



CELDF

THE RIGHT TO LOCAL-SELF GOVERNMENT

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What is CELDF?

Community Environmental Legal Defense Fund – www.celdf.org

Formed in 1995, based in Mercersburg, PA

Mission Statement

To attain sustainability, a right to local self-government must be asserted that places decisions affecting communities in the hands of those closest to the impacts. That right to local self-government must enable communities **to reject** unsustainable economic and environmental **policies set by state and federal governments**, and must **enable communities to construct legal frameworks** for charting a future towards sustainable energy production, sustainable land development, and sustainable water use, among others. In doing so, **communities must challenge and overturn legal doctrines** that have been concocted to eliminate their right to self-government, including the **doctrines of corporate constitutional rights, preemption, and limitations on local legislative authority. Inseparable** from the right to local self government - and **its sole limitation** - are the rights of human and natural communities; they are the **implicit** and **enumerated** premises on which local self government **must be built**.



CELDF Mission

How does CELDF do this?

Ordinances, HRCs & Ballot Qs

- Reject any local, state or federal laws in conflict with declared right to local self-government
- Strip corporations that violate – or merely “seek” to violate – the ordinance/HRC of all rights, privileges, powers, and protections granted to “persons” under state and federal constitutions
- Stripped “rights, privileges, powers, and protections” include asserting state or federal preemptive laws to overturn ordinance/HRC and asserting people lack power to adopt
- Bestow rights as “persons” on “natural communities and ecosystems” and authorizes any resident or the municipality to enforce or defend these rights on behalf of the ecosystem or natural community



CELDF Mission

Where does CELDF do this?

- “Over 200 communities across the U.S.”

California, Colorado, Hawaii, Illinois, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, New York, Ohio, Oregon, Pennsylvania, Texas, Washington

Pittsburgh November 2010 – “first-in-the-nation ordinance”

State College November 2011 – criminalizes extraction of natural gas

- International

Colombia, Ecuador, India, Ireland



CELDF Targets Not Limited to Extractive Industries

The community rights movement is not primarily about solving single issue assaults on our communities, and it is not at all limited to environmental issues. It is about recognizing and **changing the legal and governing system** that allows states and the federal government to license and permit harms against individuals, communities and nature. It is about removing the obstacles that legalize the violation of inalienable rights in the places we live.

<http://celdf.org/rights/issues/>

- **Chemical trespass** – pesticides and industrial waste disposal
- **Retail chain stores** – underpay wages, benefits; production overseas; disrupt local economies; harm farmland and nature
- **Unsustainable Agriculture** – industrial animal & food production; monoculture farming; 80-90% of US water use



CELDF Targets

Not Limited to Extractive Industries

- **Water privatization** – private profit in industrial activities; bottled and sold back to the public
- **Sewage Sludge** – fertilizer use cheaper than landfills & incineration
- **Unsustainable Energy** – “green” and “renewable” energy (hydropower, industrial wind farms, solar power, nuclear power); transmission towers; energy transportation corridors; coal trains; export terminals
- **GMOs** – Genetically Modified Organisms for plant agriculture
- **Forestry/Timbering**



Essence of CELDF Right to Local Self-Government

- **Right is Superior to Power of State and Federal governments**

CELDf argues that “people are the source of all power, and communities possess an inalienable right to govern ... [which] **cannot be delegated, limited, or made subservient to any other power.** The power of local self-government is exempt from, and hence superior to, the general government of the state.”

Com. v. East Brunswick Township et al., 956 A.2d 1100, 1107 (Pa.Cmwlth. 2008)



Essence of CELDF Right to Local Self-Government

“On Community Civil Disobedience in the Name of Sustainability: The Community Rights Movement in the US” (Campbell & Linzey, 2015), CELDF founder Thomas Linzey:

- Municipal laws must be established that “challenge the existing constitutional structure by creating an entirely new one.”
- “Overturning legal doctrines that support current injustice requires frontal and direct breaking of existing laws.”
- These efforts will result in “thousands of municipal constitutions” that will serve as “a template for new state and federal constitutional structures.”



Essence of CELDF Right to Local Self-Government

Sen. Jubelirer statement in support of ACRE (Agriculture, Communities and Rural Environment, Act 38 of 2005

2005 Legislative Journal—Senate, p. 633 (July 4, 2005)

At the heart of the local ordinance movement is the notion that there is the **right to reject anything, anywhere, for any reason, at any time**. That is a right that exists only in the imagination of the minds behind what is really an anti-agriculture push Local governments should and do possess powers for setting limits and establishing standards for various kinds of development, but to attempt to dictate who may or may not own various enterprises, or to dictate what sorts of contractual relationships may exist, is **a level of interference that knows no end and has no healthy outcome**.

. . . I do not discount the difficulties facing local officials caught in the clashes pitting homeowners against modern agricultural practices, but it is **wrong when groups contend that there is no control, no limit, no protection unless we let local officials write any restriction they want**.



CELDF Recognizes Lack of Legal Basis for Asserted Right

CELDF video “So Your Community is Going to be Fracked, Mined, Factory Farmed, or fill in the blank....”

<http://celdf.org/2014/09/so-your-community-is-going-to-be-fracked-mined-factory-farmed-or-fill-in-the-blank/>

- Admits ordinances are contrary to state and federal law
- Asks whether ordinance proponents can put sufficient pressure on local officials to adopt something that is contrary to state law
- Admits state and federal constitutions must be changed to authorize right to local self-government
- Has assisted in preparing constitutional amendments for introduction in four states



CELDF Recognizes Lack of Legal Basis for Asserted Right

Thomas Linzey response to January 2015 federal court rejection of Mora County, New Mexico ordinance

- “With this decision, the Court affirms what our communities already know, that **the existing structure of law denies local, democratic self-governance.**”

Standard ordinance provisions

- “Use of the courts or the Pennsylvania legislature in attempts to overturn the provisions of this Ordinance shall require community meetings focused on changes to local governance that would secure the right of the people to local self-government.” *Grant Twp, Indiana County Ordinance, Section 7.*
- “Through the adoption of this Ordinance, the people of Grant Township call for **amendment of the Pennsylvania Constitution and the federal Constitution** to recognize a right to local self-government free from governmental preemption and or nullification by corporate ‘rights.’ ” *Grant Twp, Indiana County Ordinance, Section 8.*



United States Democracy or Republic?

CELDF Democracy School

- Democracy – Greek “*demos*” and “*kratein*” meaning “the people to rule” – **majority rule**
- Republic – Latin “*res publica*” meaning “the public thing(s)” or “the law(s)” – **the rule of law**
 - “A republic, if you can keep it.” Benjamin Franklin, Constitutional Convention of 1787
 - US Constitution Art. IV guarantees every State “a Republican form of Government”
- John Adams
 - “*Democracy never lasts long.*”
 - “*It soon wastes, exhausts and murders itself.*”
 - “*There was never a democracy that did not commit suicide.*”
- George Washington
 - *Dedicated to “the preservation ... of the republican model of government.”*



US Constitution Violations

- Supremacy Clause
- Equal Protection Clause
- Contracts Clause
- First Amendment Petition Clause
- Fifth & Fourteenth Amendments
 - Substantive and Procedural Due Process



PA Constitution

- **Article I, § 2. Political powers.**

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. **For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.**

- **Article I, § 20. Right of petition.**

The citizens have a right in a peaceable manner to assemble together for their common good, and **to apply to those invested with the powers of government for redress of grievances or other proper purposes**, by petition, address or remonstrance.



PA Constitution

- **Article I, § 25. Reservation of powers in people.**

To guard against transgressions of the high powers which we have delegated, we declare that **everything in this article is excepted out of the general powers of government and shall forever remain inviolate.**

- **Article I, § 26. No discrimination by Commonwealth and its political subdivisions.**

Neither the Commonwealth **nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate** against any person in the exercise of any civil right.



PA Constitution

- **Article IX, § 1. Local government.**

The General Assembly shall provide by general law for local government within the Commonwealth. Such general law shall be uniform as to all classes of local government regarding procedural matters.

- **Article IX, § 2. Home Rule.**

Municipalities shall have the right and power to frame and adopt home rule charters. Adoption, amendment or repeal of a home rule charter shall be by referendum. The General Assembly shall provide the procedure by which a home rule charter may be framed and its adoption, amendment or repeal presented to the electors. If the General Assembly does not so provide, a home rule charter or a procedure for framing and presenting a home rule charter may be presented to the electors by initiative or by the governing body of the municipality. **A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.**



PA Constitution and Implementing Legislation

- **Article IX, § 2. Home Rule.**

Grant of home rule power to municipalities, not the people

“**Constitution reserved to the state legislature** the power to impose restrictions, limitations and regulations on the grant of home rule” *Cali v. Philadelphia*, 177 A.2d 824 (Pa. 1962).

- **Home Rule Charter and Optional Plans Law**

53 Pa. C.S. §§ 2901 – 3171

No powers contrary to or enlarging statutory powers

Can't change statutes of general application

Preemption principles apply – Act of General Assembly prevails over county ordinance. *Fross v. County of Allegheny*, 20 A.3d 1193 (Pa. 2011)

“**What was granted to Philadelphia was a restricted right or power of local self-government.**” *Philadelphia Facilities Management Corporation v. Biester*, 431 A.2d 1123, 1134 (Pa.Cmwlt. 1981).



PA Constitution

- **Article VI, § 3. Oath of Office.**

Senators, Representatives and all judicial, State and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation before a person authorized to administer oaths.

“I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity.”

....

Any person refusing to take the oath or affirmation shall forfeit his office.



PA Constitution

- **Driscoll v. Corbett, 69 A.3d 197, 207-09 (Pa. 2013)**

Article I, § 2 grants the people the authority to amend their state constitution as they deem fit, so long as they do not violate the United States constitution.

- **Wells v. Bain, 75 Pa. 39 (Pa. 1873)**

“The words ‘in such manner as they may think proper,’ . . . embrace but three known recognised modes by which the whole people, the state, can give their consent to an alteration of an existing lawful frame of government, viz.:

The mode provided in the existing constitution.

A law, as the instrumental process of raising the body for revision and conveying to it the powers of the people.

A revolution.”

”As with the movements that went before us, we must become revolutionaries, not reformers.” CELDF founder Thomas Linzey



Grant Township, Indiana County, PA federal court litigation

- **PIOGA member PGE, Inc. underground injection well**

- PGE Amended Complaint filed September 2014

- PGE Judgment on the Pleadings granted Oct 14, 2015 on state law grounds

- Twp/CELDF Judgment on the Pleadings denied Oct 14, 2015

“Defendant has provided no legal precedent [for its asserted right]. Without a legal basis for its actions, as opposed to historical documents and events, this Court cannot provide the relief Grant Township seeks.”

- PGE, PIOGA and Twp/CELDF Motions for Summary Judgment pending since January 2016

- PGE – US Constitution

- PIOGA – PA Constitution

- Twp/CELDF – inherit and inalienable right to local self-government



Grant Township, Indiana County, PA federal court litigation

- **PIOGA member PGE, Inc. underground injection well**
 - Little Mahoning Watershed and East Run Hellbenders Society, Inc. interventions denied Oct 14, 2015
 - Ecosystem/Hellbenders appeal denied July 27, 2016
 - ² “We will refer to the Appellants in the plural throughout this opinion, but we are, at best, *dubitante*, because we are not convinced that the Little Mahoning Watershed is a proper party under Fed. R. Civ. P. 17.” [**must have capacity to sue or be sued**]
 - “dubitante”: doubting —used of a judge who expresses doubt about a decision reached by the court (*Merriam-Webster*)
 - Ecosystem/Hellbenders petition for rehearing by the Third Circuit panel and the court en banc denied August 22, 2016



Putting Communities at Risk

- Litigation damages & attorneys' fees/42 U.S.C. § 1983
- No municipality insurance coverage for illegal activities
- Municipal bankruptcy
 - “And if a town goes bankrupt trying to defend one of our ordinances, well, perhaps that’s exactly what is needed to trigger a national movement.” CELDF founder Thomas Linzey in *Reuters*
- Criminal liability – 18 Pa. C.S. § 5301. Official oppression.
- Impeachment for misbehavior while in office – PA Constitution Article VI, §§ 4-7
 - Violation of oath of office



Additional Information

- Jackie Stewart ~ Energy In Depth
<https://www.energyindepth.org/?s=celdf>
- Tom Shepstone ~ Natural Gas NOW
<http://naturalgasnow.org/>
- Jim Willis ~ Marcellus Drilling News - #208
<http://marcellusdrilling.com/>