



# Susquehanna

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## Pennsylvania Legislature Preempts Community Decision Making on Fracking

### CELDF Statement on the Legislature’s Passage of Marcellus Shale Legislation (Act 13 of 2012)

The Pennsylvania Legislature recently adopted Act 13 of 2012 (House Bill 1950) to accelerate the extraction of natural gas from the Marcellus Shale deposit underlying much of Pennsylvania.

Act 13 is but one of many efforts by the State to preempt people and their communities from making critical decisions for themselves – including decisions on fracking – and it’s why communities across Pennsylvania are now joining forces to fundamentally change how, and perhaps more importantly, for whom, our structures of law and government work.

The legislature’s latest action to aid the gas corporations should come as no surprise. It’s part of a pattern that’s emerged over the years in which the legislature and State government work hand in hand to place the interests of corporations over and above our communities.

We shouldn’t be surprised either that the new bill uses state preemptive powers to strip people – and their local governments – of the authority to ban or

*(Act 13 - pg. 2)*

### No Coal Trains!

On January 26th the No Coal! Political Action Committee out of Bellingham, Washington launched their Coal Free Bellingham initiative, presenting a Bellingham Bill of Rights ordinance to a packed house of over 200 supporters, press, and interested parties. The ordinance states that residents’ rights to clean air, water and self-government, as well as ecosystem rights, are superior to corporate “rights.” And as a protection of those rights the commercial transportation of coal through Bellingham is prohibited.

If corporate interests have their way, Bellingham will be subjected to eighteen, mile-and-a-half long coal trains passing through their town every day.

*(Bellingham - pg. 4)*

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

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### *(Act 13 - from pg. 1)*

regulate natural gas extraction. Or further, that it empowers the state Public Utilities Commission (PUC) to override local ordinances that run counter to state laws that facilitate gas extraction.

Act 13 also creates so-called “impact fees” – a cynical attempt to equate the health, safety, and welfare of our communities with the resurfacing of roads.



*“Act 13: Zone This!” Photo of Pittsburgh Mills Mall area.*

### **Act 13 punctuates the State’s priority to remove as much power as possible from those who are most impacted by gas extraction.**

Prior to its passage, the State had already all but eviscerated local control – allowing municipalities to use their zoning powers only to regulate the placement of surface well pads. Given that horizontal gas drilling enables corporations to reach gas deposits under protected zones in the municipality, describing well-pad zoning as a form of “local control” was a bad joke. Even “legal” zoning measures didn’t stop gas corporations from suing municipalities – such as South Fayette and Cecil Townships – when the corporations felt that even minimal zoning restrictions would interfere with their bottom line.

This is nothing new. Time and again, the State government has stepped in to prevent our municipalities from protecting the health, safety, and welfare of their residents in the face of unrelenting corporate assaults. In the past decade alone, the State has eliminated local control over corporate water withdrawals, corporate use of genetically modified seeds, corporate factory farms, and corporate dumping of sewage sludge on our farmland.

**Granting power to a state agency – in this case, the PUC – to overrule local ordinances isn’t new either.** When Pennsylvania municipalities began enacting local bans to stop corporate factory farms and corporate sludging of farmland, the State legislature stepped in on behalf of the agribusiness industry – much as it has now stepped in on behalf of the gas industry.

Then, as now, the legislature empowered a state agency to override local decision making by communities – decision making aimed at protecting the community’s health, safety, and welfare.

That legislation – Act 38, better known as “ACRE” – was adopted in 2005. ACRE empowers the State Attorney General to represent agribusiness corporations against municipalities that dare enact local laws challenging corporate farming.

The Attorney General has already sued nearly a dozen municipalities under ACRE, including rural Packer Township in Carbon County. In that case, *the Attorney General is defending the “right” of corporations to override the community’s right to protect itself from sewage sludge being dumped on its farmland.* The

bitter irony – and the proof that Pennsylvania’s government has been further privatized – is that the Attorney General, an *elected* official, is turning around and suing the very folks who elected him, on behalf of corporations.

The Community Environmental Legal Defense Fund’s work, in stark contrast to other environmental groups across the State, has been to assume that State government will respond in this manner. Thus, our organizing has focused on assisting communities to build a framework of local law that shields that exercise of local control from the State. In short, **our organizing assumes that the State will act to override local control when that local control threatens the interests of corporations.**

Over the past several years, **we’ve assisted the City of Pittsburgh and other municipalities across Pennsylvania to adopt local ordinances that create a “bill of rights” for those communities.** Further, the ordinances *ban State-permitted harms – including gas drilling* – that violate those local bills of rights.

These ordinances advance a realization that is new to many people – *that communities cannot ban activities that are harmful to us so long as we accept the State’s authority to strip us of community self-government.* Thus, these bans have to be more than bans – they have to refuse to follow State law – because *following State law automatically means that we lose control of the very future of our townships and boroughs, and consign them to environmental and community destruction.*

**For the community-rights ordinances, the passage of Act 13 doesn’t change a thing.** The ordinances have always stood as a frontal challenge to the authority of the State to override local control, and they continue to do so under any new legal framework that the State chooses to construct.

Over 100 Pennsylvania municipalities have already adopted these laws. They confront everything from factory farms to fracking.

The inevitable result of these local refusals to follow illegitimate State law is the binding together of hundreds of municipalities to force constitutional change that overrides the authority of the State to gut community self-government. That means *driving a right to local self-government into the Pennsylvania Constitution* which enables our communities to begin to actually protect our health, safety, and welfare, rather than continuing to be at the mercy of gas and other corporations who solely seek to use our communities for resource extraction.

**Only when we wake up to the fact that this struggle isn’t about fracking or factory farming or sewage sludging – and realize that it’s about *democracy and community self-government* – will we awaken from this very bad dream.** And, only when we realize that our only option is to override the State legislature, organizing from the ground up, will we stop negotiating with gas and other corporations about how much of our community we will sacrifice.

**If your community hasn’t already adopted a local “bill of rights” that bans gas drilling, do it tomorrow.** Without a critical mass of communities in Pennsylvania joining together, constitutional change that liberates our communities to determine their own futures will remain beyond our reach. And we

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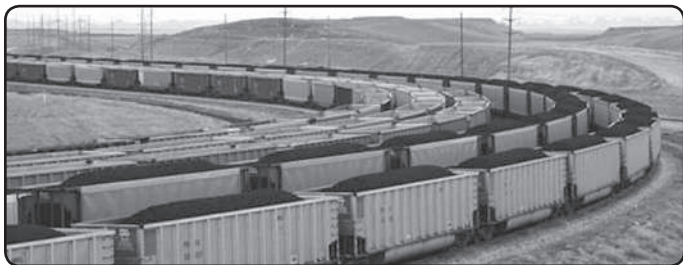
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will saddle our children with cleaning up the mess – and whatever is left of our communities and environment – that happened on our watch.

*(Bellingham - from pg. 1)*

Backed by large multinational corporations like Peabody Energy and Goldman Sachs, a coal shipping terminal is being proposed for Cherry Point, located north of Bellingham in Birch Bay. This terminal would allow millions of tons of coal to be trained from coal mines in Montana and Wyoming – rolling through numerous towns and counties like Bellingham and Whatcom County in Washington State – to Cherry Point, where the coal will be offloaded on tankers bound for China to be burned in electricity producing power plants.

The Coal Free Bellingham group will soon begin gathering signatures to qualify the Bellingham Bill of Rights initiative for the November 2012 ballot. To find out more about Coal Free Bellingham and how to help in their effort you can visit [www.coal-free-bellingham.org](http://www.coal-free-bellingham.org)



## Envision Spokane

Seven years into their effort, Envision Spokane is moving ever closer to seeing a Community Bill of Rights being adopted by voters in Spokane, Washington. Losing by less than a percentage point in 2011, the measure known as Proposition 1 demonstrated to the group that residents are ready to adopt new law asserting residents’ rights to have decision-making authority over major neighborhood development, expand greater protections for the river and aquifer, secure constitutional protections for workers in the workplace, and elevate these community rights over corporate “rights.”

Coming off a resounding ballot defeat of an expanded Community Bill of Rights in 2009, and out spent by corporate lobbyists 5 to 1 during this November’s campaign, Envision Spokane is highly encouraged and motivated by the recent election results: In a city of 200,000 residents, the campaign’s loss of less than a percentage point translates into a mere 500-vote swing.

The board of directors of Envision Spokane is in the process of redrafting the Community Bill of Rights. They will be engaged in this process over the next few months and will take various drafts out to organizations and individuals in the community for feedback and suggestions. Simultaneously the group will be presenting to key community organizations on the steps and timeline to qualify a Community Bill of Rights for a future ballot. The group will also be actively fundraising to support the impending petitioning and campaign effort. They expect the corporate lobbyist opposition to raise \$500,000 in an attempt to defeat the citizen initiative.

Democracy Schools are scheduled for April 6 & 7 and June 15 & 16 in Spokane. In addition, a series of 2-hour workshops will be held from March to June. These workshops will cover corporate constitutional rights, state preemption over local municipalities, how the law recognizes nature today, and how the regulatory system tends to regulate activists much more than corporations.

For more information on Envision Spokane and upcoming workshops you can visit [www.envisionspokane.org](http://www.envisionspokane.org)

## Fracking Idaho

Fracking is coming to Idaho. For the last few years oil and gas companies have been laying the groundwork to begin drilling for shale gas via hydraulic fracturing in Southern Idaho, specifically in Payette and Washington Counties. In retaliation for mounting push back by local residents and some elected officials against fracking, the state legislature is considering a state law that would remove any local control over drilling.

With the recognition that the state is more interested in protecting the desires of the oil and gas industry over the health, safety, and welfare of residents in counties and municipalities, a group of residents from across southern Idaho gathered for a Legal Defense Fund workshop at the end of January to learn about how other communities have moved towards rights-based, local law making in prohibiting the industrial practice of fracking.

Fifteen folks attended, including several local government officials and representing four counties in southern Idaho. The group spent the last two hours of the workshop exploring the launching of a rights-based effort at the municipal and/or county level. The citizens from Payette County committed to continuing the discussion beyond the workshop.

To find out more about fracking in Idaho, visit the Idaho Residents Against Gas Extraction (IRAGE) Facebook page: <http://www.facebook.com/groups/264716450257682/>

## Liberating Self-Government in Pennsylvania Through State Constitutional Change

*Chad Nicholson*

“For can there be anything more absurd, more arrogant, or more pernicious to the peace for Society, than for self created bodies...to form that will into Laws for the Government of the whole.” George Washington, 1794

Just what were these “self created bodies” that Washington was so upset about? Communities of exploited farmers living in Western Pennsylvania-- that’s what. As government policies in the late 1700s drove down the price of grain, farmers began converting their excess grain into whiskey, which fetched a higher price than the grain itself. The newly-minted government, administered by some of the wealthiest men in the country, then squeezed the farmers further by taxing their small-batch whiskey at a higher rate than that of the large, commercial-scale distilleries.

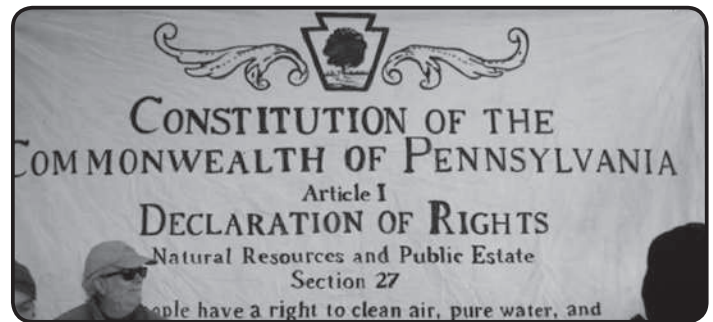
After the ratification of the second Constitution in 1789, monied men had little trouble instituting agricultural and financial policies that favored centralized wealth, and sent into foreclosure thousands who were unable to overcome these crushing burdens. These “self created bodies” that Washington was so concerned about—and against whom he unleashed 10,000 Federal troops —were folks who were attempting to regain the democratic ideals fought for in the Revolution, and which had been shrewdly stripped away in a few short years.

Tax rates that favor the wealthy? Foreclosures? Crushing burdens for small farmers? Doesn’t sound that much different from things today.

A sad history of exploitation snakes across Pennsylvania’s landscape, with entire communities being sacrificed by state-licensed harms for the benefit of a monied minority. And even though the issues may change—predatory whiskey taxes, coal mining, the importation of toxic waste, factory farms, sewage sludge spreading, shale gas drilling and fracking, and more—the story is always the same: Community self-government is overridden by a governing structure that protects and enriches a privileged few.

Over 100 Pennsylvania communities have taken notice and pushed back, adopting Legal Defense Fund drafted local laws asserting their local governing rights, and in the process taking on State-licensed corporate harms ranging from factory farms to fracking.

These communities are now banding together in County “chapters,” and scaling up their efforts as part of the Pennsylvania Community Rights Network. The Network has its sights set on statewide change, and the County chapters are beginning to lay the



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groundwork to initiate a Pennsylvania People's Constitutional Convention that elevates the right to local self-government to the highest level within the State Constitution.

Liberating Pennsylvania's communities--"self created bodies"-- to form their "will into Laws for the Government of the whole" will enable the creation of truly sustainable communities, free from oppressive State and corporate interests who, like Washington, will find this exercise of democratic self-government "absurd."

## The Right to Determine our Energy Future – No Northern Pass

*Gail Darrell*

A New Hampshire statewide discussion that began with an appeal to state legislators on the proposed electric utility project known as the Northern Pass has shifted to one of community rights.

Northern Pass is a joint venture by Hydro-Quebec, recently merged electricity and gas providers NSTAR and Northeast Utilities, and Public Service of New Hampshire (PSNH). It is projected to bring 1300 megawatts of electricity to New England's southern tier. The 180 mile proposed route for high transmission wires on steel towers, ranging from 80 – 140 feet in height, would create a permanent scar on some of New Hampshire's most pristine locations, and it is the toe-through-the-door for larger projects to follow. (Link to the project map: <http://www.northernpass.us/project-overview/route-map>)

In response to an appeal from the opposition to attend public hearings being held in Concord at the state capital, I sent a letter to the editor of the local newspaper, and then received a call from Pete Martin. We met before the scheduled meeting and Pete introduced me to some key people from the mountain region. Soon we were sharing the Democracy School education with residents of Clarkesville, Stewartstown, Sugar Hill, Easton, Franconia, Plymouth and Lancaster.

During one of these schools, an elected official spoke the opinion of the group by saying, "We've never had representation in Concord (the state capital); the North Country has no voice."

Their recognition of that reality has encouraged towns north of Plymouth to pose the question, Who protects the people?

The Democracy School message resonated with Lancaster residents, who had witnessed a lack of local authority when they attempted to stop a Family Dollar from coming into town. This battle has forced them to ask another question: Who does government work for?

When these same people drove two hours or more to the state capital to sit in on public hearings on the Northern Pass, they heard elected representatives say that the project was a done deal. In a state where people drive around

with the motto, “live free or die” on their license plates, they have a notion that they have a voice in what happens here. They were collectively irate to discover the truth about who protects the people (not the state or federal governments) and who does the government work for (not them).

Lancaster, New Hampshire, was incorporated in 1763 with a grant from Governor Benning Wentworth. Built along the Connecticut River and the border with Vermont, the town is home to the water-powered sawmill known as the Garland Mill, which has been in continuous operation since 1856 (<http://www.garlandmill.com/mill.htm>).

During the organizing around stopping the Northern Pass project, Lancaster residents learned about our legal structure that prevents communities from saying “no” to any “LEGAL” use of land. When they were asked the question, *“When it comes to making the decisions about things that directly affect you, who makes those decisions?”* - their answer was, disturbingly - *“Not us.”*

Refusing to accept “Not us” as an answer, Lancaster residents collected signatures on a petitioned warrant article for the Lancaster Right to A Sustainable Energy Future and Community Self-Government Ordinance, which makes it “unlawful for a person or persons using a corporation to engage in land acquisition necessary for the purpose of constructing unsustainable energy systems” within the town, because it would violate the rights of residents to a sustainable energy future, as well as other rights claimed within the Community Bill of Rights.

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## Susquehanna

After several public meetings at the Lancaster Town Hall, one of which had over 70 people talking about the New Hampshire State Constitution and our inalienable right to local self-government, the grassroots group opposing the Northern Pass project was ready to face the voters.



The Ordinance was brought to the vote of Town Meeting in Lancaster as a petitioned warrant article on March 13. There were six other towns in New Hampshire bringing rights-based ordinances to voters this March (description of town meeting: [http://en.wikipedia.org/wiki/Town\\_meeting](http://en.wikipedia.org/wiki/Town_meeting)).

Lancaster officials - determined not to let the ordinance pass - busily employed themselves alarming the fears of the people with dangers which do not exist, to paraphrase an anti-federalist quote from 1787. A majority of registered voters responded accordingly on March 13 and killed the article 233:65.

Easton and Sugar Hill adopted the ordinance unanimously in both towns, earlier that same evening, with the approval of 76 and 175 voters, respectively. Plymouth adopted the local law a week later, with a vote of 75:42, followed by a comment from their town moderator that the vote was "advisory." Holderness town moderator played the part of dictator that day and declared the ordinance "unenforceable." He added that the town had decided to table the warrant article until next year and no discussion was allowed. In Northfield, there was a motion from the hall to table the article and it was seconded and approved by a swift voice vote, allowing for no discussion. Another warrant article unrelated to the Northern Pass, but also brought forward by petition to ban GMOs in the town of Warner was tabled before the petitioner could make her way to the microphone.

We have to ask, if the people are not allowed full access to their local governments, why have Town Meeting? We either have a voice in our government, or we do not - and when we do not, it insults the spirit of Town Meeting, and the soul of "live free or die."



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