

SUPREME COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL :
DEFENSE FOUNDATION, :
Appellant :
 :
v. : **No. 10 MAP 2015**
 :
TOM WOLF, GOVERNOR; :
COMMONWEALTH OF :
PENNSYLVANIA :
 :
Appellees :

REPLY BRIEF OF APPELLANT

The Pennsylvania Environmental Defense Foundation ("PEDF"), Appellant, submits this reply brief in support of its appeal as of right to the Supreme Court of Pennsylvania in response to Appellees' Joint Brief in Opposition to PEDF's Appeal filed on July 22, 2015 ("Appellees' Joint Brief").

John E. Childe
Attorney for PEDF
I.D. No. 19221
1847 Center Street
Camp Hill, Pa. 17011
717-743-9811
childeje@aol.com

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INTRODUCTION

PEDF, through this reply brief, addresses several new issues/arguments asserting that this Court should affirm the Commonwealth Court's decision below. These arguments fundamentally misconstrue the standards by which the judicial branch should review public trust claims under Article I Section 27 of the Pennsylvania Constitution ("Article I § 27"), and misconstrue the basic principles of Article I § 27 itself. The need for clarity from this Court regarding the Commonwealth's duties under Article I § 27 is palpable.

I. Need for Clear Decision on Public Trust Provisions of Article I § 27

In 2012, PEDF brought this action for declaratory relief under the fiduciary provisions of the Declaratory Judgments Act ("DJA"), 42 Pa.C.S. § 7535.¹ PEDF's purpose in doing so is to stop the Governor from taking actions that mandate leasing of our State Parks and Forests for oil and gas extraction solely to raise money for general state government spending, contrary to the public trust provisions of Article I § 27.

Actions by both Governors Rendell and Corbett, including issuing executive budgets and signing appropriations acts and fiscal code amendments that mandated further leasing of public lands, make clear the divisive roles between the Governor,

¹ Section 7535. Rights of fiduciaries and other persons. Any person interested ... in the administration of a trust ... may have a declaration of rights or legal relations in respect thereto ... (2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity.

as Chief Executive, and the Department of Conservation and Natural Resources ("DCNR"), the agency empowered by the Conservation and Natural Resources Act, 71 P.S. § 1340.101 *et seq.* ("CNRA"), to protect our forests and parks under Article I § 27. Both the Governor and the Secretary of DCNR, as part of the Commonwealth, are trustees of our public natural resources under Article I § 27; both have fiduciary duties thereunder.

The intervening plurality opinion of this Court in *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013) both clarified and complicated this case. The principles of law enunciated by the plurality opinion applied directly to the arguments of the petitioners in that case, including the preeminence of Article I rights and the proprietary and fiduciary rights and obligations established in the public trust provisions of Article I § 27. But because these principles were not part of a majority opinion of this Court, the Commonwealth Court refused to apply them to this case.²

As a result, the Commonwealth Court in its opinion below provides no guidance as to the fiduciary duties of the Governor (or the General Assembly) toward our public natural resources under Article I § 27. As PEDF sets forth in its main brief, the Commonwealth Court refused to render a declaratory judgment or

² The principles enunciated in the plurality opinion existed prior to the opinion. The fact that they had not been applied directly to the trust provisions of Article I § 27 by a majority opinion of this court does not make them any the less applicable.

decree on any of PEDF's allegations regarding the Governors' violation of their fiduciary duties under Article I § 27, or the harm that resulted from the Governors' violations. Appellant's Brief at 78-85.

The court below clearly abused its discretion under the Declaratory Judgments Act by failing to render decisions on PEDF's requests for declaratory relief. The court's discretion to do so under the DJA is limited discretion. 42 Pa.C.S. § 7537 ("The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree ... would not terminate the uncertainty or controversy giving rise to the proceeding ...").

A determination that the previous actions of Governors Rendell and Corbett violated their duties as trustee and violated the proprietary and fiduciary rights of PEDF's members under Article I § 27 would preclude attempts by future Governors to again sell our public natural resources for revenue to be used for non-trust purposes without any consideration of the degradation that would result.

II. Constitutional Duty of the Judicial Branch under Article I § 27

Beyond its abuse of discretion under the Declaratory Judgments Act, the Commonwealth Court's failure to consider PEDF's Article I § 27 claims violates its own duty as trustee under Article I § 27. The courts are equally a part of the Commonwealth, and as such are trustees under the public trust provisions. *Franklin Twp. v. Commonwealth*, 452 A.2d 718, 722 (Pa. 1982).

That means that the courts too are bound by the constitutional mandate of Article I § 27 "to conserve and maintain [the public natural resources] for the benefit of all the people." The courts must meet that duty by deciding issues that come before them that raise questions concerning the duties of the administrators or trustees of the public trust, and the rights of the beneficiaries of that public trust. Those decisions must be based on the plain language of Article I § 27.

As this Court stated in *Hartford Accident and Indem. Co. v. Ins. Comm'r*, 482 A.2d 542, 549 (Pa. 1984), an Article I Declaration of Rights provision "circumscribes the conduct of state and local government entities and officials of all levels in their formulation, interpretation and enforcement of statutes, regulations, ordinances and other legislation and decisional law." As with any constitutional challenge, "the role of the judiciary when a proper and meritorious challenge is brought to the court includes the obligation to vindicate *Section 27* rights." *Robinson Twp.*, 83 A.3d at 952 (citing *Pap's A.M. v. City of Erie*, 812 A.2d 591, 611 (Pa. 2002)).

III. Commonwealth Court Reliance on General Assembly Actions

As this Court observed in *Robinson Twp.*, the Commonwealth Court has, since its decision in *Payne v. Kassab*, 312 A.2d 86 (Pa. Cmwlth. 1973), applied the three-pronged test adopted in that case as the "benchmark for Section 27 decisions in lieu of the constitutional text." 83 A.3d at 966. In its subsequent decisions, the

Commonwealth Court has indicated that the viability of constitutional claims premised upon Article I § 27 are limited by whether the General Assembly has acted and by the General Assembly's policy choices, rather than by the plain language of the amendment. *Id.*

This Court, in *Robinson Twp.*, laid out the problems of such reliance on the General Assembly: First, it describes the Commonwealth's obligations under Article I § 27 in much narrower terms than the constitutional provisions. Second, judicial relief under the Article I § 27 is premised on legislative action. Third, the constitutional duties of the executive and judicial branches are minimized, and their abilities to carry out their constitutional duties independent of legislative control are circumscribed. *Id.* at 967.

The issues in this case do not fit the mold of the *Payne* test crafted by the Commonwealth Court. The Governors' actions to require leasing and to transfer the rents and royalties from the leasing out of the trust to pay for general government spending were taken without any thought to their duties under the Article I § 27. Their signing of Fiscal Code amendments that transferred control of the Oil and Gas Lease Fund to the General Assembly was done to support their general government spending, again without any consideration of the nature of the public trust under Article I § 27 or their duties as trustee thereunder.

The Governors' decisions violate both Article I § 27 and the Conservation and Natural Resources Act. CNRA provisions were specifically adopted under the limitations of Article I § 27 to allow the leasing of our State Parks and Forests, but only under the specific protections of the CNRA. The Commonwealth Court failed to consider either of these violations. *See* Appellant's Brief at 56-59.

IV. Commonwealth Court's Creation and Resolution of Issues not Raised by PEDF to Avoid Consideration of PEDF's Actual Claims

The Appellees and the Amici urge this Court to continue avoiding the important Article I § 27 issues raised by PEDF in this case by adopting the Commonwealth Court's methods of creating and resolving issues that PEDF did not raise. The Commonwealth Court clearly recognized the nature of PEDF's claims regarding Section 1602-E of the Fiscal Code, stating that PEDF claimed this provision violates Article I § 27 in the following respects:

- (1) it permanently removes protections under the CNRA, affording DCNR on one hand the authority to enter into leases of State land for oil and natural gas development while empowering DCNR to use the revenue from those leases to mitigate the impact of those activities on and to improve the Commonwealth's natural resources;
- (2) it takes away DCNR's ability to act as the trustee of State parks and forests by authorizing the General Assembly to appropriate monies in the Lease Fund for purposes other than the conservation and protection of the Commonwealth's historic and natural resources; and
- (3) it removes from the corpus of the Article I, Section 27 trust revenues generated by the leasing of State lands.

108 A.3d at 159-160.

Instead of addressing these issues raised by PEDF, the Commonwealth Court states that PEDF's contentions regarding Section 1602-E are more about the General Assembly exercising control over certain funds as a budget-balancing device rather than about protecting the environment and concludes that it cannot inquire into the motives of the General Assembly as part of a constitutional inquiry. The Commonwealth Court then reads the plain language of Section 1602-E in isolation from the remaining sections of the Fiscal Code amendments to deny PEDF's claims without any analysis of the fiduciary duties of the Governor or the General Assembly under Article I § 27.

Similarly, with respect to Section 1603-E of the Fiscal Code, the Commonwealth Court accurately states PEDF's contention that this provision violates Article I § 27 in the following respects:

Section 1603-E of the Fiscal Code violates Article I § 27 by arbitrarily limiting the royalties available to DCNR from the . . . Lease Fund to \$50,000,000 without any fiduciary analysis of the financial needs of DCNR to meet its statutory and constitutional responsibilities to conserve and maintain the State Parks and Forest lands, and to protect the rights and benefits of the people of the Commonwealth to those lands.

Rather than addressing PEDF's Article I § 27 challenge, the Commonwealth Court states that PEDF's challenge is, in essence, a contention that the General Assembly is failing to fund DCNR's mission adequately, and dismisses PEDF's claims based on an analysis of that contention. *Id.*

The reason for the Commonwealth Court's decision to avoid dealing with the Article I § 27 issues presented by PEDF is clear. It did not want to go beyond its prior reliance on the actions of the General Assembly under the *Payne* test until this Court has issued a majority opinion providing precedential authority. The interest of the Amici Republican Caucuses of the General Assembly in having this Court avoid making any decisions based on the clear language of Article I § 27 is also clear, as that outcome continues to give them control over how Article I § 27 is implemented.

As previously stated above, the courts of the Commonwealth have the obligation as trustees under Article I § 27 to decide constitutional rights and duties of the people and the Commonwealth when presented to them. This Court, based on its plenary jurisdiction, can and should decide the issues raised by PEDF below that the Commonwealth Court refused to adjudicate.

V. Article I § 27 "Conserve and Maintain" Standard for Judicial Review

The Appellees and Amici assert that PEDF has not set forth a standard by which this Court can determine compliance or non-compliance with the Article I § 27 public trust provisions. PEDF has consistently maintained that the standard to be applied is the plain language of the public trust provision, which is to conserve and maintain the public natural resources that are the common property of people

of Pennsylvania, and the corpus of the public trust, for the benefit of all the people, both now and for future generations.

The Appellees agree with PEDF that the Commonwealth's charge as trustee under Article I § 27 is clearly to "conserve and maintain [the public natural resources] for the benefit of the people." Appellees' Joint Brief at 28. The Appellees also agree that the phrase "conserve and maintain" imparts a duty on the Commonwealth "to prevent and remedy the degradation, diminution, or depletion of our public natural resources". *Id.* (citing the Commonwealth Court opinion, 108 A.3d at 168, which in turn quotes *Robinson Twp.*, 83 A.3d at 957).

The plurality of this Court applied the same "conserve and maintain" standard in *Robinson Township*, stating that as trustee, "the Commonwealth is a fiduciary obligated to comply with the terms of the trust and with the standards governing a fiduciary's conduct. The explicit terms of the trust require the government to 'conserve and maintain' the corpus of the trust [under Article I § 27]." *Id.*

When applying the "conserve and maintain" standard, the first clause of Article I § 27, which establishes the people's right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment, defines the objective to be achieved through the public trust. The public natural resources must be conserved and maintained for the benefit of the

people to insure their right to clean air and pure water, and the preservation of the natural, scenic, historic, and esthetic values of their environment.³

The impact of the multi-generational mandate of the trust requires that these rights be preserved through the conservation and maintenance of our public natural resources both now and in the future. This Court, in the *Robinson Twp.* plurality opinion, stated:

Moreover, the constitutional provision directs the “preservation” of broadly defined values of the environment, a construct that necessarily emphasizes the importance of each value [natural, scenic, historic, aesthetic] separately, but also implicates a holistic analytical approach to ensure both the protection from harm or damage and to ensure the maintenance and perpetuation of an environment of quality for the benefit of future generations.

83 A.3d at 951.

Further, as the Amici have noted, PEDF has consistently argued that the plain meaning of the terms conserve and maintain “implicates the duty to prevent and remedy degradation, diminution, or depletion of our public natural resources” consistent with this Court's plurality opinion in *Robinson Twp.*, *id.* at 957. Appellees' Joint Brief at 28.

The Governors’ decisions to lease our State Forest resulted in degradation, diminution and depletion of large parts of our public lands by requiring the

³ With due respect to Robert Woodside quoted by Appellees (Appellees' Joint Brief at 23), his view that these values cannot be considered trust property did not consider that the values define the meaning of conserving and maintaining the public natural resources as the trust property.

construction of drilling pads, pipelines, roads, retention basins and other industrial changes to the forest. Appellant’s Brief at 28-34.

PEDF has also argued, in concert with the *Robinson Twp.* plurality opinion, that “[a]s trustee the Commonwealth has a **duty to refrain from permitting or encouraging** the degradation, diminution, or depletion of public natural resources, whether such degradation, diminution, or depletion would occur through direct state action or indirectly, *e.g.* because of the state’s failure to restrain the actions of private parties.” *Id.* at 957 (emphasis added).

From the Commonwealth duties to refrain from permitting or encouraging degradation of our public natural resources comes the requirement that each branch of government must consider *prior to proceeding* the effect of any proposed action on the public natural resources. Neither Governor Rendell nor Corbett did so in the case before this Court, even though their proposed actions to lease our State Forests and Parks for industrial development would result in known degradation.⁴

VI. No Absolute Prohibition of Leasing State Parks and Forests

PEDF has never asserted that Article I § 27 imposes an absolute prohibition of leasing our State Parks and Forests for natural gas and oil extraction. In fact, the

⁴ The Amici argue that PEDF did not raise the duty to evaluate the potential harm before making the decision or taking any action in its motion for summary judgment. PEDF did so in its first brief, Questions 2, 3, 6, 7 and 9, in the addendum to its first brief, Question II B, Constitutional Duty to Determine impact Before Taking Action, and in its reply brief, Question C.2.a. Duty to Evaluate.

Conservation and Natural Resources Act, which was enacted after the adoption of Article I § 27, incorporates the public trust principles and allows for the leasing of our State Parks and Forests for the extraction and sale of our natural gas and oil. *See Appellant's Brief at 56-61.*

To meet its duty to conserve and maintain our State Forests, DCNR adopted a strategic plan in 1995, *Penn's Woods, Sustaining Our Forests*, which mandates an ecological approach to resource management that considers the importance and interdependence of all biological and non-biological systems and cycles of the forest. RR 537. Prior to 2008, DCNR consistently followed this strategic plan when deciding whether to lease our State Forests for gas and oil extraction.

Both Governors Rendell and Corbett ignored the provisions of CNRA and DCNR's strategic plan, and without any independent analysis to replace these protections, took actions that mandated further leasing. Neither Governor gave any consideration to his duties as trustee under Article I § 27.

VII. Fundamental Fiduciary Duty to Comply with Trust Purposes

Both the Appellees and the Amici, while agreeing that the Commonwealth has the duty to comply with the basic fiduciary principles of prudence, loyalty and impartiality, attempt to apply these principles without any consideration of the purpose of the public trust under Article I § 27.

As discussed above, the Appellees do not dispute that the Commonwealth, as trustee, has the duty under Article I § 27 to conserve and maintain public natural resources for the benefit of the people. However, the Appellees do not cite or analyze the fiduciary's principle duty to comply with the terms of the trust. This Court in *Robinson Twp.* makes this fundamental connection, stating: "As trustee, the Commonwealth is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary's conduct. **The explicit terms of the trust require the government to 'conserve and maintain' the corpus of the trust.**" 83 A.3d at 957 (emphasis added).

Nor did the Appellees cite or analyze the limitations on the trustee's use of the corpus of the trust. A trustee may use the assets of the trust only for the purposes authorized by the trust or necessary for the preservation of the trust. Other uses are beyond the scope of the discretion conferred, even where the trustee claims to be acting solely to advance other discrete interests of the beneficiaries. *Robinson Twp.*, 83 A.3d at 978 (citing *Metzger v. Lehigh Valley Trust & Safe Deposit Co.*, 69 A. 1037, 1038 (Pa. 1908)). State Parks and Forests and the natural gas thereon are part of the trust corpus, and leasing and selling the trust corpus for revenue for the General Fund is not one of the purposes of the trust.

The Appellees argue that the Commonwealth met its fiduciary duties of prudence, loyalty and impartiality because the Governors did not act "dishonestly,

for an improper motive, or without proper judgment" in requiring the leasing of State Forest land for natural gas extraction. Appellee's Joint Brief at 36. The Appellees assert that "capitalizing on a resource of tremendous market value" justified the Governors' actions without any discussion of the Governors' duties to comply with the public trust purposes established by Article I § 27. *Id.*

Failure of a trustee to comply with the terms of the trust being administered or with the trustee's other fiduciary duties does not require proof of dishonesty or improper motive. It requires examining the specific terms of the trust, which in this case is whether the public natural resources are conserved and maintained for the benefit of the people under Article I §27.

An administrator or trustee does not have the discretion to violate the terms of the trust. In this case, the trustee does not have the discretion to take any action to degrade, diminish or deplete the public natural resources that are the common property of the people and the corpus of the public trust that the trustee is mandated to administer. Nor does the administrator or trustee have the discretion to fail to evaluate whether a proposed decision will or may have such impacts on the public natural resources before making the decision. Nor does the administrator or trustee have the discretion to ignore or violate the provisions of law, in this case the Conservation and Natural Resources Act, which were established to provide

safeguards for the specific activity that the trustee was considering, leasing State Forests for natural gas extraction.

This Court does not describe the duty of loyalty as authorizing a trustee to take any action as long as it has a "benefit" to the beneficiary, as the Appellees argue, but rather in terms of requiring a trustee to comply with the terms of the trust.

This Court has recognized as "undisputed that a trustee is under a duty to the beneficiaries to administer the trust solely in the interest of the beneficiaries." *Warehime v. Warehime*, 761 A.2d 1138, 1142 (Pa. 2000) (citing *In re Flagg's Estate*, 73 A.2d 411, 414-15 (Pa. 1950) and Restatement, Trusts § 170(1)).

The interest of the beneficiaries under Article I § 27 is the conservation and maintenance of the people's public natural resources in order to protect their rights to clean air, pure water and the preservation of the natural, scenic, historic and esthetic values of the environment. The Commonwealth's duty of loyalty is not satisfied by selling the people's public natural resources to raise money to pay for any government spending that has a "public benefit."

VIII. Appellee's Reasonableness Standard Flawed

Appellees propose that this Court apply a standard of "reasonableness" to determine whether the Commonwealth may regulate the people's rights to clean

air, pure water and the preservation of the natural, scenic, historic, and esthetic values of the environment under the first sentence of Article I § 27.

Nothing in the language of this constitutional provision limits the rights of the people to those "reasonably" allowed by the Governor or the General Assembly. The only test or standard is whether or not any executive action or legislation infringes on those rights by failing to fulfill the duty to conserve and maintain the public natural resources necessary to guarantee the people's rights under the terms of the public trust.

The Appellees' "reasonableness" test derives from language in *Robinson Twp.*, which they assert allows such regulation as long as it is not "unreasonable or destructive." Appellees' Joint Brief at 23 (citing 83 A.3d at 951, 953). This Court discusses the people's rights under the first sentence of Article I § 27 as follows:

This clause affirms a limitation on the state's power to act contrary to this right. While the subject of the right **may be regulated by the Commonwealth**, and regulation is "subordinate to the enjoyment of the right... [and] must be regulation purely, **not destruction**", laws of the Commonwealth that **unreasonably** impair the right are unconstitutional.

83 A.3d at 951 (citing *Page v. Allen*, 58 Pa. 338, 347 (Pa. 1868) (emphasis added)).

Reliance on this language to assert that a "reasonableness" standard can be applied to Article I § 27 rights is misplaced. As this Court recites more fully earlier in the *Robinson Twp.* opinion, this Court more than a hundred years ago articulated the limitations on regulations that impinge on the people's constitutional rights, stating:

For the orderly exercise of the right resulting from these [voter] qualifications [in Article III, Section I of the Pennsylvania Constitution], it is admitted that the legislature must prescribe necessary regulations, as to the places, mode and manner, and whatever else may be required, to insure its full and free exercise. But this duty and right, inherently imply, that such regulations are to be subordinate to the enjoyment of the right, the exercise of which is regulated. **The right must not be impaired by the regulation. It must be regulation purely, not destruction.** If this were not an immutable principle, elements essential to the right itself might be invaded, frittered away, or entirely excised under the name or preten[s]e of regulation, and thus would the natural order of things be subverted by making the principle subordinate to the accessory. . . .

Id. at 944, n. 31 (quoting *Page*, 58 Pa. at 347).

IX. Article I § 27 Rights Not Limited by State Interest in Economic Development

Appellees recognize that the people's Article I § 27 rights are inviolate, but then assert that this Court in *Robinson Twp.* imposes an obligation to accommodate the "**net result**" of the tension between these rights and the state's legitimate interest in economic development. Appellee's Joint Brief at 24. The Appellees' assert that this Court supports this conclusion by applying a "reasonableness" standard to resolve the people's Article I § 27 rights and "the personal and public interests in economic development" based on the following language in *Robinson Twp.*:

But, to achieve recognition of the environmental rights enumerated in the first clause of *Section 27* as "inviolate" necessarily implies that economic development cannot take place at the expense of an unreasonable degradation of the environment. As respects the environment, the state's plenary police power, which serves to

promote said welfare, convenience, and prosperity, must be exercised in a manner that promotes sustainable property use and economic development.

Appellee's Joint Brief at 27 (citing 83 A.3d at 954, which cites John Dernbach, 103 Dickenson Law Review 693, 718-720, and 1970 Pa. Legislative Journal-House at 2270).

This Court again discusses the relationship between economic development and Article I § 27 rights later in *Robinson Twp.* stating:

Of course, the trust's express directions to conserve and maintain public natural resources do not require a freeze of the existing public natural resource stock; rather, as with the rights affirmed by the first clause of Section 27, the duties to conserve and maintain are tempered by legitimate development tending to improve upon the lot of Pennsylvania's citizenry, with the evident goal of promoting sustainable development.

83 A.3d at 958 (citing 1970 Pa. Legislative Journal-House at 2273 and *Nat'l Audubon Soc'y v. Superior Court*, 658 P.2d 709, 727-29 (Cal. 1983)).

Several basic problems exist with the plurality's analysis in these instances. First, the people's inalienable constitutional rights under Article I cannot be limited by a governmental “interest” in promoting economic development.

Under Pennsylvania's Constitution, the Governor cannot promote economic development by violating the people's rights enumerated in Article I, which are limitations on the authority of the government, not grants of authority. The rights delineated in Article I § 27 are on par with, and enforceable to the same extent as,

any other right reserved to the people in Article I. *See* Article I § 25 (everything in Article I is excepted from the government's general powers and is to remain inviolate); *accord* 1970 Pa. Legislative Journal-House at 2272 ("If we are to save our natural environment we must therefore give it the same Constitutional protection we give to our political environment"); Franklin L. Kury, *Clean Politics, Clean Streams: A Legislative Autobiography and Reflections*, app. C (2011) (appendix includes copy of questions and answers document distributed to public prior to referendum on Article I § 27).

This Court in *Robinson Twp.* describes the fundamental structure of the Pennsylvania Constitution stating "ours is a government in which the people have delegated general power to the General Assembly, but with the express exception of certain fundamental rights reserved to the people in Article I of our Constitution." 83 A.3d at 947. In furtherance of this principle, this Court observed that Article I § 25 articulates this concept in no uncertain terms by stating that "[t]o guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate." *Id.* (quoting Article I § 25).

The Declaration of Rights assumes that the rights of the people articulated in Article I of our Constitution – vis-à-vis the government created by the people – are inherent in man's nature and preserved rather than created by the Pennsylvania

Constitution. *Id.* at 948. This concept is illustrated in the basic two-part scheme of our Constitution, which has persisted since the original post-colonial document: one part establishes a government and another part limits that government's powers. *Id.* The Declaration of Rights is that general part of the Pennsylvania Constitution which limits the power of state government. *Id.* The Governor's desire to promote economic development must be carried out within the limits on the government established by Article I, including the limitations in Section 27.

Nothing in the legislative history of Article I § 27 supports the notion that the people's rights under this section are to be balanced against economic development. In an analysis included as part of the legislative history of Article I § 27, Professor Robert Broughton does not state that the duties to conserve and maintain are tempered by legitimate development with the evident goal of promoting sustainable development. Instead, he states:

It is the role of government that is in question: As a holder of property, or of public servitudes (such as navigation rights, or, more remotely, the right to prevent public nuisances), is the government simply a corporate property owner, a proprietor, dealing with property rights as any other proprietor, or is it a trustee, with the duty to manage, use, and/or consume the property of the public solely for the benefit of the public ... The second two sentences seem to rather clearly have the purpose of placing Pennsylvania among the jurisdictions which adhere to the public trust theory of public natural resource management in contradistinction to the proprietary theory.

1970 Pa. Legislative Journal-House at 2273.

The Commonwealth is not the proprietor of these public lands and resources. Rather, the Commonwealth is the trustee, holding these public natural resources for the benefits of the people to ensure their continued use and enjoyment, both now and for future generations.

As trustee, the Commonwealth has the duty to conserve and maintain these public natural resources to guarantee the people's rights to clean air, pure water and the preservation of the natural, scenic, historic, and esthetic values of the environment. By leasing State Park and Forest land for General Fund purposes, the Governor is treating both the public lands and the natural gas that is being extracted for royalty money as Commonwealth property, not as trust property that he has the fiduciary responsibility to conserve and maintain.

The second problem with the Appellee's argument (as well as this Court's reasoning in the *Robinson Twp.* plurality opinion) is misapplication of the California case, *National Audubon, supra*, in construing the constitutional trust established by Article I § 27. The *Robinson Twp.* plurality opinion erroneously cited this California case in support of the concept that the people's Article I § 27 rights must be "tempered" by the state government's interest in economic development.

In *National Audubon*, the California Supreme Court had to decide between two competing uses of the water from Mono Lake. The City of Los Angeles

needed more diversion of water from the lake to meet its water use needs. While California has a water rights system governed by the California Water Board, the case turned on California's common law public trust doctrine, which gives the State ownership of the land beneath navigable waters, but requires the State to protect the rights of the people to the use of that water. California's common law public trust doctrine recognizes that the people's rights to water include protection of the ecological values of the water.

California recognizes *Illinois Central Railroad Company v. Illinois*, 146 U.S. 387 (1892), as the primary authority for its common law public trust doctrine. In *Illinois Central*, the Supreme Court held that Illinois could convey some of the land under navigable waters provided the people's uses to those waters, *i.e.* fishing, swimming, navigation, are not taken from them. But the State could not convey land under navigable waters that would not be subject to the purposes of the trust.

The California Supreme Court in *National Audubon* did not have before it a constitutional provision in the State's Declaration of Rights that gave the people of California the inalienable right to common ownership of California's public natural resources, including both its public lands held by the State and the natural resources of those public lands. Nor does California have a constitutional provision that establishes those public natural resources as the corpus of a specific trust,

names both current and future generations of the people as the trust beneficiaries, and limits the state's role to trustee of the trust.

The people of Pennsylvania, in voting overwhelmingly to amend the Declaration of Rights in their Constitution to include Article I § 27, designated Pennsylvania's public natural resources, including its State Parks and Forests, as their common property, the property of both the people living today and for generations to come. Common law cannot override the plain meaning of the Constitution.

The Appellees attempt to rely on *Illinois Central* and the common law public trust doctrine to assert that the money derived from the conversion of public trust assets under Article I § 27 does not have to be used for public trust purposes, *i.e.*, to conserve and maintain the people's public natural resources and the people's guaranteed rights to clean air, pure water and the preservation of the natural, scenic, historic, and esthetic values of the environment associated with those public natural resources. The Appellees arguments fail for the same reason that this Court's reliance upon the California *National Audubon* case fails. The facts and common law principles in *Illinois Central* have no relevance to the facts and constitutional law of the case before this Court.

As discussed above, the people of Pennsylvania fundamentally altered their relationship to their public natural resources when they declared their common

ownership of these resources in their Constitution and limited their government's role to that of trustee with the explicit duty to conserve and maintain their public natural resources for the benefit of all people, including future generations.

Finally, the third problem with the Appellees' argument is that their analysis provides no articulation of what constitutes “unreasonable” degradation, and how such degradation will comply with the purposes of Article I § 27, to conserve and maintain public natural resources for the benefit of all the people.

X. Article I § 27 Creates a “De Facto Trust”

A. Plain Language of Article I § 27

The Appellees and Amici do not address any of PEDF’s arguments regarding the clear provisions of Article I § 27 that make the public natural resources, including our State Forests and Parks and the natural gas and oil on them, the property of the people, not the State government, and the corpus of the public trust to be conserved and maintained for the benefit of the people. As a result of these basic principles, when the trustee mandates the conversion of those public natural resources to money, the money is still the property of the people as part of the corpus of the public trust and must be used to achieve the trust purposes, *i.e.*, to conserve and maintain the people's public natural resources for the benefit of current and future generations.

Nor do the Appellees respond to the fact that all the outstanding leases DCNR has entered into, with the exception of those required by Governor Rendell in 2009 and 2010, were entered into with the specific statutory requirement, under the Oil and Gas Lease Fund Act, 71 P.S. §§ 1331-1333, that the funds would remain with DCNR to restore and mitigate the impacts from the leases and to sustain and improve the public natural resources.

The Appellees argue that the Commonwealth Court was correct in determining that the only limit on the use of the money from converting the public natural resources in the language of Article I § 27 is the phrase “for the benefit of the people” and that the General Assembly can determine what that phrase means given its generality. To affirm this conclusion of the Commonwealth Court, however, this Court would need to ignore the context of the phrase “for the benefit of the people” in Article I § 27. As noted above, to do so would be contrary to fundamental principles of constitutional analysis. When the context of Article I § 27 is considered, the meaning of the phrase “for the benefit of the people” clearly relates to the purpose of the trust, to conserve and maintain the public natural resources “for the benefit of all the people”.

If any doubt exists as to the purpose and plain meaning of the phrase, then the Court must look to the purpose of the people (the settlors of the trust) in voting to amend their Constitution to include Article I § 27, which again brings the

meaning back to the clear relationship of the language to the purpose of the public trust, *i.e.*, to conserve and maintain the public natural resources for the benefit of all the people.

As the Commonwealth Court observed, "there is neither a mandate within nor an expectation created by [Article I § 27] that state-owned lands or natural resources (*e.g.*, timber, coal, oil, and natural gas) would be leased or sold for reasonable economic development." 108 A.3d at 170. For the court to then determine that the money from selling these public natural resources is not part of the public trust and that the Oil and Gas Lease Fund is not a *de facto* trust fund is illogical and defeats the purpose of the public trust established by Article I § 27.

B. Principles of Trust Law

The Appellees state that ultimately "the court was satisfied that the language of Section 27 does not command that revenues from leasing or sales of the Commonwealth's natural resources be restricted as PEDF claims." Appellee's Joint Brief at 42. But the Appellees offer no analysis as to how the lease and sale of the public natural resources from which the money was derived was authorized by Article I § 27.

As discussed above, the Appellees rely on *Illinois Central, supra*, the seminal case for the common law public trust doctrine proposition that

The control of the State for the purposes of the trust can never be lost, except as to such parcels as are used in promoting the interests of the

public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining.

146 U.S. at 453. The Appellees point out that under this common law authority the State sale of real property subject to the public trust for the establishment of wharves, piers, docks, etc., was appropriate in that those sales to private interests benefitted commerce and did not inhibit the public's use and enjoyment of the navigable waters. Appellee's Joint Brief at 43-44.

In Pennsylvania, however, the people have altered the common law presumption that the state owns the lands and the people have only equitable interests in the water over that land. Through a constitutional amendment, the people of Pennsylvania made it clear not only that the public natural resources are our common property, but that the Commonwealth is designated only as the trustee of those resources, mandated to conserve and maintain them for the benefit of the people. Without proprietary ownership, the state cannot sell the natural resources for purposes other than those set forth clearly in the public trust provisions of Article I § 27.

XI. Self-Enabling Public Trust

The Amici Republican Caucuses of our General Assembly argue that Article I § 27 of our Constitution is only a statement of policy, and that it is up to the General Assembly to determine how to implement that policy. The Commonwealth Court in its opinion below agrees with the Republican Caucuses of the General

Assembly by holding that the General Assembly can define the meaning of “benefit of the people”, identified in the public trust provision of the Article I § 27, and by not holding either the Governor or the General Assembly responsible as trustees of the public natural resources in considering decisions to lease our State Forests and Parks, and sell our natural gas and oil resources for non-trust purposes.

In the legislative history of Article I § 27, this constitutional amendment was clearly meant to be more than a statement of policy; it is intended to create a legally enforceable right to protect and enhance environmental quality. 1970 Pa. Legislative Journal-House at 2272. For the public trust provisions, that means a legally enforceable right to enforce the proprietary rights of the people in their public natural resources and the fiduciary duty of the Commonwealth to conserve and maintain those public natural resources.

This Court has clearly stated that, with respect to public natural resources, the terms of Article I § 27 are self-enabling. In *Payne v. Kassab*, 361 A.2d 263, 272 (Pa. 1976), this Court stated: “There can be no question that the Amendment itself declares and creates a public trust of public natural resources for the benefit of all the people (including future generations as yet unborn) and that the Commonwealth is made the trustee of said resources, commanded to conserve and maintain them. No implementing legislation is needed to enunciate these broad

purposes and establish these relationships; the Amendment does so by its own *ipse dixit*.”

The Amici Republican Caucuses of the General Assembly argue that Article I § 27 does not state that it is self-executing. However, it is a settled rule of constitutional construction that prohibitive or restrictive provisions are self-executing and may be enforced by the courts independently of any legislative action. *Robinson Twp.*, 83 A.3d at 974.

The Republican Caucus Amici argue that the majority of the other States do not consider their public trust provisions to be self-executing and so we in Pennsylvania should not. But the Amici fail to establish that the constitutional public trust provisions other States are at all comparable to Article I § 27. They are not. This Court analyzed the provisions in other State constitutions and recognized that Pennsylvania's provision in Article I § 27 is unique. *Id* at 962-963.

XII. Appellees/Amici Allege Little or No Harm from Leasing

Both the Appellees and the Amici allege that PEDF established little or no harm from the additional leases of State Forest land for natural gas and oil extraction required by the Governors, or from the loss of the rent and royalty money from the State Forest leasing.

This Court, in the *Robinson Twp.* plurality opinion, dealt with the cross-generational aspects of the public trust embodied in the second sentence of

Article I § 27, which states that Pennsylvania's public natural resources are the common property of the people, both now and for future generations. This Court determined that environmental changes "have the potential to be incremental, have a compounding effect, and develop over generations" and that Article I § 27 "offers protection equally against actions with immediate severe impact on public natural resources and against actions with minimal or insignificant present consequences that are actually or likely to have significant or irreversible effects in the short or long term." 83 A.3d at 959. PEDF has established undisputed evidence of the degradation to our State Parks and Forests from shale gas extraction.

A. Shale-Gas Monitoring Report

In the 2014 Shale-Gas Monitoring Report, DCNR makes the following statements:

- Approximately 1.5 million acres of State Forest are underlain by Marcellus shale. Of that acreage, 44% (673,000 acres) is available for gas development either through DCNR-issued leases (386,000) or severed lands development (287,000 acres). RR 844.
- Given the host of potential impacts of shale gas development to the State Forest system and its associated uses and values, the DCNR Bureau of Forestry has established a Shale-Gas Monitoring Program to track, detect, and

report on the impacts of the activity. The program was initiated in late 2010 and began implementation in 2011. RR 845.

- Most of the data and information in the Shale-Gas Monitoring Report were derived in 2012. RR 874.

- State Forest lease tracts targeting shale gas are estimated to be approximately one-fifth developed. (Does not include severed lands development). RR. 850.

- The leasing will continue for up to 50 years.

B. Water Quality

The Appellees state that Dan Devlin, former Deputy Secretary for DCNR,⁵ found that DCNR's monitoring program did not detect any significant impacts on water quality from shale gas development. Appellees' Joint Brief at 13. The 2014 Shale-Gas Monitoring Report describes initial (one year or less) monitoring results, and states: "At this early stage of the development, the [water quality] data collected are primarily for establishing baseline conditions." RR. 847. DCNR's full discussion of its primary concerns for impacts on water quality from gas production is in Part 2 of the report. RR 943-944.

⁵ Mr. Devlin continues to serve as the DCNR State Forester and Director of the DCNR Bureau of Forestry.

C. Air Quality

The Appellees also state that former Deputy Secretary Devlin found that several major air pollutant levels in Pennsylvania have exhibited a “marked decrease” since 2008. These decreases have resulted from changes in power generation in Pennsylvania and do not relate to monitoring on State Forest land. DCNR acknowledges in the report executive summary that it is not conducting any air quality monitoring on State Forest lands, but is "relying on DEP to conduct studies.” RR. 847. None of the studies being conducted by DEP appear to be located on State Forest land. RR 977-978. DCNR identified many of the potential sources and types of air pollution that can and will be emitted from gas production facilities in its discussion of air quality in Part 2 of the report. RR 976.

D. Testimony of Dr. Grace

The Appellees state that Dr. Grace, one of PEDF’s witnesses at the hearing, did not identify actual degradation or depletion of natural resources, but only speculated about future potential harms. Appellees' Joint Brief at 14. That is not true. Dr. James R. Grace⁶ testified that at the time DCNR first became aware of the

⁶ Dr. Grace has had a distinguished career in academics and in the management of Pennsylvania's State Forests. He has an undergraduate degree in forestry from the University of Vermont, a master's degree in forestry from Yale School of Forestry, and a doctorate degree in forest ecology from the Pennsylvania State University. He has served on the faculty of Department of Horticulture and Forestry at Rutgers University (1976-1983); on the faculty of School of Forestry at Penn State (1984-1987); as the Deputy Secretary at the former Department of Environmental

harm from the new shale gas extraction process, the private developers were clearing large tracts of forest and native vegetation for well pads (5 to 10 acres per pad); and clearing land for pipelines, for roads, and for water retention impoundments. He testified that with that activity "[y]ou're influencing habitat for plants and animals, for core forest values, including recreational values." RR 38. Among other things, he stated that the compressor stations created emissions into the atmosphere and made a lot of noise, and that the shale gas development would continue in the State Forests for the next 40 to 50 years. *Id.*

E. Impacts to Wildness of State Forest

The DCNR Monitoring Report stated: "Forest management must take into consideration both direct and cumulative, landscape level impacts of shale gas development over time. This initial report focuses on impacts of shale-gas development to forest conversion, the value of wild character, forest fragmentation, and restoration. From shale-gas development on State Forest land through 2012, the State Forest has experienced a loss of 19 acres of primitive (remote) areas; 8,409 acre in semi-primitive non-motorized area; and 913 acre decrease in semi-primitive motorized area." RR 1055.

Resources (1987-2000); as DCNR State Forester and Bureau of Forestry Director (2000-2007); as DCNR Deputy Secretary for Parks and Forestry (2007-2009); and as the Goddard Professor of Forestry at Penn State (2010- 2014). RR 13-14.

F. Forest Fragmentation Impacts

The DCNR Monitoring Report stated: “Pennsylvania's State Forests, particularly those in the north-central part of the State, help comprise the largest continuous block of forest in the northeastern United States. The fragmentation of large core blocks of forest by disturbances that create increased forest edge can create conditions that alter the biodiversity and ecosystem health of the forest.” RR 1047-1048. The State Forest Districts experiencing the greatest shale gas development are also experiencing the greatest forest fragmentation. The largest increase in edge forest has been experienced in the Tiadaghton State Forest (1,813 acres), followed by the Tioga State Forest (1,257 acres). RR 1054. The total increase in forest edge has been 4,355 acres. RR 214, Table 16.5. The highest loss in large core forest blocks also occurred in the Tiadaghton State Forest with a loss of 3,147 acres, again followed by the Tioga State Forest with a loss of 2,798 acres of large core forest. In total, 9,241 acres of large core forest have been lost as a result of the shale gas development. RR 1055-1056.

G. Severed Rights Impacts Not Part of Monitoring Report

The DCNR Shale-Gas Monitoring Report states that “[o]n severed state forest lands (where the mineral rights are privately owned), the deed reservations are such that the Commonwealth has little or no ability to directly control gas management activities due to the rights of the subsurface owner, reserved in the

deed. RR 867. Therefore, DCNR's ability to assess the level of development and the associated impacts from this development of privately-held gas rights on the State Forest is not included in the report. Likewise, the report makes no assessment of the potential impacts to our State Parks from the development of the privately-held gas rights on an estimated 80% of our State Parks.

H. Testimony and Affidavits

The Appellees state that the only data and conclusive impacts in the record that are attributable to the leasing activities in the State Forests from Marcellus Shale activities come from DCNR's Shale-Gas Monitoring Report. Appellees' Joint Brief at 14. That is not true. The Affidavits of PEDF's members certainly identified impacts to their uses of the State Forest. And the testimony and photographic evidence of Cindy Bower at the hearing before the Commonwealth Court provided clear undisputable evidence of the direct impacts that she and her family have experienced. RR 356-380.

XIII. Other Issues Raised by Appellees and Amici

A. Public Natural Resources are the Common Property of the People

The Amici argue that the public natural resources are not the property of the people. However, the term "property," as used in Article I § 27, has the common meaning that the people of Pennsylvania understood it to have at the time they voted to amend their constitutional rights to include Article I § 27. This Court has

made this determination in numerous cases, as provided in the following summary from *Robinson Twp.*:

Our decision implicates primarily the construction and application of *Article I, Section 27* of our Constitution. In the process of interpretation, "[o]ur ultimate touchstone is the actual language of the Constitution itself." *Id.* (quoting *Ieropoli v. AC&S Corp.*, 577 Pa. 138, 842 A.2d 919, 925 (Pa. 2004)). "[T]he Constitution's language controls and must be interpreted in its popular sense, as understood by the people when they voted on its adoption." *Id.* Towards this end, we avoid reading the provisions of the Constitution in any "strained or technical manner." *Jubelirer v. Rendell*, 598 Pa. 16, 953 A.2d 514, 528 (Pa. 2008). Indeed, "we must favor a natural reading which avoids contradictions and difficulties in implementation, which completely conforms to the intent of the framers and which reflects the views of the ratifying voter." *Commonwealth ex rel. Paulinski v. Isaac*, 483 Pa. 467, 397 A.2d 760, 766 (Pa. 1979).

83 A.3d at 944-945. The fact that Pennsylvania's public natural resources are the property of the people was made clear in the plurality opinion in *Robinson Twp.*, which states: "The second right reserved by *Section 27* is the common ownership of the people, including future generations." *Id.* at 954.

B. DCNR Required to Lease

Appellees imply that DCNR made the decisions to lease in 2009 and 2010. Appellees' Joint Brief at 7. After the 2008 lease sale, DCNR made the decision not to lease any more State Forest land until it could evaluate the impacts from the existing 660,000 acres of leased State Forest subject to the new shale gas drilling techniques. Appellant's Brief at 17.

DCNR entered into the process of leasing in 2009 and 2010 because it was mandated by the Governor to do so as a result of the Governor's signing the Executive Budget, the Appropriations Acts and the amendments to the Fiscal Code, all of which required additional leases to support general government spending. DCNR, in its January 2010 Lease Environmental Review, specifically states: "*This lease sale is a direct result of certain line items contained within the budget agreement (Appropriations Bill) and fiscal code for FY 2009-10.*" RR 694; *see also* 108 A.3d at 146-147. At the time of the two additional leases, John Quigley, then Secretary of DCNR,⁷ testified that he was ordered by the Governor to conduct the two additional lease sales. Appellant's Brief at 20; RR 152-153; *see also* Quigley memo to the Governor, RR 648-649; and testimony of Dr. Grace, who was Deputy Secretary for Forests and Parks at the time the new leases were proposed, RR 58-59.

C. PEDF has not Challenged the Validity of the Leases

Another issue that the Commonwealth Court created to avoid dealing with PEDF's Article I § 27 claims was its assertion that PEDF was challenging the validity of the 2008, 2009 and 2010 leases, but failed to include indispensable parties to those leases. Both the Appellees and the Amici argue that the

⁷ John Quigley is currently the Secretary for Department of Environmental Protection.

Commonwealth Court was correct in refusing to examine the validity of the leases because PEDF did not join indispensable parties to the leases.

PEDF has not challenged the validity of the 2008 and 2009-2010 leases, only the actions of the Governor in requiring DCNR to lease, and taking the money for both those leases and prior leases out of the public trust. PEDF did not name DCNR or all of the oil and gas companies who are parties to those leases as respondents in its petition for review because PEDF is not challenging the leases themselves.

Nor did PEDF appeal the Commonwealth Court's decision on the validity of the leases. So the matter is not before this Court for further review.

D. Leases Do Not Constitute Compliance with Article I § 27

The Appellees argue that they have complied with their constitutional duties under Article I § 27 because DCNR has acted with prudence in conserving and maintaining the natural resources by implementing robust lease terms and pre-lease analysis. However, the Commonwealth Court expressly determined otherwise. In examining future leasing decisions, the court found:

To the extent additional leasing is under consideration, the Court believes that DCNR is positioned to act consistent with its Article I, Section 27 duties and obligations. **Those duties and obligations extend beyond imposing leasing terms** like those described by the General Assembly in Section 1601-E of the Fiscal Code. ... **DCNR must also consider whether even entering into further leasing would be in the best interest of the Commonwealth and consistent**

with the rights, duties, and obligations embodied in the Environmental Rights Amendment.

108 A.3d at 172 (emphasis added).

DCNR already considered whether entering into new leases would be in the best interest of the Commonwealth and consistent with its Article I § 27 duties as embodied in its strategic plan, *Penn's Woods, Sustaining Our Forests*, and decided that no further leasing should occur until further study of the impacts of the existing leasing occurred. The Governors disregarded DCNR's determination and made contrary decisions to require additional leasing through approval of the Executive Budgets, the Appropriations Acts and amendments to the Fiscal Code enumerated in Appellant's Brief, all before the leases were entered into.

E. Statute of Limitations on Constitutional Challenges

The Amici Caucuses of the General Assembly argue that PEDF challenges to the 2009 Fiscal Code amendments, Sections 1602-E through 1604-E (71 P.S. § 1602-E – 1604-E), are barred by a two year statute of limitations.

Section 1602-E of the Fiscal Code, which transfers authority to allocate oil and gas lease funds to the General Assembly, and Section 1603-E of the Fiscal Code, which gives the General Assembly control over how much funds DCNR receives each year from the Oil and Gas Lease Fund, and which allows the General Assembly to require DCNR to use those funds for operational costs, have been relied upon each year since their enactment to provide the General Assembly

control over the Oil and Gas Lease Funds. That authority extends to the present. The Fiscal Code amendments are just as unconstitutional in their use in fiscal year 2014-15 as they were in fiscal year 2009-10.

No statute of limitations is expressed in the Declaratory Judgment Act. To the extent a limitation exists in the context of this constitutional challenge, it would be the 6 years default limitation. 42 Pa.C.S. § 5527(b).

F. Legislative Duty of Trustee

The Appellees argue that the Commonwealth's obligation to act affirmatively to protect Article I § 27 rights via legislation is "not implicated by this litigation", and is therefore not addressed. Appellee's Joint Brief at 29-30, n. 19. But legislation has been enacted (the Conservation and Natural Resources Act) dealing specifically with the Commonwealth's ability to lease State Forest and Park land, which is the subject of action. PEDF has argued that CNRA creates a statutory structure to allow DCNR to continue to lease our State Forests and Parks under the specific authority and control of Article I §27 by establishing specific safeguards to insure compliance with Article I § 27. Appellants Brief at 56-59.

CONCLUSION

For the reasons set forth above and in its prior filings, PEDF respectfully requests this Honorable Court to grant its requests for declaratory relief, including specific findings that:

- Article I § 27 prohibits the Governor from making a decision to lease or to sell our public natural resources when that decision will result in the degradation, depletion or diminution of those resources;
- Article I § 27 prohibits the Governor from making a decision to lease or to sell our public natural resources without first evaluating whether the decision will result in the degradation of those resources;
- Article I § 27 prohibits the Governor from making a decision to lease or to sell our public natural resources contrary to the provisions of the Conservation and Natural Resources Act;
- The Governor cannot use the revenue from leasing and sale of our public natural resources for purposes outside of the purpose of Article I § 27, *i.e.*, a purpose other than conserving and maintaining our public natural resources;
- Sections 1602-E through 1604-E of the Fiscal Code violate Article I § 27 because they cause degradation of our public natural resources, and

neither the Governor nor the General Assembly evaluated the impacts of these Fiscal Code amendments on the public natural resources before approving them and taking actions based on their authority.

Respectfully submitted,

John E. Childe
Attorney for Appellant PEDF
I.D. No. 19221
1847 Center Street
Camp Hill, Pa. 17011
717-743-9811
childeje@aol.com