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Ruling elevates environmental rights amendment

BY ROBERT SWIFT (HARRISBURG BUREAU CHIEF)

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HARRISBURG - The state Supreme Court ruling striking down a state law limiting the ability of local governments to zone gas drilling marks the broadest application yet of Pennsylvania's Environmental Rights Amendment to statewide legal issues, the amendment's author said Friday.

The court voted 4-2 on Thursday to hold a provision in the gas drilling impact fee law giving state agencies oversight over local drilling zoning regulations unconstitutional. Three of the justices in the majority opinion said it conflicts with the environmental rights amendment, Article 1, Section 27 of the state constitution.

This amendment says that Pennsylvanians have a right to clean air, pure water and preservation of natural, scenic, historic and aesthetic values of the environment, and the state has a trustee role to conserve and maintain public natural resources for all the people, including future generations.

"I think this (ruling) creates the beginning of a new environmental jurisprudence," said former Sen. Franklin Kury of Northumberland County, who wrote the amendment. "The court in my opinion got it right on how to interpret the amendment."

The court's numerous references to the amendment means it will have increasing importance in future environmental cases, said Mr. Kury. He said he's not involved in the impact fee case.

The practical effect of the amendment so far has been to give the public legal standing to challenge environmental decisions in court and to require local officials to take environmental issues into consideration when awarding permits or approving new development, Mr. Kury has written.

The amendment has its roots in the environmental pollution left by anthracite mining during the 19th and early 20th centuries in Northeast Pennsylvania. As a young boy, Mr. Kury lived in Shenandoah where his two grandfathers were coal miners.

King coal

"I saw what the coal companies had done to the streams and the culm banks," he said.

As a House lawmaker in 1970, Mr. Kury pushed for adoption of the environmental rights amendment, and statewide voters ratified it by a 4-1 margin in 1971.

The ruling gives its due to this history.

"When coal was 'king,' there was no Environmental Rights Amendment to constrain exploitation of the resource, to protect the people and the environment, or to impose the sort of specific duty as trustee upon the commonwealth as found in the Amendment," the ruling said.

It added, "By any responsible account, the exploitation of the Marcellus Shale Formation will produce a detrimental effect on the environment, on the people, their children, and future generations, and potentially on the public purse, perhaps rivaling the environmental effects of coal extraction. The litigation response was not available in the nineteenth century, since there was no Environmental Rights Amendment. The response is available now."

The ruling "will shape the discussions in the court on how environmental rights ought to be applied in the future," said Jordan Yeager, counsel for the municipalities challenging the impact fee law.

However, the two ranking Republican lawmakers said the ruling will have a negative impact on the economic welfare of Pennsylvanians.

"The consequences of this decision will likely be the increase of natural gas prices for consumers, while at the same time costing a multitude of jobs in Pennsylvania," said Senate President Pro Tempore Joseph Scarnati, R-25, Venango County, and House Speaker Sam Smith, R-66, Punxsutawney.

They said the ruling could jeopardize the future of impact fees paid by the gas industry under the law since 2012.

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MsRarelyWrong · 2 days ago

Dear GOD, it's about time!!! Probably a day late and a dollar short. BTW: THIS (the "new" environmental jurisprudence mentioned above) is what the term "public trust" (sans the 's, and sans the word "the") actually applies to, i.e., the people have a right to have their state hold "clean air, land, and water" in TRUST for them, to ensure they exist for future generations. Therefore, these naturally-occurring resources are held in PUBLIC TRUST. The term "public trust" has absolutely NOTHING to do with the people "trusting" their government. THAT would be the cockeyed interpretation of a local blowhard who is a true example of "a little knowledge can be dangerous."

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MsRarelyWrong → MsRarelyWrong · 2 days ago

Oh, and the local media who repeated his mangling of this term by suggesting it applied to situations in which the public should or shouldn't "trust" something, are just as wrong as he is, but doubly so, because they were too lazy to research it and realize it is a wrong usage. There is no "the public trust." Rather, it's "the public's trust."

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