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...

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-govern through local law making.

To learn more, contact us at info@celdf.org or visit our website: www.celdf.org

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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.

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 evidence 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, 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...
MUNICIPALITIES FACING FRACKING

THERE ARE THREE OPTIONS for PEOPLE in one question left to answer: the ability of your community, who makes those decisions, will affect you, your family, your quality of life, natural environment and property value. 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?

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

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 get fracked in 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.

There are three options for people in municipalities facing fracking

Do Nothing

…and get fracked.

Because it’s your right to make self-governance 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”)

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 principle, 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 decried 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 immunity 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 legislatures empower wealthy corporations to impose legalized permitted harms upon the people in their local communities. We have no one to turn to but ourselves and our neighbors.

Isn’t it time we stop leaving our rights on the table, unfended? 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 rights ordinances, exposing them to public attention or interest.

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 need for such local action is made obvious by the active denial of the right to community self-government and the brushing aside of the right to claim our own rights.

The psychological effect of exposing the blatant denial of fundamental rights will cause people at last to stand against the oppression and we 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.

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 the right to claim our own rights.

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Q: Shouldn’t we be pursuing change at the state level?
A: The problem is, though government is supposed to be “by the people,” it doesn’t work that way. As citizens, we 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 fractured and communities lose the power to make the decisions about the natural environment and future generations that are necessary to remedy the powerful position in 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?

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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 to 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, it isn’t common sense to say that the rights of the state-chartered “corporation” 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 “permis­sive” 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 code 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 decisions 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 are temporary when 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 does 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 offi­cials are quite different. The Solicitor is required to con­sider the 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.

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.

Q: What’s Stopping Us from Just Saying No to the Destruction of Our Communities?
A: Frequently Asked Questions About Community Rights Ordinances That Ban Corporate Drilling

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

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Frequently Asked Questions About Community Rights Ordinances That Ban Corporate Drilling
asserts and protects the unequally right of the people to water, which is essential to protect the right to life itself. It uses the general legislative powers of the munici-

pality 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 cor-
poration 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 unequally rights of mem-
bers 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 govern-
ments 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 govern-
ment 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 natural resources 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 gov-

ernment 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 govern-
ment, according to the U.S. Constitution. But municipal residents have no representation in state or federal gov-
ernment 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 municipalties to impose State law on the residents of municipalities, without their consent and without represent-
ation in the State government. This is a denial of fund-
amental rights.

Therefore the people legitimately may use the govern-
ment closest to them to overcome this injustice. To do so, they enact community-level laws that protect and assert their unequally 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 prepared 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 enforce-
ment of the regulations is to admit that the people have no right to prohibit the harms to themselves, their families and communities. It is to admit that the corporate inter-
ests lobbying the legislature are the actual governing power in their communities. It is to pretend that adminis-
trative agencies of the State have legitimate authority to empower State-chartered corporations to violate the rights of community members. They have no such author-
ity.

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 bid-
er, 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 foothold 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 con-
tinue 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 com-

munities 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 homes be converted into resource colonies and into sacrifice zones?

We can start by asserting our rights, by refusing to sur-
render 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 Pennsylvania Constitution by the wealthy elite, while reg-
ular citizens were off fighting the British.

The 1776 Pennsylvania Constitution’s preamble and decla-
rations of rights, Sections III–V, acknowledged the peo-
ple’s inalienable right to “community” self-government in its formulation of the source, scope and abolition of gov-
ernmental power:

WHEREAS all government ought to be instituted and sup-
ported 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

when 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...

(Frequently – pg. 5)

No Surrender – pg. 6)

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 frac 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 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 communi-
ties 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 misin-
form and deceive people in print and on cam-

era. And “corporate neighbors” quietly approach victims of fracking’s too-common destruction of well water to offer “free” bot-
tled water if the desperate landowners agree

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

To say the game is stacked against regular citi-
zens would be a huge understatement. To attempt to treat only the environmental, health, and economic symptoms of this prob-
lem 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 ser-
vants” and privileged corporations has yield-
ed 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 pro-
tections have placed themselves and their corporations above the law.
“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.”


“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 protect 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 “right” to overturn local, state, and federal law, 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 ultimately adopted three ordinances targeting not just longwall coal mining, but the more than 100 years’ worth of legal doctrines that routinely prevent municipal power over mining. These ordinances give Blaine 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 rights of citizens under the state’s constitution and “right”; and the third ordinance required corporations doing business within the municipality to disclose their activities for the benefit of residents.

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, and that the ban violated the corporation’s “constitutional right” to operate in the state. But the judge ruled that corporations do not have a constitutional right to impose their harmful activities on the people, communities, of rights for people, communities, and nature. Thus, their actions served to illustrate how the existing system functioned; the only court that could overturn the ordinances that they had originally passed and 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 dominate the franchise allowed by the township’s charter) the mining corporations struck back, and in April of 2010, the judge ruled that Blaine could not have 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 energies.

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 mining law allowed mining, a community could not reject it. On the issue of corporate rights, the judge ruled that corporations do- preempt 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 that “power is translated directly down to the 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 corporate power, we may not be able to do that on our own. 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亏损 our communities to maintain the municipal treasury. Some cases may win, many will lose, but only if we understand that people’s 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.

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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 new 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 actions served to illustrate how the existing system functioned; the only court that could overturn the ordinances that they had originally passed and 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.

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


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 do. Now it’s up to you.

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”

(How to - from pg. 1)

keeping of greedy and irresponsible crowds.

E. E. 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. To him, 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 nonproprietary classes to the public welfare 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 usury may exist already 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 brought a simultaneous devolution 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 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.” Thence, 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 corporation of the people’s 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 consequence 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-
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.

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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

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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 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 in our communities. What to do? Existing, well-settled laws offer no remedy. Instead, it legalizes those assaults. So, the question is, who’s being regulated?

To act on the premise You Have the Right:

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 assemblages 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 having behind them 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 concentrated 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 corporate businesses, 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 treat what’s now known as Dillon’s Rule against their local governments. On the basis of these judgments, 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 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
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-government, 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.

The Right to Self-Government
If you can’t exercise it where you live, you can’t exercise it anywhere

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”
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 being told 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 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 rich, with the promise of economic development 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, 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?

On False Memory:

“Let the people think they govern, and they will be governed.”

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

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.
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.

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.”


“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.”

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 20th 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.