

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA**

SENECA RESOURCES CORPORATION,

Plaintiff,

v.

HIGHLAND TOWNSHIP, ELK COUNTY,
PENNSYLVANIA AND THE HIGHLAND
TOWNSHIP BOARD OF SUPERVISORS, ELK
COUNTY, PENNSYLVANIA,

Defendants.

No. 1:16-cv-00289-SPB

PLAINTIFF’S MOTION FOR JUDGMENT ON THE PLEADINGS

AND NOW COMES Plaintiff, Seneca Resources Corporation (“Seneca”), by its undersigned counsel, and pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, hereby moves this Court for judgment on the pleadings against Highland Township, Elk County, Pennsylvania (the “Township”) and the Highland Township Board of Supervisors, Elk County, Pennsylvania (“Supervisors”) (collectively, “Defendants”) and in support states as follows:

1. On November 30, 2016, Seneca filed a Complaint against the Township and the Supervisors alleging a number of federal constitutional claims and several state law claims challenging the constitutionality, validity and enforceability of the home rule charter enacted in Highland Township on November 8, 2016, by referendum ballot (“Home Rule Charter”). On its face, the Home Rule Charter, which is attached to the Complaint as Exhibit A [Doc. No. 1, Ex. A], strips Seneca of its status as a “person” under the United States Constitution and denies Seneca access to the courts to challenge the Home Rule Charter. The Home Rule Charter was intended to—and in fact does—divest Seneca of its fundamental constitutional rights under the

First, Fifth and Fourteenth Amendments and the Supremacy Clause of the United States Constitution.

2. Seneca is entitled to judgment on the pleadings regarding Count I of the Complaint because the Home Rule Charter is preempted by the Federal Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*

3. Seneca is entitled to judgment on the pleadings regarding Count II of the Complaint because the Home Rule Charter is preempted by Pennsylvania statutes.

4. Seneca is entitled to judgment on the pleadings regarding Counts III and VI of the Complaint because the Home Rule Charter is an impermissible exercise of the Township's police power and legislative authority.

5. Seneca is entitled to judgment on the pleadings regarding Count IV of the Complaint because by attempting to strip corporations like Seneca of their rights as "persons" under the U.S. Constitution, the Home Rule Charter violates the Supremacy Clause. Seneca is entitled to judgment on the pleadings regarding Count V of the Complaint because on its face, the Home Rule Charter illegally excludes an otherwise legitimate and lawful use of property within the Township.

6. Seneca is entitled to judgment on the pleadings regarding Count VII of the Complaint because the Home Rule Charter violates Seneca's First Amendment rights by revoking Seneca's right to challenge the validity of the Home Rule Charter.

7. Seneca is entitled to judgment on the pleadings on Counts VIII and IX of the Complaint because the Home Rule Charter violates Seneca's procedural and substantive due process rights.

8. Sections 103, 104, 105, 106, 109, 110, 401, 404, 405, 406, 407, 408, 409, 410, 411 and 501 of the Home Rule Charter are inextricably intertwined and, therefore, are incapable of execution on their own. As a result, Seneca is entitled to judgment on the pleadings declaring that Sections 103, 104, 105, 106, 109, 110, 401, 404, 405, 406, 407, 408, 409, 410, 411 and 501 of the Home Rule Charter are unconstitutional, invalid and unenforceable.

9. In their Answer, Defendants admit that the Home Rule Charter is unconstitutional, invalid and unenforceable. Answer, Doc. No. 15, ¶¶ 76, 104, “Wherefore” clause, p. 15. Therefore, there are no material facts in dispute and the Court can enter judgment on the pleadings in favor of Seneca.

WHEREFORE, Plaintiff requests that this Honorable Court enter judgment on the pleadings in favor of Seneca declaring Sections 103, 104, 105, 106, 109, 110, 401, 404, 405, 406, 407, 408, 409, 410, 411 and 501 of the Home Rule Charter unconstitutional, invalid and unenforceable.

Respectfully submitted,

February 9, 2017

/s/ Brian C. Wauhop
Brian C. Wauhop
Pa. I.D. No. 306695

Brian J. Clark
Pa. I.D. No. 45842

Buchanan Ingersoll & Rooney PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101
Telephone: (717) 237-4800
Facsimile: (717) 233-0852

Stanley Yorsz
Pa. I.D. No. 28979

Megan S. Haines
Pa. I.D. No. 203590

Buchanan Ingersoll & Rooney PC
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219
Telephone: (412) 562-8800
Facsimile: (412) 562-1041

Attorneys for Seneca Resources Corporation

