

Hi-Oh Silver!!! And away!!!!
Kent Law Director James Silver Takes Everyone for a Ride

On August 28th, Kent City's Law Director, James R. Silver, sent the City Council his "review" of a proposed Community Bill of Rights Charter Amendment that voters will have an opportunity to decide upon on November 4th. His "review" suggests a certain bias against the measure and, more concerning, a bias against certain American ideals of self-government, fundamental rights, and the obligations of government to the people.

Although claiming that his comments "are based upon the words and language used in the proposed Community Bill of Rights," an objective reading of those comments shows that he liberally introduces interpretations and arguments identifiable with a particular bias against popular involvement in politics and governing. For example,

Mr. Silver takes objection to Section 4 (a) which paraphrases the Declaration of Independence (*"to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed"*) and directly quotes part of Article 1, Section 2 of the Ohio Constitution, which states: *"All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary..."*

The words he condescendingly chastises the proponent for including in their "poorly written" Community Bill of Rights read: *"all power is inherent in the people ant that all free governments are founded on the people's consent."*

Mr. Silver skinned a lot of pixels asking ludicrously if such language requires government to ask the people to vote on everything. He says that would be impractical and "unwieldy," Never mind that no such notion can be found in "the words and language used in the proposed Community Bill of Rights" [his criteria for his comments].

Mr. Silver goes on to contradict the Declaration of Independence, claiming that "[t]he current Federal, State and Local governments of this Country are not founded upon consent. They are founded upon majority rule."

Never mind that he is wrong on this point and that residents of Kent have often and persuasively made clear that they do not consent to be fracked, one can only conclude that since majority rule is the basis for legitimate government locally, statewide and nationally, that if the voters approve the Community Bill of Rights he will acknowledge that it is the legal and enforceable will of the people.

Mr. Silver also "take[s] issue to the last sentence of the paragraph labeled A (a). That section reads: *"Use of the "City of Kent" municipal corporation by the people of Kent for the making and enforcement of this law shall not be deemed, by any authority, to eliminate, limit, or reduce that*

self-governing authority.” And Mr. Silver chastises, saying, “It sets local government above State and Federal government. Our country is simply not set up this way on many issues.”

It’s an understandable mistake for a layman to make, but for a municipal attorney to conflate the powers delegate to municipal corporations by the state with the fundamental right of the people to self-government in the places where they reside is cause to suspect either willful deception or incompetence. This language clarifies that although the state may claim some authority over municipal subdivisions, the state may not legitimately violate, regulate or deny this fundamental right by imposing limitations on municipal corporations.

Mr. Silver has a problem with the proposed amendment’s assertion that there is a right to pure water. He says “if this is a right, held by all of us, which should be enforced,” then some proponents of the measure who petitioned to place it on the ballot did not bring up “some consequences.”

Taken at face value, he says the city would be obliged to stop all water pollution in the City. By commenting sequentially on each of the proposed amendment’s sections, Mr. Silver seems to have imposed a rule on his method of critique that forbade him from jumping ahead to Section 4 where the actual prohibitions to be enacted are spelled-out. Subsection (a) says this: *“It shall be unlawful within the City of Kent for any corporation or government to engage in the extraction of hydrocarbons.”* And subsection (b) says this: *“Corporations and governments that engage in the extraction of hydrocarbons in a neighboring municipality, county or state shall be strictly liable for all rights violations within the City of Kent which occur as a result of those activities.”*

Mr. Silver goes on to apply the same mutated and constrained logic to the other rights enumerated in the Community Bill of Rights. He professes difficulty understanding the meaning of common words in subsection (d) where it says that “Residents of the City of Kent possess the right to the peaceful enjoyment of their homes, free from interference, intrusion, nuisances or impediments to access and occupation. He confesses to being “at a loss for what is being required.” Should the residents be without this right, or perhaps they should lose their rights under the Ohio Constitution’s Article I, Section 3 because Mr. Silver requires definitions of what is exactly meant when it declares that *“The people have the right to assemble together, in a peaceable manner, to consult for the common good; to instruct their representatives; and to petition the General Assembly for the redress of grievances.”* Reflecting back on earlier comments by the Law Director, isn’t the Ohio Constitution badly written because it suggests and declares that the people have a right *“to instruct their representatives”*? Would that not be unwieldy? And don’t we need explicit definitions of what this means before it is enforced as law in the state?

The rest of his vacuous comments are more of the same. Not an objective critique, but a partisan screed that amounts to lobbying the people and the City Council to oppose the proposed Community Bill of Rights.

Mr. Silver makes a good point in one place. Article 1. Section 4 A. states that *“The rights enumerated herein are in addition to, and shall not limit or abridge, other rights retained by the people. All rights delineated and secured by this Charter shall be fundamental, unalienable and self-executing and these rights shall be enforceable against private and public entities.”* What seems to concern him and perhaps motivates his repeated speculation about the consequences of securing these rights within the City Charter is that government, as the legal guarantor of fundamental rights, might be required to protect them once committed to law.

Mr. Silver’s protracted speculation about how that may prove difficult forms the foundation for his opinionated opposition to the measure. On a personal note, he writes, “as Law Director, I would be charged with enforcing the rights set out” in the proposed Charter Amendment. One is tempted to wonder if this nine page rant is more a plea of a City employee over his working conditions rather than objective legal advice to City Council and the voters in Kent.

That said, these rights already belong to the residents of the City of Kent, and these rights are regularly violated, presumably on the premise that if they are not articulated specifically in law, then the government, which is instituted by the people to secure rights according to the Declaration, has no obligation to protect them.

Mr. Silver purports to lecture Council and the people about what they should do instead of enact the Community Bill of Rights. He writes, “For a brief history lesson, this Country’s government was formed from the top down. The State of Ohio was formed because the U.S. Constitution and Federal laws permitted it. The City of Kent was formed by grant of the State of Ohio and its laws and constitution. The Council members who serve Kent take an oath that requires them to uphold the laws of the United States and Ohio.”

Alas, history is just his-story when so poorly understood. And oaths must be understood to be honored. Reminding Mr. Silver that government is not legitimately top-down, but bottom up, the Ohio Constitution states:

Article I, §2 RIGHT TO ALTER, REFORM, OR ABOLISH GOVERNMENT,
AND REPEAL SPECIAL PRIVILEGES

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

To uphold the Ohio Constitution means to uphold this.

Although the U.S. Constitution legalized slavery, gave veto power over laws written by the people’s representatives to (originally) a politically appointed Senate and a (still) politically appointed Supreme Court, the document opens with the words “We the People....”

And the Declaration of Independence declares:

WE hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness -- That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness.

For a little history lesson, Mr. Silver should consider the bottom-up method the people of the American colonies used to reject the dictates of central government. It was the local town governments in New England, Virginia and the Carolinas, and the County governments in Pennsylvania who sent more than 90 instructions to the Continental Congress, and these were precursors to the Declaration of Independence. Mr. Silver, as Law Director for the City of Kent, might be instructed to read that Declaration of Independence, paying particular attention to the grievances listed there. The very first grievance in a list of about thirty says this about the king and the British Empire:

HE has refused his Assent to Laws, the most wholesome and necessary for the public Good.

What kinds of laws were being preempted by the central government? Were they state laws? Why, no. There were, of course, no states yet. Were they federal laws? Again, no; there was, as of yet, no American nation. In fact it was local, community laws that the Empire refused to recognize, vetoed and preempted. Laws in many cases that presumed to protect the people's rights, which are the highest of laws, not subordinate to state or federal regulations, preemptions or violation directly or indirectly through the issuance of "permits."

A close reading of the Declaration will reveal – on the page, without opinionated embellishment – that it was the government's violation of the right of the people to protect and govern their own communities that provoked revolution. The people of Kent have no such designs. They are proposing a law that exemplifies and upholds and vindicates the ideals they call on their government to fulfill.

The remaining litany of accusations, misreadings (intentional or not), special pleading and glossing of the actual text of the proposed Amendment by Mr. Silver deserves no great attention. It is understandable that Mr. Silver is perplexed, as Law Director, about what to do when people's rights are not protected by existing law. He clearly doesn't like the idea of the people legislating to protect their own rights when representative government fails to. But, and it is hoped he will come to understand this, it is their right.