

# Bond Case Briefs

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## **EMINENT DOMAIN - PENNSYLVANIA**

### **Robinson Township v. Commonwealth**

**Supreme Court of Pennsylvania - September 28, 2016 - A.3d - 2016 WL 5597310**

Municipalities and individuals brought petition for review challenging constitutionality of legislative act that set out statutory framework for regulation of oil and gas fracking operations, preempted local regulation of such operations, and gave power of eminent domain to natural gas corporations.

The Commonwealth Court found that the act was unconstitutional in part and enjoined application of certain provisions. On cross-appeals, the Supreme Court affirmed in part, reversed in part, and remanded. On remand, the Commonwealth Court ruled that certain sections of act were not severable and upheld constitutionality of other sections. Public Utilities Corporation (PUC) appealed and municipalities and individuals cross-appealed.

The Supreme Court of Pennsylvania held that:

- Sections of legislative act which created a mechanism for Public Utility Commission (PUC) to determine whether a local ordinance violated the Municipalities Planning Code (MPC) or chapters of legislative act at issue, were not severable from unconstitutional provisions of act which had preempted certain regulations of fracking by local municipalities;
- Statutes restricting health care professionals' access to information regarding chemicals used in fracking process were an unconstitutional special law;
- Provision requiring Department of Environmental Protection, in event of chemical spill associated with fracking, to notify only public, not private, drinking water facilities that could be affected was unconstitutional special law; and
- Provision which authorized the taking of real property for the storage of natural or manufactured gas, violated public use requirement and thus was an unconstitutional taking.

Sections of legislative act which created, as part of Oil and Gas Act, a mechanism for Public Utility Commission (PUC) to determine whether a local ordinance violated the Municipalities Planning Code (MPC) or chapters of legislative act at issue, were not severable from unconstitutional provisions of act which had preempted local municipalities from enacting or enforcing environmental legislation, mandated that certain drilling activities attendant to production of natural gas be allowed in every zoning district, and established mandatory setback waivers. Legislative history made clear that legislature's overarching objective was to have act provide a singular statewide zoning and permitting process for all oil and gas wells, and sections for which severability was at issue furthered the legislative goal of maintaining this statewide regulatory uniformity.

Sections of legislative act, restricting health professionals' access to information regarding the chemicals used in fracking process, were germane to act's overall purpose of regulating the oil and gas industry, and therefore act did not violate constitution's single subject requirement. Primary purpose of sections at issue was not the regulation of health care but rather the maintenance of trade secret protections for chemicals used in fracking process.

Provision of legislative act regarding the fracking process, requiring Department of Environmental

Protection (DEP), in event of chemical spill associated with fracking, to notify only public, not private, drinking water facilities that could be affected was an unconstitutional special law. It was not clear how exclusion of notice to the over three million Commonwealth residents who received their drinking water from wells bore any fair and substantial relationship to legislative act's objective of securing health, safety, and property rights for all Commonwealth residents during oil and gas extraction process, and there was no other mandate for DEP to provide notice to private well owners following a spill.

Provision of legislative act regarding the fracking process, which authorized the taking of real property for the storage of natural or manufactured gas, did not satisfy public use requirement and thus was an unconstitutional taking under state and federal constitutions, where statute did not restrict its application to only corporations that met conditions for classification as public utilities, and any projected benefit to public from purportedly advancing development of Commonwealth infrastructure was speculative and incidental.