

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

-----  
NATURAL RESOURCES DEFENSE COUNCIL :  
and CATSKILL CITIZENS FOR SAFE ENERGY, :  
 :  
 : Civ. No. \_\_\_\_\_  
 :  
 : Plaintiffs, :  
 :  
 : -v- :  
 :  
 : TOWN OF SANFORD, NEW YORK, :  
 :  
 : Defendant. :  
-----

**NATURE OF THE ACTION AND RELIEF SOUGHT**

1. The potential for expanded natural gas development using high-volume hydraulic fracturing (high-volume fracking) is one of the most high-profile and heavily-contested issues in New York State, and opinions on both sides of the controversy are strong. A lively debate is taking place in Albany and in communities across the shale-rich Southern Tier of New York. Not so for the residents of the Town of Sanford, however, who have been silenced by their Town Board from speaking about natural gas development at Town Board meetings.

2. Plaintiffs Natural Resources Defense Council (NRDC) and Catskill Citizens for Safe Energy (CCSE) seek declaratory and injunctive relief against defendant Town of Sanford for violating NRDC's and CCSE's members' state and federal constitutional free speech rights. On September 11, 2012, defendant adopted a resolution forbidding discussion of natural gas development during the public participation portion of defendant's Town Board meetings. This resolution

unlawfully bars plaintiffs' members from speaking at Town Board meetings about a matter of substantial public interest that has generated significant political activity. Plaintiffs seek (A) a declaration that defendant's speech ban violates plaintiffs' members' constitutional rights and (B) an order enjoining defendant from enforcing the ban.

#### PARTIES

3. Plaintiff NRDC is a not-for-profit corporation organized under the laws of the State of New York. NRDC's purpose is to protect the environment and human health, and NRDC promotes local democratic decisionmaking on issues of natural resource development, especially natural gas extraction.

4. Plaintiff CCSE is a not-for-profit corporation organized under the laws of the State of New York. CCSE's purpose is to educate affected residents about the dangers of high-volume fracking. As part of that mission, CCSE supports open and democratic local decisionmaking on natural gas extraction.

5. NRDC and CCSE bring this complaint on behalf of their members. Plaintiffs' members include residents of Sanford who are concerned about future natural gas development in their town. These members include individuals who have spoken about natural gas development at Town Board meetings before and who would do so again but for defendant's restriction on their speech.

6. Defendant Town of Sanford is a municipal corporation organized under the laws of the State of New York.

## JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

This action arises under the United States Constitution, the Constitution of the State of New York, and 42 U.S.C. § 1983.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all of the events giving rise to the claim occurred in this district.

## FACTUAL BACKGROUND

9. Natural gas development, particularly the use of high-volume fracking for the extraction of natural gas, is a high-profile political issue in the State of New York. Large parts of western and southern New York are within the Marcellus Shale formation. The Marcellus Shale is a sedimentary rock formation containing large reserves of natural gas. Exploitation of that natural gas has only recently become possible because of high-volume fracking.

10. New York State imposed a *de facto* moratorium on high-volume fracking in 2008 when the New York State Department of Environmental Conservation (DEC) began an environmental review to determine the potential significant adverse impacts of high-volume fracking and whether they can be effectively mitigated. As part of that process, DEC is preparing a Supplemental Generic Environmental Impact Statement (SGEIS) and is also conducting a review of potential health impacts. Based on those ongoing reviews, DEC has solicited public comment on proposed draft regulations to allow for new high-volume fracking in New York.

11. Last summer, the *New York Times* reported that the Cuomo Administration was evaluating a high-volume fracking program for New York under which “drilling would be permitted only in towns that agree to it.”

12. During the pendency of this statewide review, municipalities that stand to be directly affected by high-volume fracking have taken positions on both sides of the debate. Some municipalities have expressed support for high-volume fracking. Others have moved to protect themselves from the environmental and human health dangers of high-volume fracking by exercising their land use powers to limit or forbid heavy industrial uses, including natural gas development inside their borders.

13. Citizens across the State are actively participating in the public debate on high-volume fracking, especially at the local level. A significant number of concerned citizens groups have been formed to address this issue, including CCSE.

### **The Town of Sanford’s Support for Natural Gas Development**

14. Since 2008, the Town of Sanford has demonstrated support for natural gas development generally and high-volume fracking specifically. The Town has regularly contracted with and supported the natural gas industry, and has encouraged high-volume fracking both within Sanford and statewide.

15. On or about June 2008, the Town of Sanford leased land to XTO Energy, Inc., for the purpose of natural gas extraction within the Town.

16. On November 10, 2009, the Town licensed XTO Energy, Inc., to use a Town road to withdraw water for use in natural gas extraction.

17. The Town Board also passed a resolution calling on the State Legislature to “stand aside regarding the issue of drilling in the Marcellus Shale and allow DEC to complete the SGEIS and issue permits for horizontal drilling.” The Town further resolved that then-Governor Paterson should veto any proposed statewide moratorium or ban on drilling in New York State.

18. On August 9, 2011, the Town Board passed a resolution supporting the application of Bluestone Gas Corporation of New York, Inc., to the New York Public Service Commission for approval to construct a natural gas pipeline within the Town.

19. On May 8, 2012, the Town Board again passed a resolution urging the State to adopt rules for natural gas development. The Board also resolved that, in its view, pursuit of a Town ban or moratorium on high-volume fracking would be irresponsible and premature.

20. On September 5, 2012, Town of Sanford Supervisor Dewey Decker, acting in his official capacity, signed a letter to Governor Cuomo urging the Governor to move forward as soon as possible with high-volume fracking. The letter alleged that delay was “only empowering opponents” of high-volume fracking.

### **The Town of Sanford’s Speech Ban at Town Board Meetings**

21. Defendant Town of Sanford holds Town Board meetings on a monthly basis. Consistent with New York’s Open Meetings Law, when the Town Board is not in executive session these Town Board meetings are open to the public.

22. A portion of these Town Board meetings is open to public comment and participation (the “public participation portion”).

23. Members of NRDC and CCSE who are residents of Sanford, and who are concerned about natural gas development in their community, regularly attend Town Board meetings and speak during the public participation portion.

24. On August 14, 2012, the Town Board resolved to limit public discussion on natural gas development to thirty minutes for those in favor of gas development and thirty minutes for those opposed. The Board remained willing to receive written comments.

25. On September 11, 2012, the Town Board forbade all further discussion of natural gas extraction during the public participation portion of Town Board meetings until DEC completes its environmental review. The Board noted that it remains willing to receive written comments.

26. Members of NRDC and CCSE spoke at the September 11, 2012 Board Meeting against the resolution. They also attempted to speak about natural gas development in Sanford at that meeting. They were forbidden from speaking about topics related to natural gas development on the basis of the speech ban that had just been adopted.

27. Members of NRDC and CCSE have not spoken on the subject of natural gas extraction at any Town Board meeting since. Plaintiffs’ members would speak on the subject of natural gas extraction during the public participation portion of Town Board meetings but for the rule banning such speech.

28. On information and belief, the public participation portions of Sanford Town Board meetings are open to public comment and participation generally. Except for the September 11, 2012 speech ban that forbids discussion regarding natural gas development, the public participation portion is not governed by any codes, bylaws, or agendas restricting what may be discussed.

FIRST CLAIM FOR RELIEF: INJUNCTION

29. Plaintiffs incorporate by reference all preceding paragraphs.

30. Defendant's September 11, 2012 resolution forbidding all discussion of natural gas development during the public participation portion of Town Board meetings is an unconstitutional restriction on speech that violates the First Amendment to the United States Constitution and Article 1, Section 8 of the Constitution of the State of New York.

31. Defendant's speech ban has harmed and will continue to harm plaintiffs' members unless and until defendant is enjoined from its unlawful conduct.

32. An award of damages would be insufficient to compensate the plaintiffs for the deprivation of their constitutional rights.

SECOND CLAIM FOR RELIEF: DECLARATORY JUDGMENT

33. Plaintiffs incorporate by reference all preceding paragraphs.

34. There is an ongoing controversy regarding the defendant's authority to ban speech related to natural gas development at the public participation portion of Town Board meetings.

35. Defendant cannot ban speech at Town Board meetings related to natural gas development without violating the New York State Constitution and the United States Constitution.

36. Defendant, by virtue of the rule imposed by the Town Board on September 11, 2012, has assumed that it can constitutionally prohibit such speech at the public participation portion of its meetings.

37. Plaintiffs lack an adequate remedy at law.

38. Plaintiffs are entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201(a), declaring that defendant cannot, consistent with the New York State and United States Constitutions, prohibit speech related to natural gas development at the public participation portion of Town Board meetings.

#### REQUEST FOR RELIEF

39. Plaintiffs respectfully request that judgment be entered against the defendant as follows:

- A. Declaring that defendant's ban on plaintiffs' members' speech is unconstitutional and has violated plaintiffs' members' state and federal constitutional rights;
- B. Enjoining defendant, its directors, officers, employees, agents, and all persons in active concert with it from enforcing the challenged ban on plaintiffs' members' speech;
- C. Awarding plaintiffs' reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988; and

D. For such other and further relief that this Court may deem just  
and proper.

Dated: New York, New York  
February 12, 2013

Respectfully submitted,

s/ Nancy S. Marks  
Nancy S. Marks (N.Y. Bar No. 2121820)  
Natural Resources Defense Council, Inc.  
40 West 20th Street  
New York, New York 10011  
(212) 727-2700  
(212) 727-1773 (fax)  
nmarks@nrdc.org