



SUSQUEHANNA

A Publication of the Community Environmental Legal Defense Fund

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WHEN GOOD FAITH IS PUNISHABLE BY SANCTIONS

It all started, as most of these things do, with a company's application for a permit.

In May of 2013, Pennsylvania General Energy (PGE) applied for a permit from the Environmental Protection Agency to convert one of its gas extraction wells in Grant Township, Indiana County, PA, into an injection well. The company wanted to dump frack wastewater from its other wells. According to their own estimates, PGE proposes to dump more than 151 million gallons of frack wastewater into Grant Township over a ten year period — wastewater that the company's own sampling reveals will contain toxic and radioactive materials such as barium, radium, strontium, and toluene.

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THE REMARKABLE ADVANCEMENT OF THE NH COMMUNITY RIGHTS STATE CONSTITUTIONAL AMENDMENT

A landmark legislative session was held this winter in New Hampshire. It marked the first time a Community Rights state constitutional amendment was debated and voted on by a state House of Representatives. The proposed amendment would recognize the authority of people in towns throughout the state to enact local rights-based laws protecting individual and communities' rights, free from corporate interference and state preemption. That authority includes the right to protect the natural environment.

Bi-partisan Support

Nine bi-partisan sponsors championed CACR19, known as the *NH Community Rights Amendment*. It is the first Community Rights amendment in the nation to receive support from a legislative subcommittee with a recommendation of "ought-to-pass."

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The people of Grant Township rely on private wells for drinking water. They decided to stop the project. Working with their elected officials, they adopted a law recognizing the rights of residents to clean air and clean water, and banned frack wastewater injection wells as a violation of those rights. They understood that the corporation could sue the Township for its adoption of the law. Thus, the Township included provisions elevating residents' rights above the "rights" routinely claimed by corporations.

Predictably, the company sued, claiming that its "rights" had been violated by the Township and that the Township lacked the power to adopt the law in the first place.

In its defense of the Township, CELDF lawyers argued that the people of Grant possess a constitutional right of local community self-government, and that the company's assertion of its "rights" to override Grant Township constituted an unconstitutional violation of that right of self-government.

Thus, CELDF lawyers contended that it wasn't the Township that had violated the corporation's "rights," but the other way around.

Of course, corporations have long used these types of lawsuits to "chill" communities from interfering with company plans, and from making those arguments in court. Lately, however, that "chilling" effect hasn't been working. As more and more communities have come into the cross-hairs of corporations proposing pipelines, frack wells, and a variety of other projects, community members are advancing democratic and environmental rights to stop them.

And so the corporations have begun to come after the lawyers, believing that if they can scare the lawyers off, they will deprive the communities of legal representation.

Three years after the company sued Grant Township, it filed a motion for sanctions against CELDF lawyers Thomas Linzey and Elizabeth Dunne, seeking over half a million dollars from the two of them. The company asserted that CELDF's arguments in the case — that the community has a constitutional right to govern itself, and

a right to stop these types of harmful projects — was frivolous. Corporate attorneys asserted that the arguments were advanced solely to harass the company and drive up its litigation costs.

On January 5, 2018, Judge Susan Baxter granted part of PGE's motion, awarding \$52,000 in fees against attorneys Linzey and Dunne. Holding that "settled law opposes [their] arguments" and that the "community rights" doctrine had been "discredited and previously litigated," she ordered the attorneys to pay part of the company's original request for sanctions.

Judge Baxter's ruling is unusual. Attorneys are, and have always been, allowed to argue for good faith changes to the law. In fact, that's part of how major strides were made in prior people's movements where rights-based legal arguments were advanced to end segregation, gain women's right to vote, and gain the right to same sex marriage. It is no coincidence that as people reclaim Community Rights and recognize Rights of Nature, corporate and institutional hostility has escalated. That escalation, while challenging, is evidence of the movement's success in its own right.

CELDF views the sanctions as part of a new strategy by companies to punish lawyers for representing communities like Grant. In a statement put out by Grant Township, the Board of Supervisors declared that:

"We understand that the system of law that we live under doesn't recognize the right of the people who live here to stop those projects which will harm us. It doesn't recognize that we have a democratic right to say "no," which is why we've worked with CELDF to advance arguments that we have a constitutional right to govern our own community, and that companies like PGE shouldn't have more rights to decide what happens here than we do.

It's Grant Township's hope that our attorneys will wear this slap as a badge of courage, just as any front line veteran would wear a scar. This is bigger than just Grant Township, and we want others to join this fight by standing up to protect their communities. We're not going anywhere."

Attorneys Linzey and Dunne will be appealing the sanctions award to the Third Circuit Court of Appeals.

INTERNATIONAL CENTER FOR



THE RIGHTS OF NATURE

OF THE
COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

The year thus far has been busy for CELDF's *International Center for the Rights of Nature*.

We recently presented at several conferences, including the *Coming Together of Peoples Indian Law Conference* at the University of Wisconsin Law School, the *50 Years of the Indian Civil Rights Act: Protection and Denial of the Civil Rights of Native Americans Symposium* sponsored by the University of New Mexico Law School, as well as at the *Public Interest Environmental Law Conference* at the University of Oregon Law School.

In addition, this spring CELDF prepared an Amicus Curiae (friend of the court) brief for the *Permanent Peoples' Tribunal Session on Human Rights, Fracking and Climate Change*.

In the Amicus brief, we argue that fracking — and specifically the governments and corporations that protect and promote it — violates the Rights of Nature and the human right to a healthy environment.

In the brief, we draw on the growing understanding that we cannot expect to protect nature under environmental laws that were “simply not designed” to stop environmental and climate harm.

We cite the Colombia Constitutional Court's 2016 ruling, which declared that the Atrato River possesses certain legal rights. The Court explained how this mirrors other times in history where it was necessary to “take a step forward in jurisprudence,” writing:

It's about understanding this new socio-political reality with the aim of achieving a respectful transformation with the natural world...just as has happened before with civil and political rights (first generation); economic, social and cultural rights (second generation); and environmental rights (third generation). Now is the time to start taking the first steps towards effectively protecting the planet and its resources before it is too late...

The Tribunal will be live-streamed. Find our Amicus brief and information on the Tribunal on our website at www.celdf.org.

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RESTRUCTURING OHIO STATE GOVERNMENT

Ohioans have firsthand experience of this truth: The very legal and governing structures that we live under — regardless of the individuals in their corporate and government positions — are preventing us from governing ourselves and protecting our communities.

With that firsthand experience, Ohio residents are working with CELDF and taking the next step in building the Community Rights movement. They are directly addressing those structural issues, such as preemption and corporate claimed “rights,” by growing grassroots efforts in their communities *and* by using their right to initiative to amend their state constitution.

Through their Ohio Community Rights Network (OHCRN), CELDF assisted community members to draft two state amendments: the *Community Rights Amendment* and the *Initiative and Referendum Amendment for Counties and Townships*.

Last fall, supporters submitted their first round of petitions to the Attorney General and received his stamp of approval. Then, on December 5th, the Ohio Ballot Board unanimously approved the initiatives to move forward to step two of the state initiative process. And with that, Community Rights activists are moving full steam ahead. They are developing the Community Rights amendment website (see www.ohiocraction.org), creating a social media presence, developing a brochure, reaching out to local and statewide groups, and organizing and educating in counties across the state.

Community Rights advocates have begun collecting the 310,000 valid signatures required for each amendment to qualify for the ballot. They are aiming for November 2019. These amendments provide the systemic restructuring necessary to create the just and sustainable communities they envision. Help gather signatures and learn more about the amendments by visiting www.ohiocraction.org!

The Ohio Community Rights Amendments

1. The Community Rights Amendment includes the rights of natural persons, such as rights to health, safety, and welfare; democratic rights, such as the right of local community self-government; and Rights of Nature, such as the right of ecosystems to flourish and evolve.

2. The Initiative and Referendum Amendment extends the right of local democracy to residents of counties and townships — the same right that is already available to residents of cities and villages. The *Initiative and Referendum Amendment* ensures all Ohioans have equal access to direct democracy, regardless of where they live.

DICK MCGINN — A LIFE OF SERVICE



The Ohio Community Rights Network (OHCRN), CELDF, family, friends, and community members across Ohio are mourning the passing of Dick McGinn and celebrating his life of service and contribution.

Dick McGinn was a leader in the Community Rights movement in Ohio. He helped found the OHCRN and forged the path for Community Rights in the City of Athens and Athens County. He had a knack for bringing people together through his warmth, inspiration, and friendly smile. His life of service was dedicated to fairness and justice, and he was passionate in his commitment.

Dick McGinn believed in democracy by the people, he believed in Community Rights, he always gave public and private appreciation to CELDF, he believed in protecting the environment and he loved being an activist for change to protect the future.

We will miss you Dick McGinn. We will carry your passion and your legacy in our hearts as we move forward.

OREGON: TAKING COMMUNITY RIGHTS ON THE ROAD

What do pesticides, fracking, Chris Hedges, and Merrily Mazza have in common? Community Rights, Oregon communities, and three Community Rights tours across western Oregon.

The Oregon Community Rights Network (ORCRN), CELDF, and local Community Rights groups are sponsoring the tours, which take on the corporate state and its harm to people and ecosystems. The tours will explore the growing movement for the right to local community self-government, not only as an act of resistance, but also as a pathway forward to equity, justice, and sustainability.

First Stop: Countering Pesticides

Community Rights groups in Lane and Lincoln counties are collaborating on a presentation series this spring and fall on why Community Rights is critical for defending the health of people and nature from aerially sprayed toxic pesticides.

Both counties are partnering with CELDF and leading the fight against toxic spraying. *Lincoln County Community Rights* ushered in a first-in-the-nation ban on aerial spray in May 2017. Today, CELDF-affiliated attorneys are representing them as they battle with corporate interests that are attempting to overturn the law.

In neighboring Lane County, *Community Rights Lane County* submitted 15,000 signatures to place a similar aerial spray ban on the May 2018 ballot. The duly-qualified measure was blocked by their own government, the timber industry, and the courts.

Next Stop: Fracking

Merrily Mazza has lived on the front range of the Colorado Rockies since 2012, and has been on the frontline of Community Rights since 2014. Her work to advance rights and protect against fracking is ongoing, challenging the Colorado oil and gas industry as it expands across the state. She brings her powerful Community Rights message as an activist, a Lafayette City Council member, and as a grandmother, to Coos, Douglas, Jackson, and Lane counties, May 22 — May 25. The timing is spot on with Colorado fracked gas slated to flow through a proposed pipeline and export terminal in southern Oregon.

Wrapping It Up: Chris Hedges

The ORCRN is hosting Pulitzer-prize winning reporter and book author Chris Hedges in Eugene, Portland, and Salem in early October. The tour, *“Democracy Reborn: Communities Resisting, Communities Rising — An Evening with Chris Hedges,”* corresponds with the release of Hedges’ new book *America: The Farewell Tour*. Chris Hedges’ television program *Days of Revolt* featured CELDF’s Thomas Linzey and Pennsylvania Community Rights activist Mark Clatterbuck in December 2015.

More information on these events can be found at www.orcrn.org

OREGON COMMUNITY RIGHTS STATE CONSTITUTIONAL AMENDMENT, 2.0

Oregon Supreme Court justices, like other courts across the country, are inventing law as needed to block communities from advancing their right of local community self-government.

The ORCRN and CELDF-affiliated attorneys prevailed in a lower court when the state attempted to interfere with the Community Rights state constitutional amendment initiative last spring.

However, Oregon Supreme Court justices took it upon themselves to rule that the lower court lacked the authority to renumber the initiative. Initiatives are numbered based on the year they are proposed. The original petition ballot, which was November 2016, had already passed.

The ruling was contrary to common sense. It froze petition circulation, forcing the ORCRN and its supporters to relaunch their effort anew. Community Rights advocates are slated to file the constitutional amendment initiative this spring.

Oregonians aren’t stopping there, however. In addition to a reboot of the initiative process, the ORCRN members are exploring a legislative committee introduction of the amendment for the 2019 session. Supporters are planning Community Rights outreach to legislators, including trainings and presentations, throughout 2018.

For more information visit www.orcrn.org or www.oregoncommunityrights.org

WASHINGTON: TOXIC PESTICIDES PUT ON NOTICE; RIGHTS OF ORCAS GAIN FOLLOWING

Lincoln County, OR, residents adopted the first Community Rights ban on aerial sprayed pesticides last spring. They inspired communities across the region, including Snohomish County and San Juan Islands, WA.

Snohomish County Residents say Enough!

Snohomish County, WA, residents are in action, working with CELDF to stop the industrial timber industry's aerial pesticide spraying and advance Community Rights and Rights of Nature.

Community members and local groups partnered with CELDF this winter to alert communities across the county: Chemicals used by timber corporations are proven to be toxic; they are known to cause cancer; and they are sprayed by helicopter, exposing people, watersheds, and wildlife. Despite this, the state of Washington, like neighboring Oregon, has legalized spraying.

Community members in Monroe, Marysville, and Lynnwood hosted public presentations led by CELDF and two local organizations — *Skykomish Valley Environmental & Economic Alliance* and *Snohomish County Community Rights*. The presentations exposed the state's complicity

in poisoning communities and ecosystems, and explored Community Rights and Rights of Nature as tools to reclaim local community self-government and advance rights.

San Juan Islands and Gig Harbor Residents Advance Rights of Orcas

San Juan Island residents are partnering with CELDF to recognize Rights of Nature for the Salish Sea, including rights of orca, salmon, and other community members of the Sea's ecosystem. Pollution and climate change threaten the Sea, including the resident orca pod.

In February, *Community Rights San Juan Islands* organized two public Community Rights presentations, a Rights of Nature workshop, and numerous meetings with key individuals, organizations, and CELDF. *Legal Rights for the Salish Sea*, an organization based in Gig Harbor, is also part of the growing efforts to legalize the rights of the Salish Sea. The group requested CELDF conduct a training entitled *Rights of the Salish Sea: How to Organize to Protect the Future of Orca, Salmon, and Human Communities*. The event will take place May 5th.

These grassroots efforts are building out of a screening of *We the People 2.0* and a CELDF-led Community Rights workshop and Democracy School in 2017. For more information on Community Rights and Rights of Nature in Washington, see:

Snohomish County - www.facebook.com/sccr2017

San Juan Islands - www.facebook.com/Community-RightsSJI

Gig Harbor - legalrightsforthesalishsea.org

NH COMMUNITY RIGHTS - CONTINUED FROM PAGE 1

The amendment did not receive the 3/5 super-majority vote required to advance a state constitutional amendment to the November ballot. This was not surprising, given that the full committee chair ignored the subcommittee recommendation's "ought-to-pass." He allowed a motion of "inexpedient-to-legislate" to stand and move to the House floor.

Despite this, 1/3 of the New Hampshire House of Representatives demonstrated their support. These legislators recognize the inalienable right of people in their communities to protect themselves from corporations intent on using their communities as sacrifice zones. Community Rights supporters are encouraged both by the bi-partisan support the people's amendment received in the subcommittee, and the 112 House votes in favor of advancing

the amendment to voters.

Why Community Rights?

Growing numbers of New Hampshire communities are forced to host parasitic special interest projects such as high voltage transmission lines, oil and gas infrastructure, water withdrawals for resale, landfills, and other harms. They face a structure of law and government that allows corporations to impose these harmful activities into their communities against the will of the people due to corporate claimed "rights" and privileges.

In response, a growing number of New Hampshire communities are partnering with the New Hampshire Community Rights Network (NHCRN) and CELDF to advance

their rights. They are drafting local Community Rights laws, or rights-based ordinances (RBOs). The RBOs elevate communities' right of local community self-government and environmental rights to clean air, water, and soil, above corporate claimed "rights" and state preemption.

Over the past decade nearly a dozen communities statewide have adopted RBOs — not because they expected the New Hampshire legislature to agree with them, but because these rights are inherent and inalienable.

GROWING THE NH COMMUNITY RIGHTS MOVEMENT

At a January special town meeting in Plymouth, NH, residents overwhelmingly adopted a rights-based ordinance (RBO) banning unsustainable energy projects, such as Northern Pass, and protecting their right to a sustainable energy future. The ordinance asserts their right to clean air, pure water, and local community self-government, and bans land acquisition for the construction or operation of unsustainable energy projects as a violation of those rights.

For several years, Plymouth residents have been working with CELDF to stop Northern Pass, a 192-mile, high-tower electrical transmission line carrying industrial hydro-power from Canada. Community members recognized the Granite State was being used as an extension cord to deliver power to other states. The cost to New Hampshire communities includes risks to their health, water quality, local economies, and surrounding ecosystems.

The people of Plymouth will have none of it. Plymouth resident and Community Rights leader Richard Hage said, "The day after we passed our local law banning projects such as Northern Pass, the state energy and environmental agencies denied the issuance of a permit for this devastating project. But we are not fooled into

CACR19 would guarantee state protection for local RBOs.

What it Takes

We know from prior people's movements that fundamental change takes persistent, unrelenting pressure. As corporate threats grow in the Granite State, more communities are joining the Community Rights movement. These communities and their supporters will reintroduce the *NH Community Rights Amendment* because our quality of life — indeed our very lives and those of our children and future generations — depends on it.



thinking it won't be appealed and a permit issued once the project application is complete. It's up to us. We the People must exercise our right to govern and protect the places we live. Here in Plymouth, that's just what we did."

Regardless of what happens with the permitting process of the Northern Pass project, Plymouth residents know decisions about the health, safety, and welfare of both their human and natural community are in their capable hands. People living in their communities are the ones most affected by such governing decisions. Through Community Rights, they are the ones who are making them.

FIRST RIGHTS OF NATURE EASEMENT ESTABLISHED IN HAWAII

Over the winter, a landowner on the island of Kaua'i established a Rights of Nature conservation easement on an eight-acre property. The easement not only limits development, but also recognizes that ecosystems and natural communities possess legal rights to exist, thrive, regenerate, and evolve.

This marks the first Rights of Nature conservation easement on the Hawaiian Islands and the second in the U.S.

CELDf assisted in the drafting of the easement, which also contains provisions on climate change, genetic engineering, restriction of corporate claimed "rights," and enforcement language.

More information can be found here: celdf.org/2017/12/press-release-first-rights-nature-easement-established-hawaii

CELDF IS SPEARHEADING A MOVEMENT TO ESTABLISH RIGHTS FOR PEOPLE AND NATURE OVER THE SYSTEMS THAT CONTROL THEM.

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