

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL	:	
DEFENSE FOUNDATION,	:	
Petitioner	:	
	:	
v.	:	No. 228 M.D. 1012
COMMONWEALTH OF PENNSYLVANIA,	:	
and	:	
GOVERNOR OF PENNSYLVANIA,	:	
in his official capacity as GOVERNOR,	:	
Respondents	:	

JURISDICTIONAL STATEMENT

The Pennsylvania Environmental Defense Foundation, Petitioner, hereby files this jurisdictional statement as required by Pa. R.A.P. 909 in support of its Notice of Appeal to the Supreme Court of Pennsylvania from the order entered in this matter on the 7th day of January, 2015.

1. Opinion Reported: The opinion in support of this order, as well as the order, has been reported and is cited as 2015 Pa. Commw. LEXIS 9.
2. Jurisdiction: The Supreme Court has jurisdiction over appeal of this order, which is expressly defined as a final order by the Declaratory Judgments Act, 42 Pa.C.S. § 7532, and under 42 Pa.C.S. § 723, is an appeal as of right pursuant to Pa. R.A.P. 1101, as this matter was originally commenced in the Commonwealth Court and was not an appeal from another court, magisterial district judge or another government unit.
3. Order: The text of the order in question is appended hereto.
4. Concise Statement of Procedural History: Petitioner filed a petition for review in the nature of an action for declaratory relief on March 6, 2012 requesting the Court “to settle and afford relief from uncertainty and insecurity” with respect to the “rights, status and other legal

relations" of Petitioner's members as beneficiaries under the public trust provisions of Article I Section 27 of the Pennsylvania Constitution (Article I § 27) with the Commonwealth, and specifically with the Governor (Respondents), as trustee of the public trust.

The uncertainty and insecurity of Petitioner's rights resulted from decisions and actions of Governor Rendell to spend money from the sale of natural gas on our State Forests, a public natural resource, for purposes not authorized under the Article I § 27 trust to balance the General Budget; and then to require more State Forest leasing for the same non-trust purposes. Petitioner's members were harmed by those leases and by the loss of the money from those leases. Governor Rendell subsequently issued a moratorium on further leasing before leaving office. Governor Corbett continued to spend money from the sale of public natural resources for non-trust purposes and declared his intention to require further leasing to raise more money for such non-trust purposes. Petitioner filed this Petition in response.

Petitioner filed an amended petition on April 30, 2012 in response to Respondents' preliminary objections. Respondents again filed preliminary objections on July 24, 2012 asserting, *inter alia*, that the case should be dismissed because the issues involved were political questions over which the court had no jurisdiction. The Court denied the preliminary objections on January 22, 2013 following briefing and argument.

The House and Senate Republican Caucuses of the Pennsylvania General Assembly filed a motion to intervene in the case on June 13, 2013. The Court denied intervention on issues related to Article I § 27 but granted partially on procedural constitutional challenges to certain legislation in question., By Order of February 4, 2014, the Court withdrew the limited grant of intervention because Petitioner had removed its procedural challenges to legislation.

Petitioner requested to file a second amended petition on December 5, 2013 based on additional information obtained during discovery. It was granted and deemed filed as of December 30, 2013. Respondents file an answer to the second amended petition on February 12, 2014.

Petitioner requested to file an addendum to the second amended petition on February 20, 2014 to include Governor Corbett's declared intent in his Executive Budget of February 4, 2014 to require more leasing to raise money to balance his proposed budget. Petitioner's request was granted and the addendum was deemed filed as of March 18, 2014. Respondents filed their answer on April 16, 2014.

Petitioner filed a motion for summary judgment on April 21, 2014 and a motion seeking a preliminary injunction on April 28, 2014, based on the new allegations. Petitioner also requested expedited consideration of the latter. A hearing on the preliminary injunction was held on May 28, and June 2-3, 2014. An order based on the parties' stipulation of settlement was entered on July 17, 2014, based on Respondents' agreement not to require more leasing until the case was decided.

Petitioner's summary judgment claims were denied or dismissed by the Commonwealth Court in the opinion and order issued on January 7, 2015, which is the subject to this appeal.

6. Questions Presented:

- a. Did the Commonwealth Court err in denying Petitioner's motion for summary judgment seeking a declaration of the rights, privileges, and duties of the Respondents and the Petitioner under Article I § 27 when requiring the leasing of Pennsylvania's State Forests and Parks for oil and gas extraction to raise money for purposes other than conserving and

maintaining the public natural resources of our State Parks and State Forests for the benefit of the people?

b. Did the Court err in denying Petitioner's motion for summary judgment on standing by refusing to recognize the harm to Petitioner's members based on undisputed evidence presented to the Court of the harm to the public natural resources of our State Forests and State Parks from the Respondents' sale of natural gas thereon; the harm to uses of our State Forests and State Parks by Petitioner's members; and the harm to the resources and Petitioner's members from taking the money from the leasing and sale of those resources from DCNR?

c. Did the Court err in denying Petitioner's motion for summary judgment seeking a declaration that the Respondents violated their duties under Article I § 27 by failing to consider the undisputed evidence that the Respondents failed to evaluate the potential and actual harm to the public natural resources and to the rights of the people, both those living today and to the future generations, BEFORE making the decisions to require more leasing of our State Parks and Forests for gas extraction and taking the money from the leasing and sale of the gas and oil?

d. Did the Commonwealth Court err in denying the Petitioner's motion for summary judgment seeking declarations that the DCNR is the statutorily designated Article I § 27 trustee under the Conservation and Natural Resources Act with the duty to conserve and maintain our State Parks and Forests and the public natural resources that are a part thereof; and that Respondents violated their duties under Article I § 27 by ignoring DCNR's specific request not to require further leasing of our State Forests until DCNR could study the impacts of existing leases, and by ignoring DCNR's request that they honor the existing statutory appropriation of the money from the leasing and gas extraction to DCNR because DCNR needed the money to conserve and maintain the public's natural resources for the benefit of the people?

e. Did the Commonwealth Court err in finding that the Governor and the General Assembly can continue to take the money from oil and gas leases of 386,000 acres of State Forest that DCNR entered into before the 2009 Fiscal Code Amendments when DCNR entered into those leases based on the knowledge that DCNR would have the money therefrom to deal with the harm caused by authorized oil and gas extraction, and to help DCNR conserve and maintain our State Parks and Forests for the benefit of the people, both now and in the future?

f. Did the Commonwealth Court err by not considering the impacts of Sections 1604-E and 1605-E of the Fiscal Code, which require DCNR to lease more State Forest land to obtain \$240 million dollars for the General Fund in 2009 and 2010, and the relation of these provisions to Section 1602-E and 1603-E of the Fiscal Code, before deciding the constitutionality of Sections 1602-E and 1603-E?

g. Did the Commonwealth Court err in denying that the Oil and Gas Lease Fund, which is funded solely by the funds from leasing State lands for oil and gas extraction and the sale of the oil and gas therefrom, which are public trust assets under Article I § 27, is a public trust fund?

h. Did the Commonwealth Court err by finding that the Governor and the General Assembly can appropriate money from the Oil and Gas Lease Fund knowing that such appropriations will require DCNR to lease more of our State Parks and State Forests, and that DCNR needs the money from the Fund, against DCNR's recommendations, without considering the impacts of those appropriations based on their duty as trustee of the public natural resources under Article I § 27?

Dated: February 6, 2015

John E. Childe
Attorney for Petitioner

I.D. No. 19221
1847 Center Street
Camp Hill, Pa. 17011
717-743-9811
childeje@aol.com