DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 Sixth Street Boulder, CO 80302	
Plaintiffs: CLIFTON WILLMENG and ANN GRIFFIN, individually and on behalf of all persons similarly situated, v. **Defendants:** STATE OF COLORADO; JOHN W. HICKENLOOPER, in his official capacity as Governor of the State of Colorado; COLORADO OIL & GAS ASSOCIATION, a nonprofit corporation incorporated under the laws of the State of Colorado; and JOHN DOE CORPORATION, a corporation registered to do business within the State of Colorado	
Attorney for Plaintiffs: Name: Elizabeth A Comeaux Address: 1663 Steele St #901 Denver, CO 80206 Phone Number: 720-379-7864 FAX Number: 720-379-7864 call ahead E-mail: EAComeaux.Atty@outlook.com Atty. Reg.#: 8674	▲ **COURT USE ONLY** ▲ Case Number: 2014CV30718 Div: 5 Ctrm:

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

Clifton Willmeng and Ann Griffin ("Plaintiffs"), individually and on behalf of all persons similarly situated, through their counsel Elizabeth A. Comeaux, respectfully submit this Plaintiffs' Motion for Preliminary Injunctive Relief ("the Motion"), pursuant to C.R.C.P. 65, and state as follows:

Certification

Pursuant to C.R.C.P. 121 §1-15 (8) undersigned counsel conferred with opposing counsel and learned that Defendants oppose the Motion.

Summary of the Argument

The people of Lafayette possess the right of local, community self-government. They exercised that right in adopting a Charter Amendment that changes their system of municipal governance. The Charter Amendment enacts a Community Bill of Rights and bans certain oil and gas extraction within the City. The State's Oil and Gas Act, as previously interpreted – along with current efforts to

apply the doctrine of state preemption to enforce the Act - violate the right of local, community self-government by nullifying the Charter Amendment.

The right of local, community self-government is an individual political right – exercised collectively – of people to govern the local communities in which they reside. The right serves as the foundation for the American system of law. The right includes three component rights – first, the right to a system of government within the local community that is controlled by a majority of its citizens; second, the right to a system of government within the local community that secures and protects the civil and political rights of the people in the community; and third, the right to alter or abolish the system of local government if it infringes the right of local, community self-government.

The right of local, community self-government, including its three component rights, is inherent and inalienable. It derives from the fundamental principle that *all* political power is inherent in the people, is exercised by them for their benefit, and is subject to their control. This principle is secured by the American Declaration of Independence, state constitutional bills of rights, and the United States Constitution. Because the right is inherent and inalienable, state and federal governments cannot define, diminish, or otherwise control it.

State governments create a variety of local governmental bodies and subdivisions, both incorporated and unincorporated, for administration of state policy locally, and for conduct of local government. States typically delegate particular governmental powers to such local governments and otherwise limit their powers. Local governments operating pursuant to state authorized powers are different from local communities operating pursuant to the people's fundamental right of local, community self-government. The peoples' right is not dependent upon state delegation, and thus, cannot be diminished by limitations placed on local governments by other levels of government.

This means that local communities, when exercising the people's right of local, community self-government, are not subject to constraints on local lawmaking imposed by state and federal governments. Such constraints include preemption of local lawmaking by state and federal laws; the authority of corporations to use corporate "rights" to nullify local lawmaking; and the doctrine that local governments can legislate only as authorized by State government. While not subject to these constraints, the right of local, community self-government remains subject to people's civil and political rights as secured by state and federal constitutional frameworks.

Plaintiffs bring this action to advance their right of local, community self-government and to protect their actions – adoption of the Charter Amendment - undertaken in accordance with that right. Plaintiffs have shown a reasonable probability of success on the merits, and have satisfied the other requirements for the issuance of preliminary injunctive relief.

I. Introduction

Plaintiffs move for a preliminary injunction to enjoin Defendants State of Colorado, Governor John Hickenlooper, and the Colorado Oil & Gas Association

("COGA") from violating their fundamental constitutional right of local, community self-government, which includes their right to alter their system of municipal government. Plaintiffs - as residents of the City of Lafayette - exercised their right to local community self-government by enacting a Charter Amendment to the City of Lafayette's Home Rule Charter, entitled "Community Bill of Rights and Obligations", and codified as Section 2.3 to Chapter II of the Lafayette City Charter ("Charter Amendment"). Defendants infringe upon Plaintiffs' fundamental rights by seeking to apply a state law – the Colorado Oil and Gas Conservation Act, Colo. Rev. Stat. §§ 34-60-102 to 34-60-129, (hereinafter, "Oil and Gas Act") – to impliedly preempt the Charter Amendment.

The Oil and Gas Act has already been interpreted in a manner that violates Plaintiffs' right of local, community self-government. *See Voss v. Lundvall Bros. Inc*., 830 P.2d 1061 (Colo. 1992) (holding that the Oil and Gas Act prevented home-rule city from regulating any aspect of oil and gas development within its local jurisdiction because oil and gas development was a matter of statewide concern).[1] COGA's pending lawsuit -- *Colorado Oil & Gas Association v. City of Lafayette*, Case No. 2013CV31746, Dist. Ct., Boulder, County, Co. (hereinafter, "COGA Lawsuit") -- further threatens Plaintiffs' fundamental constitutional rights by seeking to invalidate the Charter Amendment as impliedly preempted by the Oil and Gas Act. The real and substantial threat to Plaintiffs' fundamental constitutional rights, and to their rights as secured by the Charter Amendment, constitutes an immediate and irreparable injury entitling Plaintiffs to preliminary injunctive relief.

II. Background

A. The Complaint

Plaintiffs, as residents of the City of Lafayette, brought an eight-count class action Complaint, pursuant to Colorado Rules of Civil Procedure 3(a), 7(a), 8(a), 57, and 65, Colorado Revised Statutes §§13-51-105, 13-51-106, and 42 U.S.C. §1983, against Defendants State of Colorado, Governor Hickenlooper, the Colorado Oil & Gas Association, and John Doe Corporation, seeking declaratory and injunctive relief to enforce their right of local, community self-government, and to enforce their civil rights pursuant to the Charter Amendment

Plaintiffs seek a preliminary injunction as to their first, second, third, fourth, fifth, sixth and seventh claims for relief. In these claims, Plaintiffs allege that the Oil and Gas Act, as interpreted, violates federal law, the U.S. Constitution, the Colorado Constitution, and the Charter Amendment: (1) by nullifying the people's constitutionally guaranteed authority to govern their own community through

[1] Recently, courts have used identical reasoning to strike a local law in Longmont banning oil and gas extraction, and to strike a local law in Fort Collins that placed a five-year moratorium on oil and gas extraction. *See* Order Granting Motions for Summary Judgment, *COGA v. City of Longmont,* No. 13CV63 (Boulder Dist. Ct. July 24, 2014); Order Granting Plaintiff's Motion for Summary Judgment, *COGA v. City of Fort Collins,* No. 13CR31385 (Larimer Dist. Ct. Aug. 7, 2014). Those cases, along with *Voss*, provide contemporary interpretations of the reach of the Oil and Gas Act, adding additional support to the Plaintiffs' contention that application of the Act against the Charter Amendment constitutes a "real and substantial threat" to the Plaintiffs' constitutional and other rights.

banning oil and gas extraction; (2) by constraining the Lafayette municipal government from securing the people's rights; and (3) by nullifying the people of Lafayette's constitutionally guaranteed right to alter or abolish their current form of government and to institute a new system of municipal government which protects their rights and their health, safety, and welfare.

B. The Plaintiffs

Plaintiff Clifton Willmeng is a resident of the City of Lafayette who voted in favor of the Charter Amendment's adoption. (Affidavit of Clifton Willmeng at ¶ 2, 3, and 8, attached as Exhibit 1, hereinafter "Willmeng Aff."). Willmeng is a homeowner and four-year resident of Lafayette. Plaintiff Willmeng was also one of the Charter Amendment's drafters and is on the board of East Boulder County United, a community group whose mission is to keep hydro-fracking for natural gas and oil out of communities. (Willmeng Aff. ¶ 4, 9.) Plaintiff Ann Griffin is a seventeen year resident of Lafayette who voted in favor of the Charter Amendment's adoption. (Affidavit of Ann Griffin at ¶ 2, 3, and 7, attached as Exhibit 2, hereinafter "Griffin Aff.").

Plaintiffs, along with all City of Lafayette residents, hold and enjoy the rights secured by the Charter Amendment's Community Bill of Rights. Plaintiffs, for instance, enjoy a right to community self-government as enumerated by Section (a) of the Charter Amendment, and have exercised their sovereign authority to govern their own community (Section (b)) by adopting the Community Bill of Rights and prohibiting new oil and gas extraction and associated activities.

C. Defendants State of Colorado, Governor Hickenlooper, and COGA

Defendant State of Colorado, through its General Assembly, is responsible for enacting State laws, and through its Office of Attorney General and the Colorado Department of Law, is responsible for enforcing State laws.

Defendant COGA is a Colorado non-profit corporation that promotes the expansion of oil and gas supplies, markets, and transportation infrastructure. COGA's members include companies and individuals engaged in the exploration, production, and development of oil and gas in Colorado; companies and individuals who have leasehold interests within or under the City's territorial jurisdiction, and companies and individuals who operate wells within and under the City's territorial jurisdiction. (COGA Lawsuit, Complaint, attached as Exhibit 3, at ¶ 5.) On December 3, 2013, COGA filed the COGA Lawsuit against the City of Lafayette. The COGA Lawsuit threatens Plaintiffs' fundamental constitutional rights by seeking to invalidate the Charter Amendment as impliedly preempted by the Oil and Gas Act.

COGA and the State are proper Defendants in this action which seeks declaratory and injunctive relief that the Charter Amendment is a valid exercise of Plaintiffs' fundamental constitutional right of local, community self-government. The Charter Amendment provides: "All rights secured by this Charter and this Section shall be self-executing. These rights shall be enforceable against private and public entities." Lafayette Municipal Code, Ch. II, § 2.3.

As to Plaintiffs' separate constitutional-based claims, 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . .

Defendant John W. Hickenlooper is the Governor of the State of Colorado, and is required to ensure that all laws of the state are faithfully executed. COLO. CONST. art. IV § 2 ("The supreme executive power of the state shall be vested in the governor, who shall take care that the laws be faithfully executed."). As Colorado's Chief Executive, Governor Hickenlooper is a proper defendant to actions to enjoin or invalidate a state statute. *See Ainscough v. Owens*, 90 P.3d 851, 858 (Colo. 2004) ("The Governor of Colorado is unique in that he is the 'supreme executive,' and it is his responsibility to ensure that the laws are faithfully executed. COLO. CONST. art IV, § 2 . . . Therefore, when a party sues to enjoin or mandate enforcement of a statute, regulation, ordinance, or policy, it is not only customary, but entirely appropriate for the plaintiff to name the body ultimately responsible for enforcing that law.").[2]

COGA is similarly liable for constitutional violations. COGA is acting under color of a State statute – the Oil and Gas Act – to deprive Plaintiffs of their fundamental constitutional rights as secured by the federal and state constitutions. *See* 42 U.S.C. § 1983. The sole basis for the COGA Lawsuit is a state statute. At issue in this case is that statute (the Oil and Gas Act) and COGA's actions "under color of" that statute. COGA is also acting under color of state law because it is a corporation chartered by the State and is seeking to assert powers bestowed upon it by both the state and federal government.

In any event, "state actor" status is not required for Plaintiffs to prevail on their independent constitutional claims.[3] The fundamental right of community self-

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[2] The *Ainscough* court cited numerous cases to illustrate the widespread practice of naming the Governor of Colorado as a defendant "when challenging the constitutionality of a statute." *Ainscough*, 90 P.3d at 858 (*E.g.*, "*Romer v. Evans*, 517 U.S. 620, 116 S.Ct. 1620, 134 L.Ed.2d 855 (1996). (challenging validity of voter initiated constitutional amendment under federal equal protection); *Ramos v. Lamm*, 639 F.2d 559 (10th Cir.1980) (challenging constitutionality of living conditions at state penitentiary); *City of Commerce City v. State*, 40 P.3d 1273 (Colo.2002) (home-rule city challenging validity of statute regulating the use of automated vehicle identification systems); *Morrissey v. State*, 951 P.2d 911 (Colo.1998) (challenging constitutionality of a voter initiated constitutional amendment pertaining to term limits); *Romer v. Board of County Comm'rs*, 897 P.2d 779, 781 (Colo.1995) (challenging a Department of Social Service's interpretation of a statute); *Dempsey v. Romer*, 825 P.2d 44 (Colo.1992) (state employees challenging constitutionality of a statute setting salary levels); *Urbish v. Lamm*, 761 P.2d 756 (Colo.1988) (challenging constitutionality of statute and Department of Social Services Rule); *Partridge v. State*, 895 P.2d 1183 (Colo.App.1995) (challenging Racing Commission decision to suspend an owner/trainer)").

[3] State actor status is obviously not required for Plaintiffs' claims (Causes of Action 3 and 6) based on violation of the Charter Amendment itself.

government is constitutionally protected and therefore, is not restricted in its reach by the Fourteenth Amendment's state actor requirement. It is, therefore, "assertable against private as well as governmental interference." *Griffin v. Breckenridge*, 403 U.S. 88, 105 (1971) (concluding that the "right of interstate travel is constitutionally protected, does not necessarily rest on the Fourteenth Amendment, and is assertable against private as well as governmental interference.").

D. The Charter Amendment

The people of Lafayette possess the right (and duty) to alter their system of municipal government if it fails to recognize the people's authority to govern the community, or if it fails to protect the rights held by the people of Lafayette. On November 5, 2013, a majority of Lafayette's voters exercised this right by passing the Charter Amendment. The Charter Amendment recognizes the people of Lafayette's authority to govern themselves within Lafayette and secures the people's civil rights through a Community Bill of Rights.

By adopting the Charter Amendment, the people of Lafayette acknowledged that their current system of government has both failed to recognize the peoples' authority to self-govern and has rendered City government unable to secure the rights of the people of Lafayette. The people of Lafayette have remedied that situation by creating a new system of municipal governance.

The Charter Amendment reaffirms their right to do so:

> a. ***Right to Community Self-Government***. All residents of the City of Lafayette possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, [and] that all free governments are founded on the people's authority and consent . . .
>
> b. ***People as Sovereign***. The City of Lafayette shall be the governing authority responsible to, and governed by, the residents of the City. Use of the "City of Lafayette" 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 unalienable and indefeasible right to self-governance in the community where they reside.

In addition to re-affirming the people's authority to govern their own community, the Community Bill of Rights enumerates certain fundamental rights that the people require the municipal government to protect:

> **Section 2.3**. . . The rights secured here are not mere privileges; they are obligations justly placed on government and on each member of the community to respect freedoms held individually and collectively by every member of the community. The protection of these rights constitutes the highest and best use of the police powers that this municipality possesses.
> . . .

c. ***Right to Clean Water***. All residents and ecosystems in the City of Lafayette possess a fundamental and unalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life—free from toxins, carcinogens, particulates, nucleotides, hydrocarbons and other substances introduced into the environment.

d. ***Right to Clean Air***. All residents and ecosystems in the City of Lafayette possess a fundamental and unalienable right to breathe air untainted by toxins, carcinogens, particulates, nucleotides, hydrocarbons and other substances introduced into the environment.

e. ***Right to be Free from Chemical Trespass***. All residents and ecosystems within the City of Lafayette possess a fundamental and unalienable right to be free from involuntary chemical trespass including toxins, carcinogens, particulates, nucleotides, hydrocarbons and other substances introduced into the environment.

f. ***Right to Peaceful Enjoyment of Home***. Residents of the City of Lafayette possess a fundamental and unalienable right to the peaceful enjoyment of their homes, free from interference, intrusion, nuisances or impediments to access and occupation.

g. ***Rights of Ecosystems***. Ecosystems possess unalienable and fundamental rights to exist and flourish within the City of Lafayette. Residents of the City shall possess legal standing to enforce those rights on behalf of those ecosystems.

h. ***Right to a Sustainable Energy Future***. All residents in the City of Lafayette possess a right to a sustainable, healthy energy future, which includes, but is not limited to, the development, production, and use of energy from renewable, healthy, and sustainable fuel sources, exclusive of fossil and nuclear fuels, and the right to establish local sustainable energy policies to further secure this right.

Lafayette Municipal Code, Ch. II, § 2.3 (c) – (h).

To secure and protect the rights enumerated in the Community Bill of Rights, the people of Lafayette prohibited commercial oil and gas extraction within the City that involved the drilling of new wells or the activation of inactive wells. The people of Lafayette prohibited any corporation from hydraulic fracturing, commonly known as "fracking", and related activities. (Lafayette Municipal Code, Ch. II, § 2.3(i)(1)-(4)).

The people of Lafayette have also recognized that the doctrine of preemption and the recognition of corporate "rights" are inconsistent with the people's fundamental rights and the protections secured by the Charter Amendment. Sections (i)(6) and (i)(7) of the Charter Amendment alter the current system of government to address these issues to the extent necessary to protect the rights of people secured by the Charter Amendment:

(i) 6. 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 Colorado 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 Colorado Constitution.

(i) 7. 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 Lafayette, or to challenge or overturn municipal ordinances or Charter provisions.

Lafayette Municipal Code, Ch. II, § 2.3 (i)6 – (i)7.

E. The Oil and Gas Act

The Oil and Gas Act is a state law pertaining to the development, production, and utilization of oil and gas in Colorado. Courts have applied the doctrine of preemption[4] to interpret the Oil and Gas Act as prohibiting local communities from banning or regulating oil and gas extraction. *See Voss*, 830 P.2d at 1060 (finding that the Oil and Gas Act prevented home rule city from regulating oil and gas development because oil and gas development was a matter of statewide concern); Order Granting Motions for Summary Judgment, *COGA v. City of Longmont,* No. 13CV63 (Boulder Dist. Ct. July 24, 2014) (finding that a local law banning oil and gas extraction was preempted by the Oil and Gas Act); Order Granting Plaintiff's Motion for Summary Judgment, *COGA v. City of Fort Collins,* No. 13CR31385 (Larimer Dist. Ct. Aug. 7, 2014) (finding that a five year moratorium on oil and gas extraction was preempted by the Oil and Gas Act).

III. Legal Standard for Declaratory Relief and Preliminary Injunction

"The Uniform Declaratory Judgments Law, §§ 13-51-101 to -115, 6A C.R.S. (1987), is a remedial statute calculated to afford parties judicial relief from uncertainty and insecurity with respect to their rights and legal relations. *Board of County Com'rs, La Plata County v. Bowen/Edwards Associates, Inc.*, 830 P.2d 1045, 1053 (Colo. 1992). A plaintiff may seek declaratory injunctive relief where "there is an existing legal controversy that can be effectively resolved by a declaratory judgment, and not a mere possibility of a future legal dispute over some issue." *Id*. (citing *Three Bells Ranch Assocs. v. Cache La Poudre Water Users Ass'n*, 758 P.2d 164, 168 (Colo.1988); *Conrad v. City and County of Denver*, 656 P.2d 662, 668 (Colo. 1983)).

Where "the action complained of has caused or has threatened to cause imminent injury to an interest protected by law", a plaintiff "may seek injunctive relief in concert with a declaratory judgment action." *Board of County Com'rs, La Plata County*, 830 P.2d at 1054-55 (plaintiff met threshold standing requirement for

[4] "It is a well-established *principle of Colorado preemption doctrine* that … a state statute or regulation supersedes a conflicting ordinance of a home-rule city." *See Voss,* 830 P.2d at 1066 (emphasis added).

injunctive relief by showing that county regulations posed a present and significant threat to its legal interest in developing oil and gas resources); *see Johnson v. District Court of Seventeenth Judicial Dist.*, 576 P.2d 167, 169 (Colo. 1978) (upholding issuance of preliminary injunction against the enforcement of a county zoning regulation which required an oil-well servicing company to obtain a permit for each service operation conducted by the company).

To prevail on a motion for preliminary injunction, the moving party must show:

> (1) a reasonable probability of success on the merits,
> (2) a danger of real, immediate, and irreparable injury which may be prevented by injunctive relief,
> (3) that there is no plain, speedy, and adequate remedy at law,
> (4) that the granting of a preliminary injunction will not disserve the public interest,
> (5) that the balance of equities favors the injunction,
> (6) that the injunction will preserve the status quo pending a trial on the merits.

Rathke v. MacFarlane, 648 P.2d 648, 653-54 (Colo. 1982) (citations omitted).

Because all class members will benefit from a preliminary injunction issued on behalf of named Plaintiffs, Plaintiffs may move for preliminary injunctive relief prior to class certification. *See Kansas Health Care Ass'n, Inc. v. Kansas Dept. of Social and Rehabilitation Services*, 31 F.3d 1536 (10th Cir. 1994) ("This court has 'recognized the line of authority indicating that a class certification is unnecessary if all the class members will benefit from an injunction issued on behalf of the named plaintiffs.'") (citing *Everhart v. Bowen*, 853 F.2d 1532, 1538-39 n. 6 (10th Cir.1988), *rev'd on other grounds*, 494 U.S. 83, 110 S.Ct. 960, 108 L.Ed.2d 72 (1990)); *see also* 7B C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 1785.2 (1986 & Supp. 1994)).

IV. Argument

A. Plaintiffs Have a Reasonable Probability of Success on the Merits Because Defendants Have Violated the People of Lafayette's Right of Local, Community Self-government.

The people of Lafayette possess the inherent and constitutional right of community self-government – a right held individually by Lafayette residents and exercised collectively as a community. As secured by the Declaration of Independence, the federal constitution, and the state constitution, that right of community self-government includes the right to alter (or abolish) any form of government which either denies the authority of a majority to govern their community, or which renders their system of government unable to protect the rights of the people of that community.

By adopting the Charter Amendment, the people of Lafayette have collectively determined that their prior *system of municipal governance* denied their

right of community self-government, because that system recognized the authority of the State government to preempt local laws based on the rights of people, and recognized the power of private corporations to use their "rights" to nullify local lawmaking. The system thus rendered a majority of the citizens of Lafayette unable to govern the community of Lafayette and rendered the City of Lafayette unable to protect the rights of Lafayette residents.

By voting overwhelmingly to amend their municipal Charter,[5] the people voted to replace their system of municipal governance with a new one – one which elevates the rights of Lafayette residents above the preemptive authority of State government and the legal "rights" of private corporations. It was their right to do so.

Provisions of the Oil and Gas Act which are deemed to preempt the people of Lafayette from protecting their health, safety, and welfare through the banning of oil and gas extraction, violate the people's right of local, community self-government. Those preemptive portions of the Act[6] are unconstitutional because they prevent the people of Lafayette from exercising their right to alter their system of municipal governance. *See Colorado Ass'n of Public Employees v. Board of Regents of University of Colorado*, 804 P.2d 138 (Colo. 1990) (statutes shown to be unconstitutional beyond a reasonable doubt must be struck); *Qwest Servs. Corp. v. Andrew Blood, Carrie Blood, & Public Serv. Co. of Colorado,* 252 P.3d 1071 (Colo. 2011) (declaring that "for as-applied constitutional challenges, the question is whether the challenging party can establish that the statute is unconstitutional 'under the circumstances in which the plaintiff has acted or proposes to act.'") (quotations omitted).

Although Colorado courts have historically recognized the people's sovereign right to alter their system of municipal government,[7] contemporary case law has shifted the focus from the *peoples' right* to govern their own community to the *powers of municipal corporations*. *See In re Title, Ballot Title, Submission Clause for 2009-2010 No. 91,* 235 P.3d 1071 (Colo. 2010) (recognizing "the full right of self-government in both local and municipal matters afforded home-rule *cities* by article XX, section 6" of the Colorado Constitution) (emphasis added). The people's fundamental *right* of community self-government is distinct from the powers wielded by municipal corporations. The people's right is a natural and inherent right secured by constitutional structures, while the municipal corporation and its powers are purely a creation of law. The people's right "is a right that has been recognized as having a value essential to individual liberties in our society." *Lujan v. Colorado St. Bd. Of Educ*., 649 P.2d 1005, 1015 n.7 (Colo. 1982) (collecting cases

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[5] Over sixty percent (60%) of the Lafayette electorate voted to adopt the Charter Amendment.

[6] *See* Section I, E, *supra*.

[7] *See Denver v. Mt. States Tel. & Tel. Co.,* 184 P. 604, 607 (Colo. 1919)("Such governmental power is inherent in the sovereign and may be exerted, withdrawn, and re-exerted according to the judgment, whim, or caprice of the sovereign. The ever-existing, inherent, and inalienable power resides in the sovereign, to wit, the whole people of Colorado, to regulate the business of every public utility operating within the limitations of the state . . ."); *See also* McQuillan, A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS, Vol. 1 at 141 (1911) (explaining that "the fundamental accepted fact of the American system of government is that the supreme power, or what is termed sovereignty. . . is in the people, not, however, as so many distinct individuals, but in their political capacity only.").

recognizing fundamental rights). It is a right "deeply rooted in this Nation's history and tradition." *Moore v. City of East Cleveland,* 431 U.S. 494, 503 (1997) (citations and internal quotations omitted). Indeed, "neither liberty nor justice would exist" if the right of local, community self-government were sacrificed. *See Washington v. Glucksberg,* 521 U.S. 702, 721 (1997)(quoting *Palko v. Connecticut,* 302 U.S. 319, 325 (1937)).[8]

Colorado courts have not previously been asked to directly enforce the people's right to community self-government as an independent, enforceable, and fundamental right.[9] The Plaintiffs ask this court to do so. Because Plaintiffs' fundamental rights of self-government – as secured by federal, state, and local systems of law - are at stake, strict scrutiny applies. *See Evans*, 854 P.2d at 1282. Defendants must therefore show a compelling state interest to defend the constitutionality of the preemptive provisions of the Oil and Gas Act, or the constitutionality of their application to the people of Lafayette. They cannot.

1. The People of Lafayette Possess the Inherent and Constitutional Right to Community Self-government.

The people of Lafayette possess an inherent right to community self-government, which includes the right to change any system of government which either denies the majority's authority to govern their community or which is rendered unable to protect the rights of the people in that community. That inherent and natural right is, in turn, embedded and secured by both federal and state constitutional structures. *See Indiana ex rel. Holt v. Denny*, 118 Ind. 449, 457-75, 21 N.E. 274 (1889) (recognizing an inherent right of local self-government embedded in the constitutional structure). In particular, it is secured by the history of the founding of the United States, the Declaration of Independence, the United States Constitution, the Colorado Constitution, and the Charter Amendment.

a. Community self-government is the well-settled foundation of the American system of constitutional law.

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[8] Colorado courts have recognized and enforced fundamental rights analogous to the people of Lafayette's right to community self-government. *See Evans v. Romer*, 854 P.2d 1270, 1282 (Colo. 1993) ("We conclude that the Equal Protection Clause of the United States Constitution protects the fundamental right to participate equally in the political process, and that any legislation or state constitutional amendment which infringes on this right by "fencing out" an independently identifiable class of persons must be subject to strict judicial scrutiny.").

[9] The people of Lafayette used their charter amendment process to codify their local bill of rights. The Charter Amendment thus establishes that:

> use of the "City of Lafayette" 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 unalienable and indefeasible right to self-governance in the community where they reside.

Lafayette Municipal Code, Ch. II, §2.3(b).

The communities within the early American colonies were founded on the people's authority to govern themselves. From the Mayflower Compact to the conflagration of the American Revolutionary War and the ratification of the United States Constitution, no principle has been more seminal than the people's sovereignty, and no right more fundamental than the right of community self-government. *Cf. Washington*, 521 U.S. at 721 ("Our Nation's history, legal traditions, and practices thus provide the crucial guideposts for responsible decisionmaking, . . . that direct and restrain our exposition of the Due Process Clause.") (citation and quotation omitted); *Griswold v. Connecticut*, 381 U.S. 479, 493 (1965) (Goldberg, J., Brennan, J., Chief Justice, concurring) (courts look to "traditions and (collective) conscience of our people to determine whether a principle is so rooted (there) * * * as to be ranked as fundamental") (citation and quotation omitted).

The colonists' struggle with British rule illustrates how community self-government took shape as the foundation of the American system of constitutional law. The colonists' efforts culminated in the Declaration of Independence, which codified the principles of local self-government that had been forged by American settlements since the 1600's. In adopting the Declaration of Independence, in 1776, the Second Continental Congress clearly expressed that government's power originates from the people and that the people have the right to alter their system of government to protect their "Life, Liberty . . . Safety and Happiness":

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

AMER. DEC. OF INDEP., ¶ 2 .

i. Community self-government was the foundation of the early American colonies.

The concept of community self-government dates back to the Mayflower Compact, adopted in 1620, over a hundred and fifty years before Thomas Jefferson reaffirmed the principles of local self-government in the Declaration of Independence.[10] The Mayflower Compact was the first constitution of its kind to be written by the American colonists. It set the stage for an understanding of government that represented a dramatic departure from European rule. In one paragraph, the original colonists dismantled the old system of government - based

[10] McQuillan, A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS, Vol. 1 at 152 (1911) ("in this country from the beginning, political power has been exercised by citizens of the various local communities as local communities, and this constitutes the most important feature in our system of government.").

on royal authority - and forged a new one based purely on the political sovereignty of the people themselves. The original colonists declared:

> [W]e covenant and combine ourselves together into a civil body politic, for our better ordering, and preservation, and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame, such just and equal laws, ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony.[11]

Far from the unusual, such early American concepts of community self-government – that people possessed the authority to create, control, and change their own governing systems - were the norm. In the 1620's, early colonists founded settlements in New Hampshire that became the Towns of Portsmouth and Dover. Both towns were "wholly self-ruled" and Dover's inhabitants self-organized themselves into a "body politic. . . with all such laws as shall be concluded by a major part of the Freemen of our Society." As another example of the "self-organizing" nature of the colonists, in 1639, the settlers of Exeter, New Hampshire created their own government, declaring in the Exeter Compact that we "combine ourselves together to erect and set up among us such Government. . . according to the libertyes of our English colony of Massachusetts." Lutz, ed., COLONIAL ORIGINS OF THE AMERICAN CONSTITUTION: A DOCUMENTARY HISTORY 3 (1998).

People in those towns, villages, and colonies also joined with other people to create levels of government to further secure their right to community self-government. For example, in January 14, 1639, people from the Connecticut Towns of Windsor, Hartford, and Wethersfield joined together to adopt the Fundamental Orders of Connecticut – the first written constitution in America - which created a compact securing the right of self-government within those Towns.[12]

In 1643, the people of various Towns and colonies joined together to create the United Colonies of New England. Together, they approved Articles of Confederation for the United Colonies, which declared that the people of each plantation, town, and colony shall have "exclusive jurisdiction and government within their limits," thereby securing their authority to self-govern.[13] Judge Eugene McQuillan, author of a seminal treatise on the law of municipal corporations, explained that those communities constituted "miniature commonwealths. . . [with] the solid foundation of that well-compacted structure of self-government." McQuillan, A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS, Vol. 1 at 144 (1911). Thus, the early American colonies were replete with constitutions, compacts, and

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[11] The Mayflower Compact at ¶ 2.

[12] *See* the Avalon Project at Yale Law School, Fundamental Orders of 1639 (http://avalon.law.yale.edu/17th_century/order.asp) (accessed August 8, 2014).

[13] *See* the Avalon Project at Yale Law School, The Articles of Confederation of the United Colonies of New England, May 19, 1643 (http://avalon.law.yale.edu/17th_century/art1613.asp) (accessed August 8, 2014). Others proceeding to create self-governing jurisdictions included the Popham Colony in present-day Maine, the Saybrook Colony of present-day Connecticut, and the colonies of New Haven, New Netherland, East Jersey, West Jersey, and the Province of Carolina, along with a slew of other settlements across the colonies which began to develop their own systems of government.

agreements reflecting that uniquely self-organizing American form of government - one in which the people of those communities possessed the unabridged (and sovereign) right to create, control, and change their systems of governance.

ii. Community self-government is the foundation of American constitutional law.

From England's perspective, self-rule was tolerated in the interests of efficiency, but final authority over governing matters lie with the English king and parliament. Clashes between those two governing systems – of the right of the American people to create, manage, and alter their systems of government as they saw fit; and the "right" of the English government to manage the colonies - were commonplace in the period leading up to the Revolutionary War.[14] Those clashes led to the development of the doctrine of community self-government as constitutional law, and, inevitably, to revolutionary conflict.

In 1760, colonial lawyer James Otis, Jr. first used the right of community self-government as a constitutional doctrine when he represented colonial merchants in a direct challenge to England's authority to adopt "writs of assistance". Miller, ORIGINS OF THE AMERICAN REVOLUTION 46 (1962). Those writs allowed English authorities to enter any colonist's residence without advance notice or probable cause. Otis argued that the writs of assistance were not valid law because they had been adopted only by the English parliament, and not by the people of the colonies. Otis' thesis – that the people themselves were the only rightful lawmaking authority – was the first manifestation of community self-government as a legal and constitutional doctrine within the colonial context. Beach, SAMUEL ADAMS: THE FATEFUL YEARS 1764-1776 55 (1965).

Otis' work, entitled *The Rights of the British Colonies Asserted and Proved,* placed the right of local self-government (including the right to alter any system of governance which undermines that right) at the heart of the patriots' struggle. In that pamphlet, he explained:

> There is no one act which a government can have a right to make that does not tend to the advancement of the security, tranquility, and prosperity of the people. . . The form of government is by nature and by right so far left to the individuals of each society that they may

[14] Foreshadowing the coming of the American Revolutionary War, there were no fewer than a dozen armed peoples' revolts against British rule in the century between 1676 and the pre-Revolutionary War struggles of the 1760's. As with the Revolutionary War, almost all were triggered by British efforts to strip the colonists of self-governing authority within their colonies. Those revolts included Bacon's Rebellion of 1676 (driven by the royal governor's refusal to implement measures adopted by the Virginia legislature); Culpeper's Rebellion of 1677 (evicting the proprietary government of Carolina due to the collection of a British-imposed tobacco duty); the Boston Revolt of 1689 (imprisoning the royal governor and re-establishing an earlier form of representative government); and the Mast Tree Riot of 1734 (against the royal government's prohibition on colonial use of mature pine trees used by the English navy for masts). Miller, ORIGINS OF THE AMERICAN REVOLUTION 38 (1962).

> alter it from a simple democracy or government of all over all to any other form they please. . .

Kurland and Lerner, eds., THE FOUNDERS' CONSTITUTION, Vol. 1, Chap. 13, Doc. 4 (1987).

iii. Denial of the right of community self-government was the cause of the American Revolution.

In Boston, which would become the epicenter of the American Revolution, a concerted movement - to replace English rule with a system of governance premised on community self-government - began in 1764. That year, the English parliament passed the Currency Acts to remove colonial legislative control over issuing currency. In response, the people of the Town of Boston – through their Town Meeting[15] - voted to establish the first, temporary Committee of Correspondence. That Committee was tasked with informing the public about the Currency Acts, along with building public support for the repeal of that Act. Maier, FROM RESISTANCE TO REVOLUTION 216 (1972). The people of New York formed a similar committee in response to Britain's adoption of the Stamp Act, which allowed new taxes to be imposed without seeking the approval of the people of the colonies. *Id*. At 80-81.The people of Virginia responded to adoption of the Stamp Act by adopting the "Virginia Resolves". The Resolves were five resolutions proclaiming that any taxation not approved by the people of the individual colonies was invalid. Miller, ORIGINS OF THE AMERICAN REVOLUTION 124-26 (1962).

"Stamp Act Riots" against British authority ensued. In 1765, the Stamp Act Congress issued a "Declaration of Rights and Grievances" which focused on the Currency and Stamp Acts' violation of the colonial right to local self-government over tax and currency issues. In that Declaration, the Stamp Act Congress charged that the Currency Act's removal of monetary policy from the colonists, and the Stamp Act's removal of tax policy from the colonists, violated the people's right of local self-government. That Declaration proclaimed:

> 3d. That it is inseparably essential to the freedom of a people, and the undoubted rights of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.
>
> . . . .
>
> 5th. That the only representatives of the people of these colonies are persons chosen therein, by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

[15] The Boston Town Meeting was a regular event to which all of the people of Boston were invited to discuss, and vote on, issues deemed important to Bostonians. The Town Meeting form of government, unique to New England, continues today – all New England Towns hold an annual Town Meeting (and special Town Meetings in between) to vote on resolutions and laws proposed by residents of the Towns. Current Massachusetts law recognizing the form and structure of those Town Meetings can be found at Chapter 43-A of the General Laws of the Commonwealth of Massachusetts.

JOURNAL OF THE FIRST CONGRESS OF THE AMERICAN COLONIES 29-31 (1845).

The English parliament retaliated by adopting the "American Colonies Act," which rejected the colonists' authority to locally self-govern. That Act proclaimed that Parliament "had hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America . . . in all cases whatsoever." Maier, FROM RESISTANCE TO REVOLUTION 145 (1972). In response, the colonists attacked the Act as "inconsistent with the natural, constitutional and charter rights and privileges of the inhabitants of this colony." Kruman, BETWEEN AUTHORITY AND LIBERTY: STATE CONSTITUTION MAKING IN REVOLUTIONARY AMERICA 12 (1997).

Over the next decade, Parliament continued to assert taxation authority over the colonists, and the American people continued to assert their right of community self-governance. In 1772, the people of Boston voted to establish the first permanent Committee of Correspondence in the colonies, tasking it with proclaiming "the rights of the colonists. . . [and] to communicate and publish the same to the several towns in this province and to the world as the sense of this town." Miller, ORIGINS OF THE AMERICAN REVOLUTION 329-30 (1962). People in hundreds of towns and villages created committees to coordinate responses to Parliamentary actions. *Id.*

Also in 1772, frontier settlers living along the Watauga and Nolichucky Rivers in the eastern part of what would become the state of Tennessee, joined together to become the Watauga Association – the first independent constitutional government in America. After negotiating a ten-year lease with the Cherokee, the settlers unanimously adopted the Articles of the Watauga Association, which established a local government system, a five member court, a courthouse and a jail. Virginia Governor Lord Dunmore called the Association "a dangerous example" of Americans forming governments "distinct from and independent of his majesty's authority." Theodore Roosevelt once declared that "the Watauga settlers outlined in advance the nation's work. They bid defiance to outside foes and they successfully solved the difficult problem of self-government." Dickinson, "Watauga Association," TENNESSEE ENCYCLOPEDIA OF HISTORY AND CULTURE (2002).

In May of 1773, Parliament adopted the Tea Act, allowing the East India Company to sell – for the first time - surplus tea directly to people in the colonies. Purchase of the English tea, and the payment of parliamentary taxes along with it, was viewed as an effort to weaken colonial opposition to parliamentary taxation - and thus, weaken colonial claims to the right of local self-government. Maier, FROM RESISTANCE TO REVOLUTION 275-78 (1972). But, the colonists rebelled, resulting in the Boston Tea Party, as well as similar Tea Parties hosted by the people of other towns and villages. The colonists refused to allow tea shipments to arrive in port, forced tea to rot on the decks, returned ships to England, or simply destroyed the tea. *Id.*

To punish the colonists for their opposition to the Tea Act, Parliament adopted a series of laws known as the "Intolerable Acts" or "Coercive Acts," which

sought to completely nullify certain types of colonial self-government.[16] The British imposed Massachusetts Government Act sent a clear signal that England would not tolerate local self-government in the colonies. Miller, ORIGINS OF THE AMERICAN REVOLUTION 369-70 (1962). Long seen as a model for local, community self-government, people in Massachusetts had been given wide latitude to make local governing decisions.[17] The goal of the Massachusetts Government Act was to displace the various legislative mechanisms of local self-government by expanding the royal governor's powers. British officials believed that their inability to control the people of Massachusetts was directly attributable to the highly independent nature of its local governments and the operation of the Town Meeting at the community level.[18] As Lord North explained to Parliament, the purpose of the Act was "to take the executive power from the hands of the democratic part of government." Christie and Labaree, EMPIRE OR INDEPENDENCE, 1760-1776 188 (1976). The royal governor eventually used the Act to completely dissolve the Massachusetts Assembly.

The people of Massachusetts rebelled against this threat to their right of local self-government by closing down the British judicial system, so that it could not be used to enforce the Act. People in the Towns of Worcester, Springfield, Southampton, Salem, Marblehead, Taunton, and Stoughton not only forcibly closed the courts, but forced hundreds of British officials to resign their positions. Without the courts, the people of those Towns drew up their own plans for keeping order, while urging the people of their own Town Meetings to "pay no regard to the late act of parliament, respecting the calling of town meetings, but, to proceed in their usual manner." Raphael, THE FIRST AMERICAN REVOLUTION BEFORE LEXINGTON AND CONCORD 107 (2011).

iv. Community self-government as the foundation of the Declaration of Independence.

Beginning in 1773, in response to the assertions of royal power and consequent nullification of local self-governance, the people of ninety towns, villages, and counties across the thirteen colonies began to issue their own local

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[16] The Acts included the Quebec Act (which stripped the people of Quebec of most governing authority, and was seen as a parliamentary model for future treatment of American colonists);the Administration of Justice Act (requiring trials of certain British officers to occur in British courts, thus removing the jurisdiction of colonial courts over those trials); the Massachusetts Government Act (banning Town Meetings without the consent of the royal Governor, and canceling part of the Colony's original Charter by eliminating the authority of the colonial assembly to elect the Executive Council); and the Quartering Act (requiring the colonies to provide housing for British soldiers over the refusal of the assemblies of several states to previously provide housing).

[17] The 1691 Charter for the Massachusetts Bay Colony provided that all residents of the Colony "shall have an enjoy all liberties and immunities of free and natural subjects. . . as if they and every one of them were born within this our realm of England." Beach, SAMUEL ADAMS: THE FATEFUL YEARS 1764-1776 48 (1965).

[18] The Act required that each "agenda item at every town meeting in Massachusetts. . . be submitted in writing to the governor and meet with his approval. . . No meeting could be called without the prior consent of the governor." Raphael, THE FIRST AMERICAN REVOLUTION BEFORE LEXINGTON AND CONCORD 50 (2011).

declarations of independence. Declaring that only their own homegrown, democratically-elected governments could "constitutionally make any laws or regulations," those communities proclaimed their own independence from British rule years before the issuance of a federal Declaration of Independence by Congress. Maier, AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE 48-49 (1997). The Charlotte Town Resolves (also known as the "Mecklenbergh Resolves" after the County in North Carolina), as one example of many, declared that "all laws derived from the authority of the King or Parliament are annulled and vacated."[19]

Next, the colonists called for the First Continental Congress, which met in September of 1774, with representatives attending from twelve of the thirteen colonies. During that Congress, the delegates resolved that "[a]ssemblies have been frequently dissolved, contrary to the rights of the people. . .[and] that the inhabitants of the English Colonies in North America, by the immutable laws of nature. . . are entitled to life, liberty, and property, and they have never ceded to any sovereign power whatever a right to dispose of either without their consent. " These declarations of the right to community self-government continued to solidify the foundation for the final break between the American colonies and England.

In May of 1776, the Continental Congress adopted a resolution which ordered power to be transferred from governments resting on the Crown's sovereignty to those based upon popular authority and self-government. The preamble demanded "that the exercise of every kind of authority under the. . . Crown should be totally suppressed." JOURNALS OF THE CONTINENTAL CONGRESS, 4:342, 357-58. Several months later, the people of Virginia adopted the first "Declaration of Rights," which set forth the constitutional doctrine of local self-government. It declared:

> Section 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them.
>
> Section 3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety and is most effectually secured against the danger of maladministration. And that, when any government shall be found inadequate or contrary to these purposes, a majority of the *community* has an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.[20]

That foundation of local self-government was recognized and reasserted by the Second Continental Congress in June of 1776, when it issued the federal

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[19] The Avalon Project at Yale Law School, THE MECKLENBURGH RESOLUTIONS (May 20, 1775) (http://avalon.law.yale.edu/18th_century/nc06.asp) (accessed August 8, 2014).

[20] *Id*. at Virginia Declaration of Rights (http://avalon.law.yale.edu/18th_century/virginia.asp) (accessed August 8, 2014) (emphasis added).

Declaration of Independence. Penned originally by Thomas Jefferson and edited by a congressional committee, the Declaration codified the principles of local self-government that had been forged by the American colonists since the 1600's. Drawing on the declarations of towns, villages, colonies, compacts, early constitutions, and the writings of James Otis and others, the Declaration re-affirmed four major principles of law –

> -First, that certain rights - those of "life, liberty, and the pursuit of happiness" are natural rights, held by virtue of being human[21];
>
> -Second, that governments are created to secure those natural rights[22];
>
> -Third, that governments owe their existence to, and derive their power exclusively from, the community which creates them[23]; and
>
> -Fourth, that when government becomes destructive of those natural rights, the people have a right (and duty) to alter or abolish that government and establish new forms of government.[24]

The Declaration of Independence has been congressionally recognized as an organic, enforceable law of the United States, and is part of the United States Code. *See* 1 U.S.C. at i-iii. In the words of historian Joshua Miller, the great principles "evoked in the Declaration are autonomy of collectivities, natural rights, and the legitimacy of revolution." *See* Miller, THE RISE AND FALL OF DEMOCRACY IN EARLY AMERICA, 1630-1789 70 (1991).

v. The right of community self-government serves as the foundation for state constitutions.

The Constitutions adopted by the people of each of the colonies - transforming the colonies into constitutionalized states – re-affirmed and codified the four local self-government principles asserted by the Declaration of Independence as the basis for those state governments.[25] The people of

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[21] Decl. of Independence at ¶ 2 ("That all men. . . are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.").
[22] *Id*. ("that, to secure these rights, governments are instituted among men.")
[23] *Id*. ("deriving their just powers from the consent of the governed.")
[24] *Id.* ("whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. . . it is their right, it is their duty, to throw off such government.").
[25]The people of two states, New York and Connecticut, adopted the text of the Declaration directly into their state constitutions; the people of eight states adopted a Declaration of Rights with their state constitutions which restated the four principles of the Declaration; and the people of four states - New Jersey, Georgia, South Carolina, and New Hampshire - included the principles embodied by the Declaration in the text of the preamble to their state constitution. *See* The Avalon Project at Yale Law School at Constitution of New York (April 20, 1777); Constitution of New Jersey (July 2, 1776); Constitution of Georgia (February 5, 1777); Constitution of South Carolina (March 26, 1776); Constitution of New Hampshire (January 5, 1776); Constitution of Delaware (September 21, 1776); Constitution of Maryland (November 11, 1776), Constitution of North Carolina (December 18, 1776);

Pennsylvania, for example, through their 1776 Constitution, reaffirmed those principles by declaring

> I. That all men are born equally free, and independent; and have certain, natural, inherent, and inalienable rights; amongst which are; the enjoying and defending of life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining happiness and safety.
>
> IV. That all power being originally inherent in, and consequently derived from, the people; therefore all officers of government, whether legislative, or executive, are their trustees, and servants, and at all times accountable to them.
>
> V. That government is, or ought to be, instituted for the common benefit, protection and security of the people, nation, or *community*; and not for the particular emolument or advantage of any single man, family, or set of men, who are a part only of that community; And that the *community* hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish government in such manner as shall be by that community judged most conducive to the public weal.[26]

In addition to providing the substantive law for the state constitutions, the right of community self-government was infused into the methods by which the people of each state drafted and adopted their own constitutions. Of the people in the thirteen original colonies, those in twelve denied legislatures the authority to draft new constitutions, and instead entrusted that responsibility only to temporary conventions of the people themselves. As explained by Professor Marc Kruman:

> The provincial congresses were not legislatures; rather, they were transitory institutions that wielded executive and judicial, as well as legislative, power. Only the members of such bodies or of temporary constitutional conventions, with no permanent interest in the frame of government, could be trusted to write a constitution. Even then, delegates to the congresses assumed the need for popular approval of constitution making. Therefore, virtually all congresses ordered new elections for new political bodies. New York's required voters to instruct their representatives as to whether they desired a state constitution, and, in 1776, the Massachusetts House of Representatives asked the towns to approve its proposed method for drafting a constitution. In special elections, framers sought support

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Constitution of Pennsylvania (September 28, 1776); Constitution of Virginia (June 29, 1776); Constitution of Vermont (July 8, 1777), http://avalon.law.yale.edu/subject_menus/18th.asp (accessed August 12, 2014).

[26] The Avalon Project at Yale Law School, Constitution of Pennsylvania at ¶¶ 2-5 (September 28, 1776) (http://avalon.law.yale.edu/18th_century/pa08.asp) (accessed August 8, 2014) (emphasis added).

> from the whole people, whom all regarded as sovereign. In so doing, they effectively created constitutional conventions.

Marc Kruman, BETWEEN AUTHORITY AND LIBERTY: STATE CONSTITUTION MAKING IN REVOLUTIONARY AMERICA 157-58 (1997).

b. The U.S. Constitution guarantees the right of community self-government to the people of Lafayette.

Echoing the Declaration of Independence, the United States Constitution similarly provides: "governments derive their just powers from the consent of the governed." U.S. CONST. art. I, §1. The United States' founders debated whether to insert all four principles of the Declaration of Independence directly into the Constitution's preamble, or whether the people's right to self-government was so fundamental that it need not be expressly stated in the text of the Constitution itself.[27] Advocating for express inclusion, James Madison argued: "[i]f it be a truth, and so self-evident that it cannot be denied – if it be recognized, as is the fact in many of the State Constitutions. . . this solemn truth should be inserted in the Constitution."[28]

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[27] This debate was forced by the people of the states through their ratifying conventions. The conventions of many states chose to use the ratification process as another vehicle for securing their right to community self-government. They did so by offering amendments which incorporated the principles of the Declaration of Independence directly into the text of the Constitution. The people who voted to reject the Constitution outright (and the populations they represented), and the people who refused to ratify without the offering of those local self-government amendments (and the populations they represented) constituted a majority of the people living within the United States at the time of ratification. *See* The Avalon Project at Yale Law School at Ratification of the Constitution by the various states (http://avalon.law.yale.edu/subject_menus/18th.asp.) (accessed August 12, 2014).

Mirroring the Declaration of Rights already adopted by a majority of people within a majority of states in their own constitutions, the people of Virginia ratified their Constitution subject to the following amendments:

> 1st. That there are certain natural rights of which men when they form a social compact cannot deprive or divest their posterity, among which are the enjoyment of life, and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.
> 2d. That all power is naturally vested in, and consequently derived from, the people; that magistrates therefore are their trustees, and agents, and at all times amenable to them.
> 3d. That the Government ought to be instituted for the common benefit, protection and security of the people; and that the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive to the good and happiness of mankind.

The Avalon Project at Yale Law School, RATIFICATION OF THE CONSTITUTION BY THE STATE OF VIRGINIA (June 26, 1788) (http://avalon.law.yale.edu/18th_century/ratva.asp) (Accessed August 8, 2014).

[28] Madison proposed amending the Constitution's preamble to include the following language:

> That all power is originally vested in, and consequently derived from the people.
>
> That government is instituted, and ought to be exercised for the benefit of the people, which consists in the enjoyment of life and liberty, with the right of

Significantly, the House rejected the addition because it deemed the language already incorporated within the Constitution's preamble. Roger Sherman explained that since

> this right is indefeasible, and the people have recognized it in practice, the truth is better asserted than it can be by any words whatever. The words "We the people," in the original Constitution, are as copious and expressive as possible; any addition will only drag out the sentence without illuminating it. . . [29]

Fourteen years later, the U.S. Supreme Court, in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803), validated Sherman's reasoning. Interpreting the Constitution's preamble as recognizing the people's inherent and fundamental right of self-government, the Court concluded:

> [t]hat the people have an original right to establish, for their future government, such principles as, in their own opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected.

Marbury, 5 U.S. (1 Cranch) at 176.

The Ninth Amendment of the Bill of Rights similarly provides authority for recognition of the people's fundamental right of self-government. Under the Ninth Amendment: "the enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage other rights retained by the people." As the concurrence in *Griswold*, 381 U.S. at 488, explained: "The language and history of the Ninth Amendment reveal that the Framers of the Constitution believed that there are additional fundamental rights, protected from governmental infringement, which exist alongside those fundamental rights specifically mentioned in the first eight constitutional amendments." Historical evidence uncovered in the last twenty-five years further establishes that the public intent of this amendment was to secure the natural rights of people that pre-existed the Constitution with the same status, whether or not the rights were enumerated in the Bill of Rights. Randy E. Barnett, THE NINTH AMENDMENT: IT MEANS WHAT IT SAYS, 85 Tex. L. Rev. 1, 28-29 (2006). These pre-existing natural rights include individual rights as well as collective rights. *Id.* at 21, 20, and 46.

Among the retained rights of the people is the fundamental right to alter or abolish their form of government whenever they see fit. *See* 2 Blackstone's COMMENTARIES: WITH NOTES OF REFERENCE TO THE CONSTITUTION AND LAWS OF THE FEDERAL

> acquiring and using property, and generally of pursuing and obtaining happiness and safety.
>
> That the people have an indubitable, unalienable, and indefeasible right to reform or change their government, whenever it be found adverse or inadequate to the purposes of its institution.

U.S. House of Representatives, June 8, 1789 (http://teachingamericanhistory.org/bor/madison_17890608/) (accessed August 8, 2014).

[29] U.S. House of Representatives, August 14, 1789 (www.teachingamericanhistory.org/bor/select-committee-report/)(accessed August 8, 2014).

GOVERNMENT OF THE UNITED STATES AND OF THE COMMONWEALTH OF VIRGINIA 162 (1803); *see Deitz v City of Central*, 1 Colo. Rptr. 323 (Colo. Terr. 1871); *Henry Broderick, Inc. v. Riley*,157 P.2d 954, 966 (Wash. 1945) (the Ninth Amendment serves as a "sentinel against overcentralization of government, [and serves as a] monument to the wisdom of the constitutional framers who realized that for the stable preservation of our form of government, it is essential that local governmental functions be locally performed."). As legal scholar Kurt Lash explains:

> The right to local self-government is a right retained by all people and can be exercised in whatever political direction the people please. What we have forgotten, what we have lost, is that the right to local self-government is more than an idea. It is a right enshrined in the Constitution itself.

Kurt Lash, THE LOST HISTORY OF THE NINTH AMENDMENT 360 (2009).

Accordingly, the people of Lafayette possess a federally guaranteed right of community self-government, which is secured by the Declaration of Independence and the United States Constitution.

c. The Colorado Constitution guarantees the right of local, community self-government

As with the history of the American colonies, Colorado's history is replete with people exercising their right to community self-government. The very first governments in Colorado were self-organized ones. Beginning in the 1860's, people established "miner's districts," "claim clubs," and "town companies" in what became Colorado. People creating these local governments wrote local constitutions while establishing legislatures and courts within them.[30] In Denver, the people exercised their own sovereign authority to create the "People's Government of the City of Denver," which recognized the people's right to "alter or amend" Denver's Constitution by majority vote at any election. *See* "Constitution", *Daily Rocky Mountain News* (September 25, 1860).

Consistent with this pre-existing natural right of local, community self-government, in April of 1859, people within Colorado's local communities joined together to form the "Territory of Jefferson."[31] Its Constitution began with a bill of rights, which reaffirmed the four basic principles set forth in the Declaration of Independence:

> Section 1. All men are by nature free and independent and have certain inalienable rights among which are those of enjoying and

[30] *See, e.g.*, the Records of the Auraria Town Company, from October, 1858 to March, 1860 (http://digital.denverlibrary.org/cdm/ref/collection/p15330coll6/id/361) (accessed July 31, 2014) (establishing the right of the people of the company to revise or amend their Constitution).

[31] "Jefferson Territory, forerunner of Colorado, was one of those spontaneous Anglo-American governments that sprang without official authorization from American soil. It was based on the spirit of the Mayflower Compact, and was similar in origin and form to the 'State of Franklin' (Tennessee) and the 'State of Deseret' (Utah)."Anonymous, *The Constitution of Jefferson Territory,* Vol. XII No.6 THE COLORADO MAGAZINE 215, 215 (1935).

> defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety and happiness.
>
> Section 2. All political power is inherent in the people. Governments are instituted for the protection, safety, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

Constitution Of The Provisional Government Of Jefferson Territory at Art.1, §§1-2.[32]

The Territory's legislature held its first session in November of 1859, organizing twelve counties within Colorado.[33] Colorado's Territorial Supreme Court recognized "local municipalities and miniature republics" as "the very womb and nursery of our free institutions" and affirmed the implicit authority of the Territorial Legislature to organize "each community in [the Territory] into a municipality, with power of local self government." *Deitz,* 1 Colo. 323 at 326-327.

In allowing Colorado to move toward statehood, the federal government reaffirmed the Declaration of Independence's significance. It required Colorado to draft a State Constitution "republican in form [and]. . . not repugnant to the constitution of the United States *and the principles of the Declaration of Independence*." Enabling Act of the Congress of the United States for the State of Colorado, 18 Stat. 474 (approved March 3, 1875) (emphasis added). In accordance with that directive, Colorado's Constitution guarantees the right of local, community self-government. Article II (Bill of Rights), Sections 1 and 2, of the Colorado Constitution reaffirm and secure the people's sovereign authority to govern themselves:

> Section 1. Vestment of political power. All political power is vested in and derived from the people; all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.
>
> Section 2. People may alter or abolish form of government proviso. The people of this state have the sole and exclusive right of governing themselves, as a free, sovereign and independent state; and to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness, provided, such change be not repugnant to the constitution of the United States.

COLO. CONST. art. II, §§1-2.

The import of the Colorado Constitution's Bill of Rights is clear: the people of a community constitute a power separate from their municipal corporation, and they collectively have a right to alter or abolish their form of municipal government.

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[32] Reprinted at *The Constitution of Jefferson Territory, supra* n. 31, at 216-220.

[33] *Provisional Laws and Joint Resolutions Passed at the First and Called Sessions of the General Assembly of Jefferson Territory Held at Denver City, J.T., November and December 1859 and January 1860,* http://babel.hathitrust.org/cgi/pt?q1=people;id=mdp.35112203943123;view=plaintext;seq=264;start=1;size=100;page=root;num=264;orient=0 (accessed July 31, 2014).

As the Colorado Supreme Court has recognized, during the founding of our country, communities were organized into municipalities, but the right to self-government remained with the people. *See Deitz,* 1 Colo. Rptr. 323 (affirming that Congress had the power to organize each community in a territory into a municipality "with power of local self government"). [34]

In addition, Section 3 of the Colorado Bill of Rights recognizes that "[a]ll persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness." COLO. CONST. art. II, §3. And, Section 28 parallels the Ninth Amendment by recognizing rights retained by the people. COLO. CONST. art. II, §28 ("Rights reserved not disparaged. The enumeration in this constitution of certain rights shall not be construed to deny, impair or disparage others retained by the people."). The right to local, community self-government is one of those retained, inalienable rights.[35]

In sum, "[w]here the language of the Constitution is plain and its meaning clear, that language must be declared and enforced as written." *Colorado Ass'n of Public Employees v. Board of Regents of University of Colorado*, 804 P.2d 138, 142 (Colo. 1990). Here, the Colorado Constitution clearly and unequivocally recognizes the fundamental right to local, community self-government in providing that all "political power is vested in and derived from the people" and that the people have the right "to alter and abolish their constitution and form of government whenever they may deem it necessary to their safety and happiness." Even if not found in the Colorado Constitution's express language, Sections 3 and 28 acknowledge inalienable rights retained by the people – one of which is the right to local,

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[34]Consistent with recognizing this fundamental right, article V, section 1 of the Colorado Constitution reserves to the People the power of initiative and referendum. Recall, initiative, and referendum are "fundamental rights of a republican form of government which the people have reserved unto themselves . . . [that] must be liberally construed in favor of the right of the people to exercise [such fundamental rights] …. Conversely, limitation on [such powers] must be strictly construed." *Bernzen v. City of Boulder,* 525 P.2d 416, 419 (Colo. 1974) (citation omitted) (holding that recall power is political in nature and therefore the judiciary may not infringe upon the powers reserved by the people); *Margolis v. District Court,* 638 P.2d 297, 302 (Colo. 1981) (holding that fundamental right of initiative and referendum applies to municipal zoning).

[35] This underlying, pre-existing natural right of the people in Colorado's local communities to local, community self-government was further elaborated in the original home rule amendment whose purpose was "securing to the people of Denver absolute freedom from legislative interference in matters of local concern." *People v. Sours,* 74 P. 167, 172 (Colo. 1903). In first interpreting the home rule amendment, the Colorado Supreme Court recognized that the people of a community constitute a power separate from their municipal corporation, and they collectively have a right to alter or abolish their form of municipal government. *See Denver v. Hallett,* 83 P. 1066, 1068 (Colo. 1905) ("the people of Denver shall always have the exclusive power of making, altering, revising or amending their charter; and further that the charter, when adopted by the people, should be the organic law of the municipality and should supersede all other charters. It was intended to confer not only the powers specially mentioned, but to bestow upon the people of Denver every power possessed by the legislature in the making of a charter for Denver."). Later interpretations of the home rule amendment have focused on the power of a subordinate governmental entity subject to limitation under state preemption doctrine. *E.g., Voss, supra*.

community self-government. A judicial interpretation that fails to recognize these fundamental rights, or which subordinates the people's rights to municipal corporations or other levels of government, is unconstitutional.

Accordingly, the Colorado Constitution guarantees the people of Lafayette's self-governing authority and their right to a system of government which recognizes that authority, and which is capable of protecting people's civil and political rights in each community.

2. The People of Lafayette Validly Enacted the Charter Amendment Pursuant to Their Fundamental Right to Local, Community Self-Government

In adopting their Charter Amendment, the people of Lafayette exercised their constitutionally guaranteed, fundamental right to local, community self-government, in particular, their right to adopt a law restricting harmful activities in their community. Lafayette residents exercised their right to alter their system of government because their municipal government had been rendered incapable of protecting their health, safety, and welfare, or, in the words of the Declaration of Independence, their "Life, Liberty . . . Safety and Happiness". Prior to the Community Bill of Rights and the ban on new oil and gas extraction, Lafayette residents' civil rights (along with those of the natural environment within Lafayette) were at great risk. Hiding behind the Oil and Gas Act and its regulatory scheme, corporations could have pursued "fracking" if they so chose. The Charter Amendment not only expressly prohibits "fracking", but such activities would otherwise violate the people's enumerated rights, including the right to clean water and air.

In sum, the Charter Amendment is an assertion of the right of the people of Lafayette to a government that will protect them. The Amendment accomplishes that by expanding the civil, political, and environmental rights of the residents of Lafayette. Such power is analogous to the recognized power of state constitutional rights to exceed the "floor" of federal constitutional rights. *See* William J. Brennan, Jr., State Constitutions and the Protection of Individual Rights, 90 HARV. L. REV. 489 (1977); *Bock v. Westminster Mall Co.,* 819 P.2d 55, 59 (Colo. 1991) ("The First Amendment is a floor, guaranteeing a high minimum of free speech, while our own Article II, Section 10 is the 'applicable law' under which the freedom of speech in Colorado is further guaranteed.") (citation omitted)).

3. The Oil and Gas Act Cannot Apply to Preempt Rights-based Local Laws and Its Application to Impliedly Preempt the Charter Amendment Violates the Right of Local, Community Self-Government

The doctrine of preemption cannot apply to a local law, such as the Charter Amendment, which asserts the people's right of local, community self-government by recognizing certain civil and political rights and prohibiting activities that would violate those rights. The people's right of local self-government is a constitutionally-guaranteed right not constrained by limitations imposed on municipal corporations

by the State.[36] As discussed above, it derives from the core principle of American governance – the ability and authority of the people collectively to protect themselves from harm by securing new rights. Consistent with this principle, a local law cannot be preempted by state law if (1) it has been adopted by a majority of people within a municipality, (2) it is adopted pursuant to the right of local, community self-government, and (3) it creates new rights or expands existing state and federally-secured rights for the community. The Charter Amendment meets all of these criteria.

It is well-established that each State has the "sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution." *Bock,* 819 P.2d at 59 (quoting *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 81 (1980)). The people, likewise, have the sovereign right to adopt, in their own local laws, individual liberties more expansive than those conferred by the Federal and State Constitutions. COLO. CONST. art. XX, § 5 ("The citizens of the city and county of Denver shall have the exclusive power to amend their charter or to adopt a new charter, or to adopt any measure as herein provided"). The most expansive right controls (regardless of which level of government recognizes that right), with people possessing the broadest rights afforded by any level of government.

Moreover, under a rights-based approach, there is no concern that a local community will pass a local law in violation of an individual's constitutionally guaranteed civil rights. In this case, the Community Bill of Rights affords Lafayette residents' rights derived from their local home-rule constitution *in addition* to the rights already guaranteed by the Colorado Constitution and U.S. Constitution. Just as the Federal Bill of Rights cannot restrict the protections guaranteed to Colorado residents by Colorado's Bill of Rights (or vice versa); a local bill of rights cannot restrict state or federal rights guaranteed to Lafayette residents. Put simply, Lafayette residents are citizens of all three levels of government, and the extent of their rights is defined by the most extensive right guaranteed by any of those three levels of government. *See Bock*, 819 P.2d at 59 ("The First Amendment is a floor, guaranteeing a high minimum of free speech, while our own Article II, Section 10 is the 'applicable law' under which the freedom of speech in Colorado is further guaranteed.") (citation omitted). The legal concept of preemption is inapplicable to rights-creation and expansion, because the failure of a "higher" level of government to recognize certain rights cannot serve to bar another level from doing so.

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[36] Courts are also beginning to declare that even certain municipal corporate powers are beyond the reach of the State legislature – a reflection of the partial embodiment of the right of self-government within those municipal vehicles. Recently, the Pennsylvania Supreme Court (by a plurality) recognized that it was beyond the authority of the Pennsylvania legislature to preempt municipalities from controlling oil and gas operations. Accordingly, the Court struck a state legislative Act which sought to override municipal zoning authority. *Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901, 978 (Pa. 2013); *see also Wallach v. Town of Dryden and Cooperstown Holstein Corporation v. Town of Middlefield*, 2014 WL 2921399, --- N.E.3d ---- (N.Y. App., June 30, 2014) (holding that New York's Oil, Gas, and Solution Mining Law does not preempt local bans on oil and gas drilling).

Plaintiffs are not asking the district court to reverse prior precedent.[37] Rather, Plaintiffs have explained when and how application of the preemption doctrine must be limited such that it does not interfere with the right of local, self-government. Plaintiffs are harmed by prior application of the preemption doctrine to strike down local laws pertaining to oil and gas activities because such precedent (1) has and continues to deter residents from exercising their right to adopt local laws protecting them from environmental and other harms, and (2) is being used against Lafayette residents in the COGA Lawsuit. Yet, there is no prior precedent discussing the preemption doctrine as it relates to the right of local, self-government. The present case is a case of first impression in which the people of Lafayette have adopted a community-rights based amendment to their local constitution and are seeking to protect those rights. The doctrine of preemption has not been previously applied to preempt a local law containing a bill of rights. And, as discussed above, it cannot be.

For these reasons, Plaintiffs are likely to prevail in showing that the Oil and Gas Act, as interpreted to impliedly preempt local laws to protect resident's health, safety and welfare, has violated their right to local, community self-government and continues to threaten to violate their rights as guaranteed by the Charter Amendment.

4. Defendants Cannot Show a Compelling State Interest to Justify Deprivation of Plaintiffs' Fundamental Right of Local, Community Self-Government

"A legislative enactment which infringes on a fundamental right or which burdens a suspect class is constitutionally permissible only if it is 'necessary to promote a compelling state interest,' *Dunn v. Blumstein*, 405 U.S. 330, 342, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274 (1972), and does so in the least restrictive manner possible. *Plyler v. Doe,* 457 U.S. 202, 217, 102 S.Ct. 2382, 2395, 72 L.Ed.2d 786 (1982)." *Evans,* 882 P.2d at 1341. Because Plaintiffs' fundamental right to local, community self-government is at stake, Defendants would have to show a compelling justification to restrict it.

Defendants cannot show a compelling justification to violate Plaintiffs' right to local, self-government. There is no reason, much less a compelling one, why a local community, such as Lafayette, cannot delineate, expand, and enforce their civil, political and environmental rights. Corporate desires to exploit oil and gas resources at the risk of residents' health, safety, and welfare is not a compelling interest.

B. <u>Injunctive Relief Will Prevent a Danger of Real, Immediate, and Irreparable Injury</u>

[37]Even if Plaintiffs were asking the Court to depart from prior precedent, in this instance, the Court has the duty to re-examine prior decisions such as *Voss*. "[W]here vital public rights are involved, and a decision regarding them is to have a direct and permanent influence, it becomes not only the right, but the duty of a court to fully and carefully reconsider those questions and permit no previous error to continue if it can be corrected." *People ex rel. v. Curtice et al.*, 117 P. 357, 365 (Colo. 1911).

Plaintiffs are harmed by the Oil and Gas Act, as applied, to strike down local laws pertaining to oil and gas activities because such precedent (1) has and continues to deter residents from exercising their right to adopt local laws protecting them from environmental and other harms, and (2) is being wielded against Lafayette residents in the COGA Lawsuit. Threatened harm to a fundamental constitutional right constitutes irreparable injury for purposes of preliminary injunctive relief. *See Rathke*, 648 P.2d at 653 ("State equity courts will enjoin the enforcement of a state statute or law in situations where property rights or fundamental constitutional rights are being destroyed or threatened with destruction."); *Johnson v. District Court of Seventeenth Judicial Dist. In and For Adams County*, 576 P.2d 167 (Colo. 1978) ("We have previously held that a declaratory judgment action may be brought to secure a judicial determination of a statute's validity without requiring one to run the risk of violation and criminal sanction.") (citing *Colorado State Board of Optometric Examiners v. Dixon*, 440 P.2d 287 (1968)).

Plaintiff Willmeng was one of the lead organizers for gathering support for the Charter Amendment. (Willmeng Aff. at ¶10.) Willmeng organized numerous public meetings and responded to questions and concerns regarding the Charter Amendment. (*Id*. at ¶11.) Several community members expressed concerns that residents would have to defend the enforceability of the Charter Amendment in light of previously thwarted efforts by local communities to protect themselves from the health and safety hazards of oil and gas exploration, including fracking operations. (*Id*. at ¶12; Griffin Aff. at ¶¶8,9.) Defending the Charter Amendment's enforceability presented a significant hurdle in campaigning for its passage. (*Id*. at ¶13; Griffin Aff. at ¶10.) Accordingly, the Oil and Gas Act as previously interpreted and applied, interfered with Lafayette residents' right to local, self-government.

Since the Charter Amendment's passage, Plaintiffs have become Lafayette residents who enjoy the rights enumerated in the Community Bill of Rights and the protections afforded by its prohibition on oil and gas drilling activities. (Willmeng Aff. ¶¶6, 7; Griffin Aff. at ¶¶5, 6.) Plaintiffs are harmed by COGA's pending action against Lafayette because that action seeks to invalidate the Charter Amendment and violate Plaintiffs' constitutional rights. (Willmeng Aff. at ¶¶14-19; Griffin Aff. at ¶¶11-14). The threat to, and uncertainty regarding, Plaintiffs' rights constitutes irreparable harm in and of itself.

C. There Is No Plain, Speedy, and Adequate Remedy at Law

Plaintiffs' action is for declaratory and injunctive relief and there is no plain, speedy, and adequate remedy at law. In this Motion, Plaintiffs seek to enjoin Defendants from attempting to enforce the Oil and Gas Act against Plaintiffs and the people of the City of Lafayette to invalidate the Charter Amendment. Plaintiffs' constitutional right to local, self-government has already been violated and the COGA Lawsuit poses an additional imminent threat. There is no adequate remedy at law.

D. Granting a Preliminary Injunction Serves the Public Interest

Granting a preliminary injunction serves the public interest. The people of Lafayette adopted the Charter Amendment. The preliminary injunctive relief sought by Plaintiffs seeks to enforce the people's fundamental right to local self-government and protect the peoples' rights secured by the Charter Amendment.

E. The Balance of Equities Favors Enjoining Defendants

The balance of equities favors enjoining Defendants. Neither COGA nor its members will be harmed by a court order granting Plaintiffs' requested preliminary injunctive relief. Neither the State nor the Governor has an interest in enforcing preemptive portions of an act which violates residents' constitutional rights. Conversely, Plaintiffs' fundamental constitutional right of local, community self-government is at stake. This right has been harmed, and will continue to be harmed, by application of the Oil and Gas Act to restrict Lafayette residents' rights to protect their health, safety, and welfare, and by the threat posed to the Charter Amendment by COGA's Lawsuit. An injunction will protect Plaintiffs' constitutional rights while causing no harm to Defendants.

F. The Injunction Will Preserve the Status Quo Pending a Trial on the Merits

Enjoining Defendants will preserve the status quo pending a decision on the merits. The injunction will allow Plaintiffs to continue to enjoy their rights as enumerated in the Charter Amendment while the Court considers their fundamental right of local, community self-government.

V. Conclusion

Plaintiffs have satisfied the six-part test for preliminary injunctive relief. Plaintiffs respectfully request that the Court grant their Motion and enter a preliminary injunction enjoining Defendants State of Colorado, Governor Hickenlooper, and COGA from attempting to enforce the Oil and Gas to invalidate the Charter Amendment and enjoining application of the Oil and Gas Act to invalidate the Charter Amendment.

Plaintiffs request a hearing on this Motion.

Dated this 19th day of August, 2014.

Respectfully submitted,

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individually and on behalf of all persons similarly situated

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF,** as well as **Exhibits 1 through 3** and a **PROPOSED ORDER,** upon all parties herein through ICCES or certified mail at Denver, Colorado, this 19th day of August, 2014 addressed as follows:

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