

Maybe it is time to revoke our consent to be governed

*“Extending standing to the real party at risk of harm – the environment – would preserve “priceless bits of Americana” before they become “forever lost or are so transformed as to be reduced to the eventual rubble of our urban environment.”
US Supreme Court Justice William Orville Douglas*

During an especially heated primary debate with Senator Bernie Sanders, Secretary Hilary Clinton made an interesting admission. “The Palestinian people,” she conceded, “have a right to self-government.”

As an advocate for community rights and local self-government my ears perked up. Of course the Palestinians have the right to govern themselves, but I had to wonder if Clinton, or Sanders for that matter, or any of the presidential hopefuls would agree that Coos County, OR or Pittsburgh, PA have the right to say no to harmful projects that violate the fundamental rights of their citizens.

Last October I had a heated albeit brief debate of my own with a lawyer who, like me, opposes the proposed Jordan Cove LNG project here on the Southern Oregon coast. We disagreed on just what are fundamental or unalienable rights. A law professor might define fundamental rights as enumerated rights that have been recognized by the Supreme Court requiring a high degree of protection from government encroachment. Fundamental rights, however, require no

validation from a governmental authority.

My granddaughter has an inarguable fundamental right to clean air and water and not to be trespassed upon by toxic chemicals. So too do I have an unalienable right to my blue eyes and the ninth amendment allows for the protection of unenumerated rights. Yet, when a small rural farming community in Pennsylvania says NO to a fracking waste injection well because it risks contaminating groundwater and therefore the very health and livelihood of the inhabitants, state and federal regulations preempt these people from protecting themselves and their children.

The lawyer argued that property rights are fundamental rights rather than a privilege granted by government. However, owning property doesn't give you the right to use that property in a way that violates the rights of your neighbors. And, just like gun rights can be taken away from felons, property rights can be taken away from landowners. Fundamental rights such as due process and the right to be healthy cannot.

What is regulation and who writes the regulations?

In short, industry regulation is legalized harm. The regulatory agencies permit industry to violate fundamental rights and in so doing shelter the offenders from civil liability for the environmental damage and health issues they cause.

The industry itself helps write the very regulations it is

supposed to comply with. When was the last time you were consulted about how many parts-per-billion of toxins your granddaughter should breathe or drink?

The regulatory agencies effectively set a cap on how clean your air and water can be. It's like setting a maximum wage law limiting how much you can earn. Instead of setting a floor constraining industry to zero harm the regulators set a ceiling constraining the public. There is a plausible view that the only thing the regulatory agencies regulate are environmentalists.

Governments are instituted among Men, deriving their just powers from the [consent of the governed](#) – Declaration of Independence

Recently, The World published a story about a statewide citizen initiative of which I am involved to amend the Oregon Constitution. The amendment will confirm our right to local self-government and prohibit the state from preempting local ordinances protecting the fundamental rights of citizens.

The Coos County Right to a Sustainable Energy Future Ordinance is one such local law that when passed will prohibit non-sustainable energy projects like Jordan Cove and will run up against state and federal preemption. State and federal regulators believe they are more expert about our communities than we are and we have inexplicably empowered them to make decisions for us instead of making them ourselves.

Needless to say the industry doesn't like communities using

direct democracy to say NO to corporate harm. The law firm of Davis Wright Tremaine has targeted rights based ordinances filed in Columbia and Douglas Counties. Supposedly filing on behalf of individuals willing to be the qualifying local resident affected by the initiative it is highly unlikely the firm's fees are paid by the signer and very likely they are funded by the industry.

Section 1. Natural rights inherent in people. We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.— Oregon Constitution

This same firm filed a comment to the statewide initiative, this time using pro-gas booster Keith Tymchuk, Mayor of Reedsport as the qualifying resident. Anyone laboring under the false belief that we operate under a representative democracy take note that an elected official opposes direct democracy allowing communities to be self determining. Tymchuk is representing the industry, not the electorate.

State Senators Arnie Roblan and Jeff Kruse who coauthored a preemptive state law dubbed the Monsanto Protection Act are representing the industry. They are not representing their constituents who want protection from GMO and chemical encroachment on their organic farms.

Justice Douglas supported the rights of nature to thrive and flourish. He believed that an ecosystem is not a slave to mankind existing only to be plundered and exploited to the benefit of corporate shareholders. He believed they are living

breathing things independent of man and at the very least deserved standing in a court of law.

Since Douglas' time Ecuador and Bolivia have amended their constitutions giving nature rights. Italy and Ireland are also considering rights of nature as a way to protect "priceless bits" of their environment that will not survive under the regulatory model.

So what are our choices?

We can choose to do nothing which is an ethical choice and leave our children and grandchildren with the consequences. Doing nothing will not stop Jordan Cove or any other industrial harm.

We can continue to abide by and validate the regulatory fallacy. We can submit comments to the regulatory free speech zones and ignore the fact that what is regulated is allowed. Doing so will also not stop Jordan Cove, although hopefully the market has done that for us.

We can declare that a government that does not protect the fundamental rights of its people is illegitimate and revoke our consent to be governed by amending that government.

Community rights is about making corporate privileges subordinate to the rights of a community. In so doing we legalize sustainability and make it possible to protect the

health and welfare of our children and our environment.