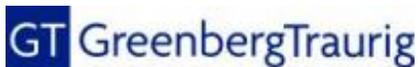# Robinson Township: Pennsylvania Act 13 Zoning Preemption for Oil & Gas Invalidated

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The Pennsylvania Supreme Court announced its decision in *Robinson Township v. Pennsylvania Pub. Util. Comm'n*, No. 63 MAP 2012 (Pa. Dec. 19, 2013), holding several provisions of "Act 13," the 2012 Pennsylvania Oil and Gas Act Amendments, 2012 Pa. Laws 87 (Feb. 14, 2012), *codified at* 58 Pa. Cons. Stat. Ann. §§ 2301-3504, to be unconstitutional.

The court as constituted for this case contained six members who divided 3-1-1-1:

- Chief Justice Castille wrote for the plurality.

- Justice Baer concurred in the mandate, but grounded his preemption decision on Due Process not the Environmental Rights Amendment.

- Justice Saylor dissented in an opinion in which Justice Eaton joined, and then Justice Eaton wrote separately.

So you have it in one place, this post sets out briefly where we are legally with respect to preemption of local regulation of natural gas development in Pennsylvania. The Robinson Township plurality rested its decision squarely on

the Environmental Rights Amendment to the Pennsylvania Constitution — Article I, section 27 — with an opinion that may have shaken up a lot more than zoning preemption in Pennsylvania.   I addressed that law as it was in *Environmental Amendment to the Pa. Constitution: A Force for 'Yes'?*, 34 Pa. L. Weekly 774 (Aug. 23, 2011), reposted on this blog. That treatment has to be revisited and should be my January column in the Pennsylvania Law Weekly.

Robinson Township left a lot of preemption in place. Section 3302 of the Amended Oil and Gas Act preempts local regulation of "oil and gas operations" except for ordinances adopted under the Municipalities Planning Code (that is, zoning or subdivision and land use ordinances) or the Flood Plain Management Act, and further preempts local ordinances adopted under the MPC or the FPMA that "impose conditions, requirements or limitations on the same features of oil and gas operations regulated by Chapter 32 [of the Oil and Gas Act] or that accomplish the same purposes as set forth in Chapter 32 . . . ." 58 Pa. Cons. Stat. Ann. § 3302. This is merely a recodification of what had been section 602 of the unamended Oil and Gas Act. It was **not** invalidated by last week's opinion.

Courts had held former section 602 — what is now section 3302 — to limit local regulation to "where" oil and gas operations could locate, not "how" they would be conducted. *Huntley & Huntley v. Borough of Oakmont*, 964 A.2d 855 (Pa. 2009)(zoning ordinance not preempted);*Range Resources-Appalachia, LLC v. Salem Twp.*, 964 A.2d 869 (Pa. 2009)(land development ordinance preempted); *Penneco Oil Co. v. County of Fayette*, 4 A.3d 722 (Pa. Commw. Ct. 2010)(no preemption). That law appears to be left intact.

Act 13 went further, however. Section 3304 required municipalities that had land use ordinances to conform those ordinances to a set of uniform standards set out in the statute. Section 3303 declared that all local regulation of oil and gas activities was preempted. The plurality found these to violate the Environmental Rights Amendment. Justice Baer found them to violate the Substantive Due Process protections of Article I, section 1, of the Pennsylvania Constitution. All of the supporting provisions of Chapter 33 are also unconstitutional.

The *Robinson Township* court also declared unconstitutional portions ofsection 3215 that called for waivers of state location and setback requirements, even over the objection of the host municipality.

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