

VOTE NO ON THE “COMMUNITY SELF-GOVERNANCE” ORDINANCE

To the Voters of the Town of Mason:

At the Mason Town Meeting Saturday, March 12, 2016, voters will have the opportunity to vote on Warrant Article 14, proposing a “Community Self Governance Ordinance.” (Hereinafter the “Ordinance”) See Article 14 here: <http://masonnh.us/wp-content/uploads/2016-Town-Warrant.pdf> It was placed on the warrant by petition, apparently as a response to the proposed NED Pipeline. I strongly oppose the pipeline, but I am also strongly opposed to the passing the “Community Self Governance Ordinance, for the reasons that follow.

The Ordinance outlines various environmental “rights,” attempts to negate any state or federal law that violates those rights, and makes it illegal for any “corporation” to violate those rights. Astonishingly the Ordinance purports to legalize anarchy and civil disorder: Section 5(d) contains this gem:

“If the Town of Mason fails to enforce or defend this law, or a court fails to uphold this law's limitations on corporate power....any person may then enforce the rights and prohibitions through **direct action.**” (Emphasis added).

The ordinance defines “direct action” as “any activities or actions carried out to directly enforce the rights and prohibitions contained within this law.”

Outrageously, the ordinance attempts to legalize this “direct action” by declaring that if “direct action is commenced, this law shall prohibit any public or private actor from filing a civil or criminal action against those participating in direct action.”

In other words, radical extremism and environmental terrorism would be legal. I have heard many (bad) ideas for battling the pipeline, ranging from pulling up survey markers, to sugaring the gas tanks of excavators, to physical confrontations with workers. No town ordinance could override the criminality of such actions, nor should it. “Direct action” should be discouraged, not encouraged by a misguided “ordinance” that throws out the rule of law and emboldens people to do harm.

The Ordinance radically restructures state government! No kidding. Just one example is this whacky provision, found in Section 6(d) of the Ordinance:

“All laws adopted by the legislature of the State of New Hampshire, and rules adopted by any State agency, shall be the law of the Town of Mason **only to the extent that they do not violate the rights or prohibitions of this law**”

A similar nullification is attempted in Section 3(d), which states:

“No permit, license, privilege, charter, or other authority issued by any state or federal entity that would violate the prohibitions of this Ordinance or any rights secured by this law... shall be deemed valid within the Town of Mason.”

These provisions attempt to elevate authority of the Town of Mason over that of the State of New Hampshire and the Federal government. To do so would require major structural changes to the State Constitution and the Federal Constitution. And its a bad idea. If you don't think so, take the ordinance and replace the word “corporations” with the words “black people”, or pick your own ethnic

group. The concept of nullification of Federal law was used to keep the South segregated, and to justify the maltreatment of people of color for at least a hundred years after the passage of the Thirteenth Amendment.

The relationship between the State of New Hampshire and its municipalities is established by the state Constitution and defined by state statutes. Except for matters of purely local concern, such as town roads, the State legislature is the only lawmaking body in the state. In New Hampshire, we do not have the constitutional ability to make a referendum vote. In other words, the people cannot make a state law by direct vote, because we have constitutionally entrusted that responsibility to the legislature. We have a representative democracy.

New Hampshire municipalities can only, with few exceptions, make local laws on subjects that the state legislature has given the town the authority to control. And we certainly don't have the authority to ignore State law if it is in conflict with local law. This Ordinance cannot change that relationship—that would require constitutional change.

We should no more pass this Ordinance than we should pass a law stating town residents have a right to use heroin, that possession of heroin is legal in town, and that no state or federal law infringing on the right to use heroin shall be deemed valid in Mason.

Another novel aspect of the Ordinance is that it attempt to give “rights” to the environment. Section 2(c) of the ordinance holds that

“Ecosystems in Mason possess rights to exist, flourish, and naturally evolve. Residents of Mason shall possess legal standing to enforce those rights on behalf of those ecosystems.”

OK. Next time I see someone pulling up dandelions or cutting down a tree, I'm calling the police.

We have environmental protection statutes in New Hampshire and federally. Lots of them. These laws are effective and necessary, but they create a natural tension between environmental protection, the property rights of individuals, and commercial interests. The environment needs statutory protection, not rights. Rights are for people, not the environment.

The Ordinance (if it was enforceable, which it is not) would have many unintended consequences. I imagine it could be used to prevent the Town or State from putting salt on the roads; ban burning wood in town or prevent the use of pavement (a fossil fuel product) on town roads.

The Ordinance contains many misstatements false characterizations of law in its preamble. It singles out the fossil fuel industry, which opens it to constitutional equal protection issues. It is a marvel of hubris in its attempt to elevate the laws of the Town of Mason over those of the State of New Hampshire and the United States of America.

In conclusion, this proposed Ordinance, which will appear on the Town Warrant, is a bomb thrown by anarchists. It is unconstitutional, unenforceable, ill advised, poorly drafted, inconsistent with the fundamental structure of government, and an encouragement to destructive acts and civil disorder. Its passage would at best give false hope to beleaguered pipeline opponents, and at worst embroil the Town of Mason in fruitless litigation, and is not likely to slow or stop the pipeline. The

federal and state laws and regulations need to be changed to give a more meaningful voice and protection to people subjected to projects like NED, but not at the expense of our structure of government and civil order. To pass this law would throw the baby out with the bathwater. Vote NO on Mason Warrant Article 14.

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Mason, NH
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