[J-127A-D-2012]][OAJC. – Castille, C.J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

ROBINSON TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, BRIAN COPPOLA, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SUPERVISOR OF ROBINSON TOWNSHIP, TOWNSHIP OF NOCKAMIXON, BUCKS COUNTY, PENNSYLVANIA, TOWNSHIP OF SOUTH FAYETTE, ALLEGHENY COUNTY, PENNSYLVANIA, PETERS TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, DAVID M. BALL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COUNCILMAN OF PETERS TOWNSHIP, TOWNSHIP OF CECIL, WASHINGTON COUNTY, PENNSYLVANIA, MOUNT PLEASANT TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, BOROUGH OF YARDLEY, BUCKS COUNTY, PENNSYLVANIA, DELAWARE RIVERKEEPER NETWORK, MAYA VAN ROSSUM, THE DELAWARE RIVERKEEPER, MEHERNOSH KHAN, M.D.	:	No. 63 MAP 2012
	:	Appeal from the Order of the Commonwealth Court at No. 284 MD 2012 dated 7/26/12
	:	ARGUED : October 17, 2012
v.	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA PUBLIC UTILITY COMMISSION, ROBERT F. POWELSON, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE PUBLIC UTILITY COMMISSION, OFFICE OF THE ATTORNEY GENERAL OF PENNSYLVANIA, KATHLEEN KANE, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND E. CHRISTOPHER ABRUZZO, IN HIS	:	

OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION APPEAL OF: PENNSYLVANIA PUBLIC UTILITY COMMISSION, ROBERT F. POWELSON, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE PUBLIC UTILITY COMMISSION & PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND E. CHRISTOPHER ABRUZZO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION	:	
ROBINSON TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, BRIAN COPPOLA, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SUPERVISOR OF ROBINSON TOWNSHIP, TOWNSHIP OF NOCKAMIXON, BUCKS COUNTY, PENNSYLVANIA, TOWNSHIP OF SOUTH FAYETTE, ALLEGHENY COUNTY, PENNSYLVANIA, PETERS TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, DAVID M. BALL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COUNCILMAN OF PETERS TOWNSHIP, TOWNSHIP OF CECIL, WASHINGTON COUNTY, PENNSYLVANIA, MOUNT PLEASANT TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, BOROUGH OF YARDLEY, BUCKS COUNTY, PENNSYLVANIA, DELAWARE RIVERKEEPER NETWORK, MAYA VAN ROSSUM, THE DELAWARE RIVERKEEPER, MEHERNOSH KHAN, M.D. v.	:	No. 64 MAP 2012 Appeal from the Order of the Commonwealth Court at No. 284 MD 2012 dated 7/26/12

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA PUBLIC UTILITY COMMISSION, ROBERT F. POWELSON, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE PUBLIC UTILITY COMMISSION, OFFICE OF THE ATTORNEY GENERAL OF PENNSYLVANIA, KATHLEEN KANE, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND E. CHRISTOPHER ABRUZZO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION APPEAL OF: OFFICE OF THE ATTORNEY GENERAL OF PENNSYLVANIA, KATHLEEN KANE, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA	:	
ROBINSON TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, BRIAN COPPOLA, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SUPERVISOR OF ROBINSON TOWNSHIP, TOWNSHIP OF NOCKAMIXON, BUCKS COUNTY, PENNSYLVANIA, TOWNSHIP OF SOUTH FAYETTE, ALLEGHENY COUNTY, PENNSYLVANIA, PETERS TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, DAVID M. BALL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COUNCILMAN OF PETERS TOWNSHIP, TOWNSHIP OF CECIL, WASHINGTON COUNTY, PENNSYLVANIA, MOUNT PLEASANT TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, BOROUGH OF YARDLEY, BUCKS COUNTY,	:	No. 72 MAP 2012 Appeal from the Order of the Commonwealth Court at No. 284 MD 2012 dated 7/26/12

PENNSYLVANIA, DELAWARE RIVERKEEPER NETWORK, MAYA VAN ROSSUM, THE DELAWARE RIVERKEEPER, MEHERNOSH KHAN, M.D.,	:	
Cross-Appellants	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA PUBLIC UTILITY COMMISSION, ROBERT F. POWELSON, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE PUBLIC UTILITY COMMISSION, OFFICE OF THE ATTORNEY GENERAL OF PENNSYLVANIA, KATHLEEN KANE, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND E. CHRISTOPHER ABRUZZO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	
Appellees	:	
ROBINSON TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, BRIAN COPPOLA, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SUPERVISOR OF ROBINSON TOWNSHIP, TOWNSHIP OF NOCKAMIXON, BUCKS COUNTY, PENNSYLVANIA, TOWNSHIP OF SOUTH FAYETTE, ALLEGHENY COUNTY, PENNSYLVANIA, PETERS TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, DAVID M. BALL, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS COUNCILMAN OF	:	No. 73 MAP 2012 Appeal from the Order of the Commonwealth Court at No. 284 MD 2012 dated 7/26/12

PETERS TOWNSHIP, TOWNSHIP OF CECIL, WASHINGTON COUNTY, PENNSYLVANIA, MOUNT PLEASANT TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, BOROUGH OF YARDLEY, BUCKS COUNTY, PENNSYLVANIA, DELAWARE RIVERKEEPER NETWORK, MAYA VAN ROSSUM, THE DELAWARE RIVERKEEPER, MEHERNOSH KHAN, M.D.,	:	
Cross-Appellants	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA PUBLIC UTILITY COMMISSION, ROBERT F. POWELSON, IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE PUBLIC UTILITY COMMISSION, OFFICE OF THE ATTORNEY GENERAL OF PENNSYLVANIA, KATHLEEN KANE, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND E. CHRISTOPHER ABRUZZO, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	
Appellees	:	ARGUED: October 17, 2012

DISSENTING OPINION

MR. JUSTICE SAYLOR **Decided: December 19, 2013**

As I read the Brief for Cross-Appellants (denominated by the lead opinion as "citizens," albeit they are largely municipalities), as it pertains to their challenge to Act

13 under Article I, Section 27 of the Pennsylvania Constitution, the main argument is that the General Assembly has inappropriately deprived municipalities of the means to fulfill their own constitutional obligation to protect the environment via zoning regulation. See Brief for Cross-Appellants (72 & 73 MAP 2012) at 31-39. Such proposition dovetails with Cross-Appellants' claim, accepted by the Commonwealth Court, that zoning is inherently a matter of local concern reflected in longstanding community planning throughout the Commonwealth, and that, as a matter of substantive due process, the Legislature cannot impact upon such planning over the objection of those who have relied upon it. See Robinson Twp. v. Commonwealth, 52 A.3d 463, 485 (Pa. Cmwlth. 2012).

The lead opinion appears to recognize the tenor of Cross-Appellants' argument. See Opinion Announcing the Judgment of the Court ("OAJC"), slip op. at 53-55. Nevertheless, after offering some apologia on Cross-Appellants' behalf relative to the limited scope of their contentions, see id. at 57-59, the lead Justices embark on their own course to reach broad-scale pronouncements that the General Assembly has implemented "blanket accommodation[s] of industry and development," id. at 113, and "swept aside" the Environmental Rights Amendment, id. at 128. The lead opinion circles back to Cross-Appellants' specific argument pertaining to Article I, Section 27 only in a brief aside, in which it credits their main contention by way of an alternative disposition. See id. at 129 n.58.

I cannot support such an approach to review of the constitutionality of a legislative enactment. There are very good reasons why judicial review of social policymaking by the political branch is highly deferential and closely constrained. This Court regularly acknowledges that the Legislature possesses superior resources for information-gathering, debate, and deliberation in the policymaking arena. See, e.g.,

Official Comm. Of Unsecured Creditors of Allegheny Health Educ. & Research Found. v. PriceWaterhouseCoopers, LLP, 605 Pa. 269, 301-02 & n.27, 989 A.2d 313, 332–33 & n.27 (2010) (referencing the General Assembly's superior policymaking resources and explaining that, "[u]nlike the legislative process, the adjudicatory process is structured to cast a narrow focus on matters framed by litigants before the Court in a highly directed fashion"). In a democratic system of government, divisive political controversies pitting citizens against citizens are resolved through the political process. Moreover, courts must take special care to avoid substituting their own policy preferences for those of the political branch. See, e.g., Parker v. Children's Hosp. of Phila., 483 Pa. 106, 116, 394 A.2d 932, 937 (1978). Such perspective informs the strong presumption of validity enjoyed by duly implemented legislative enactments and the allocation of a heavy burden upon all challengers to establish that the General Assembly has clearly, palpably, and plainly violated the Constitution. See, e.g., West Mifflin Area Sch. Dist. v. Zahorchak, 607 Pa. 153, 163, 4 A.3d 1042, 1048 (2010).

For these compelling reasons, which shape conventional judicial review of legislative enactments, and in consideration of the doctrine of separation of powers residing at the core of our governmental scheme, I believe this Court's deferential review in this case should be strictly confined to the Cross-Appellants' actual arguments relative to Article I, Section 27 of the Pennsylvania Constitution. Accordingly, and from the outset, I differ materially with the lead Justices' approach in doing otherwise.

On its merits, as the Commonwealth parties explain, this case at its center concerns the Legislature's ability to establish economic, environmental, and social policies for the Commonwealth -- here, designed to promote economic development and energy self-sufficiency -- notwithstanding a clash with land-use decisions by some local government units. See, e.g., Brief for Appellants (63 MAP 2012) at 7 ("Act 13 is

the General Assembly's response to the challenges of environmental protection and economic growth that come with the commercial development of unconventional geological formations such as the Marcellus Shale."). For policy reasons well outside this Court's purview, and in conjunction with the Legislature's power to regulate and control natural resources, the Assembly has decided to supersede some of the duties and responsibilities municipalities previously have exercised in relation to land-use planning and the environment.[1]

This Court has consistently recognized that municipalities are creatures of the General Assembly and treated the latter's dictates as preeminent. See, e.g., Olon v. DOC, 534 Pa. 90, 94-95, 626 A.2d 533, 535 (1993); Kline v. City of Harrisburg, 362 Pa. 438, 442-48, 68 A.2d 182, 184-87 (1949); accord 101A C.J.S. Zoning & Land Planning §10 (2013) ("A zoning statute which supersedes a local zoning regulation or ordinance is paramount and controlling." (footnote omitted)); Brief for the Public Utility Commission, et al., (72 MAP 2012) at 3 ("[W]hile the Municipalities concede that zoning restrictions can limit the constitutional right to free use of one's property, they argue that they somehow have a constitutionally protected right to impose even greater restrictions on land use than the General Assembly has decided is appropriate. That illogical position disregards the unassailable truth that municipalities obtain their existence and their enumerated powers solely from the General Assembly."). The lead opinion, however, appears to completely redefine the role of municipalities relative to the sovereign.

[1] The reasons informing the legislative judgment include alleviation of the hurdles to the development of an efficient and cost-effective system of harvesting oil and gas resources posed by a fluid patchwork of restrictions differing from municipality to municipality, particularly where each of the thousands of local government units can erect -- as some have erected -- barriers to development and supporting infrastructure within their borders.

Moreover, while hypothesizing an unreasonably deleterious impact of Act 13 on the environment, see OAJC, slip op. at 88-93, 117-19, 127-28, the lead opinion gives scant attention to its extensive scheme for well permitting, including the imposition of well location restrictions; the enactment's requirements for protection of fresh groundwater and water supplies; Act 13's dictate to restore land areas disturbed in siting, drilling, completing, and producing a well; the investiture of responsibility in the Department of Environmental Protection to enforce Act 13's requirements, inter alia, through permit revocation, assessment of civil fines and penalties, and injunctive relief; and the preservation of existing requirements under environmental laws, including the Clean Streams Law, 35 P.S. §§691.1-691.1001, as well as statutory and common-law remedies to abate nuisances and pollution. See 58 Pa.C.S., Ch. 32. In this regard, and relative to the lead Justices' non-record-based portrayal of Act 13's impact, I find the following argument from the Commonwealth instructive:

> The Municipalities' argument and the Commonwealth Court's majority opinion in this case are centered on the false premise that Act 13 is inherently incompatible with basic principles of land use planning. They paint a picture of residential neighborhoods torn apart by the indiscriminate placement of gas wells by an industry permitted to operate wherever it pleases. In the wake of these operations, neighboring landowners are victims who have no rights and no recourse. If this picture were correct, there would be good reason to conclude that Act 13 violates the substantive due process rights of Pennsylvania's citizens. However, this picture is a distortion of how Act 13 actually impacts zoning, and fails to take into account the protections which Act 13 provides to neighboring landowners and the population as a whole. While Act 13 does restrict the ability of Municipalities to exclude oil and gas development from specified zoning districts as a matter of course, it does not leave a vacuum. Rather, it establishes minimum setback requirements, strict environmental standards, and other criteria which must be met before property may be used for oil and gas related activities. Act 13, therefore, does not eviscerate the protections provided by local zoning ordinances; it simply substitutes the regulations and standards established by local government

officials as they relate to the location of oil and gas development with those of the General Assembly.

Act 13 provides a minimum setback requirement of 500 feet from any building for an unconventional gas well. 58 Pa.C.S. §3215. To put this in perspective, an acre of land (of equal dimensions) would be approximately 208 feet by 208 feet. The typical residential neighborhood in Pennsylvania . . . would simply not be impacted by Section 3304. Upon closer examination, it is only residential zoning districts which are vastly undeveloped or which have houses on tracts of land which are more than two acres in area which could be affected by Section 3304.[fn] The General Assembly could have reasonably concluded that the benefits of increasing the potential supply of natural gas by allowing limited development in relatively undeveloped and non-densely populated areas of the Commonwealth outweighs the harm in requiring municipalities to deviate from their comprehensive plans under the [Municipalities Planning Code].

* * *

While Act 13 theoretically opens up a large number of properties for development which would otherwise be barred under local zoning ordinances, its setback requirements, strict environmental standards, and other substantive and procedural requirements limit the amount of actual development and provide neighboring landowners with significant protections to guarantee their rights under Article I, Section 1 of the Pennsylvania Constitution. See, e.g., Section 3211 (well permits); Section 3212 (Permit Objections); Section 3215 (Well location restrictions); Section 3217 (Protection of fresh groundwater and casing requirements); Section 3218 (Protection of water supplies); Section 3254 (Restraining violations); and Section 3257 (Existing rights and remedies preserved and cumulative remedies authorized).

[fn] While there are legitimate reasons for a municipality to plan for future growth by reserving certain areas for residential use, they do not supersede all other legitimate government objectives. Moreover, any alleged harm to current residents is significantly diminished where there is limited development, the land which is actually being used for residential purposes is underutilized, and the distance between residences or other buildings is substantial. There is also the distinct possibility in these types of situations that the designation of undeveloped land as “residential” has not been made for proper land use purposes but is a pre-text for the exclusion of industrial, mining, and other business activities which the

> residents would like to keep out of their community. The General Assembly has both the authority and the responsibility to place the health, safety and welfare of the citizens of the entire state over the parochial interests of individual municipalities.

Reply Brief for Appellants (64 MAP 2012) at 3-4, 6-7 (first footnote omitted).

Addressing the actual argument advanced by Cross-Appellants, I begin with the observation that Article I, Section 27 invests the trusteeship for our natural resources in "the Commonwealth." PA. CONST. art. I, §27. As the sovereign, statewide policymaking body, the Legislature occupies the primary fiduciary role, and, by constitutional design supported by longstanding judicial precedent, the authority and responsibilities of municipalities are derivative. As much as I understand and appreciate Cross-Appellants' (and the lead Justices') legitimate and deep concern for local community planning and maximum environmental integrity, nothing in our Constitution confers upon municipalities a vested entitlement in their delegated authority to manage land use or the right to dictate the manner in which the General Assembly administers the Commonwealth's fiduciary obligation to the citizenry at large relative to the environment. Accord Brief for Cross-Appellees (73 MAP 2012) at 29 ("The Municipalities' argument is ultimately based on the false premise that Article I, Section 27 grants municipalities power as against the Legislature. Because Article I, Section 27 grants only the Commonwealth the power to conserve and maintain Pennsylvania's public natural resources, and because municipalities' power is limited to that granted by the Legislature, no power of municipalities as against the Legislature may be inferred.").

In terms of the concern for Act 13's impact upon the environment, every form of industry essential to the Commonwealth's economic longevity and growth does the same, in some manner and to some degree. Thus, the State's constitutional obligation to "conserve and maintain" simply cannot mean that Pennsylvania's natural resources may not be responsibly disturbed and utilized. PA. CONST. art. I, §27. Nothing in the

lead opinion persuades me that its historical account of under-regulated lumber and mining enterprises decimating Pennsylvania lands and resources, see OAJC, slip op. at 88-93, reasonably can be superimposed on the Act 13 regulatory regime, contrary to the expressed purposes and design of the statutory scheme, see 58 Pa.C.S. §3202 (explaining that Act 13's purposes include protecting the health, safety, environment and property of Pennsylvania citizens, while permitting optimal development of oil and gas resources which the policymaking branch considers important to economic development in Pennsylvania), and without a shred of evidentiary support.

While certainly we are presented with aggressive attacks upon the motivations of the Commonwealth government in enacting and supporting Act 13, it bears repeating that there simply is no evidence of record to support this. Indeed, on the present record, I discern no evidence that Act 13 is anything other than a non-arbitrary, non-discriminatory exercise of the General Assembly's police powers designed to further both the economic and environmental interests of the Commonwealth and its citizens at large. See generally Eagle Envtl. II, L.P. v. DEP, 584 Pa. 494, 519, 884 A.2d 867, 882 (2005) (explaining that "[t]he police power is one of the most essential and least limitable powers of the Commonwealth"). Consistent with the overarching review standards and the separation-of-powers principle, we are to take the Legislature at its word when it said that it intended to "[p]ermit optimal development of oil and gas resources of this Commonwealth consistent with protection of the health, safety, environment and property of Pennsylvania citizens," 58 Pa.C.S. §3202, at the very least, in the absence of some compelling proof to the contrary.

Thus, I find myself in a dissenting posture relative to the lead opinion's various denunciations of the purposes and effects of Act 13.[2]

Finally, I have serious reservations about the lead Justices' decision to lend municipalities standing to pursue vindication of rights accorded to (or recognized in) individuals under Article I of the Pennsylvania Constitution, particularly as and against the sovereign. As many of the briefs explain, such holding is unprecedented, has serious ramifications, and yields the potential for myriad collateral issues and controversies. See, e.g., Brief of Amici Pennsylvania Chamber of Business and Industry, et al. at 5-11 ("The idea that the Commonwealth's more than 2,000 municipalities may, and possibly must, advocate on behalf of select groups of residents that may be adversely affected by particular land uses, as a constitutional matter, is simply unfathomable."). I find much force in the notion that, since municipalities are

[2] In his concurring opinion, Mr. Justice Baer appears to translate the common-law maxim of sic utere tuo ut alienum non laedas into a federal constitutional duty, on the part of local municipalities, to protect property owners from the use of neighboring properties in ways that are undesirable to them. See Concurring Opinion, slip op. at 8-10, 15. The decisions referenced in the concurrence, however, generally concern the boundaries of the police power to establish zoning regulations restricting the ability of landowners to do as they wish with their own properties. See, e.g., Village of Euclid v. Amber Realty Co., 272 U.S. 365, 395, 47 S. Ct. 114, 121 (1926) (holding that a zoning ordinance impinging upon a landowner's desired use of his property does not offend substantive due process norms so long as the regulation is not "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare"); City of Edmonds v. Oxford House, Inc., 541 U.S. 725, 732-33, 115 S. Ct. 1776, 1781 (1995) (discussing land-use restrictions generally in the context of deciding whether a local zoning regulation violated a federal-antidiscrimination statute). None of these decisions suggests a specific obligation on the part of local governments to affirmatively exercise delegated police powers in any particular fashion or establishes local-government sovereignty over state-level government in such exercise. Indeed, the only opinion referenced in Justice Baer's concurrence which touches on the latter subject concludes as follows: "[I]n this critical area of overlap between state and local authority, traditional respect for the primacy of state interest requires that the will of the Legislature prevail over the desires of each individual locality." Cohen v. Bd. of Appeals of the Village of Saddle Rock, 795 N.E.2d 619, 624 (N.Y. 2003).

creatures of the sovereign and entirely dependent upon the will of the state for their very existence, they have no authority or duty to challenge the state's alteration of their delegated powers. Moreover, I am concerned that protracted litigation deriving from entertaining a host of arguments which do not demonstrate a clear, palpable, and plain violation of the Constitution can impede the Commonwealth's ability to maintain or enhance its relative position in an increasingly competitive economic marketplace.

In summary, I would, as Appellants urge, recognize the authority of the General Assembly to make basic, rational policy choices -- through the democratic process -- that balance the various and potentially conflicting purposes of Act 13. It is clearly the vision of our Legislature that the Marcellus Shale resource has the potential to be of great benefit to the Commonwealth at large in terms of economic development (to include job creation) and energy self-sufficiency. Furthermore, I would decline to substitute the Court's own wisdom about the merits of Act 13 for that of the General Assembly, in contravention of the limited role of judges upon their review of a duly-promulgated and presumptively valid legislative enactment. To the extent this case is about the hierarchy of municipal power relative to that of the Legislature, I am solidly in the camp supporting sovereign control in furtherance of the interests of the citizenry at large.

Mr. Justice Eakin joins this dissenting opinion.