

**For Immediate Release**  
**September 18, 2012**

Contacts:

Natural Resources Defense Council, Kate Slusark 212-727-4592 [kslusark@nrdc.org](mailto:kslusark@nrdc.org)  
Kyle Guie, PA APA Legislative Committee Chair 484-798-4796 or [kyle.b.guie@gmail.com](mailto:kyle.b.guie@gmail.com)  
Nancy Alessi, Nockamixon Township Supervisor, 610-847-8210 [NAlessi@aol.com](mailto:NAlessi@aol.com)  
Deron Gabriel, President, South Fayette Township Board of Commissioners, Allegheny County (a 1st Class Twp. in PA)  
Counsel for original plaintiffs: John M. Smith, 724-745-5121; Jonathan M. Kamin, 412-281-1119; Jordan B. Yeager, 267-898-0570; William A. Johnson, 724-225-3955; and Susan Kraham of the Environmental Law Clinic, Columbia University School of Law  
Maya van Rossum, the Delaware Riverkeeper, 215-801-3043  
Tracy Carluccio, Deputy Director, Delaware Riverkeeper Network, 215-369-1188x104

**Groups Show Legal Support for Pennsylvania Communities' Right to Make Fracking Decisions within their Borders**

**File Amicus Briefs with Supreme Court Against Law that Allows Drilling Anywhere in State**

Pittsburgh, PA – A group of environmental and community planning organizations, as well as government entities, filed a series of Amicus Briefs with the Pennsylvania Supreme Court today in support of communities' rights to making zoning decisions about fracking within their borders.

The groups—including the Natural Resources Defense Council, Pennsylvania Chapter of the American Planning Association, the Pennsylvania State Association of Boroughs, the Pennsylvania State Association of Township Supervisors, the Pittsburgh City Council, Mountain Watershed Association, and Earthjustice—filed in support of a Commonwealth Court decision that found Act 13 unconstitutional. This Pennsylvania law would have permitted fracking virtually everywhere in the Commonwealth without any regard to community character or the existing local economy.

The groups filing today join a broad spectrum of entities from throughout the state that have also filed so-called “Friends of the Court” briefs like this, illustrating that opposition to the law is growing as the case is queued up to be heard by the Supreme Court on October 17.

In their brief, the Natural Resources Defense Council is representing the Townships of Wilkins (Allegheny County), East Finley (Washington County), and Tinicum (Bucks County); the Municipalities of Murrysville (Westmoreland County) and Monroeville (Allegheny County); the Borough of Bell Acres (Allegheny County); and the City of Bethlehem (Northampton and Lehigh Counties).

“A heavy industrial activity like fracking has an enormous impact on the character of a community, its economic prosperity, and the health and happiness of its residents,” said **Dan Raichel, Project Attorney at NRDC**. “It’s only commonsense that communities should have the right to say whether or how fracking takes place within their borders.”

The Pennsylvania Chapter of the American Planning Association filed an amicus brief based on their concerns related to the importance of municipal planning and zoning.

"The Pennsylvania Chapter of the American Planning Association is concerned about the precedent that Act 13 would set for future zoning activities by limiting local municipal control. We believe that municipalities are best suited to handle local land use planning by utilizing comprehensive plans and zoning ordinances without State preemption. In order to preserve a high quality of life for all Pennsylvania residents, it is critical that municipalities maintain their ability to plan land use in accordance with a municipality's individual needs and constraints," said **Kyle Guie, PA APA Legislative Committee Chair**.

Pittsburgh City Council filed a brief based on the agreement of the nine-member Council that it was vital for the City to stand up for their residents and landowners against a state takeover.

The Pennsylvania State Association of Township Supervisors, representing 1,455 townships in the commonwealth, also filed a brief in support of the Commonwealth Court's decision against Act 13. According to PSATS website, the townships they represent "...comprise 95 percent of Pennsylvania's land area and are home to more than 5.5 million citizens — 44 percent of the state's population. Pennsylvania's townships are very diverse, ranging from rural communities with fewer than 200 residents to suburban communities of more than 60,000 residents".

Also filing in support is the Pennsylvania State Association of Boroughs, "...a nonprofit/nonpartisan association operated by the boroughs of the Commonwealth to promote effective local government practices and initiatives", according to their website.

Represented by Earthjustice, 20 nonprofit environmental organizations and citizens groups also filed as amici in support of the Commonwealth Court ruling that struck down Act 13's takeover of municipal control of gas drilling and operations. The Amicus Brief shows that, contrary to the requirements of Pennsylvania's Constitution, there is no substantial interest supporting Act 13, because local control of land use can be harmonized with state control of technical operations, as happens in most states throughout the country.

Mountain Watershed Association, a nonprofit organization centered in the Indian Creek Watershed in Westmoreland and Fayette Counties and Youghiogheny River in southwestern Pennsylvania, filed an Amicus Brief in support of the ruling. "Clearly, our legislators are out of touch with their constituents, except those who are lobbyists and make significant political contributions. Through our Marcellus Citizens Stewardship Project we talk to people actually living in the gasfields, beside the compressor stations, the frack ponds, and the concentrators. Some of our members are experiencing degradation to their quality of life and their health. People in these impacted communities could be protected through the adoption of municipal ordinances designed to protect their health and welfare. Our legislators should be working for these communities and not the industry," said **Beverly Braverman, Executive Director, Mountain Watershed Association**.

The original plaintiffs in the legal challenge – a group of seven municipalities, the Delaware Riverkeeper Network and Dr. Meherosh Khan -- welcomed the filing of the briefs in support of the Commonwealth Court’s decision by so many different interested parties, expressing that the injustice of Act 13 is more evident than ever.

**Nancy Alessi, Nockamixon Township Supervisor**, stated, "In Nockamixon people are enraged that the state passed this legislation taking away our zoning, with no notice or consideration of our local conditions, and with our local legislators not even understanding what they voted for."

"We are deeply moved by the outpouring of unanimous support from municipalities and residents across PA who want their local governments to continue their job of protecting the health, safety and welfare of residents. We have also been made aware of a growing distrust of the current DEP, PUC and the bureaucracy in Harrisburg," stated **Deron Gabriel, President, South Fayette Twp. Board of Commissioners**.

"The filing of so many briefs in support of the Court’s ruling that struck down Act 13 is heartening and makes it very clear that the unpopularity of this oppressive law is expanding as people realize how unfair and untenable it is," said **Maya van Rossum, the Delaware Riverkeeper**.

#### **Background:**

Seven municipalities, Delaware Riverkeeper Network, and Dr. Meherosh Khan filed a legal pleading in Commonwealth Court on March 29, 2012 challenging Act 13, also known as HB1950, which was signed into law by Governor Corbett on February 14, 2012. The municipalities are: Township of Robinson, Washington County; Township of Nockamixon, Bucks County; Township of South Fayette, Allegheny County; Peters Township, Washington County; Township of Cecil, Washington County; Mount Pleasant Township, Washington County; and the Borough of Yardley Bucks County. Act 13 amends the Pennsylvania Oil and Gas Act, preempting municipal zoning of oil and gas development. It also establishes an impact fee on natural gas. The named Appellants are the Commonwealth of Pennsylvania; Pennsylvania Public Utility Commission ("PUC"); Office of the Attorney General of Pennsylvania; and the Pennsylvania Department of Environmental Protection ("DEP").

The Petitioners argued that Act 13 is an unconstitutional violation of: 1) Article I, Section 1 of the Pennsylvania Constitution; 2) Section 1 of the 14<sup>th</sup> Amendment to the United States Constitution; 3) Article III, Section 32 of the Pennsylvania Constitution; 4) Article I, Section 27 of the Pennsylvania Constitution; 5) Article III, Section 3 of the Pennsylvania Constitution; 6) Due Process Principles; and 7) The Doctrine of Separation of Powers. The legal challenge was considered essentially important for the appellees because Act 13 guts local zoning of gas and oil operations and endangers public health, natural resources, communities and the environment.

On July 26, the Commonwealth Court declared the state-wide zoning provisions in Act 13 unconstitutional, null, void and unenforceable. The Court also struck down the provision of the law that required DEP to grant waivers to the setback requirements in Pennsylvania's Oil and Gas Act.

###