

The Property and Privacy Implications of Act 13: *Robinson Twp. v. Commonwealth*

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Introduction

On December 19th, 2013, the Pennsylvania Supreme Court held that parts of Pennsylvania's newly amended oil and gas act, Act 13 (hereinafter the Act),¹ were unconstitutional.² In the Supreme Court's ruling, four issues were remanded to the Commonwealth Court.³ The first issue was whether a notice requirement of a spill from drilling operations that excludes private water supplies, in favor of public water supplies, is a special law and/or violates equal protection.⁴ Next, the court addressed whether a non-disclosure requirement for trade secret protected chemicals impeded a health professional's ability to diagnose and treat patients.⁵ The third issue the court addressed was whether providing private corporations with eminent domain powers, for private purposes, is unconstitutional.⁶ The final issue the court addressed was whether the power conferred upon the Public Utility Commission (PUC) to review local zoning ordinances and to withhold impact fees from local governments are severable from enjoined provisions of Act 13.⁷

1. *Robinson Twp. v. Commonwealth*, 96 A.3d 1104 (Commw. Ct. 2014) [*Robinson Twp. III*]

A. Facts

In order to understand the case at hand, it is necessary to briefly review the

¹ 58 PA. CONS. STAT. §§ 2301-3504 (2012).

² *Robinson Twp., Washington Cnty. v. Commonwealth*, 83 A.3d 901, 915 (Pa. 2013) [*Robinson Twp. II*].

³ *Robinson Twp. v. Commonwealth*, 96 A.3d 1104 (Commw. Ct. 2014). [*Robinson Twp. III*]

⁴ *Id.* at 1109.

⁵ *Id.* at 1110.

⁶ *Id.*

⁷ *Id.*

original Commonwealth Court decision (*Robinson Twp. I*)⁸ and the Pennsylvania Supreme Court decision (*Robinson Twp. II*).⁹ In February 2012, Pennsylvania Governor Thomas Corbett signed House Bill No. 1950, widely known as, Act 13.¹⁰ Act 13 repealed Pennsylvania's Oil and Gas Act and replaced it with a codified statutory framework regulating oil and gas operations in the Commonwealth.¹¹ The primary purpose of the Act was to maximally create a favorable environment for industry operators to exploit Pennsylvania's oil and gas resources.¹² The challenged provisions of the Act significantly changed the existing zoning regime in Pennsylvania, including industrial and residential zones.¹³ Under the Act, local governments had to authorize oil and gas operations within all zoning districts throughout a local governments' jurisdiction.¹⁴ Within agricultural and industrial districts, local governments had to authorize the uses of compressor stations, and classify them as permitted uses in other districts.¹⁵ Local governments were hamstrung regarding construction, heights of structures, fencing, lighting, and noise regulations such that they were not to be more stringent than those of other zoning districts.¹⁶ They were not to limit subterranean operations, or hours of operations for assembly or disassembly of drilling rigs, oil and gas

⁸ *Robinson Twp. v. Commonwealth*, 52 A.3d 463 (Pa. Commw. Ct. 2012) [*Robinson Twp. I*].

⁹ *Robinson Twp. II*, supra note 2.

¹⁰ 58 PA. CONS. STAT. §§ 2301-3504 (2012). (For a bio of Governor Corbett see, Pennsylvania Office of the Governor, *Governor Thomas Corbett*, (last visited September 27, 2014), <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=1072165&parentname=ObjMgr&parentid=132&mode=2>).

¹¹ *Robinson Twp. II* at 915 (See 28 Pa. Cons. Stat. §§ 601.101-601.605 (1959)).

¹² *Robinson Twp. II* at 975 (See 58 Pa. Cons. Stat. § 3202(1) (1) Permit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens)).

¹³ *Id.* at 971.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 971-72.

wells, compressor stations, and processing plants.¹⁷ Local authorities were also barred from increasing setbacks on land beyond those expressed in the Act.¹⁸ Finally, local governments had to approve all proposed permitted uses within 30 days and all conditional uses within 120 days.¹⁹

The legislature also created several enforcement provisions in 58 Pa. Cons. Stat. §§3305-3309 of the Act.²⁰ Upon the request of a local resident or an oil and gas entity, the PUC was authorized to issue advisory opinions to local governments regarding Act 13 relevant local regulations.²¹ The advisory opinion ruling could not be appealed.²² In order to prohibit enforcement of local regulations alleged to be contrary to Chapters 32 and 33, or the Municipalities Planning Code (MPC) § 3306 of Act 13 allowed for civil action in the Commonwealth Court.²³ Section 3307 allowed the assignment of attorney fees and costs to local governments if a local government was found to have enacted or enforced a local regulation with willful or reckless disregard of Act 13.²⁴ Section 3308

¹⁷ *Robinson Twp. II* at 972.

¹⁸ *Id.*

¹⁹ *Robinson Twp. II* at 972.

²⁰ *Id.* (See 58 Cons. Stat. §§ 3305-3309 (2012)).

²¹ *Id.*

²² *Id.*

²³ *Id.* (See 58 Pa. Cons. Stat. § 3306 (2012) which states: (1) Notwithstanding any provision of 42 Pa. Cons. Stat. Ch. 85 Subch. C (relating to actions against local parties), any person who is aggrieved by the enactment or enforcement of a local ordinance that violates the MPC, this chapter or Chapter 32 may bring an action in Commonwealth Court to invalidate the ordinance or enjoin its enforcement. (2) An aggrieved person may proceed under this section without first obtaining review of the ordinance by the commission. (3) In an action relating to the enactment or enforcement of a local ordinance, a determination of the commission made under section 3305(b) (relating to commission) shall become part of the record before the court). (See Governor's Center for Local Government Services, *Pennsylvania's Municipalities Planning Code*, (February 2005), <http://mpc.landuselawinpa.com/MPCCode.pdf>).

²⁴ *Robinson Twp. II* at 972. (See 58 Pa. Cons. Stat. § 3307 (2012) states: In an action brought under section 3306 (relating to civil actions), the court may do any of the following: (1) If the court determines that the local government enacted or enforced a local ordinance with willful or reckless disregard of the MPC, this chapter or Chapter 32 (relating to development), it may order the local government to pay the plaintiff reasonable attorney fees and other reasonable costs incurred by the plaintiff in connection with the action. (2) If the court determines that the action brought by the plaintiff was frivolous or was brought without substantial justification in claiming that the local ordinance in question was contrary to the MPC, this

made local governments ineligible to receive unconventional gas well fees if the PUC, the Commonwealth Court, or the Supreme Court ruled a local ordinance violated Act 13.²⁵ Finally, §3309 allowed for a mere 120 day grace period to bring all existing local ordinances and land use planning schemes into compliance with Act 13.²⁶

The relevant sections of chapter 32, 58 Pa. Cons. Stat. §3215 (2012), imposed modest oil and gas well location restricts.²⁷ However, even these modest restrictions were eligible for an exemption from Pennsylvania's Department of Environmental Protection (DEP).²⁸ For any DEP ruling that denied an exception to a driller, the burden rested on the government to prove that the conditions were necessary to protect against a probable harmful impact on the public resources.²⁹ Section 3215(d) severely curtailed any influence of local governments pertaining to well location and drill permits.³⁰ Not

chapter or Chapter 32, it may order the plaintiff to pay the local government reasonable attorney fees and other reasonable costs incurred by the local government in defending the action).

²⁵ *Robinson Twp. II* at 972. (58 Pa. Cons. Stat. § 3308 (2012) states: If the commission, the Commonwealth Court or the Supreme Court issues an order that a local ordinance violates the MPC, this chapter or Chapter 32 (relating to development), the municipality enacting or enforcing the local ordinance shall be immediately ineligible to receive any funds collected under Chapter 23 (relating to unconventional gas well fee). The local government shall remain ineligible to receive funds under Chapter 23 until the local government amends or repeals its ordinance in accordance with this chapter or the order or determination that the local ordinance is unlawful is reversed on appeal.).

²⁶ *Robinson Twp. II* at 972 (58 Pa. Cons. Stat. § 3309 (2012) states:(a) *Ordinances.* -- This chapter shall apply to the enforcement of local ordinances existing on the effective date of this chapter and to the enactment or enforcement of a local ordinance enacted on or after the effective date of this chapter. (b) *Local governments.* -- A local government that has enacted a local ordinance relating to oil and gas operations prior to the effective date of this chapter shall have 120 days from the effective date of this chapter to review and amend an ordinance in order to comply with this chapter.).

²⁷ *Id.*

²⁸ *Id.* at 973.

²⁹ *Id.*

³⁰ *Id.* at 972. (58 PA. CONS. STAT. § 3215(d) (2012) *Consideration of municipality and storage operator comments.* -- The department may consider the comments submitted under section 3212.1 (relating to comments by municipalities and storage operators) in making a determination on a well permit. Notwithstanding any other law, no municipality or storage operator shall have a right of appeal or other form of review from the department's decision.).

only did the local government have no meaningful say in well location, but also any decision imposed on the local government could not be appealed.³¹

B. Procedural History

i. Commonwealth Court (*Robinson Twp. I*)

Within a month of Act 13 becoming law, in March 2012 citizens of the Commonwealth³² filed a petition for review in Pennsylvania's Commonwealth Court.³³ The petition for review was a fourteen count petition requesting Act 13 be declared unconstitutional and asked for a permanent injunction prohibiting application of the Act.³⁴ The Commonwealth filed preliminary objections to the citizens' petition for review.³⁵ The Commonwealth Court, *Robinson Twp. I*, overruled four counts.³⁶ The parties filed cross-appeals with the Pennsylvania Supreme Court.³⁷

ii. The Pennsylvania Supreme Court (*Robinson Twp. II*)

The Pennsylvania Supreme Court also held as unconstitutional that that the DEP had the right to waive the water distance restrictions the Act imposed on drilling companies, and the restrictions imposed on local governments during drill site construction.³⁸ Additionally, the Supreme Court reversed the Commonwealth Court's dismissal of claims brought under the Environmental Rights Amendment to the

³¹ *Robinson Twp. II* at 972.

³² *Robinson Twp. I* at *3.

³³ *Robinson Twp. I* supra note 8.

³⁴ *Robinson Twp. II* at 915.

³⁵ *Id.*

³⁶ *Id.* at 916. (See *Robinson Twp. I*, 52 A.3d at 470: The Commonwealth Court overruled counts I, II, III and VIII of the petitioner original petition. Count I claimed the Act was unconstitutional because it was an improper exercise of the Commonwealth's police power; Count II claimed the Act allowed for incompatible use of zoning districts; Count III claimed the Act prevents municipalities to create or follow existing zoning ordinances that protect health and welfare of its citizens; Count VIII claimed the Act was unconstitutional because it granted the Public Utility Commission the power to render opinions on the constitutionality of legislative enactments).

³⁷ *Id.*

³⁸ *Robinson Twp. III* at 1108-09. (See 58 PA. CONS. STAT. §§ 3215(b)(4) and 3304 (2012)).

Pennsylvania Constitution because the Supreme Court ruled that the responsibility for the quality of the environment is a task for both local and statewide governments, not only the General Assembly.³⁹ Finally, the Supreme Court directed the Commonwealth Court to review relevant provisions of Act 13 to determine if they are severable.⁴⁰

iii. Commonwealth Court (on remand) (*Robinson Twp. III*)

Remand to the Commonwealth Court was necessary because the Pennsylvania Supreme Court reversed the Commonwealth Court's original dismissal of claims⁴¹ brought under Section 27, Article I, of the Pennsylvania Constitution by finding 58 Pa. Cons. Stat. §§3215(d) (allowed for waiver of water distance requirements) and 3303 (declaring environment acts a statewide concern) was unconstitutional and enjoined their enforcement.⁴² The parties agreed to address four issues on remand.⁴³ First, whether a notice requirement of a spill from drilling operations that excludes private water supplies, in favor of public water supplies, is a special law and/or violates equal protection.⁴⁴ The second issue the court addressed was whether empowering private corporations with

³⁹ *Robinson Twp. III* at 1109. (P.A. CONST. ART. I, § 27 states: The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustees of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people).

⁴⁰ *Id.*

⁴¹ *Robinson Twp. I* at 488-89.

⁴² *Robinson Twp. III* at 1109. (58 PA. CONS. STAT. § 3215(b)(4) (2012) states: The department shall waive the distance restrictions upon submission of a plan identifying additional measures, facilities or practices to be employed during well site construction, drilling and operations necessary to protect the waters of this Commonwealth. The waiver, if granted, shall include additional terms and conditions required by the department necessary to protect the waters of this Commonwealth. Notwithstanding section 3211(e), if a waiver request has been submitted, the department may extend its permit review period for up to 15 days upon notification to the applicant of the reasons for the extension.

and

58 PA. CONS. STAT. § 3303 (2012): Notwithstanding any other law to the contrary, environmental acts are of Statewide concern and, to the extent that they regulate oil and gas operations, occupy the entire field of regulation, to the exclusion of all local ordinances. The Commonwealth by this section, preempts and supersedes the local regulation of oil and gas operations regulated by the environmental acts, as provided in this chapter).

⁴³ *Robinson Twp. III* at 1109.

⁴⁴ *Id.*

eminent domain powers, for private purposes, is unconstitutional.⁴⁵ The third issue the court addressed was whether a non-disclosure requirement for trade secret protected chemicals impeded a health professional's ability to diagnose and treat patients.⁴⁶ The final issue the court examined was whether the sections that gave the PUC and Commonwealth Court the right to review local zoning ordinances and to withhold impact fees from local governments were severable from enjoined provisions of the Act.⁴⁷ The court dismissed issues one, two, and three.⁴⁸ Regarding issue four, it severed the last sentence of 58 Pa. Cons. Stat. §3302 (2012), while leaving the rest of the section intact.⁴⁹ Sections 3305-3309 were declared to be non-severable because the Supreme Court ruled Chapter 33 unconstitutional.⁵⁰

C. Majority Opinion

Introduction

In February 2012, Act 13 was signed into law by the Governor of Pennsylvania, Thomas W. Corbett.⁵¹ The Act was almost immediately challenged as citizens filed a petition for review in the Commonwealth Court.⁵² The en banc panel of the Commonwealth Court held the Act unconstitutional in part and enjoined application of § 3215(b)(4) (well location exceptions) of Chapter 32, and § 3304 (governed what was allowable in oil and gas ordinances) and any remaining provisions of Chapter 33, §§ 3305 through 3309, the enforcement provisions of the Act.⁵³ Cross appeals were filed

⁴⁵ *Robinson Twp. III* at 1109.

⁴⁶ *Id.* at 1110.

⁴⁷ *Id.*

⁴⁸ *Id.* at 1119.

⁴⁹ *Id.* at 1120.

⁵⁰ *Id.* at 1122.

⁵¹ *Robinson Twp. II* at 915.

⁵² *Id.*

⁵³ *Id.* at 916.

with the Pennsylvania Supreme Court, where the court affirmed the Commonwealth Court decision in part and reversed in part.⁵⁴ Four issues were remanded back to the Commonwealth Court for the lower court to address issues that were incorrectly found in the original decision [*Robinson Twp. I*].⁵⁵

i. Issue 1: Notice requirement for public water only

To comply with the Supreme Court’s mandate, the Commonwealth Court addressed each of the four issues separately.⁵⁶ First, the court determined if the General Assembly’s distinction between private water supplies and public drinking water supplies in 58 Pa. Cons. Stat. § 3218.1 (2012) was a reasonable classification related to a legitimate state interest.⁵⁷ The petitioners argued that § 3218.1⁵⁸ was a special law and violated equal protection for three reasons.⁵⁹ First, the law only required notice to public water supply owners in the event of an oil or gas drilling-related spill.⁶⁰ Secondly, private well owners have a greater need for notification because the majority of gas drilling occurs in rural areas.⁶¹ Finally, private wells are at more risk from drilling because private wells are not required to follow regular testing and monitoring like public water systems.⁶²

Although the court acknowledged that the majority of gas drilling takes place in rural areas, and that private wells are not subject to routine testing and monitoring like

⁵⁴ *Robinson Twp. II* at 999.

⁵⁵ *Robinson Twp. III* at 1109.

⁵⁶ *Id.*

⁵⁷ *Robinson Twp. III* at 1109.

⁵⁸ 58 PA. CONS. STAT. § 3218.1 (2012) states: Upon receiving notification of a spill, the department shall, after investigating the incident, notify any public drinking water facility that could be affected by the event that the event occurred. The notification shall contain a brief description of the event and any expected impact on water quality.

⁵⁹ *Robinson Twp. III* at 1111.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

public water systems, it ruled that there are valid reasons for limiting the notice requirement to public water suppliers.⁶³ DEP does not currently regulate private water supplies, and private water supplies are specifically exempt from many statutes such as the Pennsylvania's Safe Drinking Water Act and the Waters Rights Act.⁶⁴ The court reasoned that given the DEP's lack of oversight and overall lack of information on private water supplies, it was reasonable for the General Assembly to make a distinction.⁶⁵ Along with the lack of information on private water supplies, the Court pointed back to the notice obligations under the statute.⁶⁶ The DEP is required to report any spill near or far from a well.⁶⁷ A separate statute, 25 Pa. Code § 78.66(b),⁶⁸ requires the owner of a well site to report incidents of brine that ends up on or in the ground within two hours after detecting or discovering the release.⁶⁹ Finally, if the General Assembly had not made the distinction between the private water supply and the public water supply, they may have inadvertently required private well owners to comply with public water standards.⁷⁰ The Court dismissed this count of the petition for review.⁷¹

ii. Issue 2: Eminent Domain Power

Next, the court reviewed the General Assembly's determination to empower a private corporation with eminent domain power, and ruled that it is constitutional since

⁶³ *Robinson Twp. III* at 1112.

⁶⁴ *Id.* at 1112-13.

⁶⁵ *Robinson Twp. III* at 1113.

⁶⁶ *Id.* at 1114.

⁶⁷ *Robinson Twp. III* at 1114.

⁶⁸ 25 Pa. Code. § 78.66(b) states: If a reportable release of brine on or into the ground occurs at the well site, the owner or operator shall notify the appropriate regional office of the Department as soon as practicable, but no later than 2 hours after detecting or discovering the release.

⁶⁹ *Robinson Twp. III* at 1114.

⁷⁰ *Id.*

⁷¹ *Id.*

that private corporation will use its power for private purposes.⁷² Petitioners argued that Article I, Section 10 of the Pennsylvania Constitution and the Fifth Amendment to the U.S. Constitution were violated by 58 Pa. Cons. Stat. §3241(a) (2012).⁷³ Section 3241(a) conferred on a corporation the power to appropriate an interest in property, in a storage reservoir or reservoir protective area, for the non-public purpose of injecting, storing and removing natural gas.⁷⁴ This section appears to contradict with 26 Pa. Cons. Stat. §204 (2006) of the Eminent Domain Code,⁷⁵ but the court uses several other statutes to show that the types of corporations Act 13 is referring to are public utility corporations.⁷⁶ Thus, these types of corporations, public utility corporations, are exempt from section 10 of the Pennsylvania Constitution, and the Fifth Amendment of the U.S. Constitution.⁷⁷

iii. Issue 3a: Non-disclosure requirement and single-subject requirement

A.

Third, the court examined if disclosure requirements on health professionals in the Act represented a legitimate state interest.⁷⁸ Petitioners allege that the disclosure requirements imposed on health professionals interfere with the doctor-patient relationship such that a doctor will not be able to adequately treat a patient because he or

⁷²*Robinson Twp. III* at 1114.

⁷³ *Id.* (P.A. CONST. ART. I, § 10 states: Except as hereinafter provided no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. Each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings therein by information filed in the manner provided by law. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.

U.S. Const. Amend. V states: "...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.")

⁷⁴ *Robinson Twp. III* at 1114.

⁷⁵ 26 PA. CONS. STAT. § 204 (2006) (...any condemnor of the power of eminent domain to take private property in order to use it for private enterprise is prohibited).

⁷⁶ *Robinson Twp. III* at 1114-15.

⁷⁷ *Id.* at 1115.

⁷⁸ *Id.*

she will not have access to all of the factors that may be causing the patient's illness.⁷⁹

The second claim is that the disclosure requirements created a special law regarding hydro fracturing chemicals and that these special provisions served no legitimate state interest.⁸⁰ To deal with both claims the court examined several sections within the Act that caused the court to dismiss the claims because the statutes applied equally to the oil and gas industry, and to physicians.⁸¹

First, there are several notice requirements well drillers must comply with that force disclosure of the chemical additives in the fracking fluid.⁸² Act 13 required well operators to maintain a record of each well that is drilled and provide a descriptive list of chemical additives added to the fluid to a public database within 60 days of completion of the wells.⁸³ For any chemicals that have trade secret protection, the operator must disclose the chemical family or similar description of the chemicals.⁸⁴

Secondly, regarding the confidentiality agreement that a health professional must sign in order to treat a patient who was exposed to trade secret protected chemicals, the court said doctors may share confidential and proprietary information with other physicians to treat patients, and may also include confidential or proprietary information in a patient's medical record for treatment or diagnosis.⁸⁵ The only restriction mentioned

⁷⁹ *Robinson Twp. III* at 1115.

⁸⁰ *Id.* (Footnotes 21 of the Majority opinion explains that Petitioners point to the Hazardous Communication Standard Regulations promulgated by the Occupational Safety and Health Administration, which requires companies to list more information on their Material Safety Data Sheet's, to contrast the disclosure requirements of Act 13. The Court responds, in footnote 22, that the P.A. Const., art. III, § 32 allows the General Assembly to identify classes of persons and different needs of a class as long as the differentiation is reasonable rather than arbitrary and rests upon some ground of difference which justifies the classification).

⁸¹ *Robinson Twp III* at 1116.

⁸² *Id.* at 1116-17.

⁸³ *Robinson Twp III* at 1116-17. (See 58 PA. CONS. STAT. §§ 3203 and 3222.1 (2012)).

⁸⁴ *Id.* at 1117. (See 58 PA. CONS. STAT. § 3222.1(d) (2012)).

⁸⁵ *Id.*

by the court is that the information must be used for medical needs and that health professionals must keep the information confidential.⁸⁶

B.

Section 3222.1(b) (11) regulated how health professionals requested information from a chemical company if a health professional needs trade secret or confidential information pertaining to the company's chemicals.⁸⁷ The court reviewed if §3222.1(b) (11) to see if it violated the single subject requirement of the Pennsylvania Constitution because health professionals are also regulated under Title 35 of the Pennsylvania Consolidated Statutes.⁸⁸ Article III, section 3 requires that a bill contain only one subject and, that subject is clearly expressed, in the bill's title.⁸⁹ The purpose of Article III is to prevent topics from entering bills without notice to the public and to legislators.⁹⁰ There is, however, room for material in bills that is "germane" to the bill subject, but helps carry out the bill's objective.⁹¹ In the same way, the court says § 3222.1(b)(11) is one part of a larger scheme under § 3222.1, which requires information related to the oil and

⁸⁶ *Robinson Twp. III* at 1117.

⁸⁷ *Id.* (58 PA. CONS. STAT. § 3222.1(b)(11) (2012): If a health professional determines that a medical emergency exists and the specific identity and amount of any chemicals claimed to be a trade secret or confidential proprietary information are necessary for emergency treatment, the vendor, service provider or operator shall immediately disclose the information to the health professional upon a verbal acknowledgment by the health professional that the information may not be used for purposes other than the health needs asserted and that the health professional shall maintain the information as confidential. The vendor, service provider or operator may request, and the health professional shall provide upon request, a written statement of need and a confidentiality agreement from the health professional as soon as circumstances permit, in conformance with regulations promulgated under this chapter).

⁸⁸ *Robinson Twp. III* at 1118. (P.A. CONST. ART III, § 3 states: No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof).

⁸⁹ *Id.* at 1118.

⁹⁰ *Id.* (quoting *City of Phila. v. Commonwealth*, 838 A.2d 566, 586-87 (Pa. 2003)).

⁹¹ *Id.* at 1119 (quoting *City of Phila.*, 838 A.2d at 586-87 (Pa. 2003)).

gas industry to be disclosed to entities participating in hydro fracturing of unconventional wells.⁹²

iv. Issue 4: Severability

Lastly, the parties agreed to determine if 58 Pa. Cons. Stat. §§3302, and §§3305 to 3309 (2012) were severable from the Act since the Pennsylvania Supreme Court ruled Pa. Const. Stat §§3215(b)(4), and (d), §3303 and §3304 (2012) were unconstitutional.⁹³ Generally, the doctrine of severability allows a court to remove the unconstitutional part from the statute rather than declare the entire statute invalid.⁹⁴ Section 1925 of the Statutory Construction Act provides the guidance for the courts when determining if a statute is severable:

The provisions of every statute shall be severable. If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.⁹⁵

The primary significance in severability analysis is the legislative intent of the General Assembly.⁹⁶ The Pennsylvania Supreme Court in *Saulsbury* created a two-part test to determine if a statute is severable, when it said, [t]he legislating body must have intended that the act or ordinance be separable and the statute or ordinance must be capable of

⁹² *Robinson Twp. III* at 1118-19.

⁹³ *Id.* at 1119.

⁹⁴ *Id.*

⁹⁵ 1 PA. CONS. STAT. § 1925 (1972).

⁹⁶ *Robinson Twp.* at 1119 (quoting *Pa. Indep. Waste Haulers Ass'n v. Twp. of Lower Merion*, 872 A.2d 224, 228 (Pa. Commw. Ct. 2005).

separation in fact. The valid portion of the enactment must be independent and complete within itself.⁹⁷

The severability of 58 Pa. Cons. Stat. §3302 (2012) hinged on the Supreme Court's ruling that §3303 and §3304 are unconstitutional.⁹⁸ Section 3303 (declared the environmental acts a statewide concern) and 3304 (governed what was allowable in oil and gas ordinances) are unconstitutional because they run contrary to the Commonwealth's duty as keeper of Pennsylvania's natural resources.⁹⁹ As a result, the last sentence of §3302 is invalid, and was severed from the Act.¹⁰⁰ The rest of the section remained intact.¹⁰¹

To determine if §§3305-3309 was also severable, the court examined the relevant provisions of the Oil and Gas Act of 1984 that Chapter 33 of Act 13 replaced.¹⁰² The former oil and gas act allowed municipalities to regulate where oil and gas development activities could take place, and allowed generally applicable local ordinances to apply to oil and gas operations.¹⁰³ In contrast, Chapter 33 of Act 13 contained provisions that required municipalities to enact uniform zoning provisions that preempted local

⁹⁷ *Saulsbury v. Bethlehem Steel Co.*, 196 A.2d 664, 667 (1964).

⁹⁸ *Robinson Twp. III* at 1120.

⁹⁹ *Id.*

¹⁰⁰ *Id.* (The sentence of the section that was severed by the Commonwealth Court said, “[t]he Commonwealth, by this section [3302], preempts and supersedes the regulation of oil and gas operations as provided in this chapter).

¹⁰¹ *Id.* (Section 3302 now reads: “Except with respect to local ordinances adopted pursuant to the MPC and the act of October 4, 1978 (P.L. 851, No. 166),¹ known as the Flood Plain Management Act, all local ordinances purporting to regulate oil and gas operations regulated by Chapter 32 (relating to development) are hereby superseded. No local ordinance adopted pursuant to the MPC or the Flood Plain Management Act shall contain provisions which impose conditions, requirements or limitations on the same features of oil and gas operations regulated by Chapter 32 or that accomplish the same purposes as set forth in Chapter 32”).

¹⁰² *Id.* (Section 3305 allowed for advisory opinions on local ordinances as they pertain to the MPC; Section 3306 authorized an action in the Commonwealth Court to invalidate a local ordinance that violated the MPC or chapter 32 of the Act; Section 3307 authorized attorney fees; Section 3308 took away the unconventional gas well fee if a local ordinance violated the MPC or chapter 32 of the Act; Section 3309 gave local governments 120 to amend their oil and gas ordinances so they complied with the Act).

¹⁰³ *Id.* at 1122. (quoting *Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont*, 964 A.2d 855 (Pa. 2009)).

governments from implementing regulations that dealt with oil and gas operations.¹⁰⁴ All challenges to local ordinances under Chapter 33 of Act 13, whether by an oil and gas operator or local resident, were reviewed by the PUC and appeals were sent to the Commonwealth Court.¹⁰⁵

The court ultimately ruled §§3305-3309 non-severable because the statutory scheme the General Assembly originally created through Chapter 33 is now not enforceable.¹⁰⁶ Along with §§3305-3309, the Commonwealth Court ruled §3302 is also unenforceable to the extent it enforces Chapter 33.¹⁰⁷ When these two rulings are combined, nothing remained of the jurisdictional authority of the PUC and the Commonwealth Court over challenges to local ordinances.¹⁰⁸ All local ordinance challenges will now fall with the Common Pleas court.¹⁰⁹

D. Concurring Opinion

The concurring opinion was written by Judge Patricia McCullough.¹¹⁰ Judge McCullough agreed that the Majority's decision to dismiss Count V and Count XII of the Petitioners' petition to review, but disagrees with several parts of the Majority's opinion.¹¹¹

¹⁰⁴ *Robinson Twp. III* at 1121. (One example is how Chapter 33 enforced the uniform provisions. Chapter 33 allowed a municipality or the oil and gas industry to go to the Public Utility Commission instead of the Common Pleas Court to obtain a ruling on whether the ordinance violated Chapter 33 of Act 13).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 1122.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 1124.

¹¹¹ *Id.* (Count V claimed that by the Act authorizing drilling companies to leverage eminent domain powers was an improper purpose of the Commonwealth's eminent domain power, and Count XII claimed the Pennsylvania Constitution's prohibition against a bill having more than one subject because the Act required health professionals to disclose critical diagnostic information is a different subject than the regulation of oil and gas operations.)

i. Statutory requirement to notify public water suppliers but not public water sources

Judge McCullough argued that imposing a notice requirement, in the event of a spill, only for public water supplies, and not for private water supplies, is not a legitimate governmental interest.¹¹² The Majority opinion says that there is a legitimate governmental interest because private wells are not subject to routine testing and that the DEP does not regulate private sources.¹¹³ Therefore, it is not feasible for the DEP to identify which private wells may be impacted by a spill.¹¹⁴ In response, Judge McCullough says that the General Assembly is able to create responsibility for a governmental agency despite not having that responsibility before.¹¹⁵ Additionally, it is possible for the DEP to obtain private well locations since another government agency tracks their location.¹¹⁶ Finally, the concurring opinion would rather impose a legal obligation on the DEP to notify private well owners of a spill, rather than relying on the DEP's goodwill.¹¹⁷

ii. Dismissal of the equal protection challenge of the confidentiality agreement for health professional

Since the language of the confidentiality agreement is not yet known, the concurrence suggested that it is not free from doubt that the statutory scheme would further a legitimate governmental interest.¹¹⁸ The lack of information regarding what will be required of health professionals presents apparent restrictions on health professionals

¹¹² *Robinson Twp. III* at 1125.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

to share and discuss solutions concerning chemical toxicity cases and presentations or journal articles on treatment plans.¹¹⁹ At the very least, open communication should exist within the medical community on how to handle the treatment of patients that are exposed to these chemicals.¹²⁰

iii. Clarify the Majority’s holding of the non-severable provisions of Act 13

In *Huntley & Huntley, Inc. v Borough Council of Oakmont*, 964 A.2d 855 (Pa. 2009) the Pennsylvania Supreme Court said that municipalities may regulate “where” the oil and gas industry may operate but not regulate “how” they operate.¹²¹ As a result, 58 Pa. Cons. Stat. §3302 (2012) is in line with the *Huntley & Huntley* ruling, and should therefore be severed from the Act.¹²² See *Department of Education v. The First School*, 370 A.2d 702 (Pa. 1977) (concluding that a statute was severable and effectual in application where it was unconstitutional as applied to sectarian nonpublic schools, but constitutional as applied to nonsectarian nonpublic schools). Additionally, §3302 retained legal application that allowed it to stand on its own, apart from the unconstitutional sections, 58 Pa. Cons. Stat. §§3303 and 3304 (2012), and since it is consistent with the objectives expressed in *Huntley & Huntley, Inc.*¹²³ Moreover, it is the responsibility of the General Assembly to decide whether to amend, replace, or repeal the remaining portions of Act 13, and resurrect the Oil and Gas Act.¹²⁴

¹¹⁹ *Robinson Twp. III* at 1125.

¹²⁰ *Id.* at 1126.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 1127. (See *Mitchell’s Bar & Rest., Inc. v. Allegheny Cnty.*, 924 A.2d 730 (Pa. Commw. Ct. 2007)).

E. Dissenting Opinion

Judge Kevin Borobson wrote the dissenting opinion and was joined by Judge Patricia A. McCullough.¹²⁵ The dissent began by questioning the majority's conclusion that the procedures and remedies in 58 Pa. Cons. Stat. §§3305-3309 (2012) created to enforce 58 Pa. Cons. Stat. §3302 (2012) are unenforceable because the General Assembly's intent was built upon the continued constitutionality of Chapter 33.¹²⁶ Therefore, the majority reasoned, the continued enforcement of the provisions in §§3305-3309 would be inconsistent with the legislative intent.¹²⁷

The main thrust of the dissents' argument rested on the fact that §§3305-3309 were made available in three distinct circumstances.¹²⁸ The General Assembly said procedures and remedies are available in each of the three distinct situations.¹²⁹ Since only the validity of two sections within Chapter 33 of Act 13 were declared to be unconstitutional, the other remedial provisions of §§3305-3309 should be made available.¹³⁰ Additionally, the valid provisions of §3202 still regulate the "how" of oil and gas operations and are still effective.¹³¹ Thus, the remedies available to challenged provisions from §§3305-3309 should still be available.¹³²

¹²⁵ *Robinson Twp. III* at 1123.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 1124. (The first is where a local ordinance may violate the Municipalities Planning Code. The second is where a local ordinance may violate Chapter 33, which includes the severed Sections 3303 and 3304 as well as the remaining portion of Section 3302 of Act 13. And the third is where a local ordinance may violate Chapter 32 of Act 13.)

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

2. History

i. Whether Pa. Const. Stat. §3218.1 (2012) is a special law under P.A. Const. art. III, §32

The petitioners argued that 58 Pa. Const. Stat. §3218.1 (2012) of the Act was a special law because it only required notice to public water supply owners in the event of a spill.¹³³ Article III of the Pennsylvania Constitution, section 32 (herein section 32)¹³⁴ became part of the Pennsylvania Constitution in 1874 to end legislation that favored particular localities and private purposes.¹³⁵ Section 32 became Pennsylvania's equivalent to the equal protection clause of the U.S. Const. amend XIV.¹³⁶ In *Making Equality Matter (Again)*, Donald Marritz points out that although section 32 has become the equivalent to the Equal Protection clause of the Fourteenth Amendment, these separate provisions are not identical twins.¹³⁷ Section 32 prohibits favorable or arbitrary treatment of people, groups and places, whereas the federal provision prohibit discrimination of people or groups, but not localities.¹³⁸ Under section 32, the General

¹³³ *Robinson Twp. III* at 1111.

¹³⁴ P.A. CONST. ART. III, § 32 states: The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law:

1. Regulating the affairs of counties, cities, townships, wards, boroughs or school districts:
2. Vacating roads, town plats, streets or alleys:
3. Locating or changing county seats, erecting new counties or changing county lines:
4. Erecting new townships or boroughs, changing township lines, borough limits or school districts:
5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury:
6. Exempting property from taxation:
7. Regulating labor, trade, mining or manufacturing:
8. Creating corporations, or amending, renewing or extending the charters thereof: Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

¹³⁵ *Robinson Twp. III* at 1112. (quoting *Robinson Twp. II* at 978).

¹³⁶ *Id.*

¹³⁷ Donald Marritz, *Making Equality Matter (Again): The Prohibition Against Special Laws in the Pennsylvania Constitution*, 3 WIDENER J. PUB. L. 161, 167 (1993).

¹³⁸ *Id.*

Assembly has the liberty to create different treatment for different classes of persons, but the treatment must further a state interest and must be a reasonable classification that has a substantial relationship to the purpose of the legislation.¹³⁹ The court may deem a statute unconstitutional if the statute is closed or substantially closed to future membership.¹⁴⁰

Section 32 was first challenged in 1875 after the General Assembly passed a bill that divided cities into three classes by their population.¹⁴¹ The challenged law divided cities into three categories, and legislated separately for each class.¹⁴² At the time, the city of Philadelphia was the only first class city so it challenged the law as a local and special law.¹⁴³ The court held that the law was not a special law because other cities could move into that class as populations grew.¹⁴⁴ The heart of the law is that as long as the General Assembly makes a reasonable distinction between classes, or the law is made out of legal necessity, the law is constitutional.¹⁴⁵

ii. Eminent Domain power for private purposes

The next issue undertaken by the court was to determine if 58 Pa. Cons. Stat. §3241(a) (2012) violated P.A. Const. art. I, §10 and U.S. Const. amend. V because § 3241(a) allows a corporation to use eminent domain power for non-public uses.¹⁴⁶ Section 3241(a) vests this eminent domain power in a corporation empowered to

¹³⁹ *Robinson Twp. III* at 1111 (quoting *Robinson Twp. III* at 987-88).

¹⁴⁰ *Id.* (quoting *Robinson II* at 987-88).

¹⁴¹ *Haverford Twp. v. Siegle*, 28 A.2d 786, 788 (Pa. 1942) (*Accord Wheeler v. City of Phila.*, 77 Pa. 338 (Pa. 1875)).

¹⁴² *Haverford Twp.*, 28 A.2d at 788.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 788-89.

¹⁴⁵ *Id.* at 789. (*See Commonwealth ex. rel. Brown v. Gumbert*, 256 Pa. 531 (Pa. 1917)) (holding classifications are constitutional when they are derived from legal necessity).

¹⁴⁶ *Robinson Twp. III* at 1114.

transport, sell or store natural gas in the Commonwealth.¹⁴⁷ The word empowered, from §3241(a), was interpreted by the court to mean a corporation that is a “public utility” under 66 Pa. Const. Stat. §102(1)(i) (1984). Section 102 further defines a public utility as a corporation that produces, distributes, or furnishes natural gas that is used by the public.¹⁴⁸ See also 15 Pa. Const. Stat. § 1103 (2013).

After determining §3241(a) of the Act referred to a corporation that qualified as a public utility, the court looked to a third statute, 15 Pa. Const. Stat. §1511(a)(2) and (3) (2012).¹⁴⁹ Section 1511(a), much like §3241(a) of the Act, allows a public utility to condemn property in order to transport natural gas, or produce, generate, manufacture, transmit, store, distribute or furnish natural gas to the public.¹⁵⁰ In 2005, the Pennsylvania Court of Common Pleas addressed §1511(a) in a matter of first impression.¹⁵¹

In *Kovalchick*, National Fuel Gas Supply (herein, National Fuel) filed three applications to condemn portions of Kovalchick Corporation’s property for right-of-way access for three natural gas pipelines.¹⁵² National Fuel applied for the right-of-way access under the authority of 15 Pa. Const. Stat. §§1103 and 1511 (2013).¹⁵³ Kovalchick Corporation challenged the condemnation in an equity action, specifically arguing that

¹⁴⁷ *Robinson Twp. III* at 1114. (P.A. CONST. ART. I, § 10 states: Except as hereinafter provided no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. Each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings therein by information filed in the manner provided by law. No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.”)

¹⁴⁸ *Haverford Twp.*, 28 A.2d at 1114-15. (quoting 66 PA. CONST. STAT. § 102(1)(i) (1984)).

¹⁴⁹ *Id.* at 1115.

¹⁵⁰ *Id.*

¹⁵¹ *Nat'l Fuel Gas Supply Corp. v. Kovalchick Corp.*, 74 Pa. D. & C.4th 22, 24 (Com. Pl. 2005).

¹⁵² *Id.*

¹⁵³ *Nat'l Fuel Gas Supply Corp.*, 74 Pa. D. & C.4th at 24.

two of the pipelines were used for gathering natural gas, and were not therefore governed by §§1103 and 1511(a).¹⁵⁴

The Court of Common Pleas established National Fuel is a public utility corporation under § 1103 since National Fuel transported natural gas internationally, and was a for profit corporation.¹⁵⁵ Additionally, National Fuel was governed by the Federal Energy Regulatory Commission (FERC),¹⁵⁶ thus falling within the confines of §1511(a)'s language which allows a public utility corporation to use eminent domain power conferred upon it by any other statute.¹⁵⁷ The regulation of National Fuel under the federal regulatory agency, FERC, allowed the court to bring all three pipelines in dispute under federal law, and therefore supersede any state laws that National Fuel did not follow.¹⁵⁸ Two of the three pipelines in dispute merely gathered gas for the eventual distribution to interstate travel, but that non-interstate travel activity did not preclude these two pipelines from being regulated by FERC or §1511(a).¹⁵⁹ Relying on the long established constitutional principal that federal law supersedes state law,¹⁶⁰ National Fuel's pipelines were granted right-of-way access on portions of Kovalchick Corporation's property.¹⁶¹

¹⁵⁴ *Nat'l Fuel Gas Supply Corp.*, 74 Pa. D. & C.4th at 24.

¹⁵⁵ *Id.* at 28. (The court also said National Fuel possessed a certificate of public convenience and necessity from the Federal Energy Regulatory Commission).

¹⁵⁶ Federal Energy Regulatory Commission, *What FERC Does*, (June 24, 2014), <http://www.ferc.gov/about/ferc-does.asp>.

¹⁵⁷ *Nat'l Fuel Gas Supply Corp.*, 74 Pa. D. & C.4th at 27. (FERC regulated National Fuel as a public utility involved in the gathering, storage and interstate transportation of natural gas).

¹⁵⁸ *Id.* at 29-30.

¹⁵⁹ *Id.*

¹⁶⁰ 15 U.S.C.A. § 717 (2005) (The National Gas Act conferred regulatory authority on FERC to enforce the provisions of the National Gas Act).

¹⁶¹ *Nat'l Fuel Gas Supply Corp.*, 74 Pa. D. & C.4th at 31.

iii. Does the Act violate the single-subject requirement of the Pennsylvania Constitution?

Petitioners claimed that 58 Pa. Const. Stat. § 3222.1(b)(11)¹⁶² (2012) of the Act is in violation of P.A. Const. art. III, § 3, because Title 35 of the Pennsylvania Consolidated States also regulates medical professionals.¹⁶³ P.A. Const. art. III, § 3 (herein, “Article III”) requires a bill passed by the General Assembly to contain one subject, and that subject must be clearly expressed in its title.¹⁶⁴ The general purpose of Article III was to place restraints on the legislative process and encourage open and accountable government.¹⁶⁵ The Pennsylvania Supreme Court first took up this section of the Pennsylvania Constitution in 1866 after a dispute arose over the General Assembly’s mandate to increase the size of Forest County from parts of Jefferson and Venango Counties.¹⁶⁶ In the bill, the legislature, along with increasing the boundaries of Forest County, also gave the county commissioners authorization to relocate the seat of the county.¹⁶⁷ The court relied on the constitutions of other states, primarily New Jersey and Iowa, along with a Supreme Court decision in ruling that the bill contained one subject and was therefore constitutional. The court specifically ruled the there could be no

¹⁶² 58 PA. CONST. STAT. § 3222.1(b)(11) states: “If a health professional determines that a medical emergency exists and the specific identity and amount of any chemicals claimed to be trade secret or confidential proprietary information are necessary for emergency treatment, the vendor, service provider or operator shall immediately disclose the information to the health professional upon a verbal acknowledgement by the health professional that the information may not be used for purposes other than the health needs asserted and that the health professional shall maintain the information as confidential. The vendor, service provider or operator may request, and the health professional shall provide upon request, a written statement of need and a confidentiality agreement from the health professional as soon as circumstances permit, in conformance with regulations promulgated under this chapter.”

¹⁶³ *Robinson Twp. III* at 1118.

¹⁶⁴ *Id.*

¹⁶⁵ Pa. AFL-CIO ex rel. *George v. Commonwealth*, 757 A.2d 917, 923 (Pa. 2000).

¹⁶⁶ *Blood v. Mercelliot*, 53 Pa. 391, 393 (Pa. 1866).

¹⁶⁷ *Mercelliot*, 53 Pa. at 393.

improper influence by combining the provisions of the bill, and the public would not be misled by the bills title.¹⁶⁸

Two recent cases provide clear examples of when a law does or does not address a single subject, and provide some context in which Article III was passed.¹⁶⁹ In *City of Philadelphia*, the bill in dispute made changes that impacted the administrative matter for local governments, but in particular, the act reorganized the governance of the Pennsylvania Convention Center.¹⁷⁰ The city of Philadelphia filed a declaratory judgment and injunctive relief action in the Commonwealth Court praying for preliminary injunction.¹⁷¹ Relating to Article III, petitioners claimed that in its final form the bill contained subjects that had little to do with each other and therefore violated the single-subject rule.¹⁷²

Article III was originally included in the 1864 Pennsylvania Constitution, and remained apart of the revised 1874 constitution, since the sentiment in 1874 was Article III would help further the electorate's goal of curtailing suspicious legislative practices.¹⁷³ Specifically, Article III sought to stop the history of passing legislation with several distinct matters, none of which could gain the consent of the legislature on its own.¹⁷⁴ In practice, Article III proscribes inserting measures into bills without providing fair notice to the public and to legislators.¹⁷⁵ Article III does allow for new material to be added to

¹⁶⁸ *Blood*, 53 Pa. at 395.

¹⁶⁹ *See City of Phila. v. Commonwealth*, 838 A.2d 566 (Pa. 2003); *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383 (Pa. 2005).

¹⁷⁰ *City of Phila.*, 838 A.2d at 572.

¹⁷¹ *Id.* at 573.

¹⁷² *Id.* at 574.

¹⁷³ *Id.* at 573-74.

¹⁷⁴ *Id.* at 586.

¹⁷⁵ *Id.*

a bill during the legislative process, but the new additions must be germane to the bill's subject as expressed in the bills title.¹⁷⁶

The germane requirement of Article III was initially applied strictly,¹⁷⁷ but in recent years, Pennsylvania courts have become extremely deferential toward the General Assembly in Article III challenges.¹⁷⁸ The court went on to explain that deference is necessary to prevent a “license for the judiciary to ‘exercise a pedantic tyranny’ over the efforts of the Legislature, but there must be limits.”¹⁷⁹ If limits were not placed, so says the court, Article III would be “rendered impotent” to guard against the evils that it was designed to curtail.¹⁸⁰ The court ruled the entirety of the law unconstitutional.¹⁸¹

In *Pennsylvanians Against Gambling*, petitioners filed a complaint in which they alleged the Pennsylvania Race Horse Development and Gaming Act (herein, “the Gaming Act”), violated Article III, Section III of the Pennsylvania Constitution.¹⁸² The law in dispute was first introduced for consideration on February 3, 2004, and it was titled, “An Act Providing for the Duties of the Pennsylvania State Police Regarding Criminal History Background Reports for Persons Participating in Harness or Horse Racing.”¹⁸³ The original bill was one page in length and dealt exclusively with the Pennsylvania State Police performing criminal history checks and verification of

¹⁷⁶ *City of Phila.*, 838 A.2d at 586-87.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*; see *Kotch v. Middle Coal Field Poor Dist.*, 197 A. 334 (Pa. 1938) (providing that a plurality of subjects is not objectionable so long as they are reasonably germane to each other).

¹⁷⁹ *City of Phila.*, 838 A.2d at 588 (quoting *In re Commonwealth, Dep't. of Transp.*, 515 A.2d 899 (Pa. 1986)).

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 590.

¹⁸² *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 392 (Pa. 2005).

¹⁸³ *Pennsylvanians Against Gambling Expansion Fund, Inc.*, 877 A.2d at 391.

fingerprints in support of the State Harness and Horse Racing Commissions.¹⁸⁴ After three considerations in the House and Senate the bill ballooned to 145 pages and 86 sections.¹⁸⁵

Petitioners made two Article III claims.¹⁸⁶ The first claim was that no bill shall be passed containing more than one subject; the second was that the bill must have a clearly expressed title.¹⁸⁷ The court was guided by the standard of review set forth in *City of Philadelphia*, and maintained the bill must be germane to the bill's subject.¹⁸⁸ The court acknowledged that not every amendment or new material added to a bill violates the single subject requirement.¹⁸⁹ In contrast to *City of Philadelphia*, where the single subject requirement was violated, the Gaming Act did not violate the requirement because the bill singularly addressed the regulation of gaming.¹⁹⁰ The bill did not encompass a limitless number of subjects, but specifically addressed the regulation of gaming. It created the Gaming Control Board, regulated slot machines, and provided for the administration and enforcement of the gaming law.¹⁹¹

¹⁸⁴ *Pennsylvanians Against Gambling Expansion Fund, Inc.*, 877 A.2d at 391.

¹⁸⁵ *Id.* at 391-92.

¹⁸⁶ *Id.* at 394. Petitioners also, as the court states, implicate a more specialized Article III, section III claim regarding the Legislature's creation and treatment of special funds generated ancillary to substantive legislation, *id.* at 396-404.

¹⁸⁷ *Id.* at 394.

¹⁸⁸ *Id.* The court laid out five standards from the *City of Philadelphia* opinion, and recorded in *Pennsylvania Against Gaming*: (1) The single subject's aim was to place restraints on the legislative process and encourage an open, deliberative, and accountable government; (2) Section 3 was designed to curb the practice of inserting into a single bill a number of distinct and independent subjects of legislation and purposefully hiding the real purpose of the bill; (3) The single-subject requirement prohibits the attachment of riders that could not become law as is, to popular legislation that would pass; (4) There will be a greater probability that a bill containing a single topic will be more likely to receive a considered review than a multi-subject piece of legislation; (5) The single subject requirement proscribed the inclusion of provisions into legislation without allowing for fair notice to the public and to legislators, *id.* at 395.

¹⁸⁹ *Id.* at 395.

¹⁹⁰ *Id.* at 396.

¹⁹¹ *Id.* at 391.

Regarding the requirement that the bill clearly express one subject in its title, petitioners in *City of Philadelphia* compare the original title with the finished product to claim the finished product is deceptive and loses its germaneness.¹⁹² Article III, section III title requirements have a purpose of putting the members of the General Assembly and other interested on notice.¹⁹³ However, only reasonable notice is required, and the title does not need to be an index or synopsis of the act.¹⁹⁴ Thus, the court created a two part test that must be overcome to sustain a challenge to a bill's title: (1) the legislators and public were deceived and (2) the title is such that no reasonable person would have been on notice as to the Act's contents.¹⁹⁵ The court ruled the Gaming Act had a clear title since there were no claims of deception and a reasonable person would be on notice to the purpose of the act.¹⁹⁶

iv. Severability

The final issue *Robinson Twp. III* examined was whether certain constitutional provisions of the Act could be severed from the unconstitutional provisions.¹⁹⁷ The doctrine of severability allows a court to remove the unconstitutional part from the

¹⁹² *Id.* at 404-405. (The original title provides: An Act Providing For The Duties Of The Pennsylvania State Police Regarding Criminal History Background Reports For Persons Participating In Harness Or Horse Racing. Whereas, the final version provided: Amending Title 4 (Amusements) Of The Pennsylvania Consolidated Statutes, Authorizing Certain Racetrack And Other Gaming; Providing For Regulation Of Gaming Licensees, Establishing And Providing For The Powers And Duties Of The Pennsylvania Gaming Control Department Of Revenue, The Department Of Health, The Office Of Attorney General, The Pennsylvania State Police, And The Pennsylvania Liquor Control Board; Establishing The State Gaming Fund, The Pennsylvania Race Horse Development Fund, The Pennsylvania Gaming Economic Development And Tourism Fund, The Compulsive Problem Gambling Treatment Fund And The Property Tax Relief Fund; Providing For Enforcement; Imposing Penalties; Making Appropriations; And Making Related Repeals), *id.* at 405.

¹⁹³ *Id.* (quoting *Scudder v. Smith*, 200 A 601 (Pa. 1938)).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 406.

¹⁹⁶ *Id.*

¹⁹⁷ *Robinson Twp. III* at 1119. (The court further stated that the parties in the case agreed that the only provisions that may be declared unenforceable under *Robinson Twp. III*'s decision are 58 Pa. Const. Stat. §§ 3302, and 3305 to 3309. These sections gave the PUC and the Commonwealth Court jurisdiction to review the provisions of local ordinances to determine whether the local ordinance complied with Act 13 and if not, to withhold impact fees imposed to alleviate the impacts caused by the gas drillers).

constitutional part so the entire statute does not have to fall.¹⁹⁸ This doctrine is clearly expressed in 1 Pa. Const. Stat. §1925 (1972), which says the provisions of every statute shall be severable, unless the court finds the constitutional provisions of the statute are dependent upon, or inseparable from, the unconstitutional provisions, the invalid provisions are severable.¹⁹⁹ One caveat to the general rule is that, if the court finds the remaining constitutional provisions of the statute, standing on their own, violate legislative intent the court will declare the provisions to be non-severable.²⁰⁰

The doctrine of severability is well displayed in a dispute over the constitutionality of an occupational privilege tax that the City of Johnstown and the Borough of Franklin, both in Cambria County, imposed on its residents in 1964.²⁰¹ The tax was charged to every individual who worked within the corporation limits of the city, and whose gross earnings exceeded \$600.²⁰² The Pennsylvania Supreme Court ruled the statute unconstitutional because the tax made a distinction between the payers of the tax.²⁰³ The municipalities tried to argue that the statute should sever the unconstitutional provision that sought to tax workers making over \$600 a year, while retaining the constitutional provision.²⁰⁴ Despite having a severable clause in the statute, the court refused to re-write the statute so it taxed all workers rather than making an income

¹⁹⁸ *Robinson Twp. v. Commonwealth*, 96 A.3d 1104, 1119 (Commw. Ct. 2014).

¹⁹⁹ *Id.* (quoting 1 PA. CONST. STAT. § 1925 (1974)).

²⁰⁰ *Id.*; *see Saulsbury v. Bethlehem Steel Co.*, 196 A.2d 664, 667 (Pa. 1964) (holding a two-part test exists to determine legislative intent: (a) the legislative body must have intended that the act or ordinance be severable and (b) the statute or ordinance be capable of separation in fact).

²⁰¹ *Saulsbury*, 196 A.2d at 665; *see State Bd. Of Chiropractic Examiners v. Life Fellowship of Pa.*, 272 A.2d 478 (Pa. 1971) (refusing to re-write a statute dealing with yearly chiropractic training so the remaining provisions could stand).

²⁰² *Saulsbury*, 196 A.2d at 665.

²⁰³ *Id.* at 666.

²⁰⁴ *Id.*

distinction.²⁰⁵ Speaking to the severability clause, the court said a severability clause is not controlling, but rather it must be given due weight and not be accepted as conclusive if the general legislative scheme is completely destroyed by a severance of its provisions.²⁰⁶

The doctrine of severability was also on full display in *Stilp* when the General Assembly tied the salaries of the Judiciary, the General Assembly, and certain high-ranking executive officials to the federal government salary structure.²⁰⁷ The General Assembly passed the law, Act 44,²⁰⁸ at 2:00 a.m. on July 7, 2005.²⁰⁹ The public outcry was so great the General Assembly responded with Act 72, subsequently repealing Act 44.²¹⁰ Act 44 was challenged on several constitutional fronts, but for severability purposes, the plaintiffs challenged the unvouchered expense provision as a violation of PA. Const. art. II, § 8.²¹¹ Section 8 prohibits mid-term salary increases for the members of General Assembly.²¹²

The court struck down the unvouchered expenses provision because it did not bear a reasonable relationship to the actual expenses incurred by individual legislators.²¹³

²⁰⁵ *Id.* at 667.

²⁰⁶ *Id.*

²⁰⁷ *Stilp v. Com.*, 905 A.2d 918 (Pa. 2006).

²⁰⁸ The Act of July 7, 2005, P.L. 201, No. 44 (hereinafter, “Act 44”).

²⁰⁹ *Stilp*, 905 A.2d at 925.

²¹⁰ *Id.* at 924-25. (See The Act of November 16, 2005, P.L. 385, No. 72 (hereinafter, “Act 72”).)

²¹¹ PA. CONST. ART. II, § 8 states, “The members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise. No member of either House shall during the term for which he may have been elected, receive any increase of salary, or mileage, under any law passed during such term.”

²¹² *Stilp*, 905 A.2d at 960.

²¹³ *Id.* at 968. The court stated that “any claim of a congruence between actual unreimbursed expenses incurred by legislators and the unvouchered allowances provided by legislators and the unvouchered allowances provided under Act 44 to defray those expenses would challenge belief, and particularly with respect to the unvouchered expenses allowances made available to legislative leaders. The \$11,000 provided the rank-and-file was on top of, and well in excess of, the \$7500 already provided for vouchered expenses, and indeed represented approximately 16% of their then-authorized salaries. The amount of

The court then analyzed whether the unconstitutional provision could be severed from Act 44, especially in light of the nonseverability provision the General Assembly wrote into the law.²¹⁴ After going through an extensive history of the doctrine of severability,²¹⁵ the court determined the unvouchered allowance provision was severable from the remaining valid provisions of Act 44.²¹⁶ However, the unanswered question was whether the court was free to sever the unvouchered expenses or if the nonseverability provision of Act 44 dictated.²¹⁷ This determination was further complicated by the fact that P.A. Const. art. V, § 16(a)²¹⁸ does not allow a law to decrease a judge's salary during his or her term.²¹⁹ If the court was bound by the nonseverability provision it would have violated § 16(a).²²⁰

To resolve this conundrum the court reviewed the limited authority on nonseverability clauses, but found that none of the previous cases were directly on point.²²¹ As a general matter, nonseverability provisions are constitutionally proper, and may have valid reasons for their inclusion, but separation of powers concerns are raised when the Judiciary determines the nonseverability clause was entered into the bill to act as a sword against the Judiciary or Executive.²²² See Fred Kameny, *Are Inseverability Clauses Constitutional?*, 68 Alb. L. Rev. 997, 1001 (2005) (arguing nonseverability

unvouchered expenses provided legislative leaders, meanwhile, was in excess of \$30,000, and represented over 30% of their existing salaries.”

²¹⁴ *Id.* at 970.

²¹⁵ *Id.* at 970-71. The court further stated, “the principle of severability, and the standard by which severability is measured, has its roots in the common law.”

²¹⁶ *Id.* at 973.

²¹⁷ *Id.* at 973-74.

²¹⁸ P.A. CONST. ART. V, § 16(a) states: “Justices, judges and justices of the peace¹ shall be compensated by the Commonwealth as provided by law. Their compensation shall not be diminished during their terms of office, unless by law applying generally to all salaried officers of the Commonwealth.”

²¹⁹ *Stilp*, 905 A.2d at 974.

²²⁰ *Id.*

²²¹ *Id.* at 978.

²²² *Id.* at 978-79. The court pointed out that the General Assembly may determine that a taint in any part of the statute ruins the whole or legislatures may fear the courts may guess wrong on its legislative intent.

provisions can make the cost of invalidation too great). Thus, the court ruled the enforcement of the nonseverability clause would have intruded upon the independence of the Judiciary.²²³ After applying statutory severability analysis, 1 Pa. Const. Stat. §1925 (1974), the unvouchered expense provision was held to violate P.A. Const. art. II, § 8 and was severed from the remaining valid provisions of Act 44.²²⁴

3. Analysis

Pennsylvania has been experiencing an explosion of natural gas production over the last several years.²²⁵ From 2011-2012, Pennsylvania saw a 72% increase in natural gas production, and a jump to third, from seventh, out of all the natural gas producing states.²²⁶ In western Pennsylvania, in the midst of the gas boom, Pennsylvania Governor, Tom Corbett, wooed Shell Oil Co., to choose Beaver County, PA as the location for one of its ethane processing plants.²²⁷ The Governor eventually succeeded in his courtship by offering an estimated \$1.7 billion in tax credits, in return for thousands of potential construction jobs, and trickle down economic impacts to businesses around the plant.²²⁸ While all of these exciting energy innovations were unfolding, the PA General Assembly passed Act 13.

In order to help industry make the most economically sound decisions, the General Assembly rewrote local zoning laws such that local governments no longer had much say in where wells could be located in their communities. Along with changes to the zoning laws, Act 13 impacted more obscure areas of the law like notification to private well

²²³ *Id.* at 980.

²²⁴ *Id.* at 980-81.

²²⁵ U.S. Energy Information Administration, *Pennsylvania is the fastest-growing natural gas-producing state* (December 13, 2013), <http://www.eia.gov/todayinenergy/detail.cfm?id=14231>.

²²⁶ *Id.*

²²⁷ WTAE, *Shell holds meeting on Beaver County plant proposal* (April 16, 2014), <http://www.wtae.com/news/shell-to-discuss-shale-gas-plant-proposal/25494256>

²²⁸ *Id.*

owners, in the event of a spill, or the creation of confidentiality agreements for health professionals when treating patients that had contact with trade secret protected chemicals. In this section I argue that the Majority opinion in *Robinson Twp. III* did not progress the cause of liberty or the overall knowledge of the public by excluding notice to a class of persons in the event of a spill. Secondly, the Majority opinion should have invalidated the confidentiality agreements required under Pa. Cons. Stat. § 3222.1(b) (2012), and should have instead suggested that the General Assembly remove the veil that currently conceals some of the chemicals used in the drilling process by amending Pennsylvania's Right to Know laws.²²⁹

The Commonwealth Court ruled that the DEP does not have a legal duty to notify private well owners when a spill occurred in the area.²³⁰ The Majority opinion says "... it is not feasible to require DEP to identify private wells that may be potentially affected by a spill and it is impossible for DEP to provide notice to these unknown private well owners."²³¹ Additionally, the Majority points to several DEP regulations, in footnote 17, that the court uses to reason already existing notice obligations are sufficient.²³² I propose the existing notice obligation that excludes private well owners is insufficient. In the event of a spill, the General Assembly should impose legal notice on the DEP such that the entire community is notified.

The idea of legal notice took center stage in a 1950 Supreme Court opinion.²³³ In *Mullane*, Central Hanover Bank and Trust Company (hereinafter, "Hanover") created a

²²⁹ 65 P.S. §§ 67.101-67.3104 (2009).

²³⁰ *Robinson Twp. v. Commonwealth*, 96 A.3d 1104, 1114 (Commw. Ct. 2014).

²³¹ *Id.*

²³² *Id.* at 1115.

²³³ *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

common trust fund that acquired 113 trusts and had a gross capital of \$3 million.²³⁴ Hanover sought a judicial settlement of its first account.²³⁵ In doing so, it followed the New York banking law that required notice of the judicial settlement be published in a court designated newspaper for four weeks without naming the beneficiaries.²³⁶ The law was challenged as inadequate under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.²³⁷ The Court ruled, “at a minimum [the Due Process clause] require[s] that deprivation of life, liberty, or property by adjudication be preceded by notice.”²³⁸ Given the obscurity of the notice publication, the Court ruled the notice is not necessary for beneficiaries whose interests or location could not be determined.²³⁹ However, for beneficiaries with a known location, a general and unspecific publication in a newspaper is insufficient notice.²⁴⁰

Similarly, notice only to residents using public water is insufficient considering DEP knows the location of the spill, and that there are likely private water supplies in the area. Notice must be of such nature to reasonably convey the required information and afford reasonable time for the interested parties to make their appearance.²⁴¹ The *Mullane* opinion regarding notice of an action against a person, but the principles in *Mullane* are just as applicable to notice of a spill to an impacted community, public water and private well water alike. The General Assembly should create a non-burdensome legal obligation on the DEP to utilize common communication channels to report a spill. Notice would allow residents of that community to take the necessary precautions with

²³⁴ *Mullane*, 339 U.S at 309.

²³⁵ *Id.*

²³⁶ *Id.* at 309-10.

²³⁷ *Id.* at 311.

²³⁸ *Id.* at 313.

²³⁹ *Id.* at 317.

²⁴⁰ *Id.* at 318.

²⁴¹ *Id.* at 314.

their well water instead of potentially being blind-sided by the news of a spill that might be too late. I suggest the General Assembly force the DEP to cast the notice net wide, so the residents of the impacted community have the appropriate information to take the necessary precautions for their family, their home, and their livelihood.

The Commonwealth Court should have invalidated the confidentiality agreement that health professionals are required to sign when they are treating a patient that may have been exposed to a drilling company's trade-secret protected chemicals. The applicable section in the Act states that the health professional must provide a written statement requesting this information to treat an individual that may have been exposed to a hazardous chemical, and the knowledge of the trade secret protected chemical will help in the diagnosis or treatment.²⁴² If the health professional claims the information is needed for emergency treatment, a verbal statement is sufficient, as long as the health professional agrees that the information will remain confidential and will not be used for anything other than treatment of the health needs asserted.²⁴³ In order to help remove some of the uncertainty surrounding the confidentiality agreement, I suggest the General Assembly adopt a comprehensive set of rules covering disclosure at the beginning and the end of the drilling process.

In *Robinson Twp. III*, the Majority opinion points to a law review article, "Falling Through the Cracks: Public Information and the Patchwork of Hydraulic Disclosure Laws," written by Matthew McFeeley, that compiles several tables summarizing various aspects of states disclosure laws.²⁴⁴ The General Assembly should follow two of his

²⁴² 58 Pa. CONST. STAT. § 3222.1(b)(10) (2012).

²⁴³ *Id.* § 3222.1(b)(11).

²⁴⁴ Matthew McFeeley, *Falling Through the Cracks: Public Information and the Patchwork of Hydraulic Fracturing Disclosure Laws*, 38 VT. L. REV. 849 (2014).

suggestions, but modify them, of course, to fit Pennsylvania's unique circumstances, and where possible preserve trade secret rights. The first disclosure requirement should be what Mr. McFeeley calls, a pre-fracturing notice.²⁴⁵ Act 13 does not currently require pre-fracturing disclosures.²⁴⁶ The pre-fracturing disclosure will allow the citizens to know what chemicals will be used in drilling, and what will be stored at the well site.²⁴⁷ Then, before drilling starts, owners could perform a water test to have a baseline of what is in the well water before drilling starts.²⁴⁸ Six states currently have some type of pre-fracturing disclosure law.²⁴⁹ Pre-fracturing disclosure notices could be compiled and kept securely via an internal database, or accessible through a secure online tool that would allow the public to access the records via a Pennsylvania Right to Know Request.²⁵⁰

The second suggestion from Mr. McFeeley's law review article is to make sure states require post-fracturing disclosure requirements. Pennsylvania governs post-fracturing requirements in 58 Pa. Cons. Stat. § 3222.1(b) (2012). The statute says, within 60 days of drilling being completed, operators must complete a chemical disclosure registry.²⁵¹ The driller can exempt any chemical entitled to trade secret protection from being disclosed in the disclosure registry. Today, chemicals that are entitled to trade secret protection are not available via the chemical registry because Pennsylvania's Right to Know Laws.²⁵²

²⁴⁵ *Id.* at 870.

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 871.

²⁴⁸ *Id.* at 870-71.

²⁴⁹ *Id.* (acknowledging that California, Illinois, Indiana, Montana, Wyoming, and West Virginia all have some type of pre-fracturing disclosure law).

²⁵⁰ 65 PA..CONS. STAT. § 67.702 (2009).

²⁵¹ 58 PA. CONS. STAT. § 3222.1(b)(2).

²⁵² 65 PA. CONS. STAT. § 67.708(11) (2009) (a record that constitutes or reveal a trade secret is exempt from access by the requestor).

In order to increase publically available knowledge of the chemicals that are being used in the drilling process, the General Assembly should modify Pennsylvania's Right to Know Laws such that drilling companies cannot claim trade secret protection on chemicals used during the drilling process. As the General Assembly works this modification to the law, I encourage drilling companies to follow the lead of Range Resources by self-disclosing the chemicals being used. This self-disclosure will curry good favor with the public, and help build the industry's case that the drilling process is safe. Openness and dialogue tends to diffuse speculation and conspiracies.

Modifying Pennsylvania's Right to Know Law will remove the current trade secret protection drilling companies receive on their chemicals. The protection they have gained should not be cast aside lightly, but it is necessary to weigh the benefits of these protections against the costs that are or may be endured by the citizens of this Commonwealth because of drilling. In *Robinson II*, the Pennsylvania Supreme Court analyzed the Environmental Right amendment to the Pennsylvania Constitution when it reviewed the constitutionality of Act 13.²⁵³ The court said § 27 does not require the political branches to enact specific affirmative measures to promote clean air, pure water, and the preservation of the environment, but the right "articulated is neither meaningless nor merely inspirational."²⁵⁴ By the General Assembly allowing the public to know which chemicals are used in the drilling process the legislature is merely enforcing the constitutional guarantees provided to all Pennsylvanians. Without providing the public

²⁵³ *Robinson Twp., Washington Cnty. v. Commonwealth.*, 83 A.3d 901, 951 (Pa. 2013) ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people." (quoting P.A. CONST. ART. I, § 27)).

²⁵⁴ *Id.* at 951-52.

the opportunity to secure this knowledge, the General Assembly is not doing its duty to uphold § 27 of the constitution.

If Pennsylvania takes this course of action, it will not be alone. Texas has required disclosure from drilling companies for several years by posting all chemical information on www.fracfocus.org.²⁵⁵ Environmental groups argue this website is not enough to provide disclosure, but in 2013 the website released enhancements that may enable more complete and easier access to data.²⁵⁶ At a minimum, [fracfocus.org](http://www.fracfocus.org) is a step in the right direction.

It is an exciting time to be part of another industrial revitalization sweeping certain parts of the state. I would encourage the General Assembly to march down this path of enterprise and growth in a manner that places the liberty of all Pennsylvanians first, and industry efficiencies second. By promoting the disclosure of information pertaining to all aspects of drilling decisions, the light of knowledge will guide the decision maker's choices, rather than having them clouded in speculation. The General Assembly should continue to write laws that allows all Pennsylvanians to have an opportunity to reap the benefits of drilling, if they so choose, and distance themselves, their family, and even their entire community, if they so choose.

²⁵⁵Ben Casselman, *'Fracking' Disclosure to Rise*, The Wall Street Journal (June 20, 2011), <http://online.wsj.com/articles/SB10001424052702304887904576395630839520062>.

²⁵⁶Frac Focus 2.0 to revolutionize hydraulic fracturing chemical reporting nationwide, <http://www.fracfocus.org/node/347> (last visited Nov. 7, 2014).