



For Immediate Release

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Federal Court Rebukes Pennsylvania Pro-Fracking Senators For Challenge to Delaware River Ban on Fracking

Court strengthens the values of the Pennsylvania Green Amendment for natural resources protection.

Philadelphia, PA – Today, the United States Court of Appeals for the Third Circuit affirmed a lower court decision dismissing a legal challenge to a Delaware River Basin Commission ban on fracking operations within the Delaware River Basin. The challenge to the ban was filed by State Senators Gene Yaw and Lisa Baker, the Pennsylvania Senate Republican Caucus, and Damascus Township in Wayne County. Delaware Riverkeeper Network and Delaware Riverkeeper Maya van Rossum were granted intervenor status as were Pennsylvania Senators: Steve Santarsiero, Carloyn Comitta, Amanda Cappelletti, Maria Collett, Wayne Fontana, Art Haywood, Vince Hughes, John Kane, Tim Kearney, Katie Muth, John Sabatina, Nikil Saval, Judy Schwank, Sharif Street, Tina Tartaglione, and Anthony Williams, as well as both Bucks and Montgomery Counties.

The case was heard by a panel of three Circuit Judges, L. Felipe Restrepo, Jane R. Roth, and Julio M. Fuentes. In the precedential opinion authored by Judge Fuentes issued on September 16, 2022, the court found that the two state republican legislators, the Pennsylvania State Republican Caucus, and the municipal challengers all lacked standing for failing to demonstrate injuries that meet constitutional muster. In addition, the judges determined that the fracking ban furthered the purposes of the trust by protecting the natural resources of the Commonwealth as mandated by Article 1 Section 27 of the constitution.

The plaintiffs, who filed their original complaint on January 11, 2021, claimed that the frack ban “palpably and substantially diminished the legislative powers” of the two Republican senators, prevented municipalities from economically benefiting from fracking-related activities, and

infringed upon their duty to serve as trustees of Pennsylvania's natural resources under the Environmental Rights Amendment. The judges summarily rejected each argument:

“Although Plaintiffs-Appellants advance several arguments for why they have standing to challenge the ban, none of them have alleged the kinds of injuries that Article III demands. In our view, the state senators and the Senate Republican Caucus lack standing because the legislative injuries they allege affect the state legislature as a whole, and under well-established Supreme Court caselaw, “individual members lack standing to assert the institutional interests of a legislature.””

The court went on to say:

“The municipalities lack standing because the economic injuries they allege are “conjectural” and “hypothetical” rather than “actual and imminent.” And none of the Plaintiffs-Appellants have standing as trustees of Pennsylvania's public natural resources under the Environmental Rights Amendment to the Pennsylvania Constitution because the Commission's ban on fracking has not cognizably harmed the trust.”

Maya van Rossum, the Delaware Riverkeeper, leader of the Delaware Riverkeeper Network, and Intervenor in the case, states, “In filing this legal action to force fracking on Pennsylvania communities in areas now protected, Senators Yaw and Baker, the Republican Political Caucus, and the municipal officials that have joined them in their action, violated their oath to uphold the constitution of the Commonwealth of Pennsylvania and their duty to protect the health, safety and rights of all Pennsylvanians and future generations to pure water, clean air and healthy environments. In short, this case was nothing short of political posturing. The deceitful and erroneous legal arguments advanced that sought to minimize the harms of fracking, to mischaracterize the powers of the DRBC and their own authority as legislators, were simply and clearly intended to serve the financial interests of the fracking industry, and the personal political goals (and potentially the financial goals) of the legislators themselves. The disregard of senators Yaw and Baker, the Republican Political Caucus, and participating municipal officials, for the devastating consequences of fracking for our climate, environments, the health and safety of people and that of future generations, truly shocks the conscience. I am proud that I and my Delaware Riverkeeper Network, were able to join forces with the DRBC, Senator Steve Santarsiero and other legislators that care about their constitutional obligations to protect the environments of Pennsylvania, and their moral and legal obligations, to address the climate crisis and protect the health and safety of their constituents, to defeat unconscionable claims of Senators Yaw and Baker, and the other misguided politicians that chose to join them in this case.”

van Rossum, who is also the founder of Green Amendments For The Generations, a national movement seeking to advance Pennsylvania-like environmental rights amendments nationwide, adds: “Among the most powerful recognitions of the court is that the DRBC ban on fracking, which prevents the commonwealth from liquifying its gas assets for cash in the Delaware River watershed, serves to advance the constitutional obligation of Pennsylvania government officials to conserve and maintain the Pennsylvania’s natural resources for present and future generations. We are working in over a dozen states to advance this powerful constitutional protection for environmental rights and natural resources, the court just reaffirmed the strength such constitutional recognition and protection can provide.”

Delaware Riverkeeper Network is a nonprofit membership organization working throughout the four states of the Delaware River Watershed, including Pennsylvania, New Jersey, Delaware, and New York. Delaware Riverkeeper Network provides effective environmental advocacy, volunteer monitoring programs, stream restoration projects, public education, and legal enforcement of environmental protection laws. To learn more about our work, please visit: www.delawareriverkeeper.org

Green Amendments For The Generations (GAFTG) is a non-profit environmental advocacy organization dedicated to inspiring, supporting, and enforcing constitutional Green Amendments - self-executing and enforceable environmental rights amendments that protect the right to clean air, pure water, a stable climate, and healthy environments - throughout all fifty states and ultimately at the federal level. GAFTG is currently working with communities in over a dozen states, including New Mexico, New Jersey, Delaware, Washington, Maine, and Hawaii, among others. GAFTG has increased the enforcement of Green Amendments in Pennsylvania, New York and Montana, the only 3 states with Green Amendment protections currently in place. To learn more about our movement, please visit: www.ForTheGenerations.org

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