

THE NEW HAMPSHIRE COMMUNITY RIGHTS NETWORK PRESENTS:

HOW TO PROTECT YOUR COMMUNITY

Enact Local
Democracy
Now!



DEDICATION

Gail Darrell of Barnstead, NH, was a pioneer in the growing Community Rights movement. She was harassed and threatened for believing that community rights to a healthy climate should be elevated over corporate privileges, and yet, she never let fear stand in her way. From all of us at the NHCRN and CELDF, we dedicate this booklet to her memory and in honor and celebration of her legacy of service to Community Rights.

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**HOW TO PROTECT YOUR COMMUNITY:
ENACT LOCAL DEMOCRACY NOW**



THE BARNSTEAD STORY

What Would You Do to Protect Your Community?

Barnstead, a rural town in New Hampshire, relies on a local aquifer for its drinking water. In 2004, residents discovered a nearby town's pure water source was being threatened with corporate extraction by USA Springs LLC to be bottled and sold overseas in Italy. Fearing that their source of water would be depleted as well, residents passed a groundbreaking, first-in-the-nation, community rights-based law in 2006 to protect the water ecosystem from corporate extraction and bottling. They made a decision: No. Not today. Not tomorrow. Not ever.

Barnstead residents stood together to protect their water source and their community. They used local lawmaking to codify the inherent and inalienable rights of all inhabitants to healthy and vibrant ecosystems, and the rights of ecosystems to exist, naturally evolve and flourish. They used law to codify their right to make local governing decisions to protect the health, safety, and welfare of the whole community. They understood that without water, there would be no community; without community, the ecosystem would perish.

A decade later, Barnstead residents felt their sense of personal safety was undermined by the 2016 Republican presidential candidate Donald Trump's rhetoric urging that Muslims be required to carry religious identification. Townspeople did it again. They passed another first-in-the-

nation, community-rights-based law: this one to create a sanctuary from any potential requirement to carry religious identification.

“You wouldn’t think local laws like that would go against state laws,” said Barnstead resident Diane St. Germain, who advocated and petitioned for the ordinances. “But you’d be wrong.”

Barnstead Protects the Right to Water

“We watched battles over water between residents and corporate actors in neighboring communities. It wasn’t going well for residents—but it was going splendidly for the corporation. They wanted to take the water and sell it. They were winning,” said Doug Darrell, another Barnstead resident.

“The thing is, everyone was fighting about the permit [issued by the state to allow water extraction] and trying to block it. Ninety percent of the time, though, the permit is a done deal, because we live under a structure of law that pretty much guarantees corporations will get what they want—the hell with what the people want,” said Gordon Preston, who served as a Barnstead town Select Board member.

And so, Barnstead community members decided to do something different. Instead of waging a useless battle fighting a permit that they were bound to lose, they addressed the issue head on: they made their fight about rights for the natural environment and the residents living there. Barnstead reached out to the Community Environmental Legal Defense Fund (CELDF) to assist the Town in drafting a rights-based ordinance (RBO) that banned corporate



Photo: Channing Johnson, originally taken for Yes! Magazine. Pictured (from left to right): Gordon Preston, Gail Darrell, Jack O'Neil.

privatization and extraction of water. They did the unthinkable; they codified their right to govern their own community, their right to water, and their right to safeguard the natural environment. Residents confronted the corporate power that threatened their very existence; stripping the corporations of their claimed "rights" that interfered with the people's rights and the rights of ecosystems to exist, naturally evolve and flourish.

"If we don't stop corporations and the government that enables them, we'll continue to be resource colonies for them. State and federal law says we can't do what we did. We did it anyway. Barnstead is no resource colony," said Darrell.

Gail Darrell, Doug's wife, was a lead organizer to protect Barnstead water and stop corporations from stealing it. She passed away in 2015, but in a 2007 interview with Yes! Magazine, she stated, "We talked to people about water rights everywhere we met them—at the dump, in parks. We told them why we needed to have this ordinance be unanimous and in place before corporations came to town."

It took time and education for people to understand that, when corporate-claimed "rights" come up against people's rights, corporations win. It was time to do something about it. Barnstead community members adopted the *Barnstead Water Rights & Local Self-government Ordinance* in March 2006 at Town Meeting with one dissenting vote. They made history. It was the first law in the country to protect people's right to water.¹

Barnstead Protects Freedom from Religious Identification

In the 2016 presidential campaign, candidate Donald Trump launched political rhetoric against minorities, including Muslims. He spoke in favor of requiring religious identification cards.

Barnstead resident and Haulocaust survivor, Kati Preston stated in a local interview, "I started thinking about it because every time I turned on the television I was horrified."² As a survivor of Nazi Germany, where she lost 28 family members, she felt something had to be done to protect Barnstead

¹ Learn more about Barnstead in this short video: <https://youtu.be/rtd-1AUdaL0>

² Press Release: Barnstead, NH, Adopts First-in-the-Nation Law Protects Against Religious Persecution, Including Religious ID Requirements (<https://celdf.org/2016/03/press-release-barnstead-nh-adopts-first-in-the-nation-law-protects-against-religious-persecution-including-religious-i-d-requirements/>)

residents if a law was adopted requiring religious identification. On her website, Preston wrote, “‘Never Again’” applies to all humanity.”

Residents drafted their *Right to be Free From Religious Identification Ordinance* and adopted it unanimously in March 2016—once again making history as the first community in the country to adopt a law codifying this right.

“I am proud to be part of this community, standing up and doing the right thing. We don’t suffer bullies here, and we won’t let harm come into our Town, be it corporate or government,” stated Preston.

Barnstead Reflections

“There’s all this talk about independence, freedom, liberty. And it sounds real good, until you actually try to do it. Until you tell USA Springs they’re not welcome here. Or you have government singling people out. Then, the truth comes out—it’s not we the people who get independence, freedom, and liberty. It turns out, government and corporations do. But that’s not happening here. We won’t have it,” stated St. Germain.

A growing number of communities across New Hampshire feel the same way. Since 2006, they’ve been adopting rights-based ordinances (RBOs) to protect their communities from a range of threats. Across the U.S., hundreds of other communities are doing the same.

ENACT LOCAL DEMOCRACY NOW!

Community Rights is about local decision-making that is based in the inherent and inalienable right to self-govern and Rights of Nature; it's about local democracy. Democracy is making the decisions about what happens, where we live. Democracy is *not* participating in a regulatory process that keeps us locked in a hamster wheel, trying to lessen one harm at a time. Community Rights is refusing to accept that corporations have greater rights than human beings and ecosystems. It is agreeing that the state does not get to tell us what will happen in our communities.

What does it mean to get locked in the regulatory “hamster wheel?” It means accepting and validating a set of rules that protect corporations and dictate how the rest of us are allowed to be activists. Corporate anthropologist Jane Anne Morris pointed out how activists take on one issue at a time, spending tremendous time and energy educating themselves on the harms they face, the regulations governing those harms, lobbying representatives, and submitting regulatory testimony, etc.³ The result is an endless series of long, arduous, time-consuming, and costly battles, taking on one issue after another to simply try to make the harms in our communities a little less. This process is a hamster wheel; it keeps us busy, running endlessly through the same process, and it is exhausting. Once in a while, the regulatory hamster wheel brings us success. But not often. Why not? Because the current system of law and government favors claimed corporate “rights” over those of humans and ecosystems.

³ <http://democracythepark.org/help-ive-been-colonized-and-i-cant-get-up/>

Corporate “Rights” vs Rights of the People

What does it mean to accept that corporations have greater rights than human beings? It means exactly what we see happening in our communities everyday: corporations get to do what they want. They get to do it where they want. And they get to make a lot of money doing it—at the expense of real people and natural ecosystems.

Yes, there are regulatory laws that corporations must heed. Written by a few wealthy people (mostly white men) with corporate input, they decide the extent of these harms. They decide what rate of harm is acceptable (i.e., what rate of harm the people will accept). They decide what minimum wage is paid and how accountable corporations will be. This is the regulatory process used ostensibly to address the most egregious harms and placate enough people. Ultimately, corporate actors have the liberty to act with impunity within the loose boundaries (rules) they've set for themselves via lobbied regulations.⁴ The courts back them up, further legitimizing corporate claimed “rights” and privileges.

You need only look into the development of the first of many regulatory agencies, the Interstate Commerce Commission (ICC), to gain a sense of the intent and effect of such agencies. In 1893, then Attorney General Richard Olney assured the president of the Burlington Railroad that there was nothing for those protective of corporate privileges to worry about:

4 Corporate actors make a lot of noise about how constraining regulations are to their business (i.e., profits). Remember, however, that they write these laws themselves and give them to government representatives to adopt. The regulations' sole purpose is to placate communities while industries continue their harms.

"The [ICC]...is, or can be made, of great help to the railroads. It satisfied the popular clamor for a government supervision of the railroads, at the same time that the supervision is almost entirely nominal. Further, the older such a commission gets to be, the more inclined it will be to take the business and railroad side of things. It thus becomes a sort of barrier between the railroad corporations and the people and a sort of protection against hasty and crude legislation hostile to railroad interests."⁵

The State vs Community Control

What does it mean to accept that the state gets to tell us what will happen in our communities? It means accepting that it is okay for state legislatures to enact laws that remove authority from local communities. It allows the legal relationship between the state and municipalities to be defined as that of a parent to a child. This deprives communities of their own rights to protect their health and safety with *more* protective measures than those provided in state laws. State laws supersede, override, or preempt local lawmaking. This is called state preemption. Corporate actors and state actors function as an oppressive alliance comprising the corporate state.

The role of an activist is not to navigate systems of oppressive power with as much personal integrity as possible, but rather to confront and take down those systems. Communities who hop off the hamster wheel, who refuse to accept that corporate rights supersede human and ecosystem rights, and refuse to allow the state to dictate local municipal authority are modern day freedom fighters—as shown by the people of Nottingham.

5 Kazis, Richard and Grossman, Richard, *Fear at Work: Job Blackmail, Labor and the Environment*, New Society Publishers, 1991, p. 76.

Nottingham: Stealing Community Water

In 2001, USA Springs submitted an application to the state's Department of Environmental Services (DES). They sought a "large groundwater withdrawal" that would permit them to extract 450,000 gallons of drinking water per day from Nottingham's water source to bottle and sell overseas. The DES rejected the permit, listing 27 reasons for their denial. One of those reasons was a water-draw test revealing that the pumping, which was less than the proposed amount, resulted in neighborhood wells dropping 40 feet.

Additionally, the test revealed that the pumping drew contaminants deeper into the aquifer. While Nottingham residents expressed concerns, USA Springs lawyers promised there was nothing to worry about, assuring them that USA Springs was a good neighbor and would fix any harms.

Vista of the White Mountains region of New Hampshire (Michelle Sanborn)



USA SPRINGS' PARTNER IN LEGALIZING HARM

After denying the permit twice, when USA Springs offered to address the water contamination issue, DES approved the permit, ignoring the 26 other reasons for which they denied the permit. Thus, DES is a partner in enabling and legalizing this corporate harm.

DES's approval ignored Nottingham community members, who attended regulatory hearings and followed regulatory proceedings, pleading with the



DES to protect and preserve their drinking water. Residents thought that, if enough people attended and enough evidence was provided, the DES would decide in their favor. They didn't know that they never stood a chance.

“When people and communities attempt to leverage constitutional rights to protect themselves, corporations use those same rights to stop them.”

Seeking Salvation from the Courts

Convinced that they would find a remedy in the courts, the Towns of Nottingham and Barrington, together with the local community group fighting to protect the region's water, filed a lawsuit appealing the permit.

It wasn't just the DES supporting USA Springs. The New Hampshire Supreme Court refused to recognize that the people most impacted by the takeover of the region's drinking water had *standing* in the case. Yet the state of New Hampshire—ostensibly made up of elected officials and public servants to act on behalf of the people—was permitted by the state supreme court to intervene on behalf of corporate interests, opposing community interests.

The Town of Nottingham spent nearly half a million dollars in an attempt to protect their water. The justices, predictably, ruled unanimously in favor of USA Springs and the state, which had filed a brief supporting the corporation. Community members were beginning to understand this was not the exception, but the rule.

A COLLABORATION BEGINS

Barnstead and Barrington residents knew what was happening in Nottingham. Time, money, energy, and passion combined were not enough to protect the aquifer from USA Springs, the DES, and their own representatives. Barnstead residents reached out and began to collaborate with Nottingham and Barrington residents to advance Community Rights to protect water, eventually turning their back on a regulatory system designed to force harm into their communities.

It took some time for the core Nottingham organizers—now known as the Nottingham Water Alliance (NWA)—to reach a majority of their neighbors. Many neighbors believed that all business was good business because it promised taxes and jobs. Just as the NWA found it difficult to let go of their belief and hope that government would look out for the community's best interests, so did their neighbors.

It took time for people to understand that *not* all business is good business—that new jobs from outside corporations are often filled from outside the town, and that the town's treasury would be severely burdened by having to pay infrastructure costs. Further, the town, its residents and ecosystems would be harmed by the resulting air pollution from trucking, contaminants in their drinking water, and the predictable loss of water levels in surrounding wells.

Nottingham Forges Ahead

Nottingham residents ultimately rallied together, overcoming their belief in the myth of a government of, by, and for the people. Like in Barnstead, Nottingham residents reached out to CELDF to assist with drafting language for a RBO. They turned to themselves to protect their community, adopting their *Nottingham Water Rights and Self-Government Ordinance* with two-thirds of vote at Town Meeting in 2008.



ENFORCING THE LAW

The NWA sent a registered letter with a copy of their new Water Rights Law to USA Springs, informing them that their operations would violate the town's rights-based ordinance banning corporate water withdrawals for resale outside the boundaries of the town. The corporation had nearly completed construction of its facility and was scheduled to soon begin extracting community water. Instead, they fell back.

After years of trying to force Nottingham's water into privatization, USA Springs ran out of money. Nottingham residents were persistent and unyielding in the wielding of their law. USA Springs stopped construction and, soon after, filed for bankruptcy. Corporate actors aggressively sought investors as they went through bankruptcy proceedings. Residents attended every hearing, learning of any new potential investor and mailing the investor a copy of the RBO and a letter explaining that the business activity they were considering investing in would violate Nottingham's local law and community members' intent to enforce it.

Seven times they thwarted USA Springs' efforts to bring in new investors from the US and Europe. Eventually, USA Springs attempted to keep the names of potential investors hidden from public records. That failed as well, and after eight years, the state did not renew the permits.

However, it did not stop there. In 2016, the original investor for USA Springs attempted to buy back the abandoned property for back taxes. He claimed

he had investors lined up to complete construction and would be refiling for operating permits.

The NWA filed a *pro se* objection and attended the bankruptcy proceeding. The judge acknowledged that even if the investor succeeded in buying back the property, he would still face the local law banning corporate water withdrawals for resale. Unable to secure investors before the town could assume the property for back taxes, in 2019, USA Springs lost its property to the Town of Nottingham.

Community Rights Grows in Nottingham

The residents of Nottingham continue their work to grow Community Rights. In 2019, a majority of residents voted to adopt their *Freedom from Chemical Trespass Ordinance*. They drafted and advanced the measure in response to nearby hazardous waste dumping at the Coakley Landfill (a superfund site) that has contaminated surrounding waterways.

Town Betrayals

Usually, if there is a challenge to an RBO, it comes from outside corporate actors attempting to force themselves into a community. However, Nottingham's own resident and local business owner Brent Tweed filed a lawsuit against the Town of Nottingham challenging the local law. Tweed is the sole corporate actor of G&F Goods, LLC. While the business did nothing to violate the RBO and the law did not threaten his business nor was it ever enforced against him or his business, Tweed decided to act against the will

of the townspeople—as did the Town of Nottingham. Elected town officials refused to defend the RBO, instead passively agreeing with the plaintiff’s arguments.

The NWA then retained CELDF to represent them in defending their rights and filed a motion to intervene in the case. The trial court judge refused to recognize the people’s right to defend their own law, denying the motion to intervene and relegating the NWA to a non—party status even after the Town revealed that it had no intention of contesting Tweed’s arguments. Without the NWA to support the RBO, the only two parties to the case were in complete agreement over all issues raised in the complaint (except the assignment of attorney fees). Whether a community has a right to enact laws about the decisions that affect them was to be decided by two parties on ostensibly “opposing sides” of litigation but with the identical opinion that profit, not people, govern.

The NWA appealed the trial court’s denial of the motion to intervene to the New Hampshire Supreme Court. The NWA and Tweed swapped a series of briefs on the issue and both parties requested oral argument, but the New Hampshire Supreme Court decided that oral arguments were not necessary. On December 23, 2020, the Court returned a one-page opinion affirming the trial court’s decision to deny the NWA’s motion to intervene. Six weeks later, the trial court granted the Plaintiffs’ unopposed motion for summary judgement and took Nottingham’s RBO off the books.

Harboring No Illusions

Nottingham residents harbor no illusions. They recognize the judiciary is not about justice and rights for people or nature, but about supporting the will of corporate actors. Residents recognize when a law that expands rights and stops harms is blocked by judges to favor corporate profit, we cannot claim to live in a democracy.

Nottingham residents learned a hard lesson. The same corporate interests that control the lawmakers and regulatory agencies control the courtrooms, too. "When enough people stop denying that we live in a corporate state, then we can begin to change it," stated Peter White of NWA. "Our work is not only to protect our town. It is to protect our region. It is to protect future generations. It is to up-end the status quo so we can truly create a democratic, rights-based, life-giving system."



A PATHWAY FORWARD—RBOS: WHAT ARE THEY AND WHY ARE WE USING THEM?

The communities of Barnstead and Nottingham chose to fight the tyranny that oppressed them. The pathway forward was a rights-based ordinance. An RBO is a municipal ordinance or charter amendment that codifies inherent, inalienable rights—Community Rights—for *all* inhabitants⁶ within a community.

An RBO addresses the concerns of the community, including threats to local businesses, local economies, land-use, health, and safety. It secures inalienable rights, elevating these rights above other laws⁷ that may infringe on them. RBOs address legal barriers to the real-time enjoyment of these rights, confronting these barriers and challenging their legitimacy.

While existing legal structures often do not recognize a people's right to decide what is best for their community, the right of local self-government derives from the fundamental principle that *all* political power is inherent in the people, is exercised by them for their benefit, and is subject to their control.

RBOs are a powerful tool for communities to help address the barriers to local self-government—and a necessary tool in the face of the economic

⁶ This refers to humans, flora, and fauna.

⁷ State preemption, corporate “rights” and privileges, and regulations are subordinate to the rights of natural persons and ecosystems.

and environmental harms we are daily facing. Without RBOs, we are at the mercy of state government and the corporations pulling its strings.

In short, RBOs recognize the sovereignty and legislative authority of community members to decide what constitutes harm to their community and what protections they can take. Defining harm and determining protections are at the discretion of the community. RBOs can only *expand* on individual and collective rights; they can never restrict or abolish those rights.

The Foundation of an RBO: Right of Local Self-Government

The right of local self-government is the foundation of RBOs. It consists of three vital components:

- governmental decision-making controlled by community members when drafting, adopting and enforcing policies or laws that directly impact the wellbeing of that community;
- security and protection of Community Rights—political, civil, economic, and environmental—for all community members; and
- the right to overturn and institute a new local government if the current one restricts or threatens the health, safety, wellbeing or Community Rights of its inhabitants.

RBOs are More than Addressing Environmental Harms

RBOs affirm Community Rights. They are not only about flora and fauna. They are not only about cancer rates. They are about economic harms, social

needs, personal security, systemic racism, and any other threats that the corporate state imposes on people and ecosystems for profit and power.

In addition to RBOs banning environmentally harmful corporate activities, New Hampshire residents have drafted RBOs affirming the human rights of undocumented persons, the fair compensation of workers, and free and fair elections. All benefit the social and economic vitality of the community.

What do you want and need in your community? What do you and your neighbors envision for the future? RBOs are a means to help realize that vision.

Addressing Critiques

Residents ask critically important questions about the implications of challenging unjust laws to realize the right of local self-government. They ask about the risks arising from advancing a healthy and equitable vision of what many of us want for our communities.

Challenging unjust laws and codifying the right to a healthy and equitable community invites the risk of a lawsuit. A municipality may be sued by a corporation trying to force a harmful project (for violating corporate “rights”), and/or by our own state government (for daring to locally govern ourselves through our municipality).

An equally critical question is this: What is the risk of doing nothing or pursuing government-designed and approved “solutions” (regulatory channels) to the harms and oppression we face?

By doing nothing, we are guaranteed to continue suffering harms in our community—environmental, economic, and social. We are guaranteed a steep price: unsustainable wages; fear of raids for undocumented residents; diminished or unusable water; loss of revenue for the municipality and residents due to a decline in tourism and event participation; loss of tax revenues from businesses and homeowners relocating; and the largely unquantifiable damage to the serenity, health, and safety of a community in the absence of a vibrant natural community.

Is a guaranteed future of ongoing suffering a fair price to pay for avoiding the risk of a lawsuit? Threatening or bringing a lawsuit is just one of many ways that corporations and the wealthy elite keep the 99% from organizing in our best interests. By pandering to that threat, we keep ourselves compliant and complicit in our own exploitation.

Regulatory law does not stop worker or environmental harms to our communities. At best, it slows down the rate of harm. Regulatory laws are written by representatives and supporters of the very corporations being regulated. And in the case of the environment, if state law considers the project to be legal, the permit must be issued. Thus, by objecting through a written comment process, residents often spend extraordinary time and money to stop a project, only to have it forced into their community anyway.

In Bethlehem, New Hampshire, taxpayers have paid \$1.5 million in fighting regulatory agencies against Casella's continued landfill expansion. In the early 2000's, the Town of Nottingham fought and lost a state permitting

battle against USA Springs, LLC. That legal battle cost the town over \$400,000.

This is particularly galling given that regulatory fights have nothing to do with Community Rights to clean air, water, soil, the right to local self-government, or the Rights of Nature, and everything to do with negotiating the terms of our own exploitation. It is galling because the fight is on the corporation's terms without a viable framework for stopping them.



THE PROBLEM FACING OUR COMMUNITIES

Our freedoms and the health of our communities and ecosystems are under attack. And the attack is coming from corporations, judges, and public officials acting in unison to set in place policies and practices that are causing real physical and psychological harm to us and the places we live.

Shattering the Constraints on Our Authority

States delegate specific governmental powers to municipalities. That delegation of power is predominantly in the state's and their benefactors' interests. Municipalities are expected to abide by the carefully scripted terms of that conveyed authority. States share their power over only a narrow scope of municipal affairs, such as trash pickup and noise ordinances.

As examples, in 2001, the New Hampshire Supreme Court struck down an attempt by the residents of Bethlehem to prohibit a solid waste facility from setting up shop in their town.⁸ In 2008, the New Hampshire Supreme Court prohibited residents of New London from limiting boat docks on a lake in their town.⁹ In 2011, the New Hampshire legislature passed a statute prohibiting towns from regulating or controlling the sale of firearms. These are just three out of thousands of examples that illustrate how much power our government is denying *We the People* to make decisions about what can and cannot go on locally in our own communities.

8 North Country Environmental Servs. Inc. v. Town of Bethlehem, 146 N.H. 348 (2001)

9 Lakeside Lodge, Inc. v. Town of New London, 158 N.H. 164 (2008)

Rights-based ordinances are a step towards changing that hierarchy. The people's right of local self-government is inherent and inalienable. It is not dependent upon state delegation of power. Municipalities are the vehicle through which we most easily access that right. By enacting RBOs, we begin to shatter the constraints imposed on our decision-making authority in the places where we live.

Actively seizing the mantle of local decision-making puts the needs of people and natural environments above the claimed "rights" of corporations. We can secure legal protections against harmful practices that disregard the health, safety, and security of people and ecosystems. In New Hampshire, where residents are experiencing the highest rates of breast, bladder, esophageal, and pediatric cancer in the nation, we need to act now to secure these protections.

W.F. Herrick's 1990 "Democracy" sculpture stands outside the main gate of Courthouse Plaza in Burlington, VT (Ben Price)



Let's Fight for What We Need, Not What We Think We Can Get

Just as the residents of Barnstead united to oppose the potential targeting of Muslims and the corporate takeover of their drinking water, if something unjust is happening or coming into our community, we have to decide what we're going to do about it. If we choose to fight, then let's fight on our terms, in our framework, based on what we need, and what our collective survival depends on—not what we think we're allowed to ask for.

Otherwise, we can follow the regulatory path, the option our government gives to us. Limited to comments that are only considered under strict guidelines, we will likely spend large sums of money arguing about parts per million and set-backs (if it's a corporate project), or minimum wage laws and hours worked (if it's about workers), and so on. The larger issue at hand, the harm to the community, is not part of the discussion. Regardless, if it's a government-sanctioned corporate activity, our comments hold no authority; profits alone decide whether our community will become a sacrifice zone.

Sometimes regulatory opposition coincides with a corporate project closing down. In these instances, it may appear that the regulatory system is working. Individuals that have submitted comments will believe that their efforts beat back the harm. In reality, a regulatory agency or court's decision to shut down a project is based on how the state and federal regulatory rules are written and interpreted. It is often based on economic concerns and provides the corporation redress. It has little to do with the concerns, needs, or interests of the community.

By taking the rights-based path, we elevate our terms. We argue for our inalienable rights to make our own governing decisions. We will likely spend less money, and we are more likely to keep the harm out. In the rights-based path, win or lose, it becomes crystal clear to everyone that our fight has nothing to do with setbacks or wage laws, and everything to do with abuse of power and its effects on local economic, environmental, and social justice.

How Corporations Hide Their Tyranny

Many corporations want to maintain the façade that they are “good neighbors.” State government officials want to maintain the façade that they actually represent us. Corporate state actors hide their tyranny behind these myths and appear benevolent (corporations) and representative (government).

This can work in our favor. Sometimes when a community passes an RBO asserting local decision-making authority and banning a corporate project, the corporation simply drops the project. In cases like this, corporations don’t want to be seen as tyrannical. They want good publicity.

RBOs force corporate state tyranny out into the open. If corporations force their way in, RBOs confront them with public questions they prefer not to answer, e.g., is your profit more important than our community’s health, safety, and well-being?

When Corporations and Government Sue Communities

When state governments and corporations sue municipalities to overturn

RBOs, they sue to deny people using their right of local self-governance to protect their health, safety, and well-being. It makes for bad publicity.

It reveals that our government and industries are forcing harmful activities into our communities against the expressed will of the people.

It reveals that our government and industries are forcing a financial burden on taxpayers to defend their own local law.

It reveals government and industries' willfully violating our rights: the right to govern ourselves, our right to a healthy environment and economy, our right to safety, and our right to a government that *actually* represents us and acts on our behalf.

The Cost of Getting Sued

It's a real possibility that some governments and corporations will choose to sue anyway and a municipality may face litigation costs.

Let's look at the numbers. Defending an RBO generally costs a municipality less than defending traditional state regulatory or local zoning laws. Municipalities (taxpayers) pay a high price to enforce and defend local land-use regulatory ordinances. They pay a high price to persuade state legislators or regulatory agencies to raise the regulation standards, or even to enforce existing regulations. And the benefits to communities, from this traditional regulatory system, are much lower—we are still faced with the initial harm and suffer all of the financial and environmental consequences that such harm incurs.

Enforcing and defending our right to protect human and natural communities, in contrast, is about keeping out the harm altogether.

In Nottingham, residents changed tactics altogether. After going through the traditional, regulatory route (trying to stop the permit) in the early 2000s to stop USA Springs from bottling their water, they decided to make their fight about inalienable rights to govern themselves. They adopted an RBO in 2008 that prohibited commercial water extraction for sale outside the town.

Since then, the town has incurred no additional legal expenses regarding the mining of their water. Nottingham residents used their RBO to force the developer into bankruptcy.

Summing it Up

Passing an RBO does not necessarily avoid a legal challenge. It does, however, change the grounds for legal arguments if the municipality is sued and/or when the RBO is enforced. No longer is it about how much toxin is okay, or whether or not \$7.25 is an acceptable minimum wage compared to \$8.00, or if detaining immigrants is acceptable treatment as long as certain procedures are followed. Instead, it's about our rights to a healthy and sustainable environment and economy, and freedom from discrimination—regardless of how “humane” the cage is that people are kept in. And it's on *our* terms, not on the predefined terms that most benefit corporations or governments.

This is about *We the People* and our authority to make the decisions in the places we live through a process of democratic organizing, inquiry, debate, and voting.

"Representatives Hall"; the House Chamber of the New Hampshire houses the largest legislative body in the U.S. with 400 members (Michelle Sanborn)



CREATING A RIGHTS-BASED ORDINANCE (RBO)

As a preliminary matter, no law or ordinance is fool-proof. Local people may legislate imperfectly. Democracy, however, is built on the notion of collective self-determination rather than perfection. This means *We the People* make decisions that affect us, even if the consequences may not be what we hoped, knowing that we will have to make adjustments as we go along. We can amend our policies and laws, evolve in our governance as we evolve in our understanding of the world and each other and as our climate changes around us. We stay clear on our right to self-determination and our right to a government answerable to our expressed needs.

We can hold ourselves accountable to learn from our mistakes, which is more than we can ever expect from the political system that binds our elected officials. That system was never designed to represent us.

We note that democracy is more than governance by a majority. It is a way of being in relation with one another where we are mindful of our own needs and those of others in our community, including natural ecosystems. This relationship and mindfulness helps us translate those needs more directly into laws.

Once, as individuals within a community, we collectively recognize our right to protect the land we inhabit, the health, social, and economic well-being of all, and our democratic freedoms, we are ready to create an RBO.

First, Identify the Problem

What issues are causing concern? Perhaps you want to establish a living wage or protect undocumented immigrants. You may want to stop the installation of a methane tank that is part of a fracked gas pipeline. You may wish to redirect funding from your bloated police budget into much needed public resources. You may not face an imminent social, economic or environmental threat at all; but neighboring towns and cities do, and you want to take proactive measures. Whatever the issue, your first step is to articulate it.

Second, Educate Your Community

Once you have articulated the issue, begin community conversations: Is there an explicit threat or harm to the community? Does the harm threaten the rights of the people and/or ecosystems? If so, to what—a living wage, healthy environment? Are there others who agree with you? What do you envision? What is the alternative? Once you grasp the scope of the issue, talk with friends and neighbors face to face by knocking on doors, inviting close friends to meetings who then invite their friends, who also invite their friends, and so on. Host town meetings, Democracy Schools¹⁰, workshops, film series, and discussion venues. These meetings and community engagement can be in-person or virtual.

Educating and outreach takes time. There are no shortcuts to recognizing and exercising your rights to a safe, healthy and equitable community.

¹⁰ Learn more about Democracy School here: Democracy School | <https://celdf.org/celdf-services/education/democracy-school/>.

Democracy is not a spectator sport; it is active and ongoing. If you find yourself discouraged, reach out to other communities who have done this work or the New Hampshire Community Rights Network (NHCRN)¹¹. You are not alone! Hundreds of communities began advancing rights-based work through education.

Third, Form a Core Group

From these efforts, a core group of diverse people will form to work with you to educate community members and local officials more broadly about the issue and how RBOs can address it. It's important that those who have been historically marginalized in the decision-making processes are at the center of this core group and the work to ensure that everyone's needs are being voiced and met. This needs to be done mindfully, it takes time to build the trust needed for such work. Inclusivity is more than just picking diverse members. It requires all members—especially white, male, able-bodied, straight, cisgender, and/or affluent members—to commit to doing their own political education on racism, sexism, transphobia, homophobia, ableism, classism, and other forms of oppression.

Fourth, Write the Ordinance

It is now time to draft your rights-based law. Be sure to use language that reflects diverse voices and the needs and views of the majority of those supporting this rights-based effort.

¹¹ Learn more about the New Hampshire Community Rights Network, www.nhcommunityrights.org.

The NHCRN can provide assistance, through its collaboration with CELDF, and having over 15 years of experience supporting communities through education, organizing assistance, and creating RBOs. Guidance on what is included in a RBO can be found in the Appendix. Remember, You and your community lead this process!

Fifth, Get Support for the RBO From Residents, Community Organizations and Business Owners

Because of your efforts, people are now aware of the issue. They are aware that this is about democratic, social, environmental, economic, and human rights. You have a clearly articulated Ordinance to address the issue and secure and protect rights. It is now time to build on your momentum and grow support for the RBO.

You can hold meetings, knock on doors, and campaign on social media. You can create educational materials and host workshops. You can invite guests who have led RBO campaigns in their communities to share experiences via community presentations, video conferencing, or calls. You can develop relationships with and gain support from existing groups in your community, including advocacy groups, churches, parent-teacher associations, business organizations, labor unions, and more. Be creative! You can organize mutual aid projects related to the issue your RBO addresses.¹²

¹² For example, a mutual aid project relating to an RBO establishing the right to be free from discriminatory policing might be hosting a free tail-light clinic or legal self defense training. If your RBO addresses toxins in the air or soil, you may wish to have conversations about Community Rights and self governance while you plant fruit trees for the public to enjoy or host a “gleaning” event.

Building support is empowering and inspires what is possible for your community.

Sixth, Put the RBO to a Vote

There are a number of ways this can be done. The process is determined by how your municipal governing body is structured. Residents in SB-2 towns and towns with traditional Town Meetings can ask their Select Boards to place the RBO on the annual Town Meeting Warrant. If they refuse, residents



can petition the RBO by gathering signatures from supporters who are registered voters. You will need either 25 signatures or 2% of registered voters, whichever is less.

Residents residing in a city or a town with a Council will have to check their municipal charter to determine if and how they can petition a local law, if the Council refuses to vote on the Ordinance or votes it down. Educate people on the RBO adoption process and voting date!

Once the Ordinance is on the Town Meeting Warrant or taken up by the Council, continue building support. In the days prior to the vote, rally community members by making phone calls, posting on social media, sending texts and emails, knocking on doors, and posting signs in high-traffic areas throughout the town/city. You need everyone possible to show up and vote.

Sometimes an RBO doesn't pass the first time. This can be discouraging for some people. However, it is part of the process. Learn from your experiences: What worked? What didn't? Why did some people vote against the RBO? For example, some people need more time to understand the issue and the harm it poses. Take what you learn, regroup, and start again. Try inviting someone who was on the fence into your discussions to help you rephrase the Ordinance or alter your approach in talking about the issue and the RBO. Ask those who opposed the Ordinance to help you understand their concerns. Remember, democracy is about building community relationships.

SUPPORTING AN RBO ONCE IT'S PASSED

Residents often think the work is done once they've passed an RBO. Sometimes this is when the real work begins.

Community

In order to challenge an illegitimate structure of law and government head on, we must be willing to take actions that are based on our inherent and inalienable right to protect ourselves, future generations, our communities, and the ecosystems upon which we are dependent for our survival.

Organizing efforts to write and pass an RBO means you have likely created informed networks of diverse community members who are well-prepared to defend and enforce the Ordinance once it is passed.

The importance of building community cannot be overstated. It's arguably the most important action—the foundation to achieving your and your neighbors' goals. In the process of community building, you will have built trust and inspired action. You will have learned to support one another through the ups and downs of rights-based work. You will be a community who will fight for yourselves and future generations with purpose, care, resilience, and endurance, and you will model the community in which so many of us want to live.

Opposition

Those opposed to the RBO will be only too happy to ignore, weaken, or dismantle it. If a corporation wants to operate in a way that violates the RBO, the community (that's you and your neighbors) can hold corporate and state actors to the terms of the Ordinance. While bad publicity and costly project delays can act as significant deterrents to corporate actors, it's important to be prepared to take legal as well as non-violent direct action to defend and enforce your law.

A corporation may sue to overturn the community's RBO, exposing how corporate actors hold themselves above the will of the people. This will be a revelation for some and often builds greater support for the RBO. Many folks don't appreciate being strong-armed into accepting something against their own health, safety, and well-being. Thus, a lawsuit to overturn the will of the people and force harmful activities into a community often raises awareness about how corporations use our civil rights, our government, and the judicial system to deny health and safety protections within our communities. This experience can effectively shatter the illusions of accountable governments, justice from the courts, and friendly corporations. This empowers the Community Rights movement.

Alexandria: Blowing Industrial Wind


Over the summer of 2012, residents of Alexandria, NH, learned of the *Groton Wind Power Project*, an industrial wind development project that included mountaintop removal in the Town of Groton, fifteen miles north. That fall,



Forbes Mountain in Alexandria, NH. Elevation 2183 feet. Targeted for mountaintop removal by Iberdrola Renewables for the Wild Meadows industrial wind project (Michelle Sanborn)

they learned of the Wild Meadows project proposed by the same developer, Iberdrola. The project targeted the pristine ridgelines in the Towns of Grafton, Danbury, Hebron, and Alexandria. Iberdrola is a global corporation based in Spain. The company had already erected MET towers¹³ on ridgelines, signed land leases with some local property owners, and was set to file their permit application with the New Hampshire Site Evaluation Committee (SEC).

13 MET towers are equipped to assess wind resources. Generally a MET tower will have anemometers, wind direction vanes, temperature and pressure sensors, and other measurement devices attached to it at various levels above the ground. <http://www.windustry.org/resources/meteorological-tower-met-tower>



Community members in both Alexandria and Grafton adopted a resolution¹⁴ in March 2013, expressing opposition to any industrial wind projects in their towns. They knew such projects posed economic, environmental, and health threats to their community. Iberdrola wasn't particularly interested in the resolutions. In fact, they dismissed them, stating that they were ignoring them because the will of voters expressed in the resolution was non-binding. Iberdrola filed their permit to operate with the SEC in December.

Meanwhile, at public meetings, Iberdrola representatives promised to inform the four towns how they would be impacted. The towns were promised new DOT vehicles, funds for paving roads, a new playground, and even reduced taxes once the project was complete.

None of the townspeople were so easily seduced. There were some residents, however, who did turn to the regulatory system, believing it would provide protection.

A Swift (Regulatory) Response

These residents responded swiftly and predictably to Iberdrola's plan, forming an organization called New Hampshire Wind Watch (NHWW). There was a need to educate residents and local elected officials about the harms inflicted by industrial wind. The NHWW fulfilled that need well, holding information meetings and producing education materials across the region.

¹⁴ Unlike an RBO, which voters pass in the form of a binding ordinance, a resolution is more of an emphatic values statement that has no legal effect.

When the group learned that the state of New Hampshire had no regulations for industrial wind projects, they funneled their energy into lobbying the legislature to require the SEC to adopt regulatory rules for such projects. While they ultimately succeeded in influencing the legislature and securing regulatory rules for the size, location, maximum noise levels, and environmental impacts of industrial wind projects, it indeed resulted in the hamster wheel energy drain. The process was slow, arduous, time consuming, and expensive. The outcome was bogged down in arguments about how to interpret the rules and how the SEC should apply them.

Escaping the Hamster Wheel

While most folks appreciated the educational information provided by NHWW, there were some who also could not accept the legislating of rules that *permitted* the exploitation of residents and ecosystems. They formed Citizens of Alexandria Rights Effort (CARE) to explore non-regulatory options. They didn't want to say "yes, but with these requirements to minimize harm." They wanted to say "no" to the project and "yes" to protecting the Newfound Watershed,¹⁵ their health and safety, and the region's pristine and quiet rural aesthetics, in a way that was binding in law.

Alexandria residents learned that the Town of Grafton had adopted an RBO in 2013. That law banned industrial wind projects as a violation of Community Rights to clean air, water, and local decision-making authority, and to the rights of nature to exist and flourish. Shortly after the adoption of their law, Iberdrola had removed Grafton as a host community for their project.

¹⁵ The watershed provides water to communities and ecosystems, including Alexandria.

Collaborating to Protect Communities

A collaboration began. CARE members contacted Grafton residents to learn more about their RBO. They learned about CELDF and began to host educational meetings about rights-based work in October 2013.

They also reached out to Danbury and Hebron residents to join efforts as they developed messaging, outreach, and education opportunities. This included a jointly held Democracy School¹⁶ in January 2013.

A core group of activists from each town began drafting a *Right to Sustainable Energy Ordinance* for March 2014 Town Meetings. In each town, residents adopted their RBOs by wide margins.

16 Learn more about Democracy School, Democracy School | <https://celdf.org/celdf-services/education/democracy-school/>

Town of Alexandria public meeting with Iberdrola Renewables representative (Michelle Sanborn)



Iberdrola Withdraws

Faced with not just one binding local law banning the project, but four, Iberdrola immediately backed away from furthering their permit application with the SEC.

The CARE group took no chances. They sent a letter with a copy of their newly adopted law banning industrial wind within the town to Iberdrola, the SEC, and state representatives.

Their law, however, was going to be put to the test by EDP Renewables (EDPR), a Portuguese corporation that was proposing a MET tower on another series of mountaintops in Alexandria. Residents learned of the Spruce Ridge project in November 2014. The MET tower was to gather exploratory data that would determine whether or not the project was viable.

Expanding the Reach of Their RBO

The CARE group realized that the original RBO did not address exploratory data collection. They began organizing for a second rights-based law that would prohibit land acquisition and exploratory data collection such as that proposed by EDPR. Residents adopted a second RBO at the March 2015 Town Meeting by 3 to 1.

It took two years. In April 2017, the Town of Alexandria received a letter from EDPR indicating the company was withdrawing its intent to keep the

The region also faced JUWI Renewable Energies, another industrial wind developer interested in the same ridgelines. They, too, ultimately withdrew.

“We know there may come a day when yet another industrial wind corporation may want to site here in Alexandria. We know they may challenge our law. We’re ready—and we’re clear,” stated Michelle Sanborn with the CARE group. “We’ll not be arguing with them about tower heights, setbacks, or noise. We’ll be fighting for our rights.”

[illegible]

HOW DID WE GET HERE?

Let's Look at Colonial America

We are taught to look to our colonial past for the ideals of equality, liberty, and justice. Many of us believed these ideals laid the foundation for protecting ourselves and our community from any harm that would threaten us. We now realize that our past, even our esteemed founding documents, are not just incidentally racist and sexist; they are purposely so. These patriarchal, white supremacist ideals, narratives, interests, and values are today conscientiously maintained to uphold a gender, race, and class dominance. That dominance is used for profit and exploitation.

In colonial America, freedom meant the ability to participate in hands-on local self-governance. Individuals came together in communities to discuss and debate the rules they would adopt. They selected leaders to enforce those rules. It was the first time in white, western history that this happened.

This freedom, however, was only for the privileged few. Poor people have been playing cat and mouse with democracy for centuries. People's attempts to expand their freedom co-evolves with oppressors' attempts to maintain profitable control. Often, the more privileged subset of a movement accepts a token offer of shared power from the ruling class in exchange for solidifying the structures oppressing the most marginalized, including:

- *Early colonists:* poor settlers accepted and contributed to indigenous genocide in exchange for Britain promising them stolen land they could never afford on their own. This enabled top-down leadership to commit mass murder, impose removal programs, break treaties, and establish reservations.
- *The suffrage movement:* white women originally aligned with Black women suffragists, but threw solidarity out the window and advocated against protections for Black voting rights in order to gain enough support for the 19th Amendment.
- *The corporate takeover of the gay pride movement:* rich, white, cis gay men allow the memory of Stonewall (a riot instigated by police brutality against a crowd of predominantly Black and trans women) to become an opportunity for TD Bank to put their logo on free pairs of rainbow sunglasses and for police to do traffic control at parades wearing rainbow armbands. Pride now legitimizes corporations and police, who in turn solidify continued systemic violence against the rest of the queer community.

Freedom in the form of local self-governance eludes the people in ever-evolving ways. After penning the Declaration of Independence to enshrine rights for “the People,” wealthy white colonists qualified who counted among these “People”—for example, by creating and denigrating the concept of Blackness to create a barrier between Black people and poor white colonists. The concept of race discouraged poor white men from building democratic

power with Black people in the same way that European imposition of the concept of property ownership counteracted settlers' incentive to build democracy with indigenous people. By limiting meaningful participation in government to a minority (white, land-owning male) elite ruling class, state and federal legislators continued stripping freedom, including local control. Legislators removed community governance from the very people whose consent the legislature ostensibly sourced its own power.

In short, lasting freedom cannot come at the expense of others. Early colonists used local democracy to fight off oppressive British rule, but they did so through exploitation and genocide. We can use local democracy to create a lasting freedom, but we must find a way to erode top-down power, not carve out some of it for ourselves.

Fighting for a Government of, by, and for ALL the People

It is worthy to fight for a government of, by, and for ALL the people. We, as human beings, are born with inherent, inalienable rights—not granted by a king, lord, bishop, or governing document. The Declaration of Independence articulates the concept of inherent rights but is by no means their source. Nor did the “founding fathers” even fully understand this idea, as is apparent by their narrow-minded definition of “all people.” In its truest form, stripped of the hypocrisy of its authors, the Declaration of Independence reminds us that governments are created to protect the inherent, inalienable rights of all people and that every government owes its existence to and derives its power exclusively from those it governs. Further, when a government stops

protecting these rights or attempts to empower itself beyond the will of the people, the people have a right and duty to alter or abolish their government. We have a right and duty to establish a new system of government that protects these rights.

A true democratic society is a contractual arrangement between elected public servants and their constituents. The contract expresses the needs and wishes of the people. In theory, this is a fair and equitable arrangement. While there are examples of communities where people ruled themselves guided by values of diversity, sustainability, interdependence, and equity, colonial Americans extended the right of self-rule to only a few: landed, white males.

Yet the idea of self-rule, of a people coming together to determine the policies and structures of their community, has value. We learn from Hannah Arendt that freedom is not a liberty gifted to us from the government. Rather, it is the exercise of self-governance: the employment of direct democracy where residents of a community exercise their reason, compassion, and their rights to create the rules by which they shall live.¹⁷

Defining Freedom Beyond Liberty

Today, freedom is understood in terms of civil rights. This is what Arendt called “liberty”—a liberation from certain governmental restraints and harms. Freedom is far more than liberty: at a minimum, freedom is the supportive, equitable community that people build in order to meet everyone’s needs.

17 Arendt, Hannah (1963). *On Revolution*. Penguin Books: NY, New York.

A government allows for liberty when the government at best does no harm to its people. A government instills freedom when it is accountable to the people and proactively safeguards their human rights. Freedom exists in the ongoing efforts of community members to figure out how their society should function so that it meets the needs of all its members. It exists in their recognition that things change, people's needs shift, and the rules and practices adopted must therefore be ever-evolving and open to radical replacement. Freedom begets liberty, but liberty alone will not address the root cause of harm: a government in service of itself, not its people.

The propertied white men who spoke so highly of this freedom later abandoned the sentiments of direct democracy they espoused in the

Town of Alexandria public meeting where EDP Renewables attorney threatened the Select Board to issue a local permit or face a lawsuit (Michelle Sanborn)



unenforceable, nonbinding Declaration of Independence. When drafting the binding documents that established the US government, these men replaced direct democracy with a representational, constitutional Republic: only a chosen handful from a very small privileged group was empowered with decisional authority to determine the laws by which we must all live. They rewrote freedom to mean civil liberties—gifts to beg for from the gods of governance.

This means our freedom is limited to:

- the right to campaign and vote for one among a privileged few who are backed by the established power-elite;
- the right to have our government decide what our civil rights are;
- the right to have our government pass performative, toothless laws to ostensibly protect these rights that the government decides if, when, and how to enforce;
- and the right to ask our legislature to better serve us and to voluntarily denounce the status quo that allows them to keep their positions of power and authority.

Consolidated power has corrupted our concept of freedom as true self-governance. True self-governance is something inalienable and natural to us as living beings. We have given that freedom away and replaced it with a perverted hope that the government will secure and protect our “freedom” on our behalf.

WHY STATE AND FEDERAL LEGISLATORS WON'T PROTECT US

If we actually think “our” state and federal legislators will protect our expressed needs and interests, we’re in for a painful awakening.

We the People are competing with the interests of corporate actors in a system that is designed in their favor. There are several legal doctrines that enable and encourage elevating corporate needs and wishes over those of individuals and communities, including state preemption, corporate-claimed “rights,” regulatory laws, and nature as property.

State Preemption

Governments use the legal doctrine of state preemption to assert that municipalities receive their local governing authority from the state. State governments thereby deny that local governing authority comes from the people residing in that municipality.

In contrast, corporations stand on equal footing with state governments via the Contracts Clause (a clause discussed in the next subsection under Corporate Rights). What this means is that while corporations have contractual equality with state governments via state-issued charters,¹⁸ municipalities, residents, and ecosystems do not.

Most states also follow *Dillon’s Rule*, named after Judge Dillon of Iowa who ruled in 1868 that no governing sub-unit of the state, such as towns or cities,

18 A “charter” grants legal existence to a corporation. In the 1817 case *Dartmouth College v. Woodward*, the U.S. Supreme Court ruled that a charter is a contract between the issuing state and the corporation it created.

shall undertake any action or pass any laws or rules unless given express permission to do so by the state.

Under these restrictions, a municipality must spend a great deal of time and resources lobbying for permission to either enact beneficial policies the state has not authorized or defeat harmful policies the state has approved. Inevitably, the municipality is forced to accept the state's ruling, regardless of the local community's needs or wishes.

Corporate “Rights”

Corporations use their financial and economic influence to pressure state governments into adopting legislation that allows for the damage to ecosystems and exploitation of humans for profit. Courts uphold these laws and further immunize corporations by creating the precedent of corporate “rights.” These rights promote corporate interests while undermining the rights, health and safety of individuals, ecosystems, communities, and municipalities.

It all started with the Contracts Clause.

The Contracts Clause

The Contracts Clause (Section 10, Clause 1 of Article 1) prohibits states from legislating against any specific private contract, even if the contract proves harmful to the people.

While states have the right to pass laws that protect the health, safety, and welfare of the public, and these laws may incidentally interfere with a

specific contract, the U.S. Supreme Court found that states may not go after a specific contract directly.

How did that come to be? In the 1819 case *Dartmouth College v. Woodward*, the state of New Hampshire sought to convert the college from a private institution to a public one to better serve the interests of the people.

Dartmouth trustees, however, fought back. After the New Hampshire Supreme Court ruled against Dartmouth and in favor of the will of the governor and legislature, trustees appealed to the US Supreme Court (USSC). The USSC overturned the state Supreme Court's decision and ruled in favor of Dartmouth. *The USSC found that the state violated the Contracts Clause by interfering directly with a specific contract.* This decision elevated the status of a private charter to that of a contract, thereby elevating corporations as an equal party in the charter (now seen as a contract) with the state.¹⁹

In practice, the Contracts Clause heavily weighs the scales of power in favor of corporations over individuals, the needs of local communities, and the environment. Bottom line: corporate contracts have priority over what communities and even states deem beneficial.

Bill of Rights Protections

The Courts didn't stop there. They extended protections in the Bill of Rights and 14th Amendment to corporations by claiming that corporations were "persons" under the law.

19 In response, states began to insert clauses into the corporate charters they issued, making it legal for a state to rescind a corporate charter. Note that this does not change the US Supreme Court's ruling; it simply gave the states (but not communities, people, or municipalities) a work-around.

Fourteenth Amendment: The US Supreme Court first “found” corporations in the Bill of Rights with the 14th amendment. In doing so, the Justices granted corporations “equal protection of the law.” This amendment was ostensibly passed to recognize that African-Americans had the right to equal protection under law. However, due in large part to ongoing systemic racism and the financial barriers to bringing a lawsuit, it has been used predominantly to defend corporate equal protection under law, at the expense of people and nature.²⁰ The 14th Amendment was adopted in 1868 as part of the Civil War Amendments. Between 1868–1918, 0.5% (one half of one percent) of the cases brought under this amendment were on behalf of African-Americans. Fifty percent were brought on behalf of corporations.

First Amendment Rights: The US Supreme Court granted corporations rights under the 1st Amendment, including the right to freedoms of speech. Under that umbrella, corporate actors can make exorbitant campaign contributions to candidates from the municipal to the federal levels. This grants them the power to pack courts, federal and state legislative houses, municipal representatives, and local boards with officials sympathetic to their corporate agenda. According to the Court, corporations also need religious freedom and thus are able to block female employees’ access to birth control.

Fourth Amendment Rights: The US Supreme Court granted corporations rights under the 4th Amendment, which prohibits government officials from

20 Kellman, Peter (2001), *The Working Class History Test*. Dean Ritz (ED.) *Defying Corporations, Defining Democracy: A Book of History & Strategy*, p 48. South Yarmouth, MA: The Apex Press.

unreasonably searching or seizing a person's property or home. This means corporations wield privacy rights, which enables them to hide poor working conditions, withhold damaging chemical formulas, and shield harmful environmental impacts from governmental regulatory agencies.

Fifth Amendment Rights: The US Supreme Court granted corporations rights under the 5th Amendment. These rights include protection from double jeopardy, the ability to refuse to self-incriminate, and protection against “takings”—government acquisition of not only private property but also hypothetical future profits without just compensation. The latter is most pertinent to our communities. It means that when corporations are granted permits to operate by regulatory agencies, those permits convert life-sustaining systems—air, water, and soil—into the private property of corporations. This grants corporations the right to “use” and destroy their property as they wish. Anything that interferes with that claimed right requires compensation for the interference (or taking) of their access to profit.

In practice, whenever a community seeks to stop a corporation from fracking (or mining, factory farming, etc) in their town, the corporation can use corporate constitutional rights to block them. When people and communities attempt to leverage constitutional rights to protect themselves, corporations use those same rights to stop them. The courts find that these rights belong to private corporations, not public municipalities, thus stopping communities from protecting their own health, safety, and welfare.

Corporate actors sue (or threaten to sue) communities for violating corporate rights to equal protection, privacy, due process, and their right to make a profit. The mere threat of legal action often intimidates municipal leaders into silence and compliance with corporate agendas.

The Commerce Clause

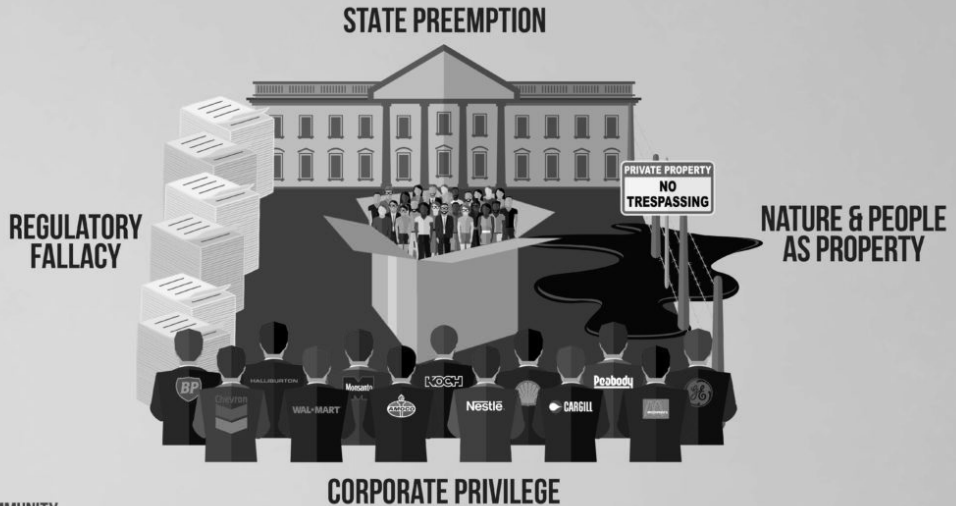
Lastly, corporations use the *Commerce Clause* to force themselves into communities against the will of the people who live there.

The *Commerce Clause* states that the federal government shall have full authority over interstate commerce. In the early 1800s, the US Supreme Court generally upheld state laws protecting residents' economic, environmental, and personal health. However, by the end of that century, the Supreme Court had a change of heart. The Justices ruled that states could not block the free flow of commerce.

This means that a state legislature cannot prohibit a company from operating in that state. Further, legislatures can no longer enact protections for residents, if doing so makes it financially inexpedient for companies to do business there.

If an oil company wants to set up business that operates across state lines, the federal government has jurisdiction over whether they can do so. State and municipal governments have no say in the matter. As long as the company does not violate federal regulations, states cannot keep the company from operating within their borders.

THE BOX OF ALLOWABLE ACTIVISM



CELDf COMMUNITY
ENVIRONMENTAL
LEGAL DEFENSE FUND

As Jane Anne Morris wrote, the “hordes of court cases following the Civil War that challenged state laws on commerce grounds were part of an orchestrated corporate effort to escape state regulation.”²¹ Corporations, through their insidious influence on lawmakers and courts, backed by incredible sums of money, have ensured themselves legal authority to make a profit at the expense of what legal mechanisms existed to safeguard people’s lives, the economic security of local communities, and the health of our planet.

²¹ Morris, Jane Anne (2008). *Gavelling Down the Rabble*. The Apex Press: Boulder, CO, p 54.

Regulatory Law

It might seem like federal *regulatory law*, such as laws establishing agencies like the Environmental Protection Agency and the National Labor Relations Board, or laws like the Clean Air Act, Clean Water Act, and minimum wage requirements would ensure our protection despite *state preemption* and *corporate "rights."* At the state level, it might seem like the New Hampshire Site Evaluation Committee is here to protect residents from harm.

Unfortunately, no. *Regulatory law* is yet another barrier to communities seeking to protect their environmental, economic, and cultural well-being.

This façade of protection is convincing. After all, federal legislatures and regulatory agencies have the power to set "reasonable" standards for the amount of harm a corporation can inflict.

The federal government has decided, however, that these regulations cannot make it unreasonably difficult for a corporation to profit. Furthermore, regulations can only *slow* the rate of harm by limiting the amount of damage that can be done to our communities; they cannot prevent it.

How much poison is acceptable in our air or water?

What if we don't want any poison?

Our authority to make that decision is not recognized by federal or state government. Ultimately, we have no say at all. We are, however, encouraged to beg and plead before regulatory agencies. And *that* is what regulatory law

is about: permitting a set amount of harm while the people have only the power to beg and plead to make the harm a little bit less.

The truth is, we're begging and pleading before regulatory agency committees appointed by government officials who do not answer to the people. Further, those committees are informed by and staffed with corporate executives walking through the revolving door between industry and government.

There's more. No matter how strong our case – no matter what evidence we bring, how passionate (or dispassionate) we are – if corporate attorneys present a permit request that is deemed a legal use, the regulatory agency *must issue the permit*. Otherwise, it is a violation of the corporation's 5th amendment rights under the Takings Clause: the permit itself is property, and by denying the permit, the regulatory agency would be denying the corporation's right to profit without compensation.

Likewise, if we take a quick look under the domain of worker rights and employment, we see a similar pattern. The National Labor Relations Act (NLRA) derives its authority in part from the Commerce Clause. By the NLRA's name, we might think it is about protecting workers. In fact, it is a law designed to "eliminate the causes of certain substantial obstructions to the *free flow of commerce* and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining." (emphasis added) The language of the NLRA makes it quite clear that the focus of protection is on the free flow of commerce – not workers' rights.



Nature as Property

Finally, our laws deem nature as property. Corporations are thus legally entitled to destroy the land they own, even if doing so puts the health and safety of living beings and ecosystems at risk.

Individuals and the municipalities we live in have no legal mechanism to protect the vital, life-sustaining ecosystems that are part of their communities, because nature has no intrinsic value under our legal system, except as a resource to be exploited. Clean water and air, and nutrition-rich, food-producing soil have no legal protection from the will and whim of those who own the property upon which they exist.



Summing Up the Problem

Corporations influence and often explicitly draft the regulations passed to purportedly govern their industries. Our own governments and judicial system protect and enable corporations, at our expense. Not only do our governments fail to care for us, but they also suppress our rights to care for ourselves. Federal laws and regulations, as well as a plethora of state laws, limit individuals' rights to safeguard their own communities. In New Hampshire, *state preemption* and Dillon's Rule keep municipalities from saying no to, or even taking precautions against, industrial and other projects that residents know will endanger their communities. Corporations threatening lawsuits for violating *corporate rights and privileges* chill individual and collective will to protect our communities. And *regulatory laws* lull us into thinking federal and state governments are looking out for us, when laws with protective names such as the Clean Air Act and the Clean Water Act actually immunize corporations against repercussions for causing the very harms we want to stop.



Locally

RBOs recognize the power of people to protect their communities. They are created and maintained through democratic self-determination. They

secure and protect “Community Rights,” which includes rights belonging to people, such as the right of local self-government, a healthy environment, living wages, dignity, and respect; and rights belonging to ecosystems, such as the rights of nature to flourish.

Today, there are hundreds of communities across the nation that have advanced local RBOs banning industries from conducting harmful practices within those communities. They are not a panacea. There is no silver bullet. However, RBOs are born from fundamental democratic principles that offer a pathway forward. Today, that pathway is leading from the local to the state level in states across the US, including New Hampshire, Pennsylvania, Ohio, and Oregon.²²

At the State Level

Passing, enforcing, and defending laws locally are the foundation to protect our freedoms, the health of our communities, and the natural environment. They are critical first steps in overturning patriarchal, white supremacist ideals, narratives, interests, and values that are maintained to uphold a gender, race, and class hegemony for profit and exploitation.

Next, we must build upward—and that means amending our state constitution. The NHCRN has partnered with local communities to draft and advance the NH Community Rights state constitutional amendment.²³

22 Learn more about our state level work at the New Hampshire Community Rights Network, www.nhcommunityrights.org.

23 Amendment FAQ | <https://www.nhcommunityrights.org/amendment-faq.html>

This amendment takes the common themes of all local RBOs—Community Rights to local self-determination; clean air, water, and soil; a healthy economy; human rights to living wages, dignity, and respect; and rights of nature to exist and flourish—and codifies these rights at the state level for *all* of New Hampshire. And just like the RBOs, the state amendment can only expand rights. It cannot take any away.

Why So High?

If we don't drive RBOs from the local to the state level, we will forever be fighting all of the barriers to safe, healthy, and just communities that we examined above. State government will continue to use state preemption and Dillon's Rule to undermine our local authority. Corporations will continue to leverage corporate claimed "rights" and privileges against us. And nature will continue to be exploited for the profit of a few people far from where we live.

RBOs support faster and more deeply rooted social change. They recognize our local communities as the rightful authority on what happens, how it happens, and whether it happens where we live. And they help us build a full movement for justice, equity, and vitality.

CONCLUSION

We need not be shy about our right and authority to alter, abolish, or establish new local governing structures that elevate people and planet over profit. When we find that old ways and new wrongs deprive us of our inalienable rights and our ability to govern our communities, we must look within to be the change we want to see. The peaceful remedy for these wrongs is to frontally challenge the corporate-state status quo with nonviolent acts of civil disobedience at the municipal level. Through local lawmaking, we can nullify the obstacles that keep us from getting what we want and need in our communities.

You—the folks living in your community—are the experts. You know best when it comes to protecting the health, safety, and welfare of your human and natural community. Presently, governmental and corporate interests use the law to override the will of the people in your community, often with devastating effects on your economic, social, and environmental relationships. Community Rights are about reclaiming your right to collectively govern your community, free from oppressive state and corporate interference.

Where Will This Take Us?

Community Rights won't solve everything but they can help create the right conditions for greater justice, equity, viability, and vitality in our communities. History has shown that social innovation springs from the local, so the local,

including local government, needs to have more, not less authority, to be the lead advocates for people, communities and Nature.²⁴

We don't just need better tools to do our justice focused work; we need a more just system to do that work within. How we eat, generate energy, go to work, teach our kids, and care for those in need cannot be reliant on higher levels of government to save us, or be at the whims of corporations. We need the ability and the recognized authority to stop unwanted harms and institute positive change to create the just and sustainable communities we envision living in.

“Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it’s the only thing that ever has.”

~ Margaret Mead

24 <https://localprogress.org/wp-content/uploads/2018/05/The-People-vs.-Preemption.pdf>

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The NHCRN informs and empowers communities and elected officials about the right of local self-governance in order to secure and protect the inherent and unalienable rights of all inhabitants of New Hampshire to economic, social and environmental justice, including the rights of nature. Contact the NHCRN at info@nhcommunityrights.org. Visit the website at www.nhcommunityrights.org.

CELDF assists communities to develop first-in-the-nation, groundbreaking laws to protect rights – including worker, environmental, and democratic rights, and rights of nature. We are not a typical environmental organization. CELDF provides free and low cost legal services, grassroots organizing, and education, to communities, states, and countries facing injustice. CELDF helps them to assert their rights to fight the harms they face. Visit the website at www.celdf.org.

APPENDIX

COMMUNITY RIGHTS = RIGHT OF LOCAL COMMUNITY SELF-GOVERNMENT + RIGHTS OF NATURE

Right of Local, Community Self-government : What It Means

The right of local, community self-government is a fundamental, individual political right—exercised collectively—by people to govern the local communities in which they reside.

This right can be broken down into three components:

1. the right to a system of government within the local community that is controlled by a majority of its citizens;
2. the right to a system of government within the local community that secures and protects the civil and political rights of every person in the community;
3. the right to alter or abolish the system of local government if it infringes those component rights.

The right of local, community self-government is inherent and inalienable. It derives necessarily from the fundamental principle that all political power is inherent in the people, is exercised by them for their benefit, and is subject to their control. Because the right is inherent and inalienable, no government can define, diminish, or otherwise control it.

State governments have created a variety of local governmental bodies, both incorporated and unincorporated, to locally administer state policy, and conduct municipal affairs. States typically delegate specific governmental powers to these local governments—and otherwise limit their powers. State authorized powers of governmental entities are distinct and, notably, apart from the people's right of local, community self-government. The peoples' right is not dependent upon state delegation. It cannot, therefore, be diminished by state limitations placed on local governments.

This means that communities, when exercising the people's right of local, community self-government, are not subject to constraints on local lawmaking imposed by state and federal governments. Such constraints include preemption of local lawmaking by state and federal laws or international treaties; the conferral of constitutional rights onto corporations, when those "rights" compete with people's civil and political rights; and the doctrine that local governments can legislate only as authorized by state government.

Laws adopted pursuant to the right of local, community self-government are, by nature of the right, limited by people's other civil and political rights, both inherent and as secured by local, state, and federal statutes and constitutions. Because most environmental, labor, election, housing, civil rights, and discrimination laws are based on statutes that recognize people's civil and political rights and provide mechanisms for enforcement of those rights, the right of local, community self-government can be exercised only to expand, not to lessen, the rights of people as secured by those laws.

The right of local, community self-government is inherent. Constitutional texts recognize and secure this right and do not limit enforcement against state actors only. Both private actors and state actors may be held liable for violation of this right.

Rights of Nature : What It Means

Rights of Nature is a paradigm-shifting legal framework that recognizes nature as a living ecosystem with intrinsic rights to exist, flourish, evolve, and regenerate. Under Rights of Nature, ecosystems and the people who depend upon them have legal standing to protect water, air, and soil.

Under US law, nature is considered property. Property is owned by natural persons or corporations. Ownership implies that the owner can do what they want with that property – including destroy it. In reality, nature is not and cannot be property. Unlike property, nature knows no boundaries. Property is discrete, like a house or a lawn mower.

Does Rights of Nature mean no one can chop down a tree, go hunting, or cut grass? Not at all. Rights of Nature looks at the entire ecosystem, which includes human beings, and prioritizes the overall, long-term health of that ecosystem over the activities of any one species, whether human or tree. Pollution knows no boundaries: poisoned water doesn't remain within defined land borders, and toxic air moves at the whim of air currents. An RBO, with Rights of Nature, empowers people to protect themselves and local ecosystems from these and any harmful practices that risk the health and well-being of the whole community.

This is not a new concept. When European settlers colonized the Abenaki and Pennacook territories, where New Hampshire is today, they did more than steal the ecosystems and land from their original stewards. Theft is the transfer of ownership from one party to another without consent. Colonists did not transfer ownership from Abenaki and Pennacook, they created the concept of property ownership and used lethal force to establish themselves as the “owners.” This new, illogical system that viewed nature as discrete units of privately owned land, marked by imaginary lines, led to colonists transforming nature from a naturally-evolving living entity that human inhabitants were stewards of and responsible for, to mere property that could be destroyed by its owner.

What’s in an RBO?

An RBO is comprised of several sections:

Preamble: RBOs generally begin with a statement of principles and grievances that explain why the local law is being adopted.

Definitions: Terms and words that are intended to have meaning specific to the RBO are listed and defined. This helps avoid misunderstanding and provides clarity about the intention of the law.

The Community Bill of Rights: These are the specific rights to be secured by the law. This is the heart of the RBO.

Prohibitions: This section bans specific corporate activities that violate the enumerated rights, and also nullifies any government permits and actions that enable corporations to violate those rights.

Enforcement: There are civil enforcement provisions, including municipal enforcement and resident enforcement of the law, via the courts, as well as through extra-judicial means. Community members can use these enforcement mechanisms to prevent or stop violations of ecosystems' rights, as well as their own.

Corporate Powers: This section reiterates that Constitutional protections of corporations are preserved except for when those protections allow corporations to violate the rights or prohibitions of the RBO. Such outlaw corporations forfeit all legal privilege. This elevates the rights of the community and its members above the claimed rights of corporations that violate the RBO.

People's Right of Self-Government: This section affirms the community's right to a system of local government founded on the consent of the people of the community members. It affirms their right to a system of local government that secures and protects their rights. It also affirms their right to alter any system of local government that lacks the people's consent or fails to secure and protect the people's rights, health, safety, and happiness.

State and Federal Constitutional Change: The RBO calls for constitutional change at the state and national level that will recognize and enforce the right to community local self-government, free from state preemption and corporate interference when local laws are enacted to protect Community Rights. This

does not mean that without State and Federal Constitutional change these rights do not exist, but rather that State and Federal Constitutions should be altered to more accurately reflect the inherent truth that people empower the government, not the other way around.

Community Rights Movement in New England

Water Rights and Right of Local Community Self-government, including Rights of Nature

2006 – Barnstead, NH

2007 – Atkinson, NH

2008 – Nottingham, NH; Shapleigh, ME

2009 – Newfield, ME

2016 – Barrington, NH

Right to Sustainable Energy and Healthy Climate, including the Right of Local Community Self-government and Rights of Nature

2012 – Sugar Hill and Easton, NH

2013 – Sangerville, ME

2013 – Grafton, NH

2014 – Danbury, Alexandria, and Hebron, NH

2015 – Alexandria expansion of 2014 law

2018 – Plymouth, NH

2019 – Exeter, NH

2019 – Nottingham, NH

Freedom from Discrimination

2016 – Barnstead, NH

Community Rights State Constitutional Amendment Introduced

2016, 2018, and 2019 – Concord, NH

Additional concerns across New England range from and include lack of election integrity, spreading of human waste as fertilizer, immigration injustice, nuclear and fracking waste, local police militarization, and workers' injustice. Regardless of the concern, the common motivating factor for RBOs remains constant: denial of the Right to Local Community Self-government and Rights of Nature.

You will be a community who will fight for yourselves
and future generations with purpose, care, resilience,
and endurance, and you will model the community in
which so many of us want to live.



New Hampshire Community Rights Network

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