THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS SUPERIOR COURT

Brent Tweed, et al

v.

The Town of Nottingham, et al

Docket No. 218-2019-CV-00398

OBJECTION TO NOTTINGHAM WATER ASSOCIATION'S MOTION TO INTERVENE

NOW COME the plaintiffs, Brent Tweed and G&F Goods, LLC, and respectfully objects to the Nottingham Water Alliance's ("NWA's") motion to intervene, and in support thereof states as follows:

1. Pursuant to N.H. Super. Ct. R. 15, the right to intervene in a legal action is limited to, "[a]ny person shown to be interested," in the subject of the lawsuit. The New Hampshire Supreme Court has held that, "[a] person who seeks to intervene in a case must have a right involved in the trial and his interest must be direct and apparent; such as would suffer if not indeed be sacrificed were the court to deny the privilege." *In the Matter of Stapleford and Stapleford,* 156 N.H. 260, 263 (2007). A trial court's decision to grant or deny a motion to intervene will not be overturned "unless [the Supreme Court] is persuaded that the court's exercise of discretion is unsustainable. *Lamarche v. McCarthy,* 158 N.H. 197, 200 (2008).

2. NWA lacks the kind of "direct and apparent" interest that would support a motion to intervene and none of NWA's purported interests in this matter would be sacrificed if it is denied intervenor status. NWA asserts that it was "instrumental in enacting the

Ordinance." *NWA's Mo. to Intervene* at 1. The mere fact that an organized interest group was in favor of the passing of the Ordinance is not sufficient to compel the court to intervention.

3. NWA asserts that the Ordinance, "enshrines the NWA members' right to local self-government," and that, "[p]laintiff's lawsuit jeopardizes this right." However, NWA does not attempt to explain how or why the Town, which is ultimately responsible for the ordinance, will not defend this interest. Absent allegations sufficient to support a finding that the Town will act in good faith to defend the Ordinance, the motion to intervene should be denied.

4. Further, NWA's assertion that the Ordinance "enshrines NWA members' right to local self-government," seeks to use a legal conclusion that is at the heart of this case as an argument in favor of intervention. The question raised by this case concerns the scope of local power vis-à-vis the state. To the extent that it argues that it is entitled to intervene because it has local rights that it claims a need to protect, NWA relies on a conclusion that is contrary to the assertions set forth in the complaint. This kind of conclusory argument should not be used as a basis to allow intervention.

5. In addition to the above, permitting NWA to intervene in this matter is likely to have the effect of unnecessarily increasing the cost this litigation. Both at the town meeting at which the Ordinance was adopted, and in public statements, NWA and its representatives have stated that NWA has been working with the Community Environmental Legal Defense Fund ("CELDF"). See Exhibit A. A videotape of the town meeting is located at https://www.youtube.com/watch?v=c89V8Wyda7k&t=7801s. Discussion concerning adoption of the ordinance begins at 1:40:40.

6. Co-founded by its chief legal counsel and executive director Attorney Thomas Linzey, CELDF is an incorporated organization that claims to build "sustainable communities by assisting people to assert their right to local self-government and the rights of nature." See Exhibit B, *Board & Staff,* retrieved from https://celdf.org/about/board-staff/ on May 22, 2019.

7. CELDF describes its mission on its website as follows:

> We work with communities that are unwilling to be oppressed by an unjust structure of law that is created by, and favors, the largest economic powers. Together, we are creating a new movement – one that recognizes, secures, and protects the rights of all those living within a community.... Through the Community Rights Movement, communities are working with CELDF to create a structure of law and government of the people, by the people, and for the people. That structure recognizes and protects the inalienable rights of natural and human communities.

See Exhibit C, retrieved from https://celdf.org/about/ on May 22, 2019.

8. In its own words, "CELDF has been working with communities seeking to codify Community Rights. Known as Community Bills of Rights, these laws have been adopted by nearly 200 communities." *Id.*

9. These activities all encourage municipalities to adopt ordinances that CELDF knows are contrary to existing law.

10. NWA and CELDF have demonstrated their awareness of the illegality of the municipal ordinances they work to pass. In 2018, a proposed amendment to the New Hampshire Constitution was introduced as CACR 19. The CACR read:

> [Art.] 40. [Right of Local Community Self-Government.] All government of right originates from the people, is founded in their consent, and instituted for the general good; the people have the right and the duty to reform governments when those governments manifestly endanger public liberty; and sustainable environmental and economic development can be achieved only when the

> people affected by governing decisions are the ones who make them; therefore, the people of New Hampshire have an inherent and inalienable right of local, community self-government in each county, municipality, city, and town to enact local laws that protect health, safety, and welfare by recognizing or establishing rights of natural persons, their local communities, and nature; and by securing those rights using prohibitions and other means deemed necessary by the community, including measures to establish, define, alter, or eliminate competing rights, powers, privileges, immunities, or duties of corporations and other business entities operating, or seeking to operate, in the community. Local laws adopted pursuant to this article shall not weaken existing protections for, or constrict the fundamental rights of, natural persons, or their local communities, or nature, as those protections and rights are secured by local, state, federal, or international law.

11. Attorney Thomas Linzey, submitted written testimony in favor on behalf of CELDF in support of the proposed amendment. See Exhibit D. This document makes clear that Attorney Linzey and CELDF understand that Nottingham lacks authority to pass the Ordinance without the state first taking action to grant the town that authority. As particular, but by no means exhaustive, examples of this, Attorney Linzey entitled an entire section of his submission, "*The Need To Change the Current Status of the Law*." See Exhibit E at 4. New Hampshire CACR 19 was overwhelmingly rejected, with an inexpedient to legislate vote of 217-112. 2018 House Journal 8 at page 29.

12. A similar amendment, CACR 8 was introduced in 2019. The proposed amendment read:

> [Art.] 40. [Right of Local Community Self-Government.] All government of right originates from the people, is founded in their consent, and instituted for the general good; the people have the right and the duty to reform governments when those governments manifestly endanger public liberty; therefore, all people have the inherent and inalienable right to local self-government, a right of the people which includes using, altering, abolishing, or reforming their municipal governments to enact local laws that recognize, secure, and protect the economic, social, and environmental well-being of people, their communities, and natural

> environments. This right to local self-government includes the people's authority to use prohibitions and other means to elevate the rights of people, their communities, and natural environments, and to do so free from ceiling preemption and from competing rights, powers, or duties of corporations and other business entities. Local laws enacted pursuant to this article may strengthen and expand but shall not weaken or constrict existing rights and protections for people, or their communities, or natural environments, as those already recognized rights and protections are secured by other local, state, federal, or international laws, including but not limited to federal first and second amendment rights and protections.

13. At the hearing on this proposed constitutional amendment, Michele Sanborn and Attorney Kelley spoke and provided written testimony in favor of the CACR. See CACR 8 written hearing testimony, Exhibit F. These materials reflect the fact that both Michelle Sanborn and Attorney Kelley recognize that existing law needs to be changed at the state constitutional or state statutory level in order for the Ordinance to have effect.

14. The CACR was voted inexpedient to legislate in the New Hampshire House of Representatives by an overwhelming roll call vote of 282-74. 2019 House Journal 11 at 14. The CACR would require 240 votes to pass the House. See N.H. Const. Part II, Art. 100. It thus failed by 166 votes.

15. Having failed to achieve its goals through the appropriate legislative mechanism, NWA and CELDF continued their campaign in Nottingham. At the Nottingham town meeting a member of NWA, John Terninko, and a representative of CELDF, Michelle Sanborn, spoke on behalf of the Ordinance. In speaking to the ordinance, the following exchange occurred:

> Michele Sanborn: In New Hampshire we are a Dillon's Rule state, which means that the state has to specifically enable a municipality to be able to take any action at all. So the downside to that is it ties your hands and it also ties your select board's hands from being able to afford protections at the local level. So what the local law does is it's based on

> your right, not on state statute, the state Constitution Article 10 is called the right of revolution, which is about the right to change, alter, abolish, reform your form of government when it is no longer serving its purpose, which is to protect you.
>
> John Terninko: So some of you know I'm a little ornery at times, and my attitude is let's assume we can do whatever we want to, and if the state says no then let's fight them. So what we are going to do is, we are going to act like he have the rights, that we did have a long time ago before the state started taking them away from us.

Town Meeting Video, starting at 1:53:30.

16. Also in the town meeting, a person asked Michelle Sanborn why the Ordinance contained a paragraph calling for change at the state and federal level. That portion of the meeting occurred as follows:

> Lori Anderson: So I'm reading the very last paragraph of this and I find it really troubling. A lot of it I find troubling but that's beside the point. This here says that it calls for an amendment to the New Hampshire constitution and the federal Constitution … to recognize expressly a right of the local self-government free of government restrictions, ceiling preemption. I don't understand this….Why is that paragraph even in here?

Town Meeting Video, starting at 1:58:15.

Michelle Sanborn responded as follows:

> It's in here because of the recognition that there needs to be state and federal level change to recognize the right of local self-government to empower you within your community to be able to protect yourself.

17. Sanborn's response also included a description of something she characterized as "ceiling preemption" and argued that:

> The corporations come in, use the government which is established to protect the citizens to then override our local lawmaking to then carry out harmful activities within our communities so that's why corporate

> rights are also addressed which was the state constitutional amendment that I referred to which is moving through the legislature as we speak.

18. This exchange reflects that NWA, and the CELDF representative working with it, clearly understood that in order for the Ordinance to have legal effect, change would have to occur at the state level and that municipalities simply were not empowered to do what the Ordinance purports to do.

19. Attorney Linzey's written testimony on 2018 CACR 19 expressly recognizes the legal fact of state and federal pre-emption. See Exhibit D at page 3 (citing string of pre-emption cases decided by the New Hampshire Supreme Court). As an organization, CELDF recognizes the existence of state and federal pre-emption ("There are laws that allow large corporations to force harmful activities into communities – despite community opposition."), corporate legal rights ("Our structure of law elevates corporate decision-making over community decision-making. Corporations have court-conferred constitutional 'rights.' They wield these 'rights' against communities to eliminate local efforts that may interfere with industry plans to expand their operations, regardless of the impact to communities and nature."), the existence of regulatory law ("Agencies such as the Environmental Protection Agency, the National Labor Relations Board, and the Minerals Management Agency – do not actually protect us. Rather, they regulate the amount of harm that is inflicted on our communities."), and legal rights of property owners ("Our legal system grants landowners the right to damage the environment, even though the impact is carried by the entire community.") See Exhibit F, retrieved from https://celdf.org/community-rights/.

20. Attorney Linzey has written about the tactics he advocates to accomplish the legal changes that groups like CELDF, the New Hampshire Community Rights Network, and

NWA seek, but have thus far been unable to achieve through proper legislative means. In his pamphlet *On Community Civil Disobedience in the Name of Sustainability: The Community Rights Movement in the United States*, a CEDLF publication, he writes:

> In essence, those municipal laws (such as the Ordinance) challenge the existing constitutional structure by creating an entirely new one. They then dare the corporate beneficiaries of the existing structure to challenge those laws and, in the process, harness corporate resources to remove the camouflage about how the system currently functions. By being forced to leverage corporate resources and publicly illustrating (in real time) how the existing structures nullifies community lawmaking, more and more people arrive at the realization that the structure is inherently unjust and undemocratic.
>
> As part of a self-enhancing cycle, the corporate challenge (and resulting judicial decision) thus clarifies for a broader segment of the public how the constitutional structure operates and why it must be changed. The process also allows lawyer for the communities to lay out and explain to judges and courts why a new structure of law is necessary, and how that new structure of law could operate.

PM Press, 2015 at 27. Stated otherwise, Linzey advocates passing laws that are known to be illegal for the short-term purpose of having courts strike them down. The litigation is little more than an effort to prove a point by losing cases. This is an express process of civil disobedience due to the belief that, "overturning legal doctrines that support current injustice requires frontal and direct breaking of existing laws." *Id*. at 24.

21. CELDF's tax returns for 2017, the most recent year currently available on the IRS website, reflect revenue of $2,032,830 and net assets of $2,714,666. See Exhibit G. Accordingly, it appears that CELDF is, if it so chooses, is in a position to dedicate substantial resources to this litigation.

22. Unsuprisingly given that CELDF employs a strategy that specifically seeks to cause legal battles to garner public attention, CELDF-affiliated litigation has resulted in sanctions against CELDF-affiliated parties and counsel for vexatious litigation, advancing spurious claims, and violating court rules. Last year, the United States District Court for the Western District of Pennsylvania sanctioned CELDF attorneys $52,000, to be paid to its litigation opponent and reported the lawyers involved to the disciplinary board of the Supreme Court of Pennsylvania. See, Exhibit I, Doc. 290, *Pennsylvania General Energy Co., LLC, v. Grant Township,* Case No. 14-CV-209 (W.D. Pa.). In the Order, the court goes through CELDF's extensive history of vexatious and bad faith litigation that helped form the basis of the Court's decision to impose sanctions. See, Exhibit H at 17-21.

23. None of the cases cited by the federal court in Pennsylvania involved Attorney Kelly, who has filed an appearance and seeks intervention on behalf of NWA. The plaintiffs are not aware of any similar allegations against Attorney Kelley and this is not an effort to smear Attorney Kelley personally based on her association with the CELDF-associated entity NWA. Undersigned counsel fully expects that, if the right of intervention is granted, Attorney Kelley will act in good faith and in compliance with all obligations of the profession. As far as Attorney Kelley is concerned, there is no reason to believe otherwise at this time.

24. However, nothing in the relief sought by NWA requires it to be represented by Attorney Kelley. It is entirely possible that CELDF counsel who have been sanctioned in other courts could seek admission *pro hac vice*, NWA could dismiss Attorney Kelley and retain other counsel, or that NWA could dismiss attorney Kelley and proceed *pro se,* employing precisely the

tactics advanced by Attorney Linzey in his pamphlet and described by the Federal District Court for the Western District of Pennsylvania.

25. NWA's motion to intervene states that NWA's principle purpose is "educat[ing] the residents of Nottingham about local self-government." This statement suggestions that NWA could seek to use this litigation as a forum to engage in "public education," rather than simply litigating in court for the purpose of resolving a legal dispute. This court is a forum for the resolution of legal claims, not a forum for parties to seek publicity for their causes or to engage in demonstrations or "public education," or to advance Thomas Linzey's theories about creating change through civil disobedience. That kind of public grandstanding, were it to occur, is the kind of behavior that could cause the plaintiff to seek sanctions.

26. Further, the plaintiff has advanced various claim under 42 U.S.C. §1983. In §1983 litigation, the prevailing party is entitled to attorney's fees. See, 42 U.S.C. 1988(b). To the extent that NWA causes increased legal fees associated with prevailing in this matter, NWA's involvement in this litigation could result in increased fees to be paid by the Town.

WHEREFORE, the plaintiffs respectfully request that the Court:

A. Deny NWA's motion to intervene; and

B. Grant such other relief as may be just and proper.

Respectfully Submitted
Brent Tweed
By his attorneys,
Lehmann Law Office, PLLC

May 24, 2019 /s/*Richard J. Lehmann*

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(603) 731-5435
rick@nhlawyer.com

CERTIFICATION

I hereby certify that a copy of this pleasing was this day forwarded to opposing counsel via the court's electronic case filing system.

/s/*Richard J. Lehmann*
Richard J. Lehmann

EXHIBIT A

The Forum
Serving the Towns in the Shadow of Pawtuckaway
Candia - Deerfield Northwood - Nottingham

The Forum
Serving the Towns in the Shadow of Pawtuckaway
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Nottingham Water Alliance Defends Rights Based Ordinance

__ • Start Date:May 04, 2019May 04, 2019 Issue Date:May 04, 2019May 04, 2019

The Nottingham Water Alliance (NWA) has retained the Community Environmental Legal Defense Fund (CELDF) to represent them in defending the Freedom from Chemical Trespass Ordinance.

A challenge has been brought by Brent Tweed of G&F Goods, LLC in Rockingham Superior Court. The Ordinance was passed by voters in March of this year at Nottingham Town Meeting.

The new Rights-based Ordinance protects the rights of Town residents to clean water, air, and soil, and prohibits corporations or government agencies from disposing of toxic wastes in Nottingham in order to protect those rights. This is the second such Ordinance adopted by the Town of Nottingham, the first protecting the right of Townspeople to clean drinking water by banning commercial water extraction. The Right to Water Ordinance was passed in 2008 and prevented USA Springs from extracting and bottling water, draining Nottingham's aquifer.

"We are concerned about keeping our children safe by keeping toxins out of our water," said Judy Doughty, Board member of the Nottingham Water Alliance. There are around 850 toxic waste sites in New Hampshire, including 22 on the national Superfund registry.

"The people of Nottingham are the best ones to protect our water and natural resources, and the voters have spoken at Town Meeting," stated John Terninko, Chairperson of the NWA. "Seven children have been diagnosed with cancer near the Coakley Landfill and two have died, and we don't want that problem in Nottingham."

For more information contact John Terninko of NWA or Michelle Sanborn of CELDF.

Reader Comments

M. Sanborn
MAY 06 • When the People act on their local governing authority to protect what rightfully belongs to them -- a healthy climate capable of sustaining human and natural life systems -- corporate actors take legal action to protect their claimed "rights" to govern over the will of the People. This kind of legal corporate power-posturing should infuriate Granite Staters. Our Town Meetings are beacons of local democracy where the voters are the legislative lawmakers. When corporate actors use their corporate shields to violate our inherent and unalienable right to protect our human and natural communities, we should be outraged! The NH Community Rights Amendment that has been denied a people's vote by both parties controlling the NH Legislature reveals that even in the Live Free or Die state we must hold our electeds accountable to us and when they refuse to listen, we must be prepared to take non-violent civil disobedient action to protect the livability of our planet and survival of future generations.

Submit your comment

May 25, 2019May 25, 2019 • An Update from Representative David Coursin
May 18, 2019May 18, 2019 • Tell the Senate: Remove SB 306 From the Budget!
May 18, 2019May 18, 2019 • Raymond Democrats Host Campaign Finance Reform Debate
May 18, 2019May 18, 2019 • Political Spending in NH
May 11, 2019May 11, 2019 • Marianne Williamson For President
May 04, 2019May 04, 2019 • Nottingham Water Alliance Defends Rights Based Ordinance
May 04, 2019May 04, 2019 • Freedom from Chemical Trespass
April 20, 2019April 20, 2019 • Young Voter From Keene
April 13, 2019April 13, 2019 • Promoting Civil Discourse
March 30, 2019March 30, 2019 • Community Rights Based Ordinances Only Way to Protect Our Towns
March 30, 2019March 30, 2019 • Spring is Here
March 23, 2019March 23, 2019 • Verville and Spillane Have To Explain HCR3 Vote
March 23, 2019March 23, 2019 • Ranked Choice Voting
March 16, 2019March 16, 2019 • Thanks for Voting Northwood!!!
March 16, 2019March 16, 2019 • Nothing clever about ‘Cherry Frost’ gun raffle
March 16, 2019March 16, 2019 • More Final Thoughts
March 16, 2019March 16, 2019 • Ms. Klipa for Deerfield School Board
March 09, 2019March 09, 2019 • Protect coyotes while they are raising pups
March 09, 2019March 09, 2019 • Positive Ideas for Northwood's Future at Candidates' Night
March 09, 2019March 09, 2019 • Final Thoughts
March 09, 2019March 09, 2019 • Vote No on Capitol Reserve Fund Articles
March 09, 2019March 09, 2019 • NH Community Rights Amendment
March 02, 2019March 02, 2019 • Vote No on Deerfield School Warrant Article 2
March 02, 2019March 02, 2019 • Letter for Northwood
March 02, 2019March • Matt Frye for Select Board

EXHIBIT B

COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

BOARD & STAFF

STAFF

Thomas Linzey, Esq., Executive Director. Thomas is a co-founder of the Community Environmental Legal Defense Fund and serves as chief legal counsel. Contact: **info@celdf.org (mailto:info@celdf.org)** and 717-498-0054

Stacey Schmader, Administrative Director and National Democracy School Director. Stacey is a co-founder of CELDF. She administers the Democracy School program and is CELDF's financial officer. Contact: **stacey@celdf.org (mailto:stacey@celdf.org)** and 717-498-0054

Mari Margil, **Associate Director**. Mari runs our international program, working in Nepal, India, Australia, and other countries to advance the Rights of Nature. She also leads CELDF's outreach and development efforts. Contact: **mmargil@celdf.org (mailto:mmargil@celdf.org)** and 717-498-0054

Ben Price, National Organizing Director. Ben leads our organizing nationwide. Before moving into the national director position, he led our work across Pennsylvania, where over 100 communities have enacted CELDF-drafted laws. Ben is a Democracy School lecturer. Contact: **benprice@celdf.org (mailto:benprice@celdf.org)** and 717-254-3233

Emelyn Lybarger, Communications and Outreach Director. Emelyn leads our donor and foundation outreach, and coordinates CELDF communications, including our website and social media. Contact: **emelyn@celdf.org (mailto:emelyn@celdf.org)**.

Chad Nicholson, Pennsylvania Community Organizer. Chad joined our staff in 2010, after working with Envision Spokane. He now lives and organizes in Pennsylvania, assisting communities to engage in rights-based organizing to protect themselves from harmful corporate activities. Contact: **chad@celdf.org (mailto:chad@celdf.org)** and 207-541-3649

Kai Huschke, Northwest and Hawaii Community Organizer. Kai is a board member of Envision Spokane and is working to organize other communities in Washington, Oregon, and Hawaii. Contact: **kai@celdf.org (mailto:kai@celdf.org)** and 509-607-5034

Tish O'Dell, Ohio Community Organizer. Tish co-founded the grass-roots organization in Broadview Heights, OH, that successfully campaigned to adopt a Home Rule Charter amendment creating a Community Bill of Rights banning shale gas drilling and fracking. Contact: **tish@celdf.org (mailto:tish@celdf.org)** and 440-838-5272

Michelle Sanborn, New Hampshire Community Organizer. Michelle co-led the effort to protect her hometown of Alexandria, NH, from industrial wind turbines through a Community Bill of Rights Ordinance, which was adopted by her community in 2014. Michelle is organizing across New Hampshire and supporting the work of the New

EXHIBIT C

CELDF COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

ABOUT

The Community Environmental Legal Defense Fund (CELDF) is building a movement for Community Rights and the Rights of Nature to advance democratic, economic, social, and environmental rights – building upward from the grassroots to the state, federal, and international level.

Our mission is to build sustainable communities by assisting people to assert their right to local self-government and the rights of nature.

Begun as a traditional public interest law firm seeking to protect the environment, CELDF sought to protect communities from projects such as incinerators and waste dumps which cause environmental harm. Along the way, we encountered barriers put in place by both government and corporations. Such barriers included corporate constitutional "rights" and the preemptive authority of state government – both of which are used to override community decision making.

> CELDF learned that no matter how hard we tried to stop projects that cause known environmental harm, our own government had worked with corporations to make sure such projects were sited.

In fact, together they had developed a structure of law which – rather than focused on protecting people, workers, communities, and the environment – was instead focused on endless growth, extraction, and development.

It is a structure that is inherently unsustainable, and has in fact, made *sustainability illegal*.

Thus, we recognized that whether communities were facing fracking, injection wells, factory farms, pipelines, GMOs, water extraction, or a wide range of other threats, the barriers they faced to stopping these projects – and in their place establishing sustainable energy, water, agriculture, and other systems – were the same.

OUR WORK TODAY

Today, through grassroots organizing, public education and outreach, and legal assistance, nearly 200 municipalities across the U.S. have enacted CELDF-drafted Community Rights laws which ban practices – including fracking, factory farming, sewage sludging of farmland, and water privatization – that violate the rights of people, communities and nature.

To protect those rights, the laws address the key barriers to local self-governance and sustainability – such as corporate constitutional "rights" – and has assisted the first communities in the U.S. to eliminate corporate "rights" when they interfere with Community Rights.

Further, CELDF has worked with the first U.S. communities and the first country to establish the rights of nature in law – recognizing the rights of ecosystems and natural communities to exist and thrive, and empowering people and their governments to defend and enforce these rights.

CELDF is now bringing communities and groups together to form statewide Community Rights Networks and the National Community Rights Network to drive change from the grassroots upward to the state and federal level.

This is the start of the Community Rights Movement. **Join us! (https://celdf.org/join-the-movement/)**

FIGHT FOR A MORE DEMOCRATIC TOMORROW, TODAY.

Our democracy has been usurped by corporations. Please give today to help CELDF return the democratic process to the people. CELDF uses every dollar of your donation to fight for rights.

DONATE TODAY (HTTPS://CELDF.ORG/DONATE)

Posted on August 4, 2015 (https://celdf.org/about/) Updated on April 10, 2019 (https://celdf.org/about/) Print this page

EXHIBIT D

CELDF
COMMUNITY
ENVIRONMENTAL
LEGAL DEFENSE FUND

TESTIMONY
IN
SUPPORT OF
CACR19

New Hampshire House Municipal &
County Government Committee
(February 6, 2018 Hearing)

SUBMITTED BY:

THOMAS ALAN LINZEY, ESQ.
EXECUTIVE DIRECTOR AND CHIEF LEGAL COUNSEL

COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND, INC.

COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

February 6, 2018

Re: CACR19, providing that the people of the state may enact local laws that protect health, safety, and welfare.

Dear Mr. Chairman and House Municipal & County Government Committee Members,

You have an opportunity to level the playing field between large corporations and the people of New Hampshire's municipalities and counties, when those corporations seek to site harmful projects within those communities. CACR19, a proposed constitutional amendment, would recognize those communities' right of local, self-government, and authorize a form of "limited home rule" whereby those communities could protect the rights of their residents against those corporations.

I. Current Status of the Law – The Use of Corporate "Rights" in Confrontations Between Large Corporations and Municipalities.

Currently, when a large corporation seeks to site a harmful project in the community, and the municipality[1] adopts a law to stop the project, the corporation will sue the municipality in an effort to overturn the law.[2] The claims brought within the lawsuit will include at least one based on the allegation that the municipality has violated the corporation's constitutional "rights". Specifically, that claim generally focuses on the "interference" by the municipality with corporate property rights, and the corresponding constitutional prohibition against the "taking" of those property rights by the municipality.[3]

The corporation will include those constitutional claims in its lawsuit because federal law enables the corporation to recover money damages from the municipality if a court rules in the corporation's favor on that claim.[4] In addition, if a court rules in

[1] This written testimony's use of the word "municipality" shall refer to both municipal governments and county governments within New Hampshire.

[2] Generally, these lawsuits have been brought in federal court. Federal courts have been the preference of large corporations for these suits because they make the action more expensive for the municipality, because federal courts have generally been more receptive to corporate claims to "rights" under the U.S. Constitution, and because filing the action in federal courts lifts the action away from local courts, which may be more receptive to residents' claims of local self-government.

[3] Most often, the "property" being "taken" is the permit issued by either a state or federal governmental agency for the project to proceed. Under the law, the permit itself is considered to be property, and thus, any municipal action to stop the underlying project may be considered to be a "taking" of that property.

[4] 42 U.S.C. §1983 (allowing recovery of monetary damages in response to a finding of a violation of federally-guaranteed constitutional rights).

favor of the corporation's constitutional "rights," federal law recognizes the ability of a corporation to recover its attorneys' fees against the municipality.[5]

Corporate constitutional "rights" are premised on the status of the corporation as a "person" for purposes of the Bill of Rights of the United States Constitution. Such recognition of corporations, which began in 1819 in New Hampshire in the *Dartmouth College* case, enables corporations to claim almost all of the same federal Bill of Rights' constitutional protections that were originally secured only to natural persons.[6]

Because of that constitutional status, when corporations file suit against municipal laws on the basis of the corporation's constitutional "rights," they are, in essence, bringing a civil rights lawsuit against the municipality to protect the corporation's civil "rights." Precisely because the law generally encourages civil rights lawsuits to be filed on behalf of individuals to vindicate individual civil rights, corporations have been able to leverage that status on their own behalf to threaten recovery of monetary damages and attorneys' fees from municipalities that interfere with their operations.[7]

While Supreme Court decisions like *Citizens United*[8] and *Hobby Lobby*[9] are hotly debated, at least in political circles, the impact of corporate "rights" on the rights of people within their own municipalities has been largely ignored. The effect of

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[5] 42 U.S.C. §1988 (allowing for an application for attorneys' fees if a court rules that federally-guaranteed constitutional rights have been violated).

[6] The United States Supreme Court declared that corporations were entitled to First Amendment protections in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); to Fourth Amendment protections in *Hale v. Henkel*, 201 U.S. 43 (1906); and to Fifth Amendment protections in *Noble v. Union River Logging R. Co.*, 147 U.S. 165 (1893); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922); and *Fong Foo v. United States*, 369 U.S. 141 (1962). The United States Supreme Court conferred Contracts Clause protections on corporate charters in *Dartmouth College v. Woodward*, 4 Wheat. 518 (1816), a case which originated in New Hampshire. Fourteenth Amendment equal protection and due process protections were conferred onto the corporate form by *Santa Clara County v. Southern Pacific Railroad Company*, 118 U.S. 394 (1886) (conferring equal protection rights onto the corporate form); and *Minneapolis & St. Louis Railroad Company v. Beckwith*, 129 U.S. 26 (1889) (conferring due process rights onto the corporate form).

[7] In reality, corporations have been able to claim the benefits of "personhood" – the authority to challenge and punish governmental action as a violation of corporate constitutional "rights" – while remaining private actors against whom allegations of constitutional rights' violations cannot be brought.

[8] In *Citizens United v. Federal Election Commission*, 558 U.S. 310, 466 (2010), the Supreme Court overturned campaign finance laws as a violation of corporate free speech rights.

[9] In *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2802 (2014), the Supreme Court found that corporations were capable of holding religious beliefs, and that the exercise of those beliefs was protected by the Bill of Rights.

corporate constitutional "rights" in this arena, however, is even more damning than the effect of those corporate "rights" on campaign finance and freedom of religion issues.

It is more damning because it has the effect of completely divesting the people of New Hampshire communities of their right to govern their own community in the face of a large corporation seeking to exploit it.

II. Current Status of the Law – Use of "Ceiling" Preemption and Dillon's Rule in Confrontations Between Corporations and Municipalities.

In addition to using corporate constitutional "rights" to overturn municipal lawmaking, corporations also assert two other doctrines in lawsuits filed to overturn municipal laws.

Those two other doctrines are state "ceiling" preemption and Dillon's Rule. State "ceiling" preemption refers to the authority of the State to set regulatory standards that municipalities may not exceed. This is different than the State's authority to set minimum regulatory standards that municipalities may exceed.

For example, New Hampshire's regulatory scheme for large water bottling operations has been found to supplant local lawmaking which would seek to protect the public trust in drinking water availability.[10] In other words, courts have found that state law setting certain standards preempts the entire "field" of large water withdrawals, and thus, that state regulations displace municipal authority in this particular area.

That type of preemption is prevalent in New Hampshire, and has been applied by the courts to overturn local laws in the areas of zoning against corporations acting pursuant to state leasing,[11] the adoption of local hazardous waste laws,[12] the adoption of local chemical defoliant laws,[13] the enforcement of siting regulations around hazardous waste disposal facilities,[14] the adoption of local regulations related to stone-crushing operations,[15] the enforcement of local regulations for landfills,[16] the adoption of local ordinances regulating excavation operations,[17] the issuance of local liquor licenses,[18]

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[10] *Appeal of the Town of Nottingham*, Case #2004-601 (NH Supreme Court 2006).

[11] *City of Portsmouth v. John T. Clark and Sons of New Hampshire, Inc.*, 117 N.H. 797 (1977) (citing to *Bisson v. Milford*, 109 N.H. 287 (1969) (declaring that "cities and towns have only such powers as are granted to them by the state.").

[12] *State v. Hutchins*, 117 N.H. 924 (1977).

[13] *Town of Salisbury v. New England Power Co.*, 121 N.H. 983 (1981) (holding that the local ordinance was preempted by statute statutes regulating chemical sprays).

[14] *Stablex Corp. v. Town of Hooksett*, 122 N.H. 1091 (1982) (holding that local siting regulations were preempted by state law, which "completely preempts the field of hazardous waste in this State"); see also, *Applied Chemical Technology, Inc. v. Town of Merrimack*, 126 N.H. 45 (1985) (affirming *Stablex*).

[15] *Appeal of Coastal Materials Corp.*, 130 N.H. 98 (1987).

[16] *Town of Pelham v. Browning Ferris Industries of New Hampshire, Inc.*, 141 N.H. 355 (1996).

[17] *Arthur Whitcomb, Inc. v. Town of Carroll*, 141 N.H. 402 (1996).

[18] *Casico, Inc. v. City of Manchester*, 142 N.H. 312 (1997).

the adoption of local ordinances establishing term limits for elected officials,[19] the adoption of local non-smoking ordinances,[20] the adoption of local solid waste laws,[21] the adoption of local ordinances banning the use of construction and demolition debris in co-generation facilities,[22] and the enforcement of local laws regulating the placement of mooring and slips for boats on lakes,[23] among others.

While "ceiling" preemption can be *established* via the passage of state statutes and regulations, it is privately *enforceable* by corporations and other business entities attempting to force certain projects into communities. That means that if the New Hampshire legislature and its regulatory agencies preempt municipalities from acting in certain areas, the actual *enforcement* of those preemptive standards falls to the large corporation seeking to strike down the offending municipal law. Thus, while the preemptive law itself may be adopted by the State, it is the corporations themselves that benefit from the protections provided by it.

The legal doctrine of Dillon's Rule is a similar tool, and is related to preemption. It stands for the proposition that a municipality may only legislate in areas in which the state has previously authorized the municipality to act. So, unless the municipality has been pre-authorized by the state to make law in a particular area, the municipality is unable to do so. *See, e.g., Dugas v. Town of Conway*, 125 N.H. 175, 181 (1984) ("cities and towns have only those powers which are granted them by the legislature.").

Used in lawsuits brought by large corporations against municipalities, "Dillon's Rule" is often asserted to claim that the municipality has been acting outside of its valid authority in adopting a law prohibiting the corporate project, and therefore, that the court must strike down the law. Again, even though Dillon's Rule is a doctrine created by the state (through the courts, as a rule built on the municipality being a "creature" of the state), the doctrine is privately enforceable by the corporation suing the municipality to overturn the law.

III. The Need to Change the Current Status of the Law

Faced with lawsuits brought by large corporations against municipalities, the targeted municipal governments often fold, and then proceed to repeal their local law to avoid damages and other expenses. Given the current status of the law, their response is a logical one. Faced with the expense of the lawsuit, and the potential for the payment of damages and attorneys' fees, the decision by the municipality to nullify its ordinance

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[19] *Hooksett v. Baines*, 148 N.H. 625 (2002).

[20] *JTR Colebook, Inc. d/b/a The Colebrook House v. Town of Colebrook*, 149 N.H. 767 (2003) (declaring that "where the state has preempted the field, local law regulating the same subject is inconsistent with the state's transcendent interest, whether or not the terms of the local law actually conflict with the statewide regulation.").

[21] *North Country Environmental Services, Inc. v. Bethlehem*, 150 N.H. 606 (2004).

[22] *Bio Energy, LLC v. Town of Hopkinton*, 153 N.H. 145 (2005).

[23] *Lakeside Lodge, Inc. v. Town of New London*, 158 N.H. 164 (2008).

and allow the corporate project to proceed, is one made to protect the fiscal health of the municipality.[24]

Without a change to the system of law - in which these legal doctrines have been "weaponized" for use against people in their own communities - any conception of local control is simply a farce. Any corporation possessing the wealth to use the courts to override municipal lawmaking has the ability to do so, and the community's vision for what they want for their own municipality is sacrificed to the outside interests of that corporation.

In many ways, the current system of law – in which corporate "rights," ceiling preemption, and Dillon's Rule are created by governments as doctrines of law, and then leveraged by large, private interests to override democratic self-government – has little in common with any concept of democracy.

Indeed, those two systems are irreconciliable.

A. How CACR19 Changes the Current Status of the Law to Restore Local Self-Government.

Local self-government is not a foreign concept to either the New Hampshire Constitution or the United States Constitution.

Indeed, local self-government at the community level is the keystone of the U.S. system of law – and its development can be traced back to the self-organizing communities of the Mayflower Compact and New England towns. The American Revolution's foundation was the authority of the colonists to self-govern in their own communities and colonies, and that thrust of the American Revolution then became embedded into the Declaration of Independence. The Declaration's sentiments – that people have a right and a duty to alter their own governments if those governments fail to secure their rights – are also embedded in every state constitution, including the constitution of New Hampshire.[25]

This right of local, community self-government has, unfortunately, been ignored for over the past hundred years, in favor of validating superior state and federal governmental decisionmaking. While finding some credence in the courts in the late 1800's[26], the past century of jurisprudence has either outright ignored the authority of people to govern their own communities, or has merely paid lip service to it.

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[24] While municipal insurance policies may, on their face, cover some of these costs, most insurance policies include disclaimers in which the insurance corporation may opt out of coverage if the insurance company determines that a defense of the local law is not likely to succeed in the face of the legal doctrines outlined here.

[25] For an extended discussion of the historical basis for the right of local self-government, see Thomas Linzey & Daniel E. Brannen Jr., *A Phoenix From the Ashes: Resurrecting a Constitutional Right of Local, Community Self-Government in the Name of Environmental Sustainability*, 8 Ariz. J. Envtl. L. & Pol'y 1 (2017).

[26] In the late 1800's, the state supreme courts of at least fourteen states adopted the "Cooley Doctrine" (named on behalf of Michigan Supreme Court Chief Justice Thomas

It is why municipalities are claimed to be merely "creatures of the state" and why the law recognizes the absolute authority of the state or federal government to define what people in their own municipalities can and cannot do, along with having the power to merge and even abolish municipalities. John Forrest Dillon, the judge who crafted "Dillon's Rule", once declared that

> Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control. . . [Municipalities are] mere tenants at will of their respective state legislatures. . . [to be] eliminated by the legislature with a stroke of the pen.

Clinton v. Cedar Rapids and the Missouri River Railroad, 24 Iowa 455 (1868).

CACR19 has been very carefully drafted to resuscitate the individual right of local, community self-government, to be asserted collectively by the residents of New Hampshire counties and municipalities to stop harmful corporate projects at the local level. It does so by recognizing the right itself, and then defining the right to include the authority to adopt local laws which override corporate "rights" and eliminate ceiling preemption, as long as those local laws do not interfere with existing state and federal constitutional and statutory rights for people, their communities, or nature.

1. CACR19 and the Use of Corporate "Rights".

CACR19 authorizes people, within their own municipality, to adopt a very specific type of law if they want to fall within the protections of CACR19. To qualify, that local law must expand civil and political rights for people of the municipality, and the local law may then prohibit certain activities within the municipality that would violate those rights. CACR19, Page 1, Line 9-11 ("to enact local laws that protect health, safety, and welfare by recognizing or establishing rights of natural persons, their local communities, and nature").[27]

M. Cooley), which held that a right of local, community self-government existed, and that municipalities pre-dated the creation of states and the United States, and thus, that the right of local, community self-government was a constitutional right. *See, e.g., People v. Hurlbut*, 24 Mich. 44 (1871) ("local government is a matter of absolute right; and the state cannot take it away.").

[27] The interplay between federal and state constitutions already recognizes this relationship, in that state constitutions are recognized as having the ability to expand and broaden existing federal constitutional rights. In other words, people at the state level possess the authority to use their state constitutions to build on the "floor" of federal constitutional rights. *See William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights*, 90 Harv. L.Rev. 489 (1977). CACR19 seeks to create the same relationship between the state and the local, which currently exists between the federal and the state – the ability to broaden and expand civil and political rights at the local level.

To protect the underlying law, CACR19 also authorizes localities to adopt provisions within those laws which "establish, define, alter, or eliminate competing rights, powers, privileges, immunities, or duties of corporations and other business entities operating, or seeking to operate, in the community." CACR19, Page 1, Line 12-14.

Corporate constitutional "rights," because of their use to override existing municipal laws, constitute the "competing rights, powers, privileges, immunities and duties" that CACR19 authorizes communities to re-define, if redefinition is "necessary" to secure the rights adopted within the local law. CACR19, Page 1, Line 11.

Thus, CACR19 not only explicitly authorizes municipalities to engage in "rights-based" lawmaking, which expands people's civil and political rights within the municipality, it also authorizes the community's authority to protect the enforcement of the laws by elevating those rights above those "rights" claimed by corporations. Without that elevation, the local laws would be pointless, because they could be overridden at will by the very corporations seeking to violate those expanded civil and political rights.

2. CACR19 and the Use of "Ceiling" Preemption.

In much the same way, CACR19 protects a very specific kind of municipal lawmaking against the use of "ceiling" preemption by corporations in attempts to overturn municipal laws.

If a municipality adopts the specific type of "rights-based" law authorized by CACR19, that law will be shielded from the application of "ceiling" preemption on one condition, namely, that the local laws "do not weaken existing protections for, or constrict the fundamental rights of, natural persons, or their local communities, or nature, as those protections and rights are secured by local, state, federal, or international law." CACR19, page 1, Lines 14-16.

Again, CACR19 not only explicitly authorizes a very narrow, specific form of municipal lawmaking, it also seeks to protect that lawmaking from collateral attack by those corporations affected by those local laws. Here, it would shield that local lawmaking from claims based on "ceiling" preemption, but only if the local law satisfies the threshold test – that it does not weaken existing statutory protections for, or constrict the fundamental rights of, people, communities, or the natural environment.

That threshold test marks one of the important limitations of local lawmaking exercised pursuant to CACR19 – that the protections of CACR19 vanish if the local law restricts, weakens, or diminishes either existing statutory protections or constitutional rights currently held by people in New Hampshire. If a local law seeks to reduce those protections or rights, then the protections of CACR19 do not apply, and the local law can be overridden through the use of existing legal doctrines.

3. CACR19 and the Application of Dillon's Rule.

By its very existence, CACR19 would eliminate the application of Dillon's Rule in an attack against a local law adopted pursuant to the Amendment. By explicitly recognizing a right of local, community self-government, and by authorizing certain

lawmaking to be done pursuant to the narrow confines of that right, ratification of the Amendment would satisfy the requirements of Dillon's Rule. The Amendment would provide the explicit authorization to municipalities to engage in "limited home rule" lawmaking, thus providing a platform for municipalities to adopt "rights-based" laws that comply with the requirements of the Amendment.

As with corporate "rights" and "ceiling" preemption, laws adopted pursuant to the requirements of the Amendment would be shielded from the assertion of Dillon's Rule as part of an attack on municipal lawmaking by corporations.

The legislature has a choice to make with respect to the action it takes on CACR19. It can disregard the Amendment and allow the status quo to stand – which means acquiescing to the continued pummeling of the people of New Hampshire at the hands of large corporate entities; or it can choose to empower and liberate the people of New Hampshire to act within their own municipalities to level the playing field.

We urge the Committee to take the first step of recognizing the problem and taking action to fix it – by advancing CACR19 through the Committee and towards the full floor of the House with a unanimous vote of "ought to pass" (OTP).

For those who believe in the promises of self-government contained within the Declaration of Independence, the New Hampshire Constitution, and the U.S. Constitution, there is simply no time to lose.

Testimony Submitted by:

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EXHIBIT E

New Hampshire Community Rights Network

March 6, 2019

Re: Support for CACR8, relating to the right to govern. Providing that the people of the state may enact local laws that protect health.

Dear Honorable Chair and House Municipal & County Government Committee Members:

As a daughter, a wife, and mother of three children, I implore you to recommend OTP on CACR8. I'm also a resident of Alexandria, NH, co-founder of Citizens of Alexandria Rights Effort (CARE Group), serving president of the NH Community Rights Network (NHCRN), and New England Community Organizer for the Community Environmental Legal Defense Fund (CELDF), which partners with the NHCRN.

To clarify, this testimony in support of CACR8 is on behalf of the NH Community Rights Network (NHCRN) which is a non-partisan grassroots non-profit founded in 2013 to educate communities and electeds about our right to local self-governance in order to secure and protect the inherent rights of all inhabitants of NH. **The NHCRN is a growing coalition of communities across the State of NH that are not waiting for state permission to protect their rights, health and safety and have already democratically adopted local laws that: make social and environmental harm illegal; elevate rights of people and ecosystems over corporate and state use of ceiling preemption; and call for state constitutional change recognizing the right to local self-governance.**

We grow up in the United States proud of our nation's historic role in leading humanity's transition from a monarchy to a democracy, or more specifically, a democratic republic. The simple definition of "democracy" is a government by the people, "plutocracy" is a government by the wealthy, and "oligarchy" is a small group of people having control of a government. A nation, and its states, which are ruled by a minority of people with big money is not any form of a democracy, be it a republic or not.

The foundation of political power is and always has been, economic power. IF New Hampshire were truly a democratic republic, each person would have a voice in the control and management of the means of their living. That would require more than just a vote expressing a preference for which establishment-vetted "representative" will be in Concord for the next two years.

DO NOT be led to believe that we must choose between two options: Dillon's Rule (citizens are restricted from local lawmaking that is not specifically enabled by the state) or Home Rule (citizens can use local lawmaking to decide on matters where the state is silent). Dillon's Rule vs. Home Rule is a false choice. Both feature an undemocratic concentration of preemptive control over the means of living in the hands of the few. Local democracy is essential for a democratic republic to work effectively for the benefit of all.

The critical economic and political question for the People of New Hampshire is not whether our means of living will be controlled by corporations or government, but whether control will be concentrated for the benefit of the few, or dispersed with benefits shared by everyone. **CACR8 retains New Hampshire's form of representative government and provides a means to hold our representatives accountable to the origin of political power – *"residing originally in, and being derived from, the people"* – in how best to represent us, at all times, in accordance with Article 8 of the NH Bill of Rights.** *Continued on next page*

Along with acknowledging the myth that we have a functioning democratic republic form of government, we need also to acknowledge that we do not have an independent judiciary either. Judges are appointed by the party in power and owe their allegiance to that party. For example, in New Hampshire, Gov. Sununu has appointed three out of the five state supreme court justices (one was already a justice, but Sununu appointed him to the chief justice position). Therefore, at least three out of the five judges hearing the Northern Pass appeal owe their relatively lucrative and powerful jobs to the governor who strongly supports the project. That leaves those most affected by the project – the citizens of New Hampshire – at a disadvantage when they, or even state agencies such as the Site Evaluation Committee (SEC), make binding decisions that Eversource might disagree with. **CACR8 would make clear to the judicial system that preemption could not be used as a ceiling to override local lawmaking that protects New Hampshire citizens in matters of health and safety, but provides a process establishing state and federal laws as a "floor" in which local people can collectively raise but not lower, thereby protecting economic, social, and environmental justice at the local community level.**

While it's true that society needs certain restrictions to maintain order and safety it is thoroughly unjust when the very state government whose duty it is to protect its citizens is actually protecting corporate freedom to cause harm, while at the same time legislatively denying citizens the freedom to protect themselves and the ecosystems they depend on for quality of life. Government is created by the governed – who are willing to give up some freedoms to create that society – that is supposed to function to secure certain rights and protections for the governed. But what if the function of that government is not securing rights and protections for the governed? The NH Bill of Rights in Article 3 says that without such an equivalent of protections, the surrender of some of our natural rights to the society we created, are VOID. Government is not the source of our inherent and inalienable right to self-govern, although such a right is affirmed in Articles 1, 2, 3, 8 , 10, 32, and 38 of the NH Bill of Rights.

CACR8 is about all about law and order by specifically enumerating the right to local self-government as an individual political right that empowers collective local lawmaking authority to put a check on the use of ceiling preemption, which corporations have used to secure their position of economic power over the citizens and ecosystems of New Hampshire.

Fear-based rhetoric from corporate lobbyists that CACR8 will generate numerous lawsuits for the state or that a patchwork of local lawmaking is just too burdensome for them to navigate are just an effort to maintain the status quo of their power grab which is contrary to our NH Bill of Rights, the Live Free or Die independence of Granite State citizens, and the ultimate sacrifice of our Revolutionary ancestors to throw off the top-down form of British government and create a bottom-up democratic republic.

In the words of MLK Jr., "There comes a time when one must take a position that is neither safe nor politic nor popular, but one must take it because their conscience tells them it is right." The right thing to do for the people and natural environments of New Hampshire is to advance CACR8 with a unanimous OTP recommendation to the full House.
Respectfully,

Michelle

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OVERVIEW: THE RIGHT OF LOCAL, COMMUNITY SELF-GOVERNMENT AMENDMENT IN NH

The NH Community Rights Network is a growing coalition of communities across the State of NH that have no longer been waiting for state permission to pass local laws that protect their rights, health and safety and instead, have already adopted local rights-based laws that: make social and environmental harm illegal; elevate rights of people and ecosystems over corporate and state interference; and call for state constitutional change recognizing the right to local self-governance. They have done so because as corporate threats grow in the Granite State, more citizens recognize that our quality of life, indeed our very lives and those of our children and future generations, depend upon it.

Over 200 hundred communities nationwide – nearly 2 dozen in NH – have come together to collectively discuss and adopt such local laws as described above in a non-partisan manner. All politics are local and every human being is concerned with securing rights to such things as health and safety. However, sad to say, we must overcome a political divide at the state level which has maintained the status quo of elevating corporate personhood rights to exploit people, communities, and natural environments over the rights of natural persons and ecosystems to protect themselves through legislative means that deny local governing authority to protect matters of health and safety.

The Right of Local Community Self-government amendment was first heard by the NH Legislature in 2016 then again just last year, in 2018, when it received a landmark vote of support from 1/3 of the NH House! This grassroots effort to specifically enumerate the Right of Local, Community Self-government within state constitutions is being introduced for the 3rd time in NH, for the 1st time in OR, language has been approved for citizen initiative in OH, and a grassroots effort is stirring in PA to gain legislative support.

- **In 2016,** a 1 ½ hr.-long hearing full of supporting testimony from the capable citizens of NH was ignored, and the unanimous ITL from the committee was based on one dissenting testimony from Greg Moore, lobbyist for the ultra-conservative Americans for Prosperity (AFP) – which according to Wikipedia – is a libertarian/conservative political advocacy group in the United States funded by the Koch brothers. As their primary political advocacy group, it is one of the most influential American conservative organizations.
    - **AFP touted that the measure would *allow a local community unfettered taxing authority to tax soda, sugary snacks, and potato chips!* CACR8 would not allow local communities unfettered taxing authority because #1) taxation is neither a legislative "prohibition," nor #2) other "means" (line 10) and thus, it wouldn't be authorized by CACR8.** *"Means" refers to other than legislative actions, i.e. Internal policies for the municipality.*
    - **The one question that did come from the committee during the 2016 hearing had to do with *a community voting to authorize the building of a large gambling casino by an out-of-state corporation that might be able to use the amendment language to circumvent state law and do just that.***

      The desire for a casino within a community does not recognize or establish rights of people or their natural environments, nor would it secure such a right using prohibitions or other means – *especially if it is allowing it*, therefore, CACR8 would not authorize the building of a large gambling casino. (Lines 8–13 of CACR8 that describes the kind of municipal laws authorized under the CRA. "local laws that recognize, secure, and protect the economic, social, and environmental well-being of people, their communities, and natural environments. This right to local self-government includes the people's authority to use prohibitions and other means to elevate the rights of people, their communities, and natural environments, and to do so free from ceiling preemption and from competing rights, powers, or duties of corporations and other business entities.")

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- **The 2016 committee report questioned whether** *the proposed amendment would completely override state or federal law,* **however, there is no such authority granted within CACR8.** (Language in lines 8–13 limit the purpose of local lawmaking that people would be empowered to collectively enact, and lines 13–17 specifically limit local authority to *strengthen and expand rights and protections* already secured by local, state, federal, or international laws.)

- **In 2018,** 2 ½ hrs. of supporting testimony was heard from NH citizens and dissenting testimony from AFP and some misinformed individuals about the right of local self-government being used to infringe upon personal rights and protections.
  - Confusion was expressed over whether enumerating the Right to Local Self-government is proposing *broad-based Home Rule for NH municipalities.* **No, CACR8 offers a narrow portal of allowable empowerment that recognizes the right of PEOPLE to use their local lawmaking process to adopt certain local laws that build upon state and federal laws as a "floor" thereby protecting people, their communities, and their natural environments from legal action against corporate activities.**
  - Both Dillon's Rule & Home Rule doctrines subject individual citizens to ceiling preemption which is used by business entities to override collective local law-making that builds upon state and federal laws as a "floor" and instead, interfere with individual rights and protections at the local community level. **CACR8 is not home rule but an inherent and unalienable right that resides above a government's functioning protocol.** NH DOES NOT have to be a Home Rule state to recognize individual political rights of its citizens.
  - *Why not just pass a law?* **Self-governance is an inherent and unalienable right which belongs codified within the NH Bill of Rights.**
  - *What about the expenditure of public funds if an entity challenged the new provision of the state constitution on the grounds of federal preemption?* **Support for CACR8 should not be limited by this kind of thinking that puts costs over principles and people and is really saying that the right of people to protect themselves, their communities and their natural environments from harmful corporate activities aren't as valuable to the State as the promise of business taxes.**
  - *Will this generate a flood of lawsuits?* We live under a legal structure which allows anyone to sue anyone for anything at any time. There is nothing in CACR8 that changes that. **What CACR8 does do, is afford legal protections for people to use their local lawmaking process to enact local protecting laws that fit the narrow portal of authorized application, thereby *protecting municipalities from legal challenges.* The economic well-being of municipalities benefits the local community and the state.**
  - *Would CACR8 give NH towns the right to veto just about anything being built?* Today, the law elevates the claimed "rights" of private corporations over the rights of people who live in NH communities. Private corporations (usually industrial-scale) regularly invoke these rights and privileges when their interests conflict with the communities' attempt to protect the local environment, economy, or resident's health and safety. **CACR8 is not about "liking or not liking" projects, it is about empowering people with a recognized political right to use their local lawmaking process to codify protections for the health and safety of both human and natural communities within their towns – over the privilege of private corporations to use ceiling preemption to force activities that would violate the local law.**
  - *We should not require a municipal referendum on every proposed project.* **CACR8 does not propose such a notion.** There is no requirement under CACR8 for a community to collectively enact a local law subject to the Right of Local Self-government.

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- *Recognizing the Right of Local, Community Self-government would create rights that have never existed.* **Not accurate. Inherent and unalienable rights DO NOT exist because they are granted by government documents, but because they are our birthright as human beings.** Infringement upon our right to local, community self-government was the primary reason for The Revolution. The Declaration of Independence cites 30+ grievances, more than 20 have to do with violating local self-governing authority.
- *Would CACR8 create a tyranny of the majority that would trample upon "property rights," not preserve them?* Current restrictions upon "property rights" exist in which it is illegal for individuals to carry out activities on property that would be harmful to those around us, i.e. we cannot dump toxins, extract groundwater in large amounts, or cite, construct, or operate industrial-scale energy projects unless a permit is obtained to legalize what would otherwise be illegal. We are subject to local zoning regulations and state laws on what we can and cannot do with our own personal or commercial property. CACR8 does not rewrite these regulations in any way. **CACR8 expands "property rights" in matters of health and safety to all members of the community – not just abutters, those financially vested, and those who own permits – by empowering people to use their local lawmaking process to build upon existing state and federal land-use protections, allowing the community to hold together to protect local natural resources in a meaningful and sustainable way. "Property rights" are expanded throughout the local community for the benefit of the general good.**

- The current political structure renders the people of NH powerless to directly protect themselves, their property, their local communities and ecosystems in any meaningful way. Ceiling preemption renders the citizens of the State as abused children; corporations as the abuser; with the state as the enabler of the abuse through the issuance of land-use permits that legalize the abusive activity. And then the courts are there to protect the abuser from the abused when they attempt to stop the abuse!
  - **If we were truly speaking of an abused child, there would be outrage over such a system that would legalize child abuse, protect the abuser and punish the abused for trying to stop the abuse,** and yet we are talking about children; their mothers, their fathers, and other family members too. We all make up our communities. We are the families that live, work and play amongst legalized harmful activities that reduce our property values, undermine our local economies, contaminate our air, water and soil which contributes to NH having the highest pediatric rate of cancer in the nation, and we just keep up the status quo. We keep thinking that if we elect the right people, or pass enough land-use regulations, that somehow, the system will magically begin to correct itself. That hasn't worked since the first regulatory laws were introduced. Doing the same thing over and over again and expecting different results is called insanity! **CACR8 is the only way to hold the abuser accountable because it empowers the abused with legal authority to stop the abuse and instructs the courts to protect the abused from the abuser and no longer the other way around.**

- The Right of Local, Community Self-government amendment was heard by the House Municipal & County Government committee last year and received an OTP recommendation of (3-2) by an established bi-partisan subcommittee that held three work sessions. The subcommittee report was not allowed to be heard during the executive session which left the full committee at a disadvantage in considering the full study of the amendment. A motion of ITL was moved and resulted in a final recommendation from the committee of (11-8). Even so, 1/3 of the entire House voting on March 15, 2018 voted to advance the Right of Local Self-Government amendment (ITL 217-112).

Continued on next page

Written testimonies from Granite State residents as well as additional supporting material have been submitted for public record. You will find a wealth of information supporting the Right to Local Self-government included in the 351 pages of bill history on the NH General Court website under last year's bill number CACR19.

If there is one thing I want this committee to remember, it's this: **LOCAL SELF-GOVERNMENT IS NOT NEW, IT IS WHAT SET THIS NATION APART FROM THE OTHERS WITH THE DECLARATION OF INDEPENDENCE AND IS THE FOUNDATION OF THE STATE OF NEW HAMPSHIRE.**

On behalf of my fellow citizens of NH, and myself, I would like to express appreciation to Rep. Ellen Read for sponsoring this local democracy amendment, and the bi-partisan co-sponsor support from nine other Representatives. I urge this committee to recommend OTP on CACR8 and restore local democracy to the people of New Hampshire.

Respectfully,

Michelle

Michelle Sanborn
Serving President of the NHCRN
Alexandria, NH 03222-6562
603-524-2468

KIRA AAKRE KELLEY
ATTORNEY AT LAW
NEW HAMPSHIRE COUNSEL, CELDF
CHAIR, VERMONT NATIONAL LAWYERS GUILD

21 B Acme St, Windsor VT 05089
802-683-4086
kakelley436@gmail.com
District of Columbia Bar ID: 1618130

To: Municipal & County Government Chairman and Committee Members
Re: Testimony in Support of CACR8
Date: March 6, 2019

Dear Municipal & County Government Chairman and Committee Members:

The Right of Local Community Self-Government has been a cornerstone of both national and state government, throughout their evolution into the structures they are today. Our founding and governing texts reflect this: **people have the right and the obligation to continuously guide their government towards justice and away from corrupting influences.**

The Mayflower Compact, the Declaration of Independence, and the New Hampshire State Constitution all illustrate this concept. These documents represent collective initiative, whereby people devised a governing structure to protect their common interests. *These documents vest the decision-making and governing authority in the people who are bound to and by that document, allowing the majority of that body or locality to make the decisions that impact the collective.*

The people (by majority or supermajority consent) create a system of governance, and have the ultimate say in its abilities and limits.

The right to local self governance is **inherent and inalienable**; our federal and state governments prove this by their own existence and relationship to each other. People chose to join together to form and consent to federal and state governance. People have the same right to form local governments and to run them as they see fit. To say that states get to control local governments is to eviscerate the very theory upon which the state itself exists as a government of free people.

Affirming this inherent right in a Constitutional amendment would strengthen our longstanding tradition of civic engagement, allowing people to utilize the structures of government as tools to stabilize and bolster their economies, environment, and public safety.

This amendment would nullify unconstitutional legal doctrines that interfere with residents using local government to protect themselves. Three doctrines that currently inhibit the inherent and inalienable exercise of local self-governance are: corporate Constitutional rights, Dillon's Rule, and ceiling preemption.

1. *Corporate Constitutional "Rights"*: Corporations are "creatures of the state," legal fictions. The United States Constitution protects people against the State "and all of its creatures." The Constitution does not allow a fictional entity that the State has created to challenge a law that the people have passed to protect their fundamental rights. This amendment would correct the misguided judicial interpretations that elevate the property rights of legal fictions over the safety of real people.

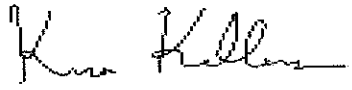
2. *Dillon's Rule*: The right of local community self-government belongs to *people*, it is an individual right exercised collectively. Dillon's rule incorrectly frames the power dynamic. The *people*, through consent of the governed, delegate the authority to pass and enforce laws to both their state and local governments. The *state* receives only such power as the *people* delegate to it, and can not attempt to limit the authority that *people* can delegate to their local governments.

3. *Ceiling Preemption*: This doctrine deprives people of their inherent authority to protect themselves from harm by legislating more protectively than the state has chosen to do. Just as the states are laboratories of democracy in relation to the federal government, towns are laboratories of democracy in relation to the state. So long as towns abide by the minimum standards the state sets to avoid outsourcing harms to other towns, people have the authority to adopt more protective stances against threats to human and environmental rights.

This legislature often uses Constitutional Amendments to overturn unjust common law. For example, last year the legislature adopted CACR15 to reinstate taxpayer standing, which the New Hampshire Supreme Court had previously done away with in *Swank v. Manchester* (2015) and *Duncan v. New Hampshire* (2012). Similarly, CACR8 would secure the inherent and inalienable right to local self governance by putting Corporate "rights," Dillon's Rule, and ceiling preemption challenges to rest.

Thank you for your time.

Sincerely,



Kira Kelley, Esq.

EXHIBIT F

CELDF COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

COMMUNITY RIGHTS

CELDF's Community Rights work is a paradigm shift, a move away from unsustainable practices that harm communities, and a move towards local self-government.

Community Rights include *environmental rights*, such as the right to clean air, pure water, and healthy soil; *worker rights*, such as the right to living wages and equal pay for equal work; *rights of nature*, such as the right of ecosystems to flourish and evolve; and *democratic rights*, such as the right of local community self-government, and the right to free and fair elections.

We work with communities that are unwilling to be oppressed by an unjust structure of law that is created by, and favors, the largest economic powers. Together, we are creating a new movement – one that recognizes, secures, and protects the rights of all those living within a community.

Freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.
— Dr. Martin Luther King, Jr.

A MOVEMENT WHOSE TIME HAS COME

Today, communities across the country are being told that they don't have the right to make critical decisions for themselves. They're told they cannot say "no" to fracking or factory farming. They're told they cannot say "yes" to sustainable food or energy systems.

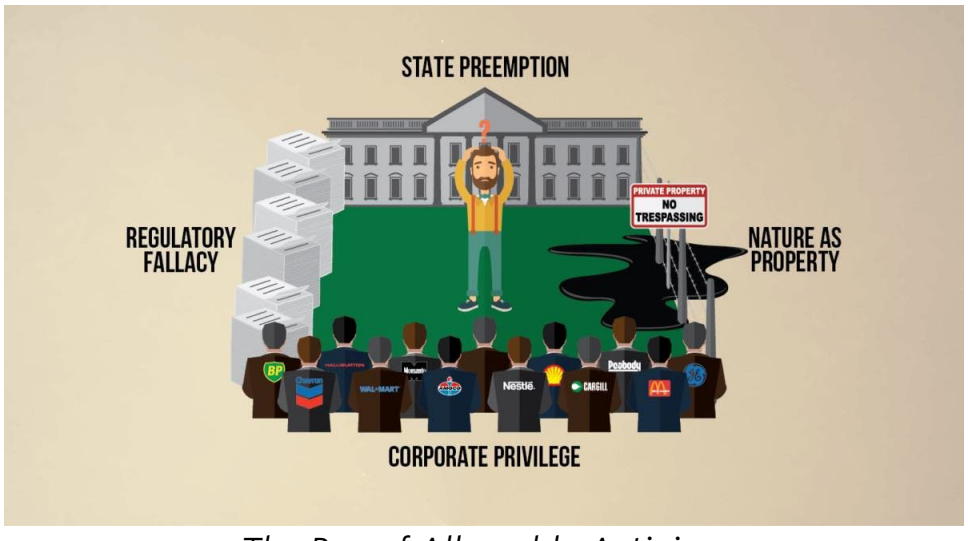
Through the Community Rights Movement, communities are working with CELDF to create a structure of law and government of the people, by the people, and for the people. That structure recognizes and protects the inalienable rights of natural and human communities.

We have a democracy problem. We live under a system of laws that doesn't care what we want as a community.
— Thomas Linzey

HOW DOES A COMMUNITY LOSE ITS VOICE?

1. **State and Federal Preemption** – There are laws that allow large corporations to force harmful activities into communities – despite community opposition.

2. **Corporate Privilege** – Our structure of law elevates corporate decision-making over community decision-making. Corporations have court-conferred constitutional "rights." They wield these "rights" against communities to eliminate local efforts that may interfere with industry plans to expand their operations, regardless of the impact to communities and nature.
3. **The Regulatory Fallacy** – Agencies such as the Environmental Protection Agency, the National Labor Relations Board, and the Minerals Management Agency – do not actually protect us. Rather, they *regulate* the amount of harm that is inflicted on our communities.
4. **Nature as Property** – Our legal system grants landowners the right to damage the environment, even though the impact is carried by the entire community.



The Box of Allowable Activism

EXAMPLES OF A BROKEN SYSTEM

- Residents of **Grant Township, PA (https://celdf.org/2015/08/grant-township-pa-refusing-to-be-poisoned-and-demanding-democracy/)**, are told they cannot stop the injection of toxic frack waste into their community. Why? Because the State has pre-empted them from doing so, and the corporation has the "right" to inject.
- Residents of Spokane, WA, are told they do not have federal Bill of Rights protections on the job because corporate "rights" trump their rights to privacy and to free association.
- Communities in Oregon's fertile Willamette Valley and timber lands of Josephine County are told they cannot say "no" to the contamination of their farmland by genetically modified (GM) seeds and poisoning of their forests and waterways from pesticides. They are finding their own state government protecting these harmful practices, and blocking communities' efforts to codify sustainability.
- Communities in New Hampshire face construction of a massive energy transmission project that will cut through the most pristine landscapes of the state. They are told they have no right to stop the project or to establish sustainable energy systems.
- Communities across the country are told they do not have the authority to demand free

and fair elections, police accountability, divestment from fossil fuels, or religious freedom – among many other issues – because these issues run up against state preemptive laws and corporate "rights."

COMMUNITY RIGHTS IN THE AMERICAN REVOLUTION

The very founding of our country was based on an assertion of Community Rights. In the years leading up to the Declaration of Independence and the Revolutionary War, the colonists had decided that they could no longer tolerate a distant, monarchical, and oppressive system of government that treated communities on this continent as resources to be plundered.

Many of the grievances outlined in the Declaration of Independence of 1776 are similar to grievances voiced by communities across the nation today.

PREEMPTION

The colonists had to deal with preemption. The King and British Parliament constantly interfered with the legislative priorities of the local communities. Indeed, the very first grievance laid out in the Declaration of Independence deals with preemption directly:

"HE has refused his Assent to Laws, the most wholesome and necessary for the public Good."

"He" of course means the King, and the colonists noted that time and time again, the King had interfered with legislation desired by the colonists to protect their health, safety, and welfare.

NATURE AS PROPERTY

The colonists were also outraged over how the King and his loyalists treated the natural environment. It was considered property for profit:

"HE has plundered our Seas, ravaged our Coasts."

CORPORATE PRIVILEGE

Corporations, and the privileges bestowed upon them, were of particular concern to the colonists. Chartered corporations, such as the East India Company, were given privileges and protections that legalized their harmful activities all over the world.

I hope we shall crush in its birth the aristocracy of our monied corporations which dare already to challenge our government to a trial by strength, and bid defiance to the laws of our country.

— Thomas Jefferson

An early American Community Rights protest

THE COMMUNITY RIGHTS SOLUTION OF 1776

Given the growing injustices facing the colonists, the Declaration of Independence was issued and new governing documents were developed, including the Articles of Confederation and new state constitutions.

While not perfect, these new constitutions took local community self-government seriously. Corporations were brought under the control of the communities that they served, and it was understood that *the community* was the sole and legitimate source of all governing authority. The first Pennsylvania constitution, ratified in 1776 (not long after the Declaration of Independence), stated:

"WHEREAS all government ought to be instituted and supported for the security and protection of ***the community*** *as such... and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness."*

THE MODERN COMMUNITY RIGHTS MOVEMENT

Community Rights secured in this country's founding have been eroded away over the last **two hundred years (https://celdf.org/how-we-work/education/democracy-school/)**. Our state and federal constitutions have been hijacked. They are routinely wielded by corporations to force harmful environmental and economic activities into communities that don't want them.

And yet, over the past decade, and despite overwhelming opposition from large, multinational corporations, the Community Rights secured in our country's founding are now being reclaimed and asserted by hundreds of municipalities across the country.

LOCAL COMMUNITY RIGHTS

CELDF works with communities seeking to codify Community Rights. Known as Community Bills of Rights, these laws have been adopted by nearly 200 communities. They protect rights by banning harmful corporate activities ranging from coal mining to factory farms to fracking to the dumping of sewage sludge.

While the issues may be different, the DNA of these laws is the same: the recognition of a right of local community self-government and the right to strengthen the floor of rights protected by state and federal government.

Communities are stepping forward to determine a future of their own making. A future that is not determined by an out-of-area corporation, but rather by the people who live there.

A 2014 Ordinance passed in Grant Township, Indiana County, PA, demonstrates language common to Community Rights laws:

"All residents of Grant Township possess the right to a form of governance where they live which recognizes that all power is inherent in the people and that all free governments are founded on the people's consent. Use of the municipal corporation "Grant Township" by the people for the making and enforcement of this law shall not be deemed, by any authority, to eliminate, limit, or reduce that sovereign right."

Grant Township, Public Herald, May 4, 2016

MOVING COMMUNITY RIGHTS TO THE STATE LEVEL

Movements begin at the local level. The movement for women's suffrage didn't start with the US Supreme Court. Rather, it was a struggle that lasted more than 50 years. It included *over 400 local and state laws* that recognized the right of women to vote. These local and state laws began to be adopted long before that right was ensconced in the U.S. Constitution with the ratification of the 19th amendment in 1920.

We also learn from prior movements that organizing *only* at the local level will always leave communities vulnerable to attack from corporations and state and federal government. Part CELDF's work is to help communities harness the momentum from local, grassroots organizing, and channel that energy into state-based organizations to drive larger structural legal change.

You never change things by fighting the existing reality. To change something, build a new model that makes the existing model obsolete.

— R. Buckminster Fuller

CELDF has assisted communities in six states to join together, forming Community Rights Networks (CRNs). These CRNs are hubs, facilitating and amplifying the energy and resources from community organizing. They support growing Community Rights organizing locally, helping communities protect themselves from immediate threats. They also serve to channel the growing energy of these communities into a collective force, working to secure and protect Community Rights at the state level.

CELDF's partner communities, which make up the CRNs, are enacting local rights-based laws that explicitly demand action at the state and federal levels. For example, Grant Township, Indiana County, PA's, Community Bill of Rights was adopted in 2014. It states:

"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.'"

These calls echo across states. And our state-level work is rapidly expanding. In 2014, the **Colorado Community Rights Network (http://cocrn.org/)** circulated a petition for a state constitutional amendment recognizing the right of Colorado communities to protect their health and safety by prohibiting harmful corporate activities. While corporate challenges interfered with the signature-gathering process, making it difficult to gather the required number of signatures in a short period of time, the Colorado Network is leading signature-gathering efforts for a similar amendment in 2016.

In February 2016, a constitutional amendment for Community Rights was introduced in the **New Hampshire (http://nhcommunityrights.org/)** legislature. And in March of 2016, the **Pennsylvania Community Rights Network (http://pacommunityrights.org/)** rolled out a state constitutional amendment that would recognize the right of citizen initiative. If adopted, it will empower Pennsylvanians to advance Community Rights amendments to protect themselves and create sustainable communities – liberating them from the corporate state legislature.

MOVING COMMUNITY RIGHTS TO THE NATIONAL LEVEL

Our Community Rights work has moved to the national level to mobilize local and state Community Rights advancements into a force that will eventually democratize our federal constitution. Formed in 2014, the **National Community Rights Network (http://nationalcommunityrightsnetwork.org/)** (NCRN) states:

"Without a federally protected right of local, community self-government, rights- based laws adopted at the local and the state level can be overturned by preemptive federal laws and by federally-anchored corporate constitutional "rights."

The National Community Rights Network is now, (1) coordinating the work of the state-based Community Rights Networks; (2) raising the profile of community rights-based organizing at the national level; and (3) drafting federal constitutional amendments that recognize and protect the right to community self-government.

TAKE ACTION:

COMMUNITY RIGHTS BEGIN WITH YOU

If you or your community is threatened by corporate or government harms and want to take action to protect your community, contact us and learn how.

You and your community have rights, and CELDF is here to help you fight for them. **Click here to learn more about where we work and how you and your community can get involved (https://celdf.org/how-we-work/)** — or email us at **info@celdf.org (mailto:info@celdf.org)**.

LEARN MORE THROUGH OUR COMMUNITY RIGHTS PAPERS

1. **The Spirit of '73 and the Right to Local Self-Government (https://celdf.org/2015/03/community-rights-paper-1/)**
2. **A Celebration of NIMBY: "Not in my backyard...not in ANY backyard!" (https://celdf.org/wp-content/uploads/2015/08/Community_Rights_Paper_2_NIMBY.pdf)**
3. **Firing Big Green (https://celdf.org/wp-content/uploads/2015/08/Community_Rights_Paper_3_Firing_Big_Green.pdf)**
4. **American Independence (https://celdf.org/wp-content/uploads/2015/08/Community_Rights_Paper_4_AmericanIndependence.pdf)**
5. **The Fickleness of Democracy (https://celdf.org/wp-content/uploads/2015/08/Community_Rights_Paper_5_Fickleness_of_Democracy.pdf)**
6. **The Myth of Community Rights (https://celdf.org/wp-content/uploads/2015/08/Community_Rights_Paper_6_Myth_of_CR.pdf)**
7. **Why Corporate "Rights" Matter (https://celdf.org/wp-content/uploads/2015/08/Community_Rights_Paper_7_Why_Corp_Rights_Matter.pdf)**
8. **A Touch of Class (https://celdf.org/2015/12/community-rights-papers-8-a-touch-of-class/)**
9. **Drowning the Clean Water Act in the Constitution's Bathtub (https://celdf.org/2015/12/community-rights-paper-9-drowning-the-clean-water-act/)**
10. **Paradise Lost (https://celdf.org/2015/12/community-rights-paper-10-paradise-lost/)**
11. **Slaves in all but Name (https://celdf.org/2016/01/community-rights-paper-11-slaves-in-all-but-name/)**
12. **Preempting Democracy (https://celdf.org/2016/04/community-rights-paper-12-preempting-democracy/)**
13. **Breaking the Planet (https://celdf.org/2016/06/community-rights-paper-13-breaking-planet/)**
14. **Democratic Rights Matter (https://celdf.org/2016/12/community-rights-paper-14-democratic-rights-matter/)**

FIGHT FOR A MORE DEMOCRATIC TOMORROW, TODAY.

Our democracy has been usurped by corporations. Please give today to help CELDF return the democratic process to the people. CELDF uses every dollar of your donation to fight for rights.

DONATE TODAY (HTTPS://CELDF.ORG/DONATE)

Posted on August 4, 2015 (https://celdf.org/community-rights/) Updated on April 10, 2019 Print this page (https://celdf.org/community-rights/)

EXHIBIT G

2949325109013 8

C&E 989

Form 990 Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

► Do not enter social security numbers on this form as it may be made public.

► Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

A For the 2017 calendar year, or tax year beginning , and ending

B Check if applicable:
- ☐ Address change
- ☐ Name change
- ☐ Initial return
- ☐ Final return/terminated
- ☐ Amended return
- ☐ Application pending

C Name of organization: Community Environmental Legal Defense Fund

Doing business as:

Number and street (or P O box if mail is not delivered to street address): PO Box 360

Room/suite:

City or town: Mercersburg

State: PA

ZIP code: 17236

Foreign country name / Foreign province/state/county / Foreign postal code:

D Employer identification number: 25-1760934

E Telephone number: (717) 498-0054

G Gross receipts $: 2,069,104

F Name and address of principal officer: Stacey L Schmader PO Box 360, Mercersburg, PA 17236

H(a) Is this a group return for subordinates? ☐ Yes ☒ No

H(b) Are all subordinates included? ☒ Yes ☐ No

If "No," attach a list (see instructions)

I Tax-exempt status: ☒ 501(c)(3) ☐ 501(c) ( ) ◄ (insert no) ☐ 4947(a)(1) or ☐ 527

J Website: ► www celdf org

H(c) Group exemption number ►

K Form of organization: ☒ Corporation ☐ Trust ☐ Association ☐ Other ►

L Year of formation: 1995

M State of legal domicile: PA

Part I Summary

Activities & Governance	1	Briefly describe the organization's mission or most significant activities: The Organization mission is to build sustainable communities by assisting people to assert their right to local self-government, and expand and recognize the rights of people,communities,and nature		
	2	Check this box ► ☐ if the organization discontinued its operations or disposed of more than 25% of its net assets		
	3	Number of voting members of the governing body (Part VI, line 1a)	3	4
	4	Number of independent voting members of the governing body (Part VI, line 1b)	4	0
	5	Total number of individuals employed in calendar year 2017 (Part V, line 2a)	5	10
	6	Total number of volunteers (estimate if necessary)	6	
	7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	0
	b	Net unrelated business taxable income from Form 990-T, line 34	7b	0

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236 AUG 27 2018 IRS-OSC
OGDEN, UT

			Prior Year	Current Year
Revenue	8	Contributions and grants (Part VIII, line 1h)	1,058,442	2,032,830
	9	Program service revenue (Part VIII, line 2g)	7,244	28,530
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	8,252	7,744
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	0	0
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	1,073,938	2,069,104
Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)	0	10,000
	14	Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	356,211	546,111
	16a	Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	b	Total fundraising expenses (Part IX, column (D), line 25) ► 47,823		
	17	Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	474,847	484,964
	18	Total expenses Add lines 13–17 (must equal Part IX, column (A), line 25)	831,058	1,041,075
	19	Revenue less expenses Subtract line 18 from line 12	242,880	1,028,029

			Beginning of Current Year	End of Year
Net Assets or Fund Balances	20	Total assets (Part X, line 16)	1,686,637	2,716,800
	21	Total liabilities (Part X, line 26)	0	2,134
	22	Net assets or fund balances Subtract line 21 from line 20	1,686,637	2,714,666

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge

Sign Here

Stacey L Schmader — Signature of officer — Date: 8/8/18

Stacey Schmader — Type or print name and title — Secretary/Treasurer

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN
Kenneth E Herrmann	Kenneth E Herrmann	7/2/2018		P00109033

Firm's name ► Herrmann & Loll Inc. CPA — Firm's EIN ► 27-3875709

Firm's address ► 1417 Third St, Beaver, PA 15009 — Phone no 724-371-0726

May the IRS discuss this return with the preparer shown above? (see instructions) ☒ Yes ☐ No

For Paperwork Reduction Act Notice, see the separate instructions. Form **990** (2017)

HTA

937 14

SCANNED OCT 17 2018

EXHIBIT H

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA GENERAL ENERGY COMPANY, LLC,	:	
Plaintiff	:	**C.A. No. 14-209ERIE**
	:	
vs.	:	**Magistrate Judge Baxter**
	:	
GRANT TOWNSHIP,	:	
Defendant.	:	

OPINION AND ORDER

Magistrate Judge Susan Paradise Baxter[1]

Pending before the Court are: (1) the renewed motion for sanctions filed on behalf of Plaintiff Pennsylvania General Energy Company, LLC ("PGE") (ECF No. 249); (2) Defendant Grant Township's motion to strike PGE's motion for sanctions (ECF No. 253); (3) Little Mahoning Watershed and East Run Hellbenders Society, Inc.'s motion to strike PGE's motion for sanctions as untimely (ECF No. 256); and (4) Grant Township's counter-motion for sanctions (ECF No. 264).

For the reasons that follow, the Court grants in part PGE's motion for sanctions, and attorneys' fees and costs will be assessed against Attorneys Linzey and Dunne of the Community Environmental Legal Defense Fund ("CELDF") ONLY, and not, either directly or indirectly, against Defendant Grant Township. In addition, Attorney Linzey will be referred to the Disciplinary Board of the Supreme Court of Pennsylvania for such further proceedings as the Board may deem appropriate. Attorney Schromen-Wawrin's motion to strike, filed on counsel's

[1] This civil action was originally assigned to District Judge Frederick J. Motz and then assigned to District Judge Arthur J. Schwab for settlement purposes. Thereafter, in accordance with the provisions of 28 U.S.C. § 636(c)(1), the parties voluntarily consented to having a United States Magistrate Judge conduct proceedings in this case, including the entry of a final judgment.

behalf via proposed intervenors Little Mahoning Watershed and East Run Hellbenders, reluctantly is granted. The remaining motions are denied.

I. Background and Relevant Procedural History[2]

PGE is a private corporation in the business of exploration and development of oil and gas. PGE currently owns and operates natural gas wells in Grant Township, Pennsylvania. PGE's exploration and development activities include drilling and operating gas wells and managing brine and other produced fluids from operating wells.

In 1997, PGE's predecessor in interest put into production a deep gas well in Grant Township on property known as the Yanity Farm. PGE intends to use the Yanity Well to inject produced fluids from its other oil and gas operations. Based on its intention to convert the use of the Yanity Well to an injection well for disposal of produced fluids generated at other PGE oil and gas wells, PGE proceeded to obtain regulatory approval for such use.

On March 19, 2014, PGE received an initial permit from the United States Environmental Protection Agency to convert the Yanity Well into an injection well, and on September 11, 2014, the EPA issued a final permit in this regard.

On June 3, 2014, with the assistance and direction of Community Environmental Legal Defense Fund ("CELDF"), Grant Township adopted the Community Bill of Rights Ordinance (the "CBR" or "Ordinance"). The CBR expressly prohibits any corporation from "engag[ing] in the depositing of waste from oil and gas extraction" and invalidates any "permit, license, privilege, charter, or other authority issued by any state or federal entity which would violate

[2] For purposes of the resolution of the pending motions, certain undisputed facts gleaned from the litigation of this matter and set forth in this Court's Opinion resolving cross-motions for summary judgment shall be reiterated herein. *See*, *Pennsylvania General Energy Company, LLC v. Grant Township*, 2017 WL 1215444 (W.D. Pa. Mar. 31, 2017).

[this prohibition] or any rights secured by [the Ordinance], the Pennsylvania Constitution, the United States Constitution, or other laws."

PGE filed this action challenging the constitutionality, validity, and enforceability of the CBR. Through this action, PGE seeks relief pursuant to 42 U.S.C. § 1983 against the Township on the grounds that the Ordinance stripped Plaintiff of its federal constitutional rights, and otherwise is in direct conflict with a number of Pennsylvania statutes and therefore is preempted. ECF No. 5.

Attorney Linzey, on behalf of Grant Township, filed an Answer and Counterclaim invoking 42 U.S.C. § 1983 and § 1988 against PGE, claiming, *inter alia*, that by bringing this lawsuit challenging the Ordinance, PGE, "acting under color of state law" sought to violate the right of the people of Grant Township to "local community self-government" as secured by the Pennsylvania Constitution, the federal constitutional framework, and the CBR itself. ECF No. 10. Grant Township's counterclaim sought various remedies comprised, in part, of both a declaration that the CBR is a valid exercise of the right to self-government; a declaration that PGE, by virtue of its corporate status, is not a "person" under the law; and an injunction preventing PGE from violating the Ordinance.

Thereafter, community group East Run Hellbenders Society Inc. ("Hellbenders"), also represented by Attorney Schromen-Wawrin, also of CELDF, filed a motion to intervene in this action as of right or permissively. Attorney Schromen-Wawrin identified the Little Mahoning Watershed ("Ecosystem") as an additional Proposed Intervenor. ECF No. 37. This Court denied intervention[3], and the Third Circuit affirmed. In affirming, the Circuit acknowledged serious and

[3] Pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, the Court also granted a motion to intervene filed by Pennsylvania Independent Oil & Gas Association ("PIOGA"), a Pennsylvania nonprofit trade association representing individuals and corporations involved in the oil and gas industry. Intervention was requested to permit PIOGA to challenge the Defendant's Ordinance on behalf of at least five member oil and gas well operators in Grant

substantive concerns at the attempted intervention of an ecosystem as a proper party to federal litigation under the plain language of the Federal Rules of Civil Procedure. The Third Circuit further concluded that counsel for Grant Township adequately represented the interests asserted by the community group, at least in part given legal representation by the same environmental law organization. *Pennsylvania General Energy Company, LLC v. Grant Township*, 658 F. App'x 37, 41 (3d Cir. 2016).

Cross-motions for judgment on the pleadings were resolved as to certain of the parties' claims, with this Court granting in part PGE's motion and declaring invalid six operative provisions of the challenged Ordinance.[4] Grant Township's motion for relief as to its counterclaim was denied. ECF No. 114. Attorney Linzey, on behalf of Grant Township, followed with a motion for reconsideration, necessitating a response in opposition by PGE. Upon consideration, this Court denied the motion finding, at best, that Attorney Linzey misapprehended the scope of review inherent in a motion for judgment on the pleadings, and merely sought to relitigate the denial of Grant Township's initial motion. ECF No. 172. In the interim, the people of Grant Township voted to repeal the Community Bill of Rights Ordinance and, with the guidance of Attorney Linzey and CELDF, adopted a new Home Rule Charter incorporating many of the provisions previously declared invalid. ECF No. 180-2.

PGE next sought summary judgment on its remaining federal constitution claims; specifically, that the CBR violates the Supremacy Clause, the Equal Protection Clause, the

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Township that were affected by the terms of the Community Bill of Rights Ordinance, and whose interests were broader than those represented by PGE. ECF No. 115.

[4] The Court held that Sections 3(a) and (b), 4(b) and (c), and 5(a) and (b) of the Community Bill of Rights Ordinance were invalid as each is preempted by state law and Grant Township was enjoined from enforcing these sections of the Ordinance. ECF No. 114. Specifically, this Court held that: §§ 3(a) and (b) were enacted without legal authority in violation of the Second Class Township Code, and were exclusionary in violation of Pennsylvania law; §§ 4(b) and (c) were enacted without legal authority in violation of the Second Class Township Code; § 5(a) was preempted by the Limited Liability Companies Law; and §§ 5(a) and (b) were preempted by the Second Class Township Code.

Petition Clause of the First Amendment, the Contract Clause, and both the substantive and procedural components of the Due Process Clause of the United States Constitution. PGE also sought summary judgment in its favor on Grant Township's counterclaim. Grant Township filed its own motion for summary judgment, again asserting, *inter alia*, that PGE violated the Township's right to "local community self-government." This Court issued a judgment order, denying Grant Township's motion in full, and granting PGE's motion in part and denying it in part, with relief granted in PGE's favor as to Grant Township's counterclaim, the Equal Protection Claim, the Petition Clause claim, and the Substantive Due Process challenge. Summary judgment was denied on PGE's Procedural Due Process and Contract Clause challenges due to PGE's failure to submit a copy of an existing Underground Injection Control ("UIC") permit conveying a property interest to PGE, as well as PGE's omission of copies of any leases with Grant Township landowners to substantiate its contract claims, the absence of which left limited questions of fact to be resolved.

A trial as to PGE's remaining claims is scheduled for May 2018.

II. Discussion

A. PGE's Motion for Sanctions

PGE's pending motion for sanctions renews and supplements a previously filed motion for sanctions, and seeks to recover over $500,000 in attorneys' fees and costs incurred as a consequence of "frivolous, unfounded, harassing pleadings and motions in pursuit of … illegitimate ends, thereby increasing litigation costs, abusing process, and wasting judicial resources." ECF No. 249, p.1.

PGE argues that CELDF counsel guided Grant Township's promulgation of an unlawful CBR Ordinance and filed numerous motions and pleadings which were conceded to be without

legal support, but nevertheless were submitted for judicial consideration, in pursuit of a political agenda to "reorder and restructure" our system of government. ECF No. 250. PGE points to examples of filings asserting Grant Township's "right" to "local, community self-government" rising above well-established concepts of state and federal preemption, as well as arguments propounded by CELDF counsel throughout this litigation rejecting the longstanding legal recognition and protection of corporations as "persons" under the United States Constitution.[5] PGE contends that counsel cannot claim incompetence or lack of awareness of the frivolous nature of the claims asserted by them in this action, given that identical arguments were raised by CELDF and/or Attorney Linzey in prior litigation and uniformly rejected by courts in this Circuit and elsewhere.

PGE states that as a result of Attorney Linzey's conduct, the litigation of this matter extends to over 250 docket entries, reflecting a strategy to delay resolution of this action in order to interfere with PGE's ability to conduct lawful activities within Grant Township, and to impose unwarranted financial strain on PGE as it litigates this action to preserve its rights. As just one of many examples of frivolous motions, PGE points to the motion to strike the affidavit of PGE's Vice President of Engineering, filed in response to arguments raised by Grant Township in opposition to PGE's motion for summary judgment. ECF No. 250, *citing* ECF No. 193 and ECF No. 244. Based upon the course of conduct evinced by Defendant's counsel, PGE asserts the propriety of sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, and the inherent power of the Court to assess attorney's fees when a party has acted in bad faith, or for oppressive reasons.

[5] PGE has supplied the Court with hundreds of pages of newspaper articles, CELDF organizational materials, and citations to interviews of Attorney Linzey to demonstrate intent to manipulate the judicial system to harass and obstruct corporate targets. The Court has not relied upon these materials, because they involve activities outside the progress of litigation of this matter, and are not necessary to the disposition of the pending motions.

In addition, PGE claims it is entitled to sanctions against Attorney Schromen-Wawrin, pursuant to 28 U.S.C. § 1927, as a result of a "patently frivolous claim" on behalf of the Little Mahoning Watershed, as well as proposed intervention on behalf of the East End Hellbenders, a community group comprised of residents of Grant Township.

1. Rule 11

Under Rule 11 of the Federal Rules of Civil Procedure, by signing a pleading, motion or other filing, an attorney certifies, *inter alia*, that to the best of his or her knowledge, and formed after an inquiry reasonable under the circumstances:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; [and]
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law.

Fed. R. Civ. P. 11(b). In the event a party believes a motion or pleading has been interposed for an improper purpose, upon appropriate notice and a 21-day waiting period to permit the withdrawal of the offending paper, claim, defense, contention, or denial, a motion for sanctions may be filed. Fed. R. Civ. P. (11)(c).

PGE asserts that throughout this litigation, Attorneys Linzey and Dunne, in conjunction with CELDF, have acted unreasonably, pursuing discredited legal theories, misrepresenting facts, and unnecessarily multiplying litigation, and therefore are subject to sanctions to bear the expense incurred by PGE to retain its right to operate its legal business within Grant Township. In opposition to the requested sanctions, Defendant's counsel contend that PGE's motion has been interposed to harass, is untimely, and is filed without required safe harbor notice, and that

Grant Township's legal arguments are supported by existing law, are reasonable arguments to extend, modify or reverse existing law, or to establish new law.[6] In addition, counsel assert that sanctions against the Township or its counsel are inappropriate because CELDF and its associated attorneys have not previously been sanctioned, and have candidly disclosed the existence of opposing case law.

Counsel for Defendant and Proposed Intervenors argue that PGE's motion for sanctions as to Attorney Schromen-Wawrin should be denied as untimely and in violation of Rule 11's safe harbor provisions, requiring service of an intended motion 21 days on the offending party prior to filing.

Before addressing the merits of a party's Rule 11 motion, the Court must determine whether the party complied with the "safe harbor" provision of Rule 11(c)(2). Under that provision, a party cannot file a motion for sanctions until it first presents the motion to the offending party, and allows 21 days for the other party to withdraw or correct the challenged issue. *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90, 99 (3d Cir. 2008) (citing Fed. R. Civ. P. 11(c)(2)). Counsel for Grant Township challenge the motion as violating Rule 11's safe harbor provisions because PGE failed to serve a copy of the renewed motion prior to filing, "and seeks to rely on the original notice given in 2015 to comply with the notice rule."[7] ECF No. 260, p. 4.

PGE's renewed motion for sanctions primarily addresses the counterclaim and defenses set forth in Grant Township's Answer and repeatedly asserted throughout this litigation. In this respect, the motion is nearly identical to PGE's initial motion for sanctions, which was dismissed

[6] In support of the claim that PGE's motion for sanctions is part of a scheme to harass, Attorneys Linzey and Dunne point to POIGA's referral of Attorney Linzey to the Supreme Court of Pennsylvania Disciplinary Board for his conduct in litigating this matter. Such proceedings are not relevant to the disposition of the pending motions given *inter alia*, the referral from a party other than PGE.

[7] Objection as to lack of notice also forms the basis of Grant Township's motion to strike. ECF No. 253.

by the Court as premature. ECF No. 224. There is scant authority as to whether the refiling of substantially the same motion on nearly identical grounds implicates or requires a second safe harbor period, but examination of the purpose indicates that the goal of a safe harbor period is met under these circumstances. "The purpose of the safe harbor is to give parties the opportunity to correct their errors," *Schaefer*, 542 F.3d at 99, and "encourage the withdrawal of papers that violate the rule without involving the … court." *In re Miller*, 730 F.3d 198, 204 (3d Cir. 2013)(internal citation omitted). In this case, PGE's initial motion for sanctions was preceded by sufficient service of a copy of the proposed motion, requesting withdrawal of Grant Township's offending defenses and counterclaim. Under these circumstances, the initial notice provided ample opportunity for Grant Township to abandon those claims not reasonably founded in the law. Despite notice of the offending conduct, counsel for Grant Township continued to assert identical legally implausible arguments throughout this litigation.

While the grounds asserted in PGE's renewed motion remained the same, the Third Circuit has held that, "[i]f the twenty-one day period is not provided, the [Rule 11] motion must be denied." *Schaefer*, 542 F.3d at 99; *Metropolitan Life Ins. Co. v. Kalenvitch*, 502 F. App'x 123, 125 (3d Cir. 2012). Cases within this Circuit applying the rule are readily distinguishable on the basis that the moving party failed to serve notice of the objectionable content to permit withdrawal of the offending documents prior to seeking judicial intervention. However, the mandate to provide notice with service of a copy of the proposed motion in compliance with Rule 11(c) appears to be without exception. The Court is mindful that in this instance, relief is also sought pursuant to 28 U.S.C. § 1927 and the inherent power of the court, which do not implicate the mandatory nature of Rule 11's safe harbor. Accordingly, to the extent PGE is

entitled to sanctions predicated upon the conduct of opposing counsel, the propriety of an award will be reviewed pursuant to the available alternatives.

2. Section 1927

PGE's motion for sanctions seeks relief pursuant to 28 U.S.C. § 1927 as to Attorney Schromen-Wawrin with regard to the attempted proposed intervention of East End Hellbenders and the Little Mahoning Watershed, and as to Attorneys Linzey and Dunne for the "frivolous arguments of Grant Township and Counsel." ECF Nos. 249; ECF No. 250, p. 31-32. Section 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927. "[T]he principal purpose of imposing sanctions under 28 U.S.C. § 1927 is the deterrence of intentional and unnecessary delay in the proceedings." *Zuk v. Eastern Pennsylvania Psychiatric Institute*, 103 F.3d 294, 297 (3d Cir. 1996)(internal quotation marks and citations omitted). The Third Circuit has held that § 1927 requires a finding of bad faith or intentional misconduct on the part of the offending attorney. *In re Prudential Ins. Co. America. Sales Practice Litig. Agent Actions*, 278 F.3d 175, 188 (2002). "'Indications of this bad faith are findings that the claims advanced were meritless, that counsel knew or should have known this, and that the motive for filing the suit was for an improper purpose such as harassment.'" *Id.*, *quoting Smith v. Detroit Federation of Teachers Local 231, Am. Federation of Teachers, AFL-CIO*, 829 F.2d 1370, 1375 (6th Cir. 1987).

a. Timeliness

Attorneys Schromen-Wawrin, Linzey, and Dunne initially object to the imposition of sanctions under Section 1927 on timeliness grounds. As set forth below, the motion is timely with regard to Attorneys Linzey and Dunne. However, the Court finds that PGE's delay of one year after final judgment was entered as to Proposed Intervenors Little Mahoning Watershed and East Run Hellbenders precludes the imposition of sanctions as to Attorney Schromen-Wawrin.

Attorney Linzey concedes that on December 2, 2015, PGE served notice of its intent to seek sanctions against Grant Township based upon alleged legally spurious claims and defenses contained in Grant Township's Answer and Affirmative Defenses, and requested that the claims and defenses be withdrawn. The notice was served one year after Grant Township filed its Answer to the Complaint, and shortly after its motion for reconsideration of the Court's order granting in part PGE's motion for judgment on the pleadings. The Court stayed and subsequently dismissed both motions for sanctions without prejudice, determining that resolution was appropriate after disposition of the pending cross-motions for summary judgment. ECF Nos. 161; ECF No. 171; ECF No. 175; ECF No. 218; and ECF No. 224.

Attorney Linzey cites the Third Circuit opinion in *Mary Ann Pensiero, Inc. v. Lingle*, 847 F.2d 90 (3d Cir. 1988), in support of the contention that PGE's one-year delay before filing the initial motion for sanctions renders the motion for sanctions untimely, "baseless," "for an improper purpose," and "frivolous." The *Pensiero* Court, however, addresses **only** Rule 11, and adopts "as a supervisory rule for the courts in the Third Circuit a requirement that all motions requesting Rule 11 sanctions be filed in the district court *before the entry of a final judgment*. Where appropriate, such motions should be filed at an earlier time – as soon as practicable after discovery of the Rule 11 violation." *Id*. at 99 (emphasis added). The goal of the rule is to avoid

fragmented appeals and "inefficiency resulting from delay in filing a sanction motion until after resolution of the merits appeal." *Id.* In addition,

> "The Advisory Committee Notes recommend that '[a] party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so … *However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter.*"

Id. (emphasis added). Judgment has not yet been entered as to all claims against Grant Township, and sanctions are sought as a result of conduct that commenced at the pleading stage, with its assertion of certain frivolous claims and defenses. Furthermore, given this Court's discretion, all such motions were held in abeyance and dismissed for resolution after the disposition of summary judgment motions. Accordingly, to the extent timing of motions for sanctions pursuant to Rule 11 is at all relevant to motions proceeding under § 1927, the motion for sanctions as to Linzey and Dunne is timely. *Schaefer*, 542 F.3d at 102.

Attorney Schromen-Wawrin contends that PGE's sanction motion with regard to the attempted intervention of the Little Mahoning Watershed and East End Hellbenders is untimely because it was filed after judgment was entered as to both Proposed Intervenors. The Third Circuit has specifically concluded that, "to the extent the [Rule 11] supervisory rule remains viable [requiring the filing of motions before the entry of judgment], it does not apply where sanctions are sought under § 1927. That having been said, however, a motion for sanctions should be filed within a reasonable time." *Id.*

Attorney Schromen-Wawrin filed a motion to intervene on behalf of the Watershed and East End Hellbenders in November 2014. After extensive briefing by the parties, this Court held the motion in abeyance to permit resolution of potentially dispositive motions. ECF No. 37; ECF No. 78. The motion to intervene was renewed on April 16, 2015, and ultimately denied on

October 14, 2015. ECF No. 96; ECF No. 115. Schromen-Wawrin filed a timely appeal to the Third Circuit, resulting in a panel affirmance of this Court's decision. Despite the Third Circuit's unequivocal finding that intervention was unwarranted, Schromen-Wawrin sought reconsideration *en banc*, which the full Court of Appeals denied. A mandate order affirming this Court's decision was entered on August 30, 2016. ECF Nos. 116; ECF No. 221.

PGE filed its motion for sanctions as to all CELDF, and Attorneys Linzey, Dunne, and Schromen-Wawrin, on June 2, 2017. ECF No. 249. Unlike PGE's prior sanction motion, the pending motion is the first asserting bad faith or misconduct related to the proposed intervention of Hellbenders and the Watershed. PGE does not offer an explanation for its failure to seek sanctions earlier, which weighs against a finding of reasonable delay, especially where discovery of alleged misconduct was not hindered by fraud or obfuscation. *See, e.g., In re Grigg*, 568 B.R. 498, 508-510 (Bankr. W.D. Pa. 2017)(finding the delay of one year unreasonable where no explanation for delay provided, and misconduct apparent); *cf., Marino v. Usher*, 2013 WL 12146386, at *3 (E.D. Pa. Nov. 19, 2013) (Section 1927 motion for sanctions timely four months after alleged misconduct, where moving party attempted settlement and motion was filed one month after settlement negotiations proved unsuccessful).

Having found that the motion for sanctions as to Attorney Schromen-Wawrin is untimely, the Court shall enter an Order granting the motion to strike filed on behalf of Little Mahoning Watershed and East End Hellbenders (ECF No. 258) on that basis only. The Court stresses, however, that the denial of relief should not be interpreted as condoning the commencement of proceedings to intervene where, as under the facts presented here, no reasonable interpretation of existing case law rendered such motion appropriate. As readily discerned by the Third Circuit, the arguments advanced by Attorney Schromen-Wawrin represent a "misread[ing]" of applicable

law, are "untenable" in light of the facts, "[fatal]ly" flawed, unpersuasive, "conclusory and nonspecific," "purely speculative," and unsupported by any evidence. *Pennsylvania Gen. Energy Co., LLC v. Grant Twp.*, 658 F. App'x at 41-42, 43. Such an approach is unreasonable under any circumstance, but especially in light of the expense and resources borne by PGE, this Court, and the Third Circuit to resolve what is otherwise a plainly frivolous attempt to intervene in pending litigation for purposes unrelated to the just litigation of a claim. Accordingly, the disposition of the motion for sanctions with regard to Attorney Schromen-Wawrin reflects only the untimeliness of the motion, and not the merits.

b. § 1927 Merits as to Attorneys Linzey and Dunne

In assessing the propriety of a motion pursuant to § 1927, the Court acknowledges longstanding guidance informing a decision to award sanctions:

> It is important that a district court resist the understandable temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. This kind of hindsight logic could discourage all but the most airtight claims, ….

Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421-422 (1978). The Third Circuit has held that the court's sanctioning powers should be used sparingly in order to avoid chilling novel legal or factual arguments from counsel. *In re Orthopedic Bone Screw Products Liab. Litig.*, 193 F.3d 781, 796 (3d Cir. 1999). "The power to sanction under § 1927 necessarily 'carries with it the potential for abuse, and therefore the statute should be construed narrowly and with great caution so as not to stifle the enthusiasm or chill the creativity that is the very lifeblood of the law.'" *LaSalle Nat. Bank v. First Connecticut Holding Group, LLC.*, 287 F.3d 279, 289 (3d Cir. 2002) *quoting Mone v. Comm'r of Intern. Revenue*, 774 F.2d 570, 574 (2d Cir. 1985). In particular, "[t]he uncritical imposition of attorneys' fees can have an undesirable chilling effect

on an attorney's legitimate ethical obligation to represent his client zealously." *Ford v. Temple Hosp.*, 790 F.2d 342, 349 (3d Cir. 1986).

Citing these limiting principles, Attorneys Linzey and Dunne defend their conduct and that of CELDF, and through briefs and an attached affidavit of a member of CELDF's board, claiming that the arguments asserted are in the tradition of *Brown v. Board of Ed.*, 347 U.S. 483 (1954), the striking down of prohibitions on gay marriage, and other defining moments in legal history. *See, e.g.*, ECF No. 260. However, sanctions may be imposed under § 1927 where, as here, counsels' conduct results from bad faith and not well-intentioned zeal. "A showing of bad faith requires clear and convincing evidence that counsel or a party intentionally advanced a baseless contention for an improper purpose. Bad faith is plain when the claims advanced were meritless, that counsel knew or should have known this, and that the motive for filing the suit was for an improper purpose such as harassment." *Wise v. Washington County*, 2015 WL 1757730, at *11 (W.D. Pa. 2015)(internal citations and quotation marks omitted).

To differentiate responsible and legally plausible claims from those that are plainly unreasonable and subject to sanctions, this Court finds instructive the analysis employed by the district court in *Matthews v. Freedman*, 128 F.R.D. 194, 200 (E.D. Pa. 1989), *aff'd* 919 F.2d 135 (3d Cir. 1990). In that case, counsel asserted legally frivolous constitutional claims, but the district court, mindful of the potential to chill "creative and enthusiastic advocacy in support of novel constitutional claims," adopted the "more concrete" and objective approach outlined by Professor Edward Cavanaugh to determine whether counsel's argument is "plainly unreasonable" and therefore subject to sanctions.[8] *Id.*, *citing* E.D. Cavanaugh, *Developing*

[8] The *Matthews* court adopted the Cavanaugh criteria for purposes of determining a Rule 11 violation, but upon reaching the conclusion that the Rule 11 motion was late, the court applied its findings of bad faith and awarded sanction pursuant to § 1927. *Matthews*, 128 F.R.D. at 207.

Standards under Amended Rule 11 of the Federal Rules of Civil Procedure, 14 Hofstra L.Rev. 499 (Spring 1986). There, the district court summarized:

> On Cavanaugh's spectrum, a legal argument is "clearly reasonable" in the following situations:
>
> — argument is based on plain meaning of statutes or Supreme Court decisions;
>
> — argument is based on caselaw from within circuit;
>
> — circuit caselaw is unsettled, but caselaw from another circuit or district supports argument;
>
> — circuit caselaw is contrary to argument, but another circuit supports it.
>
> — plausible argument in case of first impression;
>
> — argument counter to established caselaw, but compelling facts or values suggest re-examination of settled precedent; or
>
> — settled precedent is factually distinguishable, and argument meets one of the other standards above.
>
> In the middle, "gray area" of his spectrum, Cavanaugh classifies legal arguments according to rebuttable presumptions. An argument is "presumptively reasonable" if it is based on
>
> — novel (plausible) theories based on analogies to unrelated areas of law; or
>
> — plausible theories in a complicated area of the law.
>
> By comparison, an argument is "presumptively unreasonable" if it is founded on
>
> — farfetched analogies that imply an improper purpose; or
>
> — misrepresentations of governing law that suggest an intention to mislead the court.
>
> Lastly, Cavanaugh classifies the following types of argument as "clearly unreasonable":
>
> — fatal, irremediable defect on face of pleading;

— **settled law opposes argument and counsel does not confront or attempt to distinguish adverse authority**; or

— argument consists of dubious legal propositions unsupported by legal research.

Cavanaugh suggests that this type of conduct is not merely suspect: instead, it is conclusively sanctionable under Rule 11 absent a "clear and convincing" justification for the pleader's conduct.

Matthews v. Freedman, 128 F.R.D. at 200 (E.D. Pa. 1989)(internal case citations omitted)(emphasis added).

In opposition to the motion for sanctions, counsel contend that the various pleadings and memoranda filed on behalf of Grant Township meet ethical obligations to disclose contrary law, appropriately seek to reverse or extend existing law in good faith, and have been filed at the direction of their clients to pursue what counsel asserts are valid arguments for self-government. ECF No. 260, pp. 20-22. However, the objective criteria outlined in *Matthews* render it apparent that Attorneys Linzey and Dunne have repeatedly filed pleadings and motions that are "clearly unreasonable" and therefore in bad faith within the meaning of § 1927.

As reflected in the record, Attorneys Linzey, Dunne and Schromen-Wawrin provided free legal assistance to Grant Township and an affiliated community group to pursue a discredited and previously litigated "community rights" approach to prevent oil and gas operations within the Township. In particular, the CBR seeks to disavow constitutional rights afforded corporations so as to prevent PGE from the lawful exercise of its right to pursue gas extraction related activities within its borders. This is in keeping with CELDF's strategy, described by the Third Circuit as advocating, "that communities pass laws that assert community rights against corporations and others engaged in activity disfavored by members of the community." *Seneca*

Resources Corporation v. Township of Highland, Elk County, PA, 863 F.3d 245, 248 (3d Cir. 2017).[9]

The record reflects that on June 3, 2014, prior to passage of the challenged CBR, counsel for PGE advised the Grant Township Board of Supervisors that the proposed Ordinance suffered numerous insurmountable legal deficiencies, as determined by this Court at least once before with regard to a similar ordinance also drafted by Attorney Linzey and CELDF. ECF No. 273, pp. 15-19, *citing Penn Ridge Coal, LLC v. Allegheny Pittsburgh Coal Co.*, C.A. No. 08-1452P, ECF No. 30 (W.D. Pa. April 8, 2009) (concluding that the Township had no legal authority to annul constitutional rights afforded corporations by the United States Supreme Court).

Despite this information, the Ordinance passed and CELDF-affiliated counsel continued to press forward with a counterclaim and defenses remarkably unchanged from prior CELDF litigation seeking to overturn longstanding corporate rights and ignoring the established preemptive effect of valid federal and state permits and environmental regulation.[10]

Upon detailed review of the briefs filed by the parties and governing law, this Court granted PGE's motion for judgment on the pleadings as to those portions of the Ordinance challenged specifically, and granted PGE's motion for summary judgment as to its remaining constitutional claims, save those for which specific evidence was required. The Court rejected as unfounded and contrary to established law all arguments propounded by counsel for Grant

[9] *Seneca Res. Corp. v. Twp. of Highland*, 863 F.3d at 248 (3d Cir. 2017), citing Uma Outka, *Intrastate Preemption in the Shifting Energy Sector*, 86 U. Colo. L. Rev. 927, 959–60 (2015) (referring to CELDF-sponsored antifracking legislation in Pittsburgh, Pa., Mora, N.M., and Lafayette, Colo.); Catherine J. Iorns Magallanes, *Foreword: New Thinking on Sustainability*, 13 N.Z. J. Pub. & Int'l L. 1, 12 (2015) ("160 communities in the United States have adopted such rules that have been drafted by the CELDF....").

[10] *See e.g., Range Resources – Appalachia, LLC v. Blaine Tp*, 649 F. Supp.2d 412 (W.D. Pa. 2009) (invalidating an ordinance drafted by CELDF banning shale operations in Washington County, Pennsylvania and seeking "to guarantee to the residents of Blaine Township their right to a republican form of governance by refusing to recognize the purported constitutional rights of corporations."). The CBR at issue here similarly invokes the "People's Right to Self-Governance and Right of Separation."

Township seeking to deem PGE a state actor amenable to suit pursuant to 42 U.S.C. § 1983, and otherwise seeking to strip PGE of certain constitutional rights recognized pursuant to over one hundred years of Supreme Court precedent. In reaching its conclusion, this Court observed that counsel for Defendant provided no legal precedent to the contrary, nor other legal basis for a different result, and merely reasserted the existence of historical documents and events previously rejected by this Court as justification for Grant Township's claims. *Pennsylvania General Energy Company, LLC v. Grant Twp.*, 139 F. Supp.3d 706, 714 (W.D. Pa. 2015).

In determining the propriety of sanctions for advancing plainly unreasonable arguments, the Court has examined CELDF's federal environmental litigation occurring over the past fifteen years in Pennsylvania. CELDF, with Attorney Linzey as lead counsel, has championed the notion of "community self-governance" as justification for CELDF-drafted local ordinances to invalidate corporate property rights, and to strike at the preemptive effect of state and federal law where in conflict with a community-enacted ordinance. *See, Penn Ridge Coal LLC v. Allegheny Pittsburgh Coal Co., supra; Range Resources-Appalachia, LLC v. Blaine Township, supra; Friends and Residents of Saint Thomas Township, Inc. v. Saint Thomas Development, Inc.,* 2005 WL 6133388 (M.D. Pa. Mar. 31, 2005), *aff'd sub nom. Friends & Residents of St. Thomas Twp., Inc. v. St. Thomas Dev., Inc.*, 176 F. App'x 219 (3d Cir. 2006). In each cited action, the district court reviewed CELDF's arguments and found them wanting, lacking argument predicated in law or facts, and failing to justify setting aside historically well-settled legal precepts.[11] The most recent cases, including the instant action, find identical arguments reasserted, but not advanced in any material manner by distinguishing facts, analogy, or supporting case law from any court of coordinate or superior jurisdiction.

[11] In particular, this Court has reviewed CELDF's memoranda in *Penn Ridge Coal,* C.A. No. 08-14252P, at ECF No. 14 (pps. 28-108); ECF No. 19; and ECF No. 43 (pps. 17-22); *Range-Resources,* C.A. No. 09-355P, at ECF No. 11; ECF No. 22; and *St. Thomas,* C.A. No. 04-627, at ECF No. 13; ECF No. 18.

Attorneys Linzey and Dunne contend that because adverse precedent is acknowledged in supporting briefs, the duty of candor owed to the Court and other parties to the litigation has been met thereby precluding an award of sanctions. This position is equally untenable and unsupported by appropriate citation. Merely acknowledging historical fact does not cloak frivolous litigation with a mantle of seriousness. Instead, such litigation creates enormous expense to parties and taxes limited judicial resources. Rather, counsel's repeated presentation of identical theories over the course of fifteen years eliminates any claims of novelty or plausibility, and cannot be excused as a good faith course of conduct.

Counsel would have been advised to take to heart the court's decision over a decade ago in *Friends and Relatives of Saint Thomas Twp.*, where the Court narrowly declined the imposition of sanctions, concluding that Attorney Linzey "endeavored against unfavorable precedent to convert his clients' feeling and concerns into a constitutional framework," but finding fault with counsel's arguments:

> The Court finds the question of whether sanctions should be imposed in this case to be very close. Many of Plaintiffs' arguments are asserted without acknowledgment or sufficient apparent regard for established legal principles and holdings. Throughout much of their papers, Plaintiffs do not so much argue that the Court should establish a change in the law regarding the rights of corporations under the United States Constitution, but rather they argue that such rights simply do not exist, ignoring scores of decisions to the contrary. To be sure, Plaintiffs have pointed to numerous historical documents and secondary sources demonstrating a long-running argument among scholars on this legal issue. However, Plaintiffs pay insufficient attention to the fact that established constitutional law on this subject demonstrates conclusively that corporations do, in fact, enjoy such rights.

St. Thomas, 2005 WL 6133388 at *14. The present litigation shows that no lessons in good faith legal argument have been learned. Rather, Attorneys Linzey and Dunne continue to pursue nearly identical and rejected theories unabated, without regard to their obligation to conduct

reasonable inquiry into applicable law prior to filing. As a result, PGE and this Court were left to resolve claims and defenses that in all candor, should have been abandoned, given the absence of any attempt to distinguish or confront adverse authority. Such conduct evinces bad faith, and the invocation of the courts for purposes unrelated to the speedy and just resolution of legal causes.

Under the circumstances presented, the Court finds that an award of sanctions pursuant to 28 U.S.C. § 1927 against Attorneys Linzey and Dunne is appropriate.

3. Inherent Power of Court to Impose Sanctions

PGE also invokes the inherent power of the Court to impose sanctions upon Grant Township and its counsel. Specifically, PGE asserts that sanctions should be awarded on the grounds that Grant Township and its counsel "(a) defended this action and filed a counterclaim to the action for an improper purpose and for the purpose of harassing and intimidating PGE, thereby increasing its litigation costs, (b) filed multiple frivolous claims and documents, and (c) multiplied the proceedings for an improper purpose and for the purpose of harassing and intimidating PGE, thereby increasing its litigation costs." ECF No. 249, page 2.

"Federal courts possess certain 'inherent powers,' not conferred by rule or statute, to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. That authority includes; the ability to fashion an appropriate sanction for conduct which abuses the judicial process. And one permissible sanction is an 'assessment of attorney's fees' …, instructing a party that has acted in bad faith to reimburse legal fees and costs incurred by the other side." *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (internal citations omitted).

As explained *supra* with regard to § 1927, the Court finds that Attorneys Linzey and Dunne have acted in bad faith with regard to the pursuit of frivolous legal claims and defenses.[12] Such conduct has resulted in the expenditure of significant litigant and judicial resources, and warrants the imposition of sanctions that are beyond the compensatory relief afforded by § 1927. Accordingly, where appropriate, the Court's imposition of sanctions pursuant to its inherent power will be ordered.

4. Sanctions Awarded

This Court has determined that Attorneys Linzey and Dunne have pursued certain claims and defenses in bad faith. Based upon prior CELDF litigation, each was on notice of the legal implausibility of arguments previously advanced as to: (1) the purported invalidity of corporate rights; (2) the identification of a regulated corporation as a "state actor"; (3) community self-governance as a justification for striking or limiting long-standing constitutional rights, federal and state laws, and regulations; and, (4) the purported invalidity of "Dillon's Rule" to the extent it applies to limit a municipality's ability to enact ordinances in conflict with state and federal law. Despite their own prior litigation, CELDF and Attorney Linzey, in particular, continue to advance discredited arguments as a basis for CELDF's ill-conceived and sponsored CBR, and in so doing have vexatiously multiplied the litigation of this matter.

According to PGE, nearly all litigation expenses incurred in this matter are related to Attorney Linzey's bad faith. ECF No. 250. While it is clear that PGE was required to bear

[12] Dunne entered her appearance as counsel affiliated with CELDF on March 4, 2016. ECF No. 187. Since that time, through briefs and in person when appearing before the Court, she has actively participated in the litigation of this matter pursuant to the "community self-government" theories previously asserted by CELDF and Attorney Linzey. *See, e.g.*, ECF No. 233, Grant Township's supplemental brief in support of cross-motion for summary judgment ("More fundamentally, and cutting across all of PGE's claims, is the fact that even if PGE could show a violation of its constitutional rights – which it cannot – such rights cannot trump the people's fundamental right of local, community self-government, including the people's right to exercise that right to protect their air, water, and soil."). Accordingly, the Court finds Dunne's participation equally troubling, and demonstrating the requisite degree of bad faith.

significant expense to challenge the CBR, recovery of all litigation costs is not warranted in the absence of definitive evidence that the entirety of an action was the result of fraud. Rather, as the Supreme Court recently made clear, sanctions must be sufficiently causally connected to conduct. "This but-for causation standard generally demands that a district court assess and allocate specific litigation expenses—yet still allows it to exercise discretion and judgment. The court's fundamental job is to determine whether a given legal fee—say, for taking a deposition or drafting a motion—would or would not have been incurred in the absence of the sanctioned conduct. The award is then the sum total of the fees that, except for the misbehavior, would not have accrued." *Goodyear Tire & Rubber Co.*, 137 S. Ct. at 1187.

This standard applies whether sanctions are awarded pursuant to § 1927, or the Court's inherent authority to control litigation before it. "[U]nder 28 U.S.C. § 1927, a court may require an attorney who unreasonably multiplies proceedings to pay attorney's fees incurred 'because of' that misconduct. Those provisions confirm the need to establish a causal link between misconduct and fees when acting under inherent authority, given that such undelegated powers should be exercised with especial 'restraint and discretion.'" *Id. quoting Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980). In this regard, PGE bears the burden to establish the link, and seeks to do so by providing the Court with copies of its billing records for the entirety of this litigation. ECF No. 250-9 through ECF No. 250-14.

The Court has undertaken review of the billing records, and finds approximately $52,000 in costs and fees reasonably incurred by PGE to research and draft motions and memoranda in support and in opposition to dispositive motions for judgment on the pleadings and summary judgment.[13] The litigation of CELDF's previously discredited theories was central to each

[13] The Court has determined that the number of hours indicated for research, drafting, editing, and revising is reasonable, as is the hourly rate charged for the work completed by the various attorneys retained by PGE.

motion, and therefore is an appropriate measure of sanctions, directly resulting from the misconduct occasioned by Attorneys Linzey and Dunne.

This sum is approximately 10% of the total litigation costs incurred by PGE in pursuit of its legitimate challenge to Grant Township's enactment of the CBR, and while small in comparison, bears a direct relationship to PGE's challenge of the claims and defenses asserted in the Answer and Counterclaim. Other expenses incurred in discovery, with regard to motions to intervene and to dismiss, or in pursuit of a preliminary injunction, while necessitated by litigation of this matter, do not directly implicate the relitigation of arguments previously found lacking by this and other courts of coordinate jurisdiction.[14]

B. Grant Township's Motion for Sanctions

Grant Township, through Attorney Dunne, has filed a counter-motion for sanctions. The motion is denied, as it rests upon the alleged impropriety of PGE's sanctions motion. Because the Court concludes that PGE is entitled to limited sanctions, for the reasons set forth above, Grant Township is not entitled to sanctions under Rule 11, § 1927, or the inherent power of the Court.

III. Conclusion

The Court does not derive pleasure in the task before it today. However, as made clear by the pattern of CELDF-affiliated litigation (all of which has been led by Attorney Linzey) in the years leading to this action, foregoing sanctions in this instance would be inconsistent with the Court's duty to ensure that lawyers who practice before it do so ethically and responsibly. An attorney's zealous advocacy for the protection of a client's interests is certainly appropriate; however, the legitimate pursuit of justice imposes important obligations on counsel to ensure that the Court is not a mechanism of harassment or unbridled obstruction. The continued pursuit of

[14] This Court has determined not to impose sanctions directly on Grant Township.

frivolous claims and defenses, despite Linzey's first-hand knowledge of their insufficiency, and the refusal to retract each upon reasonable request, substantially and inappropriately prolonged this litigation, and required the Court and PGE to expend significant time and resources eliminating these baseless claims. Accordingly, sanctions are imposed and justified in this instance.

For the reasons set forth above, this 5th day of January, 2018, it is hereby ORDERED:

1. The Motion for Sanctions filed by PGE (ECF No. 249) is granted in part, and the Court sanctions Attorneys Linzey and Dunne ONLY in the total sum of $52,000, to be paid to PGE within 120 days of this Order. The motion is denied in all other regards.

2. The Clerk is directed to transmit this Opinion and Order to the Disciplinary Board of the Pennsylvania Supreme Court, with a request to determine appropriate disciplinary measures, if any, to be imposed upon Attorney Linzey for the reasons set forth herein.

3. The Motion to Strike filed on behalf of the East End Hellbenders (ECF No. 256) is granted.

4. The Motion to Strike filed by Grant Township (ECF No. 253) is denied.

5. The Motion for Sanctions filed on behalf of Grant Township (ECF No. 264) is denied.

BY THE COURT:

s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
U.S. Magistrate Judge