

Unanimous Pennsylvania Commonwealth Court rules that the Supreme Court's interpretation of Environmental Rights Amendment in landmark *Robinson Township* decision is nonbinding

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SUMMARY

The Pennsylvania Commonwealth Court ruled on January 7, 2015 that the Supreme Court's interpretation of the Environmental Rights Amendment in *Robinson Township*, which was backed by only three justices, is nonbinding. The court relied instead on a three-part test devised in 1973. This Alert highlights the four biggest takeaways from the recent decision.

A mere 13 months after the Supreme Court's landmark decision in *Robinson Township*,¹ which overturned certain provisions of Pennsylvania's 2012 Oil and Gas Act (Act 13) as unconstitutional under the Pennsylvania Constitution's Environmental Rights Amendment, the Commonwealth Court ruled that the Supreme Court's analysis of the Amendment, which was backed by only three justices, is nonbinding. *Pennsylvania Environmental Defense Foundation v. Commonwealth*, Docket No. 228 M.D. 2012, 2015 WL 79773 (Pa. Cmwlth. Jan. 7, 2015) (available at <http://tinyurl.com/mmbjsam>)

In a case decided on January 7, 2015, a unanimous en banc panel of the Commonwealth Court ruled that a three-part test devised forty years ago by that Court remains the controlling law when reviewing challenges to state action brought under Article I, Section 27 of the Constitution, the Environmental Rights Amendment. A plurality of three Supreme Court justices in *Robinson Township* had criticized that test, set forth in *Payne v. Kassab*,² stating that its use should be limited to the "narrowest of cases," rendering it virtually meaningless. The plurality set out a new balancing test to be used by courts when reviewing state actions impacting the environment. In this week's ruling, Commonwealth Court disagreed, stating that the legal reasoning and conclusions contained in the plurality opinion are "not binding precedent on this Court," since they are not consistent with other binding precedent from the Commonwealth Court and Supreme Court on the same subject.

The Pennsylvania Environmental Defense Foundation challenged the Commonwealth's budget decisions with respect to the Commonwealth's leasing of state lands for oil and gas development. The group argued that the Commonwealth's actions violated the Environmental Rights Amendment. The Commonwealth Court disagreed, finding that the budgetary decisions were not inconsistent with the Commonwealth's trustee obligations under the Environmental Rights Amendment.

1. *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013).

2. 312 A.2d 86 (Pa. Cmwlth. 1973), aff'd, 361 A.2d 263 (Pa. 1976).

What was remarkable about the Supreme Court's *Robinson Township* decision was that it fundamentally altered how the Environmental Rights Amendment should be interpreted, reinvigorating the moribund Amendment, effectively overruling or limiting over forty years of case law. What is remarkable about the Commonwealth Court's *PEDF* decision is that the lower Court reinstates the applicability of some of that 40-year-old case law.

Here are the initial takeaways:

- **The *Payne* test is resuscitated.** Virtually every challenge to Commonwealth action in the environmental realm since the Supreme Court's decision in *Robinson Township* has relied heavily on the Environmental Rights Amendment. The *PEDF* decision sends a strong signal that reviewing courts and the Environmental Hearing Board ought to continue to use the *Payne* test when reviewing challenges to Commonwealth action under the Amendment. Since most appeals from lower courts and EHB decisions are directed to the Commonwealth Court in the first instance, it is likely that the *Payne* test will continue to be given precedence over the *Robinson Township*'s plurality view, barring reversal of the *PEDF* decision by the Supreme Court.
- **A different Supreme Court will weigh in.** The Pennsylvania Environmental Defense Fund has indicated that it will appeal the Commonwealth Court's decision. Since the challenge was brought under the Commonwealth Court's original jurisdiction, there is an automatic right to appeal to the Supreme Court. Notably, however, it will be an altogether different Supreme Court reviewing the *PEDF* decision. The *Robinson Township* plurality was written by former Chief Justice Castille and joined only by Justices Todd and McCaffrey. With the recent retirements of Chief Justice Castille and Justice McCaffrey from the Court, Justice Todd remains the only judge still on the Court that participated in the plurality opinion. Justice Saylor, recently elevated to Chief Justice, wrote a dissenting opinion.
- **The Supreme Court's plurality opinion has been diminished in importance and has been shown to be "not binding precedent."** The Commonwealth Court has ruled that "we find the plurality's construction of Article I, Section 27 persuasive only to the extent it is consistent with

binding precedent from this Court and the Supreme Court on the same subject." Some commentators took the position that the plurality opinion was a major sea change in the interpretation of the Environmental Rights Amendment and it would have a wide ranging impact on state actions. They were correct in the sense that the plurality brought to the forefront this provision that had seen better days. They were premature, however, in thinking that any change would be lasting.

- **The Environmental Rights Amendment is still alive and self-executing.** Despite the fact that the *PEDF* decision effectively resets the evaluative test back to where it was pre-*Robinson Township*, the decision gives full recognition to the Environmental Rights Amendment as the source of an independent cause of action.

Saul Ewing attorneys have been following and will continue to monitor changes with respect to the interpretation of the Environmental Rights Amendment. For more information on these matters, please contact the authors or the attorney at the firm with whom you are regularly in contact.

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