

# A Statewide Rights Based Strategy to Ban Fracking in Colorado

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by Lotus

On the single subject question the proposed Colorado constitutional amendment final V-6 is likely to meet the single subject requirement because it simply adds one power to those already delegated to municipal bodies. We have run this proposed amendment by a Colorado attorney and this was basically the response we received.

There are some legal realities that I think many in the Colorado anti-fracking movement are not aware of, but they must become aware of if we are to be successful and ban fracking from Colorado. BOTH local communities and states currently lack the legal authority to ban fracking. At the local level fracking cannot be banned without removing the layer of corporate rights, preemption by the state, and Dillon's Rule (the municipal government is the child of the state). At the state level a fracking ban would be shot down in court, as similar bans have been shot down in many other states based on mainly corporate "takings" and the commerce clause:

1. Virginia attempted to ban out of state waste, and was prevented by WMX's commerce clause challenge.
2. Iowa attempted to ban corporate ownership of hog processing facilities and this ban was shot down on the basis of corporate rights.
3. South Dakota and Nebraska tried to ban corporate factory farms, but were prevented by the commerce clause.

Statewide bans are nothing new and have been tried many times in the past and appear to have always failed due to federal constitutional rights and powers held by the corporations.

So the Colorado Community Rights Network (COCRN) approach to getting out of the legal box that state and federal key legal doctrines have us in is, I think, the following:

1. The attached proposed constitutional amendment would, instead of lending itself to the same kind of legal challenge as occurred in Virginia, Iowa, South Dakota and Nebraska, actually release hundreds of communities working on hundreds of different issues, not just fracking, to move ahead with local laws – which then forces the corporations to deal with each of 100s of communities rather than one statewide initiative on fracking. Strategically it opens the playing field, rather than pinning all hopes on a statewide ban that will very likely be struck down.
2. Eventually, after we have a much larger and more aware statewide movement, the community rights approach is saying that we need to pass a series of state constitutional amendments aimed at subordinating corporate rights to community rights.
3. The attached proposed constitutional amendment is a pre-movement constitutional amendment which would, in some ways, "free" communities dealing with a range of different issues.
4. Once communities across Colorado have been "freed", in some ways, by the proposed amendment pasted below, then we can use this "freeing" that was created by the attached amendment to build a movement of activists who understand that we primarily have a democracy problem, not just a fracking problem.
5. The core problem is that community majorities, under the current structure of law (both state and federal) when confronted by a corporation claiming certain rights, do not get to decide what happens in their communities, a minority of corporate owners and board members decide instead.
6. The corporations currently largely run the state and federal governments. Unless we are able to increase the rights of local communities, where we are more likely to be able to win against the corporations, then our current corporatocracy is not likely to become a democracy.

The ways in which the proposed constitutional amendment, pasted below, would “free” local communities are the following. Our state constitution will declare that:

- A. Our people have the inalienable right to local self-government including in each county, city, town and any other municipal subdivision or other local community within the State. (Not limited to home rule municipalities and counties.)
- B. Local communities have the power to enact local laws for the protection of the health, safety, and welfare by recognizing the fundamental rights of people, communities, and the natural environment, and by securing those rights using prohibitions and other means.
- C. Local governments have the power to enact local laws establishing, defining, altering, or eliminating the rights, powers, and duties of for-profit business entities, operating or seeking to operate in the community, to prevent such rights and powers from usurping or otherwise conflicting with the fundamental rights of people, their communities, and the natural environment.
- D. Local laws adopted pursuant to this right to local self-government shall not be subject to preemption by international, federal, or state law.

If you think that changing existing law can be complicated, it can be. But what other choice do we have but to change existing law? People can attempt to pass a state constitutional amendment that does very little to actually change existing law, and that does not even allow more rights for local municipalities, but what does that accomplish? Do we really want to pass a state constitutional amendment that has no more substance or teeth than a statewide survey? Is a constitutional amendment that accomplishes almost nothing what we want to work for and spend money on?

Our plans and actions have to be headed in a direction that is based on our current legal reality, not on some sort of mindless ill informed hope. In order to ban fracking in Colorado we must change Colorado law, and eventually US law, possibly at some point even international law.

We have three choices:

1. Do nothing.
2. Attempt to work within the current rigged system of law, rigged in favor of the corporate few.
3. Do something outside the box.

Not so long ago women and blacks were in a similar situation in which their rights did not exist in law. They created the women’s’ suffrage movement and the civil rights movement. These movements changed the laws at the highest level, the U.S. Constitution. What makes you think that we cannot accomplish the same thing? What other choice do we have?

At the pre-summit meeting on November 16, 2013 there was some concern that the previous version of the attached amendment was too complicated. Changing laws frequently is complicated. But, as I pointed out at the meeting, the attached amendment is only half a page. The Lafayette charter amendment that passed by more than 60% is 3.5 pages long. The argument that the amendment itself must be simple is a false argument as Lafayette has proven. It is not the amendment that gets passed out to people; it is the short statements that describe what the amendment will accomplish that gets passed out.

Keep in mind that the highest court, the U.S. Supreme Court, is generally a supporter of the current corporatocracy. It was the U.S. Supreme Court that gave corporations the rights of people, which the founders of our country never intended, and which is not in the U.S. Constitution. So we have a long road ahead of us, one that can only be won by an informed and dedicated movement similar to the women’s suffrage movement and the civil rights movement.

At the pre-summit meeting Sam and others kept referring to both local control and community rights. It was never made clear what the difference was. It appears to me that what Sam and others mean by local control is a proposed constitutional amendment that is much simpler than the COCRN presented draft proposed constitutional amendment pasted below. For all the reasons given above, I think that a simpler approach is an approach that is not likely to be based on current law, and is therefore not likely to get us where we want to go, but is instead likely to take us to a dead end, to be ineffective.

Another objection that Sam raised to the attached COCRN draft amendment was that we would be taking on not just the oil and gas industry but many other industries too. My response is that the vast majority of corporations are very welcome in our communities and so they will have no reason to feel threatened by the attached draft amendment. I own a corporation. My corporation has no reason whatsoever to oppose the attached draft amendment. Also, keep in mind that each person in Colorado has one vote; the corporations are not allowed to vote! So we obviously outnumber the corporations by a very wide margin.

So how do we get out of the current legal box we are in? We create a movement of people who understand that we do not live in a democracy. We live in a corporatocracy, a system of government that is mainly controlled by corporations. At other times in history this was referred to as fascism.

I hope that this “A Statewide Rights Based Strategy To Ban Fracking In Colorado” has been helpful.

For more on this subject go to:

So Your Community is Going to be Fracked, Mined, Factory Farmed, Fill in the Blanks...

<http://celdf.org/section.php?id=399>

A New Civil Rights Movement: Liberating Our Communities from Corporate Control

<http://www.celdf.org/celdf-statement-a-new-civil-rights-movement-liberating-our-communities-from-corporate-control>

Democracy School

<http://www.celdf.org/what-is-democracy-school>

<http://www.celdf.org/democracy-school-on-line>

Restoring Democracy in the Fight Against Fracking

<http://ecowatch.com/2012/12/26/restoring-democracy-fracking/>

Great Books <http://www.celdf.org/section.php?id=186>

[www.celdf.org](http://www.celdf.org)

# Colorado Constitutional Amendment

## *Community Rights Amendment*

**Be it Enacted by the People of the State of Colorado**

Article II, Bill of Rights of the Constitution of the State of Colorado is Amended  
BY THE ADDITION OF A NEW SECTION to read:

### **Section 32. Right of the People to Local Self-Government**

As all political power is vested in and derived from the people, and as all government of right originates from the people, the people have an inherent and inalienable right to local self-government, including in each county, city, town, and any other municipal subdivision or other local community within the State. That right shall include, without limitation, the power to enact local laws protecting health, safety, and welfare by recognizing the fundamental rights of people, communities, and the natural environment, and by securing those rights using prohibitions and other means; and the power to enact local laws establishing, defining, altering, or eliminating the rights, powers, and duties of for-profit business entities, operating or seeking to operate in the community, to prevent such rights and powers from usurping or otherwise conflicting with the fundamental rights of people, their communities, and the natural environment. Local laws adopted pursuant to this right shall not be subject to preemption by international, federal, or state laws, nor shall they be subject to limitation pursuant to Article XX, section 6 of the Colorado Constitution; provided however, that local laws shall not restrict fundamental rights of individuals, their communities, or the natural environment secured by the Constitution of the State of Colorado, the U.S. Constitution, or international law, nor shall local laws weaken protections for people, their communities, or the natural environment provided by state, federal, or international law.

Self-executing and severability. All provisions of this section are self-executing and severable.

Effective Date. All provisions of this section shall become effective upon official declaration of the vote hereon by proclamation of the governor, pursuant to section 1 (4) of Article V.