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## **Community Challenges Corporate Claims to Constitutional "Rights"**

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Last year, Friends and Residents of St. Thomas Township (FROST) saw a giant quarry-asphalt-cement corporation poised to invade their community.

In South-Central Pennsylvania, where St. Thomas Township is located, factory farms and sludge spreading, toxic dumps, quarries and other unwelcome corporate projects have been a reality in many communities. Logically, people have been working to nip these assaults in the bud. Vigorous explorations have been under way about corporations and the law, about people's persistent struggles for rights in these United States. Such efforts have been driving innovative citizen campaigns into village squares, voting booths, local legislatures, courts, and assorted political and cultural arenas.

To date, 78 Pennsylvania townships have passed laws banning corporate involvement in agriculture. Several townships have passed laws stripping corporations of constitutional protections and powers.

Because these campaigns have been energizing and effective, growing numbers of people in this part of Pennsylvania have lost interest in waging endless, defensive battles with regulatory agencies like the state's Department of Environmental Protection or township zoning and planning boards. People are learning that they can stop corporate directors and managers from rigging the law and choreographing public officials and public policy.

Integral to its new organizing, FROST filed an unusual legal challenge to corporate and state officials. Here is a short summary of what's been going on in St. Thomas Township, followed by a glimpse at how FROST members see their struggle.

\* \* \* \*

Agents of the St. Thomas Development Corporation handed the township a proposal to build a quarry, asphalt plant and concrete factory on 450 acres of apple orchard. Neighbors came together as FROST to educate themselves and the township about this corporate invasion.

FROST members turned to their elected township supervisors for help, only to be told neither the people of the township nor the people's elected supervisors had legal authority to stop this corporate project. So last November, having decided to elect one of its own as supervisor, FROST ran a write-in candidate, Frank Stearn. Stearn won.

A few days after Frank Stearn was sworn in as township supervisor, the St. Thomas Development Corporation sent a letter to the chair of the board of supervisors. This letter demanded that the board prevent Stearn from considering, discussing, debating, or voting on "any and all matters relating to or connected with" the quarry and related projects in the township. Claiming constitutional "rights" of due process and equal protection -- and wrapping their bullying letter in the First Amendment -- the corporate directors warned that if the board did not enforce Stearn's silence and non-participation, the corporation would bring a discrimination lawsuit against the township.

Such a lawsuit would rely upon a Reconstruction-era U. S. civil rights statute written to establish the constitutional rights of freed slaves and punish recalcitrant public officials. It was intended to aid the enforcement of the Fourteenth Amendment -- one of many human rights laws now resting ominously in corporate arsenals.

Bowing to these corporate threats, the board of supervisors prevented Stearn from participating in, and voting on, decisions made at several supervisor meetings.

FROST folks saw that because this letter was sent by a corporation which the Pennsylvania legislature -- through state corporate laws -- had granted the constitutional powers and protections of natural persons, it amounted to more than "just a letter." Its purpose was to intimidate and shut people up . . . to deny people's rights. FROST members saw that like railroad conductors during those hellish decades in which segregation was the law of the land, today's corporate rule-makers are also backed by the long arm of the law.

Historian C. Vann Woodward describes the process:

"The Jim Crow laws put the authority of the state or city in the voice of the streetcar conductor, the railway brakeman, the bus driver, the theater usher. . . They gave free rein and the majesty of the law to mass aggressions that might otherwise have been curbed, blunted and deflected." [1]

**Since the American Revolution**, people across this country have engaged in passionate debate and sustained struggle to define the proper nature of corporations. Over the past half-century, those debates and struggles have often taken the form of community resistance to corporate and government imposition of projects on unwilling communities.

The claims asserted by FROST members can be heard today in many communities where people are resisting state-sanctioned corporate might. That is because the issues presented here are intimately tied to a central source of injustice that a republican form of government constitutionally guaranteed to the people cannot exist when the State does nothing to prevent corporate directors and their agents from doing what the Constitution forbids the State to do.

--Friends and Residents of St. Thomas Township (FROST)

\* \* \* \*

Thomas Linzey, founder of the Community Environmental Legal Defense Fund (CELDF) in

Chambersburg PA, had been working closely with neighboring townships experimenting with new strategies and tactics. FROST hooked up with Linzey and laid out its offensive.

FROST's plans included investigation into legal, social movement and constitutional histories; participation in CELDF-POCLAD "Democracy Schools"; public education and local organizing; gaining majority control of the board of supervisors by running candidates in the 2003 and 2006 elections; designing appropriate township ordinances asserting people's authority to make the rules for corporate involvement in the township; crafting lawsuits giving corporate directors, state officials and judges this choice: either grant FROST its desired remedy, or declare for all to bear that in St. Thomas Township, corporate directors run the show.

To remedy the corporation's "letter," FROST turned to the Commonwealth's attorney general and secretary of state. These public officials refused to act, thus failing in their duty to stop the state's corporate creation from continuing to violate people's rights.

So last March, in the U.S. District Court for the Middle District of Pennsylvania, FROST lodged complaints -- on behalf of themselves and a class consisting of all the residents of the township -- against the Commonwealth of Pennsylvania, against its secretary of state and attorney general, against the corporation and its directors.

FROST charged that the state illegitimately had "bestowed constitutional rights and protections possessed by natural persons onto corporations." [2] FROST asserted that "Public officials in Pennsylvania had enabled a corporate creation of the state to call upon the law of the land -- and therefore the federal courts -- to quash the constitutional rights of people within St. Thomas Township." [3] Such actions, claimed FROST, violate the plain language of the 14th Amendment.

FROST called upon the Court:

- **to remove** constitutional authority from the corporation and its directors;
- **to declare** that the corporation's claim of constitutional "rights" had no basis in law;
- **to rule** as unconstitutional the state law (15 Pa. C. S. Section 1501) which wraps the "rights" of natural persons around corporations;
- **to instruct** Pennsylvania officials to revoke or amend the St. Thomas Development Corporation's charter;
- **to order** corporate directors to pay each member of the class \$8,000 in damages.

The secretary of state, the attorney general and the quarry corporation's directors responded by asking Judge Yvette Kane to dismiss the lawsuits. They do not want parties to this case having the chance to argue it all out in court.

The corporate directors went further: they called upon the judge to punish Attorney Linzey for filing an "outlandish," "pernicious," "nonsensical," "specious," and "frivolous" case. They wrote Judge Kane that FROST, through Attorney Linzey, has asserted "legal claims which are so far outside the boundaries of any reasonable interpretation or possible extension of the law . . . If attorneys filing frivolous attacks on settled law are not sanctioned, then they will be encouraged to mount frivolous attacks on every area of established law as they may."

### Unsettling "Settled Law"

The attorney general and secretary of state of Pennsylvania now admit:

- Yes, the Commonwealth of Pennsylvania chartered St. Thomas Development Corporation. Yes, the Pennsylvania Constitution defines people as the source of all governing authority. Yes, state law gives corporations the rights of natural persons. But the state and its officers are not responsible when corporations violate people's rights. This is called **settled law**.
- Yes, the Bill of Rights, the 14th Amendment and civil rights laws require the United States government to step in when people's fundamental rights are violated -- especially when government is the violator. But the United States has no authority to stop corporate denials of people's rights. This is called **settled law**.
- The corporate constitutional maxim says: since no remedy is available for FROST members in Federal Court, no harm has been perpetrated by corporate directors and their agents, or by the state and its agents. FROST, therefore, has no legitimate cause of action. FROST members must not be seen or heard in Federal Court. This is called **settled law**.

The corporate constitution's "settled law" pours from corporate and public officials like water over Niagara.

-- R.G.

\* \* \* \*

So the St. Thomas Development Corporation's first assaults upon this community did not take the form of excavations, dynamite explosions, massive truck traffic and great dust storms. Instead, FROST members ran smack into the corporation's directors and lawyers *brandishing the laws of Pennsylvania and the United States Constitution backed by the might of the nation*.

That is why FROST chose NOT to mobilize in regulatory agencies, or in zoning and planning board hearings. They understood that in such arenas, no remedies would be available except a slightly less destructive corporate invasion. [4]

And they knew that decade after decade after decade, citizen groups seeking justice in such realms have not even been allowed to talk about rights trampled, rights usurped, rights denied. Much less have they sought remedies their communities actually wanted and needed.

### Despotism's LONG GRIP on the Law

One main pillar of domestic slavery, as it now exists in the United States, is the idea that it rests upon law. Law is regarded with veneration, and nowhere more so than in the United States, as the great foundation and support of the right of property, of personal rights, in a word -- of social organization.

. . . opinions respecting law and government involve, indeed, the inconsistency and absurdity of supposing that men have power, by arrangement and convention, to make that artificially right which is naturally wrong, an inconsistency and absurdity which there have not been wanting able writers to expose.

. . . law, so far as it has any binding moral force, is and must be conformable to natural principles of right; . . . and that so far as this conformity is wanting, what is called law is mere violence and tyranny . . . which man . . . has a moral right to resist passively at all times, and forcibly when he has any fair prospect of success. Such, indeed, was the principle upon which the American Revolution was justified.

. . . Men cannot bargain away either their own rights, or the rights of others.

. . . It is the glory of the tribunals of the common law, that, even when trampled in the mud by the feet of power, they have never consented to lie there quiet. They have struggled always . . . to cleanse the ermine robes of justice from the mire of ignorant, weak, cruel, self-seeking legislation, . . . to weigh out again equal justice to all.

. . . The sort of men who occupy the judicial bench are seldom much inclined to outrun popular opinion; yet it may be fashionable among them to affect to despise such opinion, . . . it is none the less true that their own views are greatly influenced, if not indeed mainly determined, by the prevailing sentiment of the community about them.

-- from *An Inquiry into the Nature, Results and Legal Basis of the Slave-Holding System* by Richard Hildreth, 1854

\* \* \* \*

During last spring and summer, FROST members (called "plaintiffs" in this case), along with the corporation and the Commonwealth (called "defendants"), submitted lengthy written arguments -- and replies to arguments -- to the court. (These submissions are called "briefs.") If after studying these briefs Judge Kane throws out the lawsuit, she will validate the corporate claim that people suffer no injury when corporate directors use the laws of the land to deny people's fundamental rights.

If, on the other hand, Judge Kane allows the case to be argued, she will affirm that the court takes seriously FROST's allegations of constitutional injury and the need for proper judicial remedy, She will declare both to this court and to the community that FROST members are *not* silent and invisible before the law (as was true of millions of slaves within the jurisdiction of the Constitution). She will say that to this court, FROST members are not like the indentured servants, women, free African Americans, Native Peoples, working people, white men without property, family farmers, immigrants, union organizers, war protesters,

imperialism opponents and so many other classes of people whom the rule of law in this country has denied . . . and still, alas, denies.

As FROST members intensify their educational and organizing work over the next few months, Judge Kane will decide whether or not to schedule these cases for trial, and to punish Tom Linzey for heresy.

If a trial does take place, FROST members are prepared to make the most of their opportunity. They will assert the *people's interpretations* of the Constitution, assert *people's histories*, and stake their rightful claims before a United States court, and before the nation.

*BWA* is pleased to present, in the second part of this issue, edited selections from FROST briefs. [5]

## ENDNOTES

1. *The Strange Career of Jim Crow*, NY: Oxford University Press (2002), pp. 107-8. (originally published 1955).
2. *PLAINTIFFS' REPLY TO THE COMMONWEALTH DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO CERTIFY THE CLASS ACTION* (re 22 MOTION to Certify Class) filed by Friends and Residents of Saint Thomas Township, Inc. (FROST), written by Thomas Linzey and Richard Grossman, entered 08/16/2004, p. 6.
3. *Ibid*, p. 10.
4. For an exposition on the dead-end arena of regulatory law *See* "Sins of the Fathers: How Corporations Use the Constitution and Environmental Law to Plunder Communities and Nature," speech by Thomas Alan Linzey at the University of Pittsburgh School of Law, 4 March 2004.
5. The complete briefs excerpted in *By What Authority*, Vol. 6, No. 2 -- Autumn 2004 are:
  - *PLAINTIFFS' BRIEF IN OPPOSITION TO THE COMMONWEALTH DEFENDANTS' MOTION TO DISMISS AMENDED COMPLAINT* (re 7 MOTION to Dismiss, 6 MOTION to Dismiss) filed by Friends and Residents of Saint Thomas Township, Inc. (FROST); Reply Brief due by 6/18/2004, written by Thomas Linzey, entered 06/01/2004.
  - *PLAINTIFFS' BRIEF IN OPPOSITION TO THE CORPORATE DEFENDANTS' MOTION FOR SANCTIONS* (re 15 MOTION for Sanctions) filed by Friends and Residents of Saint Thomas Township, Inc. (FROST); Reply Brief due by 6/24/2004, written by Thomas Linzey and Richard Grossman, entered 06/07/2004. Attachments:
    - *#1 Exhibit(s) Counsel Letter* from Daniel E. Brannen Jr., Counselor At Law, to Thomas A. Linzey
    - *#2 Exhibit(s) Counsel Letter* from Blair Bobier, Attorney at Law, to Thomas A. Linzey
    - *#3 Exhibit(s) Counsel Letter* from Lewis Pitts, Esquire, to Thomas A. Linzey
  - *PLAINTIFFS' REPLY TO THE CORPORATE DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO CERTIFY THE CLASS ACTION* (re 22 MOTION to Certify Class) filed by Friends and Residents of Saint Thomas Township, Inc. (FROST); written by Thomas Linzey and Richard Grossman, entered 08/02/2004.
  - *PLAINTIFFS' REPLY TO THE COMMONWEALTH DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO CERTIFY THE CLASS ACTION* (re 22 MOTION to Certify Class) filed by Friends and Residents of Saint Thomas Township, Inc. (FROST); written by Thomas Linzey and Richard Grossman, entered 08/16/2004.

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*By What Authority* (ISSN: 524-1106) is published three times a year by the Program on Corporations, Law & Democracy. The title is English for *quo warranto*, a legal phrase that questions illegitimate exercise of privilege and power. We the people and our federal and state officials have long been giving giant business corporations illegitimate authority. Today, a minority directing giant corporations and backed by police, courts, and the military, define our culture, govern our nation, and plunder the earth. *By What Authority*, reflects an unabashed assertion of the right of the sovereign people to govern themselves.

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*BWA* is a tool for democracy proponents to rethink and reframe their work. To that end we encourage readers to engage us with comments, questions, and suggestions.

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