



## COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

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### **Frack-Backers Launch Preemptive Strikes against Democracy Attempt to Kill the Initiative Process “It’s Already Been Decided? Who Decided That?” Ben Price, CELDF**

As Congressional representatives meet to debate military strikes against the Syrian government for targeting its own people for toxic chemical attacks and Syria offers to surrender those toxins to halt the atrocities, in Ohio there’s a clandestine but well orchestrated attempt by backers of toxin-laden frack drilling and poison injection wells to block citizens from deciding for themselves whether State-permitted poisons will be allowed to be pumped and dumped in their communities.

On August 15<sup>th</sup>, the Athens County Board of Elections sided with seven residents who filed a protest asking them to refuse to allow voters to vote on a Community Bill of Rights Ordinance banning fracking. The Ordinance had been properly proposed and petitioned, yet *without explanation* the Board of Elections voted to side with the protesters. In effect, the County Board of Elections vetoed the initiative process, and preemptively decided a question that democracy demands be decided by City voters.

On August 30<sup>th</sup>, a group calling itself the Mahoning Valley Coalition for Job Growth and Investment filed a protest against a proposed Youngstown Community Bill of Rights Charter Amendment with the Mahoning County Board of Elections, asking that the Board hold a hearing and consider its reasons why the Charter Amendment should not be presented to the voters in November. Two members of the Mahoning Valley Coalition are also members of the County Board of Elections. Despite the fact that the Youngstown Community Bill of Rights Committee had collected petition signatures certified by the City Clerk as sufficient to place the question on the ballot, the Board of Elections scheduled the requested hearing for Friday, September 6<sup>th</sup>, the last day for such an initiative to be legally scheduled for appearance on the general election ballot. The Mahoning County Board of Elections gathered at the designated time and place to announce that the protest against the initiative had been withdrawn.

On September 5<sup>th</sup>, with just one day remaining for ballot certification, the Wood County Board of Elections was presented with a protest filed by a single resident of Bowling Green, demanding that a petitioned initiative measure, a Community Bill of Rights banning fracking, be kept off the November ballot. The initiative petitions had been certified as legally sufficient by the Wood County Board of Elections on August 13<sup>th</sup>, and the Sentinel Tribune newspaper reported the next day “*The issue will be placed on the Nov. 5 ballot.*” The same law firm -- JPL Lavelle and Associates -- that filed the complaints in Athens and Youngstown submitted the Bowling Green protest. This filing left less than 24 hours for the petition committee to respond and seemed targeted to deprive City voters of their right to the initiative process by making it all but impossible to defend the measure from a preemptive veto by a single City resident. None-the-less, the petitioners did file a defense of their initiative, and on September 12<sup>th</sup>, the Wood County Board of Elections voted unanimously to overturn the challenge and place the proposed charter amendment on the ballot for Bowling Green voters to decide.

## Background

Against the consent of millions of Ohioans, the State government has green-lighted the injection of chemical toxins into the ground, directly through life-sustaining aquifers, either to force natural gas and naturally encased radioactive materials to the surface, or to hide the backwash of poisons from such operations in other communities by pumping it into the ground under our feet. Meanwhile, state law-makers have busied themselves enacting legislation that removes all local authority to govern the behavior of corporations involved in oil and gas extraction. Placing sole authority to “regulate” these wealthy investment magnates in the hands of the Ohio Department of Natural Resources (ODNR), legislators funnel “permits” that legalize the violation of fundamental rights of whole communities to their corporate benefactors.

Ohioans are beginning to understand that such legal chicanery by the State illegitimately attempts to elevate regulatory law above the unalienable rights of people and nature. But such corporate-subsidizing legislation cannot be superior to and preemptive of fundamental rights, and communities like Yellow Springs, Broadview Heights, Mansfield and Niles have already enacted Community Bills of Rights that subordinate the legal privileges bestowed by the people on corporations to their own governing authority.

It is in this context that we find the current flurry of procedural attempts to keep people from voting to enact their own Community Bills of Rights. Worried that citizens exercising their right to self-government in their own communities might decide that wealthy corporations should not be calling the shots, frack-backers are busily working to stop them from having that choice. Their claim: that only ODNR has State-recognized authority to govern gas and oil extracting corporations.

But Americans have seen this kind of procedural denial of rights before. A method of government once rejected by American Revolutionaries has been resurrected by some of the present-day political class. In place of representative democracy, today we are offered what revolutionary colonists criticized as a “ministerial” form of government, wherein all decisions affecting colonial communities were made in advance by the central government, and the local ministers had only authority to administer “superior” law, and no authority to make their own.

When the Continental Congress issued the Declaration of Independence in 1776, the signers included a list of reasons for declaring why they no longer owed allegiance to the “crown,” aka the British Empire. The very first complaint lodged against the empire was this: *“HE [the empire’s King] has refused his Assent to Laws, the most wholesome and necessary for the public Good.”*

They were not referring to state laws – there were no “states” yet. They were not referring to national laws – there was no nation yet. They meant that the empire was nullifying, or “preempting” local community laws enacted by direct representatives of the people in the Town Meetings, County and Provincial Assemblies and other community governing bodies throughout the colonies. As evidence of this, noted historian Pauline Maier has documented over ninety local “declarations of independence” issued by community governments throughout the colonies prior to July 1776. It was these expressions of frustration with the central government, and their complaints that necessary local laws were being “preempted” by the servants of the empire, that inspired Thomas Jefferson’s more famous “Declaration of Independence” in 1776.

Today we see history repeating itself. The servants of wealth and corporate privilege have engaged in a campaign to thwart the self-governing rights of Ohioans who try, within their municipal governments, to exercise the power of initiative and referendum.

Today in Ohio, the corporate forces of coercion seem ready for a contest of legal might against legitimate rights. Minority rule, ministerial government, privileges over rights: Our communities are being transformed into corporate resources colonies, and State government is acting as the enabler.

In 1776, the Continental Congress had this to say in the Declaration of Independence: *“Experience hath shewn, that Mankind are more disposed to suffer, while Evils are sufferable, than to right themselves by abolishing the Forms to which they are accustomed. But when a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security.”*

In these Community Bills of Rights we see that the people of our day have tired of the long train of abuses and usurpations of their right to govern themselves in the places where they live. They are experimenting with providing new guards for their future security, and they are doing so peacefully, democratically. And yet corporate power and readily-manipulated centralized political control has continued a campaign to block them and deny them the peaceful path to justice. The health, safety, and welfare of our communities cannot long endure under the weight of such oppression.

### **It’s already been decided? Who decided that?**

It is, unfortunately, only in a minority of American communities that the right to initiative, referendum and recall is recognized, and in some states it is utterly absent. In Pennsylvania, where municipal home rule is a rarity, and only about seventy out of more than twenty-four hundred municipalities have local charters, protecting corporate privilege from democracy is routine. But so-far the track record of Pennsylvania voters in home rule communities deciding to adopt Community Bills of Rights that prohibit rights-violating corporate behavior has been impressive. In 2011, voters in State College, PA decided by a 72% margin to amend their home rule charter with a Community Bill of Rights that guaranteed legal protection for the right to clean air and water, the rights of nature, the right to a sustainable energy future, and the right of local communities to legislate on such matters. To protect these rights, the amendment also banned fracking and other extractive technologies that would expand dependence on fossil fuels. They were following the lead of a unanimous Pittsburgh City Council that had, in 2010, enacted an ordinance to secure the same rights. In 2012, Ferguson Township voters enacted a similar home rule charter amendment. But that same year, corporate money and ensconced political forces fought to kill a similar measure in Peters Township, Washington County. There, voters were told that to vote to protect themselves would be a vote against a healthy economy. Should I mention that similar arguments were made against abolitionists who called for the immediate cessation of slavery?

Despite mostly good news, Pennsylvania’s claim to fame for institutional attempts to deny the right to community self-government is a doozy. In 2008, then Pennsylvania Attorney General and now state governor Thomas Corbett argued before the Commonwealth Court that, *“There is no inalienable right to local self-government.”* Never mind that the signers of the Declaration of Independence thought to the contrary, what about the twelve and one-half million Pennsylvanians living today: What do they think? And who decides such matters?

Some other examples of government serving corporate interests against community interests, from around the country: On August 29, 2013, Spokane County Superior Court blocked the Spokane Community Bill of Rights from appearing on the November ballot. City Council member Steve Salvatori argued belligerently that they “were not taken off the ballot to curtail citizen rights. They were taken off because they would interfere with previously granted rights. And they were not found

invalid by critics, power brokers or The Man, they were found to be beyond the scope of local initiative by a judge.” Quite a statement, eh? Never mind that the rights previously constitutionalized as the self-governing authority of people are now subordinated to what are termed “corporate personhood rights.” And never mind that when the U.S. Supreme Court “found” corporations magically embedded in the U.S. Bill of Rights they thought it unnecessary to argue the case. In fact, the chief justice, Morrison R. Waite, said this at the time: *“The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.”* No cogent argument for changing property into people with rights was ever presented.

Upholding “precedent” that grants rights to inanimate property over the fundamental rights of living, breathing beings is now the rule of thumb swished about like a buggy whip by judges and elections officials. The argument goes like this: *“Your betters have already decided that corporations have rights and that local governments have no authority to manage their behavior when they come to your town, against your consent, with a state issued ‘permit’ in hand.”* And yet, the whole purpose of the power of initiative was once to allow citizens to decide such matters for themselves.

### **What is to be done?**

On November 16<sup>th</sup>, 2013, representatives from Counties across the State will convene at the Founding Convention of the Ohio Community Rights Network (OHCRN). This Network will organize member Chapters in each County to document the grievances of the people and to assemble a People's Constitutional Convention, with delegates chosen from each Township, Village, and City, to amend or re-write the Ohio Constitution so that it recognizes the fundamental right to community local self-government, unimpeded by state preemption, so that each community has authority to enact local laws to protect the health, safety, welfare, quality of life and fundamental rights of People and Nature. Other statewide Community Rights Networks have been launched in Pennsylvania, New Hampshire, and New Mexico, with more to come.

### **Why is State Constitutional Change Necessary?**

#### *It Is Time the People Govern*

Every Ohioan retains an unalienable right to participate in community local self-government in the place where they live. But every citizen of Ohio is denied the full enjoyment of that right, and many are denied it completely.

State laws that deny the authority of community governments to protect their health, safety, welfare, and quality of life violate fundamental rights. State laws that exempt agribusiness, energy, waste hauling, water wholesaler, and other corporations from being governed locally place the privileges of wealth and property over the democratic rights of citizens to determine the future of their own communities. Local officials regularly confess to their constituents that they wish they could do more, but their “hands are tied” by state preemptive law. These officials are told that if they honor their oaths to protect the health, safety and welfare of the community, they will be breaking state law.

#### *Unequal Rights to Self-Government*

Citizens living in home rule cities enjoy a modicum of local self-governing rights that include initiative, referendum, and recall, as well as the ability to amend their local government charters and the right to enact local laws through their elected community representatives. Citizens in statutory cities, villages and townships can beg their local officials to make law on their behalf. But too often

these local representatives act as mere administrators of State law in our communities. That is when the initiative process becomes a valuable tool. And yet, even then, County and State functionaries often try to stop the people from voting on citizen initiated legislation, as we have seen. Residents of unincorporated townships have it even worse. They are denied all forms of local self-government. The fact is people in cities, villages, and townships, are afforded unequal protection of the law regarding the right to community local self-government.

### *The Illusion of Democracy*

The authority to locally administer State-dictated regulations does not constitute community local self-government. When residents of our communities are told to appeal to their state representatives if they want laws passed, they are sent on a fool's mission. No municipality, city, village or township has representation in the state legislature. Voting districts are gerrymandered for incumbency protection in violation of community integrity by whatever political party is in power come census time. The "representatives" choose their voters, rather than voters choosing their representatives.

### *Who will represent us?*

*We are the ones we've been waiting for.* To become part of the grassroots movement for community rights, you can participate personally in the Ohio Community Rights Network (OHCRN). Write to [info@ohcommunityrights.org](mailto:info@ohcommunityrights.org) for details. If you're interested in Community Rights Networks in other states, let us know. We'll get you the information you need.