENERAL OF :
PENNSYLVANIA, KATHLEEN KANE, IN :
HER OFFICIAL CAPACITY AS :
ATTORNEY GENERAL OF THE :
COMMONWEALTH OF PENNSYLVANIA, :

PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND JOHN H. QUIGLEY, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

APPEAL OF: COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA PUBLIC UTILITY COMMISSION, ROBERT F. POWELSON, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE PUBLIC UTILITY COMMISSION

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, MEHERNOSH KHAN, M.D.

v.

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA PUBLIC UTILITY

No. 105 MAP 2014

Appeal from the Order of the Commonwealth Court at Docket No. 284 MD 2012, dated July 17, 2014.

ARGUED: March 9, 2016

COMMISSION, GLADYS M. BROWN, IN :
HER OFFICIAL CAPACITY AS :
CHAIRMAN OF THE PUBLIC UTILITY :
COMMISSION, OFFICE OF THE :
ATTORNEY GENERAL OF :
PENNSYLVANIA, KATHLEEN KANE, IN :
HER OFFICIAL CAPACITY AS :
ATTORNEY GENERAL OF THE :
COMMONWEALTH OF PENNSYLVANIA, :
PENNSYLVANIA DEPARTMENT OF :
ENVIRONMENTAL PROTECTION AND :
JOHN H. QUIGLEY, IN HIS OFFICIAL :
CAPACITY AS SECRETARY OF THE :
DEPARTMENT OF ENVIRONMENTAL :
PROTECTION :

CROSS APPEAL OF: 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, MEHERNOSH KHAN, :
M.D. :

CONCURRING AND DISSENTING OPINION

I took a different view of this case in connection with the Court's previous review. I expressed the belief that those with standing to challenge Act 13's validity should have been required to adduce *evidence* supporting their contentions, to be tested through the adversarial process, before any of the law should be stricken. See *Robinson Twp. v. Commonwealth*, 623 Pa. 564, 741-50, 83 A.3d 901, 1009-14 (2013) (Saylor, J., dissenting); accord Joshua P. Fershee, *Facts, Fiction, and Perception in Hydraulic Fracturing: Illuminating Act 13 and Robinson Township v. Commonwealth of Pennsylvania*, 116 W. VA. L. REV. 819, 826 (2014) (focusing on "how assumed facts were used to justify the plurality opinion" in the 2013 *Robinson Township* opinion). I also did not support the conferral of standing upon municipalities – which are otherwise creatures of the Legislature – to invoke the rights of "the people," under Article I, Section 27 of the Pennsylvania Constitution, PA. CONST., art. I, §27, and thereby to challenge a presumptively valid legislative enactment. To the extent that the majority credits plurality aspects of the previous *Robinson Township* decision related to such matters, see, e.g., Majority Opinion, *slip op.* at 36 n.35, I am unable to join the opinion.

With respect to the severability of Sections 3305 to 3309, I agree with the position advanced by the Public Utility Commission and credited by Judge Brobson in his dissenting opinion on the Commonwealth Court. See *Robinson Twp. v. Commonwealth*, 96 A.3d 1104, 1123-24 (Pa. Cmwlth. 2014) (Brobson, J., dissenting); cf. *id.* at 1126 (McCullough, J., concurring and dissenting). Applying the presumption in favor of severability and the "jurisprudential restraint" required of reviewing courts, *Stilp v. Commonwealth*, 588 Pa. 539, 627, 905 A.2d 918, 971 (2006), it is my position that the statutory framework and conditions for local government to be eligible to receive impact fees should be left intact, to the degree that they were not found to be unconstitutional and enjoined by the 2013 *Robinson Township* decision. In this regard, I

respectfully differ with the majority's depiction of the role ascribed by the General Assembly to the Public Utility Commission and/or the Commonwealth Court as that of a "statewide zoning hearing board," Majority Opinion, *slip op.* at 47. See Brief for the PUC at 16 (explaining that Act 13 "leaves the procedures of the MPC intact; it merely adds an additional procedure that is necessary because the MPC does not specifically address the impact fees unique to Act 13").

I also would not invalidate, on the basis that it comprises special legislation, the provision of Act 13 requiring the Department of Environmental Protection to notify public drinking water facilities of spills. See 58 Pa.C.S. §3218.1. From my point of view, the protection of public water sources is a legitimate and important state purpose fully justifying the enhanced notice requirement fashioned by the Legislature. See *generally Appolo Fuels, Inc. v. U.S.*, 381 F.3d 1338, 1350–51 (Fed. Cir. 2004) (identifying protection of a public water supply as important government action designed to protect the health and safety of communities). Furthermore, I do not view the prohibition against special legislation as requiring the General Assembly to expand the scope of an administrative agency's regulatory purview before the agency can be directed to accomplish a publicly-oriented task relative to public water sources. Moreover, as the Department discusses at length, there are other statutory protections serving the interests of those maintaining private water sources. See, *e.g.*, Brief for DEP at 32 (explaining that the claim that Section 3218.1 "relieves . . . industry from having to address its true impact on rural communities misleadingly omits any reference to the laws and policies that form the basis of DEP's comprehensive spill prevention and response program").

In all other respects, I concur in the result attained under the majority opinion.