

The language of the decision shown here throughout, but most importantly on page 2, (re: Page 29, w/my underline and boldface added) gives foundation to an opening to allow someone to plead through local government channels, and up through the courts of the Commonwealth, if necessary, that local governments must provide governance in municipal ordinances for effective and transparent protections for all features and values of the environment – built and natural.

RJH

[J-35-2016]

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

SAYLOR, C.J., EAKIN, BAER, TODD, DONOHUE, DOUGHERTY, WECHT, JJ.

PENNSYLVANIA ENVIRONMENTAL

DEFENSE FOUNDATION,

Appellant

v.

COMMONWEALTH OF PENNSYLVANIA, AND GOVERNOR OF PENNSYLVANIA,

TOM WOLF, IN HIS OFFICIAL CAPACITY AS GOVERNOR, Appellees

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No. 10 MAP 2015

Appeal from the Order of the Commonwealth Court at No. 228 MD

2012 dated January 7, 2015

ARGUED: March 9, 2016

OPINION - JUSTICE DONOHUE DECIDED: June 20, 2017

In *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (plurality), a plurality of this Court carefully reviewed the reasons why the Environmental Rights Amendment was necessary, the history of its enactment and ratification, and the mischief to be remedied and the object to be attained. At the outset of this opinion, we reiterate this historical background, which serves as an important reminder as we address the issues presented in the present case:

The drafters of the Environmental Rights Amendment recognized and acknowledged the shocks to our environment and quality of life:

“We seared and scarred our once green and pleasant land with mining operations. We polluted our rivers and our streams with acid mine drainage, with industrial waste, with sewage. We poisoned our ‘delicate, pleasant and wholesome’ air with the smoke of steel mills and coke ovens and with the fumes of millions of automobiles. We smashed our highways through fertile fields and thriving city neighborhoods. We cut down our trees and erected eyesores along our roads. We uglified our land and we called it progress.

Moreover, public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians.”

Id. at 960-63 (footnotes and some citations omitted).

The Commonwealth’s fiduciary duty to “conserve and maintain” our public natural resources is a duty owed to the beneficiaries of the public trust, namely “the people, including generations yet to come,” as set forth in the second sentence of Section 27. *Id.* The “people,” in turn, are those endowed with “a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment,” as set forth in the first sentence of Section 27. *Id.*

Continued

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By arguing that proceeds obtained from the sale of our natural resources are not part of the corpus of the trust, the Commonwealth improperly conceives of itself as a mere proprietor of those public natural resources, rather than as a trustee. In the Commonwealth's view, it may dispose of our public natural resources as it so chooses and for any purpose it so conceives, so long as such disposition broadly benefits the public (apparently without regard to "generations yet to come").

See Commonwealth's Brief at 45. As such, it urges us to substantially diminish its fiduciary obligation to prevent and remedy the degradation of our natural resources. We decline to do so. Accordingly, we re-affirm our prior pronouncements that the public trust provisions of Section 27 are self-executing.

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We additionally find support in Section 27's legislative history, in which Professor Broughton opined that the Amendment "would immediately create rights to prevent the government **(state, local, or an authority)** from taking positive action which unduly harms environmental quality." Legislative Journal—House at 2281 (Broughton Analysis). Again, however, there is no indication that the General Assembly considered the purposes of the public trust or exercised reasonable care in managing the royalties in a manner consistent with its Section 27 trustee duties.

We hold, therefore, that sections 1602-E and 1603-E, relating to royalties, are facially unconstitutional.³¹ They plainly ignore the Commonwealth's constitutionally imposed fiduciary duty to manage the corpus of the environmental public trust for the benefit of the people to accomplish its purpose – conserving and maintaining the corpus by, inter alia, preventing and remedying the degradation, diminution and depletion of our public natural resources.³² See *Robinson Twp.*, 83 A.3d at 957.

To the extent the remainder of the Fiscal Code amendments transfer **proceeds from the sale of trust assets** to the General Fund, they are likewise constitutionally infirm.

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The Commonwealth (including the Governor and General Assembly) may not approach our public natural resources as a proprietor, and instead must at all times fulfill its role as a trustee. Because the legislative enactments at issue here do not reflect that the Commonwealth complied with its constitutional duties, the order of the Commonwealth Court with respect to the constitutionality of 1602-E and 1603-E is reversed, and the order is otherwise vacated in all respects. The case is remanded to the Commonwealth Court for further proceedings consistent with this Opinion.

Page 45 Conclusion

The DCNR is not the only agency committed to conserving and maintaining our public natural resources, and the General Assembly would not run afoul of the constitution by appropriating trust funds to some other initiative or agency dedicated to effectuating Section 27. By the same token, the Lease Fund is not a constitutional trust fund and need not be the exclusive repository for proceeds from oil and gas development.

However, if proceeds are moved to the General Fund, an accounting is likely necessary to ensure that the funds are ultimately used in accordance with the trustee's obligation to conserve and maintain our natural resources.