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Live Free or What?

By Gail Darrell, New England Organizer

There is widespread sentiment that our state of New Hampshire gives towns a wide berth for local initiatives that pass at Town Meeting. The people who have grown up here believe in the independence of small government. With a motto of “live free or die,” we assume there will be no opposition from the state to local governing assertions.

However, when we dig deeper, we find considerable case law to support the contrary. In fact, there are more than fifteen cases where the New Hampshire Supreme Court has ruled in favor of state preemption and one case where the Federal Supremacy Clause was upheld, prohibiting towns from regulating or controlling cell phone towers.

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Check Out Our New Website

The Legal Defense Fund is happy to announce the launch of our new website in April. You can find it at www.celdf.org.

On the new site, you’ll be able to keep up-to-date with us through our first-ever blog. There will also be information on upcoming events and Democracy Schools.

In addition, you’ll be able to find information on our work with communities across the U.S. on issues including water privatization, sludging, and natural gas drilling. There is also a host of information about corporate rights, home rule, municipal self-government, and more.

We hope you find the new site informative and easy to navigate, as well as helpful in your research and keeping informed about the issues you care about most. If you have any feedback, we’d love to hear from you. Email info@celdf.org.

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

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Thank you for giving!

Thank you to our many supporters who helped us raise \$25,000 this fall, which will be matched with a generous grant from the **CS Fund**.

With your contributions, we will be able to assist the increasing number of communities that are reaching out to us for help.

If you haven't had a chance to give, please make a contribution today. Your support will help us work with communities facing threats such as the privatization of their water and the sludging of farmland.

You can contribute on-line at our new website, www.celdf.org, by phone at (717) 709-0457, or by mail: P.O. Box 2016, Chambersburg, PA, 17201 (a form is enclosed for your convenience).

A First Shot Across the Bow of the Corporate Ship of State



They came from communities across Pennsylvania – thirty-one people from thirteen counties: Cambria, Carbon, Centre, Chester, Erie, Franklin, Lancaster, Lycoming, McKean, Montgomery, Northampton, Schuylkill, and York. They came determined to break new ground with a campaign to secure democracy for all Pennsylvanians in the communities in which they live.

Assembled in Chambersburg by the Community Environmental Legal Defense Fund on February 20, 2010, for the first Community Rights Networking Conference, the people gathered represented Pennsylvania communities that were among the first in the nation to wield their inherent local governing authority to say “no” to mining, factory farms, land-application of sewage sludge and other harmful corporate activities legalized by state legislatures and permitted by state regulatory agencies. They were among the first to challenge the unjust structure of law that subjugates the will of community majorities to corporations. That law and those structures, enabled and supported by the state, rendered those communities powerless to protect themselves from corporate assaults.

Unwilling to accept that unjust status quo, those communities and their local elected officials have enacted binding local laws. These ordinances, drafted by the Legal Defense Fund, affirm local governing authority, strip corporations of the constitutional rights intended for real persons,

and ban specific corporate activities within those communities.

These groundbreaking Pennsylvania communities are now followed by a host of communities in a growing number of states that also are enacting local self-governance ordinances to protect themselves. It's become a peoples' movement—building democracy from the ground up.

This people's movement, however, is causing much consternation in corporate boardrooms and the chambers of the Pennsylvania Legislature. So much so, that the corporations and the state, determined to preserve the very profitable status quo, have closed ranks.

Corporations have threatened to sue the municipalities and, in 2005, the Pennsylvania Legislature enacted Act 38, the "Agriculture, Communities and Rural Environments" (ACRE) law, which gives the attorney general discretion to intervene on behalf of corporations and against the communities when municipal laws interfere with corporations' rights to despoil the communities and their environment for profit. With that one act, the legislature discarded any pretense that it is not wholly owned by corporate interests. And while Act 38 is only the latest in a long list of legislation that strips community majorities of the right to local self-government, the legislature made the mistake of assuming that Pennsylvanians, thus slapped, would stand down.

No. Undaunted by the muscle-flexing of the corporate state, on February 20, 2010, in Chambersburg, Pennsylvanians with experience
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The Supremacy Clause is often quoted in support of federal preemption of any undesired state exercise of authority.

The Supremacy Clause, Article VI, Section 2 of the U. S. Constitution states, “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.”

Justice John Marshall, (Supreme Court Justice from 1801 – 1835) interpreted the language above to intend that “the government of the Union though limited in its power, is supreme within its sphere of action.”

It was not until the 1930s that the Court shifted its opinion from one of states’ rights to one of giving the federal government the broad national power that it has today.

The ruling in the recent case, *Town of Nottingham v. USA Springs, Inc.* (2008 - Appeal), drove home the message of “corporate rights over community rights.” Despite significant scientific evidence to deny a water withdrawal permit, the New Hampshire Supreme Court affirmed it. Reacting to the seven year long controversy, Barnstead, New Hampshire passed a rights based ordinance at Town Meeting in 2006 to strip corporate privi-

lege and deny corporate water withdrawals within the town. Nottingham residents also pushed back at Town Meeting in response to the judges’ decision by working with Barnstead resident Gail Darrell to pass an ordinance in 2008 similar to the one in Barnstead. At present, there are four towns in New Hampshire with rights based laws on the books. Perhaps this was not the sort of legislative change the judge intended when he urged anyone unhappy with his ruling to pursue “a change in the law.” But it is change, nonetheless—change that is encouraged by Article 10 of the New Hampshire Constitution¹.

The strategy of challenging the current legal structure is a stumbling block to people who are looking for a remedy – some way to deny a project unfavorable to their community – without questioning state law. Selectmen and planning board members, as agents of the state, usually resist challenges that bring the letter of the law into question. No good citizen invites trouble with the state. However, when the state is seen as unprotective of the health, safety and welfare of its residents, law abiding people are forced to challenge existing state law in order to save themselves and their families from unwanted harm and possible health risks. This can become controversial and create a difficult barrier for the community to overcome, but we are seeing more and more people to stand up and speak out against state laws that do not protect the places they live from contamination or permitted, corporate plunder.

After many conversations about state preemption and Dillon’s Rule (where the state is the “parent” and the municipality is the “child”) we ask, “how is it that self-governing authority is guaranteed by the language of the New Hampshire Constitution, yet denied by several decisions issued at the Supreme Court level?”

We decided to closely examine how to correct this governing problem in order to provide people, communities and nature with protections that can be implemented at the local level.

On Thursday, February 4, 2010, several Democracy School graduates, very familiar with the rights based strategy, met to discuss how to remedy the problem of preemption.

Olivia Zink, Ellen Hayes, Judy Doughty, Chris Mills, Gail Mills and Steve Kowal brainstormed around the kitchen table at the home of Doug and Gail Darrell and adjourned with several tasks assigned for the next meeting. Chad Nicholson, who volunteered with the Envision Spokane project, was invited to join the group, as he was on the east coast visiting friends at the time. Altogether, the evening made for a valuable discussion of community rights.

With the assistance of Steve Kowal (on camera) we plan to craft and participate in several, short video pieces that will serve as a somewhat humorous recognition of the lack of local governing authority in New Hampshire. We hope to generate statewide support for a call to reconsider language for the New Hampshire Constitution that will guarantee the right to community authority

free from state preemption that is protective of community residents and all living beings.

After our next meeting in March, we will roll out a name for the group and pamphlets for distribution. We invite you to join us in making real the claim, "... all government of right originates from the people."²

¹NH Constitution Part First. Article 10. [Right of Revolution]. "Government being instituted for the common benefit, protection and security of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may and of right ought to reform the old, or establish a new government. The doctrine of nonresistance against arbitrary power, and oppression, is absurd, slavish, and destructive of the good and happiness of mankind."

²Bill of Rights Section Article I, New Hampshire Constitution.

Mt Shasta and Nevada City California

Concerned about water withdrawal for bottling and the "seeding" of storm clouds with toxic chemicals to produce corporate-owned rainfall in her pristine mountain community, Angelina Cook of Mount Shasta, California is one of those leading the charge for rights in partnership with Global Exchange and CELDF.



"Our ordinance is designed to reverse the dangerous momentum of business as usual by placing citizen rights ahead of corporate interests," says Angelina. "Our ordinance will prohibit corporate cloud seeding and ground water extraction for resale within city limits. In addition to preventing further degradation, it will transform our existing submissive private-public dynamic."

Though winter months are challenging, the citizens' group formed to pass the ordinance has braved the snow and freezing temperatures of the pacific northwest, knocking on neighbors' doors to talk

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in asserting local rights in the face of state usurpations initiated a state-wide campaign to rewrite the Pennsylvania Constitution. They issued The Chambersburg Declaration as evidence of their commitment and determination to achieve that goal.

The day-long conference was the first opportunity for many of these local organizers to meet and share their experiences. Describing their townships and boroughs as “resource colonies for corporations” and “sacrifice zones” for waste haulers, they concluded their deliberations by pledging to become Community Rights Networkers, and by issuing the Chambersburg Declaration, in which they affirm (in part):



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;

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about rights, and to gather the petition signatures needed to put the ordinance on the ballot this year. They have also been waging a lively debate in their local newspaper about rights, with different members of the group publishing an editorial every week, responding to questions and concerns they hear from residents at the grocery store, community meetings or as they visit neighbors. They expect to have far more signatures than required by mid-March.

Farther south, in the foothills of the Sierra mountains, residents in Nevada City, California are also gearing up for a rights-based push. From resort development to destructive gold mining, timber harvesting and massive water diversion and damming, residents are seeking to ensure a community controlled sustainable future. Following a long series of community meetings, public presentations and a Democracy School, a growing number of residents are now looking to mount a campaign to adopt a community Bill of Rights that would provide a legal platform for sustainability policies to be adopted that reflect the vision of the community.

For information about work in California, contact Shannon Biggs at Shannon@globalexchange.org or 415.575.5540.

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That environmental and economic sustainability can be achieved only when the people affected by governing decisions are the ones who make them. . . . (To read the complete Declaration, log onto our website at www.celdf.org).

And, in the Declaration, they resolve to build a people's movement ". . . 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," and that "such a movement shall begin in the municipal communities of Pennsylvania."

In the months and years ahead, they will educate and organize their fellow citizens in their own communities and in others, building the network required to achieve the state-wide consensus and momentum that will culminate with a constitutional convention. Within each of these communities, delegates will be selected that will assume the task of drafting a new Constitution – one that reflects the will of the people and the local governing authority of our communities – to be ratified by popular referendum.

Like the people's movements of the past, this endeavor is enormous in scope, and it requires that these thirty-one intrepid Networkers increase their numbers exponentially. To this end, the Networkers and the Legal Defense Fund staff invite you to join us in making history. To learn more about the campaign and the ways in which you might participate, contact Ben Price at 717-254-3233 or benprice@celdf.org.



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