

INTRODUCTION

1. This action involves the enforcement of a Community Bill of Rights Charter Amendment (“Charter Amendment”), codified as Broadview Heights City Charter Art. XV, and passed by a majority of Broadview Heights’ voters on November 6, 2012. A copy of the Charter Amendment is attached as Exhibit A.

2. The Charter Amendment is an organic law directly enacted by the people of Broadview Heights in their sovereign capacity, utilizing the initiative process.

3. The Charter Amendment protects the natural, essential, and inalienable rights of the individual Plaintiffs, the people whose interests Plaintiffs represent, and all of the people of Broadview Heights, including the right to self-governance, to clean water, to clean air, to be free from chemical trespass, to peaceful enjoyment of home, and to a sustainable energy future. The Charter Amendment also protects the rights of natural communities and ecosystems to exist and flourish within the City of Broadview Heights.

4. To further secure the rights enumerated in the Charter Amendment, the people of Broadview Heights prohibited corporations from engaging in the extraction of gas and oil within the City of Broadview Heights, with the exception of active and producing wells at the time of the Charter Amendment’s enactment using existing methods of extraction.

5. On June 10, 2014, Bass Energy, Inc. and Ohio Valley Energy Systems Corp. (“Bass and OVE”) sued the City of Broadview Heights, asserting that the Charter Amendment is invalid because (1) it deprives them of their property without due process; and (2) state law – the Ohio Revised Code Chapter 1509, hereinafter “the Oil and Gas Act” – preempts it. *See Bass Energy Inc. et al. v. City of Broadview Heights, Ohio*, Civ. No. 14 828074, Court of Common Pleas,

Cuyahoga County, Ohio (hereinafter, “Bass/OVE Lawsuit”).

6. Through this action, Plaintiffs seek, among other things, to enforce the Charter Amendment’s provisions and to enjoin the Defendants from violating the people of Broadview Heights’ inherent and unalienable civil and political rights.

PARTIES

Plaintiff Mothers Against Drilling in Our Neighborhoods, Inc.

7. Plaintiff Mothers Against Drilling in Our Neighborhoods, Inc. (“MADION”) is an Ohio non-profit corporation whose mission is to educate the residents of Ohio about community rights with the goal of stronger and healthier neighborhoods and communities.

8. MADION was the creator of, and proponent for, the Charter Amendment initiative.

9. MADION expended significant resources working for the passage of the Charter Amendment.

10. MADION continues to expend significant resources educating the community of Broadview Heights about the Charter Amendment and the rights articulated thereunder.

11. If the Charter Amendment is preempted, or otherwise invalidated, MADION will suffer substantial injury because MADION will be significantly hindered in advancing its mission of preserving and enhancing the quality of life for the present and future residents of the City of Broadview Heights.

12. MADION’s members are putative class representatives LETICIA O’DELL AND GERARD VOLK who have suffered an injury in fact because of the actual threat to their ability to protect their rights, as articulated in the Charter Amendment, posed by the Oil and Gas Act.

13. MADION’s members are putative class representatives LETICIA O’DELL AND

GERARD VOLK who have suffered an injury in fact because of the actual threat to their rights, as articulated in the Charter Amendment, posed by Defendants Bass and OVE's planned new oil and gas activities within Broadview Heights.

Plaintiff LETICIA O'DELL

14. Plaintiff Leticia O'Dell is an individual board member of the board of directors of MADION.

15. O'Dell is a resident, voter, taxpayer, and homeowner within the City of Broadview Heights.

16. As an inhabitant of the City of Broadview Heights, O'Dell enjoys the fundamental and unalienable right of local, community self-government.

17. O'Dell supported passage of the Charter Amendment by circulating petitions for signature and engaging in civic discourse to publicize it.

18. O'Dell has in the past met with several legislators in the Ohio General Assembly about the fracking problems in Broadview Heights, including the proximity of radioactive and chemically toxic drilling equipment next to a children's play area, and the siting of waste holding ponds in neighbors' yards.

19. O'Dell lives within .6 miles of two active wells.

20. O'Dell lives within less than 2 miles, and in some instances, less than 2 blocks, from proposed new fracking wells with the City of Broadview Heights.

21. O'Dell's property, and the property of other Broadview Heights residents, has been negatively affected by oil and gas activities and fracking operations within Broadview Heights. These negative effects will persist if new oil and gas activities, including fracking operations, are

allowed.

22. On November 6, 2012, O'Dell, along with other Broadview Heights voters, exercised her right of local, community self-government by voting for the Charter Amendment.

23. O'Dell is one of the citizens of Broadview Heights whose fundamental natural, essential and inalienable rights are now secured by the Charter Amendment.

Plaintiff GERARD VOLK

24. Plaintiff Gerard Volk is an individual board member of the board of directors of MADION.

25. Volk is a resident, voter, taxpayer, and homeowner within the City of Broadview Heights.

26. As an inhabitant of the City of Broadview Heights, Volk enjoys the fundamental and unalienable right of local, community self-government.

27. Volk supported passage of the Charter Amendment by circulating petitions for signature and engaged in civic discourse to publicize it.

28. There are two fracking wells 300 feet from Volk's and his wife's home.

29. These fracking wells have significantly impacted Volk's peaceful and quiet enjoyment of his home, his safety and his welfare.

30. One of these wells resulted in more than two straight weeks of 24 hour-per-day drilling, toxic fumes, and innumerable trucks lined up in convoys on the narrow neighborhood streets, often blocking access to fire hydrants.

31. Volk has been forced to close up his house because of chemical emissions from the well which have been released since drilling. Toxins have also prevented Volk from having his

grandchildren over for family holiday gatherings.

32. A fracking well approximately 1 mile from Volk's residence has leaked petrochemicals on at least two occasions.

33. Nearby fracking operations have significantly reduced Volk's property value. A property value assessment shows that Volk's property value has decreased by \$30,000.00.

34. New oil and gas operations, including fracking wells, will further impact Volk's peaceful and quiet enjoyment of his home, his safety and his welfare.

35. On November 6, 2012, Volk exercised his right of local, community self-government by voting for the Charter Amendment.

36. Volk is one of the citizens of Broadview Heights whose fundamental natural, essential and inalienable rights are now secured by the Charter Amendment.

Plaintiff BARBARA VONBENKEN

37. Plaintiff VonBenken is a resident, voter, taxpayer, and homeowner within the City of Broadview Heights.

38. VonBenken has resided in the City of Broadview Heights for over 19 years.

39. As an inhabitant of the City of Broadview Heights, VonBenken enjoys the fundamental and unalienable right of local, community self-government.

40. VonBenken voted in favor of the Charter Amendment.

41. VonBenken supports MADION's work in the City of Broadview Heights.

42. The property adjacent to VonBenken's has an active oil and gas well.

Defendant State of Ohio

43. Defendant State of Ohio, through its General Assembly, is responsible for enacting

State laws, and through its Office of Attorney General, is responsible for enforcing State laws.

Defendant John R. Kasich

44. Defendant John R. Kasich is sued in his official capacity as the Governor of the State of Ohio. Governor Kasich is required to ensure that all laws of the State are faithfully executed. As Ohio's Chief Executive, Governor Kasich is the proper defendant to actions to enjoin or invalidate a state statute.

City of Broadview Heights

45. The City of Broadview Heights is a general purpose municipal corporation governmental entity located in Cuyahoga County, Ohio, the charter of which contains certain enumerated community-based rights which are the subject of this lawsuit.

Defendant Bass Energy, Inc. ("Bass")

46. Bass is an Ohio corporation with its principal place of business in Fairlawn, Ohio, with oil and gas leases with property owners in the City of Broadview Heights and is engaged in, or is seeking to engage in, oil and gas activities within the City of Broadview Heights in violation of the Charter Amendment.

Defendant Ohio Valley Energy Systems Corp. ("OVE")

47. OVE is an Ohio corporation with its principal place of business in Austintown, Ohio. OVE has oil and gas leases with property owners in the City of Broadview Heights and is engaged in, or is seeking to engage in, oil and gas activities within the City of Broadview Heights in violation of the Charter Amendment.

Defendant John Doe Corporation

48. Defendant John Doe Corporation is a corporation engaged in, or seeking to engage in,

oil and gas activities within the City of Broadview Heights in violation of the Charter Amendment.

CLASS ACTION ALLEGATIONS

49. Plaintiffs LETICIA O'DELL, GERARD VOLK, AND BARBARA VONBENKEN, represent individuals who reside in the City of Broadview Heights.

50. The class, which consists of all individuals who reside in the City of Broadview Heights, is so numerous that joinder of all members is impracticable.

51. There are questions of law and fact common to the class.

52. The claims of the representative Plaintiffs are typical of the claims of the class.

53. The representative Plaintiffs will fairly and adequately protect the interests of the class.

54. Plaintiffs have retained counsel competent to litigate this class action and who will adequately represent the class.

55. A class action is appropriate in this case for one or more of the following reasons:

a. Prosecution of separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the Defendants.

b. Adjudications with respect to Plaintiffs would be dispositive of the interests of the other members of the class and would substantially impair or impede their ability to protect their interest.

c. Defendants have acted on grounds generally applicable to the class, which makes final injunctive relief and declaratory relief appropriate with respect to the class as a

whole.

d. Questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

56. Questions of law and fact common to the Plaintiff class include:

a. Whether the Oil and Gas Act of the State of Ohio violates the people of Broadview Heights's federal, state, and locally-secured right of local, community self-government.

b. Whether the Oil and Gas Act of the State of Ohio renders the City of Broadview Heights unable to secure and protect the civil rights of the people of Broadview Heights.

c. Whether the Oil and Gas Act of the State of Ohio violates the people of Broadview Heights' right to alter their current form of government and to institute a new system of municipal government which protects their rights and which recognizes majority governance.

JURISDICTION AND VENUE

57. This Court has subject matter jurisdiction over this action pursuant to O.R.C. § 2721.02 and because the events complained of occurred in Ohio.

58. This Court has personal jurisdiction over Defendants Bass and OVE because they are both Ohio corporations with their principal places of business in Ohio.

59. This Court has personal jurisdiction over John Doe Corporation because it is an Ohio corporation engaged in, or seeking to engage in, activities within Cuyahoga County, Ohio.

60. This Court has personal jurisdiction over the State of Ohio and Governor John R.

Kasich, and the City of Broadview Heights.

61. Venue is proper in this Court pursuant to Ohio Civ.R. 3(B) because this action concerns the constitutional and unalienable rights of the people of the City of Broadview Heights, and Broadview Heights is located within Cuyahoga County, Ohio.

FACTS COMMON TO ALL CLAIMS

Charter Amendment

62. The City of Broadview Heights is a home rule city whose citizens may amend the City Charter by initiative. *See* Ohio Const. Art. XVIII, §§ 18.03 and 18.07, City Charter Art. VIII.

63. In 2012, MADION timely filed a proposed Community Bill of Rights Charter Amendment with the City Clerk, and it was duly placed on the ballot.

64. On November 6, 2012, voters, including named Plaintiffs O'Dell, Volk, and VonBenken, passed the Charter Amendment into law by a majority vote of 6,406 out of 9,652 votes cast, which was 66.37% of the vote.

65. By its terms, upon passage, the Charter Amendment became self-executing.

66. The Charter Amendment enumerates a range of rights for residents of the City of Broadview Heights, including the right to pure water, clean air, peaceful enjoyment of home, and to a sustainable energy future. The Charter Amendment also protects the rights of natural communities and ecosystems to exist and flourish within the City of Broadview Heights.

67. Section(g) of the Charter Amendment recognizes the people of Broadview Heights as sovereign.

68. To secure and protect the rights enumerated in the Charter Amendment, the people of

Broadview Heights prohibited new oil and gas extraction activities within the City.

69. Broadview Heights Charter Amendment § 1 provides:

It shall be unlawful for any person or corporation to engage in the extraction of gas or oil within the City of Broadview Heights, with the exception of gas and oil wells installed and operating at the time of enactment of this Charter provision, provided that the extraction of gas or oil from those existing wells does not involve any practice or process not previously used for the extraction of gas or oil from those wells and providing those wells are capped securely when production ceases.

70. Charter Amendment, § 2 prohibits “any person or corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to deposit, store or transport waste water, "produced" water, "frack" water, brine, or other materials, chemicals or by-products used in the extraction of gas or oil, within, upon or through the land, air or waters of the City of Broadview Heights.”

The Right of Local Community, Self-Government

71. The right of local, community self-government is an inherent, fundamental, and inalienable right held by each individual person that resides within Broadview Heights, and is held collectively by the inhabitants of Broadview Heights.

72. The right of local, community self-government is a right that has been recognized as having a value essential to the individual liberties in our society, and it is deeply rooted in our nation’s history and tradition.

73. The right of local, community self-government is secured by the United States Declaration of Independence, which recognizes four principles of law essential to American governments: first, that people possess certain fundamental civil and political rights; second, that governments are created to secure those rights; third, that governments owe their existence to, and derive their power exclusively from, the community of people which creates and empowers

them; and fourth, that if government becomes destructive of those ends, the people have a right and a duty to alter or abolish that system of government and replace it with one which both recognizes their self-governing authority and which protects their civil and political rights.

74. The right of local, community self-government is secured by the United States Constitution, which incorporates the principles of the Declaration of Independence.

75. The right of local, community self-government is also secured by the Ninth Amendment of the United States Constitution which provides: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. Amend. IX.

76. The right of local, community self-government is secured by the Ohio Constitution.

77. Ohio Constitution, Article I, § 2 provides that all political power is inherent in the people. It reads:

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

78. Similar to the Ninth Amendment, the Ohio Constitution, Article I, § 20 reserves to the people, the inherent and inalienable right of local self-government. It provides: "This enumeration of rights shall not be construed to impair or deny others retained by the people, and all powers, not herein delegated, remain with the people." Ohio Const. Art. I, § 20.

79. The right of local, community self-government is expressly recognized in the Broadview Heights Charter. The Charter's Preamble states:

We, the citizens of the City of Broadview Heights, County of Cuyahoga, State of Ohio, believing in our ability to govern ourselves in local self-government under the Constitution and the laws of the State of Ohio, do hereby adopt this Charter.

80. The Charter's "Form of Government and Powers" section at Charter Art. II, § 2, recognizes that the people of Broadview Heights shall have the most expansive powers possible.

It states:

The city shall have all powers of local self-government and home rule and all powers possible for a city to have or hereafter to be granted to cities, under the Constitution or laws of the State of Ohio. All such powers shall be exercised in the manner prescribed in this Charter or, if not prescribed herein, in such manner as shall be provided by Council, and there is reserved to the people the right to petition for redress of grievances.

81. Through their local government Charter, the people of Broadview Heights can recognize additional rights – beyond those recognized in federal and state constitutions.

82. Just as federal constitutional rights do not preempt state constitutional rights, local constitutional rights – recognized here in the Broadview Heights' Charter – create an additional layer of rights.

83. The Community Bill of Rights Charter Amendment, enacted pursuant to the unalienable and constitutional right of local, community self-government and the Broadview Heights Charter, reaffirms the right of local, community self-government in the following provisions:

Art. XV, § f. Right to Self-Government. All residents of The City of Broadview Heights possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities and their directors and managers shall not enjoy special privileges or powers under the law which make community majorities subordinate to them.

Art. XV, § g. People as Sovereign. The City of Broadview Heights shall be the governing authority responsible to, and governed by, the residents of the City. Use of the "City of Broadview Heights" municipal corporation by the sovereign people of the City to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and indefeasible right to self-governance in the community where they reside.

84. The right of local, community self-government includes:

- a. The right to a system of government within the local community that is controlled by a majority of that community's citizens.
- b. The right to a system of government within the local community that secures and protects the civil and political rights of every person in the community.
- c. The right to alter or abolish any system of local government that either fails to incorporate majority governance or that fails to secure and protect the civil and political rights of citizens and residents of the community.

85. Through their adoption of the Community Bill of Rights Charter Amendment, the people of Broadview Heights recognized that their current municipal system of governance failed to protect their civil and political rights, and they acted – pursuant to their right of local, community self-government - to change their system of local government.

86. The people's authority to wield their right of local, community self-government is separate and distinct from the authority held by municipal corporations to enact local laws.

87. The people's right of local, community self-government is not limited by any other grant of authority (or lack of grant of authority) to Broadview Heights by the State, nor is it preempted by state or federal law.

88. Because the right of local, community self-government is a fundamental, unalienable right that is also constitutionally protected, either state actors or private actors may be liable for violating it.

Defendants' Unlawful Activities

89. As evident from the Bass and OVE Lawsuit, new wells are planned within the City of

Broadview Heights.

90. Bass and OVE seek to drill a new well on property owned by St. Sava Serbian Eastern Orthodox Church of Cleveland, Ohio (“St. Sava”). That well is known as Well #5D.

91. Bass has a permit from the Ohio Department of Natural Resources, Division of Mineral Resources, to drill Well #5D.

92. According to Bass and OVE, Well #5D is planned to be a conventional well, similar to the three wells currently operating on the St. Sava property.

93. Bass is violating the Charter Amendment by depositing wastewater from oil and gas activities within the City of Broadview Heights.

94. OVE is violating the Charter Amendment by depositing wastewater from oil and gas activities within the City of Broadview Heights.

95. John Doe Corporation has plans to drill new fracking wells in the City of Broadview Heights in violation of the Charter Amendment.

96. John Doe Corporation is violating the Charter Amendment by depositing wastewater from oil and gas activities within the City of Broadview Heights.

97. Defendants Bass, OVE, and John Doe Corporation are violating the Charter Amendment by depriving the inhabitants of Broadview Heights of their right to clean air, pure water, peaceful enjoyment of their homes, and to a sustainable energy future.

Bass/OVE Lawsuit and the Oil and Gas Act

98. On June 10, 2014, Bass and OVE sued the City of Broadview Heights, asserting that the Community Bill of Rights is invalid because: (1) it deprives them of their property without due process; and (2) state law – Ohio Revised Code Chapter 1509, hereinafter “the Oil and Gas

Act” – preempts it. *See Bass Energy Inc. et al. v. City of Broadview Heights, Ohio*, Civ. No. 14 828074, Court of Common Pleas, Cuyahoga County, Ohio (hereinafter, “Bass and OVE Lawsuit”).

99. The Bass and OVE Lawsuit relies on corporate “rights” and the doctrine of preemption.

100. Corporate “rights” and the doctrine of preemption violate the right of the people of Broadview Heights to local, community self-government.

101. The doctrine of preemption, when exercised to override the people’s authority to protect their own health, safety, and welfare, violates the right to local, community self-government by preventing the peoples’ use of their own municipal government to govern themselves, and by nullifying the government’s ability to secure and protect the people’s rights.

102. The Oil and Gas Act purports to give the State of Ohio’s department of natural resources, division of oil and gas resources management, the “sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations within the state, excepting only those activities regulated under federal laws for which oversight has been delegated to the environmental protection agency and activities regulated under sections 6111.02 to 6111.028 of the Revised Code [state water pollution control law].” O.R.C. § 1509.02.

103. The preemptive provisions of the Oil and Gas Act violate the people of Broadview Height’s unalienable right to local, community self-government and threaten to violate the people’s right of local, community self-government as secured by the Charter Amendment.

104. The existence of the Oil and Gas Act, to the extent it is interpreted as overriding the peoples’ authority to ban oil and gas extraction within their own communities, and threatens to

displace the people's authority to enforce the Charter Amendment, poses an actual and imminent threat to the fundamental and unalienable rights of the people of Broadview Heights as secured by the federal and state constitutions and the Charter Amendment.

105. The recognition of corporate "rights" unconstitutionally overrides people's authority to govern themselves within communities, and exercise of corporate "rights" over people's rights prevents the municipality from securing and protecting the people's civil and political rights.

106. Rights belong only to living beings, not to property in the form of corporations.

107. Pursuant to their right of local self-government, the people of Broadview Heights have the right to change their system of municipal governance.

108. In response to the existence of the doctrine of preemption and corporate "rights", the people of Broadview Heights have altered their system of government by adopting the following provisions of the Charter Amendment:

Art. XV, Sec. i(5). Corporations in violation of the prohibition against gas and oil extraction, or seeking to engage in gas or oil extraction shall not have the rights of "persons" afforded by the United States and Ohio Constitutions, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Ohio Constitution.

Art. XV, Sec. i(6). Corporations engaged in the extraction of gas or oil shall not possess the authority or power to enforce State of federal preemptive law against the people of the City of Broadview Heights, or to challenge or overturn municipal ordinances or Charter provisions adopted by the City of Broadview Heights Council.

Art. XV, Sec. i(7). No permit, license, privilege or charter issued by any State or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Charter provision or deprive any City resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Charter, the Ohio Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Broadview Heights.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF
(Against Defendants Governor John R. Kasich and State of Ohio)
Violation of the Right of Local, Community Self-Government
as Secured by the U.S. Constitution
(Pursuant to 42 U.S.C. §1983)

109. Plaintiffs incorporate by reference and reallege, as if fully set forth herein, the allegations contained in the above paragraphs 1 through 108.

110. The State of Ohio has adopted the Oil and Gas Act.

111. The Oil and Gas Act contains provisions which purport to preempt local laws governing oil and gas activities.

112. The Oil and Gas Act, a state statute, violates the U.S. Constitution by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

113. The Oil and Gas Act, a state statute, violates the U.S. Constitution by nullifying the people of Broadview Heights' constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

114. The Oil and Gas Act, a state statute, violates the U.S. Constitution by constraining the Broadview Heights' municipal government from securing the people's rights.

115. There is a real and substantial threat that the court in the pending Bass/OVE Lawsuit will apply Ohio's Oil and Gas Act to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Broadview Heights' right to local, community self-government as guaranteed by the U.S. Constitution.

116. Plaintiffs state that Defendants' actions alleged above, in combination, threaten to violate the people of Broadview Heights' rights under color of state law, to-wit, by abridging their individual and collective rights to local, community self-government as secured by the U.S. Constitution, in violation of 42 U.S.C. §1983.

117. The State and Governor Kasich are state actors, acting with the intent and for the purpose of depriving the people of Broadview Heights of, among other rights, the rights secured under the U.S. Constitution.

118. Plaintiffs seek declaratory and injunctive relief, costs and such other and further relief as the Court deems just and proper in the premises.

SECOND CLAIM FOR RELIEF
(Against Defendants Governor John R. Kasich and State of Ohio)
Violation of the Right of Local, Community Self-Government
as Secured by the Ohio Constitution

119. Plaintiffs incorporate by reference and reallege, as if fully set forth herein, the allegations contained in the above paragraphs 1 through 118.

120. The State of Ohio has adopted the Oil and Gas Act.

121. The Oil and Gas Act contains provisions which purport to preempt local laws governing oil and gas activities.

122. The Oil and Gas Act violates the Ohio Constitution by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

123. The Oil and Gas Act violates the Ohio Constitution by nullifying the people of Broadview Heights' constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

124. The Oil and Gas Act violates the Ohio Constitution by constraining the Broadview Heights municipal government from securing the people's rights.

125. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Broadview Heights' individual and collective rights of local, community self-government as guaranteed by the Ohio Constitution.

126. Plaintiffs seek declaratory and injunctive relief, costs and such other and further relief as the Court deems just and proper in the premises.

THIRD CLAIM FOR RELIEF
(Against Defendants Governor John R. Kasich and State of Ohio)
Violation of the Right of Local, Community Self-Government
as Secured by the Charter Amendment

127. Plaintiffs incorporate by reference and reallege, as if fully set forth herein, the allegations contained in the above paragraphs 1 through 126.

128. The State of Ohio has adopted the Oil and Gas Act.

129. The Oil and Gas Act contains provisions which purport to preempt local laws governing oil and gas activities.

130. The Oil and Gas Act violates the Charter Amendment by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

131. The Oil and Gas Act violates the Charter Amendment by nullifying the people of Broadview Heights' constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

132. The Oil and Gas Act violates the Charter Amendment by constraining the

Broadview Heights municipal government from securing the people's rights.

133. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Broadview Heights' individual and collective rights to local, community self-government as guaranteed by the Charter Amendment.

134. Plaintiffs seek declaratory and injunctive relief, costs and such other and further relief as the Court deems just and proper in the premises.

FOURTH CLAIM FOR RELIEF
(Against Defendants Bass and OVE)
Violation of the Right of Local, Community Self-Government
as Secured by the U.S. Constitution

135. Plaintiffs incorporate by reference and reallege, as if fully set forth herein, the allegations contained in the above paragraphs 1 through 134.

136. The Oil and Gas Act contains provisions which purport to preempt local laws governing oil and gas activities.

137. The Oil and Gas Act violates the U.S. Constitution by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

138. The Oil and Gas Act violates the U.S. Constitution by nullifying the people of Broadview Heights' constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

139. The Oil and Gas Act violates the U.S. Constitution by constraining the Broadview Heights municipal government from securing the people's rights.

140. In passing the Charter Amendment, the people of Broadview Heights exercised their

authority to govern themselves as guaranteed by the U.S. Constitution.

141. In the Bass/OVE Lawsuit, Bass and OVE are attempting to violate the people of Broadview Heights' right to local, community self-government as guaranteed by the U.S. Constitution by actively asserting the preemptive authority of the Oil and Gas Act to override Broadview Heights' ban on new oil and gas activities.

142. In the Bass/OVE Lawsuit, Bass and OVE are seeking to invalidate the Charter Amendment in violation of the people of Broadview Heights' authority to alter their system of governance as guaranteed by the U.S. Constitution.

143. The Bass/OVE Lawsuit, and subsequent litigation of that case, infringes upon the people of Broadview Heights' authority to govern themselves, by requiring the people of Broadview Heights' to expend resources to defend their constitutionally-guaranteed right to local, community self-government.

144. Bass and OVE are acting under color of state law pursuant to 42 U.S.C. § 1983 because they are corporations chartered by the State, are seeking to assert powers given to them by the State, and have invoked the power of a court to enforce their claimed rights under Ohio law.

145. Bass and OVE are acting under color of state law pursuant to 42 U.S.C. § 1983 because they are attempting to enforce a state law -- the Oil and Gas Act -- with the intent, and for the purpose of, depriving the people of Broadview Heights of, among other rights, the rights secured under the U.S. Constitution.

146. Alternatively, Bass and OVE are liable as private actors for violating the right of local, community self-government because that right is a fundamental, unalienable right that is

state and federally constitutionally protected.

147. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Broadview Heights' right of local, community self-government as guaranteed by the U.S. Constitution.

148. Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper in the premises.

FIFTH CLAIM FOR RELIEF
(Against Defendants Bass and OVE)
Violation of the Right of Local, Community Self-Government
as Secured by the Ohio Constitution

149. Plaintiffs incorporate by reference and reallege, as if fully set forth herein, the allegations contained in the above paragraphs 1 through 148.

150. The Oil and Gas Act contains provisions which purport to preempt local laws governing oil and gas activities.

151. The Oil and Gas Act violates the Ohio Constitution by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

152. The Oil and Gas Act violates the Ohio Constitution by nullifying the people of Broadview Heights' constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

153. The Oil and Gas Act violates the Ohio Constitution by constraining the Broadview Heights municipal government from securing the people's rights.

154. In passing the Charter Amendment, the people of Broadview Heights exercised their

authority to govern themselves as guaranteed by the Ohio Constitution.

155. In the Bass/OVE Lawsuit, Bass and OVE are attempting to violate the people of Broadview Heights' right to local, community self-government as guaranteed by the Ohio Constitution by actively asserting the preemptive authority of the Oil and Gas Act to override Broadview Heights' ban on new oil and gas activities.

156. In the Bass/OVE Lawsuit, Bass and OVE are seeking to invalidate the Charter Amendment in violation of the people of Broadview Heights' authority to alter their system of governance as guaranteed by the Ohio Constitution.

157. The Bass/OVE Lawsuit, and subsequent litigation of that case, infringes upon the people of Broadview Heights' authority to govern themselves, by requiring the people of Broadview Heights to expend resources to defend their constitutionally-guaranteed right to local, community self-government.

158. Bass and OVE are acting under color of state law because they are corporations chartered by the State and are seeking to assert powers given to them by the State.

159. Bass and OVE are acting under color of state law because they are attempting to enforce a state law -- the Oil and Gas Act -- with the intent and for the purpose of depriving the people of Broadview Heights of, among other rights, the rights secured under the U.S. Constitution.

160. Alternatively, Bass and OVE are liable as private actors for violating the right of local, community self-government because it is a fundamental, unalienable right that is constitutionally protected.

161. There is a real and substantial threat that the Oil and Gas Act will be applied to

preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Broadview Heights' right of local, community self-government as guaranteed by the U.S. Constitution.

162. Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper in the premises.

SIXTH CLAIM FOR RELIEF
(Against Defendants Bass and OVE)
Violation of the Right of Local, Community Self-Government
as Secured by the Charter Amendment

163. Plaintiffs incorporate by reference and reallege, as if fully set forth herein, the allegations contained in the above paragraphs 1 through 162.

164. The Oil and Gas Act contains provisions which purport to preempt local laws governing oil and gas activities.

165. The Oil and Gas Act violates the Charter Amendment by nullifying the people's constitutionally guaranteed authority to govern their own community, and by interfering with the people's ability to protect their health, safety, and welfare through banning oil and gas extraction.

166. The Oil and Gas Act violates the Charter Amendment by nullifying the people of Broadview Heights' constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government.

167. The Oil and Gas Act violates the Charter Amendment by constraining the Broadview Heights municipal government from securing the people's rights.

168. In passing the Charter Amendment, the people of Broadview Heights exercised their authority to govern themselves as guaranteed by the Broadview Heights Charter.

169. In the Bass/OVE Lawsuit, Bass and OVE are attempting to violate the people of

Broadview Heights' right to local, community self-government as guaranteed by the Charter Amendment by actively asserting the preemptive authority of the Oil and Gas Act to override Broadview Heights' ban on new oil and gas activities.

170. In the Bass/OVE Lawsuit, Bass and OVE are seeking to invalidate the Charter Amendment in violation of the people of Broadview Heights' authority to alter their system of governance as guaranteed by the Charter Amendment.

171. The Bass/OVE Lawsuit, and subsequent litigation of that case, infringes upon the people of Broadview Heights' authority to govern themselves, by requiring the people of Broadview Heights to expend resources to defend their constitutionally-guaranteed right to local, community self-government.

172. There is a real and substantial threat that the Oil and Gas Act will be applied to preempt the Charter Amendment's ban on oil and gas extraction in violation of the people of Broadview Heights' right of local, community self-government as guaranteed by the U.S. Constitution.

173. Plaintiffs seek declaratory and injunctive relief, costs and attorneys' fees, and other and further relief as the Court deems just and proper in the premises.

SEVENTH CLAIM FOR RELIEF
(Against Defendants Bass and OVE)
Violation of § 6 of the Charter Amendment

174. Plaintiffs incorporate by reference and reallege, as if fully set forth herein, the allegations contained in the above paragraphs 1 through 173.

175. Bass and OVE are corporations engaged in the extraction of gas or oil in the City of Broadview Heights and who are also depositing, storing or transporting waste water,

“produced” water, “frack” water, brine, or other materials, chemicals or by-products used in the extraction of oil and gas, within upon or through the land, air or waters of the City of Broadview Heights.

176. Section 6 of the Charter Amendment provides:

Corporations engaged in the extraction of gas or oil shall not possess the authority or power to enforce State or federal preemptive law against the people of the City of Broadview Heights, or to challenge or overturn municipal ordinances or Charter provisions adopted by the City of Broadview Heights Council.

177. The Court's recognition of the validity of the claims in the Bass/OVE Lawsuit violates § 6 of the Charter Amendment.

178. For this Claim, Plaintiffs seek declaratory and injunctive relief, costs and such other and further relief as the Court deems just and proper in the premises.

EIGHTH CLAIM FOR RELIEF
(Against John Doe Corporation)
Violation of the Charter Amendment

179. Plaintiffs incorporate by reference and reallege, as if fully set forth herein, the allegations contained in the above paragraphs 1 through 178.

180. Upon information and belief, John Doe Corporation is engaged in, or is seeking to engage in, oil and gas extraction and related activities in violation of §§ 1-4 of the Charter Amendment.

181. John Doe Corporation's unlawful extraction of oil and gas and related activities within the City of Broadview Heights violates the rights of the people of Broadview Heights secured by the Charter Amendment's Community Bill of Rights.

182. Upon information and belief, John Doe Corporation has – or may prospectively seek – a permit, license, privilege or charter issued by a State or federal agency, Commission or Board

to operate wells, or engage in natural gas and oil exploration, in the City of Broadview Heights in violation of the Charter Amendment's prohibitions against oil and gas extraction.

183. John Doe Corporation's permit, license, privilege or charter violates the right of the people of Broadview Heights to local, community self-government, and under § 7, is invalid.

184. For this Claim, Plaintiffs seek declaratory and injunctive relief, costs and such other and further relief as the Court deems just and proper in the premises.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, individually and on behalf of those persons whose interests they represent, pray for judgment as follows:

1. For a judicial determination and declaration that:
 - a. The provisions of the Oil and Gas Act that purport to preempt local laws enacted pursuant to the authority of the people to govern themselves and to strengthen protections for peoples' health, safety, and welfare, are unconstitutional and in violation of the Charter Amendment, because they violate the people of Broadview Heights' right to local, community self-government.
 - b. The Oil and Gas Act, if applied to preempt the Charter Amendment, violates the people of Broadview Heights' authority to govern themselves within their own municipality, as guaranteed by the Ohio Constitution, federal law, and the Charter Amendment.
 - c. The Oil and Gas Act, if applied to preempt the Charter Amendment, unconstitutionally constrains the City of Broadview Heights from securing and protecting the rights of the people of Broadview Heights.
 - d. The Bass/OVE Lawsuit is an attempt to enforce the Oil and Gas Act in

violation of the people of Broadview Heights' right to local, community self-government, as reaffirmed by the Ohio Constitution, federal law, and the Charter Amendment.

e. The Bass/OVE Lawsuit violates § 6 of the Charter Amendment.

f. Under § 5 of the Charter Amendment, Defendants Bass, OVE and John Doe Corporation do not have, within the City of Broadview Heights, the rights of “persons” afforded by the U.S. and Ohio Constitutions.

g. Under § 5 of the Charter Amendment, Defendants Bass, OVE, and John Doe Corporation do not possess, within the City of Broadview Heights, the protections afforded by the commerce and contracts clauses of the U.S. and Ohio constitutions.

h. The permits, licenses, privileges or charters granted to Defendants Bass, OVE and John Doe Corporation violate the people of Broadview Heights’ right of local, community self-government, and under § 7 of the Charter Amendment, are invalid within the City of Broadview Heights.

2. For a preliminary and permanent injunction:

a. Enjoining the Defendants, their attorneys, employees, agents and all others working in concert therewith from attempting to enforce the unlawful and unconstitutional preemptive provisions of the Oil and Gas Act against the Plaintiffs, the people of the City of Broadview Heights, and their municipal government, to invalidate the Charter Amendment;

b. Enjoining any future enforcement of the preemptive provisions of the Oil and Gas Act against the Charter Amendment adopted by the people of Broadview Heights.

3. For all costs of litigation, including without limitation, expert and attorney's fees, pursuant to Section 8 of the Charter Amendment and the Civil Rights Act of 1871, 42 U.S.C.

§1988 and any other applicable law.

4. For such other and relief as this Court deems just and proper in the premises.

/s/ Terry J. Lodge
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Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby demand trial by jury of all issues in the Complaint which are so triable.

/s/ Terry J. Lodge
Terry J. Lodge (0029271)
Counsel for Plaintiffs

Dated: December 4, 2014

Broadview Heights Code of Ordinances
CHARTER ARTICLE XV COMMUNITY BILL OF RIGHTS

ARTICLE XV COMMUNITY BILL OF RIGHTS

a. **Right to Pure Water.** All residents, natural communities and ecosystems the City of Broadview Heights possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

b. **Right to Clean Air.** All residents, natural communities and ecosystems in The City of Broadview Heights possess a fundamental and inalienable right to breathe air untainted by toxins, carcinogens, particulates and other substances known to cause harm to health.

c. **Right to Peaceful Enjoyment of Home.** Residents of The City of Broadview Heights possess fundamental and inalienable right to the peaceful enjoyment of their homes, free from interference, intrusion, nuisances or impediments to access and occupation.

d. **Rights of Natural Communities.** Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems possess inalienable and fundamental rights to exist and flourish within The City of Broadview Heights. Residents of the City shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems.

e. **Right to a Sustainable Energy Future.** All residents in The City of Broadview Heights possess a right to a sustainable energy future, which includes, but is not limited to, the development, production, and use of energy from renewable and sustainable fuel sources.

f. **Right to Self-Government.** All residents of The City of Broadview Heights possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities and their directors and managers shall not enjoy special privileges or powers under the law which make community majorities subordinate to them.

g. **People as Sovereign.** The City of Broadview Heights shall be the governing authority responsible to, and governed by, the residents of the City. Use of the "City of Broadview Heights" municipal corporation by the sovereign people of the City to make law shall not be construed to limit or surrender the sovereign authority or immunities of the people to a municipal corporation that is subordinate to them in all respects at all times. The people at all times enjoy and retain an inalienable and inalienable and inalienable right to self-governance in the community where they reside.

h. **Right as Self-Executing.** All rights delineated and secured by this Charter shall be self-executing and these rights shall be enforceable against private and public entities.

i. Securing and Protecting Rights. To further secure and protect the rights enumerated by the Bill of Rights.

1. It shall be unlawful for any person or corporation to engage in the extraction of gas or oil within the City of Broadview Heights, with the exception of gas and oil wells installed and operating at the time of enactment of this Charter provision, provided that the extraction of gas or oil from those existing wells does not involve a practice or process not previously used for the extraction of gas or oil from those wells and providing those wells are capped securely when production ceases.

2. It shall be unlawful for any person or corporation, or any director, officer, owner, or manager of a corporation to use a corporation, to deposit, store or transport waste water, "produced" water, "frack" water, brine, or other materials, chemicals or by-products used in the extraction of gas or oil, within, upon or through the land, air or waters of the City of Broadview Heights.

3. It shall be unlawful for any person or corporation, or any director, officer, owner, or manager of a corporation to use a corporation to engage in the creation of fossil fuel, nuclear or other non-sustainable energy production and delivery infrastructures, such as pipelines, processing facilities, compressors, or storage and transportation facilities of any sort that would violate the right to a sustainable energy future for the City of Broadview Heights.

4. Corporations and persons using corporations to engage in gas or oil extraction in a neighboring municipality, county or state shall be strictly liable for all harms caused to natural water sources, ecosystems, human and natural communities within the City of Broadview Heights.

5. Corporations in violation of the prohibition against gas and oil extraction, or seeking to engage in gas or oil extraction shall not have the right of "persons" afforded by the United States and Ohio Constitutions, nor shall those corporations be afforded the protections of the commerce or contracts clauses with the United States Constitution or corresponding sections of the Ohio Constitution.

6. Corporations engaged in the extraction of gas or oil shall not possess the authority or power to enforce State or federal preemptive law against the people of the City of Broadview Heights, or to challenge or overturn municipal ordinances or Charter provisions adopted by the City of Broadview Heights Council.

7. No permit, license, privilege or charter issued by any State or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Charter provision or deprive any City resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Charter, the Ohio Constitution, the United States Constitution, or other laws, shall be deemed valid within the City of Broadview Heights.

8. Any person, corporation, or other entity that violates any prohibition of this Ordinance shall be guilty of a summary offense and, upon conviction shall be sentenced to pay the maximum fine allowable under State law for that violation, and shall be imprisoned to the extent allowed by law. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each section of this Ordinance found to be violated. Enforcement of this article may be initiated by the Broadview Heights Police Department, the Director of Public

Safety, or other designee of City Council. Broadview Heights may also enforce this Ordinance through an action in equity. In such an action, Broadview Heights shall be entitled to recover damages and all costs of litigation, including limitation, expert and attorney's fees.

9. Any City resident shall have the authority to enforce this Ordinance through an action in equity. In such an action, the resident shall be entitled to recover damages and all costs of litigation, including, without limitation, expert and attorney's fees. Any person who brings an action to secure or protect the rights of natural communities or ecosystems within Broadview Heights shall bring that action in the name of the natural community or ecosystem in a court of competent jurisdiction. Damages shall be measured by the cost of restoring the natural community or ecosystem to its pre-damaged state, and shall be paid to Broadview Heights or other applicable governmental entity, to be used exclusively for the full land complete restoration of the natural community or ecosystem.

10. The provision of this section are severable. If any court of competent jurisdiction decides that any sub-section, clause, sentence, part, of provision of this section is illegal, invalid, or unconstitutional, such decision shall not affect, impair or invalidate any of the remaining subsections, clauses, sentences, parts, or provisions of this Bill of Rights and its prohibitions. The people of the City of Broadview Heights hereby declare that in the event of such a decision, and the determination that the court's ruling is legitimate, they would have enacted this amendment even without the sub-section, clause, sentence, part, or provision that the court decides is illegal, invalid, or unconstitutional. All inconsistent provisions of prior Ordinances and zoning Ordinances adopted at any time by the City of Broadview Heights are hereby held in abeyance, but shall take immediate effect in the event this Bill of Rights and its protective prohibitions are overturned.

(Approved Nov. 6, 2012)

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