UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF PENNSYLVANIA

PENNSYLVANIA GENERAL ENERGY COMPANY, L.L.C. Plaintiff, vs. GRANT TOWNSHIP, Defendant.	Case No. 1:14-cv-209 Magistrate Judge Susan Paradise Baxter

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S RENEWED AND SUPPLEMENTAL MOTION FOR SANCTIONS

I. PROCEDURAL BACKGROUND

This Memorandum of Law provides the legal support and argument for Pennsylvania General Energy L.L.C.'s ("PGE") Renewed and Supplemental Motion for Sanctions against Defendant Grant Township and its counsel, Community Environmental Legal Defense Fund ("CELDF"), Thomas Linzey, Esq. ("Attorney Linzey"), Lindsey Schromen-Wawrin, Esq. ("Attorney Schromen-Wawrin"), and Elizabeth Dunne, Esq. ("Attorney Dunne") (collectively, "Counsel"), for their frivolous legal claims and defenses pursued in the above-captioned action. PGE filed this action to challenge the constitutionality, validity and enforceability of an ordinance adopted by Grant Township that established a so-called Community Bill of Rights for the people of Grant Township (the "Ordinance"). The Ordinance was drafted and enacted with the assistance of The Community Environmental Legal Defense Fund ("CELDF"), which has also provided free legal assistance to Grant Township, community group East Run Hellbenders

Society Inc. ("Hellbenders"), and the Little Mahoning Watershed ("Ecosystem") in connection with the adoption of the Ordinance and the litigation connected therewith.

Grant Township filed an Answer and Affirmative Defenses that denied PGE's averments regarding its constitutional and state law preemption claims and raised legal defenses not warranted by existing law. (ECF No. 10, pp. 5-18.) Grant Township also filed a Counterclaim that alleged that the people of Grant Township have a purported right to "local, community self-government" greater than well-established constitutional rights, and requested, among other relief, a declaration that the Ordinance is a valid assertion of that right, a declaration that PGE is not a "person" under the law, and an injunction preventing PGE from violating the Ordinance. (ECF No. 10, at pp. 24-29.) Represented by CELDF and Attorney Schromen-Wawrin, the Hellbenders and the Ecosystem filed a Motion to Intervene in this action. (ECF No. 37).

On October 14, 2015, this Court entered a Memorandum Opinion and Order that denied Grant Township's Motion for Judgment on the Pleadings on its Counterclaim and found that Grant Township failed to present any legal precedent in support of judgment as a matter of law. (ECF No. 113, at pp. 5-9.) In the same Memorandum Opinion and Order, this Court also invalidated portions of the Ordinance as preempted or invalid under state law and expressly recognized that Grant Township's position is "contrary to over one hundred years of Supreme Court precedent that establishes that corporations are considered 'persons' under the United States Constitution." (ECF No. 113, at pp. 5-9, 13-20.) The Court's opinion also denied the Motion to Intervene.

Despite the patent lack of legal support for its claims, Grant Township filed a Motion for Reconsideration of the Court's decision denying judgment on the pleadings and a supplement thereto, which the Court denied. (ECF Nos. 119, 150, 172.) The Hellbenders and the Ecosystem

also appealed the Court's decision denying intervention to the Third Circuit Court of Appeals. (ECF No. 139.) Thereafter, on December 28, 2015, Grant Township filed a Motion to Dismiss for Lack of Jurisdiction Plaintiff's Amended Complaint (ECF No. 152), which the Court struck in a court order dated February 5, 2016 (ECF No. 174) upon PGE's Motion to Strike (ECF No. 162).

In January, both parties filed Motions for Summary Judgment (ECF Nos. 154, 157.) On January 15, 2016, PGE filed a Motion for Sanctions Pursuant to Fed. R. Civ. P. 11(b) and Brief in Support. (ECF No. 161.) Grant Township responded by filing its own Motion for Sanctions. (ECF No. 171.) By Text Orders, the Court stayed the Motions for Sanctions (ECF Nos. 176, 179), and thereafter, the Court entered an additional order continuing the stay, finding that the motions were more appropriately dealt with following resolution of the pending motions for summary judgment. (ECF No. 218.) By Opinion filed July 27, 2016, the Third Circuit Court of Appeals affirmed this Court's denial of intervention. (ECF Nos. 219, 221.) By Order entered September 30, 2016, the Court dismissed motions for sanctions 161 and 171 as premature and determined that motions for sanctions may be filed following the resolution of the pending cross motions for summary judgment. (ECF No. 224).

On March 31, 2017, the Court issued a judgment order on the summary judgment motions, denying Grant Township's motion for summary judgment at ECF No. 157 in full and granting PGE's motion at ECF No. 154 in part and denying it in part, with relief being granted in PGE's favor on Grant Township's counterclaim, the Equal Protection claim, the Petition Clause claim, and the Substantive Due Process challenge. Summary judgment was denied on the Procedural Due Process and Contract Clause challenges for more proof at trial. (ECF No. 242.)

The matter has now been referred to Judge Arthur J. Schwab for settlement purposes only (ECF No. 247), with a mediation scheduled for June 13, 2017.

II. COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

Co-founded by its chief legal counsel Attorney Linzey, CELDF is an incorporated organization that claims to build "sustainable communities by assisting people to assert their right to local self-government and the rights of nature." *See* Exhibit A, *Board & Staff*, retrieved from http://celdf.org/mission-statement; https://celdf.org/about/board-staff/. As explained on its website,

> We work with communities that are unwilling to be oppressed by an unjust structure of law that is created by, and favors, the largest economic powers. Together, we are creating a new movement – one that recognizes, secures, and protects the rights of all those living within a community…. Through the Community Rights Movement, communities are working with CELDF to create a structure of law and government of the people, by the people, and for the people. That structure recognizes and protects the inalienable rights of natural and human communities.

See Exhibit A, *Community Rights*, retrieved from https://celdf.org/community-rights/.

CELDF recognizes the existence of state and federal pre-emption ("There are laws that allow large corporations to force harmful activities into communities – despite community opposition."), corporate legal rights ("Our structure of law elevates corporate decision-making over community decision-making. Corporations have court-conferred constitutional 'rights.' They wield these 'rights' against communities to eliminate local efforts that may interfere with industry plans to expand their operations, regardless of the impact to communities and nature."), the existence of regulatory law ("Agencies such as the Environmental Protection Agency, the National Labor Relations Board, and the Minerals Management Agency – do not actually protect us. Rather, they regulate the amount of harm that is inflicted on our communities."), and legal rights of property owners ("Our legal system grants landowners the right to damage the

environment, even though the impact is carried by the entire community.") *Id.* In fact, iterations of CELDF's acknowledgment that the law does not support its position are so voluminous that PGE has devoted an entire exhibit to them. *See* Exhibit B, incorporated herein by reference. Even so, the attached Exhibit B is not exhaustive of public statements, including lengthy videos, by CELDF and Counsel that their position constitutes an attempted revolution.

In its own words, "CELDF has been working with communities seeking to codify Community Rights. Known as Community Bills of Rights, these laws have been adopted by **nearly 200 communities**." *Id.* (emphasis added) The CELDF's own website highlights the Grant Township Ordinance as an example of its work. *Id.* In fact, CELDF hosts a "Democracy School" that teaches its manifesto of changing the existing structure of government. *See* Exhibit A, *Democracy School Curriculum*, retrieved from https://celdf.org/how-we-work/education/democracy-school/democracy-school-curriculum/.

A review of the history, policy, and laws written by the CELDF establishes that the organization seeks to rewrite the basic structure of government within the United States by placing the authority of individuals and ecosystems above the authority of the federal and state governments. The idea is to establish municipal laws that "**challenge the existing constitutional structure by creating an entirely new one.***" On Community Civil Disobedience in the Name of Sustainability: The Community Rights Movement in the United States* (Campbell & Linzey, 2015) (emphasis in original). The founder of CELDF recognizes that its tactics are illegal, stating that "**overturning legal doctrines that support current injustice requires frontal and direct breaking of existing laws.**" *Id. (emphasis added).* CELDF anticipates that its efforts will result in "thousands of municipal constitutions" that will serve as "a template for new state and federal constitutional structures." *Id.* The precursor to the "municipal constitution" is the

Community Bill of Rights Ordinance, provisions of which this Court found to be invalid and unconstitutional on multiple grounds.

CELDF is funded not only by donations from individuals, but also by foundations such as the Leonardo DiCaprio Foundation. *See* attached Exhibit C. CELDF's tax returns for the years 2012-2015 reflect an average revenue of $805,722 and net assets of $1,391,157. *Id.*

Attorney Linzey filed his appearance in this matter on October 6, 2014 (ECF No. 6) and has signed a multitude of documents in association with CELDF as counsel for Grant Township. Attorney Schromen-Wawrin sought permission to appear pro hac vice in this matter on November 12, 2014 (ECF No. 30) and has signed a multitude of documents in association with CELDF as counsel for Hellbenders and the Ecosystem. Attorney Dunne sought permission to appear pro hac vice in this matter on March 4, 2016 (ECF No. 187) and has signed a multitude of documents in association with CELDF as counsel for Grant Township.

III. SANCTIONS

Prior to the filing of this action and throughout the proceedings, Grant Township and Counsel have publicly admitted that their actions are without legal foundation and are intended to spur a revolution in the American legal system, even if that course of action means bankrupting Grant Township. As set forth in this Memorandum, Grant Township and Counsel have used this litigation as a political stage to gain media attention[1] for their cause and have

[1] *See*, for example, the interview given by Attorney Linzey as reported at *Green Group's Unconventional Fight against Fracking:* "[CELDF's] rebellious approach has drawn fire from the oil industry, legal experts and established environmental groups. And the criticism is likely to grow as cash-strapped local jurisdictions find themselves on the hook for defending ordinances in court cases they have little chance of winning. But [CELDF founder attorney Thomas] Linzey says his goal is not to write local laws that are popular, or stand up in court, but rather to trigger a public debate about community rights to local self-government - even if it means a community ultimately falls into financial ruin. 'If enough of these cases get in front of a judge, there is a chance we could start to have an impact within the judiciary,' said Linzey. 'And if a town goes bankrupt trying to defend one of our ordinances, well, perhaps that's exactly what is needed to trigger a national movement.'" Valdmanis, Richard (2015,

filed frivolous, unfounded, harassing pleadings and motions in pursuit of their illegitimate ends, thereby increasing litigation costs, abusing process, and wasting judicial resources. Accordingly, PGE seeks sanctions under Fed. R. Civ. P. 11, 28 U.S.C. § 1927, and the inherent power of the court.

The failure of Counsel to honor the mandates of the profession and their duty to the Court invites opprobrium and public sanction. The court in *Rhodes v. MacDonald*, 670 F. Supp. 2d 1363 (M.D. Ga. 2009), aff'd, 368 Fed. Appx. 949 (11th Cir. Ga. Mar. 15, 2010), eloquently expressed the responsibility attorneys bear in exchange for the honor of practicing law:

> Commenting on the special privilege granted to lawyers and the corresponding duty imposed upon them, Justice Cardozo once observed:
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> > Membership in the bar is a privilege burdened with conditions. [A lawyer is] received into that ancient fellowship for something more than private gain. He [becomes] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice.
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> *People ex rel. Karlin v. Culkin*, 248 N.Y. 465, 162 N.E. 487, 489 (N.Y. 1928) (Cardozo, J., writing as Chief Judge of the New York Court of Appeals before his appointment to the United States Supreme Court) (internal quotation marks omitted). Competent and ethical lawyers "are essential to the primary governmental function of administering justice." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792, 95 S. Ct. 2004, 44 L. Ed. 2d 572 (1975). For justice to be administered efficiently and justly, lawyers must understand the conditions that govern their privilege to practice law. Lawyers who do not understand those conditions are at best woefully unprepared to practice the profession and at worst a menace to it.
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> When a lawyer files complaints and motions without a reasonable basis for believing that they are supported by existing law or a modification or extension of existing law, that lawyer abuses her privilege to practice law. When a lawyer uses the courts as a platform for a political agenda disconnected from any legitimate legal cause of action, that lawyer abuses her privilege to practice law. When a lawyer personally attacks opposing parties and disrespects the integrity of the judiciary, that lawyer abuses her privilege to practice law. When a lawyer recklessly accuses a judge of violating the Judicial Code of Conduct with no supporting evidence beyond her dissatisfaction with the judge's rulings, that lawyer abuses her privilege

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June 29). Green group's unconventional fight against fracking, Retrieved from http://www.reuters.com/article/2015/06/29/us-usa-fracking-lawsuits-insight-idUSKCN0P90E320150629

> to practice law. When a lawyer abuses her privilege to practice law, that lawyer ceases to advance her cause or the ends of justice.

Rhodes, 670 F. Supp. 2d at 1365. *See* also *Miranda v. Southern Pacific Transp. Co.*, 710 F.2d 516, 519 (9th Cir.1983) (noting that the bar bears a special administrative responsibility in the judicial process independent from the public at large, are referred to as officers of the court, and are subject to monetary sanctions for failure to carry out their responsibility); *Donaldson v. Clark*, 819 F.2d 1551, 1558-59 (11th Cir. 1987) (en banc) (same).

Likewise, Article VI of the Pennsylvania Constitution governs conduct of "Public Officers." Section 3 sets forth the Oath of Office that every public officer must take, as follows:

> Senators, Representatives and all judicial, State and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation before a person authorized to administer oaths. "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity." The oath or affirmation shall be administered to a member of the Senate or to a member of the House of Representatives in the hall of the House to which he shall have been elected. Any person refusing to take the oath or affirmation shall forfeit his office.

Pa. Const. art. VI, § 3. In addition to Section 3, Section 7 of Article VI conditions the holding of office on the requirement that civil officers "behave themselves well while in office." Pa. Const. art. VI, § 7. Misbehavior while in office subjects civil officers to impeachment. Pa. Const. art. VI, §§ 4-7.

As noted above, Grant Township has acknowledged that Community Bill of Rights Ordinances are intended to spur a revolutionary departure from the Constitution and have no foundation under any law that currently exists, including the United States Constitution. Accordingly, by adopting a Community Bill of Rights Ordinance and pursuing its claims in the action *sub judice*, Grant Township, through its supervisors and with the support of its residents,

has violated and continues to violate the oath to obey and defend the Constitution of the United States and the Commonwealth and have utilized and misused the judicial system to do so. Accordingly, Grant Township is subject to sanctions in this matter.[2]

A. SANCTIONS UNDER RULE 11

1. *Legal Standard*

Rule 11 of the Federal Rules of Civil Procedure requires that every pleading, motion and other paper be signed by counsel of record. Fed. R. Civ. P. 11(a). By signing and presenting the pleading, motion and other paper to the court, the attorney is certifying that the paper "is not being presented for any improper purpose" and that "the claims defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(1), (2). "Rule 11 sanctions may be awarded in exceptional circumstances in order to 'discourage plaintiffs from bringing baseless actions or making frivolous motions.'" *Bensalem Twp. v. Int'l Surplus Lines Co.*, 38 F. 3d 1303, 1314 (3d Cir. 1994) (citing *Doering v. Union Cty. Bd. of Chosen Freeholders*, 857 F.2d 191, 194 (3d Cir. 1988)). Rule 11 sanctions are appropriate where lengthy litigation costs the impacted party "a significant amount of time, stress, funds, and resources." *Rouse v. II-VI Inc.*, 2013 U.S. Dist. LEXIS 138598, *10 (W.D.Pa. 2013).

Rule 11 imposes a "nondelegable duty" upon the person signing a pleading, written motion, or other paper filed with the court "to conduct his own independent analysis of the facts and law which forms the basis of a pleading or motion." *Garr v. U.S. Healthcare, Inc.*, 22 F.3d 1274, 1277 (3d Cir. 1994) (citations omitted). An inquiry is considered "reasonable" under the

[2] This Motion does not impact the Court's referral of this matter to mediation before Judge Schwab. *See Ferguson v. Valero Energy Corp.*, 454 Fed. Appx. 109, 113, 2011 U.S. App. LEXIS 24167, *7 (3d Cir. Pa. 2011) (holding that if an attorney and his firm "negotiated their own release from sanctions during the settlement talks with respect to their clients' suit, they could have been subject to disciplinary action under the conflict-of-interest provisions of the Pennsylvania Rules of Professional Conduct. *See* Pa. R. Prof'l Conduct 1.7.").

circumstances if it provides the person with "an objective knowledge or belief at the time of the filing of a challenged paper that the claim was well-grounded in law and fact." *Bensalem Twp.*, 38 F.3d at 1314 (citations omitted). "An argument constitutes a frivolous legal position for purposes of Rule 11 sanctions if, under an 'objective standard of reasonableness,' it is clear ... that there is no chance of success and no reasonable argument to extend, modify or reverse the law as it stands." *Caisse Nationale De Credit Agricole- CNCA, New York Branch v. Valcorp, Inc.*, 28 F. 3d 259, 263-64 (2d Cir. 1994) (citation omitted); *see also Napier v. Thirty or More Unidentified Fed. Agents, Employees or Officers*, 855 F.2d 1080, 1091 (3rd Cir. 1988); *Rouse*, 2013 U.S. Dist. LEXIS 138598 at *9 ("Litigation is not a platform to advance unsupported conclusions.").

The standard for Rule 11 sanctions focuses on the objective reasonableness of the party or attorney making the legal claims. *See, e.g., Fishoff v. Coty, Inc.*, 634 F.3d 647, 654 (2d Cir. 2011) (The legal position has "no chance of success."); *Burns v. George Basilikas Trust*, 599 F.3d 673, 677 (D.C. Cir. 2010) (A reasonable attorney in similar circumstances could not have believed his or her actions were legally justified.); *ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 579 F.3d 143, 150 (2d Cir. 2009) (The actions show objective unreasonableness.). "Claims that ignore contrary case law, offer no colorable argument or support, present incomprehensible arguments, or contain nothing of substance or merit, are frivolous." *Lewis v. Smith*, 2010 U.S. App. LEXIS 27606, *7-*8 (3d Cir. 2010) (citations omitted). A finding of bad faith is not required. *Cohen v. Kurtzman*, 45 F. Supp. 2d 423, 435-436 (D.NJ 1999).

Rule 11 prohibits an attorney from using the courts for a purpose unrelated to the resolution of a legitimate legal cause of action. *Rhodes v. MacDonald*, 670 F. Supp. 2d 1363 (M.D. Ga. 2009). It is not "a proper function of a federal court to serve as a forum for 'protests,' to the detriment of parties with serious disputes waiting to be heard." *Saltany v. Reagan*, 886

F.2d 438, 439-40, 281 U.S. App. D.C. 20 (D.C. Cir. 1989). In *Rhodes*, the court imposed sanctions against counsel as punishment for her misconduct, as a deterrent to prevent future misconduct, and to protect the integrity of the court based, in part, on a finding that the attorney had filed a legal action for which no reasonable expectation of obtaining relief existed in order "to provide the 'legal foundation' for her political agenda." *Rhodes*, 670 F. Supp. 2d at 1366.

Upon a court's determination "that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee." Fed. R. Civ. P. 11(b). A monetary sanction may not be imposed on a **party** for violation of Rule 11(b)(2) (viz., the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law), but such a sanction may be imposed on a party for any of the other grounds under Rule 11(b).

The Committee Notes to Rule 11 discuss criteria for determining when monetary sanctions, either payable to the court or the opposing party, should be awarded to deter frivolous filings. The criteria are as follows: (1) whether the improper conduct was willful, or negligent; (2) whether the improper conduct was part of a pattern of activity, or an isolated event; (3) whether the violation infected the entire pleading, or only one particular count or defense; (4) whether the violator has engaged in similar conduct in other litigation; (5) whether the improper conduct was intended to injure; (6) what effect the violation had on the litigation process in time or expense; (7) whether the violator is trained in the law; (8) what amount, given the financial resources of the violator, is needed to deter that person from repetition in the same case; and (9)

what amount is needed to deter similar activity by other litigants. Fed. R. Civ. P. 11, Notes of Advisory Committee on 1993 amendments.

Litigants are to be provided notice of the alleged violation and an opportunity to respond before sanctions are imposed. *Id.* In order to obtain Rule 11 relief, the movant must comply with the "safe harbor" provision of Rule 11(c)(2), i.e., the motion cannot be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. Fed. R. Civ. P. 11(c)(2). Whether the matter should be decided solely on the basis of written submissions or should be scheduled for oral argument depends on the circumstances. *Id.* "Whether a violation has occurred and what sanctions, if any, to impose for a violation are matters committed to the discretion of the trial court." *Id.*

2. Application of Rule 11

As set forth in PGE's initial Motion for Sanctions, PGE provided written notice to Grant Township and Attorney Linzey of the alleged Rule 11 violations on November 19, 2015, and PGE also served a copy of the Motion with the notice letter. A true and correct copy of the notice letter is attached hereto as Exhibit "D." Despite notice of the Rule 11 violations and a formal request that Grant Township and CELDF withdraw its Answer, Affirmative Defenses and Counterclaim (ECF No. 10) and Motion for Reconsideration (ECF No. 119), Grant Township, CELDF, Attorney Linzey and Attorney Dunne refused to do so. After PGE filed the motion for Rule 11 sanctions, by Order entered September 30, 2016, the Court dismissed the motion as premature and determined that the motion could be filed following the resolution of the pending cross motions for summary judgment. (ECF No. 224).

The record is replete with instances in which Grant Township and Attorney Linzey have admitted that the purpose of the defense of PGE's suit and the claims that they have pressed were for the purpose of furthering their political agenda against corporations and lawful commercial activity in the Commonwealth and in favor of changing the political landscape and desire to eliminate constitutional rights through improper means.

As this Court explained in the Memorandum Opinion of March 31, 2017 (ECF No. 241), "Grant Township's counterclaim alleges that by challenging the Community Bill of Rights Ordinance through the instant action, PGE is violating the rights of the people of Grant Township to local community self-government as secured by the American Declaration of Independence, the Pennsylvania Constitution, the federal constitutional framework, and the Community Bill of Rights Ordinance itself. ECF No. 10. Grant Township seeks to enforce this purported right to local community self-government through 42 U.S.C. § 1983." This Court determined that, "all of Grant Township's arguments in favor of state action are contrary to established law." *Pa. Gen. Energy Co., LLC v. Grant Twp.*, 2017 U.S. Dist. LEXIS 48716, *15 (W.D. Pa. Mar. 31, 2017).[3] Accordingly, this Court granted summary judgment in favor of PGE and against Grant Township, finding that Grant Township's § 1983 claim for a violation of its "rights to local self-government" failed as a matter of law. *Id.* at *15-16.

Likewise, this Court rejected Grant Township's claims in opposition to PGE's motion for summary judgment that "because this Court has already invalidated certain provisions of the Community Bill of Rights Ordinance, no relief on PGE's federal constitutional claims can be

[3] Of course, Counsel should have already been aware of this as CELDF and Attorney Linzey raised the same issues previously in federal court, to which the district court responded, "Perhaps in an effort to evade the settled law to the contrary, Plaintiffs offer their own tortured explanation as to why the Corporate Defendants should be deemed state actors." *Friends & Residents of St. Thomas Twp., Inc. v. St. Thomas Dev., Inc.,* 2005 U.S. Dist. LEXIS 47628, *32, 2005 WL 6133388 (M.D. Pa. Mar. 31, 2005), aff'd, 176 Fed. Appx. 219, 2006 U.S. App. LEXIS 8743 (3d Cir. Pa. 2006).

ordered, rendering them moot" and that PGE failed to establish a direct causal connection between the passage of the Ordinance and the violation of PGE's constitutional right, which is necessary for a successful claim of municipal liability. *Id.* at *16-24. This Court properly determined that merely because PGE had achieved some of the declaratory and injunctive relief sought on state grounds did not mean that PGE could not pursue the remainder of the relief sought under Section 1983. Further, this Court recognized that the connection between Grant Township's actions and the impact on PGE was far from tenuous. *Id.* at *24.

Substantively, this Court found in favor of PGE on multiple counts concerning the violation of PGE's constitutional rights. Notably, the Court pointed out a multitude of instances in which the evidence presented by Grant Township failed to support the claims, e.g.,

- Counsel for Grant Township relied on a Power Point presentation by Pennsylvania DEP's Oil and Gas Management division purporting to provide an overview of the U.S. E.P.A.'s UIC program, to which this Court responded, "Unclear, or vague assumptions from a Power Point presentation do not qualify as evidence. This defense, therefore, fails for lack of evidentiary support." *Id.* at *31.
- Counsel for Grant Township argued that "it is hard to fathom an instance where an individual, without being shielded from liability by the corporate form, would ever engage in such a dangerous activity," to which the Court responded, "Unlike its previous argument, Grant Township does not even attempt to provide support for this contention. The Township's uncorroborated supposition requires no further legal analysis because 'unsubstantiated arguments made in briefs are not considered evidence of asserted facts.'" *Id.*

- In response to Grant Township's argument that "the people of the Township have identified a 'multitude of reasons' for the adoption of the Ordinance, the Court found "no evidence of a rational relationship between the disparate treatment of corporations and the stated goals of the Ordinance." *Id.* at *31.
- As to the Petition Clause challenge and Grant Township's argument that PGE's initiation and prosecution of the instant action showed that the Ordinance did not prevent PGE from seeking redress from the courts, this Court found, "Grant Township's argument misses the mark. While the Ordinance did not actually prevent PGE from filing the instant action, the Ordinance attempted to do so. It is that attempt that runs afoul of the Constitution…By limiting access to courts only through approved 'community meetings,' the Community Bill of Rights Ordinance shuts the courthouse door to litigants, which it cannot constitutionally do."

Perhaps most telling, however, is this Court's analysis of the substantive due process challenge, wherein the Court found a clear violation of PGE's substantive due process rights and cited to both the text of the Ordinance itself and the statements of record made by Grant Township and Counsel, noting that "[t]hese record facts, among others, demonstrate irrational and arbitrary behavior, which acknowledges language contrary to existing law and takes the purpose outside of the original point of the Ordinance." *Id.* at *38. This Court rejected all of Grant Township's arguments in support of its Ordinance, finding that "a starting point of seeking a clean environment spun out of control into an Ordinance that does much more, including stripping corporations of their federal constitutional rights." *Id.*

Likewise, in this Court's Memorandum Opinion granting judgment on the pleadings with regard to PGE's state pre-emption claims, the Court addressed Grant Township's Motion for Judgment on the Pleadings, noting as its foundation the following:

> In its motion for judgment on the pleadings as to this counterclaim, Defendant summarizes its position:
>
> > The right of local community self government is a fundamental individual political right — exercised collectively — of people to govern the local communities in which they reside. 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 every person in the community; and third, the right to alter or abolish the system of local government if it infringes those component rights.
> >
> > The right of local community self government is inherent and inalienable. It derives necessarily 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. The right is secured by the Pennsylvania Constitution, the American Declaration of Independence, state constitutional bills of rights, and the United States Constitution. Because the right is inherent and inalienable, no government can define, diminish, or otherwise control it.
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> ECF No. 53, page 4 (italics in original).
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> According to Defendant, the alleged right of local community self-government includes the right of the people to change their system of government if it has been rendered incapable of protecting their civil and political rights. Defendant explains that after "... recognizing the existence of [certain] constraints on their own municipal government, the people of Grant Township decided to change their system of government" and the people "did so through the adoption of the Ordinance, which envisions a new system of local governance free of those constraints." ECF No. 59, pages 1-2. Defendant further describes:
>
> > The authority for the people of Grant Township to create that new system is rooted in their constitutional right to local community self government. Grounded in natural law, as well as the federal and state constitution, the right is most clearly described in the Pennsylvania Constitution when it recognizes that all political power 'is inherent in the people' who have an 'inalienable and indefeasible right to alter ...

> their government ... as they may think proper." Driscoll v. Corbett, 620 Pa. 494, 69 A.3d 197, 207-08 (Pa. 2013) (quoting PA. Const. Art. I, § 2). The people of Grant Township have exercised that power by creating a local bill of rights, by prohibiting activities that would violate that bill of rights, and by protecting their bill of rights from competing corporate legal doctrines.
> *Id.*

Pa. General Energy Co., LLC v. Grant Twp., 139 F. Supp. 3d 706, 713-714, 2015 U.S. Dist. LEXIS 139921, *10-11 (W.D. Pa. Oct. 14, 2015).

In rejecting this claim, this Court reasoned, "Defendant seeks judgment upholding its Ordinance based solely upon these historical events. Defendant provides no precedential statute or constitutional provision authorizing its action other than its assertion that Plaintiff has no rights — from contracting to do business in Grant Township to bringing a lawsuit to complain about an ordinance -- because it is not a person. This view is contrary to over one hundred years of Supreme Court precedent that establishes that corporations are considered 'persons' under the United States Constitution." *Id.* at 714. Citing to the decision in *Swepi, LP v. Mora County, New Mexico*, 81 F.Supp.3d 1075, 1171-72 (D.N.M. Jan. 19, 2015), this Court emphasized that a district court is bound by Supreme Court precedent and that Grant Township had presented no legal precedent to the contrary. *Id. See also Range Res. - Appalachia, LLC v. Blaine Twp.*, 649 F. Supp. 2d 412 (W.D. Pa. 2009).

In addressing PGE's claims, this Court found several sections of the Ordinance invalid and unenforceable because Grant Township exceeded its legislative authority under Pennsylvania's Second Class Township Code. Specifically, Grant Township had no authority to enact Sections 3(a) and (b) of the Ordinance because no state authority granted a municipal government or its people the authority to regulate the depositing of waste from oil and gas wells or to invalidate permits granted by the state or federal government. *Id.* at 718. Further, no

legislative authority existed for Grant Township to create a cause of action for its residents to enforce an ordinance written on their behalf, so Section 4(b) and (c) were found to be invalid. *Id.* at 719. Section 5(a) was found to irreconcilably conflict with the Limited Liability Companies Law. *Id.* at 720. Further, Section 5(a) was preempted as it impermissibly attempted to eliminate legal recourse to the court of common pleas, and Section 5(b) of the Ordinance was struck down as it purported to trump "laws adopted by the legislature of the state of Pennsylvania, and rules adopted by any State agency." *Id.* at *30. PGE was also entitled to judgment on the pleadings with regard to Count X of its Amended Complaint because Grant Township did not even oppose PGE's motion in this regard, apparently recognizing that the Ordinance is *de jure* exclusionary as it completely bans a legitimate use. *Id.* at 718.

In another frivolous pleading, Grant Township filed a Motion to Strike the Affidavit of James Ashbaugh, P.E., Vice President of Engineering at PGE. ECF No. 193. Again, this Court held that the Motion was baseless because the Affidavit addressed the argument raised by Grant Township in its opposition brief. (ECF No. 244).

Even if the law to the contrary of Grant Township's positions were not so clearly overwhelming, CELDF and Attorney Linzey cannot be excused on the grounds of being unaware of the law of incompetence because they have been directly involved in repeated lawsuits in which they have unsuccessfully raised the same issues that they have unsuccessfully raised here. *See Swepi, LP v. Mora County, New Mexico*, 81 F.Supp.3d 1075, 1171-72 (D.N.M. Jan. 19, 2015) (Oil company's motion for judgment on the pleadings was granted in part because by banning hydrocarbon exploration-and-extraction activities, the ordinance was antagonistic to state law as it prohibited activities that state law permitted); *Mothers Against Drilling in our Neighborhood v. State*, 2016-Ohio-817, 60 N.E.3d 727 (Ohio Ct. App., Cuyahoga County Mar.

3, 2016) (holding that community activist organization's complaint against governmental parties and energy companies was properly dismissed as city's "ban" under on new oil and gas drilling directly conflicted with the State's regulatory scheme, such that it was invalid and preempted); *Vermillion v. Mora County, New Mexico*, Case No. 1:13-cv-01095 (D.N.M.) (settled after *Swepi* decision); *Range Res. - Appalachia, LLC v. Blaine Twp.*, 2009 U.S. Dist. LEXIS 100932 (W.D. Pa. Oct. 29, 2009) (holding that ordinances "Eliminating Legal Powers and Privileges from Corporations Doing Business Within Blaine Township to Vindicate the Right to Democratic Self-Governance" and for "Corporate Disclosure and Environmental Protection" were preempted by state law, constituted an impermissible exercise of police power, and violated the Supremacy Clause); *Penn Ridge Coal, LLC v. Blaine Twp.*, 2009 U.S. Dist. LEXIS 84428 (W.D. Pa. 2009) (granting motion on the pleadings, holding that township ordinances were unconstitutional, preempted by state law, and/or constituted an impermissible exercise of the Township's legislative authority); *Friends & Residents of St. Thomas Twp., Inc. v. St. Thomas Dev., Inc.*, 2005 U.S. Dist. LEXIS 47628 (M.D. Pa. Mar. 31, 2005) (dismissing complaint against Commonwealth and private company that claimed violation of "the individual plaintiffs' right to self-government and popular sovereignty by asserting state-conferred corporate powers to deny those rights"); *Office of Atty. Gen. ex rel. Kelly v. Packer Twp.*, 49 A.3d 495, 499 (Pa. Commw. Ct. July 12, 2012) (in denying summary judgment to Township on self-governance claim in Attorney General's action challenging "Local Control, Sewage Sludge and Chemical Trespass Ordinance", noting that the court had rejected the Township's self-governance argument on multiple occasions; township repealed ordinance); *Colo. Oil & Gas Ass'n v. City of Longmont*, No. 2012-CV-960, 20th Judicial District Court of Colorado (striking down Charter Amendment banning drilling as preempted by Colorado Oil and Gas Conservation Act); *Colo. Oil & Gas*

Ass'n v. City of Lafayette, Boulder County District Court No. 13CV31746, *appeal denied*, 2015 Colo. App. LEXIS 828 (Colo. Ct. App. May 28, 2015) (Striking down Charter Amendment banning drilling as preempted by Colorado Oil and Gas Conservation Act); *East Boulder Co. United v. Colo. Oil & Gas Ass'n*, Colo. Court of Appeals No. 14CA2007 (dismissing appeal of city residents who were denied intervention in a suit seeking to overturn City's Community Bill of Rights that banned oil and gas extraction within the city).

In fact, Attorney Linzey narrowly escaped the imposition of sanctions in 2005:

> The Court finds the question of whether sanctions should be imposed in this case to be very close. Many of Plaintiffs' arguments are asserted without acknowledgment or sufficient apparent regard for established legal principles and holdings. Throughout much of their papers, Plaintiffs do not so much argue that the Court should establish a change in the law regarding the rights of corporations under the United States Constitution, but rather they argue that such rights simply do not exist, ignoring scores of decisions to the contrary. To be sure, Plaintiffs have pointed to numerous historical documents and secondary sources demonstrating a long-running argument among scholars on this legal issue. However, Plaintiffs pay insufficient attention to the fact that established constitutional law on this subject demonstrates conclusively that corporations do, in fact, enjoy such rights.
>
> Similarly, Plaintiffs' arguments as to why the Defendant Corporation should be deemed a state actor appears to ignore the established legal inquiry regarding state action. Instead of apparently engaging in such inquiry, Plaintiffs fashion an unsupported and illogical test to conclude that the Corporate Defendants should be considered state actors by virtue of their "wielding" state-conferred powers allegedly to violate the constitutional rights of natural persons. Such arguments appear to be made not so much to suggest, in good faith, that a change in the law is warranted, but to obfuscate or disregard the well-established law that is contrary to Plaintiffs' own interests.
>
> Finally, the Court finds that Plaintiffs' alleged injuries are hypothetical, indirect, and in largely ephemeral. Moreover, the alleged injuries of which the Plaintiffs complain can not legitimately be said to have been caused by any Defendant. As best as the Court can tell, this entire cause of action arose out of a single letter issued by a corporation to a local political body that had the effect of causing a Township official to recuse himself from considering certain matters. This caused Plaintiffs substantial angst regarding a perceived infringement on their right to self-government and

> other fundamental constitutional liberties. It is difficult to discern how Attorney Linzey could reasonably interpret his clients' allegations as amounting to bona fide constitutional injury actually caused by Defendants' actions, notwithstanding the genuinely passionate feelings his clients have regarding this matter.

St. Thomas Dev., 2005 U.S. Dist. LEXIS 47628 at *44-46. Nevertheless, the district court declined to impose sanctions against Attorney Linzey at that time. Despite the district court's clear admonishment of Attorney Linzey, however, Attorney Linzey has continued to engage in the same tactics in numerous court cases and in this litigation in particular.

Notably, Counsel used the same exact tactics in Highland Township, instigating a lawsuit before this very Court arising from a virtually identical Community Bill of Rights Ordinance. *See Seneca Resources Corp. v. Highland Twp.*, W.D. Pa. No. 15-60. As in this case, the oil and gas operator has been forced to address a frivolous defense and defend multiple groundless motions. *See Seneca Res. Corp. v. Highland Twp.,* 2016 U.S. Dist. LEXIS 41273 (W.D. Pa. Mar. 29, 2016) (denying Highland Township's motion to dismiss for lack of standing); *Seneca Res. Corp. v. Highland Twp.*, 2016 U.S. Dist. LEXIS 41274 (W.D. Pa., Mar. 29, 2016) (denying request for intervention by CELDF-backed citizens' group and ecosystem). By utilizing the court system to continue to present frivolous defenses and claims in lawsuits, the outcome of which is preordained by virtue of hundreds of years of settled precedent, Attorney Linzey is imposing financial strain on companies and judicial resources alike. *See* Affidavit of Lisa C. McManus, Esq., attached as Exhibit E.

Likewise, Grant Township, through its elected supervisors, has continued to pursue this suit after the Rule 11 notice was served. Following are selected quotes from among many statements by the supervisors as reflected on Exhibit B:

Stacey Long:

"Our community wrote a new constitution, with wide community support and input, to protect our rights and our environment."

"We had no leverage, we were sitting ducks. For the people of Grant Township, disillusionment morphed into open rebellion."

"If the judge says something we don't like, we are not going away."

Jon Perry:

"I was elected to protect the health and safety of my constituents. Passing laws that protect our community from the harmful effects of an industry that wants to dump toxic waste in our Township is my duty. We've received threats and lawsuits from this industry over the past few years, and their inability to control us, and their desperation to stop us, is leading to increasingly unhinged behavior and rhetoric. If they're ready for another round, then bring it on."

"There's a fair degree of 'f*#k you' in this area," says Perry. "We don't want people to come in and mess with us."

Fred Carlson, Grant Township Chairman, Board of Supervisors:

"The meeting is in regards to withdrawing the ordinance because our attorney is saying it's not constitutional," Carlson told The Associated Press. "But another group of attorneys wants to help us fight it in court." Indiana Gazette, 2014.

"Our ordinance is passed," Carlson declared. "You boys know where we're at. If there's a problem, go at it."

These statements demonstrate that the supervisors have jettisoned their duties under Pa. Const. art. VI, § 3 and have violated their oath to "support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth," instead choosing to set up their own local "constitution" and rejecting the laws of the United States and Commonwealth of Pennsylvania. The township has been instrumental in the pursuit of this litigation, as is reflected by the voluminous public statements made in that regard. *See* Exhibit B. In direct contrast to the Grant Township supervisors' actions, the Highland Township supervisors eventually entered a consent decree in the action in *Seneca Resources Corp. v. Highland Township*, *infra*, admitting

that the Community Bill of Rights Ordinance was invalid, unconstitutional, and unenforceable and refrained from further pursuing its defense or enforcement.

As further evidence of their callous disregard of the law, after this Court invalidated the Ordinance, Grant Township adopted a Home Rule Charter ("Charter") with virtually identical provisions. *See* Exhibit F. The Commonwealth of Pennsylvania Department of Environmental Protection ("DEP") filed suit against Grant Township and the Grant Township Supervisors in the Commonwealth Court of Pennsylvania at 126 MD 2017 for a declaration that state laws and regulations, in particular the Oil and Gas Act, Act of February 14, 2012, P.L. 87, No. 13, 58 Pa.C.S. §§ 3201-3309 ("Oil and Gas Act"), the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, as amended, 35 P.S. §§ 6018.101-Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. § 510-17 ("Solid Waste Management Act"), and the rules and regulations promulgated thereunder, preempt the Charter.

Represented by CELDF contract attorney Natalie A. Long, Grant Township and the Supervisors filed an Answer and Counterclaim on May 8, 2017, claiming that the DEP has violated its right of local, community self-government, the very "right" that this Court found had no foundation in the law. In Section D of their counterclaim, Grant Township purports to reject "Certain Unconstitutional Legal Doctrines," claiming as follows:

> 61. To vindicate the right of local, community self-government, the new municipal system of governance (established through the adoption of the Charter) does not recognize certain legal doctrines, including: certain constitutional "rights" illegitimately claimed and asserted by corporations seeking to engage in activities prohibited by the Charter; certain types of state and federal preemption that would interfere with the Charter's rights and prohibitions; and certain state authority that would otherwise constrict the exercise of the right of local, community self-government.
> 62. The Charter, and the people of Grant Township through their adoption of the Charter, recognized that these doctrines, and the application of these doctrines to the Charter, are incompatible with the people's right of local, community self-government.

See Exhibit G, Respondent's Answer to Petition for Review in the Nature of Complaint Seeking Declaratory and Injunctive Relief, New Matter, and Counterclaim, Para. 61.

The Counterclaim goes on to request a declaration that "the Charter is a valid law adopted pursuant to the people's right of local, community self-government," an injunction against DEP from violating the Charter, and an award of nominal, compensatory and/or consequential damages, costs, and attorneys' fees pursuant to 42 U.S.C. Sections 1983 and 1988. As explained by Supervisor Stacey Long in a CELDF press release,

> "Our community wrote a new constitution, with wide community support and input, to protect our rights and our environment," township Supervisor Stacy Long said in the CELDF news release. "And now we've been sued, not only by a corporation that wants to profit by dumping toxic waste in our community, but also by our own state 'environmental protection' agency. Our fight continues, but we also hope that the latest shameful actions by the DEP inspire others to stand with us, and stand up in their own communities, against unchecked corporate and state power."

Nicholson, Chad (2017, Mar 29). *PR: The Corporate State of Pennsylvania; DEP Issues Permits to Polluting Corporations; Simultaneously Sues Communities to Overturn Bans on Frack Wastewater Dumping,* Retrieved from https://celdf.org/2017/03/pr-corporate-state-pennsylvania/. *See* attached Exhibit B. Thus, CELDF and Grant Township are ignoring this Court's findings with regard to the validity and constitutionality of virtually identical language and clearly intend to continue the disturbing pattern until a court takes them to task for their misconduct.

Rule 11 sanctions are warranted given the lack of any precedent supporting Grant Township's claims, the frivolous nature of Grant Township's arguments for modification of well-settled law, the improper purpose for which the claims were filed, and the continued defiance of the rulings of court after court. Attorney Linzey and Attorney Dunne prepared and

signed the pleadings in this case and knew or should have known that Grant Township's legal claims and defenses would not succeed and were well beyond reasonable arguments to modify existing law. Counsel has a duty to analyze the legal legitimacy of the claims, yet CELDF and Attorney Linzey have not only conceded in numerous forums that Grant Township's claims and arguments are ***not*** warranted under existing law, they have been directly involved in lawsuits in which the claims raised in this action have been rejected by numerous courts. Grant Township and Counsel precipitated the action and then defended it and filed counterclaims and multiple documents to further their political agenda and desire to eliminate constitutional rights through improper means.

In addition to the statements set forth above and in Exhibit B, in the pleadings filed in this matter, Grant Township and Counsel have admitted the following:

a. In Grant Township's Brief in Support of its Motion for Judgment on the Pleadings ("Brief in Support"), Grant Township asserted that it "understands that arguments in later sections of the brief raise issues related to what may be considered 'well-settled' law." (ECF. 53, p. 8, n. 2.) Grant Township alerted this Court that it sought relief that is contrary to the law and asked this Court to render a decision against well-settled legal precedent.

b. With respect to the long-standing limits on local governments, Grant Township made the following startling admission: "Community lawmaking as the legitimate exercise of self government by people where they live has generated mostly critical, occasionally derisive treatment form legislators, jurists, and commentators since the time of the founding. Consistent with this attitude, American jurisprudence has developed legal doctrines to infringe the right of local, community self-government,

both by denying it outright, and by severely restricting local governmental power allowed for communities by state law. Such doctrines include corporate constitutional 'rights,' Dillon's Rule, and preemption." (ECF No. 53, p. 30.)

c. Grant Township has further admitted that for "the past 150 years, the judiciary has 'found' corporations within the U.S. Constitution and bestowed constitutional rights upon them." (ECF No. 53, p. 33.)

d. With respect to Dillon's Rule, Grant Township admitted that "Pennsylvania jurisprudence has long applied Dillon's Rule to subordinate municipal corporations to the state, and continues to do so today." (ECF No. 53, p. 39.)

e. Lastly, Grant Township admitted that it is trying to change the landscape of federal constitutional law and Pennsylvania state law: "By enacting the Community Bill of Rights Ordinance, the people of Grant Township decided that the existing municipal system of law – constrained by precisely the same legal doctrines asserted against the Township by PGE in this action – was failing to provide the most basic constitutional guarantees of American governments." (ECF No. 53, pp. 44-45.)

Thus, Grant Township and Counsel recognize and admit in the documents filed in this case that their arguments are contrary to current law and that to succeed, they must modify the form of government in the United States and reverse decades-long precedent. Moreover, as set forth in Exhibit B, CELDF, Attorney Linzey and Grant Township have conceded publicly on multiple occasions that Grant Township's claims are against existing precedent and that Grant Township is essentially seeking to alter our country's structure of government.

Counsel's position on the legal claims and defenses in this action is clear: Grant Township and Counsel want to make laws, knowing that what they seek to do has no legal

support and has been regularly rejected. It is equally clear, based on their own admissions, that Grant Township and Counsel do not intend to stop their repeated effort to ignore existing and well-founded law. As Judge Schwab admonished in the *Rouse* case, litigation is not a platform to advance unsupported conclusions. This is the very kind of behavior that Rule 11 was designed to address.

This Court's Memorandum Opinion dated March 31, 2017 (ECF No. 241) underscores the frivolous nature of the claims of Grant Township in this action. The filings in this case violate Rule 11 because they are not warranted by existing law or a nonfrivolous attempt to modify the law. The filings are frivolous, and they are filed for an improper purpose. Grant Township, CELDF, Attorney Linzey, and Attorney Dunne are trying to amend the United States Constitution and completely overhaul the structure of government in this country to allow governance at the local level to be the supreme law of the land.

This Court has the opportunity to use Rule 11 the way it was intended: to deter future inappropriate conduct. Sanctions for a violation of Rule 11 are primarily imposed to deter similar violations by the offender or others similarly situated. *See DiPaolo v. Moran*, 407 F.3d 140 (3d Cir. 2005). Because Grant Township, CELDF, Attorney Linzey, and Attorney Dunne do not intend to cease the presentation of legal theories that have no legal support, even in light of this Court's rulings and well-established precedent, sanctions are appropriate here to deter similar, repeated violations. Even in the face of clear admonishment by the courts for his actions over a decade ago, Attorney Linzey continues to pursue frivolous litigation to the detriment of corporate citizens and their employees. The manifestos published by Attorney Linzey, Attorney Dunne, and CELDF establish that they intend to continue to urge communities to file or defend lawsuits such as the one *sub judice*, despite the clearly frivolous nature of the same. *See*, for

example, the following books available on Amazon.com: Anneke Campbell & Thomas Linzey, *We the People: Stories from the Community Rights Movement in the United States* (2016); Thomas Linzey, Elizabeth Dunne & Daniel E. Brannen, Jr., *The People's Right to Local Community Self-Government: Grant Township v. Pennsylvania General Energy Company* (2016); Anneke Campbell & Thomas Linzey, *Be The Change: How to Get What You Want in Your Community* (2009).

As a direct result of the filings in this action, PGE has paid Babst Calland legal fees and costs directly related to the filings in this litigation of at least $561,208.28. *See* Exhibit E, Affidavit of Lisa C. McManus, Esq. Of that amount, $121,275.34 has been incurred and paid by PGE since since Attorney Dunne entered her appearance in the case, March 4, 2016, after deducting fees for services related to the intervention by the Hellbenders and the Watershed. *Id.* This, of course, does not include the countless hours spent by PGE in-house legal counsel and PGE employees. *Id.* As noted above, Grant Township has threatened to file for bankruptcy if an award of attorneys' fees is awarded against it, and Attorney Linzey and CELDF have openly encouraged this path. The attitude expressed by Grant Township, Attorney Linzey, and CELDF has been one of callous disregard to the cost of this litigation to PGE. It appears that they believe that they are insulated from any consequences with regard to their using the court system as a tool to further their political agenda and desire to eliminate the well-established constitutional rights of corporate citizens.

When this Court analyzes the actions of CELDF and Attorneys Linzey and Dunne against the criteria set forth in the Committee Notes to Rule 11 for determining when monetary sanctions should be awarded to deter frivolous filings, it is apparent that (1) the improper conduct was willful; (2) the improper conduct was part of a pattern of activity; (3) the violation infected the

entire action; (4) the violator has engaged in similar conduct in other litigation; (5) the improper conduct was intended to injure; (6) the violation had a material and deleterious impact on the litigation process in time and expense; (7) the violator is trained in the law; (8) given the financial resources of the violators as well-funded environmentalists who travel the globe inciting communities to establish ordinances and file lawsuits like the one at issue here, a significant sanction is needed to deter them from repetition; and (9) a significant amount is needed to deter similar activity by these and other litigants. Similarly, Grant Township is fully aware that its defense and prosecution of a counterclaim in this action violate the strictures of Rule 11 against presentation for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. In addition, if this Court grants the relief sought by PGE in the Renewed and Supplemental Motion, other municipalities or governmental units will be forewarned regarding CELDF's efforts to undermine the constitution and the risks attendant with such misconduct.

B. SANCTIONS UNDER 28 U.S.C. § 1927

1. Legal Standard

Sanctions against Counsel are also justified under 28 U.S.C. § 1927. Pursuant to Section 1927, "[a]ny attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. The primary purpose of 28 U.S.C. § 1927 is to deter intentional and unnecessary delay. See *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 278 F.3d 175, 188 (3d Cir. 2002) (citing *Zuk*, 103 F. 3d at 297). For a court to award fees and costs pursuant to 28.U.S.C. § 1927, the court must examine "whether counsel: "(1) multiplied proceedings; (2) in an unreasonable and

vexatious manner; (3) thereby increasing the cost of the proceedings; and (4) doing so in bad faith or by intentional misconduct." *Id*. (quoting *Williams v. Giant Eagle Markets, Inc.*, 883 F.2d 1184, 1191 (3d Cir. 1989)).

Bad faith is evident when "claims advanced were meritless, that counsel knew or should have known this, and that the motive for filing the suit was for an improper purpose such as harassment." *In re Prudential*, 278 F. 3d at 188.

> The intentional advancement of a baseless contention that is made for an ulterior purpose, i.e., harassment or delay, may support a finding of bad faith. Ford v. Temple Hosp., 790 F.2d 342, 347 (3d Cir. 1986) (citations omitted). Further, "when a claim is advocated despite the fact that it is patently frivolous or where a litigant continues to pursue a claim in the face of an irrebuttable defense, bad faith can be implied." *Loftus v. SEPTA*, 8 F. Supp. 2d 458, 461 (E.D.Pa. 1998)(citations omitted). "A district court may award fees and costs for the entire course of proceedings when it appears that the entire action was unwarranted." *Woods v. Adams Run Assocs., et al.*, 1997 U.S. Dist. LEXIS 6865, No.Civ.A. 96-6111, 1997 WL 256966, at *4 (E.D.Pa. May 13, 1997)(citing *Browning v. Kramer*, 931 F.2d 340, 345 (5th Cir. 1991)).

Trauma Serv. Group, P.C. v. Hunter, MacLean, Exley & Dunn, P.C., 2000 U.S. Dist. LEXIS 8073, *7-8 (E.D. Pa. June 12, 2000). In upholding an award of sanctions in the form of attorneys' fees, the court in *Lewis v. Smith*, 480 Fed. Appx. 696 (3d Cir. Pa. 2012), found numerous facts to support the district court's finding of bad faith, including that a motion to dismiss put the attorney on notice that his case was potentially meritless; findings by the court and the award of attorneys' fees indicated that the case was objectively meritless; and the attorney's prior sanctionable conduct suggested a pattern of vexatious litigation. *Id*. at 699. See also *Ford v. Temple Hosp.*, 790 F.2d 342, 346, 350 (3d Cir. 1986) (Finding that a lawyer who willfully "continued to prosecute a frivolous and meritless action even after being informed on at least three occasions by the defendants that the claim was colorless" had acted in bad faith.).

Section 1927 "is designed to discipline counsel only and does not authorize imposition of sanctions on the attorney's client." *Zuk v. Eastern Pa. Psychiatric Inst. of the Med. College of Pennsylvania*, 103 F.3d 294, 297 (3d Cir. 1996). Moreover, Section 1927 imposes liability directly upon counsel and not counsel's law firm. *Jones v. Pittsburgh Nat'l. Corp.*, 899 F.2d 1350, 1359 n.4 (3d Cir. 1990). Parties and attorneys are entitled to notice and the opportunity to be heard before sanctions are imposed. *Prudential*, 278 F.3d at 191 (citing *Martin*, 63 F.3d at 1262).

2. Application of 28 U.S.C. § 1927

This Court has repeatedly recognized the frivolous arguments of Grant Township and Counsel. In its Memorandum Opinion dated October 14, 2015 (ECF No. 113) denying Grant Township's Motion to Dismiss for lack of standing (ECF No. 80), the Court stated as follows with regard to "Defendant's Argument":

> Defendant now moves to dismiss this entire action for lack of constitutional standing based upon PGE's failure to obtain a DEP permit. ECF No. 80. The only evidence presented by Defendant in support of its motion to dismiss is the DEP's March 12, 2015 letter to PGE revoking the modification permit…. Rather than engage in the proper inquiry, Defendant attempts to re-write Plaintiff s pleading by shifting the focus of the inquiry…. Perhaps this shift of focus is because the actual constitutional, statutory, and preemption claims made in the Amended Complaint are difficult to defeat on standing grounds…. Beyond attempting to re-characterize Plaintiffs Amended Complaint, Defendant also does not engage in the required legal standing analysis for each of Plaintiffs claims. Instead, Defendant's motion to dismiss takes a one-size-fits-all approach to standing in this case…. The Court notes that Defendant's attempt to circumvent the laborious legal work required to defeat standing on all thirteen causes of action has been rejected specifically by the Supreme Court of the United States: "standing is not dispensed in gross."

Pa. General Energy Co., LLC v. Grant Twp., 2015 U.S. Dist. LEXIS 139904, *22-27, 2015 WL 6001550 (W.D. Pa. Oct. 14, 2015). Not only had Grant Township filed the Motion to Dismiss at ECF No. 80 on this basis, it also filed an entirely separate motion seeking a stay of the litigation

on the same grounds. See ECF No. 82, Motion for Stay Pending Permit Issuance. The Township also renewed the motion to dismiss. (ECF No. 99).

The docket in this action, which is nearing 30 pages at the conclusion of the summary judgment stage, is rife with additional examples of frivolous, baseless pleadings. See, e.g., ECF No. 83 Motion for Reconsideration of Special Master Decision (requesting Court to "visit the Township to meet with the parties that would be affected by the injection well, and explore the impact that the proposed injection well would have on the people of Grant Township, their community, and the watershed."), denied at ECF 84; ECF No. 119 Motion for Reconsideration of October 14, 2015 Memorandum Opinion, denied at ECF No. 172 ("Grant Township's motion for reconsideration is nothing more than an attempt to relitigate its motion for judgment on the pleadings, and accordingly, the motion will be denied.").

As if filing a multitude of baseless claims and motions were not bad enough, Attorney Schromen-Wawrin exacerbated the situation by filing a Motion to Intervene on behalf of Hellbenders and Ecosystem (ECF No. 37), thereby unreasonably multiplying the proceedings and the cost thereof and causing additional significant delay. As explained by this Court in the Memorandum Opinion of October 15, 2015 (ECF No. 115), Hellbenders is an advocacy group formed in response to PGE's proposed well and was a primary advocate of the Ordinance, while the "Little Mahoning Watershed 'is an ecosystem that encompasses certain aquatic and terrestrial ecosystems associated with Little Mahoning Creek,' including the tributaries East Run Creek and Mill Run Creek, and the ground water systems below Grant Township." *Pa. Gen. Energy Co., LLC v. Grant Twp.,* 2015 U.S. Dist. LEXIS 139919, *3 (W.D. Pa. Oct. 14, 2015), aff'd, 658 Fed. Appx. 37 (3d Cir. July 27, 2016).

In upholding this Court's denial of the Petition to Intervene, the Third Circuit Court of Appeals determined that Hellbenders and the Ecosystem failed to demonstrate that the Township did not adequately represent their interests, emphasizing that,

> Appellants' interests were closely aligned --if not identical to-- those of the Township. As we indicated previously, the Appellants have not alleged, much less shown, that the Township has colluded with PGE or acted with disinterest or inattention in defending PGE's lawsuit. Nor do the Appellants claim the Township has been less than conscientious in the prosecution of a counterclaim against the company.
>
> Fatal to the Appellants' request for intervention is the substantial overlap between their interests and those of the Township. This overlapping of interests begins with the parties' legal representation. The proposed intervenors have the same legal counsel, from the same environmental organization, as does the Township…. Next, there is significant overlap between the Township's pleadings and those presumptively filed by the Appellants. Indeed, the Township's answer, App. at 51-58, is practically identical to the proposed answer filed by the [sic].

Id., 658 Fed. Appx. at 41. The Third Circuit notes with disapproval Hellbenders and the Ecosystem attempted "to establish their different interests with conclusory, nonspecific claims of dissimilarity and divergence" and otherwise presented only speculative evidence. *Id.* at 42. Likewise, the Third Circuit rejected the claim that the Ordinance provided Hellbenders and the Ecosystem with the right to intervention because no law supported a local ordinance's conferral of a right to intervene. *Id.* at 43.

Notably, the Third Circuit expressed in a footnote its hesitation in even referring to the Ecosystem as a legitimate party to the appeal because pursuant to Fed. R. Civ. P. 17(b),

> in order to be a party to a lawsuit, the purported litigant must have the capacity to sue or be sued. On this point, the rule speaks only in terms of individuals, corporations and others permitted by state law to sue or be sued. See Fed. R. Civ. P. 17(b). The plain language of Rule 17 does not permit an ecosystem such as the Little Mahoning Watershed to sue anyone or be sued by anyone, and for that reason alone we have misgivings with the Watershed being listed as a party in this litigation. But, because this

> particular issue was not pursued on appeal, and given the nonprecedential nature of this opinion, we make no specific holding on the question.

Id. at 38, fn. 2. Regardless of whether the Court of Appeals made a specific holding, its opinion in this regard was clear: no foundation exists for making an "ecosystem" a party to litigation.

Given the lack of legal merit and the nonexistent likelihood of success on its claims as found not only by this Court but also by the Third Circuit Court of Appeals, the pursuit of legal claims and defenses by Attorney Schromen-Wawrin is clearly unreasonable and vexatious, multiplied the proceedings, increased the cost of the proceedings, and was done in bad faith with the improper purpose of harassing PGE in order to make a statement and gain publicity in support of his and CELDF's mission.

As CELDF, Grant Township, and Hellbenders all worked in lockstep with regard to the passage of the Ordinance, Attorney Schromen-Wawrin clearly was aware that no grounds for the intervention of the Hellbenders existed. Moreover, no authority other than the Ordinance was cited for the intervention of the Ecosystem (See ECF No. 38), which as a system of rivers, streams, and animals can have no standing under the law to appear in a lawsuit.

The filing of the Motion to Intervene on November 18, 2014, resulted in a multitude of additional documents being filed. See ECF Nos. 37, 38, 45, 54, 96, and orders of court. Further, Hellbenders (and the Ecosystem presumably through a representative) sought to be included in all proceedings even before the grant of intervention, and the Court's attention was required for this matter. Moreover, despite this Court's clearly unequivocal and well-supported denial of intervention, Attorney Schromen-Wawrin appealed the decision to the Third Circuit (ECF No. 139) and filed a Motion for Stay Pending Resolution of Appeal of Denial of Intervention (ECF

No. 2017), which resulted in this Court's staying and administratively closing the case, and caused the cancellation of the jury trial scheduled for August 8, 2016. (ECF No. 217)..

In this case, clear objective evidence of bad faith exists in the matters set forth in the analysis of Rule 11 sanctions and in this section. The requisite bad faith and vexatious conduct appears in "the totality of the campaign … waged during the course of this litigation, not upon any single maneuver." *In re Prudential Ins. Co. Am. Sales Practice Litig. Actions,* 278 F.3d 175, 189 (3d Cir. N.J. 2002). The actions of Counsel throughout this litigation were meant to multiply the proceedings in an unreasonable and vexatious manner, thereby increasing the cost of the proceedings, and were done in bad faith or by intentional misconduct.

C. SANCTIONS UNDER THE INHERENT POWER OF THE COURT

1. *Legal Standard*

Federal courts possess the inherent power to "assess attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991) (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 258-59 (1975)) (internal quotation marks omitted). See also *Trauma Serv. Group, P.C. v. Hunter, MacLean, Exley & Dunn, P.C.*, 2000 U.S. Dist. LEXIS 8073, *10 (E.D. Pa. June 12, 2000) (citing *United States v. Int'l. Bhd. of Teamsters*, 948 F.2d 1338, 1345 (2d Cir. 1991)). This power extends to the imposition of discipline on attorneys. See *Prudential*, 278 F.3d at 189.

The existence of a sanctioning scheme in statutes and rules does not replace the court's inherent power to impose sanctions for bad faith conduct. Whereas rules-based sanctions "reach only certain individuals or conduct, the inherent power extends to a full range of litigation abuses" and, "at the very least . . . must continue to exist to fill in the interstices." *Chambers,* 501 U.S. at 46; *Prudential*, 278 F.3d at 189. "Even though inherent-authority sanctions are generally

disfavored where another provision—such as § 1927—authorizes sanctions, our decision in *Prudential* allows a district court to depart from this preference when the conduct is egregious or where the statutory provision is not adequate to sanction the conduct." *Ferguson v. Valero Energy Corp.*, 454 Fed. Appx. 109, 114 (3d Cir. Pa. 2011).

"A court must . . . exercise caution in invoking its inherent power, and it must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *Chambers*, 501 U.S. at 50; accord *Prudential*, 278 F.3d at 189, 191. Thus, "a finding of bad faith is 'usually' required" before inherent-power sanctions are ordered, and generally a court should not resort to such sanctions unless "'the conduct of a party or an attorney is egregious and no other basis for sanctions exists.'" *Prudential*, 278 F.3d at 181 & n.4, 189 (quoting *Martin*, 63 F.3d at 1265). In ruling on a motion for sanctions under its inherent power, the court must identify and determine the legal basis for each sanction charge sought to be imposed, and whether its resolution requires further proceedings, including the need for an evidentiary hearing. *Ferguson*, 454 Fed. Appx. at 114.

2. *Application of Sanctions Pursuant to the Inherent Power of the Court*

As set forth above, PGE has set forth ample evidence of the basis for sanctions. Each and every ground set forth under Rule 11 and Section 1927 applies under the inherent power of the court, and PGE sets forth the request for sanctions under the court's inherent power to address the actions taken by all Counsel throughout the entire litigation from its inception, not merely after the Rule 11 notice was served on Attorney Linzey and Attorney Dunne, and without the limitations imposed by Section 1927.

IV. CONCLUSION AND RELIEF REQUESTED

PGE seeks sanctions in this case because Grant Township and Counsel have utilized the court to further its political agenda and seek to eliminate corporate constitutional rights, all to the material detriment of PGE and its employees. While Grant Township and Counsel may want a different form of government, their method of obtaining it is unlawful and an abuse of the judicial system. As succinctly expressed by Attorney Linzey, Counsel's "goal is not to write local laws that are popular, or stand up in court, but rather to trigger a public debate about community rights to local self-government - even if it means a community ultimately falls into financial ruin. 'If enough of these cases get in front of a judge, there is a chance we could start to have an impact within the judiciary,' said Attorney Linzey. 'And if a town goes bankrupt trying to defend one of our ordinances, well, perhaps that's exactly what is needed to trigger a national movement." Valdmanis, Richard (2015, June 29). Green group's unconventional fight against fracking, Retrieved from http://www.reuters.com/article/2015/06/29/us-usa-fracking-lawsuits-insight-idUSKCN0P90E320150629.

While trying to establish a right to local self-government, Counsel views corporations not even as collateral damage, but as an enemy that must be penalized by the stripping of all of its rights. Grant Township and Counsel have lost sight of the fact that the reason that corporations are recognized as "people" under the Constitution is that corporations are *made* of people, people who are impacted by frivolous lawsuits prosecuted to further an environmentalist agenda.

Since the United States Supreme Court decided *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819), the law of the land has been that corporations have the same rights as natural persons. Although Grant Township and Counsel may object to that law, they are not entitled to utilize and abuse the judicial system to harass and intimidate corporate citizen after corporate

citizen in the hope of triggering a national movement. Nor should Counsel's strategy of insuring the insulation of their clients through bankruptcy protection after imposing enormous economic burdens on corporations through litigation be condoned. Only the imposition of sanctions significant enough to deter future conduct of this nature will prevent Counsel from continuing to abuse the judicial system to publicize its anti-government, anti-corporate rights manifesto.

Accordingly, PGE respectfully requests that:

a. Sanctions be imposed against Grant Township, CELDF, Attorney Linzey, and Attorney Dunne pursuant to Fed. R. Civ. P. 11(b)(1) on the ground that they have abused the federal court system by filing pleadings and motions to pursue political objectives and have filed frivolous, unfounded, harassing pleadings and motions in pursuit of their illegitimate ends, thereby increasing litigation costs, abusing process, and wasting judicial resources.

b. Sanctions be imposed against CELDF, Attorney Linzey, and Attorney Dunne pursuant to Fed. R. Civ. P. 11(b)(2) on the ground that they have filed frivolous pleadings and motions that are against well-established law and are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law and have refused to withdraw their filings and arguments despite receiving notice of PGE's intention to file for sanctions pursuant to Rule 11.

c. Sanctions be imposed against Attorneys Linzey, Schromen-Wawrin, and Dunne pursuant to 28 U.S.C. § 1927 on the ground that they have multiplied the proceedings in this case unreasonably and vexatiously thereby increasing the cost of the proceedings and did so in bad faith or by intentional misconduct.

d. Sanctions be imposed against Grant Township and Attorneys Linzey, Schromen-Wawrin, and Dunne under the Court's inherent power to do so on the grounds that they (a) defended this action and filed a counterclaim to the action for an improper purpose and for the purpose of harassing and intimidating PGE, thereby increasing its litigation costs, (b) filed multiple frivolous claims and documents, and/or (c) multiplied the proceedings for an improper purpose and for the purpose of harassing and intimidating PGE, thereby increasing its litigation costs.

e. An award of monetary sanctions and attorneys' fees award be imposed as follows:

    a. Against Grant Township, Attorney Linzey, Attorney Dunne, and CELDF jointly in the amount of $121,275.34;

    b. Against Grant Township, Attorney Linzey, and CELDF jointly in the amount of $397,006.24; and

    c. Against Attorney Schromen-Wawrin in the amount of $42,926.70.

f. That the Court further impose a non-monetary sanction against Attorney Schromen-Wawrin, Attorney Linzey, and Attorney Dunne, requiring that each attach a copy of this order entering sanctions against them, along with a certification that they have paid monetary sanctions ordered herein, to all future motions for pro hac vice admission in any United States District Court.

g. That the Court award any additional sanction it deems appropriate as a result of the conduct set forth herein.

Respectfully submitted,

Dated: June 2, 2017

By: /s/ *James V. Corbelli*

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed a true and correct copy of the foregoing and Memorandum of Law in Support Plaintiff's Renewed and Supplemental Motion for Sanctions this 2nd day of June, 2017, using the Court's CM/ECF system, which will automatically serve a copy upon all counsel of record.

By: */s/ James V. Corbelli*