

# Common Sense

## *Banning Fracking at the Local Level*



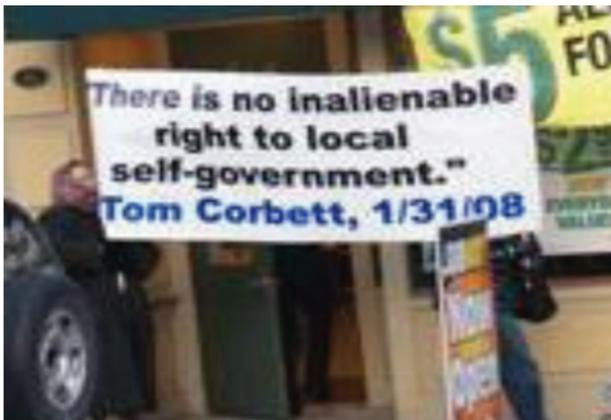
A Publication of  
**THE COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND**

## HOW to BAN FRACKING DESPITE CORPORATE RIGHTS and STATE PREEMPTION *Community Rights Ordinances*

*"There is no unalienable right to local self-government."*

-Attorney General Thomas Corbett

*HE has refused his Assent to Laws, the most wholesome and necessary for the public Good...*



*HE has called together Legislative Bodies at Places unusual, uncomfortable, and distant...for the sole Purpose of fatiguing them into Compliance with his Measures... HE has dissolved Representative Houses repeatedly, for opposing with manly Firmness his Invasions on the Rights of the People... HE has erected a Multitude of new Offices, and sent hither Swarms of Officers to harass our People, and eat out their Substance... FOR taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments... FOR suspending our own Legislatures, and declaring themselves invested with Power to legislate for us in all Cases whatsoever.*

— The Declaration of Independence, July 4, 1776

According to Martin J. Schiesel, in his book *The Politics of Efficiency (Municipal Administration and Reform in America: 1880-1920)*, "Simon Sterne, a reform lawyer and member of the Tilden commission [formed in 1875 to investigate the Tweed ring in New York], argued in 1877 that the 'principle of universal manhood suffrage' only applied to 'a very limited degree' in municipal administration because the city was 'not a government, but a corporate administration of property interests in which property should have the leading voice.' In the same vein, Francis Parkman saw the notion of 'unalienable rights' as an 'outrage of justice...when it hands over great municipal corporations...to the

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## Pittsburgh City Council Unanimously Bans Fracking

In November 2010, under threat of gas drilling, the Pittsburgh City Council unanimously voted to adopt an ordinance banning commercial natural gas extraction within the city. Hailed across Pennsylvania as the turning of the tide against fracking, the ordinance recognizes a Community Bill of Rights, bans commercial natural gas extraction within the city as a violation of that Bill of Rights, and removes certain legal rights and powers from natural gas corporations operating within the city.

Why did Pittsburgh adopt the ordinance, rather than trying to limit drilling to residential areas or seeking help from the Department of Environmental Protection to protect them from drilling?

Members of the city council recognized that when the state permits the drilling to occur, the state isn't going to provide municipalities

with the authority to prevent it. Accordingly, the council decided to create its own local structure of law, which directly challenges the authority of both the state – and the natural gas corporations empowered by the state – to drill within the city.

In so doing, the council followed the lead of more than 100 municipalities in five states that have adopted similar ordinances preventing corporations from setting up factory farms, dumping sewage sludge, pumping water from aquifers, and mining. These laws were adopted by communities working with the Community Environmental Legal Defense Fund.

Through its two-day Democracy School trainings, community organizing, public education and outreach, and ordinance drafting, the Legal Defense Fund assists communities and municipal governments struggling to transition from

merely *regulating* corporate harms to *preventing* those harms by asserting their right to self-government through local law making.

To learn more, contact us at [info@celdf.org](mailto:info@celdf.org) or visit our website: [www.celdf.org](http://www.celdf.org).



## **NO SURRENDER:** **We Won't "Regulate" the Rate of Destruction**

*Getting fracked is not inevitable — unless we surrender by inaction. It's not inevitable unless we assume there's nothing we can do. It's not inevitable unless we are willing to surrender our fundamental rights without a fight.*

Exploding gas wells, flaming faucets, lost land value, floating fish, radioactive road de-icers, roadside dumping of toxic waste...the evi-

dence that our communities are being turned into resource colonies of gas drilling corporations is everywhere. People in the targeted municipalities are waking up to what's in store for them, and they are beginning to understand that no one is going to help them: not the state, not regulatory agencies, not the federal government, not environmentalists,

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*The materials within are not intended as legal advice and should not be deemed to be the offering of legal services, or of advocacy for particular legislative actions.*

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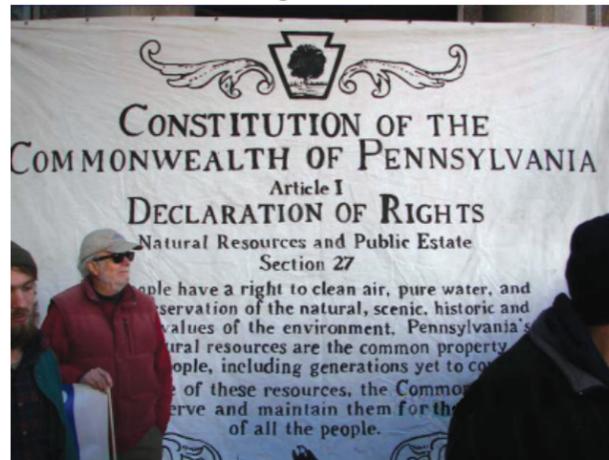
Fred Walls

# NOT JUST A LEGAL STRATEGY: Community Rights Ordinances = Organizing People to Vindicate Civil Rights

*The People have unalienable rights. The state has no authority to issue permits to state-chartered corporations that make it legal for them to violate the rights of the people.*

This idea that people have rights and that the state has no authority to license violation of those rights, is the core principle, the underlying premise, for mounting a new civil rights movement for the legal recognition and protection of community rights. We have a right to use the government closest to us – our municipalities – because, until the state and federal governments cease and desist from licensing and permitting state-chartered corporations to deprive our unalienable rights in communities across America, we are on our own.

In Pennsylvania, a new governor decreed that law enforcement action against criminal practices by corporations fracking in communities atop the Marcellus Shale must be pre-approved by political appointees of the governor. This, after news that the appointed head of the Department of Community and Economic Development will have monarchical authority to override state agencies that deny permits to gas-drilling corporations. And the Governor's Marcellus Shale Advisory Board is packed with representatives from the gas drilling industry, all of whom donated to the Governor's election campaign, and eight of whom had been charged with violating environmental law prior to Mr.



Corbett taking office.

As with the federal Halliburton Loophole, corporations in Pennsylvania are again *exempted* – placed above the law – and the state is beneath contempt.

*Corporate persons* enjoy privileges the courts call *rights*, and the people's rights are legally subordinated to corporate rights. But such laws are illegitimate. In Pennsylvania, the legislature, the courts and the governor have disenfranchised 12.5 million Pennsylvanians and granted governing authority to the wealthiest corporations. Privatization of our government and public institutions races ahead, leaving people out in the cold.

The people have rights, yet the state issues permits to state-chartered corporations, empowering them to enter our communities without our consent, "legally" violating our rights. We've seen this kind of oppressive government conniving with privileged elites before. The Governor decrees immu-

nity from laws established in the name of the people, the courts declare that corporate property has the same rights as living human beings, and the legislature empowers wealthy corporations to impose legalized permitted harms upon the people in their communities. We are on our own. We have no one to turn to but ourselves and our neighbors.

Isn't it time we stop leaving our rights on the table, undefended? Shouldn't we refuse to be complicit in the ruination of our communities, and shouldn't we take a stand by following the lead of Pittsburgh, by adopting Community Bills of Rights in municipalities across the state and imposing a prohibition on corporate fracking because the practice violates those rights?

### Civil Rights Organizing Strategy

Campaigning locally to adopt community-rights ordinances that prohibit corporations from violating the rights of communities and people is much more than a legal strategy. The need for such local action is made obvious by the active denial of the right to community self-government and the brushing aside of *consent of the governed* by state and federal governments.

The larger strategy behind organizing locally to assert rights has zero to do with relying on the courts. Adopting community rights ordinances and banning corporate activities that violate rights is an organizing strategy, not merely a legal strategy. The courts likely will not vindicate our rights; they may, on behalf of the corporations, strip them, as they have done for many years. But community rights ordinances force them to do so publicly, clearly, and not in a quiet blizzard of legal mumbo-jumbo hidden away from public attention or interest.

Exposing the oppressive conniving of state and corporate power publicly, in sharp contrast to the people's aspirations and sense of public justice – this is the legal goal.

Why take this route? If we are to have our rights stripped, let it not be because we failed to exercise them; let it not be because we surrendered them and settled for regulating the rate of destruction; let it not be because we zoned where our community rights could be denied, or because we adopted conditional-use regulations that amount to little more than terms of surrender. If we are to have our rights stripped by the state on behalf of wealthy and powerful corporations, let us expose it to the world as the tyranny that it is.

The psychological effect of exposing the blatant denial of fundamental rights will cause people at last to stand against the oppression and will inspire them to join together, as self-governing communities, all daring to assert their legitimate law-making power. Then we will see justice. Then we will see people governing corporations, instead of the reverse. Such is the power of the people when they are roused to action.

## Where is Your Citizenship?

*"The idea of citizenship in the United States seems to me to have been greatly oversimplified. It has become permissible to assume that all one needs to do to be a good citizen is to vote and obey and pay taxes, as if one can be a good citizen without being a citizen either of a community or of a place."*

– Wendell Berry, "The Long-Legged House"

## When It Comes to Fracking, WHAT ARE YOUR COMMUNITY'S OPTIONS?

When it comes to making governing decisions that will affect you, your family, your quality of life, natural environment, property value and the future livability of your community, who makes those decisions? Is it you and the people who will be directly affected in your community, or is it somebody else?

If you answered "somebody else," then there's only one question left to answer: *What are you going to do about it?*

### THERE ARE THREE OPTIONS for PEOPLE in MUNICIPALITIES FACING FRACKING

#### Do Nothing

...and get fracked.

Because it's your right to make self-governing decisions, this is a decision you are free to make. But with that freedom comes responsibility for the consequences. The question is: although you have the freedom to decide for yourself, do you have the right to surrender your community today, to the detriment of future generations?

#### Try to Use Existing Law to Protect Your Community

...and get fracked.

The stacked-deck of regulatory law offers no protection for your community from fracking. (See "The Four Roadblocks to Stopping Fracking")

#### Act on the Knowledge That You Have an Unalienable Right to Local Self-Governance

By choosing to do nothing (option 1) or trying to use existing law (option 2), you surrender your rights without a fight and getting fracked is a certainty. Through local law-making, communities are enacting bans on corporate drilling and fracking, and are challenging existing structures of law that override local democratic decision making and violate community rights.



# Frequently Asked Questions About Community Rights Ordinances That Ban Corporate Gas Drilling

## Remember: this is about your community's right to decide!

**Q: Shouldn't we be pursuing change at the state level?**

A: The problem is, though government is supposed to be "by and for the people," we, as citizens, don't have the same access to power at the state level that corporate and industry lobbyists do. On just about every issue you can think of, the state has policies in place—policies on which communities were not consulted, and policies corporations and industries generally helped to write. When state policies place our communities in harm's way, we have no choice but to act locally to assert our rights to protect our health, safety and welfare. It makes sense for us to make decisions about the communities in which we live. In our communities, it is we who are the experts. Is there anyone more qualified to make these decisions?

**Q: Pittsburgh adopted a Community Rights Ordinance banning gas drilling, but my municipality is different!**

A: Whether you live in a Pennsylvania borough or township, a town in New York or Maryland, a county in West Virginia, or a city or township in Ohio, you have the same fundamental rights as the people in Pittsburgh or anywhere else. And you face the same obstacles to asserting those rights (see: "THE FOUR ROADBLOCKS to STOPPING FRACKING: *What's Stopping Us from Just Saying No to the Destruction of Our Communities?*")

**Q: Are we setting up our community to get sued if we adopt a Community Rights Ordinance that bans fracking?**

A: We hear this question all the time. The more appropriate question is: what will it cost us, our communities, the natural environment and future generations if we fail to assert our rights and ban fracking?

Challenges to unjust laws don't come without risk, but consider the alternative. If we don't pass a Community Rights Ordinance banning fracking, our communities get fracked as our elected officials surrender the rights of community members because a lawyer representing a corporation with more money says we should, or else they might sue us. More often than not, the threat is just that. Corporate attorneys rely on fear to get what they want.

Fear-mongering around lawsuits works to divert our attention from what is at risk if we fail to assert our rights. To be sued by a large corporation could result in liability for the municipality, or things like a reduced bond rating for the Township, since we haven't the funds to pay absurd amounts potentially awarded by a corporate-friendly judge, who may keep us from even having a jury. But if the natural water sources are ruined, property values will plummet; taxes won't be collected; landowners will not be able to sell their property since no mortgage company would issue a loan to a buyer; families and children will move away for lack of fresh water. The health costs to residents associated with exposure to toxins cannot be calculated, but cannot be ignored either.

What's the price of liberty, of our health, of our community? How many thousands of dollars would we sell them for? ... And we're worried about a lawsuit?

**Q: What should citizens do to get local officials to adopt a Community Rights Ordinance?**

A: Whether or not our local officials are personally in support of the ordinance is immaterial. They have to know the cost of not passing the ordinance is higher than the cost of passing it. They have to know residents of the community understand the risks and that, as a community, they are willing to stand behind their elected officials in support of the ordinance. Bringing local officials to that understanding is our organizing task. The Community Environmental Legal Defense Fund works with communities to explain why these community rights ordinances are necessary to remedy the powerful position in which corporations have been placed.

**Q: How do we answer lawyers and critics who say Community Rights Ordinances are "illegal and unconstitutional"?**

A: In a democratic republic, it must be possible for the people to change law, especially unjust law. And it must

be impossible for the state to abridge or violate rights. It was once legal for one class of people to own another. The constitutional rights of slave-owners were once considered by the courts to be superior to the human and civil rights of slaves. Women were once considered to have no personal rights; they were chattel, owned by fathers or husbands. Today, instead of people being treated as property and slave owners being empowered by law to trump their human and civil rights – we have corporate property being treated by the courts as "persons" with constitutional protections used to subordinate the rights of human beings. No matter what the courts say, it is time to mount a Community Rights Movement to subordinate state-chartered corporations to the governance of the people, and to overcome state laws that make it "illegal" for people to assert their rights and "legal" for corporations to violate them.

In his inaugural address, Abraham Lincoln stated: *"the candid citizen must confess that if the policy of the Government is to be irrevocably fixed by the decisions of the Supreme Court...the people will cease to be their own rulers."*

**Q: Why has the municipal attorney advised our local officials not to adopt a Community Rights Ordinance?**

A: Let's remember who the municipal solicitor works for:



not the people. It is not the job of the solicitor to defend the rights of the members of the community, and they won't. *They are hired to advise the officers of the municipal corporation to avoid lawsuits, not to protect the interests or human and civil rights of the municipal residents.* But they do not have the authority to dictate municipal policy. They are not elected officials, and have no authority to make a decision not to adopt the ordinance. They do not represent the people, but represent state law at the local level—that's their job.

And so, if the residents have any hope of being represented in their community government, their elected local officials must take seriously their oath of office: "to protect the health, safety, and welfare" of the community. If they fail to do this and instead accept the legal opinion of the Solicitor as their only option, then the people will have been abandoned, their rights orphaned, including their right to a representative form of government. The job of the Solicitor and the obligations of the elected officers are quite different. The Solicitor is required to convey knowledge of State law regarding the interests of the municipality as a subdivision of the State. The elected officials are duty-bound to exhibit personal integrity and ethical judgment in service of the health, safety and welfare of the community. Sometimes that means listening to the advice of the Solicitor but acting against that advice.

**Q: Can the local officials be sued individually if they adopt an ordinance they are told by the Solicitor is "illegal"?**

A: Anyone can sue anyone for anything, and attorneys for wealthy corporations frequently threaten law suits they know they can't win, because they think they can intimidate people who have fewer resources. Elected officials are generally protected by *sovereign immunity* when acting in their official legislative capacity. And so the real question is this: Would the local officials be acting in a manner that puts their community at risk and violates the rights of the members of the community by honoring their oath of office to "protect the health, safety and wel-

fare" of the community, by adopting a Community Rights Ordinance? Can the State legitimately make it "illegal" for them to honor their oaths? And wouldn't a lawsuit accusing them of "illegally" honoring their oaths be frivolous?

**Q: What about personal property rights of lease holders? Don't they count?**

A: The right to own and enjoy property and home is part of what a Community Rights Ordinance to ban fracking is all about. Lease holders have exactly the same right to the peaceful enjoyment of their property as each of their neighbors. But no one in the municipality has a "right" to use their property in a way that threatens or harms the rights of their neighbors or the community.

The property rights of lease holders and their neighbors are at risk because of fracking, not because it is banned. Property market values plummet when leases are signed and when drilling occurs. Many lending institutions refuse to issue mortgages to potential buyers of leased land or land adjacent to leased land, and lease holders will find it difficult if not impossible to refinance their property or obtain insurance. Their property rights don't count *without* a Community Rights Ordinance banning fracking!

**Q: Would passage of the ordinance violate corporate property rights?**

A: This question presumes that corporations – which are property by the way – have rights themselves; that privileges bestowed in the name of the people on chartered corporations must be respected by community majorities above their own rights. The better question is, does the right to own property convey with it the right to do harm? And when we're comparing rights, isn't it common sense to say that the rights of people in a community are superior to the Court-bestowed "rights" of a corporate minority to do harm to that community? Communities across the country are now trying to create majority community rights over the privileges bestowed on corporations and the handful of people who run them. This is a question of fundamental rights, not state regulations and corporate law. The Supreme Court was not elected; its members were appointed – not to make law or grant property equal rights to people, but to ensure the U.S. Constitution is adhered to. It has no authority to amend the Constitution, though in recognizing "corporate rights" it has repeatedly done so.

The people in our municipalities have not surrendered their right to self-government in the communities where they live. We need our local elected representatives to stand with us, and not with those who would subordinate our unalienable rights to the state-chartered and "permitted" privilege of corporate property to accumulate wealth.

**Q: Won't stripping of constitutional protections for corporations hurt small business owners in the municipality?**

A: Business owners still maintain all of their legal protections under the state corporate codes and their individual charters. The only time the privileges of any corporation are stripped is when that corporate entity seeks to use their constitutional protections to violate the provisions of the ordinance that were enacted to protect the health, safety and welfare of residents of the municipality. Corporations have routinely exercised their rights under the law to override community decision-making, when those decisions run contrary to their business interests. Despite the fact that many corporate-run activities harm people and the environment, permits from the State protect them from liability for violating the rights of community members. Justice demands a remedy, and corporate constitutional protections for corporations used to violate rights perpetuate injustice. The Community Rights Ordinance eliminates constitutional privileges for criminal corporations. It's the right medicine.

**Q: Doesn't the state Oil and Gas Act preempt municipalities from adopting laws that regulate gas drilling?**

A: The Community Rights Ordinance does not regulate any activity. It asserts an already existing right to local self-government on issues with direct local impact, and it

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asserts and protects the unalienable right of the people to water, which is essential to protect the right to life itself. It uses the general legislative powers of the municipality to protect the health, safety and welfare of the community. Because even a marginal threat to the safety of the local aquifers poses too great a danger of depriving the people and environment of healthy potable water, use of water and deposition of waste water into local water sources may also be prohibited.

To regulate means to allow, under specific conditions. The Community Rights Ordinances do not recognize a corporation as having any rights that can be used to deprive the rights of community residents, and therefore they make no attempt to regulate the fracking activity. Rather they assert and protect the unalienable rights of members of the community.

**Q. By what authority can we do this?**

A. Article 1, Section 2 of the Pennsylvania Constitution states (state constitutions in other states contain similar provisions):

Political Powers

“All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.”

Article 1, Section 27 of the Pennsylvania Constitution states:

Natural resources and the Public Estate

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

The Commonwealth has failed to do so.

And Article 1, Section 25 of the PA Constitution makes it absolutely clear that these rights are not dependent on the administrative efforts of the Commonwealth, but are enforceable and legitimate in their own right. It states:

Reservation of Power in People

“To guard against the 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.”

**Q: Isn't the municipality just an administrative subdivision of the state? It has no right to local self-government, does it?**

A: That is partially true. The municipality has no rights, nor does the state. The people, however, do. They have the fundamental right to a republican form of government, according to the U.S. Constitution. But municipal residents have no representation in state or federal government for their communities. Representatives to the legislature do not represent the municipal populations of the state, and yet the State claims the authority to use municipalities to impose State law on the residents of municipalities, without their consent and without representation in the State government. This is a denial of fundamental rights.

Therefore the people legitimately may use the government closest to them to overcome this injustice. To do so, they enact community-level laws that protect and assert their unalienable rights.

**Q: State regulatory agencies are the proper venue for protecting the local environment, right?**

A: Regulations set the legal level of harm; they do not create impediments to harm. “Permits” issued by the state are licenses to do harm, and they are legal shields that protect the permit holder from liability to the harmed community. The regulations that legalize the harms are too often proposed and written into bills by agents of the regulated industries. It is absurd to pretend that the regulatory scheme of law can be used by citizens to protect their rights and interests. To demand enforcement of the regulations is to admit that the people have no right to prohibit the harm to themselves, their families and communities. It is to admit that the corporate interests lobbying the legislature are the actual governing power in their communities. It is to pretend that administrative agencies of the State have legitimate authority to empower State-chartered corporations to violate the rights of community members. They have no such authority.

**Q: Isn't the State the trustee of natural resources for the people?**

A: The State can claim legal responsibility for protecting the common environment, to benefit the greater good. But this has been corruptly interpreted to mean the state can auction off commonwealth forests to the highest bidder, and that it can issue licenses “permitting” profit-tak-

ing at the expense of the community. The State has, in effect, made resource colonies of its municipalities and doled out franchises for the corporate occupation of our home towns.

**Q: But we need energy—where else are we going to get it if we make a law to ban gas drilling?**

A: This question assumes we have no choice but to continue to live as we have been living. It presumes we cannot change an economy and a structure of law that sees nature and humans as resources (i.e., “natural resources” and “human resources”) to be exploited and used up. It means continuing to live under a structure of law that does not allow us to make decisions about what our communities will look like: *Where* do we want our energy to come from? How much energy do we actually need? What decisions can we make in *this* community that will allow us to protect the health, safety and welfare of the community members, both human and non-human, from fracking? *How* can we live differently, in a way that will allow us to create sustainable communities, rather than letting our hometowns be converted into resource colonies and into sacrifice zones?

We can start by asserting our rights, by refusing to surrender them or negotiate them away piecemeal.

**Q: Don't people have an obligation to obey the law? Can they use their municipalities to challenge state law?**

A: Those who fought for independence from the British Empire declared the sovereignty of the people as the source of governing authority back in 1776, in the Declaration of Independence. That language persists in the current state constitution, even though the primacy of the community was removed from the original Pennsylvania Constitution by the wealthy elite, while regular citizens were off fighting the British.

The 1776 Pennsylvania Constitution’s preamble and declaration of rights, Sections III–V, acknowledged the peoples’ inalienable right to “community” self-government in its formulation of the source, scope and abolition of governmental power:

*WHEREAS all government ought to be instituted and supported for the security and protection of the **community** as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness...*

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not their representatives or lawyers. They are on their own.

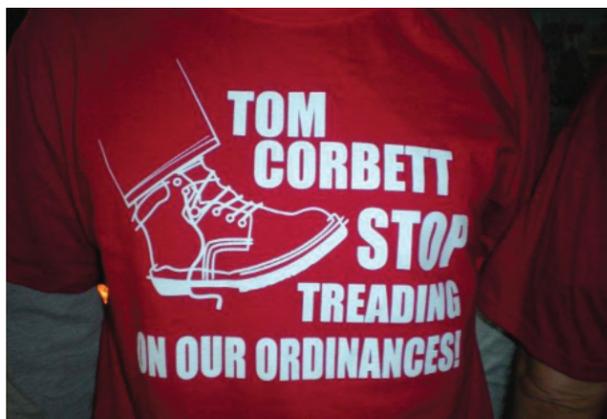
State law-makers continue clearing the way for the frackers: In Pennsylvania there’s a new exemption from clean air requirements, no regulation or monitoring of frack waste water dumping in Commonwealth streams and rivers, and a complete exemption from local control. Enforcement of laws against fracking corporations must now be OK’d by political appointees; and permits can’t be denied based on state law if the head of Community and Economic Development waves compliance with the rules.

In New York, citizens have been holding their breath, waiting for the moratorium to expire and for the drilling to begin; they’ve been pushed out of the decision-making loop by a state preemption on local control over drilling corporations. Some New Yorkers are hoping to use zoning to shrink the percentage of their communities they’ll have to surrender, but there is a push to make New York land-use laws as useless as those in Pennsylvania, Ohio, and elsewhere.

In Ohio, in Western Maryland and West Virginia it’s the same story – state and federal

legislators, judges and governors have become advocates for the privileges of state-chartered drilling corporations and against the rights of people. They’ve done all they can to silence and neutralize those communities that will be directly affected.

As citizens scramble to educate themselves about the dangers of hydraulic fracturing, the industry continues to lie to landowners as they slide leases under their pens. Corporate



public relations flacks take money to misinform and deceive people in print and on camera. And “corporate neighbors” quietly approach victims of fracking’s too-common destruction of well water to offer “free” bottled water if the desperate landowners agree

to sign non-disclosure agreements. Meanwhile, professional corporate prostitutes claim there is no documented evidence that fracking ever ruins wells.

To say the game is stacked against regular citizens would be a huge understatement. To attempt to treat only the environmental, health, and economic symptoms of this problem would be a mistake – we must cure the disease that allows these symptoms to spread unchecked, but first we must understand its nature.

Instead of communities being immunized against industrial corporate destruction of our health, safety, environment and quality of life, corporations have been immunized against local control by state and federal law-makers. Quiet collusion between “public servants” and privileged corporations has yielded corporate exemptions from federal, state and local laws. Let’s be clear what it means to be exempt from obedience to laws that everyone else is required to obey: corporate managers hiding behind limited liability protections have placed themselves and their corporations above the law.

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# The Opening Salvo: Blaine Township, Washington County Picks a Fight With Coal Corporations in Western Pennsylvania

**“Our rights under the Pennsylvania Constitution don’t mean shit if you’re forced to negotiate with the DEP and the courts. In this area, coal is king. Coal is King.”**

-Michael Vacca, Vice Chairman, Blaine Township Planning Commission (quoted from *Penn Ridge v. Blaine Township*, U.S. District Court for the Western District of Pennsylvania).

**“Stopping the community from being mined means we must challenge laws and decisions that have stripped away our right to self-government.”**

-Scott Weiss, Chairman, Blaine Township Board of Supervisors (quoted from *Penn Ridge v. Blaine Township*, U.S. District Court for the Western District of Pennsylvania)

In 2007, after watching other Western Pennsylvania Townships around them being wrecked by longwall coal mining operations, the Blaine Township Board of Supervisors decided to do what no other Pennsylvania municipality had done before – ban commercial mining operations within the township. They did so after arriving at the same conclusions drawn by other townships in Pennsylvania’s coal country – that the damage caused by longwall mining is irreversible, and that Pennsylvania law and regulations were actually written to allow mining corporations to *cause* those damages, rather than to help communities *prevent* them from occurring in the first place.

With the help of the Community Environmental Legal Defense Fund, a nonprofit public interest law firm, and the Legal Defense Fund’s nationally-known two-day Democracy School trainings, the Blaine Supervisors learned how corporations use their claimed *constitutional “rights”* to overturn local, state, and federal laws; and how doctrines like *Dillon’s Rule* (which declares that a municipality is a *child* to the state’s *parent*), and *preemption* (which generally declares that a municipality cannot prohibit what a state allows) are used routinely by corporations to prevent municipalities from protecting themselves from harmful corporate activities.

In accordance with that understanding, the Blaine Supervisors unanimously adopted three ordinances targeting not just longwall coal mining, but the more than 100 years’ worth of legal doctrines that routinely prevent municipalities like Blaine from having control over what happens in their community.

The first ordinance banned longwall mining and voided all state permits that interfered with that ban; the second ordinance elevated the rights of the community above the mining corporations’ claimed constitutional “rights”; and the third ordinance required corporations doing business within the municipality to disclose their activities to the supervisors.

In October 2008, the coal mining corporations struck back, filing a lawsuit in federal court in Pittsburgh. In the lawsuit, the corporations claimed that state mining law *preempted* the ordinance, that the ban violated the *corporation’s constitutional rights*, that Blaine Township had *exceeded the authority* given to it by the state, and that coal mining was an essential part of the country’s *commerce*, and thus, the federal government, not the municipality, was the rightful authority to pass mining laws.

The lawsuit confirmed what the supervisors already knew – that to stop longwall mining, they’d have to directly challenge – and overturn – century-old legal doctrines that had been carefully crafted by corporations to strip residents of their ability to decide the future of their communities

Through that lawsuit, the supervisors came face-to-face with a system of law that intentionally places the rights of a handful of corporate decisionmakers over the self-government rights of community majorities. In talking with other communities, they learned that no matter what issue a community faced, the same legal doctrines were used routinely to supplant local decisionmaking.

Instead of backing down (or immediately repealing the ordinances in the face of the corporate threat, as many other Township Boards have done), the township residents upped the ante by calling for a home-rule election, through which the township would draft its own local constitution that would enable it to ban longwall mining in the municipality.

In rapid order, they not only successfully collected enough signatures to qualify the home-rule question, they then proceeded to vote to approve the question and elect a home rule commission, which began drafting a

home rule charter for the municipality. After hundreds of meetings by Blaine residents, the product was a new local constitution containing a new Bill of Rights for residents, and a new sustainable energy policy that banned longwall mining while reducing the township’s reliance on fossil-fuel-derived energy sources.

Reading the tea leaves as the opening shot in a war over self-government, the mining corporations struck back – first by a frenzy of federal court filings further threatening the township and, second, in the opinion of many in the township, by covertly funding and supporting a full-blown campaign against the home rule charter – painting the charter as government’s “interference” with private property and the “free market”.

In October 2010, a federal judge ruled in favor of the mining corporations – holding that since state law allowed mining, a community could not reject it. On the issue of corporate *rights*, the judge ruled that corporations do, indeed, possess the same constitutional rights as those accorded to *persons*; and that those rights routinely are wielded to overturn laws that violate those *rights*. In addition, the judge said that the only court that could overturn that doctrine is the U.S. Supreme Court, not the lower federal court; and that the issue must be appealed to get to that level.

Recognizing that a home rule charter adopted by the voters of the township would be a much stronger vehicle than an ordinance adopted by only three supervisors – and understanding that the federal court’s ruling would be made moot by the replacement of the ordinances by the home rule charter – the Board of Supervisors opted to



repeal the ordinances that they had originally passed and worked towards the passage of the home rule charter.

Unfortunately, unable to muster the financial resources to go toe-to-toe with the mining corporations on the home rule charter campaign (and thus unable to dispel the false claims made against the charter), the charter failed to be adopted into law. And, since the ordinance has been repealed by the supervisors, no appeal to higher courts could be filed by the township.

Understanding the importance of this battle – and thus, the need to further punish the township - the mining corporations didn’t stop there. They supported two pro-mining candidates for township supervisor, who displaced two of the main advocates for the original ordinances. And those two new supervisors retained the current solicitor, a pro-mining voice who had argued against the passage of the ordinances.

We all talk abstractly of the power wielded by corporations, of *corporate power*, but we often fail to understand how that power is translated directly down to these individual battles. The power of mining corporations is immense – not just because of their size and wealth, but due to a structure of law, carefully designed over the years by corporate lawyers, that creates special laws for the people who run them. As recognized by the Blaine Township Supervisors, stopping mining, natural gas extraction, factory farms, the land-application of sewage sludge...means not only saying “no” to them, but openly challenging, and eventually dismantling, the legal doctrines that support a corporation’s “right” to impose their harmful activities on us in the first place. Otherwise, we will never be able to create the communities that we want and need in the face of a structure of law that is almost never on our side.

## **FAQs:**

**Q: Knowing this story is great, but what good does it do to pass an ordinance that’s already been struck down by a court?**

As Blaine residents understand, the legal doctrines that place our communities on their knees come from an unholy alliance between government and the corporations – and, in fact, most times, they’re the same peo-

ple in both governmental and corporate positions. Claiming our right to govern our own communities must, therefore, overhaul the very fabric of the legal structure that’s been constructed over time.

Changing that fabric eventually means achieving state and federal constitutional changes, because corporate decisionmakers have clothed themselves in those constitutional powers. Until we make that structural change, we’ll be left holding the bag after a handful of corporate decisionmakers resolve to turn our communities into sacrifice zones.

Changing that structure isn’t easy. But it certainly isn’t going to be achieved by begging and pleading with state agencies or the state legislature to do something to protect us. A new regulation or new law by the state (even assuming that they have our interests in mind), may establish new rules for how the rape will occur, but they continue to enable the rape to occur in the first place.

As it turns out, we don’t have to reinvent the wheel. There have been successful movements in the United States that have achieved constitutional change – including abolishing slavery and winning the right to vote for women. Those movements didn’t focus on building a regulatory agency dedicated to regulating the number of lashes for slaves or new rules for how husbands should treat their wives – they focused instead on driving constitutional change by illustrating how the existing system was unjust and immoral. To do that, they broke existing law, forcing the system to punish them, as a clear, explicit, and public illustration of how the system functioned.

Northern juries violated the law by refusing to send slaves back to their owners, blacks sat at lunch counters in violation of the law, women illegally cast ballots at voting places, and American revolutionaries illegally declared their independence from England. Each of those actions served to illustrate how the existing system operated and what a new structure might look like. In the process, those actions galvanized people to join together to build movements that eventually undid the existing system permanently – not through the courts, but through changing the very structure of the existing system.

Eventually, there will be a thousand lawsuits just like the one in Blaine Township. And then a thousand more. As Frederick Douglass once noted, “power concedes nothing without demand.” We’ve become so obedient that we’ve forgotten how to refuse to submit to a structure of law that is harming us.

Some of those lawsuits may be appealed and, in others, elected officials will sacrifice their communities to maintain the municipal treasury. Some cases may win, many will lose – but together, they will give birth to a peoples’ movement that this country hasn’t seen since the late 1800s – a movement aimed at throwing off the authority that enables a small number of people to override community decisions dealing with energy, food, waste, and resource sustainability.

As the Blaine supervisors discovered, if we believe in self-government and protecting our communities from harm, there may not be any other choice.

## **Is the Blaine ordinance the same as ordinances being adopted on fracking?**

No. There are some important differences between the ordinances adopted by Blaine and the ones currently being adopted to deal with fracking. The newer ordinances – which incorporate some of the court decisions in the Blaine case – are built around the expansion of rights for people, communities, and nature. Thus, their central feature is an enforceable Bill of Rights that augments state and federal constitutional guarantees with the right to clean air and water, the right to self-government, and the right to a sustainable energy future. The new ordinances then ban those activities – like natural gas extraction – that violate the Bill of Rights.

Finally, new sections of the ordinances redefine corporate *rights* within the municipality, declare state permits issued in violation of the Bill of Rights null and void within the municipality, and hold state officials liable for violating the ordinance. The new ordinances that say *no* to fracking thus say *yes* to expanded civil rights within the municipality.

It is this new, rights-based framework that is being avoided by the gas corporations – resulting in their decision not to sue the City of Pittsburgh, for example, over the recent ordinance adopted by the City Council that

(The Opening - pg. 11)

(Frequently - from pg. 4)

*A Declaration of the Rights of the Inhabitants of the Commonwealth or State of Pennsylvania....*

IV. *That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.*

V. *That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation or **community**; and not for the particular emolument or advantage of any single man, family, or set of men, who are only part of that **community**: And that the **community** hath an indubitable, unalienable and indefea-*

*sible right to reform, alter, or abolish government in such manner as shall be by **that community** judged most conducive to the public weal.*

Pennsylvania Constitution of 1776, Ch. I, § III-V (emphasis added) (in Ken Gormley, *The Pennsylvania Constitution*, at 878 (2004)).

The language here is significant. People are the source of all governmental power - which governments must exercise for the common benefit of people, nations or communities - and to ensure that this is so, the "community" has "an indubitable, unalienable and indefeasible right to reform, alter or abolish government." It is not the State that holds the right, nor elected officials or governmental

bodies, nor corporate interests. Rather, **communities of people** naturally have a right to self-government, and

they are powerless only in their inability to alienate that right to anyone.

The governments we erect owe us certain social obligations that we refer to as Rights. They are the coin of exchange for the social contract we enter into in agreeing to abide by the social rules that we call laws. But any law that deprives rights breaches the contract and nullifies the law. In the absence of laws that protect the Rights of the people, the people themselves have the authority to enact them, using the government closest to them. That is what communities have begun to. Now it's up to you.

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## On NIMBY:

*"I am having a great deal of difficulty in believing that either the state or the nation will meet its obligation in East Kentucky, and I am certain that the coal companies will be no more responsible than they are forced to be. I am afraid that the region has tacitly been made a preserve of the mining interests, to be exploited and destroyed to the last valley. I believe that the American system has already demonstrably failed in this region, and I am afraid that in the government's refusal to acknowledge that failure and to act to correct it our system has begun a failure that is nationwide."*

- Wendell Berry, "The Long-Legged House"

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(How to - from pg. 1)

keeping of greedy and irresponsible crowds.' E.I. Godkin, founder-editor of *The Nation*, one of the country's most influential organs of political criticism, pointed to unrestricted suffrage as the main source of misgovernment in major cities. 'The reason why majority government succeeds ... in small municipalities...and does not succeed in large cities,' wrote Godkin in 1884, 'is that all, or nearly all, voters are direct taxpayers, and thus feel local politics to be part of their private and personal affairs.' He blamed the alleged indifference of nonpropertied classes to public expenditures for the rising costs of local government and recommended that they be prevented from voting on important civic measures."

Few today would be as honest as Simon Sterne in describing the average municipality as "not a government, but a corporate administration of property interests in which property should have the leading voice." It is an echo of James Madison's dictum that "Landholders ought to have a share in the government, to support these valuable interests, and to balance and check the other. They [laws] ought to be so constituted as to protect the *minority of the opulent* against the majority."

If the average community activist understood that this is the unvoiced belief on which the corporate state has built its regulatory structure of law, which amplifies the *rights of property* - meaning, today, *corporations* - and silences the rights of people, they would begin to organize differently. They would stop asking to testify at public hearings sponsored by environmental regulatory agencies and zoning boards, because they would understand that the regulatory charade subordinates community rights to the *rights of corporate property*.

Allowing the "greedy and irresponsible crowds" to speak at public comment

sessions organized by regulatory agencies was a shrewd concession on the part of Madison's "minority of the opulent." Creating and preserving the illusion of democracy has helped defuse and confound many campaigns in the people's movement for community rights, which is to say, the struggle for democracy where the people live.

For the people to be motivated to begin creating real democracy and community-driven decision-making with the force of law behind it, they must overcome the illusion that remedies for usurpations of that authority already exist in the dominant structure of law. As we have seen, the regulatory system is one such trap. Community groups go to regulatory agencies to prevent harms inflicted by growth coalitions and corporations. People vote, but the inverse of expanded suffrage has been the simultaneous divestiture of decision-making authority for people in the communities where they live.

Today, majorities unquestioningly accept that decisions about labor, production, distribution, resources, development, and every element of economic policy are private and contractual in nature and not open to public input, except as we may influence them in our capacity as consumers in the marketplace. In our capacity as citizens, we are expected to stand by idly and watch the free market wheel past us - or over us as the case may be.

We are, apparently, also expected to believe that no person or faction, but only the collective wisdom of interacting private interests, directs the invisible hand of that invisible entity known as "the market." Therefore, there is no need for democratic decision-making and no obligation to uphold the ideal of *consent of the governed* when it comes to the market. And yet, all the conditions and rules for regulating trade, interstate commerce, corporations and that mythical place called

"the market" are codified in law, and all of them that apply to people where they live are in the nature of prohibitions against interfering with the magical self-governing market.

But believing in magic and surrendering democratic decision-making to that belief is simply rubbish. All matters affecting a community are legitimately subject to local decision-making, none more than economic decisions and issues dealing with work, food, environment, land, trade, production, health, education, and justice.

Here is no hypothetical calling of the corporate state to account. The question posed is this: What will lead to the exercise and protection of our unalienable rights, including the right to local, community self-government? And the answer is: Nothing but the exercise and protection of unalienable rights through the exercise of our right to local, community self-government!

There is no substitute for local self-government. We cannot approach higher levels of government, state or federal, and ask for a grant of privileges now denied us. Our unalienable rights are not privileges, and if we find ourselves asking for their return, we will be asking a usurper for that which will never be willingly restored.

Self-governing communities must reject the status of municipal corporations as well as the illegitimate privileges and constitutional status given by courts and legislatures to private corporations that are *permitted* to violate the rights of the people. The usurpation of the peoples' sovereignty by consigning them to mere tenancy within the colonies of the corporate state, known as municipal corporations, was not a mistake of history or the unintended consequences of a muddled judicial decision. Real people purposely made real decisions that stripped the majority of their rights, especially the right to local self-gov-

(How to - pg. 10)

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Are your elected officials constantly telling you that their hands are tied when making important decisions in your community about your health and safety? Have you wondered how corporations constantly overrule the will of people and communities? Democracy School walks you through the why as well as how communities across the U.S. are pioneering a new form of organizing that asserts local control to protect the rights of their residents, communities, and nature.

#### *At Democracy School, you will*

Learn how communities in Pennsylvania, New Hampshire, Maine, Maryland and Virginia are using their municipal governments to drive economic and environmental sustainability into law;

Learn why large corporations seemingly possess more rights than the communities in which they do business, and why communities lack the legal authority to say *no* to projects that they don't want;

Learn what prior peoples' movements in the United States have done to challenge the system of law; and

Discuss the next steps for your community for passing laws to expand protections for workers, neighborhoods, and the environment.

For more information or to host a school, contact Stacey Schmader at 717-498-0054 or [Stacey@celdf.org](mailto:Stacey@celdf.org).

### On Expert Witnesses:

*"We should be on guard not to overestimate science and scientific methods when it is a question of human problems...we should not assume that experts are the only ones who have a right to express themselves on questions affecting the organization of society."*

– Albert Einstein



**Building sustainable communities by assisting people to assert their right to local self-government and the rights of nature.**

# THE FOUR ROADBLOCKS to STOPPING FRACKING

## What's Stopping Us from Just Saying No to the Destruction of Our Communities?

THE FOUR ROADBLOCKS to STOPPING FRACKING  
What's Stopping Us from Just Saying No to the  
Destruction of Our Communities?

### The Regulatory Fallacy

To *regulate* is to *permit* harmful corporate behavior in communities, whether the people want it or not, under conditions legalized by the state. Those regulations that have become law typically have been recommended or negotiated for by the regulated industry. They define the amount of harm they anticipate they will inflict, and legalize that amount of harm. Regulatory agencies issue permits that allow corporations to impose harms on human health and the environment, and protect the corporations from liability to the community and individuals for the legalized harms inflicted.

Often, community members testify at regulatory hearings in opposition to issuance of the permits because they suspect that the regulations will not protect them. Ironically, many environmentalists then demand that the regulations be enforced to the fullest, unaware that those laws actually regulate *them* and make their activism predictable.

Regulations do not protect us, our communities or the environment. At best, they slow the rate of destruction while making it all perfectly legal. In the case of fracking, those corporations are exempt from the Clean Drinking Water Act, the Clean Air Act, the Superfund Act and other laws. The fracking corporations are above those laws.

*Zoning*, the most local of regulatory tactics, simply allows a community to decide *where* the fracking will occur. Zoning cannot prevent fracking – it simply allows a municipality to decide what parts of the community it will surrender to the corporation. Similarly, *conditional use* ordinances merely create disincentives to the drillers. Like zoning, they amount to little more than terms of surrender – they are not governing decisions.

The regulatory system creates the illusion that we have a democratic process for complaining about corporate assaults on our communities, but it offers no remedies. Instead, it legalizes those assaults. So, the question is, who's being regulated?

What to do? In this document we provide answers. It's time to stop accepting regulated rates of corporate destruction and start governing in our communities.



### Corporate Supremacy

Wondering why your community and its elected officials are challenged at every turn by corporations proposing projects you want to prevent, and whose attorneys argue that, if you do try to stop them, you're violating the corporation's rights?

A central aim of the American Revolution was to subordinate private corporations – like the British East India Company – and minority privilege to the sovereignty of the people. They knew they would have to safeguard their local assemblies as organs of community self-governance.

Since then, a structure of law has been created to subordinate our local governing authority to profit-seeking corporations hiding behind corporate charters with limited liability protections, and the privilege of constitutional rights



bestowed on them by the courts. The result is that we, the people, are precluded from preventing corporate assaults on our communities.

How did this happen? Beginning in the 1840s, in a series of court cases that eventually wound up in the United States Supreme Court, railroad and other corporations sought to insulate their business decisions from community control. By the 1890s, they had succeeded in establishing the structure of law that enables corporations to wield the constitutional rights of living, breathing people. Today, their lawyers assert the rights to freedom of speech, due process, equal protection and property in order to override local community decisions.

The corporate lawyers running the courts laid the foundation for a slew of legal theories designed to protect the concocted corporate constitutional rights. Among those is the requirement that municipalities must allow all *legal uses* within their communities – thus stripping away their authority to prohibit fracking, factory farms, incinerators, land-applied sewage sludge, waste dumps, or any other type of legalized corporate activities.

And when a community attempts to prohibit corporate activities, corporate attorneys can sue the community, contending that the corporation's property has been *taken* – a violation of the corporation's Fifth Amendment rights.

What to do? Existing, well-settled law changes only when enough people and communities demand that it be

changed. In this document, we propose an appropriate response to the institutional denial of the rights of people in their communities by state and federal governments on behalf of corporations: the assertion of our inherent local self-governing authority.

### Preemption and Dillon's Rule

Who has rights? In your community, who decides what is legal and what is not? Is it the people affected by governing decisions, or is it someone else who calls the shots?

Despite our tradition of defending the right to local self-governance as asserted in the Declaration of Independence, since the Civil War our local governing authority has been chipped away as more centralized control has been imposed for the purpose of protecting the privileges enjoyed by the corporate minority.

History books largely ignore the concerted attacks on community self-government in America. In the *Dartmouth* case of 1819, the Supreme Court created a distinction between public municipal and private business corporations, declaring that, while business corporations enjoy contractual equality with the state, municipal corporations do not. Fifty years later, Iowa Supreme Court Justice John Dillon (formerly counsel to railroad corporations), in his opinion on a case between a municipality and a railroad corporation, in which the court ruled in favor of the railroad corporation, opined that municipalities have no rights that are not specifically granted to them by their state legislatures.

Dillon's opinion was sanctioned by the U.S. Supreme Court in 1907. Today, most states wield what's now known as *Dillon's Rule* against their local governments. On the basis of these judge-made laws, we, the people, are divested of our inherent local governing authority and preempted from adopting laws to protect our communities and environment from corporate assaults permitted by the state.

In 1907, J. Allen Smith wrote in his book, *The Spirit of American Government*, that "The powerful corporate interests engaged in the exploitation of municipal franchises are securely entrenched behind a series of constitutional and legal checks on the majority which makes it extremely difficult for public opinion to exercise any effective control over them."

This blatant denial of our right to govern ourselves in the communities where we live, and the elevation of business corporations as the legitimate constituents of legislators, suggests we need to re-examine our strategies for a redress of grievances.

### Doubt

Our biggest obstacle by far is our doubt that we have the duty, the authority and the competence to assert our rights and ban fracking. Those doubts are the result of corporate-state fear tactics intended to shake our resolve and cause us to surrender our communities without a fight. We must shake off those doubts and act in cooperation and solidarity with our friends, neighbors and local governments.

"It's hard to fight an enemy who has outposts in your head." – Sally Kempton, feminist and author

## Act on the Premise You Have the Right:

"Sometimes you have to act as if acting will make a difference, even when you can't prove that it will. That, after all, was precisely what happened in Communist Czechoslovakia and Poland, when a handful of individuals like Vaclav Havel and Adam Michnik resolved that they would simply conduct their lives "as if" they lived in a free society. That improbable bet created a tiny space of liberty that, in time, expanded to take in, and then help take down, the whole of the Eastern bloc.

"So what would be a comparable bet that the individual might make in the case of the environmental crisis? Havel himself has suggested that people begin to "conduct themselves as if they were to live on this earth forever and be answerable for its condition one day."

— Michael Pollan, "Why Bother?" Sunday, April 20, 2008, *New York Times Magazine*

# The Right to Self-Government

## If you can't exercise it where you live, you can't exercise it anywhere

Because of the regulatory fallacy, state preemptions and corporate privilege, local officials, who take an oath to protect the health, safety and welfare of their communities, are warned by municipal attorneys that, if they honor that oath, they'll be breaking state and federal law.

If you're being told you can't adopt laws to protect the people and environment in your community, then let's break out a map of the state and see if we can pinpoint the place where your right to self-government *can* be exercised. If we can't find a real place, in real time, where you can engage in self-governance, then it's just a concept, not a reality. It's a myth, not a fact. And it's a right denied.

Sure, we've heard that this is a democratic republic and not a democracy, but if the people you elect to represent you are forbidden from doing so, where's the representation? Where's the republic?

It turns out that our municipalities have no representation – as communities or as municipalities – in state or federal government. Voting districts are carved up (gerrymandered) by the winning political party every decade, and the districts do not represent communities of people, but calculated political advantage for the party in charge at the time. There is no municipal federalism, and our communities have no voice and no representation, either locally or at the state level.

How can this be true? Self-government is the essence of democracy. How can local self-government be a violation of state law? Is the state authorized to violate rights, and to *permit* state-chartered corporations to pile on and violate them too? What's the point in electing local officials if they are proscribed from honoring their duty to protect the community's health, safety and welfare?

Unless local officials take their oaths seriously and stand with their communities against the rights-denying – and, therefore, illegitimate – behavior of state legislators, courts and governors, self-government is dead. But we can fight back by making local laws that protect rights – by acting on our belief in the truth that we possess an unalienable right to self-government, right here in the communities where we live.



## On "feelings and emotions"

*"It is paradoxical that although the GNP is invisible, and pollution is most visible, the abstraction is taken for concrete reality and the sensuous experience dismissed to the margins of society, where it is picked up by such marginal elements as artists, philosophers, and generally disaffected."*

- William Irwin Thompson, "Gaia and the Politics of Life"



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*(How to - from pg. 6)*

ernment, which was fought for during the American Revolution. The counter-revolution has triumphed utterly.

### **Our right to self-governance exists only in its exercise. So what does a Community Rights Ordinance look like?**

More than 100 communities in Pennsylvania, Virginia, Maryland, Massachusetts, New Hampshire, and Maine have recognized that, so long as activists continue to use strategies and tactics designed by others (whose motives are to use communities for their own purposes), community self-determination will forever remain a lofty, unachievable dream. They've recognized that only a new community script – written by those affected by the activities that must be prohibited – will elevate the right to local, community self-government above the state's authority to preempt them, and above the claimed rights of corporations as underwritten by the state.

That new community script represents a community-based civil rights movement that is expanding across the country to communities in Ohio, New York, California and Washington because communities have grown tired of *experts* and lawyers telling them that they have no choice but to suffer the ills of corporate assaults.

That new script now is codified into ordinances that assert expanded Bills of Rights at the municipal level and prohibit activities that would violate that civil rights matrix. The ordinances drive the

stake of local bans directly into the heart of the illegitimate corporate privileges and powers that thwart the most sacred right echoed throughout American history. The right of self-government advanced to secure and protect the rights of people and communities.

Anticipating corporate challenges, the local laws decline to accord those legal rights and powers to corporations within the municipality, while declaring that state-issued permits that violate the Bill of Rights section of the ordinances are invalid within the municipality.

In short, the ordinances reject the notion that free people may only use those administrative tools that have been carefully constructed for us by a corporate minority to perpetuate the myth that we enjoy community, democratic self-government. Instead, the ordinances create a new framework that challenges the court-concocted and legislatively navigated law of the land by constructing a new rights-based framework that fosters economic and environmental sustainability at the community level.

It's not complicated. The ordinances turn the myth of popular sovereignty into reality. With the fracking boom in full swing, and our communities becoming resource colonies for a gaggle of corporations, if the time isn't now, then when will it come? If our communities are not the ones to lead the way, then who will? How long will we continue to allow corporate directors, abetted by traitorous legislators, to govern our communities?

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## On False Memory:

*"Let the people think they govern, and they will be governed."*

- William Penn, *Some Fruits of Solitude* (1693).

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*(No Surrender - from pg. 4)*

This injustice is bad enough. Even worse, state governments have placed the privileges of corporations above the fundamental rights of people by issuing permits, without the consent of the governed, that legalize the harms and enable state-chartered corporations to violate our rights.

For people who still believe legislatures serve the public, there's a predictable tendency to petition them for help. Our municipal officials are developing shoulder cramps from repeated shrugging at the pleas of constituents, as they sheepishly intone "we wish we could help, but our hands are tied." And they aren't lying. The handcuffs they're wearing are marked "property of the corporate state."

If we leave it at that, we truly have no remedy for injustice. This is what it is to get fracked. But it's not inevitable unless we surrender by inaction. It's not inevitable unless we assume there's nothing we can do. It's not inevitable unless we are willing to surrender our fundamental rights without a fight.

People in Pittsburgh, Licking Township, West Homestead and other communities in Pennsylvania, as well as in Mountain Lake Park, Maryland; Wales, New York... are acting on the premise that their right to community self government, to clean water and a healthy environment, are higher law than regulatory laws, preemptions and exemptions for corporations, chartered and licensed by the state in the name of the people.

In this publication, we offer people who believe in and stand up for unalienable rights information and tools to assert those rights by enacting local laws establishing their community Bill of Rights and prohibitions on corporate fracking. In these pages you will find answers to the most worrisome questions about what it means to not surrender your rights, and to act in the knowledge that those rights are fundamental, that you are born with them and that they cannot be taken away by governments or corporations.

(The Opening - from pg. 5)

created a new Bill of Rights and banned natural gas extraction as a violation of those rights. With the passage of that ordinance, the City of Pittsburgh became the first major municipality in the United States to adopt a rights-based ordinance.

**Is there any chance that these ordinances will be upheld by a court?**

Yes. In some ways, the ordinances merely cash our collective check for self-government. History classes and political pundits galore have extolled the belief that we live in a system in which we govern ourselves. In fact, the American Revolution was based primarily on that concept. Court cases like Blaine's enable communities to make the case that the current system does everything in its power to undermine self-governance and to ensure that a small number of people continue to hold enormous legal and political power under the system. These cases force courts to come face-to-face with that reality – as they did during the Civil Rights era – and decide whether to come down on the side of a corporate minority or a community

majority. It is those confrontations that eventually will build a movement focused on elevating community self-government above corporate *rights*. Until then, building sustainable communities will remain merely a dream.

**What's the long-term goal of adopting ordinances?**

Constitutional change. Since many of the doctrines – like corporate “rights,” for example, or corporate commerce rights – are wrapped up in the constitution, State legislatures are powerless to change them (even if they wanted to). Thus, long-term, the ordinances aren't really ordinances at all – they're mini-constitutions which embody what constitutional change must eventually look like. To achieve that constitutional change, enough communities in enough places must begin to push-back against the structure of law, and then knit themselves together to drive changes to the state constitution, and eventually, to the federal constitution.

Whether we make it to that place or not is up to folks like those in Blaine Township, who are not willing

to submit to a structure that guarantees that they will get drilled, mined, factory-farmed, or dumped on.

**Where is the authority to adopt ordinances like Blaine's?**

Us mostly. When we stop looking for authority given to us by others, and instead understand that we need to create it ourselves, we'll be one step closer to actually governing our own communities. And, of course, there's plenty of authority – both legal and otherwise – for a system that is actually based on “consent of the governed.” The Declaration of Independence does a fine job of recognizing that when governmental systems no longer protect the rights of the people, those systems must be abolished and replaced with ones that do. The Pennsylvania Constitution says the same thing, and the 1776 version of that Constitution declares that communities have inalienable rights of their own.

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## Business vs. Municipal Corporations

*“Business men had been given one instrument, the people another. The one was simple, direct, and powerful; the other confused, indirect, and helpless. We had freed the individual but imprisoned the community...The text-books talked of political sovereignty, but what we really had was business sovereignty. And because the business corporation had power while the political corporation had not, the business corporation had become the state.”*

- Richard C. Howe, The Confessions of a Reformer (1925).

*“Satisfactory regulation is not, as seems to be implied in much of the discussion favoring the substitution of state for local control, merely a question of placing this function in the hands of that governmental agency which has most power and prestige behind it. The power to exercise a particular function is of little consequence, unless there is an adequate guaranty that such power will be exercised in the interest of the local public for whose protection it is designed. It may be regarded as a well established principle of political science that to ensure a satisfactory and efficient exercise of a given power, it should be lodged in some governmental agency directly responsible to the constituency affected.”*

- J. Allen Smith, Centralization and Popular Control (1930).

*“The attitude of the well-to-do classes toward local self-government was profoundly influenced by the extension of the suffrage...the removal of property qualifications tended to divest the old ruling class of its control in local affairs. Thereafter, property owners regarded with distrust local government, in which they were outnumbered by the newly enfranchised voters. The fact that they may have believed in a large measure of local self-government when there were suitable restrictions on the right to vote and to hold public office, did not prevent them from advocating an increase in state control after the adoption of manhood suffrage.”*

- J. Allen Smith, The Growth and Decadence of Constitutional Government (1930).

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*On February 20, 2010, the Community Environmental Legal Defense Fund hosted the first meeting of the Pennsylvania Community Rights Network (PCRN). Thirty-one people from thirteen counties across Pennsylvania were represented: Cambria, Carbon, Centre, Chester, Erie, Franklin, Lancaster, Lycoming, McKean, Montgomery, Northampton, Schuylkill and York.*

*The folks gathered were among the first in the nation to wield their inherent right to local self government to say “no” to corporate harms assaulting their communities. With this first meeting, the people launched a statewide campaign to rewrite the Pennsylvania Constitution, pledging their commitment by issuing the Chambersburg Declaration. The Declaration reads:*

# **THE CHAMBERSBURG DECLARATION**

*BY THE UNDERSIGNED IN CHAMBERSBURG, PENNSYLVANIA, ON  
SATURDAY, FEBRUARY 20<sup>TH</sup>, 2010*

## *We declare:*

That the political, legal, and economic systems of the United States allow, in each generation, an elite few to impose policy and governing decisions that threaten the very survival of human and natural communities;

That the goal of those decisions is to concentrate wealth and greater governing power through the exploitation of human and natural communities, while promoting the belief that such exploitation is necessary for the common good;

That the survival of our communities depends on replacing this system of governance by the privileged with new community-based democratic decision-making systems;

That environmental and economic sustainability can be achieved only when the people affected by governing decisions are the ones who make them;

That, for the past two centuries, people have been unable to secure economic and environmental sustainability primarily through the existing minority-rule system, laboring under the myth that we live in a democracy;

That most reformers and activists have not focused on replacing the current system of elite decision-making with a democratic one, but have concentrated merely on lobbying the factions in power to make better decisions; and

That reformers and activists have not halted the destruction of our human or natural communities because they have viewed economic and environmental ills as isolated problems, rather than as symptoms produced by the absence of democracy.

## *Therefore, let it be resolved:*

That a people’s movement must be created with a goal of revoking the authority of the corporate minority to impose political, legal, and economic systems that endanger our human and natural communities;

That such a movement shall begin in the municipal communities of Pennsylvania;

That we, the people, must transform our individual community struggles into new frameworks of law that dismantle the existing undemocratic systems while codifying new, sustainable systems;

That such a movement must grow and accelerate through the work of people in all municipalities to raise the profile of this work at state and national levels;

That when corporate and governmental decision-makers challenge the people’s right to assert local, community self-governance through passage of municipal law, the people, through their municipal governments, must openly and frontally defy those legal and political doctrines that subordinate the rights of the people to the privileges of a few;

That those doctrines include preemption, subordination of municipal governments; bestowal of constitutional rights upon corporations, and relegating ecosystems to the status of property;

That those communities in defiance of rights-denying law must join with other communities in our state and across the nation to envision and build new state and federal constitutional structures that codify new, rights-asserting systems of governance;

That Pennsylvania communities have worked for more than a decade to advance those new systems and, therefore, have the responsibility to become the first communities to call for a new state constitutional structure; and

That now, this 20<sup>th</sup> day of February, 2010, the undersigned pledge to begin that work, which will drive the right to local, community self-government into the Pennsylvania Constitution, thus liberating Pennsylvania communities from the legal and political doctrines that prevent them from building economically and environmentally sustainable communities.

## *That a Call Issues from this Gathering:*

To create a network of people committed to securing the right to local, community self-government, the reversal of political, legal, and cultural doctrines that interfere with that right, and the creation of a new system and doctrines that support that right;

To call upon the people and elected officials across the Commonwealth of Pennsylvania to convene a larger gathering of delegates representing their municipal communities, who will propose constitutional changes to secure the right of local, community self-government; and

To create the people’s movement that will result in these changes to the Pennsylvania Constitution.