

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

Nos. 63 & 64 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 KHAN, M.D.,
Appellees/Cross-Appellants

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,
Appellants/Cross-Appellees.

*On appeal from an Order of the Commonwealth Court
entered on July 26, 2012 at No. 284 M.D. 2012.*

BRIEF OF *AMICI CURIAE* 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, AND WESTMORELAND MARCELLUS CITIZEN'S GROUP

Charles McPhedran
Attorney Identification No. 60123
EARTHJUSTICE
1617 John F. Kennedy Blvd., Suite 1675
Philadelphia, PA 19103
(212) 791-1881 | Phone

Deborah Goldberg
Bridget Lee
EARTHJUSTICE
156 William Street, Suite 800
New York, NY 10038
(212) 791-1881 | Phone

Counsel for Amici Curiae

September 17, 2012

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The 20 local, state, and national environmental organizations and citizen groups that appear as friends of the Court in this appeal (“*Amici*”) represent tens of thousands of members in the Commonwealth of Pennsylvania.¹ Many of *Amici*’s members live in areas underlain by the Marcellus and other shale formations, and their communities already are or soon will be adversely affected by the pollution, noise, light, odors, and other disturbances associated with the gas development process. *Amici* understand that municipalities traditionally have had the duty and the power to protect communities’ health, safety, morals, and welfare, by adopting comprehensive land use plans that separate incompatible uses – such as family homes and shale gas wastewater impoundments – into separate zoning districts. *Amici* rely upon, and therefore have a direct interest in, the continuing authority of municipalities to utilize such plans to protect their constituents, including local landowners, whose constitutionally guaranteed property interests are served by rational zoning measures.

Act 13 of 2012, 58 Pa. Cons. Stat. §§ 2301–3504 (“Act 13”), harms that interest by unlawfully interfering with municipal authority over land use regulation. Specifically, section 3304 of Act 13 (“Section 3304”), 58 Pa. Cons.Stat. § 3304, mandates that “all local ordinances regulating oil and gas operations” in the Commonwealth authorize those operations in “all zoning districts.” *Id.* § 3304(a), (b)(5)–(6). That requirement forces incompatible uses into the same zoning districts, vitiating duly enacted comprehensive land use plans necessary to protect

¹ *Amici* are: 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, and Westmoreland Marcellus Citizen’s Group. The individual statements of interest of all of the *Amici* are annexed as Exhibit A to this brief.

local communities and to preserve constitutionally protected private property rights. *Amici* therefore urge this Court to affirm the Commonwealth Court's decision that Section 3304 of Act 13, is null and void for violating Article I, Section I of the Pennsylvania Constitution, Pa. Const. art. I, § 1, and permanently to enjoin Section 3304 and all other provisions of Act 13 that enforce Section 3304.²

STATEMENT OF FACTS

Amici adopt and incorporate by reference Appellees' Statement of Facts.

ARGUMENT

I. Section 3304 Is Unconstitutional Because It Is Not Substantially Related to Inherently Local Interests in Orderly Development and Comprehensive Land Use Planning.

A zoning law can withstand constitutional scrutiny only when its requirements are substantially related to a legitimate governmental interest. *See Boundary Drive Assocs. v. Shrewsbury Twp. Bd. of Supervisors*, 507 Pa. 481, 489, 491 A.2d 86, 90 (1985). When a zoning provision has no substantial relationship to such an interest, it is not "necessary for the preservation of public health, safety, morals or general welfare," *Twp. of Exeter v. Zoning Hearing Bd. of Exeter Twp.*, 599 Pa. 568, 580, 962 A.2d 653, 660 (2009) (internal quotation marks omitted), and it violates the Pennsylvania Constitution. Because Section 3304 of Act 13 lacks the requisite relationship and thus violates the standard for lawful zoning, this Court should affirm the decision below, which invalidated that provision and enjoined its enforcement.

Under Article I, Section I of the Pennsylvania Constitution and applicable case law, property rights are subordinate to legitimate applications of the police power, including zoning

² *Amici* submit this brief exclusively in connection with appeals Nos. 63 and 64 MAP 2012. Appellees' briefs in response to those appeals are due on September 18, 2012. Therefore, this brief in support of Appellees in those appeals is timely filed.

measures that protect and preserve “a particular public health, safety, morality, or welfare interest in a community.” *C & M Developers, Inc. v. Bedminster Twp. Zoning Hearing Bd.*, 573 Pa. 2, 14, 820 A.2d 143, 150 (2002). The police power interest that zoning serves in regulating land use thus is inherently local in character; it is a particular interest *in a community* – indeed, in the part of the community that will be directly affected by the law. *See Best v. Zoning Bd. of Pittsburgh*, 393 Pa. 106, 112, 141 A.2d 606, 610 (1958) (noting that “the test of constitutionality” of a zoning measure “is whether the health, safety, morals or general welfare of the inhabitants of that part of the community affected will be promoted by the application” of the law). To ensure that land use regulations serve that interest, lawful zoning must “be in conformance with a comprehensive plan for the growth and development of the community.” *In re Realen Valley Forge Greenes Assocs.*, 576 Pa. 115, 133, 838 A.2d 718, 729 (2003).

The acknowledged standard for constitutional zoning measures reflects the distinction between the police power interest served by land use regulation and that served by statutes regulating the exploitation of oil and gas resources. *See Huntley & Huntley, Inc. v. Borough Council of the Borough of Oakmont*, 600 Pa. 207, 224-225, 964 A.2d 855, 865 (2009). Quoting Colorado’s Supreme Court with approval, the *Huntley* Court noted:

“While the governmental interests involved in oil and gas development and in land-use control at times may overlap, the core interests in these legitimate governmental functions are quite distinct. The state’s interest in oil and gas development is centered primarily on the efficient production and utilization of the natural resources in the state. A county’s interest in land-use control, in contrast, is one of orderly development and use of land in a manner consistent with local demographic and environmental concerns.”

Id. at 225, 964 A.2d at 865 (quoting *Bd. of Cnty. Comm’rs, La Plata Cnty. v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1057 (Colo. 1992)). Land use constitutionally may be regulated to achieve that orderly development, “but the power to thus regulate does not extend to an

arbitrary, unnecessary or unreasonable intermeddling with the private ownership of property, even though such acts be labeled for the preservation of health, safety, and general welfare.”” *Twp. of Exeter*, 599 Pa. at 580, 962 A.2d at 660 (quoting *Exton Quarries, Inc. v. Zoning Bd. of Adjustment of W. Whiteland Twp.*, 425 Pa. 43, 58-59, 228 A.2d 169, 178 (1967)).

Appellees demonstrate that, in dictating land use provisions to municipalities in Pennsylvania, Act 13 operates as a zoning law and is therefore subject to the standard for lawful zoning stated above. Section 3304 of Act 13 makes lawful and rational zoning impossible, however, because it forces incompatible uses into the same districts. In so doing, the provision coerces municipalities into disregarding their own comprehensive land use plans, which are necessary to protect the constitutionally guaranteed property rights of their constituents. Section 3304 thus purports to require zoning measures that have no substantial relationship to the police power interest in land use control, even though the Legislature does not have the power to compel municipalities to violate the Constitution. For this reason alone, this Court should affirm the Commonwealth Court’s decision nullifying Section 3304 and enjoining all provisions of Chapter 33 of Act 13 that enforce Section 3304.

Section 3304 violates the Pennsylvania Constitution and should be permanently enjoined for another reason, as well. As *Amici* demonstrate in section II below, even if (contrary to *Huntley*) Respondents invoke the interest in exploiting oil and gas resources as an ostensible justification for Act 13’s zoning mandate, Section 3304 still fails constitutional scrutiny. The law and practice in many states – including Pennsylvania, prior to the enactment of Act 13 – show that state regulation of oil and gas development can be successfully harmonized with local regulation of land use. *See infra* Section II.A. Although it may “be labeled for the preservation of health, safety, and general welfare,” Section 3304 thus is “an arbitrary, unnecessary, and

unreasonable intermeddling” with constitutionally protected property rights in this Commonwealth. For this reason, too, Section 3304 should be nullified and its enforcement should be enjoined.

II. Because State Oil and Gas Laws Can and Do Operate in Harmony with Local Laws Governing Land Use, Section 3304 Is an Arbitrary, Unreasonable, and Unnecessary Intrusion on Constitutionally Protected Property Rights.

This Court has recognized that property rights in the Commonwealth of Pennsylvania may not be limited through zoning, except as “*necessary* to protect the interests of the public and of neighboring property owners.” *In re Realen*, 576 Pa. at 130, 838 A.2d at 727 (emphasis added). Not only is Section 3304 unnecessary to promote those interests but it is, as Appellees have demonstrated, flatly inconsistent with orderly development and rational land use planning. Moreover, even if the state’s interest in promoting the exploitation of oil and gas resources were a legitimate purpose of zoning – and it is not – *Amici* show below that Section 3304 is not necessary to serve that purpose either.

The Legislature’s constitutionally impermissible decision to enact Section 3304 appears to rest on the notion that efficient oil and gas development cannot be reconciled with respect for the property rights protected by local zoning. Before the enactment of Act 13, however, Pennsylvania harmonized state regulation of oil and gas operations with local regulation of land use, and the industry successfully obtained thousands of drilling permits. Moreover, the law and practice of other states show that the industry can and does flourish under similar allocations of authority. Moreover, Because Act 13’s draconian imposition on local zoning authority is wholly unnecessary to achieve the state’s interest in promoting exploitation of oil and gas resources, Section 3304 is unconstitutional and should be enjoined permanently.

A. The Oil and Gas Industry Expanded Rapidly in Pennsylvania before the Enactment of Act 13.

The documented experience in Pennsylvania belies any claim that exploitation of oil and gas resources requires intrusion upon the property rights protected by rational zoning laws. Even before enacting Act 13, the Legislature ensured that the industry would be allowed to operate in all municipalities. *See* 53 Pa. Cons. Stat. § 10603(i) (“Zoning ordinances shall provide for the reasonable development of minerals in each municipality.”). Under the regime recognized in *Huntley*, where the state regulates “technical aspects of well functioning and matters ancillary thereto (such as registration, bonding, and well site restoration), rather than the well’s location,” 600 Pa. at 223, 964 A.2d at 864, Pennsylvania issued 18,576 oil and gas drilling permits in just the three years from 2009 through 2011. *See* Pa. Dep’t of Env’tl. Prot., *Permits Issued-Wells Drilled Maps 2009-2011*, http://www.portal.state.pa.us/portal/server.pt/community/marcellus_shale/20296 (providing links to data).

B. Throughout the Nation, the Oil and Gas Industry Thrives under Regulatory Regimes That Put the State in Control of Industrial Operations and Municipalities in Control of Land Use.

Like Pennsylvania before Act 13, most oil- and gas-producing states regulate technical aspects of the industry’s operations, while leaving the regulation of land use in the hands of individual localities. The very intensively developed states of Oklahoma, Texas, and Wyoming uniformly permit local ordinances regulating land use for gas development, as do Kansas and New Mexico. For more than 20 years, Colorado’s highest court has recognized the right of localities to regulate land use. Several states – California, Illinois, and New York – allow outright bans on development within municipal borders. Even as a means of promoting exploitation of oil and gas resources, Section 3304 therefore is an arbitrary, unreasonable, and unnecessary intrusion on rights protected under the Pennsylvania Constitution.

In a number of states with a history of oil and gas development, local governmental units exercise considerable regulatory authority. In Texas, municipalities enjoy home-rule status and, as in Pennsylvania, they may enact and enforce ordinances designed to protect health, life, and property of their citizens. *See* Tex. Const., art. XI, § 5. Exercising that power of local self-government, municipalities in Texas have adopted ordinances that extensively regulate not only the use of land for oil and gas development but also some aspects of technical operations. *See, e.g.,* Southlake, Tex., Code § 9.5-242 (establishing more than 50 requirements for on-site operations); Fort Worth, Tex., Code § 15-30–15-51 (setting forth conditions for local gas well permits, including city council consent for wells in defined locations).

Kansas, New Mexico, Oklahoma, and Wyoming leave land use regulation to localities, which have adopted ordinances governing the permissible locations of oil and gas activities. *See, e.g.,* Chanute, Kan., Code §§ 16.44.020–16.44.030 (prohibiting all oil drilling and gas drilling in residential zones); Wichita, Kan. Code § 25.04.015 (prohibiting well drilling within city limits, except in oil and gas well districts); Dona Ana Cnty., N.M., Code § 250-72 (New Mexico) (establishing procedures and standards for proposed planned unit development overlay zones, including those for oil and gas drilling, and requiring that they be consistent with the County’s Comprehensive Plan); El Reno, Okla., Code § 270-5 (describing drilling permits for oil and gas wells “within the legally described area of the City”); Lawton, Okla., Code § 18-5-1-502(A)(4) (allowing oil and gas drilling in general agricultural districts); Evanston, Wyo., Code §§ 16-4; 16-17 (barring drilling without local well permit and authorizing drilling only in specified zones); Newcastle, Wyo., Code § 17-16 (Wyoming) (barring oil and gas wells from specified zoning districts).

The only state high court to address the issue of local control of land use related to oil and gas operations, other than this Court, is the Supreme Court of Colorado.³ Since 1982, the Colorado Supreme Court has recognized the distinction between the governmental interest in oil and gas development and that in land use control. *See Bowen/Edwards*, 830 P.2d at 1057. Finding that the two interests often can be harmonized, the Court concluded that the state's interest in its regulation of gas development would justify interference with a comprehensive land use plan only if there were an operational conflict between state and local requirements.⁴ *Id.* at 1059. Following the decision in *Bowen/Edwards*, Colorado codified its operational conflicts test in a formal rule. *See* 2 Colo. Code Regs. § 404-1 (“Nothing in these rules shall establish, alter, impair, or negate the authority of local and county governments to regulate land use related to oil and gas operations, so long as such local regulation is not in operational conflict with the Act or regulations promulgated thereunder.”). Applying that test, even an oil and gas operator challenging the Town of Frederick's ordinance admitted:

[P]rovisions requiring an operator to obtain building permits for above-ground structures, maintain access roads, submit emergency response and fire protection plans, and regulate the distances that buildings must be set back from existing wells are matters that a local government may legitimately regulate pursuant to its land use authority.

³ One trial court in West Virginia has held that state law preempts all local regulation of the oil and gas industry. *See Northeast Natural Energy, LLC v. City of Morgantown*, No. 11-C-411, slip op. (Cir. Ct. Monongalia Cnty. Aug. 12, 2011). Unlike Pennsylvania, however, West Virginia does not affirmatively impose an obligation on municipalities to adopt zoning measures inconsistent with their comprehensive land use plans. In addition, the provision of West Virginia law held to preempt all local regulation has never been challenged as a violation of constitutionally guaranteed property rights.

⁴ In a companion case, the Colorado Supreme Court ruled that a city could not ban all drilling operations within its limits. *See Voss v. Lundvall Bros., Inc.*, 830 P.2d 1061 (Colo. 1992).

Town of Frederick v. N. Am. Res. Co., 60 P.3d 758, 766 (Colo. App. 2002).⁵

Several states where the oil and gas industry has been operating for more than a century allow localities to exclude those operations completely. The Attorney General of California has issued an advisory opinion stating that the state’s approval of an oil or gas well “would . . . not nullify a valid prohibition of drilling or a permit requirement by a county or city in all or part of its territory.” Cal. Att’y Gen. Op. No. SO 76-32, 59 Att’y Gen. Op. 461, 480 (1976). The Legislature of California also has granted localities broad authority to regulate oil production activities within their borders. *See* Cal. Pub. Res. Code § 3690 (“This chapter shall not be deemed a preemption by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including, but not limited to, zoning, fire prevention, public safety, nuisance, appearance, noise, fencing, hours of operation, abandonment, and inspection.”). From 2009 through 2011, there were 7,624 wells drilled in California. *See* Cal. Div. of Oil, Gas and Geothermal Res., *2011 Preliminary Report of California Oil and Gas Production Statistics 2*, available at ftp://ftp.consrv.ca.gov/pub/oil/annual_reports/2011/PR03_PreAnnual_2011.pdf.

Illinois law contains a provision requiring that oil and gas developers obtain “the official consent of the municipal authorities” before obtaining a drilling permit from the state, “and no permit shall be issued unless consent is secured and filed with the application. 225 Ill. Comp. Stat. 725/13 (West 2012). Another statute provides: “The corporate authorities of each

⁵ Other efforts to regulate aspects of industry activities have been invalidated pursuant to the operational conflicts test. *See, e.g., Colorado Min. Ass’n v. Bd. of Cnty. Comm’rs of Summit Cnty.*, 199 P.3d 718 (Colo. 2009) (invalidating provision of county ordinance banning a particular technique of mining); *Bd. of Cnty. Comm’rs of Gunnison Cnty. v. BDS Int’l, LLC.*, 159 P.3d 773 (Colo. App. 2006) (holding that county recordkeeping regulations created operational conflicts with state oil and gas law and rules); *Town of Frederick*, 60 P.3d at 765 (affirming the invalidation of setback, noise abatement, and visual impact provisions).

municipality may grant permits to mine oil or gas, under such restrictions as will protect public and private property and insure proper remuneration for such grants.” 65 Ill. Comp. Stat. 5/11-56-1 (West 2012). “The legislature’s use of the word ‘may’ indicates that a municipality’s authority to grant such permits is a ‘permissive power, which [a municipality] may choose to exercise or not.’” *Tri-Power Res., Inc. v. City of Carlyle*, 359 Ill. Dec. 781, 784 (Ill. App. Ct. 2012) (quoting *Maddux v. Blagojevich*, 233 Ill. 2d 508, 523 (2009)). The *Tri-Power* court held that “the power to prohibit the operation of oil and gas wells within its municipal limits” extends to both home rule and non-home-rule units of government. 359 Ill. Dec. at 786. “There are approximately 32,100 oil and gas production wells” in Illinois today. Ill. Dep’t of Natural Res., *Oil and Gas Facts*, <http://dnr.state.il.us/mines/dog/facts.htm>.

Finally, two New York trial courts recently upheld local zoning provisions that banned oil and gas operations within municipal borders. See *Anschutz Exploration Corp. v. Town of Dryden*, 940 N.Y.S.2d 458 (Sup. Ct. Tompkins Cnty. 2012); *Cooperstown Holstein Corp. v. Town of Middlefield*, 943 N.Y.S.2d 722 (Sup. Ct. Otsego Cnty. 2012). Like the *Huntley* Court, the New York courts recognized that the challenged ordinances did not conflict with the state’s oil and gas law. See *Anschutz*, 940 N.Y.S.2d at 467 (“[L]ocal governments may exercise their powers to regulate land use to determine where within their borders gas drilling may or may not take place, while [the state] regulates all technical operational matters on a consistent statewide basis in locations where operations are permitted by local law.”); *Cooperstown*, 943 N.Y.S.2d at 729; cf. *Penneco Oil Co. v. Cnty. of Fayette*, 4 A.3d 722 (Pa. Commw. Ct. 2010) (upholding county zoning ordinance that did not attempt to regulate technical aspects of gas development operations). As of August 29, 2012, 135 local communities in New York had enacted local laws establishing moratoria on shale gas development or prohibiting it altogether. Fracktracker,

Current High Volume Hydraulic Fracturing Drilling Bans and Moratoria in NY State, <http://www.fractracker.org/fractracker-maps/ny-moratoria/>. In the meantime, oil and gas drilling and production proceeds in other municipalities, as it has done since the late 1800s, with approximately 14,000 active wells operating statewide today. See N.Y. State Dep't of Envtl. Conservation, *Oil, Gas and Solution Salt Mining in New York State*, <http://www.dec.ny.gov/energy/205.html> (noting that this figure includes solution salt mining wells). “Extraction of oil and gas contributes half a billion dollars to the state’s economy each year.” *Id.*

In sum, harmonizing local zoning authority with state regulation of the gas industry’s operations, activities, and processes plainly is the rule, rather than the exception in the United States. Given the widespread exercise of such zoning power in states throughout the nation where oil and gas extraction is booming, Section 3304 cannot pretend to be necessary to secure the efficient recovery of oil and gas in Pennsylvania, even if that interest could support Act 13’s zoning measures. Indeed, the explosive development of oil and gas under the *Huntley* regime – where local governments were required to allow oil and gas development somewhere within municipal limits but could exclude it from districts where it would harm community interests – confirms that forcing municipalities to allow drilling in all zoning districts is an arbitrary, unreasonable, and unnecessary intrusion on the rights protected by Article I, Section I of the Pennsylvania Constitution.

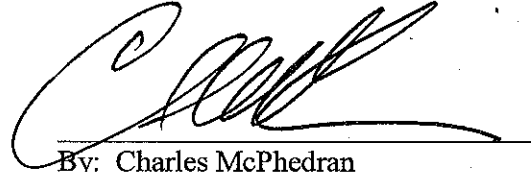
CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to affirm the decision of the Commonwealth Court, declaring that Section 3304 of Act 13 is null and void and permanently enjoining all provisions of Chapter 33 of Act 13 that enforce Section 3304.

Dated: September 17, 2012

Respectfully submitted,

EARTHJUSTICE



By: Charles McPhedran
Pa. Bar Id. No. 60123
1617 John F. Kennedy Blvd., Suite 1675
Philadelphia, PA 19103
212-791-1881 x8234
cmcphedran@earthjustice.org

Deborah Goldberg*
Bridget Lee*
156 William St., Suite 800
New York, NY 10038-5326
212-791-1881
dgoldberg@earthjustice.org
blee@earthjustice.org

Attorneys for *Amici Curiae*

* Admitted in New York; not admitted in Pennsylvania.

EXHIBIT A

STATEMENTS OF INTEREST OF *AMICI*

Berks Gas Truth (“BGT”) is a grassroots community organization of over 600 concerned citizens who are fighting to stop unconventional natural gas drilling. It is dedicated to raising public awareness of the issues surrounding drilling and taking action to protect natural resources, health, and safety from its consequences. BGT worked to oppose the passage of Act 13 and led a campaign to inform municipalities of its provisions and encourage them to pass resolutions supporting the lawsuit challenging the legality of the Act. BGT firmly believes that municipal governments exist for good reason and that it is unconstitutional to strip them of their authority to protect their communities and the natural resources therein.

The **Brockway Area Clean Water Alliance** (“BACWA”) is a pro-community, pro-water, pro-business alliance that supports the efforts of the Brockway Borough Municipal Authority to provide three communities with clean water. BACWA follows issues pertaining to its members’ public water source, and views rampant Marcellus drilling activity in the Brockway municipal watershed as a public and an economic threat. BACWA supports the right of municipalities to enact zoning ordinances to protect the health of their communities.

The **Clean Air Council** (“Council”) is a non-profit environmental organization with members throughout Pennsylvania. Its mission is to protect everyone’s right to breathe clean air, and for more than 40 years it has fought to improve air quality across Pennsylvania. The Council has worked extensively on issues related to the air quality effects of shale gas operations in Pennsylvania, with a particular emphasis on enhancing local input and public participation in decisions about equipment proposed in their community. Natural gas operations cause localized air quality and health effects, making it crucial for communities to retain the authority to protect their citizens through the use of zoning. In preempting this authority, the Council believes that Act 13 wrongfully usurped the ability of local governments to safeguard their citizens. The

Council supports the Commonwealth Court’s finding that this aspect of Act 13 was unconstitutional.

Clean Water Action (“CWA”) is a non-profit environmental organization that has been working in Pennsylvania for 28 years. CWA has 100,000 members in Pennsylvania who support the goals of protecting our environment, health, economic well-being and community quality of life. CWA members have been actively involved at the community level in working with local governments to ensure that these goals are met with regard to Marcellus Shale natural gas extraction. CWA has long recognized that land use planning is critical to environmental protection and stewardship. The current and potential future impacts of shale gas extraction in Pennsylvania is a top concern of CWA and its membership.

Damascus Citizens for Sustainability (“DCS”) is a collaborative effort to preserve and protect clean air, land and water as a civil and basic human right in the face of the threat posed by the shale gas extraction industry. DCS has focused its advocacy and legal efforts on protecting the Delaware River Watershed but increasingly has extended its efforts across the state of Pennsylvania and the entire Marcellus region. Based on these concerns, DCS, a 501(c)(3) not-for-profit, has advocated for human and environmental health considerations and local decision making in gas development decisions. DCS supports the authority of local municipalities to determine land use via zoning. DCS also supports strong setback regulations.

Earthworks is a non-profit organization dedicated to protecting communities and the environment from the impacts of irresponsible mineral and energy development, while seeking sustainable solutions. For over two decades, Earthworks has been engaged in efforts nationwide to reform public policy, improve corporate practices, and use sound science to expose and resolve related health and environmental issues. Earthworks provides information to, and

actively supports, its members, citizens and elected officials working to improve the oil- and gas-related laws and practices that affect communities, including through township ordinances, municipal zoning and locally-based land use decisions. In Pennsylvania and other states, Earthworks has worked with local governments to draft, modify, and adopt oil and gas regulations.

Environmental Defense Fund (“EDF”) is a not-for-profit non-partisan environmental organization with over 16,000 members in the Commonwealth of Pennsylvania. Guided by science, economics and law, EDF is dedicated to finding practical and lasting solutions to the most serious public health and environmental problems. EDF has worked with concerned citizens, government officials, scientists, and industry across the country to forge solutions addressing the adverse impacts of shale gas development activities to air, water, land, and communities. Based on experience working in over a dozen gas-producing states, including extensive field work in Pennsylvania, EDF has found that retention of traditional municipal zoning control does not conflict with the gainful utilization of shale gas reserves.

Gas Drilling Awareness Coalition of Luzerne County (the “Coalition”), based in Dallas, Pennsylvania, is a non-profit community educational association, whose members are concerned with the negative effects of the industrial process of drilling for natural gas in Pennsylvania. Coalition members are citizens from all walks of life. The Coalition supports and recognizes the authority for local municipalities to regulate the land use within their borders to protect the character and environmental integrity of their communities.

The **Group Against Smog and Pollution** (“GASP”) is a Pittsburgh-based nonprofit environmental organization founded in 1969 and dedicated to improving air quality in southwestern Pennsylvania. Much of GASP’s recent work has focused on mitigating the air

quality impacts of Pennsylvania shale gas development. GASP supports municipalities' right to establish land use restrictions to preserve the character of neighborhoods and to protect human health and the environment.

The **Pennsylvania Division of the Izaak Walton League** (“IWLA”), founded in 1925, is the one of Pennsylvania’s oldest and largest grassroots environmental organization. Its mission is to conserve, maintain, protect, and restore the soil, forest, water, and other natural resources of Pennsylvania, the United States, and other lands. IWLA has been working at the local, regional, and national levels to advocate for sensible solutions to the most pressing challenges facing America’s natural resources. The Pennsylvania Division of IWLA has more than 1,600 members. Many have a keen interest in fishing, hunting, camping, and other outdoor recreation. What all share is a passion for protecting the outdoors. IWLA members in Pennsylvania live in and around areas where oil and gas drilling is now occurring or will occur, and are directly harmed by pollution, noise, light, and other disturbances associated with the process. In order to protect its members, and communities, parks, and forests, the Pennsylvania Division of the IWLA has been an active grassroots organizing effort that reaches people throughout the state. Because this Division believes strongly in local communities’ right to protect themselves, it has advocated against Act 13 and supports efforts to restore local control.

The **League of Women Voters of Pennsylvania** (the “League”), a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League has completed a statewide study of natural gas extraction from Marcellus Shale and has adopted positions from which it advocates. The League supports the maximum protection of public health and the environment in all aspects of Marcellus Shale natural gas

production, site restoration, and delivery to the customer, by requiring the use of best practices and promoting comprehensive regulation, communication, and adequate staffing across government agencies. Further, the League supports legislation and regulation that insures public input into decision-making regarding the location of facilities and related pipelines. In promoting good government, the League has long advocated for comprehensive statewide planning. Such planning would coordinate regional plans among agencies, require impact statements on major public and private investments, and encourage local governments to exercise at least at a minimum level of planning and control over land use.

Lehigh Valley Gas Truth (“LVGT”) is a volunteer grassroots community organization of nearly 200 concerned citizens who are advocating for the protection of communities, water, air, and land from the life-threatening abuses of shale gas drilling in Pennsylvania. LVGT is dedicated to raising public awareness of the issues surrounding drilling and to influencing lawmakers and regulatory agencies to protect public health and living systems from its consequences. LVGT mobilized with other groups to oppose the passage of Act 13, inform municipalities of its provisions, and encourage them to pass resolutions supporting the lawsuit questioning the constitutionality of this Act.

Local Authority Western PA (“LAWPA”) is a coalition of citizen volunteers spanning eight counties in Western Pennsylvania. LAWPA is dedicated to preserving the rights of citizens to make local decisions to preserve the environment and future planning. LAWPA is opposed to any legislation that would prevent municipalities from taking commonsense steps to shield their communities from threats to their residents’ health, safety and property value.

Marcellus Outreach Butler (“MOB”) is a group of citizen volunteers residing in Butler County, Pennsylvania. Active for the last year and one half, MOB members are dedicated to

preserving the rights of citizens to make decisions regarding unconventional gas drilling locally. MOB opposes legislation that usurps the zoning authority of local governments, which know best how to protect their residents' health, safety and property value.

Marcellus Protest is an alliance of western Pennsylvania groups and individuals building a broad movement to stop the destruction of their environment and communities caused by Marcellus Shale gas drilling and to support other affected communities. Since its inception in 2010, Marcellus Protest has advocated for local shale gas drilling bans in western Pennsylvania. In support of its advocacy efforts, Marcellus Protest has organized rallies, distributed educational materials, organized video screenings and a traveling speakers' series, and communicated with the media.

PennEnvironment, Inc. is a non-profit, citizen-based environmental advocacy organization that advocates for clean air, clean water and the protection of open spaces across Pennsylvania. Since 2002, PennEnvironment has worked to identify environmental problems facing the commonwealth and has advocated pragmatic solutions, often with the help of its 130,000 citizen members. In response to shale gas development, PennEnvironment has become as strong voice in favor of greater protection of Pennsylvania's environment, and its residents' health and quality of life. PennEnvironment supports and recognizes the authority of local municipalities to regulate land use within their borders to protect the character and environmental integrity of their communities.

The **Responsible Drilling Alliance** ("RDA"), a non-profit entity headquartered in Williamsport, Pa., was formed by local citizens in 2009 in response to the sudden, and dramatic, industrial transformation of the region occurring as a result of the introduction of unconventional gas extraction. RDA is an education and advocacy coalition that seeks to educate the public

about shale gas drilling and all of its ramifications. Through outreach programs, events, public forums, and weekly e-letters, RDA strives to balance the conversation about shale gas drilling. RDA advocates for federal, state and local regulations necessary to protect the economy, environment, health, safety and quality of life of its members. RDA recognizes and supports the authority provided by the Pennsylvania Municipalities Planning Code Act of 1968, which provides local municipalities with the power to regulate land use and development in order to protect the regional character and environmental integrity of their communities.

The **Sierra Club**, founded in 1892, is the nation's oldest and largest grassroots environmental organization. Its mission is to explore, enjoy, and protect the planet. The Sierra Club has over 600,000 members, with over 24,000 members in Pennsylvania. Sierra Club members in Pennsylvania live in and around areas where fracking is now occurring or will occur, and are directly harmed by pollution, noise, light, and other disturbances associated with the process. In order to protect its members, and their communities, parks, and forests, the Sierra Club has been an active voice for proper regulation of the natural gas industry. The Sierra Club advocates for local, state, and national regulatory reform, works to limit natural gas demand, and mounts an active grassroots organizing effort that reaches people throughout the state and the country. Because the Sierra Club believes strongly in local communities' right to protect themselves, it has advocated against Act 13 and supports efforts to restore local control.

The **Thomas Merton Center** ("TMC") is a Peace and Social Justice Center that has operated in Pittsburgh, Pennsylvania since 1972. TMC believes that it is a primary obligation of every nation to provide its communities with the ability to preserve biologically sustainable local ecosystems. TMC opposes any legislation that presumes to take away both local autonomy and the right to clean air, clean water, and natural living ecosystems.

The **Westmoreland Marcellus Citizen's Group** ("WMCG") is a grassroots organization located primarily in Westmoreland County. Its mission is to raise the public's general understanding of the impacts of Marcellus drilling on the natural environment, health, and long-term economies of local communities, and to help enact land-use ordinances that will better serve the interests of Westmoreland County citizens. WMCG has worked with local supervisors, county commissioners, and state legislators to advocate for regulation of the gas industry and for the active involvement of local government officials in protecting their communities through zoning ordinances. WMCG strongly supports communities' rights and local control, and has advocated against Act 13.