

COMMUNITY

DEFENSE

Initiative

*“using municipal rights”
to protect your community”*

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Massachusetts Constitution (emphasis added)

Article I. All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.

Article IV. ***The people of this commonwealth have the sole and exclusive right of governing themselves***, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America in Congress assembled.

Article VI. ***No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community***, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawgiver, or judge, is absurd and unnatural.

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Purpose of this presentation:

- to share information about how communities are using MUNICIPAL RIGHTS to get the most that they can from local government
- environmental justice
- social justice
- health/safety
- etc

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DISCLAIMER!

I'm NOT a LAWYER...

Just a concerned citizen who served as an elected official and has learned much about:

- the consequences of doing nothing
- how LOCAL LAW can be used to protect communities using old-fashioned common sense, and creative committed volunteers.

So remember...I'm NO LAWYER...consult your lawyer before doing anything!

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We are trained, as a society to believe that

Cities/towns ***must*** "permit" destruction of their valuable community assets (environmental, safety, heritage, etc) by corporations and/or the state/federal government itself, because of "federal preemption" and "the commerce clause", or "takings" or else wait for the state/federal gov't to "fix" things.

This has worked VERY WELL to keep municipalities subservient to the Federal Government and keep monied interests in control of our government.

But it's simply NOT ALWAYS TRUE!

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Example: Big Gas Co can come in and lay pipelines, frack/drill for “natural” gas if the Feds approve, right?

Answer: NO!

For decades, we thought that if we said no, that the Federal Government would step in and force the town.

But Big Corps have NOT been able to get the Federal Government to force towns to let this drilling and pipelines occur, when towns use their “rights”.

Why is that?

BECAUSE WE HAVE an INALIENABLE RIGHT to SELF-GOVERNANCE, when it comes to protecting our HEALTH & SAFETY.

And NOW the Courts are making it clear! We don't win every time, but we ARE winning...and if we give up, then we will definitely lose.

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Learning about “the Law” is not just learning
“the history” of law & associated court cases

*It's about learning **HOW LAW “works”**
currently as well as *HOW LAW has*
*EVOLVED and continues to**

THEN you can better understand how you can
USE that legal process to get what
communities need

...to protect the health/safety of inhabitants.

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*To understand why laws may not be working for you,
you must first understand:*

- US Law is based on Colonist Governmental structure. *The United States were originally a bunch of COLONIES*

Massachusetts: Bay Colony CORPORATION
Pennsylvania: Pennsylvania Dutch CORPORATION

- US Law did not derive from the protection of your health, happiness and freedoms FIRST.
- The CONSTITUTION provides the human rights, that are to nullify laws that protect corps over humans.
- But you have to understand HOW it works to be able to use it.

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The Constitution was originally set up to ***guarantee profit for the merchant class.***

Colonial Law was derived from CORPORATE CHARTERS to “extract resources” & the “protect the right” to assets:

- agricultural
- mineral
- LABOR (yes, you are considered AN ASSET in the original colonial corporate charters)

The first goal of “laws” are ***not*** to protect communities but to “permit” pollution/commerce

US Law, such as the Clean Air Act, Wetlands Protections Act, ***“codify in law” how much pollution is allowed.***

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That all said, do not despair!

- While laws began with protecting corporations and they often DO protect corporations, we ARE gaining ground to assert our rights under law.
- We do this little by little, by both passing local and state laws, and engaging the courts to establish that people are more important than corporate profits and/or that corporate protections are unconstitutional.

We can NOT make this progress by standing by.

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Community Environmental Legal Defense Fund

CELDF.org

Coined the phrases:

“The only thing that regulations regulate is activists”

and

The BOX of ALLOWABLE ACTIVISM

CELDF pioneered a new form of law known as “Rights-Based-Ordinances”, used in over 150 towns/cities to ban fracking, sewage sludge application, etc, etc

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Constitutional “right to self-governance” & “commerce clause” create a “*natural conflict*” between State/Local Governance & Federal *Pre-emption*.

Federal environmental “pre-emption” only applies where states are being “discriminatory” toward a specific type of business, or if there is an “overarching” national-interest for “permitting” a specific project.

Federal “pre-emption” does not apply where there is a **STRONG CASE** for the protection of the health and safety of a community

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This “NATURAL CONFLICT” is a DANGER to our communities
BUT also an OPPORTUNITY

BECAUSE “the rules” are not set in stone, WE are making history by challenging the myth that an “inalienable corporate right to profit” exists and that the Federal/State government always trumps local.

WE are making the rules!

EVERY DAY, some community enacts an ordinance, or pushes back on regs and/or process.

EVERY DAY, we use our “municipal rights” to do what we, as a society things is “the right thing to do”.

And EVERY DAY courts and government staff are deciding “which side they are on”.

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And if we DO NOTHING

The BIG CORPS win!

They have ARMIES of lawyers which
intimidate staff, run process around in
circles, bury administrators in paper work

And this ties government up in
THEIR KNOTS
In THEIR FAVOR

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Federal Gov't / Big Corps derive LEGAL power from:

- **Commerce Clause** (“can't stop progress!”)
- **Federal Pre-emption** (“can't fight the feds!”)
- **Dillon's Rule** (“states tell towns what to do!”)
- **Contract Law** (“corporations rule!”)
- **Property Rights / Nature as “Property”**
 (“we have the right to destroy!”)
- **Presidential Directives**
 (“we have the OBLIGATION to destroy
(i.e. directive to extract oil)

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Towns/Cities derive LEGAL power from:

- US Constitution / Massachusetts Constitution
- State/City Town Charters (HOME RULE)
- Federal Protections (Clean Water Act, Americans w/Disabilities, Tribal, etc)
- case law supporting “liberal interpretation” of concepts of local sovereignty

Individuals derive LEGAL power from:

- Constitution
- Bill of Rights
- Property Rights
- Contracts
- ORGANIZING!

NOTE: LEGAL power is DIFFERENT from NATURAL POWER. We automatically have the right to exist. We do not need papers or documents or courts to grant us the right to exist or the right to natural resources.

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UTILITIES derive power from

- Federal law around satisfying “Community Needs”
- Powers “permitted” via the Federal/State Government, when a “community interest” has been “determined”. Also called a “National Interest Determination”
- Eminent Domain
- Rights-of-Way
- Pre-emption

BUT that's where a national/state interest has been determined, which in most cases it has NOT.

If the company tells you that Eminent Domain is “inevitable”, have you been harmed? Is this an act of interstate fraud? If they do it to a LOT of people, has THE TOWN been harmed?

With power comes responsibilities. Utilities must obey “common carriage” rules, which provide strict oversight, public comment rules, etc

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Some Basic “Rules of Law”

- To make law, you need **“jurisdiction”**, which comes from the state “charter”, where municipal “charters” and/or county charters were created from.
- To get someone to do something or stop doing something, you need a **“basis”** from which to work (some kind of existing law, or precedence applicable to a jurisdiction). That basis is “the legal authority”.
- To make or enforce law, you need **“authority”** and/or **“standing”**
 - elected or hired official of “the state” (state, municipality, county)
 - voter/citizen rights
 - corporate contract w/state
- Harm has to be **“measurable”**

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HOME RULE

The States “carved up” cities/towns and awarded “municipal charters”. Many states, including Massachusetts based their municipal charters on “HOME RULE”.

“MGL Chapter 43 Section 13:. Any city or town may, by the adoption, amendment or repeal of local ordinances or by-laws, exercise **any power or function which the general court has power to confer upon it**, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section 8 of Article LXXXIX of the Amendments to the Constitution **and which is not denied, either expressly or by clear implication, to the city or town by its charter.**” [excerpt, emphasis added]

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Massachusetts: “*Board of Appeals of Hanover v. Housing Appeals Comm.*”

"*Any city or town may*, by the adoption, amendment, or repeal of local ordinances or by-laws, *exercise any power or function which the general court has power to confer* upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter."

(emphasis added) “general court” = Mass state legislature

This means that IF the state CAN allow the town to do it, that it MUST.

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Case Western Law Review

2013 analysis of New York fracking ban being upheld:

"...provisions calling for liberal interpretation of local power and extolling the importance of local land use powers create an implicit presumption against preemption"

What does this mean? Massachusetts Municipalities, protected by the Massachusetts Constitution have the inalienable right to self governance, via liberal interpretation of HOME RULE, confirmed by SJs and the Supreme Court

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WINS in Massachusetts and in other states FOR communities right to self-governance!

- Utilities / Transit
- Factories/Factory Farms
- Hazardous material prohibitions/limits
 - herbicides
 - single use water bottles
 - plastic bags

Case after case after case is being ruled IN FAVOR of communities which have “rights-based-ordinances, and have claims against harm/risk to their health & safety. Over and over again, limits on federal pre-emption and “right-to-profit” are being successfully challenged by communities.

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AUTHORITY

for changing/making local law

- Local legislators/officials, can “make regs” and if Town Meeting votes are required, can call Town Meetings
 - Boards of Selectmen/Mayor/City Council
 - Zoning Boards (ltd power, but influential)
 - Boards of Health (state authority)
 - Historic District Commissions (state authority)
- Citizens Petition
 - Special Town Meeting

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EXAMPLE: The Wetland Protections Act. As long as you don't build in the “buffer zone” you are “permitted” to build.

BUT states/towns have enacted MUCH tighter wetland protections ordinances.

And they are BEING UPHELD, and RESPECTED by companies.

EXAMPLE: Prohibition versus Regulation

Recent Supreme Judicial Court ruling telling us that prohibitions of “land uses” are not considered “regulation” of utilities.

The list goes on...

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SUMMARY

FERC ONLY has authority to overrule municipalities IF the proposal is “in the public interest”. FERC.gov: “Only under limited circumstances, usually the individual states can approve such construction.”

FERC “public interest determination” process now has REGIONAL “teeth”. The REGIONAL group must agree that they need such a pipeline/transmission line.
~ UPHOLD AUGUST 2014 ~ (S.Carolina v FERC)

AND the process includes an opportunity for the STATE to OBJECT! The process STOPS, until the conflict is resolved.

BUT THE STATE MUST OBJECT! It can not miss the deadlines!

IF the state FAILS to meet the deadline to register such a complaint, is the state LIABLE? For damages to THE TOWN? Is the TOWN LIABLE, if the town does not warn the state that it must object on the town's behalf?

WHEN does the TOWN OBJECT? IMMEDIATELY? FORMALLY? How about demanding a cease and desist for NESCOE and other “pseudo agencies” from acting like they already have such a “public interest determination?”

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To make sure that you do NOT get stuck in this
“Box of Allowable Activism”:

- learn about municipal rights
- learn how municipal rights can be used
- take action to enact ordinances and regulations
- USE those municipal rights to enforce behavior of entities which threaten your communities

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LOTS of ways to use “municipal rights”

- cease and desist / demand letters
- notifications and charges of “harm”
- sue the Federal Gov't *
- process
 - deny/slow rolling surveying and other permits
- ordinances
 - community-rights/rights-of-nature*
 - strengthening of wetland regs **
 - farms have wetland protections **
 - prohibitions*
 - strengthening CR/APR, 2/3 vote for state overturning
 - establishing HIGH FEES for
 - destruction of eco-habitat during surveying
 - parking during surveying
 - land clearing limitations (Cape Cod Commission)

* successfully supported by case law

** Massachusetts focused

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Recent examples of Massachusetts Towns asserting rights against corporate/state destruction:

- Ban of Sale ***Single Use Water Bottles***

* Concord, others investigating

- Denial of new ***Fossil Fuel Infrastructure***

* Deerfield, Weymouth, Groton, Acton investigating

- Denial of expansion of ***Asphalt Plant*** Project

* Westford

- Ban of the use of ***Plastic Shopping Bags***

* Framingham, others in process

- Ban of use of ***Herbicides*** on Aquifer Recharge Areas

(Orleans/Acton, others soon)

- ***Foreclosures*** Must be Approved by Elected Officials

* Worcester, Springfield, Lynn, others?

- Others? The list goes on!!!

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“Legal HARM”

- One entity (corporation, person, town, etc) can claim harm by another entity
- Harm must be measurable (receipts, research, analysis, etc)
- The process of claiming harm has “steps”, normally recognized by the courts
 - polite warning
 - waiting some period of time (ie. 90 days)
 - more polite warnings, waiting periods
 - serious warning
 - claim of harm
- Or, one can go straight to a formal complaint that harm has occurred.

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***A municipality (as a representative for
“the people”) can claim harm by the state***

A community group can sue the city or state for not taking action to protect their health/safety. “Harm” has to have occurred for a “claim” to be made, as opposed to an “appeal for help”. But if property values have been impacted, then harm has occurred.

Example:

IF state “agency” is promoting a plan to put a pipeline through CONSERVATION RESTRICTION protected land. A CR is a VERY STRICT “covenant” that takes 2/3 vote of the legislature to overturn.

IF the legislature overturns such (it's not been done before, that we know of), it tells ALL towns that a CR is “meaningless”, pulling the entire rug out from under the concept of conservation.

A community group can claim that the state has HARMED it.

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And what about fraud?

There have been reports of landowners being told that FERC “will” give KM eminent domain powers.

That is an outright lie.

KM representatives stand up in public forums, arranged by public officials that the Commerce Clause will allow KM to proceed. That Federal Pre-emption will allow KM to proceed.

These are lies!

These claims are fraudulent and are being used to fool public officials and landowners into cooperating. These claims are being used to scare towns into cooperating or “they will be sued”. If FERC could proceed with ED, they would have. They would NOT have asked the state for assistance!

Who enforces fraud rules in this state?

The Attorney General. But enough people and towns must formally complain before an investigation will be seriously pursued. The more people that complain, the stronger the action is by the state.

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SUMMARY

- If you **DO NOTHING** unsustainable environmental destruction will happen ***(It's REQUIRED by public/corporate law)***
- **You have A LOT of POWER** via MUNICIPAL RIGHTS to push back and say “NO”.
- **It's relatively EASY** to enact local “community rights-based” law IF your community wants it

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*** ORGANIZE!**

*** EDUCATE!**

*** LEGISLATE!**

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PREAMBLE, Massachusetts Constitution:

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following Declaration of Rights, and Frame of Government, as the Constitution of the Commonwealth of Massachusetts.

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