

Community Empowerment and Environmental Ordinances in the United States: A Study

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Acronyms

Acronym	Meaning
ACRE	Agriculture, Communities and Rural Environment
ALEC	American Legislative Exchange Council
CBR	Community Bill of Rights
CBRs	Community Bills of Rights
CELDF	Community Environmental Legal Defense Fund
COGA	Colorado Oil and Gas Association
COGCCA	Colorado Oil and Gas Conservation Act
CRUS	Community Rights US
GARN	Global Alliance for the Rights of Nature
GMOs	Genetically Modified Organisms
IPA	Interpretive Policy Analysis
LEBOR	Lake Erie Bill of Rights
NCRN	NSF-Census Research Network
NGOs	Non-Governmental Organizations
NLAC	New Latin American Constitutionalism
OSHA	Occupational Safety and Health Act
OSHRC	Occupational Safety and Health Review Commission
PGE	Pennsylvania General Energy Company
PROF	Professor (Academic Title)
UK	United Kingdom
US	United States
USEPA	United States Environmental Protection Agency

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ABSTRACT

In the aftermath of the *Citizens United v. Federal Election Commission* decision in 2010, there has been a notable increase in corporate lobbying efforts aimed at influencing State legislatures.¹

The ruling effectively expanded corporate influence in politics by equating financial spending with free speech, opening the door for corporations to exert greater control over legislative agendas. One notable consequence of this shift has been the suppression of municipal powers, as corporations increasingly lobby state governments to preempt or override local regulations that conflict with their interests.

Municipalities, as subordinate entities to their state governments, often seek to assert themselves by using the regulatory powers granted to them to make political or social statements, such as enacting environmental protections, labour laws, or anti-discrimination ordinances. However, corporations—armed with more political influence post *Citizens United*—have successfully pushed state legislatures to pass preemption laws that prevent municipalities from enacting policies that could hurt business interests. This dynamic creates a significant tension between local governments attempting to reflect the values of their communities and state governments, which may be more susceptible to corporate influence. Consequently, the ability of municipalities to enact meaningful local regulations is often stifled.

In some instances, local government municipalities have responded in what may be regarded as typical US fashion, by employing the ideals of “We the People of the United States,” to advance their own political agenda through local action.² They have done so using their regulatory powers and specifically their powers to enact municipal ordinances as a tool for change, endeavouring to rebalance the power dynamics that exist among local, state, and federal levels.³

¹ *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010).

² Bruce Ackerman, *Constitutional Politics/Constitutional Law*, 99 THE YALE LAW JOURNAL 453 (Dec. 1989), p. 456.

³ Christopher B Goodman, Megan E Hatch, Bruce D McDonald III, *State Preemption of Local Laws: Origins and Modern Trends*, 4 PERSPECTIVES ON PUBLIC MANAGEMENT AND GOVERNANCE, Issue 2 (2021).

Central to this thesis is an exploration of a series of ordinances which have been put in place by municipalities for political purposes but which, in legal terms, have had very little chance of withstanding challenges in the courts, and their connection with a not-for profit organisation –the Community Environmental Legal Defence Fund (CELDF). This thesis seeks to uncover the extent to which CELDF has served as the conduit through which these municipalities have channelled their activism.⁴

To this end, I have compiled a dataset of municipal ordinances that challenge corporate influence and aim to grant rights to nature. This thesis argues that the primary purpose of these ordinances is to assert the right to local democracy, with many of the municipalities involved drawing heavily on the guidance and experience of the Community Environmental Legal Defense Fund (CELDF).⁵ As a result, the reader will also find a significant focus on the work and ethos of CELDF, in fact, this research places significant emphasis on CELDF’s work and its role in helping local communities develop what are known as Community Bills of Rights (CBRs), which serve as the foundation for the CBRs I have examined.

CELDF’s capacity to assist communities expanded after 2006, when the organisation grew to include national, state, and local chapters. This growth allowed CELDF to engage more directly with communities through initiatives like the “Democracy School.” At these sessions, participants are encouraged to explore ways to address the constitutional power imbalance between states and municipalities and to confront corporate influence on state legislatures. Topics covered include strategies such as revoking legal personhood for corporations and formulating, enacting, and protecting local community rights.⁶

After attending Democracy School, participants can collaborate with CELDF’s legal experts to address their specific concerns by drafting a Community Bill of Rights tailored to their needs and circumstances. This process has been instrumental in shaping the ordinances featured in this research.⁷

The municipal ordinances or CBRs, that I have assembled are of interest for two specific reasons. First they grant rights to nature or natural phenomena. This is in itself sufficient to

⁴ CELDF Community Rights Pioneers Protecting Nature and Communities, CELDF (2020), <https://celdf.org/>.

⁵ *CELDF -Where We Work*, CELDF, <https://celdf.org/where-we-work/>.

⁶ Richard L. Grossman, *The Daniel Pennock Democracy School Curriculum* (Community Environmental Legal Defense Fund 2005).

⁷ Thomas Linzey, *We The People : Stories From the Community Rights Movement in the United States* (Oakland, California: Pm Press 2016).

make them of interest. As my research discovered, the recent attempts to confer legal or constitutional rights upon natural phenomena that we have seen specifically in Ecuador and now elsewhere in South America owed much to the work of CEDLF which pioneered this strategy in Pennsylvania with the Tamaqua Ordinance that I discuss in Chapter 1.

The second main focus of my interest is that though seemingly granting rights to natural entities, these ordinances, or CBRs are, in essence, bold affirmations of community rights to self-determination.⁸ Laden with an anti-corporate ethos, the ordinances, challenge established norms and boldly assert that the bedrock commitment of the US Constitution should be interpreted through the lens of prioritizing localism, self-governance, and self-determination.⁹ Specific features take the form of attempts to confer legal “standing” sufficient to support an action in the courts upon “residents”, thereby apparently seeking to create an *Actio Popularis*, or citizens’ action which will enable public-minded citizens to enforce the rights which the ordinances purport to confer. These include rights to take nonviolent direct action as a legal enforcement tool, to secure sanctuary from the state and federal violation of conferred rights and to ensure that corporations that have not been banned from their territory are subjected to fair taxation.¹⁰ Because of these bold assertions, the ordinances are unlikely to withstand legal scrutiny.¹¹

This thesis ventures to explore the driving forces behind the municipal ordinances’ enactment, their dynamic evolution over time in terms of values and strategy, and what these municipal ordinances or CBRs tell in terms of US political practices.

⁸ On this see for instance, Simon Davis-Cohen, *Dismantling Corporate Control Isn’t a Spectator Sport: An Interview with Thomas Linzey*, In These Times, (Mar. 15, 2016) <https://inthesetimes.com/article/thomas-linzey-interview-on-corporate-control-and-community-rights>.

⁹ *Id.*

¹⁰ On this, however, CELDF’s list is not exhaustive, I will show this in more detail in chapter three.

¹¹ On this see for instance, Peggy Kirk Hall, Ellen Essman, Evin Bachelor, *The Lake Erie Bill of Rights Ballot Initiative*, In the Weeds Digging into current legal issues with OSU Extension’s Farm Office, (2018). https://www.greatlakeslaw.org/files/LEBOR_OSU_Extension_Ag_Law_Analysis.pdf.

This thesis investigates US municipal activism, aided by the Community Environmental Legal Defence Fund (CELDF), through municipal ordinances known as Community Bills of Rights (CBRs) as instruments for change.

First, it explores the interaction between the current trend of constitutionalising rights of nature and local legislative activism, emphasizing the convergence of Roman law principles and indigenous jurisprudential traditions in granting rights of nature, especially the recognition of community rights. It also highlights CELDF's influence in shaping Ecuadorian constitutional provisions on rights of nature and the shift from mere environmental protection to recognizing local communities' rights over their natural resources.

Second, it discusses and then compares current scholarship on adversarial activism against (what is termed) legislative activism. Doing so highlights the distinctive nature of legislative activism within the adversarial framework and offers a better understanding of the methods and motivations behind the municipal legislative activism influenced by CELDF's values.

Finally, it dissects CBRs as legislative instruments and examines claims made by CELDF, seeking to understand the widespread adoption of ordinances purportedly granting rights of nature, despite having been legally challenged several times. This sheds light on the motivations behind the CBRs, revealing connections to themes such as anti-corporatism, limited government, and assertions of local democracy and self-determination. The analysis redefines CELDF's role as a radical grassroots movement advocating for Police Powers' recognition by municipalities.

In summary, this thesis underscores the importance of safeguarding local communities' rights. While the focus appears centred on recognizing rights of nature, the essence lies in empowering local communities and preserving their control over their environment. By advocating for the community's right to local self-governance, CELDF aims to enable municipalities to secure local communities' rights in local decision-making. This perspective has profound implications for legal advocacy, governance structures, and social justice in the US, emphasizing the paramount importance of localism and community empowerment.

INTRODUCTION

OVERVIEW AND CONTEXT OF THE SUBJECT – WHY THIS TOPIC IS IMPORTANT AND WHAT A READER UNFAMILIAR WITH THIS TOPIC NEEDS TO KNOW IN ORDER TO UNDERSTAND THE ARGUMENT THAT FOLLOWS

The Rights for Nature, Ecuador and the Role of Pressure Groups

In recent years, grassroots movements across the globe have exhibited an escalating propensity to mobilize, advocating for environmental rights and an equitable allocation of resources, particularly in the context of urgent ecological concerns such as climate change, deforestation, and pollution.¹² One strategy employed by these movements is the promotion of rights of nature.¹³

The recognition of rights of nature represents a significant shift in environmental governance, acknowledging the inherent value and rights of ecosystems and natural entities.¹⁴ This approach holds potential for addressing conflicts related to ecological distribution by promoting a more equitable and sustainable allocation of environmental resources.¹⁵ Its goal is to ensure that marginalized communities and future generations have access to and benefit from the Earth's ecological systems.¹⁶

¹² On this see for instance the work of Horton. Lynn R. Horton, *Grassroots Environmental Movements*, in BERKSHIRE ENCYCLOPEDIA OF SUSTAINABILITY (Berkshire Publishing Group Aug. 2016). See also, Arnim Scheidel et al., *Environmental Conflicts and Defenders: A Global Overview*, 63 GLOBAL ENVIRONMENTAL CHANGE 102104 (Jul. 2020).

¹³ On this there are many examples. For instance, Guillaume Chapron et al., *A Rights Revolution for Nature*, 363 SCIENCE 1392 (American Association for the Advancement of Science Mar. 2019). Also, *The Rights of Nature: A Global Movement*, ENVIRONMENT & SOCIETY PORTAL, <https://www.environmentandsociety.org/mml/rights-nature-global-movement>.

¹⁴ Michelle Maloney, *Rights Of Nature, Earth Democracy And The Future Of Environmental Governance*, Green Agenda (Aug. 4, 2019), <https://greenagenda.org.au/2019/04/rights-of-nature/>.

¹⁵ The concept of Ecological Distribution Conflict was introduced by Martinez Alier and Martin O'Connor in 1996, aiming to portray societal contentions arising due to the unequal allocation of natural resources and the disproportionate encumbrance of pollution. Inequitable distribution of environmental advantages and detriments engenders conflicts. J. Martinez Alier & M. O'Connor, *Ecological and Economic Distribution Conflicts, GETTING DOWN TO EARTH: PRACTICAL APPLICATIONS OF ECOLOGICAL ECONOMICS* 1 (Jan. 1996). On this see also: *Ecological Distribution Conflicts*, EJOLT, <http://www.ejolt.org/2016/04/ecological-distribution-conflicts/>.

¹⁶ Robyn Eckersley, *Liberal Democracy, and the Rights of Nature: The Struggle for Inclusion*, 4 ENVIRONMENTAL POLITICS 169 (Routledge Jan. 1995).

Prominent organisations like the Global Alliance for the Rights of Nature (GARN) have emerged as pivotal agents in galvanizing and championing the acknowledgment of rights of nature.¹⁷ Serving as a collaborative and advocacy platform, these organizations have endeavoured to redress disputes linked to ecological allocation while concurrently fostering sustainability.¹⁸

The Community Environmental Legal Defence Fund (CELDF), affiliated with GARN, is one of the grassroots organisations dedicated to environmental and social justice activism.¹⁹ CELDF has emerged as a significant force nationally and globally.²⁰

In the United States, since 2006, CELDF has played a role in promoting the recognition of rights of nature.²¹ Through its activist approach, CELDF has supported municipalities in facilitating the passage of Municipal Ordinances (which are part of the umbrella term they call Community Bills of Rights) at local level working with municipalities towards establishing rights of nature, as part of a recognition of community rights, and fighting corporate and state interference in their affairs.²² These Community Bills of Rights (CBRs), I argue, reflect a

¹⁷ Global Alliance for the Rights of Nature -About GARN, <https://www.garn.org/about-garn/>. See the webpage listing the GARN members. Members - Global Alliance for the Rights of Nature (GARN), GARN <https://www.garn.org/our-members/>. See also, Craig M. Kauffman & Pamela L. Martin, *Constructing Rights of Nature Norms in the US, Ecuador, and New Zealand*, 18 GLOBAL ENVIRONMENTAL POLITICS 43 (Jan. 2018).

¹⁸ See Cormac Cullinan, *Democracy Matters - Cormac Cullinan - Global Alliance for the Rights of Nature (GARN)*, (Nov. 5, 2011), <https://www.garn.org/democracy-matters-cormac-cullinan/>.

¹⁹ The Community Environmental Legal Defense Fund (CELDF), as self-identified on its official website, aligns itself with the grassroots movement paradigm. Established with a purposeful intent to “Catalyse a Decolonial Shift,” CELDF undertakes the promotion of “Community Rights and the Rights of Nature,” strategically aimed at enhancing democratic, economic, social, and environmental rights. “Catalyzing a Decolonial Shift” embodies an active effort to dismantle societal structures influenced by colonialism. It entails empowering marginalized communities, particularly indigenous peoples, to reclaim agency over their lives, lands, and resources, while addressing historical and ongoing impacts of colonization like land theft, cultural erasure, and environmental degradation. Within the framework of the Community Environmental Legal Defense Fund (CELDF), it specifically refers to initiatives aimed at advancing community rights and recognizing the rights of nature. This approach challenges prevailing legal frameworks that often prioritize corporate interests over community well-being and ecological health. By advocating for the legal acknowledgment of community rights and the rights of nature, these endeavours strive to redirect power from colonizing forces to local communities, fostering more democratic, equitable, and sustainable societies. For further insights into CELDF's grassroots approach and its socio-political implications, refer to the organization's official website: Protecting Nature and Communities, CELDF, <https://celdf.org/about-celdf/>. Resources Archive, CELDF, <https://celdf.org/resources/>.

²⁰ Rights of Nature: Timeline - CELDF - Protecting Nature and Communities, CELDF <https://celdf.org/rights-of-nature/timeline/>.

²¹ *The Community Environmental Legal Defense Fund*, THE GREEN INTERVIEW, <https://thegreeninterview.com/interview/margil-mari/>.

²² *Community Environmental Legal Defense Fund*, GUIDESTAR PROFILE, <https://www.guidestar.org/profile/25-1760934>.

localized expression of constitutional aspirations within the context of community rights of local democracy.²³

Globally, the Community Environmental Legal Defense Fund (CELDF) has become an influential model for grassroots movements, inspiring similar efforts in countries like Ecuador and Bolivia.²⁴ CELDF's approach has encouraged these nations to adopt legal mechanisms recognising the rights of ecosystems and natural entities, contributing to a broader discussion on environmental constitutionalism. This term refers to the practice of embedding the rights of nature into their constitutional frameworks, particularly in countries in the Global South.²⁵

A major success came in Ecuador, where the 2008 Constitution was the first in the world to include provisions granting legal rights to nature. This was a landmark moment that introduced environmental constitutionalism as a way to address environmental issues through legal means. Other countries followed Ecuador's lead, adopting similar constitutional provisions that emphasize the protection of natural ecosystems.

Initially my research focused on environmental constitutionalism and, specifically, on constitutionalising nature's rights. However, early in the research, I discovered the significant impact of CELDF, particularly its role within the US, on global efforts to embed the rights of nature in constitutions. CELDF's influence extends far beyond the US, shaping the global movement towards recognising and legally protecting nature.

Specifically, CELDF's pivotal role in Ecuador's constitutional provisions related to nature's rights was marked by its collaborative efforts with local organizations, the Pachamama Alliance, and indigenous groups. Through these collaborations, CELDF contributed to crafting legal frameworks that recognize and protect nature's rights within the Ecuadorian Constitution. Recognizing this, the research shifted its focus to analyse this phenomenon within the historical backdrop of US activism, particularly through an examination of Community Bills of Rights (CBRs) enacted by US municipalities with assistance from organizations like the CELDF.

²³ On this see also, Camille Lanteigne, *The Watermelon Way: Anticapitalism and Environmentalism in the American Rights of Nature*, Philosophy Department McGill University (Apr. 2020).

²⁴ *The Community Environmental Legal Defense Fund*, *supra* note 10. See also Kauffman & Martin, *supra* note 17.

²⁵ Craig M. Kauffman & Linda Sheehan, *The Rights of Nature: Guiding Our Responsibilities through Standards*, in ENVIRONMENTAL RIGHTS 342 (Stephen J. Turner et al. eds., Cambridge University Press 1st ed. May 2019).

These CBRs, akin to constitutional documents, exemplify a unique form of activism shaping legal frameworks to recognize nature's rights.

As a result, a literature review was undertaken to explore the concept of granting rights of nature and the legislative activities aimed at enforcing these rights. An examination of literature on Ecuadorian constitutional provisions revealed intriguing differences from similar provisions in other countries. Therefore, the research proceeded with two approaches: tracing the origins of Ecuador's constitutional provisions on rights of nature and conducting a comparative analysis with judicial and legislative decisions from other countries.

Through this comparative exploration, striking similarities emerged between Ecuador's constitutional provisions and US municipal ordinances enacted since 2006. This discovery underscores the interconnectedness between Ecuador's constitutional journey and the grassroots activism supported by CELDF, emphasizing a transnational exchange of ideas and legal strategies. Thus, this research seeks to illuminate the complex dynamics shaping the recognition of nature's rights within both the Ecuadorian and US contexts, contributing to a deeper understanding of the global movement for environmental justice.

Therefore, the primary objective of the literature review was to investigate the concept of granting rights of nature and the associated legislative and law-making activities which have been designed, to give effect to these rights.

From an initial examination of available primary and secondary literature on Ecuadorian constitutional provisions with the available primary and secondary literature on judicial and legislative decisions that in other countries awarded rights of nature I realised how the wording and the legal arguments present in the judicial and legislative decisions that awarded rights of nature in other countries diverged considerably from those present in the Ecuador constitutional provisions.²⁶

²⁶ Specifically, I have availed myself of these papers to identify the legal initiatives awarding rights of nature. Alex Putzer et al., *Putting the Rights of Nature on the Map. A Quantitative Analysis of Rights of Nature Initiatives across the World*, 18 JOURNAL OF MAPS 89 (Jan. 2022). Also, Kauffman & Sheehan, *supra* note 25.

Therefore, to define my research objective I have examined the literature to trace the origins of the Ecuadorian constitutional provisions on rights of nature and identify the individuals or advocacy groups that supported their enactment. This analysis aimed to establish a historical context and shed light on the driving forces behind the recognition of these rights. Through this comparative exploration, noteworthy similarities emerged between the provisions in Ecuador and the municipal ordinances enacted in the US, particularly those implemented since 2006.²⁷

The literature review yielded two key findings:

- **Institutional Dynamics:** From an institutional perspective, scant attention has been devoted to examining the evolution and interaction of national and local chapters within the GARN, specifically the biggest among these local chapters: CELDF.²⁸ Moreover, the literature lacks an in-depth analysis of how the legal strategies of these chapters are shaped by the legal, social, and political contexts in which advocacy groups operate. Understanding these institutional dynamics is vital to comprehending the diverse approaches and outcomes associated with rights of nature advocacy.²⁹
- **Social Action Framework:** Insufficient analysis has been conducted on the novel modes of governance advocated by rights of nature movements.³⁰ These encompass nature protection, community rights, sustainable development, anti-corporate sentiments, self-determination, and indigenous recognition. Examining the effectiveness and implications of these social action frameworks is important for understanding the transformative potential and practical applications of rights of nature. Specifically, in

²⁷ A prominent example is the Tamaqua Borough municipal ordinance passed in Tamaqua, Pennsylvania, which introduced the world's first local rights of nature municipal ordinance in 2006. While the Tamaqua municipal ordinance does not explicitly confer direct rights to nature, it establishes a commitment to safeguard the integrity of the indigenous natural ecosystem. By acknowledging inherent rights to nature, the municipal ordinance takes a holistic approach. It is noteworthy that scholarly discourse often credits the Tamaqua municipal ordinance as a pioneering instance of legal acknowledgement of rights of nature, despite its nuanced approach. For an examination of the Tamaqua municipal ordinance and its implications within the context of rights of nature, refer for instance to the work of Boyd, Tănăsescu, and Kauffman. David R. Boyd, *Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?*, 32 NATURAL RESOURCES & ENVIRONMENT 13 (American Bar Association 2018). Kauffman & Martin, *supra* note 17. See also Environmental Justice Atlas, EJOLT, <https://ejatlas.org>. Tamaqua Borough US Sewage Sludge Ordinance, ECO JURISPRUDENCE MONITOR, <https://ecojurisprudence.org/initiatives/tamaqua-borough-sewage-sludge-ordinance/>. The text of the Tamaqua municipal ordinance, Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, <http://files.harmonywithnatureun.org/uploads/upload666.pdf>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

the context of this research, in the US there is yet little insight into the operational dynamics of governments at the local level.³¹ This becomes salient when examining the landscape of municipal endeavours aimed at circumventing the constraints of state authority and establishing assertions of local self-governance. Analogous patterns of local initiatives can be discerned in parallel contexts, such as the emergence of sanctuary cities, the legalization of marijuana, and the formulation of minimum wage policies.³² This scarcity of in-depth knowledge is notably attributed to the vast number of municipalities scattered across the nation's geography that collectively shape the intricate tapestry of governance dynamics within the US.³³

In conclusion, the literature review has played a pivotal role in deepening my understanding of the concept of rights of nature and shedding light on the associated activities. It has provided valuable insights into the Ecuadorian constitutional provisions, municipal ordinances in the US, and the endeavours of CELDF.

By trying to address the gaps in previous research and illuminating the motivations, achievements, and legal challenges associated with municipal level activism, the research offers a contribution to the existing body of knowledge on the subject matter. Moreover, it strives to provide a nuanced perspective on the use of law as a tool for environmental activism and emphasizes the importance of examining broader themes such as legalism, environmentalism, anti-corporatism, and the intricate dynamics surrounding the ownership and utilization of the environment.

This research contributes to scholarly knowledge by shedding light on the activities of municipalities and their relationship with activist organisations such as CELDF. Also, it makes a smaller contribution to the existing literature by addressing gaps in previous research trying

³¹ Specifically, I have relied on, Timothy J. Conlan, Paul L. Posner, David R. Beam, *Pathways Of Power: The Dynamics of National Policymaking* (Georgetown University Press May 2014).

³² On this I have surveyed the works of Card, Kamin, and Wong. Sam Kamin, *Marijuana Law Reform in 2020 and Beyond: Where We Are and Where We're Going*, 43 SEATTLE UNIVERSITY LAW REVIEW 883 (Jan. 2020). David Card, *Do Minimum Wages Reduce Employment? A Case Study of California, 1987–89*, 46 ILR REVIEW 38 (SAGE Publications Inc Jan. 1992). Tom K. Wong, *The Politics of Immigration: Partisanship, Demographic Change, and American National Identity* (Oxford University Press 2017).

³³ The United States boasts approximately 19,500 municipalities, reflecting its diverse governance landscape. These municipalities vary widely in population, geography, and governance structures. For more information on this topic see, US Census Bureau, *City and Town Population Totals: 2020-2022*, Census.Gov, <https://www.census.gov/data/tables/time-series/demo/popest/2020s-total-cities-and-towns.html>.

to enhance the understanding of how law can serve as a powerful tool for environmental activism. Furthermore, it delves into broader themes such as community rights –encompassing the rights of local democracy and self-determination–, as well as the ownership and utilization of the environment, including rights of nature and anti-corporatism. By exploring these interconnected themes, the research sheds light on the multifaceted dimensions of environmental advocacy.

The research establishes connections between municipal ordinances and the broader pattern of activism. It seeks to shed light on the motivations, methods, and impacts of the all the types of CBRs (Constitutional Amendments, Home Rule charters, Home Rule charter amendments, amendments to municipal codes, county ordinances, and local Acts) promulgated or enacted with the help of CELDF, delving into the intersections of legalism, environmentalism, anti-corporatism, and the dynamics between municipalities and the state. Furthermore, it examines how the principles embodied in these CBRs, I posit, have been re-uses (using a process that I believe could be construed as legal transplantation) by CELDF with the help of local Non-Governmental Organisations (NGOs) starting with the Ecuadorian constitutional provisions in 2008.³⁴

In summary, the research expands the current understanding of the role of law in environmental activism and explores the broader interconnected themes. Primarily it illuminates scholarly understanding of a particular assertion of community rights by US municipalities whose activities, because of the practical research difficulties, are currently under-researched. It also offers a smaller contribution to the existing literature by addressing gaps within specific scholarly strands by offering an analysis of the motivations, achievements, and legal challenges associated with a particular type of activism advocating the recognition of rights of nature.

Theoretical Background

The research is framed within the theoretical background of the judicialization of political issues in the US and the concept of (what I term) legislative activism. The study focuses on municipal activism aided by CELDF and their CBRs. The theoretical background encompasses

³⁴ See Tănăsescu, *supra* note 27 Legal Rights of Nature Principles Proposed by Community Environmental Legal Defense Fund Legal Services, CELDF, <https://celdf.org/legal-services/>. See also, CELDF on rights of nature. Protecting Nature and Communities, CELDF, <https://celdf.org/about-celdf/>. Resources Archive, CELDF, <https://celdf.org/resources/>.

the concepts of adversarial legalism, legislative activism, and the role of municipalities and grassroots organisations in driving democratic and environmental change.

Scholars on the theorisation of adversarial legalism such as Alexis de Tocqueville, Prof. Robert Kagan, and Dr. Silverstein contribute to this theoretical framework. Tocqueville's observations highlight how political questions often transform into judicial questions in the US, with the judiciary exerting influence on the political process.³⁵ Prof. Kagan's concept of adversarial legalism emphasizes the role of lawyer-dominated litigation in policy making, implementation, and dispute resolution.³⁶ Silverstein's analysis of juridification examines how the judiciary has increasingly become the arbiter of social issues, replacing political ambiguity with unambiguous rules and procedures.³⁷

These perspectives shed light on the use of litigation and legal mechanisms for pursuing social change in the US. They underscore the significance of the judiciary in shaping policies and the role of adversarial legalism in driving legal advocacy and activism.

By integrating these scholarly perspectives into the research, I introduce the concept of legislative activism, which involves leveraging legislative mechanisms to bring about democratic change. This approach aligns with the observation made by Tocqueville regarding the unique US practice of seeking societal transformation through legal means but is distinctive from the theories of adversarial legalism expounded by Prof. Kagan and Dr. Silverstein.

The research examines how the activism of municipalities, facilitated by CELDF, distinguishes itself from adversarial legalism and explores the motivations, methods, and impacts of this

³⁵ On this phenomenon of political issues becoming also juridical issues, in the 1820s and 1830s, Alexis de Tocqueville wrote: "*Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.*" Alexis de Tocqueville (1805-1859) was a French political thinker, historian, and author best known for his seminal work, "Democracy in America" (1835/1840). This influential text, based on Tocqueville's travels and observations of the United States, provides insights into the nature of democracy, civil society, and the US political system. Tocqueville's analysis continues to be a foundational resource for understanding the principles and challenges of democracy, both in the United States and around the world. Alexis De Tocqueville, *Democracy in America* (The Century Co. 1898 in the Lawbook Exchange, Ltd. 2003).

³⁶ Adversarial Legalism, as theorized by Prof. Robert A. Kagan, characterizes the US legal system, emphasizing litigation and the active involvement of various parties in dispute resolution and regulation. Kagan's concept, detailed in his book "Adversarial Legalism: The US Way of Law," highlights the reliance on lawsuits and the influence of interest groups and stakeholders, both for protecting individual rights and accountability but also contributing to inefficiency and high costs. Robert A. Kagan, *Adversarial Legalism: The American Way of Law* (Harvard University Press 2001).

³⁷ Gordon Silverstein, *Laws Allure How Law Shapes, Constrains, Saves, And Kills Politics* (Yale Law School 2009).

approach. It also explores the historical context of previous movements, specifically the agrarian movements of the 1890s and 1930s, that have influenced the strategies CELDF has suggested municipalities should use.

The theoretical framework recognises the importance of understanding legal movements, their utilization of (what I term) legislative activism, and how this strategy –which CELDF suggested municipalities use– has shaped their tactics. It highlights the distinctive nature of legislative activism within the realm of adversarial legalism and emphasizes the role of municipal activism, facilitated by grassroots organisations like CELDF, in effecting democratic change.

By exploring the research territory within the context of these theoretical underpinnings, the study aims to provide an understanding of municipal legislative activism, its influences, and its implications for democratic and environmental justice objectives in the US and abroad.

Research Territory

The research territory of this study encompasses various contexts that try to provide an understanding of the subject matter. It is within this multi-dimensional landscape that the research seeks to explore and analyse the intricate dynamics at play.

First and foremost, the context of legislative activism serves as a foundation for understanding the role of law and legal processes in shaping policies and driving social change. Through an examination of CBRs and legal frameworks, the research aims to uncover the mechanisms through which legislative activism operates and how it challenges existing power structures.

Within the realm of environmentalism, the research delves into the efforts to address environmental concerns and promote sustainability. It seeks to understand how municipal ordinances, particularly those drafted by CELDF, contribute to environmental activism and advocate for the recognition of rights of nature. This recognition underscores the importance of protecting and preserving the natural world as a fundamental aspect of the environmental movement.

Embedded within the research territory is the context of anti-corporatism, which highlights the resistance against corporate influence and the desire to restore democratic control over local resources and decision-making processes. By examining the themes of anti-corporatism present in the municipal ordinances, the research aims to shed light on the strategies employed to counter corporate interests and promote grassroots activism.

Additionally, the research explores the intricate relationship between municipalities and the state. It examines the power dynamics and struggles for local democracy that arise within this context. By analysing the CBRs and their implications for the relationship between local governments and higher-level governmental bodies, the research uncovers the tensions and negotiations that shape governance at the local level.

Collectively, these themes converge to form the research territory, providing a framework for investigating the unique dynamics of activism against state and corporate interests, the recognition of a specific interpretation of the idea of rights of nature and the pursuit of local democracy. By exploring the CBRs passed by municipalities with the aid of CELDF and their broader implications, the research seeks to contribute to the understanding of how municipalities function as laboratories of democracy and how they shape the US political, social, and judicial culture.³⁸

BROADER LITERATURE REVIEW AND HOW THE UNDERSTANDING OF THE MATERIAL SHAPES THE RESEARCH QUESTIONS WHICH FOLLOW

Primarily, this research tries to further scholarly understanding of a particular assertion of community rights by US municipalities whose activities, because of the practical research difficulties, are currently under-researched.

³⁸ The phrase “laboratory of democracy” is associated with the dissenting opinion of US Supreme Court Justice Louis Brandeis in *New State Ice Co.* In his dissenting opinion, Supreme Court Justice Louis Brandeis argued that: “*A State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.*” States are seen as democratic laboratories with the freedom to experiment with novel social and economic structures, something that is not feasible at the federal level. This kind of experimentation can then be copied by other States, influencing how the United States Supreme Court decides to interpret the Constitution for recognizing these new governance models. In this context, the idea of Supreme Court Justice Louis Brandeis that the State can be seen as a laboratory of novel democratic ideas of governance is transposed at the municipal level. From the data present in the dataset, it emerges very clearly this is a trend of the local democratic process that is happening at the substate (municipal) level. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, (U.S. 1932).

It also sheds light on the intersection between the strategy of the municipal activism put in place with the aid of CELDF and strategy and theories of legal advocacy in the US through an analysis of the content of its legal instrument, the CBRs. It reveals that municipal legislative activism serves as a political tactic that taps into themes of anti-corporatism, small government, and assertions of local democracy and self-determination. The finding also challenges the perception of CELDF solely as an environmental rights movement and frames it as a radical grassroots movement advocating for the recognition of Police Powers to municipalities. By incorporating the community right to local self-government, municipal activism, facilitated by CELDF, extends beyond environmentalism, and has broader implications for legal advocacy and governance structures in the US.

Moreover, this research contributes to the understanding of legal advocacy in the US by situating this manifestation of municipal activism within the broader context of legal activist movements and specifically addressing the historical tradition in the US of adversarial activism. While previous studies have extensively examined adversarial legalism, this research focuses on a distinct form of legal activism I call legislative activism. It highlights how the approach taken by municipalities to assert rights of autonomy via the use of their legislative powers to achieve specific environmental and democratic objectives differs from traditional adversarial activism in the United States. By exploring this alternative strategy, the study fills a gap in the existing literature and expands our knowledge of the diverse tactics and approaches employed by legal activists. It fills a gap in the literature by first identifying the strategy the municipalities employ with the help of CELDF and classifies it as legislative activism and then providing an analysis of the activism employed by municipalities with the assistance of CELDF and how it is deployed to achieve specific environmental and democratic objectives.

The research makes other two smaller contributions to the current scholarly literature on the topic of the constitutionalising of rights of nature.

Firstly, it adds to the ongoing discourse by expanding upon the idea of an alignment between current legal scholarship advocating for rights of nature and the indigenous jurisprudential tradition. By examining shared characteristics and insights between these two legal traditions, the research sheds light on how provisions for rights of nature are addressed in legislative and judicial decisions, with a particular emphasis on community rights. This analysis deepens the

understanding of the philosophical foundations and legal frameworks supporting the recognition of rights of nature.

Secondly, this research uncovers the influential role played by CELDF in shaping these constitutional provisions, demonstrating how CELDF's advocacy of a specific interpretation of the idea of awarding rights of nature has not only influenced the Ecuadorian context but also impacted the global discourse suggesting the possibility of legal transplantation. This finding reinforces my argument that the current legal scholarship drawing on concepts from the Roman legal tradition aligns with the indigenous jurisprudential tradition. My argument is that the shared similarities between these legal traditions have facilitated a phenomenon of crosspollination that could be interpreted as legal transplantation and, in the process, shaped the idea of awarding rights of nature within legal frameworks, driven by grassroots movements.

Interpretive Framework

The present research uses Interpretive Policy Analysis (IPA), drawing inspiration from scholars like Frank Fischer, and Dvora Yanow.³⁹

Interpretive Policy Analysis (IPA) is combined with a tripartite structure of analysis to provide an understanding of policy processes and outcomes. IPA emphasizes interpretation, meaning making, and the social construction of policy. It recognises that policies are influenced by various actors, values, and interpretations, rather than being objective and rational solutions.

By integrating IPA with a tripartite structure of analysis, researchers explore policy issues in a more nuanced manner. The interpretive lens of IPA helps uncover the meanings, discourses, and narratives that shape policy decisions within each dimension of the tripartite structure. It

³⁹ Frank Fischer: Fischer is known for his work on policy discourse and the importance of language in shaping policy processes. He has written extensively on interpretive approaches to policy analysis and has emphasized the role of meaning-making and interpretation in policy studies. Dvora Yanow: Yanow has made significant contributions to the field of interpretive policy analysis, particularly in relation to the role of narrative and storytelling in policy processes. She has emphasized the need to understand policy as a social construction and has highlighted the importance of interpretive methods in uncovering the multiple meanings and narratives that shape policy decisions. Frank Fischer, *Public policy, and discourse analysis*, REFRAMING PUBLIC POLICY 73–93 (2003). Dvora Yanow, *Conducting Interpretive Policy Analysis* (Sage Publications 2009). *See also*, Frank Fischer, Gerald J. Miller, and Mara S. Sidney, *Handbook of public policy analysis*, (Routledge 2007).

allows for a deeper exploration of the multiple perspectives, beliefs, and values that influence policy choices and outcomes.

The tripartite structure enables an in-depth understanding of policy processes by considering the complex interplay between content, context, and actors. It moves beyond traditional positivist approaches that focus solely on objective and rational aspects of policymaking. Instead, it embraces the social and discursive dimensions of policy, acknowledging the importance of interpretation, meaning making, and discursive dynamics.

In this research the tripartite structure of analysis looks at three interconnected dimensions: **IDEAS** (the content), the municipalities with the help of the Community Environmental Legal Defense Fund as a **LEGAL MOVEMENT** (the actors), **LEGAL FRAMEWORKS and STRUCTURES** (the context) these are the Community Bills of Rights or CBRs.

IDEAS. The research examines the ideas surrounding rights of nature, encompassing both anthropocentric and biocentric perspectives. It explores how the concept of rights of nature intersects with the notions of community rights, ecological distribution conflict, and anti-corporatism.

Community rights form a central aspect of this framework, emphasizing the authority of communities to protect their local environment and make decisions that impact their well-being. The recognition and codification of community rights in local laws empower communities to assert control over their destinies and safeguard their natural resources. This includes decisions relating to land use, resource extraction, and environmental protection, with a primary focus on the well-being of the community.

Ecological distribution conflict recognises the unequal distribution of environmental harm and benefits within society. This concept highlights the need to address this disparity through laws and policies that promote environmental justice, challenge unsustainable practices, and prioritise the well-being of both human and non-human communities. By addressing ecological distribution conflict, a more equitable and sustainable relationship between humans and the environment can be fostered.

Additionally, the framework considers the concept of anti-corporatism, which questions the influence and power of corporations in shaping laws and policies that prioritise profit over community and environmental rights. Anti-corporatism acknowledges that corporate interests often drive unsustainable practices and environmental degradation. By advocating for

community rights and the devolution of decision-making power to the local level, a more accountable, transparent, and democratic environmental decision-making process can be achieved.

These interconnected ideas of rights of nature, community rights, ecological distribution conflict, and anti-corporatism provide a theoretical foundation for understanding and analysing policy processes and outcomes. By exploring these ideas, the research aims to shed light on the relationship between environmentalism, community empowerment, environmental justice, and the pursuit of a more sustainable future.

THE LEGAL MOVEMENT. The research analyses the actors of the CBRs: the municipalities, and CELDF. The research highlights the distinction between adversarial legalism and the approach of legislative activism employed by municipalities with the help of CELDF. While adversarial legalism, as defined by Prof. Kagan, refers to the utilization of lawyer-dominated litigation for policymaking, policy implementation, and dispute resolution, CELDF's strategy focuses on a form of activism I call legislative activism. This approach involves leveraging legislative mechanisms to bring about democratic change, aligning with Tocqueville's observation of –US– citizens' proclivity for using legal means to pursue societal transformation.

By contextualizing the activities of the municipalities within the broader landscape of legal and adversarial movements, the research sheds light on how different strategies and approaches shape activist tactics. It provides an analysis of legislative activism and its impact on advancing environmental and social justice objectives.

LEGAL FRAMEWORKS and STRUCTURES. The research examines a program of city ordinances passed by municipalities and inspired and managed by lawyers who founded the grassroots organisation known as CELDF. Across the US, approximately 400 ordinances have been enacted by the municipalities, with a significant concentration of around sixty-three ordinances in Pennsylvania, where CELDF was founded.

These ordinances aim to confer legal personality rights upon natural phenomena, referred to as “Nature,” while simultaneously denying corporate bodies their right to legal personality in legal proceedings. This program illustrates the legal structures and frameworks adopted by the municipalities and established by CELDF, which further demonstrate the organisation's endeavours to promote the recognition of nature's rights and challenge corporate power.

CBRs are municipal ordinances developed through collaboration between municipalities and CELDF. These ordinances seek to safeguard communities from environmental and economic threats posed by corporate activities. CBRs assert that corporations do not possess legal personhood and prohibit various industrial activities within the local jurisdiction. They uphold community rights to self-governance and participatory democracy; distinguishing municipalities as independent entities separate from the state. CBRs encompass provisions recognising a range of rights, such as environmental rights, workers' rights, and democratic rights. They also provide mechanisms for legal recourse against infringements by third parties and include enforcement provisions and regulations pertaining to corporate powers. CBRs often advocate for constitutional changes at the state and federal levels and may include sections addressing severability and repeal.

As legal structures, CBRs refer to specific laws or ordinances enacted at the local or community level. These legal instruments establish enforceable rights and protections for community residents, focusing on issues such as environmental protection, social justice, or community empowerment. The CBRs serve as tools to assert local sovereignty and challenge existing legal frameworks that may inadequately address the concerns and values of a particular community. Furthermore, the CBRs can be viewed as part of a broader legal framework. They embody the underlying principles, values, and objectives of the enacting community. The CBRs often draw upon concepts such as environmental sustainability, social equity, and democratic decision-making. By introducing new rights and obligations that prioritise community interests and well-being, they have the potential to challenge and expand existing legal frameworks.

In summary, CBRs represent both legal structures and legal frameworks. As legal structures, they are specific laws or ordinances enacted at the local level to establish enforceable rights and protections. As legal frameworks, they reflect the principles and values of the community and can challenge or expand existing legal frameworks to better serve community interests.

The involvement of the CELDF in the drafting process of the Ecuadorian Constitution suggests a transnational exchange of legal ideas and practices. This demonstrates the evolution and cross-pollination of national and local chapters within different nations that are part of GARN. The legal strategies employed by these advocacy groups are shaped by the legal, social, and political culture of the environments in which they operate. This exchange of ideas and practices highlights the significance of CELDF's work in using concepts rooted in the specific US context to other countries and regions, which might suggest a phenomenon of legal transplantation.

APPROACH, RESEARCH AIMS, AND RESEARCH QUESTIONS

The Aims

The aims of this research are twofold.

- Firstly, it aims to identify the type of legal instrument used with the help of CELDF as a mechanism of activism in relation to the recognition of rights of nature and its interconnected themes. Throughout the chapter I have also included in brackets information about the type of CBRs, such as Constitutional Amendments, Home Rule charters, Home Rule charter amendments, amendments to municipal codes, county ordinances, and local Acts, to clarify the specific types of CBRs under discussion. By looking at the content of the CBRs passed by the municipalities and examining CELDF promotional literature, this research seeks to locate the values that they promote highlighting the distinctive practice of municipal legislative activism, which sets it apart from traditional adversarial activism.
- Secondly, it aims to analyse the wording of the CBRs to provide insights into their production, motivations, objectives, and evolution. Additionally, it aims to understand why some of these municipal ordinances have been invalidated or unsuccessfully litigated due to opposition from cities, states, or corporations, with a particular focus on the legal arguments related to state pre-emption. By examining these aspects, this study tries to enhance the understanding of these CBRs and their impact on municipal activism and legal discourse.

The objectives

The objectives of this research are three-fold.

- To explore the connection between environmental constitutionalism –where environmental protection is recognised within legal frameworks, often at constitutional level– and municipal legislative activism, which refers to local government enacting laws to address community concerns, including environmental issues, in the U.S. Environmental constitutionalism involves embedding environmental rights or

protections within a constitution, while municipal legislative activism refers to the use of law making powers to advance social or environmental causes.

- To explore municipal legislative activism as a distinct form of activism, while analysing the methods, motivations, and impacts of this type of activism, aided by the CELDF, in promoting environmental and social change.
- To dissect the content of CBRs as legislative instruments and analyse the claims made by municipalities with the assistance of CELDF to uncover and locate their values and the place of these values in US political and constitutional thought.

Research questions

The research questions are:

- What is the connection between environmental constitutionalism and municipal activism intended to promote rights of nature?
- How do the Community Bills of Rights (CBRs) promoted by municipalities with the assistance of the Community Environmental Legal Defence Fund (CELDf) fit into a pattern of legal activism in the United States (US)?
- How can we account for the widespread adoption of municipal ordinances containing CBRs which purport to grant rights of nature but have little prospect of being upheld in state and federal courts?

These questions pertain specifically to dataset I have created consisting of ordinances containing CBRs enacted by municipalities with the assistance of CELDF. I contend that the CBRs were enacted with the aim of countering state governance and corporate influence and asserting their right to self-govern. My intent is to discern how these CBRs leverage legislative authority to counteract both state governance and corporate sway, all while seeking to assert municipal autonomy under the form of local self-governance. a fundamental aspect of this analysis is to probe into the rationale behind the specific framing of these municipal ordinances, particularly when their viability in a legal context is markedly limited, leading to questions of resilience

These questions also give rise to broader inquiries concerning the legal efforts of other local chapters affiliated with the GARN to establish rights of nature provisions within their respective jurisdictions. Specifically, they raise questions about the normative framework

underlying these provisions and how their formulation might be shaped by the unique legal, political, and social context in which the local chapters operate. These are complex matters that warrant further consideration and research to fully understand the implications and dynamics at play in different context.

METHODOLOGY

The methodological approach has been dealt in previous sections.

Method

To enhance my understanding of the activities of the municipalities, I have developed a dataset of municipal ordinances. I have identified relevant municipal ordinances enacted between 1996 and 2019 and created a taxonomy to illustrate the emerging themes from the analysis of these ordinances.

The dataset is instrumental in addressing research objectives and serves as a tool to answer research questions.

The significance of the dataset becomes evident within the context of specific themes, including anti-corporatism, anti-state sentiments, and the struggle for local democracy and self-determination. It serves as a valuable tool for explaining these themes by providing contextual information. Moreover, the dataset helps showcase how legislative municipal activism to achieve specific political objectives is aided by the work of CELDF and its lawyers.

Data for the dataset was collected through publicly available internet archives, specifically the **Wayback Machine**, which is a digital library of internet sites owned by the Internet Archive. Two databases were examined to gather the data: the **CELDF website** and the **COMMUNITY RIGHTS US website**. The **National Community Rights Network** was also utilized to explore the broader trends that led to the passage of these ordinances.

- **The Wayback Machine** was used to track each ordinance back to the respective local government's online archive. The research relied on the Wayback Machine, a digital archive of the World Wide Web. By accessing snapshots of websites captured at different points in time, the Wayback Machine provided valuable insight into the

evolution and development of municipal ordinances. By entering the URLs of the relevant local government websites into the Wayback Machine, the research was able to retrieve archived versions of these sites and examine the drafting and approval stages of the municipal ordinances.⁴⁰

- **The CELDF website**, specifically the archived webpages on the Wayback Machine, was searched to identify the monthly newsletters containing updates on municipalities that were in the process of or had already approved municipal ordinances drafted with the assistance of CELDF.⁴¹
- **The Community Rights US website** was used to compile all the ordinances passed by municipalities with the aid of CELDF within the period of 1997-2019. The website's list of publications helped track each ordinance back to the respective local government's online archive on the Wayback Machine. The Community Rights US website was also valuable in tracing the community chapters established by CELDF, which appointed local community rights organizers responsible for organizing at the local level during the drafting and approval stages of the ordinances. It should be noted that some states have multiple chapters that cater to specific provinces. This decentralized approach allowed CELDF to effectively address the unique needs and concerns of different communities within a state, fostering grassroots engagement and participation in the legislative process. By analyzing the activities of these community chapters and their coordination with the overarching CELDF network, the research gained an understanding of the legislative activism employed by CELDF and its impact on environmental and social justice objectives.⁴²
- **The National Community Rights Network** was utilized to examine the general trend that led to the passage of these municipal ordinances, particularly the municipalities' pursuit of self-governance. This network operates at the state level and tracks the evolution of the community rights movement.⁴³

⁴⁰ *Wayback Machine*, <http://web.archive.org/>.

⁴¹ CELDF Community Rights Pioneers Protecting Nature and Communities, CELDF (2020), <https://celdf.org/>.

⁴² The website of a local organisation that works in partnership with CELDF to “Protect the rights of people and ‘Nature’ by dismantling the corporate rule.” Home Community Rights US (2020), <https://communityrights.us/>.

⁴³ The National Community Rights Network who is leading the fight for recognition of self-governance and community rights. The NCRN has had input in drafting a federal Constitutional amendment XXVIII, protecting the right of local communities to adopt right-based laws without being overturned by federal pre-emptive laws. <https://www.nationalcommunityrightsnetwork.org/about>.

In addition, data was collected from three other databases, **LexisNexis State Net**⁴⁴ (a subscription-based 50-state legislation tracking platform), **Westlaw**⁴⁵ (an online legal research service available through subscription), and **Ballotpedia**⁴⁶ (an online political encyclopedia for US elections, candidates, and ballot measures) to identify relevant legal challenges to the municipal ordinances, ascertain the grounds for these challenges, and determine whether the challenges have been successful or are still pending.

Finally, the arguments which I make and that are present in this chapter are informed by ten documents published by CELDF (many of these documents are available on **Wayback Machine** or in other shadow libraries).⁴⁷

Ethical considerations

The data presented in this thesis was collected in accordance with the ethical guidelines defined by the Birmingham City University Research Council and follows good research practices. As the data collection for this thesis involved secondary data analysis, it does not raise ethical issues as it does not pertain to any categories deemed at risk within the Birmingham City University Research Council research ethical framework.

Furthermore, in line with the Birmingham City University Research Council research ethical framework, I am fully aware of and adhere to the published codes of conduct, ethical principles, and guidelines of professional bodies associated with the discipline.

The research conducted for this work primarily involved the analysis of publicly available legislative measures, which does not raise any ethical concerns.

Additionally, the Wayback Machine, operated by the Internet Archive, played a significant role in gathering relevant materials for this study. The Wayback Machine is a digital archive that provides access to snapshots of websites from the past, offering valuable historical information.

To utilize the Wayback Machine, the following actions were undertaken:

⁴⁴ *LexisNexis State Net*, <https://www.lexisnexis.com/us/legal.com>

⁴⁵ *WestlawNext International*, <https://thomsonreuters.com>

⁴⁶ *Ballotpedia*, <https://ballotpedia.org>.

⁴⁷ For more information about the documents published by CELDF see the appendix.

- Retrieving the texts of municipal ordinances from the websites of respective local governments.
- Accessing the texts of Home Charter proposals, Home Charter Amendments, and State Constitutional Amendments.
- Identifying relevant monthly newsletters discussing updates on the approval of municipal ordinances drafted in collaboration with CELDF (Community Environmental Legal Defense Fund).
- Retrieving all available material published by CELDF between 1996 and 2022. The materials include court briefs, white papers, books, and transcripts from interviews.

All materials gathered for this Ph.D. research originate from the Wayback Machine digital archive.

Addressing copyright concerns associated with the Wayback Machine requires consideration of various factors, including jurisdiction and the specific materials obtained from different sources. While United States federal government materials generally fall within the public domain, individual states may have distinct approaches to copyright. However, both United States (US) and United Kingdom (UK) law generally allow for the use of these documents in non-commercial research under fair use/fair dealing provisions. Therefore, even if some of these documents are potentially subject to copyright protection, their use in this study for non-commercial research would likely be permissible.

Regarding the Wayback Machine itself, it has been extensively used as a means of gathering evidence in civil cases, with courts generally recognising its validity as an evidence-gathering method without significant discussion on copyright implications. In the case of *Healthcare Advocates Inc v. Harding et al.*,⁴⁸ where the Wayback Machine was employed to retrieve archived images from a website for evidentiary purposes, the court determined that such use constituted fair use.

In summary, the utilization of the Wayback Machine for accessing copyright materials, in accordance with fair use/fair dealing provisions, does not raise additional copyright

⁴⁸ *Healthcare Advocates, Inc. v. Harding*, Earley, Follmer & Frailey 497 F.SUPP.2D 627 (E.D. PA. 2007).

infringement concerns. Therefore, the use of this software for non-commercial, educational research, as in the present study, falls within the bounds of fair use.

Finally, I've included tables from Erling D. Solberg and Ralph R. Pfister's work, "Rural Zoning in the United States: Analysis of Enabling Legislation."⁴⁹

My use of these tables is in accordance with UK copyright exceptions. On this, of relevance, is the "illustration for instruction" exception outlined in Section 29 and 32 of the Copyright, Designs, and Patents Act 1988.⁵⁰ This exception allows for the non-commercial educational use of materials, if proper attribution is provided, and it adheres to the principles of "fair dealing." To determine whether the use is fair, it's important to consider whether it would harm the interests of the copyright owner. When using small portions of published papers, citing the source ensures that the usage aligns with the principles of fair dealing. By appropriately crediting the tables to the authors, I've ensured that my use of the tables falls within the guidelines of fair dealing.

Research challenges

The research has faced four main challenges during the data collection. These challenges are:

Limited availability of data. The availability of comprehensive and reliable data on CELDF, legislative activism, and the adoption of CBRs can be limited. This is particularly true for certain time periods or geographical locations, making it difficult to conduct extensive and longitudinal analyses.

Fragmented, dispersed, and incomplete information. Relevant information and data on the activities undertaken by CELDF and related topics are dispersed across various sources, including websites, news articles, legal documents, and archival materials. Moreover, some data sources lack comprehensive records, be incomplete, or not readily accessible. While I have tried to collect and organise all these fragmented sources of information, my dataset (consisting of the CBRs and the legal challenges that they have been subjected to) might still be

⁴⁹ Erling Day Solberg & Ralph R. Pfister Rural Zoning in the United States : Analysis of Enabling Legislation (Washington, D.C. : Economic Research Service, U.S. Dept. Of Agriculture 1972).

⁵⁰ Copyright, Designs and Patents Act 1988 c. 48 § 29 and 32.

incomplete. Moreover, such limitations can hinder a thorough understanding of the legal challenges and outcomes faced by CELDF.

Reliance on publicly available internet archives: My reliance on publicly available internet archives, such as the Wayback Machine, to access historical information, web pages, and documents might not capture all the content or functionalities of the original websites, leading to potential gaps in the data collected.

Lack of standardized data. Given the decentralised nature of CELDF's activities and the diverse range of jurisdictions involved, data collected from different sources may not be standardized or uniform. This has created challenges when attempting to compare and analyse information across different cases or locations.

I have tried to overcome data limitations and contribute to the scholarly literature by employing a variety of data collection methods and rigorously analysing all the available information that I have found and classified.

STRUCTURE OF THE CHAPTERS AND BRIEF OVERVIEW OF WHAT EACH CONTRIBUTES AND ARGUES

The research is structured into three main chapters, each addressing specific aspects of the research objectives and contributing to the scholarly literature.

Chapter I:

Title: “Rights of Nature, an Analysis of Legal Recognition: Exploring the Link Between Environmental Constitutionalism and Municipal Activism”

Chapter I aims to explore the concept of recognising rights of nature and the connection between environmental constitutionalism and local level legislative activism in the United States. It addresses the first research question: What is the connection between environmental constitutionalism and local level legislative activism intended to promote rights of nature? The chapter tries to contribute to the scholarly understanding of rights of nature, by expanding on the idea that there is an alignment between current legal scholarship and indigenous jurisprudential tradition. It does so by using the case studies of the Tamaqua municipal

ordinances and the Ecuadorian Constitution to explore the processes, uncover the grassroots organisation that has helped the actors pushing forwards these legislative and constitutional provisions, CELDF, and underlining the specific wording of the rights to nature provisions to people in relation to nature, the emphasis right of communal right of access to the local natural environment, community rights of local democracy and self-determination.

Objective: To explore the idea of recognition of rights of nature and the connection between environmental constitutionalism and municipal activism in the US in the form of CBRs –a form of constitutional document.

Research Question:

- What is the connection between environmental constitutionalism and local level legislative activism intended to promote rights of nature?

Contribution to knowledge: This chapter makes one smaller contribution to the scholarly literature on rights of nature and the legal mechanisms involved in their recognition.

Secondly, this chapter shed lights on the role played by CELDF in shaping these provisions, illustrating how the advocated provisions for rights of nature by CELDF have shaped the Ecuadorian constitutional provisions on rights of nature. This finding reinforces the argument that the current legal scholarship, which draws on legal concepts from the Roman legal tradition to advocate for rights of nature, aligns itself with an indigenous jurisprudential tradition. My argument is that it is the shared similarity between these legal traditions that has facilitated a crosspollination of approaches from very different countries and shaped the recognition of rights of nature within legal frameworks, driven by grassroots movements.

Thirdly, this chapter emphasizes the shift in focus from measures aimed solely at protecting the environment to recognising the rights of local communities and their control over their natural resources. By examining the provisions of CELDF's municipal ordinances whose content has influenced the provisions of the Ecuadorian Constitution (a form of crosspollination that could be construed as legal transplantation), the research uncovers the underlying principles of access, enjoyment, and control that constitute the rights of the local community. This perspective challenges the conventional notion that the purpose of these measures is protecting the environment per se and highlights the significance of safeguarding

the rights of the community to make decisions and protect their local natural resources from external interference.

In summary, this chapter offers a small contribution to the scholarly understanding of rights of nature by expanding on existing scholarly literature, by highlighting the possibility of legal transplantation processes from municipal ordinances to constitutional provisions, and emphasizing the rights of local communities to access, enjoy, and control their natural environment. These insights provide a nuanced perspective on the multifaceted nature of rights of nature and their implications for environmental governance and social justice.

Chapter II:

Title: “The Strategy of Municipal Legislative Activism”

Chapter II firstly examines the concept of adversarial legalism and focuses on a specific form of activism which I call legislative activism. The chapter explores the activities of municipalities with the aid of CELDF and their use of legislative activism to pursue environmental and social justice objectives. The research question addressed is: How do the Community Bills of Rights (CBRs) promoted by municipalities with the assistance of the Community Environmental Legal Defence Fund sit into a pattern of legal activism in the United States (US)? The chapter contributes to the scholarly literature by expanding the understanding of activist tactics and the type and role of legislative activism sponsored by CELDF and adopted by municipalities in driving democratic change.

Objective: The objective is twofold

Firstly, to compare scholarly discussions on the concept of adversarial legalism against a phenomenon I term legislative activism.

Secondly, the analysis identifies municipal activism as a manifestation of (what I term) legislative activism.

This type of legislative municipal activism has been assisted by CELDF, a grassroots organisation that pursues environmental and social justice objectives. The study aims to explore the methods, motivations, and impacts of the municipalities’ approach, which has

strongly been influenced by CELDF's values, thereby shedding light on the role of municipal legislative activism in promoting environmental and social change.

Research Question:

- How do the Community Bills of Rights promoted by municipalities with the assistance of the Community Environmental Legal Defence Fund fit into a pattern of legal activism in the United States?

Contribution to knowledge: This chapter contributes to the existing scholarly literature by examining a specific scholarly strand of adversarial legalism in the US and its connection to the CELDF.

While adversarial legalism, defined by Prof. Kagan as the utilization of lawyer-dominated litigation for policymaking, policy implementation, and dispute resolution, has been extensively studied, this research focuses on a specific form of activism which I label as legislative activism.⁵¹ This distinct manifestation of resorting to law and legal mechanisms aligns with Tocqueville's observation of the uniquely US practice of seeking social change through legal means.⁵²

In fact, adversarial legalism and legal activism represent two distinct approaches to utilizing the legal system for effecting social change, each with its own characteristics and implications.

Adversarial legalism, as defined by Professor Kagan, involves the predominant use of litigation and legal processes, typically led by lawyers, to shape policy, implement policies, and resolve disputes. This approach often relies on courtroom battles, legal challenges, and adversarial proceedings to achieve desired outcomes in matters of public policy and social justice.

On the other hand, legal activism, refers to a specific form of activism centred around legislative action and legal mechanisms. This approach entails efforts to bring about social change through the enactment of laws, advocacy for legal reforms, and engagement with legislative processes. Legal activists may work within or outside of formal legal institutions to

⁵¹ Kagan, *supra* note 36.

⁵² See Tocqueville *supra* note 35.

advance their agendas, utilizing legislative channels to address systemic issues and promote policy reforms.

The difference between adversarial legalism and legal activism lies primarily in their focus and methods. Adversarial legalism primarily revolves around litigation and legal challenges as a means of shaping policy and resolving disputes, often emphasizing confrontational and adversarial tactics within the legal system. In contrast, legal activism focuses on legislative action and engagement with legal frameworks to bring about social change, prioritizing advocacy, coalition-building, and grassroots mobilization to influence policy outcomes.

The distinction between these approaches is significant because it reflects different strategies and philosophies regarding the role of law in effecting societal transformation. Adversarial legalism tends to emphasize the role of the courts and legal professionals in shaping public policy, often resulting in protracted legal battles and contentious disputes. Legal activism, on the other hand, highlights the potential of legislative processes and collective action to drive change, emphasizing collaboration, negotiation, and political mobilization as means of achieving policy objectives.

Understanding the difference between adversarial legalism and legal activism is crucial for activists, policymakers, and scholars alike, as it informs strategic decision-making and advocacy efforts aimed at addressing social issues and advancing progressive agendas within the legal system. By recognizing the distinct approaches and implications of each, stakeholders can effectively navigate legal and political landscapes to pursue their goals of social justice and systemic reform.

By contextualizing the activities of the municipalities with the assistance of CELDF within the broader framework of legislative and adversarial movements, this chapter strives to expand the understanding of how different strategies and approaches shape activist tactics. It tries to address a gap in the literature by providing an analysis of the legislative activism employed by municipalities with the aid of CELDF and its influences on environmental and social justice objectives.

This research offers a small contribution to the scholarly discourse on legal movements and their utilization of legislative tools to achieve social and political goals. By highlighting the

distinctiveness of legislative activism within the realm of adversarial legalism, it enriches the understanding of how municipalities, with the help of grassroots organisations like CELDF, employ legal mechanisms to drive democratic change.

Chapter III and chapter IV:

Title: “Unveiling Patterns and Trends: Analysis of the Community Bills of Rights (1998-2019)” – Part 1 and 2

Chapter III and IV dissects the CBRs as legislative instruments and analyse the claims made by municipalities with the aid of CELDF. It addresses the third research question: How can we account for the widespread adoption of municipal ordinances which purport to grant rights of nature but have little prospect of being upheld in state and federal courts?

These chapters contribute to the scholarly literature by shedding light on the intersection between the municipalities’ strategy (developed with the aid of CELDF) and theories of legal advocacy in the US, revealing the political dynamics behind the activism of municipalities, and highlighting the broader implications of its objectives for legal advocacy and governance structures.

Objective: To systematically dissect the CBRs as legislative instruments and analyse the claims made by CELDF.

Research Question:

- How can we account for the widespread adoption of municipal ordinances which purport to grant rights of nature but have little prospect of being upheld in state and federal courts?

Contribution to knowledge: These chapters primarily offer a contribution to the scholarly understanding of a particular assertion of community rights by US municipalities whose activities, because of the practical research difficulties, are currently under-researched.

The research presented in these chapters uncover, through an analysis of the content of its legal instrument: The CBRs, the motivation behind the widespread adoption of municipal ordinances

which purport to grant rights of nature but have little prospect of being upheld in state and federal courts. It reveals that the legislative activism used by municipalities with the help of CELDF serves as a political tactic that taps into themes of anti-corporatism, small government, and assertions of local democracy and self-determination.

This finding highlights the complex political dynamics behind the activism of municipalities and provides insights into the broader historical context of activism in the US. It challenges the perception of CELDF solely as an environmental rights movement and frames it as a radical grassroots movement advocating for the recognition of Police Powers to municipalities. By incorporating the community right to local self-government, CELDF's activism extends beyond environmentalism and has broader implications for legal advocacy and governance structures in the US.

In conclusion the four chapters aim to underscore the significance of localism and the protection of local communities' rights within the framework of municipal activities. While the discourse is often framed around the recognition of rights of nature, the underlying essence revolves around empowering local communities and granting them control over their environment.

By examining the content of the legislative proposals, the CBRs at the local level in the US, and globally in constitutional provisions used by grassroots movement as activist tools, it becomes evident that the objective extends beyond mere environmental protection through the awarding of nature's rights and legal personhood. Instead, the aim is to safeguard the local natural environment by acknowledging the rights of local communities and their capacity to make decisions and protect their natural resources from external interference.

This emphasis on localism aligns with the principles of community rights and the aspiration for local self-government. Through challenging the conventional notion of environmental protection and advocating for a community right to local self-government, CELDF strives to secure the rights of local communities in controlling their local natural environment.

Hence, while the recognition of rights and legal personhood for nature serves as a framework, the ultimate goal is to empower local communities and ensure their rights and control over their natural resources. This perspective illuminates the broader implications of legal advocacy,

governance structures, and social justice in the US, emphasizing the paramount importance of localism and community empowerment in environmental decision-making.

In conclusion, the structure of the research, composed of four main chapters, addresses the research questions, and gives a contribution to the scholarly literature. The chapters delve into the recognition of rights of nature, examine the strategy of legislative activism employed by municipalities with the aid of CELDF and analyse the CBRs as a legislative tool. Through these investigations, the research enhances our understanding of the philosophical underpinnings, legal mechanisms, and implications of localism and community empowerment in environmental decision-making.

AN EXPLANATION OF THE THESIS STRUCTURE

This thesis examines a legal instrument (the Community Bills of Rights which can be Constitutional Amendments, Home Rule charters, Home Rule charter amendments, amendments to municipal codes, county ordinances, and local Acts) using a policy lens for the analysis (using the method of Interpretative Policy Analysis) while infusing the analysis with a historical sensibility by paying attention to the historical context in which these municipal ordinances are being passed by municipalities and correlating it with historically similar socio-political and economic contexts in the US.

Because the research sits at the intersection of legal and policy analysis, the structure of thesis reflects the specific ways in which research is conducted in this area of research and the method chosen for the analysis. For this reason, instead of employing a thematic structure the structure reflects the methodology used to analyse the phenomena. In addition, because legal research is being undertaken, detailed descriptions are provided.

The use of a methodological structure is a defining feature of Interpretative Policy Analysis (IPA) as a research method. This structured approach helps researchers uncover the underlying meanings and assumptions on a specific topic, such as a legal phenomenon, providing a more nuanced understanding of it. Also, IPA place emphasis in understanding the meanings and interpretations that individuals or groups assign to the legal phenomenon.

Unlike thematic structures that segment research into discrete topics, a methodologically driven approach ensures a systematic examination of the legal phenomenon being studied. Moreover, this framework facilitates a consistent application of research methods, enhancing the overall coherence and depth of the analysis.

In addition, by integrating detailed description and IPA, this thesis creates a unified analytical framework. This integration allows for a more systematic exploration of legal texts and doctrines, providing insights into both their doctrinal and policy implications.

Finally, a methodologically driven structure maintains consistency across all chapters, applying the same rigorous analytical standards. This approach ensures that each aspect of the legal issue in question is examined with precision, reinforcing the thesis's overall argument.

Moreover, in legal analysis, detailed descriptions play a crucial role in outlining the facts, legal principles, and contextual elements relevant to a legal issue. Detail descriptions have the key function of providing:

1. **Contextual Foundation:** Descriptive analysis establishes a clear contextual backdrop, which is essential for understanding the scope and implications of legal doctrines. By providing a detailed account of the facts and legal environment, description helps frame legal questions accurately.
2. **Clarification of Legal Issues:** Accurate description aids in identifying and delineating specific legal issues that require attention. This clarity is critical for effective problem-solving and ensures that legal arguments are based on a well-defined factual and legal matrix.
3. **Argument Development:** The foundation laid by descriptive analysis supports the construction of sound legal arguments. It ensures that arguments are grounded in a thorough understanding of both the facts and the relevant legal principles, enhancing the quality and persuasiveness of legal reasoning.
4. **Enhanced Interpretation:** Detailed description assists in interpreting legal texts and decisions by ensuring that the nuances and subtleties of legal language are fully appreciated. This is crucial for applying legal principles consistently with the intended meaning of legal texts.

Why is description pivotal in legal analysis?

1. **Contextual Clarity:** Detailed descriptions provide the necessary context for accurate interpretation. They ensure that legal principles are understood within their full context, facilitating a more precise analysis of their implications.
2. **Comparative Insight:** By comparing legal texts and doctrines, description highlights key differences and similarities. This comparative analysis is essential for uncovering nuanced legal interpretations and understanding their broader impacts.

In this case, integrating a methodologically structured analysis using Interpretative Policy Analysis (IPA) with the detailed descriptions required in legal analysis provides a more nuanced understanding of the wording found in the municipal ordinances, their legal and policy implications, and the meaning CELDF and the municipalities attach to their actions of legislative activism.

This methodological orientation helps achieve a coherent examination of a specific environmentalist movement in the US which is critiquing the legal doctrine that currently

award legal personhood while at the same time pushing to change the relationship between municipalities and state powers.

A methodologically driven structure—integrating detailed description and Interpretative Policy Analysis (IPA)—provides a superior framework for analysing legal issues compared to thematic approaches. The use of description as done in legal analysis ensures contextual clarity, while IPA enriches the analysis by providing interpretative and policy insights. This approach not only enhances the coherence and rigor of the analysis but also addresses complex legal and policy issues in a more holistic and informed manner.

In sum a methodologically driven structured combined with detailed descriptions offers:

1. **A holistic understanding of the phenomenon:** The integration of detailed description and IPA provides a framework for the analysis. Description offers the necessary contextual clarity, while IPA provides interpretative and policy insights, enriching the analysis.
2. **Chapter-Level Consistency:** Each chapter adheres to the overarching methodological framework, ensuring that the research maintains consistency and coherence throughout. This approach allows for an examination of legal issues using a policy method of analysis from multiple angles.
3. **Analytical Coherence:** The methodologically driven structure is justified by its ability to integrate detailed description and IPA effectively. This integration ensures that the analysis addresses both doctrinal and policy dimensions, offering a well-rounded exploration of legal issues.

CHAPTER ONE

Exploring the Link Between Environmental Constitutionalism and Municipal Legislative Activism

INTRODUCTION

This chapter holds significant importance as it marks the inception of the research journey. It serves to provide the contextual backdrop necessary to frame the activities undertaken by municipalities with the assistance of the Community Environmental Legal Defence Fund (CELDF).

To build this contextual backdrop it is necessary to introduce the primary actors. The people that contributed significantly to the Ecuadorian Constitutional provisions belong to a grassroots organisation based in the US and affiliated with the GARN.⁵³ This local grassroots organisation, CELDF is a public interest law firm whose work in the United States and abroad consists in fostering environmental activism in communities by practising civil disobedience through legislative or judicial action.⁵⁴

CELDF has built loose ties with the Pachamama Alliance a San Francisco based NGO that works to defend the Amazon rainforest and the indigenous communities that live there. CELDF started working with the Pachamama Alliance after Bill Twist, the co-founder of the Pachamama Alliance, first heard about ideas of awarding rights to nature in 2007 from a

⁵³ GARN, *supra* note 17.

⁵⁴ Where We Work, CELDF, <https://celdf.org/where-we-work/>.

colleague that attended CELDF Democracy School and discussed his experience at the Pachamama Alliance.⁵⁵

When the new President of Ecuador Rafael Correa called a convention to rewrite Ecuador's Constitution, Twist and other subsidiaries of the Pachamama Alliance (represented by Hugo Romo Castillo, who wrote an article advocating for the creation and adoption of provisions of rights of nature in *El Comercio*) recognised an opportunity to advocate for Constitutional provisions for rights of nature.⁵⁶

Therefore, Bill Twist contacted CELDF about the opportunity to help Rafael Correa draft provisions of rights of nature for the new Ecuadorian Constitution to be approved in 2008. Hence, because of the ties between the Pachamama Alliance and CELDF, the lawyers' founders of CELDF became heavily involved in the creation of the provisions of rights of nature in Ecuador by assisting in the drafting of the constitutional text.⁵⁷

This establishes now that there are indeed ties between the variously loose chapters present around the world and affiliated with the GARN.⁵⁸ Specifically in this case, CELDF was asked to participate at the Ecuadorian Constitutional Convention in 2008 because of its long history of activism in the US at local level.⁵⁹ In fact, since 1998 CELDF has helped local communities pass local anti-corporate ordinances and since 2006 with the Tamaqua municipal ordinance or CBR these municipal ordinances or CBRs also include provisions for rights to nature or rights to natural communities.⁶⁰

⁵⁵ Pachamama Hosts Global Alliance for Rights of Nature in San Francisco, CELDF, <https://celdf.org/2011/05/pachamama-hosts-global-alliance-for-rights-of-nature-in-san-francisco-2/>.

⁵⁶ Regarding the article written by Hugo Romo Castillo advocating for the creation and adoption of provisions of rights of nature in *El Comercio* see, *Hugo Romo Castillo, La Pachamama*, *El Comercio*, (Sept. 23, 2015), <https://www.elcomercio.com/cartas/pachamama-hugo-romo-castillo-cartas.html>.

On this see also, Kyle Pietari, *Ecuador's Constitutional Rights of Nature: Implementation, Impacts, and Lessons Learned*, 40 WILLAMETTE ENVIRONMENTAL LAW JOURNAL (2016).

⁵⁷ On this see, CELDF in Otavalo, Ecuador, for a Rights of Nature Conference, CELDF, <https://celdf.org/2014/02/celdf-in-octavalo-ecuador-for-a-rights-of-nature-conference/>. Happy Anniversary Rights of Pachamama Ecuador!, CELDF, <https://celdf.org/2022/09/happy-anniversary-rights-of-pachamama-ecuador/>. Press Release: Ecuador Approves New Constitution: Voters Approve Rights of Nature, CELDF, <https://celdf.org/2008/09/press-release-ecuador-approves-new-constitution-voters-approve-rights-of-nature/>.

⁵⁸ GARN, *supra* note 17.

⁵⁹ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 66, §15. See also, Pietari, *supra* note 56.

⁶⁰ Tish O'Dell, *Lessons from Ecuador*, CELDF, <https://celdf.org/2021/12/lessons-from-ecuador/>.

Therefore, this chapter establishes the contextual backdrop by comparing the Ecuadorian constitutional provisions with the local ordinance of Tamaqua. Though the rights of nature remain a niche concept in legal and political spheres, practical applications are becoming more visible. Communities are increasingly shifting from anti-corporate stances to advocating for these rights. The initial interest stemmed from Ecuador's pioneering constitutional provisions, which were influenced by US lawyers and led to further exploration of US municipal activities.

A chronological review of local ordinances, starting with the Tamaqua ordinance in 2006, reveals a significant evolution in Community Bills of Rights (CBRs). This evolution reflects a growing recognition of the rights of nature as a means of enhancing self-determination.

It highlights how the rights of nature are gaining political and legal recognition, particularly following their initial incorporation in the Ecuadorian constitution. The focus is on recognizing community rights related to local environmental access, including autonomy, democracy, and ownership.

Overall, this chapter sets the stage for our analysis by exploring the intersection of rights of nature with community rights, ecological distribution conflict, and anti-corporatism. It highlights how these ideas empower local decision-making, seek environmental justice, and challenge corporate influence, offering valuable insights into environmentalism, community empowerment, and sustainability.

In summary, the purpose of this inquiry, as outlined in the thesis statement, is to investigate the emerging trend of municipal activism for the adoption of municipal ordinances (the Community Bills of Rights, a form of constitutional document) recognizing rights for nature. This chapter aims to establish the context of this research by delving into the IDEAS framework to address the primary research question: "What is the connection between environmental constitutionalism and local level legislative activism intended to promote rights of nature?" By investigating this question, the chapter seeks to provide an understanding of the relationship between environmental constitutionalism and the municipal activism that has unfolded in the United States (US).

To set the context for the analysis, the chapter begins by drawing on scholarly literature to define the term "Nature" and introducing the framework of ecological distribution conflict to

show their interconnectedness. Then it discusses the ethical ideas and legal avenues that support granting legal personhood and rights of nature.

Therefore, Section I discusses the lack of consensus regarding the meaning of nature and considers various conceptualizations, including its connection to human character, biophysical processes, and the idea of an interconnected community of beings and biota within an ecosystem framing it under the concept of the ecological distributional conflict. Then it explores the ethical transition from a predominantly anthropocentric standpoint to an eco-centric worldview, prompted by emerging ethical paradigms and deontological principles that underscore the intrinsic value and interrelation of all sentient entities. Subsequently, it delves into the topic of how translating these ethical concepts into legal requirements poses challenges due to variations in the definition of juristic personhood across different legal systems. It does so firstly, examining the theoretical foundations surrounding the grant of personhood to nature by exploring how legal scholars have addressed the complex concept of personhood in relation to nature. On this topic, I try to offer my contribution to the scholarly literature by expanding the argument that current legal scholarly work attempting to award rights for nature by drawing on Roman law aligns itself with the indigenous jurisprudential tradition. Specifically, I posit that it is their shared characteristics and insights that facilitated the incorporations of provisions for rights of nature are addressed in legislative and judicial decisions, particularly in relation to community rights, a theme often overlooked.

Section II examines the Tamaqua municipal ordinance and the Ecuadorian Constitution as case examples, analysing their provisions and enforcement mechanisms. This exploration stems from the recognition, as outlined in the thesis statement, of distinct phrasings within the Ecuadorian constitutional provisions conferring rights of nature and the Tamaqua Community Bill of Rights or CBR (a municipal ordinance that might be classified as a form of constitutional document). Therefore, firstly, similarities between the two legal frameworks are identified, including the recognition of legal personhood and rights of nature, the emphasis on living in harmony with nature, and the link between the rights of nature and the rights of local communities. Secondly, weaknesses in the enforcement mechanisms of both frameworks are highlighted, as well as the influential role of the Community Environmental Legal Defense Fund (CELDF) in aiding the US municipality of Tamaqua shape their CBR, and the Ecuadorian Constitutional Assembly drafting the provisions recognizing rights to nature in their new Constitution. Tangentially, the section uncovers the underlying principles of access,

enjoyment, and control that constitute the rights of the local community. This perspective challenges the conventional notion of protecting the environment per se and highlights the significance of safeguarding the rights of the community to make decisions and protect their local natural resources from external interference.

To conclude, this chapter offers a small contribution to the scholarly understanding of rights of nature by expanding upon the idea of a link between current legal scholarship and the indigenous jurisprudential tradition, highlighting the possibility of a process of cross-pollination from US municipal ordinances to constitutional provisions (which could be construed as a form of legal transplantation), and emphasizing the rights of local communities to access, enjoy, and control their natural environment. These insights try to provide a nuanced perspective on the multifaceted nature of rights of nature and their implications for environmental governance and social justice.

RIGHTS OF NATURE: THEORETICAL PERSPECTIVES

This section delves into the multifaceted concept of “Nature,” its interconnectedness with the concept of ecological distribution conflict, and explores the arguments put forth regarding the need for a new deontological ethics to guide the protection of the natural environment. The recognition of rights of nature and the challenges associated with translating ethical concepts into legal requirements are central to this examination.

The first two sub-sections examine the definition of “Nature” as a construct that evolves alongside changes in knowledge, society, politics, and ethics. Scholars argue for a more inclusive understanding of nature as an interconnected community of beings and biota within an interdependent ecosystem. The concept of rights of nature is explored, highlighting the dynamic relationship between humans and the natural world.

The third sub-section examines the practical implications and challenges associated with using the term “Nature” to grant rights and award personhood to the natural environment. It emphasizes the need for an inclusive and just approach that challenges anthropocentrism, values cultural diversity, and considers the well-being of non-human beings.

Finally, the fourth sub-section delves into the complex process of incorporating ethical concepts into existing legal systems, with a particular focus on granting personhood and recognising rights of nature. It scrutinizes the challenges arising from variations in the definition of juristic personhood across different legal traditions. Drawing on current jurisprudential traditions, the aim is to establish a solid theoretical foundation for the grant of personhood to nature.

By integrating these various themes, this section offers a concise literature review about the idea of awarding rights for nature to be able to better understand the wording of the provisions found in the Tamaqua municipal ordinance and the Ecuadorean Constitutional provision and to make the case that their wording is quite specific and aimed at the recognition of precise rights connected with idea of awarding rights of nature: community rights, a right to local democracy and self-determination, and the idea that of a community access and ownership of the environment –this stems from the fact that this specific interpretation of rights of nature is influenced by the ideas of the same grassroots organisation, CELDF.

Defining the Concept of Nature

In the literature, a definition of what “Nature” is, has not yet been agreed upon.⁶¹ Most authors recognize that Nature should be seen as a construct tied to the idea of human character.⁶² Hence, one that constantly shifts according to epistemological, social, political, and ethical changes.⁶³

Schillmoller *et al.* argue that nature is a binary construct representing the human consciousness (the *nomos*) and the biophysical processes (the *physis*).⁶⁴ This duality reflects the binary understanding of nature and culture that constantly shifts according to human power, desire, and other forces representing human consciousness and biophysical processes.⁶⁵

⁶¹ For a general discussion on this topic see, Robin George Collingwood, *The Idea of Nature* (Oxford University Press Dec. 1960).

⁶² On this see for instance, Elena Blanco, *Personhood, Jurisdiction and Injustice: Law, Colonialities and the Global Order*, 10 JOURNAL OF HUMAN RIGHTS AND THE ENVIRONMENT (Mar. 2019). Lidia Cano Pecharroman, *Rights of Nature: Rivers That Can Stand in Court*, 7 RESOURCES 13 (Feb. 2018). Boyd, *supra* note 27. There are also many more authors discussing the idea of nature which I have not included in this note. For the purpose of this thesis the most notable ones, are the scholarly work of Cullinan, Professor Wood and Stone. I will discuss their works later in this chapter.

⁶³ Pecharroman, *supra* note 62. See also authors cite in note 62.

⁶⁴ Anne Schillmoller & Alessandro Pelizzon, *Mapping the Terrain of Earth Jurisprudence: Landscape, Thresholds and Horizons*, 3 ENVIRONMENTAL AND EARTH LAW JOURNAL (2013), p. 13.

⁶⁵ *Id.*, p. 13.

Similarly, Burdon and Berry suggest that nature should be defined as an interconnected community of beings and biota that are part of a single interdependent ecosystem.⁶⁶

For this reason, some scholarly literature suggests that it would be more appropriate to define the concept as a right *to* “Nature” rather than right *of* “Nature”.⁶⁷ This terminology better reflects the dynamic and evolving relationship between humans and nature, which is often characterised by anthropocentric interventions.⁶⁸

Awarding Rights to Nature

Awarding rights of nature means recognising and granting legal rights and protections to the natural world, including ecosystems, species, and natural entities.⁶⁹ It involves acknowledging that nature has inherent value, independent of its utility to humans, and deserves legal consideration and protection.⁷⁰

By awarding rights for nature, it is understood that natural entities have certain entitlements and legal standing, like human rights.⁷¹ These rights may include the right to exist, the right to thrive and regenerate, the right to a healthy and balanced environment, and the right to be free from harm or destruction caused by human activities.⁷²

This approach seeks to shift the anthropocentric perspective that considers nature merely as property or a resource for human exploitation.⁷³ Instead, it recognises the interconnectedness and interdependence of all living beings and emphasizes the need to respect and protect the integrity and well-being of ecosystems and the natural environment.⁷⁴

Awarding rights of nature aims to promote sustainable and responsible interactions with the environment, ensuring the long-term preservation of biodiversity, ecological systems, and the

⁶⁶ Peter Burdon, *Wild Law - The Philosophy of Earth Jurisprudence*, 35 ALTERNATIVE L.J. 62 (2010). And, Thomas Berry, *The Great Work: Our Way into the Future* (Crown Oct. 2011).

⁶⁷ Pecharroman, *supra* note 96. Blanco, *supra* note 62. See also authors cite in note 62.

⁶⁸ *On this see for instance*, Blanco, *supra* note 62. Pecharroman, *supra* note 62.

⁶⁹ Boyd, *supra* note 27.

⁷⁰ Thomas Berry, *The Great Work: Our Way into the Future* (Crown Oct. 2011). *See also* on this topic Cullinan, *supra* note 18. And, Christopher D. Stone, *Should Trees Have Standing?: Law, Morality, and the Environment* (Oxford University Press Third Edition, Third Edition Ed. Apr. 2010).

⁷¹ Stone, *supra* note 70.

⁷² *Id.*

⁷³ Cullinan, *supra* note 18.

⁷⁴ *Id.*

overall health of the planet.⁷⁵ It reflects a broader recognition of the rights of non-human entities and the need for humans to act as responsible stewards of the Earth.⁷⁶

What is the significance of the lack of a clear definition of nature?

Efforts to grant personhood to nature and redefine natural rights have sparked significant debate primarily due to its inherent anthropocentrism, which stems from a historical worldview that regards humans as separate from and superior to the natural world.⁷⁷

Critics highlight several challenges: the legal and practical difficulties of implementing and enforcing such rights; the reflection of anthropocentric biases in human-centric legal systems; potential economic implications, particularly for industries reliant on resource extraction and development; the challenge of balancing the rights of nature with human interests and needs, which could lead to conflicts and legal disputes; scientific and philosophical disputes regarding the basis for attributing personhood to nature; and the necessity of considering diverse cultural and indigenous perspectives that may not align with Western legal concepts.

This perspective often leads to the instrumentalization and exploitation of nature for human benefit, disregarding the intrinsic value and rights of non-human beings.⁷⁸ Critics argue that this narrow focus on human interests neglects the interconnectedness and interdependence of all living beings within ecosystems.⁷⁹ Roger and Maloney further highlight the problematic nature of speaking on behalf of nature, as it lacks a human voice and its thoughts and feelings

⁷⁵ On this idea see for instance, Wood, *supra* note 61. Maloney, *supra* note 14; Chapron et al., *supra* note 13. For a general discussion see, Susana Borràs, *New Transitions from Human Rights to the Environment to the Rights of Nature*, 5 TRANSNATIONAL ENVIRONMENTAL LAW 113 (Apr. 2016). It is noteworthy to mention that the constitutional provisions in Ecuador served as a catalyst, inspiring analogous measures in other Latin American nations during the same period (e.g., Bolivia). Specifically on the interrelation of these two topics, and relevant to this research, see for instance, Evo Morales Ayma, *The Rights of Nature: The Case for a Universal Declaration of the Rights of Mother Earth* (Council Of Canadians; Fundación Pachamama; Global Exchange 2011). For a succinct discussion on this topic see also, Carlotta Byrne, *Earth Jurisprudence - Law for an Animate Earth*, Resilience (Jun. 4, 2020), <https://www.resilience.org/stories/2020-06-04/earth-jurisprudence-law-for-an-animate-earth/>.

⁷⁶ Wood, *supra* note 17. Maloney, *supra* note 14. Chapron et al., *supra* note 2. Byrne, *supra* note 75. Borràs, *supra* note 75. Ayma, *supra* note 75.

⁷⁷ Amitai Etzioni, *The Spirit of Community: Rights, Responsibilities, and the Communitarian Agenda* (Crown Mar. 2013).

⁷⁸ Nicole Rogers & Michelle Maloney, *The Australian Wild Law Judgment Project*, 39 ALTERNATIVE LAW JOURNAL 172 (Sep. 2014).

⁷⁹ Madeleine Lovelle, *Entering Uncharted Waters: Awarding Legal Rights to Rivers*. See also, Bétaille, *supra* note 81. Rogers & Maloney, *supra* note 78. Boyd, *supra* note 16. Stone, *supra* note 62.

remain unknowable.⁸⁰ Additionally, the concept of nature tends to oversimplify and homogenize the complexities and diversities of the natural world, overlooking inherent variations, conflicts, and dynamic interactions within ecosystems.⁸¹ This oversimplification fails to capture the intricate web of life that exists in the natural world.⁸² Cultural biases also shape our understanding of nature, as different cultures have diverse relationships and interpretations based on their unique histories, traditions, and belief systems. Imposing a singular concept of nature disregards or undermines indigenous, traditional, and local knowledge systems, which offer nuanced perspectives on nature.⁸³ Recognizing and valuing these diverse cultural perspectives is crucial for fostering a more inclusive and rounded understanding of the natural world.⁸⁴

Overall, while the movement to create personhood for nature and redefine natural rights has initiated important debates, it also faces significant challenges that require careful consideration and resolution.

Rights to Nature and the Ecological Distribution Conflict: Interconnected Paths to Environmental Justice

Rights of nature and the ecological distribution conflict are intertwined and central to the discourse on environmental justice.⁸⁵ The concept of granting legal rights for nature represents a paradigm shift in how we perceive and interact with the natural world.⁸⁶ Traditionally, the environment has been treated as property or a resource solely for human exploitation, neglecting its intrinsic value and rights.⁸⁷ However, recognising the rights of nature

⁸⁰ Rogers and Maloney argue that “Any attempt to speak in another’s voice, particularly when we can never discover what the ‘other’ is thinking or feeling, is inherently problematic. This point has been made by feminist lawyers, in relation to the ‘silencing of the voices of “others” and ... replacing them with our own more privileged voices’. This form of ventriloquism is particularly problematic when the ‘other’ does not and cannot have a human voice.” Rogers & Maloney, *supra* note 78, p. 174.

⁸¹ On this *see*, Lovelle, *supra* note 79. Rogers & Maloney, *supra* note 250. Boyd, *supra* note 16. For a general discussion *see*, Julien Bétaille, *Rights of Nature: Why It Might Not Save the Entire World*, 16 JOURNAL FOR EUROPEAN ENVIRONMENTAL & PLANNING LAW 35 (Mar. 2019).

⁸² On this *see*, Lovelle, *supra* note 79. Boyd, *supra* note 16. Bétaille, *supra* note 81. Rogers & Maloney, *supra* note 78.

⁸³ On this *see*, Bétaille, *supra* note 92. Boyd, *supra* note 16. Rogers & Maloney, *supra* note 78. Lovelle, *supra* note 79.

⁸⁴ On this *see*, Lovelle, *supra* note 79. Boyd, *supra* note 16. Rogers & Maloney, *supra* note 78. Bétaille, *supra* note 92.

⁸⁵ Specifically on the interrelation of these two topics, and relevant to this research, *see for instance*, Ayma, *supra* note 75.

⁸⁶ On this *see for instance*, Boyd, *supra* note 27. Berry, *supra* note 66. Berry, *supra* note 70. Wood, *supra* note 17. Cullinan, *supra* note 18.

⁸⁷ For a general discussion on this topic *see*, Cullinan, *supra* note 18.

acknowledges that ecosystems, species, and natural entities have inherent worth and deserve protection and respect independent of their utility to humans.⁸⁸

This perspective on rights of nature compels us to confront the ecological distribution conflict, which arises from the unequal distribution of environmental benefits and burdens across communities. Historically marginalized and disadvantaged communities, including low-income neighbourhoods, indigenous peoples, and communities of colour, often bear a disproportionate share of environmental degradation, pollution, and health risks. In contrast, more privileged communities often enjoy the benefits of pristine environments, clean air, and access to natural resources.⁸⁹

Addressing the ecological distribution conflict requires acknowledging the social, economic, and political structures that perpetuate environmental injustices.⁹⁰ It necessitates recognising that environmental harm is not evenly distributed but disproportionately impacts marginalized communities.⁹¹ By doing so, it becomes evident that achieving environmental justice entails more than just protecting the environment; it also requires addressing social inequalities and systemic injustices that exacerbate the ecological distribution conflict.⁹²

Moreover, addressing the ecological distribution conflict requires re-examining power dynamics and dismantling systems that perpetuate environmental injustices.⁹³ It calls for the empowerment of marginalized communities and the amplification of their voices in shaping environmental policies and practices.⁹⁴ Achieving environmental justice involves fostering collaboration, solidarity, and partnerships among diverse stakeholders, including affected communities, environmental organisations, policymakers, and businesses.⁹⁵

⁸⁸ *Id.* For a succinct discussion on this topic see also, Byrne, *supra* note 75.

⁸⁹ *On this see*, Joan Martínez-Alier, *The Environmentalism of the Poor: A Study of Ecological Conflicts and Valuation* (Edward Elgar Publishing Jan. 2003).

⁹⁰ Most relevant to this line on enquiry is the scholarly work of Juan Martinez-Alier in the book “Ecology, Economy and Society: Essays in Honour of Kanchan Chopra.” Joan Martinez-Alier, *Ecological Distribution Conflicts and the Vocabulary of Environmental Justice*, in *ECOLOGY, ECONOMY AND SOCIETY: ESSAYS IN HONOUR OF KANCHAN CHOPRA* 187 (Vikram Dayal et al. eds., Springer 2018).

⁹¹ *Id.*

⁹² *Id.*

⁹³ Alier & O’Connor, *supra* note 4. See also, Martínez-Alier, *supra* note 89.

⁹⁴ Martínez-Alier, *supra* note 89.

⁹⁵ *Id.*

In conclusion, rights of nature and the ecological distribution conflict are fundamental to the pursuit of environmental justice. Recognising the intrinsic value and rights of nature challenges anthropocentrism and redirects the focus towards holistic environmental protection. Simultaneously, addressing the ecological distribution conflict necessitates confronting systemic inequities and striving for a fair and just distribution of environmental benefits and burdens. By integrating these concepts into environmental discourse and actions, it is possible to work towards a more equitable and sustainable future both for local communities and their natural local ecosystems.

From Anthropocentrism to Ecocentrism, the Rise of a New Paradigm

The ethical foundations of contemporary environmental legal frameworks are rooted in anthropocentric paradigms that view nature as instrumental to human welfare.⁹⁶ This perspective, prevalent in Western and Judeo-Christian traditions, justifies exploiting ecological systems for human benefit, reinforcing a dichotomy between society and nature.⁹⁷

To shift towards environmental protection, a new ethical paradigm emerged in the 1970s. Contemporary ethicists critique anthropocentric and utilitarian ethics, advocating a deontological framework that values nature intrinsically.⁹⁸ This approach aims to preserve ecosystems, rejecting reductionist economic valuations.⁹⁹

This paradigm, influenced by John Muir and Aldo Leopold, challenges three traditional assumptions: human moral superiority, nature's utilitarian value, and human exclusion from the ecological community.¹⁰⁰ It promotes rights and duties toward the planet, ensuring protection for future generations.¹⁰¹

⁹⁶ On this *see for instance*, Andrew Dobson, *The Green Reader: Essays Toward a Sustainable Society* (Mercury House 1991).

⁹⁷ For an introductory discussion on this topic *see*, Joseph R. DesJardins, *Environmental Ethics: An Introduction to Environmental Philosophy* (Wadsworth Cengage Learning 2013). For a more general discussion on this topic *see*, Lynn White, *The Historical Roots of Our Ecologic Crisis*, 155 *SCIENCE, NEW SERIES* 1203 (1967). *See also*, J. Baird Callicott, *Thinking Like a Planet: The Land Ethic and the Earth Ethic* (Oxford University Press 2013).

⁹⁸ DesJardins, *supra* note 97. White, *supra* note 97. Callicott, *supra* note 123.

⁹⁹ DesJardins, *supra* note 97. White, *supra* note 97. Callicott, *supra* note 123.

¹⁰⁰ *Id.* *See also* the works of Aldo Leopold and John Muir. For this thesis I availed myself of these books, Curt D. Meine & Richard L. Knight, *The Essential Aldo Leopold: Quotations and Commentaries* (Univ Of Wisconsin Press Mar. 2006). John Muir, *Collected Works of John Muir, Naturalist Complete and Unabridged* (Benediction Classics Nov. 2021).

¹⁰¹ Aldo Leopold, *A Sand County Almanac, and Sketches Here and There* (Oxford University Press 1989).

Scholarly literature suggests implementing this framework through Earth Jurisprudence, extending the right to care to all beings.¹⁰² Christopher Stone's idea of granting legal standing to trees and natural entities exemplifies this shift, redefining humanity's relationship with the environment and positioning environmental protection as a core legal principle.¹⁰³

Within this reimagined legal paradigm, "Wild Laws" gain relevance.¹⁰⁴ These laws are derived from nature's inherent principles and aim to protect and preserve the ecosystem, recognizing that human well-being is intertwined with the health of the natural world.¹⁰⁵

Translating an Ethical Concept into a Legal Requirement

Amidst the absence of a universally agreed-upon definition of nature, the notion of bestowing personhood and rights upon nature has arisen as a response to prevailing anthropocentric environmental legal frameworks, encapsulated within the framework of "Wild Laws."¹⁰⁶ Scholarly discourse asserts that in order to protect the rights of nature, granting personhood to either specific ecological elements (e.g., rivers) or entire ecosystems (e.g., rainforests) is essential, ensuring the consideration of nature's interests prior to its commodification or exploitation.¹⁰⁷

Nonetheless, the transition from ethical concept to legal mandate encounters challenges due to disparities in the interpretation of legal personhood across jurisdictions.¹⁰⁸ Personhood, denoting the capacity to hold rights and assume duties, lacks a necessary alignment between

¹⁰² Stone, *supra* note 70. And, Stone, *supra* note 62.

¹⁰³ Michelle Maloney & Peter Burdon, *Wild Law - In Practice* (Routledge May 2014). See also authors cited in note 96.

¹⁰⁴ Cullinan, *supra* note 18. See also, Michelle Maloney & Peter Burdon, *Wild Law - In Practice* (Routledge May 2014).

¹⁰⁵ *Id.*

¹⁰⁶ Cullinan, *supra* note 18.

¹⁰⁷ *Id.* Maloney, *supra* note 14. See also, Brunello Stancioli, *A Bundle of Rights and Pachamama: Visa Kurki's Theory of Legal Personhood*, REVUS. JOURNAL FOR CONSTITUTIONAL THEORY AND PHILOSOPHY OF LAW / REVIJA ZA USTAVNO TEORIJO IN FILOZOFIJO PRAVA No. 44 (Klub Revus – Center za raziskovanje evropske ustavnosti in demokracije Jan. 2021). Helen Dancer, *Harmony with Nature: Towards a New Deep Legal Pluralism*, 53 THE JOURNAL OF LEGAL PLURALISM AND UNOFFICIAL LAW 21 (Feb. 2021). Michelle Maloney, *Building An Alternative Jurisprudence For The Earth: The International Rights Of Nature Tribunal*, 41 VERMONT LAW REVIEW (2016). Helen Dancer, *Harmony with Nature: Towards a New Deep Legal Pluralism*, 53 THE JOURNAL OF LEGAL PLURALISM AND UNOFFICIAL LAW 21 (Feb. 2021). Chapron et al., *supra* note 2. Wood, *supra* note 17. Maloney & Burdon, *supra* note 104.

¹⁰⁸ Stone, *supra* note 70. And, Stone, *supra* note 62.

these attributes. Moreover, the entitlement to rights hinges on the availability of remedies, which, if absent, nullifies the existence of rights, as emphasized by William Blackstone's principle of justice.¹⁰⁹

Historically rooted in natural law tradition, Western legal thought has adhered to an anthropocentric perspective, distinguishing humans from non-human entities based on rational capacities.¹¹⁰ This viewpoint hinders the attribution of legal rights to non-human entities due to its focus on human traits.¹¹¹ Within this context, the naturalistic perspective conflates personhood with legal subjectivity, complicating the legal recognition of non-human entities.¹¹² This influence is evident in the US Supreme Court case of *Sierra Club v. Morton*, where the court denied the environmental group Sierra Club standing to sue on behalf of the natural environment, contending that nature lacked legal personhood.¹¹³ This example underscores the challenge of recognizing legal rights for non-human entities within the naturalistic tradition.¹¹⁴

In response, scholars have proposed diverse approaches to conceptualizing personhood for nature, drawing from distinct jurisprudential traditions.¹¹⁵ These can be grouped under three main traditions: positivist, indigenous, and the Roman jurisprudential precedent rooted in the *jus gentium*.¹¹⁶ I will now proceed to briefly discuss each of these traditions.

¹⁰⁹ On this, William Blackstone notes, “Every right when with-held must have a remedy, and every injury its proper redress”. William Blackstone, *Commentaries On The Laws Of England*, Volume 1: A Facsimile of the First Edition Of 1765-1769 (University Of Chicago Press Nov. 1979). Excerpt From 2016 Ed., *The Oxford Edition Of Blackstone’s: Commentaries On The Laws Of England: Book I, II, III, and IV* (William Blackstone Et Al. Eds., Oxford University Press Nov. 2016). Volume 1, Chapter 1, page 23.

¹¹⁰ Anna Gear, *Human Rights, Property and the Search for ‘Worlds Other’*, 3(2) JOURNAL OF HUMAN RIGHTS AND THE ENVIRONMENT 173-195 (2012). See also, Kurki, *supra* note 107.

¹¹¹ Nicola Pain & Rachel Pepper, *Can Personhood Protect the Environment? Affording Legal Rights to Nature*, 45 FORDHAM INT’L L.J. 315 (2021–2022). See also, Gear, *supra* note 107. And, White *supra* note 97.

¹¹² Stancioli, *supra* note 107.

¹¹³ *Sierra Club v. Morton*, 405 U.S. 727 (Supreme Court 1972). See also, Joseph L. Sax, *Standing to Sue: A Critical Review of the Mineral King Decision*, 13 NAT. RESOURCES J.76 (1973).

¹¹⁴ Kurki, *supra* note 107.

¹¹⁵ On this topic scholars discuss challenges in translating ethical rights to nature into law, focusing on juristic personhood variations. e.g., Cullinan advocates Earth Jurisprudence, addressing ecological intricacies. Wood explores legal trusts for nature, considering legal rights complexities, including juristic personhood. Boyd examines global rights of nature, offering diverse legal approaches, considering juristic personhood interpretations. Collectively, these scholars enrich the discourse on environmental law and ethics, providing insights into the intricate process of translating nature's rights from an ethical concept to a robust legal structure. Wood, *supra* note 17. Cullinan, *supra* note 18. David Richard Boyd, *The Rights Of Nature: A Legal Revolution That Could Save the World* (Ecw Press 2017).

¹¹⁶ Blanco, *supra* note 96, p. 102.

Positivistic Tradition

The positivist tradition posits that legal persons are defined through formal legal means, enabling the designation of any entity, including nature, as a legal person.¹¹⁷ This tradition suggests that nature can be assigned legal personhood with defined rights managed by active moral subjects.¹¹⁸

Pietrzykowski argues for pragmatic reasons to recognize rights for nature, proposing procedural and transactional capacities based on legal norms.¹¹⁹ Gray and Wise define legal personhood as the ability to bear duties, while Feinberg correlates it with having necessary and sufficient interests.¹²⁰ Raz and Kramer require societal value alongside interests, suggesting that while intrinsic value for nature is difficult to assign, instrumental value is easily attributed, allowing nature to hold passive rights.¹²¹

Grear suggests separating legal subjectivity from humanity, proposing a categorization of entities based on worthiness and legal subjectivity.¹²² Naffine's definition of legal personhood, extended through anthropomorphism, could pragmatically respect the rights of all potential beneficiaries.¹²³

Kurki argues that legal personhood is flexible and can be expanded through legal fiction. For instance, in *Trustees of Dartmouth College v. Woodward*,¹²⁴ a corporation was established as a legal person without a physical form.¹²⁵ Kurki distinguishes between natural and non-natural entities, proposing that natural entities should be treated as legal persons, while non-natural entities function as legal platforms.¹²⁶ A legal platform is a bundle of legal entitlements and burdens that can attach to certain entities, allowing non-human entities to bear some rights if attached to such a platform.¹²⁷

In summary, the positivist tradition provides various methods for assigning legal personhood to nature, exploring criteria like interests, responsibilities, and societal value, aiming to bridge anthropocentric legal norms with the recognition of nature's rights.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Tomasz Pietrzykowski, *Rules, and Rights*, in PROBLEMS OF NORMATIVITY, RULES AND RULE-FOLLOWING 113 (Michał Araszkiewicz et al. eds., Springer International Publishing 2015), p. 11.

¹²⁰ Steven M. Wise, *Legal Personhood and the Nonhuman Rights Project*, 17 ANIMAL LAW REVIEW 1 (2010), p. 34. *See also*, Arnold B. Hall, *Review of The Nature and Sources of the Law*, 5 THE AMERICAN POLITICAL SCIENCE REVIEW 645 (American Political Science Association, Cambridge University Press 1911).

¹²¹ J. Raz, *On the Nature of Rights*, 93 MIND 194 (Oxford University Press, Mind Association 1984). Matthew H. Kramer, *Rights Without Trimmings*, in A DEBATE OVER RIGHTS: PHILOSOPHICAL ENQUIRIES (Matthew H. Kramer et al. eds., Oxford University Press Sep. 2000).

¹²² Grear, *supra* note 107.

¹²³ Ngaire Naffine, *Legal Personality and the Natural World: On the Persistence of the Human Measure of Value*, 3 JOURNAL OF HUMAN RIGHTS AND THE ENVIRONMENT (2012).

¹²⁴ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819).

¹²⁵ Kurki, *supra* note 107.

¹²⁶ *Id.*, p. 128.

¹²⁷ *Id.*, p. 128

Indigenous and Roman Tradition

Roman law integrates moral and ethical principles into its legal framework, recognizing the influence of natural law on legal doctrines.¹²⁸ Similarly, indigenous jurisprudence acknowledges the personhood of non-human entities, emphasizing their agency and interconnectedness.¹²⁹ A re-examination of Roman legal principles could expand Western notions of juristic personhood and legal subjectivity, aligning with modern environmental and sustainability concerns.¹³⁰

Indigenous legal systems challenge anthropocentric views by recognizing the intrinsic value and rights of non-human entities.¹³¹ For example, the Maori recognize the Whanganui River and the Guna acknowledge the Uaguitupo forest as legal persons, highlighting their distinct legal statuses.¹³²

By comparing Roman and indigenous traditions, we can explore how both frameworks grant personhood to nature. Roman law's concept of *jus gentium* included rights for abstract entities,

¹²⁸ In Roman law, *jus gentium* recognized the distinct rights of abstract entities and individual persons, categorized as persons (*personae*), things (*res*), and actions (*actiones*). This classification emphasized the separation between legal subjects, property, and legal claims. While *jus gentium* governed interactions with non-Roman individuals and communities, it differed from *jus civile*, which applied exclusively to Roman citizens. The influence of *jus gentium* on the Western legal tradition can be seen in the reception of Roman law during the middle ages, the development of international law based on principles of fairness and natural justice, and its continued relevance in contemporary legal systems, human rights discourse, and global governance. On this see, Paul Du Plessis, Clifford Ando, Kaius Tuori, *The Oxford Handbook of Roman Law and Society* (Oxford University Press 2016).

¹²⁹ Mihnea Tănăsescu, *Rights of Nature, Legal Personality, and Indigenous Philosophies*, 9 TRANSNATIONAL ENVIRONMENTAL LAW 429 (Nov. 2020).

¹³⁰ Kurki, *supra* note 107. Michael C. Blumm & Mary Christina Wood, *The Public Trust Doctrine in Environmental and Natural Resources Law* (Carolina Academic Press Third Edition Ed. 2021). See also, Kaius Tuori, *Revisiting Legal Personhood: Exploring the Roman Law Perspective*, JOURNAL OF LEGAL HISTORY (2013). And, John Studley & Willian V. Bleisch, *Juristic personhood for sacred natural sites: A potential means for protecting nature*, 24 PARKS, 81–96 (2018).

¹³¹ Tănăsescu, *supra* note 129.

¹³² Indigenous jurisprudence recognizes personhood for non-human entities, a common aspect in diverse cultural contexts. These systems view non-human elements as interconnected and active participants in the natural world, with rights equivalent to humans. For instance, the Maori grant legal personhood to the Whanganui River, emphasizing its living entity status. Similarly, the Guna acknowledge the Uaguitupo forest as a legal person. This approach contrasts with Western views that treat nature as exploitable resources. Indigenous jurisprudence upholds interconnectedness and balance in nature, providing an alternative framework that challenges anthropocentrism and values non-human entities intrinsically. On this see, Joan Martínez-Alier et al., *Sustainable De-Growth: Mapping the Context, Criticisms and Future Prospects of an Emergent Paradigm*, 69 ECOLOGICAL ECONOMICS 1741 (Jul. 2010).

distinguishing personhood from legal subjectivity.¹³³ This framework, including ideas from Christopher Stone's "Should Trees Have Standing?," could offer insights into recognizing non-human entities' rights through guardians or trustees.¹³⁴

Indigenous traditions also embrace a holistic view of personhood. For instance, the Maori concept of "whakapapa" extends genealogical connections to natural features, endowing them with rights and responsibilities.¹³⁵ This distinction between human and non-human personhood facilitates the recognition and protection of natural entities in Maori law.¹³⁶

Roman law also included spiritual entities, known as *numina*, which were granted legal protection.¹³⁷ This is akin to indigenous practices, such as the Andean concept of "Huacas," sacred places or entities with spiritual significance.¹³⁸ Both traditions attribute legal rights and responsibilities to these entities through guardians or caretakers.

The Public Trust Doctrine, evolving from Roman *jus gentium*, recognizes shared resources held in trust for public benefit.¹³⁹ This principle parallels indigenous stewardship practices, where natural resources are seen as sacred and managed for the benefit of future generations. Both traditions stress collective responsibility and sustainable management of resources.¹⁴⁰

¹³³ Tănăsescu, *supra* note 129. Dancer, *supra* note 107. Maloney & Burdon, *supra* note 104. Wood, *supra* note 17.

¹³⁴ Stone, *supra* note 70. And, Stone, *supra* note 62.

¹³⁵ Lesley Rameka, Whakapapa: *A Māori Way of Knowing and Being in the World*, in 1 *ENCYCLOPEDIA OF EDUCATIONAL PHILOSOPHY AND THEORY* (Michael A. Peters ed., Springer Singapore 2016).

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ For an introductory discussion on this topic see, Eduardo Viveiros De Castro, *Cosmological Deixis and Amerindian Perspectivism*, 4 *THE JOURNAL OF THE ROYAL ANTHROPOLOGICAL INSTITUTE* 469 (Sep. 1998). See also, Studley & Bleisch, *supra* note 130.

¹³⁹ Kurki, *supra* note 107. Studley & Bleisch, *supra* note 130.

¹⁴⁰ On the variation between interpretation of the Public Trust Doctrine see for instance, Hope M. Babcock, *Using the Federal Public Trust Doctrine to Fill Gaps in the Legal Systems Protecting Migrating Wildlife from the Effects of Climate Change*, 95 *NEBRASKA L. REV.* 649 (2016). Robin Kundis Craig, *A Comparative Guide to the Western States' Public Trust Doctrines: Public Values, Private Rights, and the Evolution Toward an Ecological Public Trust*, 16 *PENN STATE ENVIRONMENTAL LAW REVIEW* 1 (2007). Robin Kundis Craig, *A Comparative Guide to the Eastern States' Public Trust Doctrines: Public Values, Private Rights, and the Evolution Toward an Ecological Public Trust*, 16 *PENN STATE ENVIRONMENTAL LAW REVIEW* 1 (2007). Thomas A. Campbell, *The Public Trust, What's It Worth?*, 34 *NATURAL RESOURCES JOURNAL* 73 (Regents of the University of New Mexico on behalf of its School of Law 1994). Erin Ryan, *The Public Trust Doctrine, Property, and Society*, (Routledge 2022). John W. Ragsdale Jr, *Time Immemorial: Aboriginal Rights In The Valles Caldera, The Public Trust, And The Quest For Constitutional Sustainability*, 86 *UNIVERSITY OF MISSOURI KANSAS CITY LAW REVIEW* 869 (2018).

Building on existing scholarly discourse, I propose that the convergence of these traditions is driven by their shared legal approaches to granting personhood to non-human entities. Specifically, my argument is that this convergence facilitates a global exchange of a specific interpretation of nature's rights, encompassing community rights, participatory democracy, and communal access to local environments. This convergence supports the adoption, driven by transnational grassroots organisations (which support more localised movements –in the case of this research municipalities in the United States (US)–), of this nature's rights interpretation, which, while varying in the type of legal provisions for nature's rights, unifies in advocating community rights, participatory democracy, and communal rights of access and management of local natural environments.

This intricate interplay between the communal rights of access to the local natural environment, community rights, and participatory democracy forms a cohesive democratic framework for governance and decision-making.¹⁴¹ Communal rights of access and management of the local natural environment encapsulate shared interests in public goods and resources, with the aim of responsible resource management for the collective welfare.¹⁴² Conversely, community rights underscore the agency of specific groups, acknowledging their distinct relationships with local natural environments and advocating for their involvement in decisions impacting their well-being and resources.¹⁴³ Participatory democracy, as a democratic paradigm, emphasizes citizens' active participation in decision-making processes.¹⁴⁴ It acknowledges the significance of diverse voices in shaping judgments related to shared resources and public affairs.¹⁴⁵

The interplay among these terms becomes apparent as communal rights of access and management of the local natural environment and community rights find their most effective

¹⁴¹ James D. Gwartney & Richard L. Stroup, *Communal vs. Private Property Rights*, Foundation for Economic Education, (Feb. 1, 1988) <https://fee.org/articles/communal-vs-private-property-rights/>. This has also been recognised in other contexts as community-based natural resource management (CBNRM). On this see, *Community Based Natural Resources Management*, WORLD NEIGHBORS, <https://www.wn.org/what-we-do/community-based-natural-resources-management/>.

¹⁴² For an introduction on the idea of community rights see, Etzioni, *supra* note 77. See also, Adcharaporn Pagdee et al., *What Makes Community Forest Management Successful: A Meta-Study From Community Forests Throughout the World*, 19 SOCIETY & NATURAL RESOURCES 33 (Jan. 2006).

¹⁴³ Thomas Linzey & Anneke Campbell, *Be The Change : How to Get What You Want in Your Community* (Salt Lake City Gibbs Smith 2009).

¹⁴⁴ Laurence Bherer et al., *The Participatory Democracy Turn: An Introduction*, 12 JOURNAL OF CIVIL SOCIETY 225 (Feb. 2016).

¹⁴⁵ *Id.*

expression through the vehicle of participatory democratic practices.¹⁴⁶ Participatory democracy empowers communities to exercise their rights, contribute to decisions concerning resources, and provide insights that inform overall governance.¹⁴⁷ Within the framework of participatory democracy, communities engage in constructive dialogues and collaborative decision-making with a range of stakeholders.¹⁴⁸ This dynamic fosters the negotiation of rights, the sharing of responsibilities, and the formulation of sustainable solutions that harmonize the common good with the specific needs of communities.¹⁴⁹ This interwoven dynamic establishes an inclusive, equitable, and democratic framework that aims at enhancing the sustainability and equity of resource management and governance.¹⁵⁰

These assertions will be substantiated through my analysis, which draws comparisons between the Ecuadorean constitutional provision and the Tamaqua municipal ordinance in the subsequent section.

OPERATIONALISING RIGHTS OF NATURE

This section undertakes a comparative analysis of the Tamaqua municipal ordinance in the United States and the Ecuadorian Constitution. This section serves to substantiate the preceding argument that the convergence among diverse traditions finds its roots in shared legal arguments for bestowing personhood upon non-human entities. This substantiation is achieved by demonstrating that this convergence, in fact, facilitates a global exchange, driven by transnational grassroots organizations which provide crucial support for the adoption of the provisions, of a distinct interpretation regarding nature's rights. This specific interpretation encompasses facets such as community rights, participatory democracy, and communal access to local natural ecosystems. While variations may exist in the precise legal frameworks bestowing nature's rights, there is a unified advocacy for including in the legal provision ideas of community rights, participatory democracy, and communal access and stewardship of local natural environments.

¹⁴⁶ On this topic see, Kahente Horn-Miller, *What Does Indigenous Participatory Democracy Look Like: Kahnawa:Ke's Community Decision Making Process*, 18 REV. CONST. STUD. 111 (2013).

¹⁴⁷ Bherer et al., *supra* note 144.

¹⁴⁸ *Id.* See also, Horn-Miller, *supra* note 146.

¹⁴⁹ Bherer et al., *supra* note 144. Horn-Miller, *supra* note 146.

¹⁵⁰ Bherer et al., *supra* note 144. Horn-Miller, *supra* note 146.

These legal instruments notably recognize and safeguard the rights of nature, either by bestowing rights to nature or by recognising a broad obligation to uphold the integrity of the local natural ecosystem. Noteworthy in this context is the role played by the Community Environmental Legal Defense Fund (CELDF), a grassroots organization operating in the US, which contributed to the development of the Ecuadorian constitutional provisions and the Tamaqua municipal ordinance. This underscores a process of crosspollination of legal concepts and practices across borders –a phenomenon that, I argue, could be construed as a process of legal transplantation.

The Tamaqua Municipal Ordinance

Situated in the eastern Schuylkill Region of Pennsylvania, Tamaqua is a town and borough with a population of approximately 7,000 residents.¹⁵¹ Notably, Tamaqua holds a pioneering status in the realm of legal history as it became the first municipality in the United States (US) to enact on September 19th, 2006, a municipal ordinance that includes provisions that, while not bestowing personhood to nature directly, establish a wide obligation to respect the integrity of the local natural ecosystem.¹⁵²

The Tamaqua ordinance includes provisions that mirror principles of Earth Jurisprudence, specifically of Wild Laws, these can be traced back to the work of South African attorney Cormac Cullinan, whose book “Wild Law: A Manifesto for Earth Justice” called for a new conceptualisation of rights, including the recognition of nature's right to flourish.¹⁵³ Cullinan

¹⁵¹ In Wake of Toxic Dumping, Tamaqua Borough Passes Rights of Nature Ordinance, USA, EJOLT, <https://ejatlas.org/conflict/tamaqua-borough-passes-ordinance-on-rights-of-nature>. See also, Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

¹⁵² EJOLT, *supra* note 15. See also, Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

¹⁵³ Cullinan, *supra* note 18. See also Cormac Cullinan, *Wild Law A Manifesto for Earth Justice*, Green Books (2011). On this, in the book, Cullinan recalls his encounter with Thomas Linzey of the Community Environmental Legal Defence Fund. Prompted by an editor's suggestion, Cullinan reached out to Linzey via email. To his surprise, Linzey responded promptly, informing him that the Tamaqua Borough Council had recently passed the first municipal ordinance recognizing the rights of natural communities. Cullinan was provided with a copy of the ordinance and was astonished to find that it mirrored key principles of Earth Jurisprudence, even though the CELDF members were unfamiliar with the concept of Wild Law. Intrigued by this parallel, Cullinan shared his work on the idea of Wild Law with Linzey. This exchange revealed that despite their geographical and methodological differences, both Cullinan and Linzey had independently arrived at similar conclusions regarding the importance of recognizing and protecting the rights of natural ecosystems. On this see also, Maloney and Burdon, *supra* note 104.

argued that nature possesses intrinsic rights, just as humans do, and that the well-being of the Earth community is inseparable from human existence.¹⁵⁴

The Tamaqua municipal ordinance, enacted to address the land application of sewage sludge, aims to mitigate significant threats to the health, safety, and welfare of the residents and environment in the Tamaqua borough.¹⁵⁵ This measure involved prohibiting corporations from engaging in such practices and revoking constitutional powers previously held by corporations within the borough.¹⁵⁶ The Tamaqua ordinance set a precedent for granting legal standing to natural communities and ecosystems.¹⁵⁷ While it did not create a separate legal personality for nature, it recognised the rights for communities to protect nature on its behalf.¹⁵⁸ This recognition underscores the need to prioritise the interests of nature over property rights.¹⁵⁹

The arguments presented in the Tamaqua municipal ordinance highlight two primary themes: morality and responsibility.¹⁶⁰ The moral duty of protecting the ecosystem is emphasized, emphasizing the sacredness of nature and the need to preserve it.¹⁶¹ The municipal ordinance advocates for a development approach that recognises the interdependence between the ecosystem and the community.¹⁶² Moreover, it establishes a sense of responsibility for the community to safeguard their ecosystem against external threats, particularly the private interests of corporations and unfavourable policies from state and federal governments.¹⁶³

Another key theme underlying the municipal ordinance is the idea of local self-determination.¹⁶⁴ The people of Tamaqua asserted their fundamental and inalienable right to govern themselves, seeking to secure their rights to life, liberty, and the pursuit of happiness.¹⁶⁵ The municipal ordinance (they call it a Community Bill of Rights –CBR–) mandates public meetings to explore alternative measures that expand local control and residents' ability to protect their right to self-government.¹⁶⁶ Moreover, the municipal ordinance aims to revoke the

¹⁵⁴ Cullinan, *supra* note 18. *And*, Cullinan, *supra* note 153.

¹⁵⁵ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

¹⁵⁶ *Id.*

¹⁵⁷ EJOLT, *supra* note 5. *See also*, EJOLT, *supra* note 15.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

legal rights traditionally bestowed upon corporations and instead allocate them to ecosystems and the communities that depend on them.¹⁶⁷

The impact of the Tamaqua municipal ordinance extended beyond its local jurisdiction.¹⁶⁸ It paved the way for the inclusion in subsequent municipal ordinances of rights to specific natural ecosystems –the Lake Erie Community Bills of Rights (CBR) (municipal ordinance of the city of Toledo, Ohio charter)– or conceptualized as an integrated ecosystem, positioning it as a member of the community –all the other municipal ordinances or CBRs– and catalysed a global movement advocating for the recognition of rights of nature.¹⁶⁹ Grassroots communities, affiliated loosely, have actively promoted this novel legal concept not only in the US but also in other countries.¹⁷⁰ The following sub-sections will delve into how these key principles that I have just introduced are expressed throughout the municipal ordinance.

The Biocentric Provisions

Section 7.6 of the municipal ordinance stipulates that Borough residents, natural communities, and ecosystems are to be accorded the status of “persons” for the explicit purpose of enforcing their rights.¹⁷¹ This provision affords these entities legal standing, enabling them to assert and safeguard their rights akin to human beings.¹⁷² This extension of personhood beyond human and artificial entities represents a significant departure from conventional legal norms.¹⁷³

While historically, legal personhood has been attributed exclusively to human beings and, in some cases, artificial entities like corporations, this provision broadens the scope of personhood to encompass non-human entities.¹⁷⁴ This recognition acknowledges their inherent worth and entitlement to distinct rights. Importantly, while the Tamaqua municipal ordinance or CBR

¹⁶⁷ *Id.*

¹⁶⁸ CELDF on rights of nature, *supra* note 9.

¹⁶⁹ *Id.* See also, Lake Erie Bill of Rights, Charter of the City of Toledo, Ch. XVII, §§ 253-260 https://codelibrary.amlegal.com/codes/toledo/latest/toledo_oh/0-0-0-158818. CELDF called the Community Bill of Rights (a municipal ordinance) “The first right-based law in the United States that specifically acknowledges the rights of a distinct ecosystem.” Rights of Lake Erie Recognized in Historic Vote, CELDF, <https://celdf.org/2019/02/rights-of-lake-erie/>.

¹⁷⁰ CELDF on rights of nature, *supra* note 9. See also, *Global Alliance for the Rights of Nature (GARN) -About GARN*, <https://www.garn.org/about-garn/>.

¹⁷¹ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.7.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* See also, Stone, *supra* note 70. And, Stone, *supra* note 62.

refrains from explicitly bestowing rights upon nature as an independent entity, it conceptualizes nature as an integrated ecosystem, positioning it as a member of the community.¹⁷⁵

This ecosystem perspective encompasses the constituents of the community—borough residents, natural communities, and ecosystems—comprising both living and non-living elements essential for sustaining life within the community.¹⁷⁶ The language used in the municipal ordinance emphasizes the inclusivity of these entities.¹⁷⁷ Furthermore, even though the municipal ordinance doesn't explicitly establish personhood for nature itself, it does impose a responsibility to uphold the integrity of the local natural ecosystem.¹⁷⁸

By conferring “personhood” status upon borough residents, natural communities, and ecosystems, the municipal ordinance or CBR empowers these entities to seek legal remedies and protection.¹⁷⁹ This empowerment enables them to initiate legal actions, such as seeking declaratory, injunctive, or compensatory relief in cases of ordinance violations.¹⁸⁰ This provision signifies a broader acknowledgment of the interdependence between humans and the natural environment, highlighting the importance of conserving and safeguarding natural resources for the betterment of current and future generations.¹⁸¹

From a close reading of these provisions, an argument can be formulated suggesting that the drafters may have drawn inspiration from legal principles rooted in the Roman legal tradition of *jus gentium* when crafting the ordinance. This connection to *jus gentium* implies an intention to create a legal framework that reflects not only contemporary values but also echoes historical legal philosophies. The Tamaqua municipal ordinance or CBR explicitly confers the status of “persons” upon Borough residents, natural communities, and ecosystems.¹⁸² I argue that, it seems like this provision potentially aligns with the notion of Public Trust. This approach serves to protect resources shared within the community, recognizing these entities as integral components of the Public Trust that necessitate preservation for the overall welfare of society.

¹⁷⁵ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.6.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.6.

This ensures the prudent management of natural resources for both the present and future generations.

This interpretation of the municipal ordinance or CBR as embracing a concept akin to the Public Trust Doctrine underscores its commitment to ensuring sustainable resource management. By acknowledging the shared responsibility for these resources, the municipal ordinance or CBR emphasizes the importance of preserving the natural environment for the collective well-being and prosperity of society. This alignment with the concept of Public Trust mirrors the historical and ethical foundations of legal principles that have endured across different legal traditions.

The Provisions of a Right to a Healthy Environment

Section 7.7 of the municipal ordinance or CBR asserts the fundamental and inalienable rights of all residents of Tamaqua Borough to a healthy environment and the integrity of their bodies.¹⁸³ It specifically recognises the right to unpolluted air, water, soils, flora, and fauna, as well as the right to be free from unwanted invasions of the body by pollutants.¹⁸⁴

This provision establishes a legal framework for environmental protection and safeguards the well-being of the residents.¹⁸⁵ It recognises that a healthy environment is a fundamental right that should be enjoyed by all individuals within the Borough.¹⁸⁶ It emphasizes the importance of preserving and maintaining the natural resources necessary for sustaining a healthy ecosystem and protecting human health.¹⁸⁷

Furthermore, by explicitly acknowledging the right to be free from unwanted invasions of the body by pollutants, this provision recognises the potential harm caused by environmental pollution.¹⁸⁸ It establishes a duty on the part of the government and other actors to take measures to prevent and mitigate pollution that may adversely affect the residents' health and well-being.¹⁸⁹

¹⁸³ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.7.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

In summary, Sections 7.6 and 7.7 represent a significant legal development in recognising the rights of non-human entities and affirming the fundamental rights of residents to a healthy environment and bodily integrity.¹⁹⁰ These provisions expand the scope of legal protections, reflecting a growing awareness of the interconnectedness between human well-being and the environment.¹⁹¹ They provide a legal basis for enforcing these rights and establishing responsibilities for preserving and protecting the natural resources within the Borough.¹⁹²

The Restoration Mechanisms

Peculiarly, the municipal ordinance or CBR does not include any provisions for restoring nature. My argument is that this is because nature is not awarded rights per se –rather, personhood to nature is granted under the wider umbrella of community rights as a right awarded to the local natural ecosystem. In fact, the Tamaqua municipal ordinance or CBR does not explicitly confer personhood upon nature as an independent entity.¹⁹³ Instead, it recognises the rights of the communal access to local ecosystems, which encompasses the shared resources within a community.¹⁹⁴ This includes the people, natural communities, and ecosystems that collectively form the fabric of the community.¹⁹⁵

In other words, my view is that this conceptualisation of legal rights to nature aligns with the concept of community rights, which recognises the importance of safeguarding the common resources that contribute to the well-being and sustainability of the community as a whole. In this sense nature does not have specific needs but only those that are perceived important by the local community.

The Enforcement Mechanisms

I will now briefly analyse the provisions detailing the enforcement mechanisms which are outlined in Section 11 and 12 of the municipal ordinance or CBR and serve as an essential framework for enforcing violations of the municipal ordinance.¹⁹⁶

¹⁹⁰ *Id.* § 7.6-7.7.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.* § 7.6.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* § 11-12.

The municipal ordinance or CBR recognises and enforces the rights of residents to defend natural communities and ecosystems.¹⁹⁷ It allows the Borough of Tamaqua and its residents to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Borough.¹⁹⁸ The municipal ordinance or CBR also grants standing to the borough and its residents to enforce the rights of residents, natural communities, and ecosystems.¹⁹⁹

However, this is contrary to established legal doctrine. In common law systems, standing rules typically require claimants to demonstrate that they have suffered a specific injury that goes beyond the harm experienced by the public.²⁰⁰ Additionally, while class actions exist, they are specific and have limitations, and there is no legal mechanism for an *Actio Popularis* –or an Amparo mechanism (I will explain this in the next section)–, which is an action initiated by a private citizen in the public interest.²⁰¹ Therefore, in this case CELDF is attempting to confer “standing” on “residents” as an attempt to create an *Actio Popularis*, which is contrary to current legal doctrine.

Moreover, by incorporating the Pennsylvania Rules of Criminal Procedure in the municipal ordinance or CBR, it effectively aligns with established legal procedures for handling summary offenses within the state, ensuring a consistent and systematic approach for enforcement.²⁰²

The imposition of fines, as stipulated in Section 11.2, is designed to deter non-compliance with the municipal ordinance.²⁰³ The graduated fines for repeat violations not only signify the seriousness of the offense but also underscore the borough's unwavering commitment to upholding the provisions of the ordinance.²⁰⁴ Additionally, the inclusion of potential imprisonment serves as a potential consequence for more severe or persistent violations, further emphasizing the importance of compliance.²⁰⁵

¹⁹⁷ *Id.* § 11.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* § 12.2.

²⁰⁰ Peter W. Low, John Calvin Jeffries, Curtis A. Bradley, *Federal Courts and the Law of Federal-State Relations* (Foundation Press 2014).

²⁰¹ *Id.*

²⁰² Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 11.1.

²⁰³ *Id.* § 11.2.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

Section 11.3 addresses the concept of continuing violations, recognising that violations can span multiple days or encompass breaches of different sections of the municipal ordinance or CBR.²⁰⁶ This provision establishes that each day or portion thereof and each violated section will be considered a separate offense.²⁰⁷ Such an approach ensures enforcement of the municipal ordinance or CBR, enabling the appropriate addressing of ongoing or repeated violations.²⁰⁸

The availability of both district justice courts, in Pennsylvania this is the Court of Common Pleas, as indicated in Section 11.4, provides Tamaqua Borough with flexibility in enforcing the municipal ordinance.²⁰⁹ The choice of the legal venue can be made based on the specific circumstances of each case.²¹⁰ Furthermore, the provision enabling Tamaqua Borough to recover all costs of litigation, including expert and attorney fees, safeguards against potential financial burdens associated with enforcing the municipal ordinance.²¹¹

Section 11.6 introduces a significant consequence for repeated violations related to sewage sludge application, namely, a permanent prohibition on engaging in this activity.²¹² This prohibition not only acts as a strong deterrent but also highlights the borough's firm commitment to safeguarding the environment and public health.²¹³

By granting individual residents the authority to enforce the ordinance through legal action in the local Courts, as outlined in Section 11.7, the municipal ordinance or CBR empowers residents to actively participate in upholding the rights and protections afforded by the ordinance.²¹⁴ The provision further ensures that residents are not impeded by financial barriers, as they can recover all costs of litigation, including expert and attorney fees, when seeking legal remedies.²¹⁵

²⁰⁶ *Id.* § 11.3.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.* § 11.4.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.* § 11.6.

²¹³ *Id.*

²¹⁴ *Id.* § 11.7.

²¹⁵ *Id.*

Transitioning to Section 12, the civil rights enforcement provisions establish liability for individuals, corporations, or entities that violate the rights, privileges, or immunities secured by the municipal ordinance or CBR or other relevant legal frameworks.²¹⁶ The inclusion of compensatory and punitive damages, along with the responsibility for all costs of litigation, reflects the gravity of such violations and aims to provide appropriate remedies and restitution for the affected parties.²¹⁷

Furthermore, Section 12.2 extends standing and authority to borough residents, enabling them to enforce not only the civil rights provisions of the municipal ordinance or CBR but also relevant state and federal civil rights laws.²¹⁸ This provision recognises the vital role of community engagement and participation in safeguarding the rights of natural communities, ecosystems, and Borough residents.²¹⁹ It empowers residents to initiate legal action against violators and seek redress for any infringements on their rights.²²⁰

Collectively, these provisions demonstrate a robust enforcement framework encompassing fines, potential imprisonment, legal actions, and remedies for both the borough and individual residents. Through the implementation of these measures, the municipal ordinance or CBR seeks to ensure compliance, promote accountability, and safeguard the rights of nature and the community.

Key Takeaways

In conclusion, the Tamaqua municipal ordinance represents a significant legal development by acknowledging the interconnectedness of the integrated ecosystem, which encompasses residents, natural communities, and ecosystems, and imposing an obligation to uphold its integrity.²²¹ The municipal ordinance or CBR acknowledges the rights of the communal access to local ecosystems, which encompasses the shared resources within a community.²²²

²¹⁶ *Id.* § 12.

²¹⁷ *Id.* § 12.1.

²¹⁸ *Id.* § 12.2.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.* § 7.

²²² *Id.*

Through its provisions, the municipal ordinance or CBR demonstrates a commitment to safeguarding the rights of residents to a healthy environment and bodily integrity, recognising the interdependence between human well-being and the environment.²²³ It grants residents the authority to actively participate in enforcing these rights, providing avenues for seeking legal remedies and recovering litigation costs at state and federal levels.²²⁴

The ordinance establishes liability for violations and includes compensatory and punitive damages, emphasizing the significance of appropriate remedies and restitution for affected parties.²²⁵ The enforcement framework's primary objectives are to ensure compliance, promote accountability, and safeguard the rights of both nature and the community.²²⁶

In summary, the Tamaqua municipal ordinance or CBR signifies a notable advancement in the legal recognition of non-human entities, the affirmation of residents' rights, and the establishment of a framework for the preservation and protection of natural resources.²²⁷

The Ecuadorean Constitution

Starting in the early 1970s, a worldwide trend emerged wherein environmental provisions have been constitutionally entrenched, a phenomenon referred to as environmental constitutionalism.²²⁸ Numerous state constitutions have integrated clauses recognizing citizens' entitlement to a healthy environment.²²⁹ Such provisions typically affirm individuals' fundamental right to a healthy environment, while imposing an obligation upon the government to safeguard and conserve the environment for current and future generations.²³⁰ Presently, over three-quarters of national constitutions globally encompass environmental provisions recognising the right of a healthy environment, with analogous patterns observed at sub-national levels in various countries.²³¹ This approach, driven by an instrumental rationale that

²²³ *Id.*

²²⁴ *Id.* § 11-12.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ For a general discussion see, Ackerman, *supra* note 2. See also, Roderic O'Gorman, *Environmental Constitutionalism: A Comparative Study*, 6 TRANSNATIONAL ENVIRONMENTAL LAW 435 (Nov. 2017). Louis J. Kotzé, *Arguing Global Environmental Constitutionalism*, 1 TRANSNATIONAL ENVIRONMENTAL LAW 199 (Apr. 2012). And, James R. May & Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press 2015).

²²⁹ O'Gorman, *supra* note 228. See also, Kotzé, *supra* note 228. And, May & Daly, *supra* note 228.

²³⁰ O'Gorman, *supra* note 228. See also, Kotzé, *supra* note 228. And, May & Daly, *supra* note 228.

²³¹ O'Gorman, *supra* note 228.

aims to uphold human entitlements to the natural world, has led to the predominance of anthropocentric rights within these provisions.²³²

More recently, a global paradigm shift has emerged, with some constitutions, primarily in Latin America, embracing a rights-based approach for environmental preservation.²³³ These new provisions signify a paradigm shift from a legal orientation primarily centred on human interests to one that embraces an ecocentric perspective.²³⁴ This transformation is exemplified by the constitutions' explicit recognition and establishment of legally enforceable rights of nature, challenging the conventional anthropocentric viewpoint that prioritizes human concerns over those of the natural world.²³⁵

State constitutions assume a pivotal role in propelling the notion of conferring legal rights to nature owing to their profound legal consequences.²³⁶ They furnish a legal framework for the safeguarding of nature's rights, enabling citizens to challenge government or private actions that may compromise the environment.²³⁷ These challenges seek redress for environmental harm, with the government assuming responsibility for environmental protection.²³⁸ The attribution of legal personhood for nature through constitutional clauses establishes a juridical bedrock for litigation and legal actions geared towards safeguarding these rights.²³⁹ Such actions may be initiated by individuals, entities, or even by the natural components themselves via appointed guardians or trustees.²⁴⁰

Additionally, state constitutions hold the potential to usher in a legal paradigm shift, recalibrating the perception of nature from mere property to recognizing the intrinsic value and significance of natural entities.²⁴¹ This shift fosters an integrated approach to environmental preservation, acknowledging the interdependence of natural systems and the imperative of conserving these systems for future generations.²⁴²

²³² Louis J. Kotzé & Paola Villavicencio Calzadilla, *Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador*, 6 TRANSNATIONAL ENVIRONMENTAL LAW 401 (Nov. 2017).

²³³ For a general discussion see, Borràs, *supra* note 75.

²³⁴ Kotzé & Calzadilla, *supra* note 232.

²³⁵ Borràs, *supra* note 75.

²³⁶ Kotzé & Calzadilla, *supra* note 232.

²³⁷ *Id.*

²³⁸ Kotzé, *supra* note 228.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ Borràs, *supra* note 75.

²⁴² *Id.*

Nonetheless, the inclusion of rights for nature in state constitutions is not devoid of contention. Critics contend that it could trigger an upsurge in lawsuits and introduce ambiguity in property rights.²⁴³ Moreover, they assert that such recognition is superfluous, given that prevailing environmental laws and regulations already offer substantial protection for natural resources.²⁴⁴ Despite these criticisms, the incorporation of rights of nature within state constitutions stands as a substantial stride towards acknowledging the inherent worth of nature and the urgency of safeguarding it for posterity.²⁴⁵

The Ecuadorean Constitution was one of the many Constitutions of Latin American Countries that were passed in the wake of the New Latin American Constitutionalism (NLAC) a wave of constitution making that started at the end of the 20th century and continued through the beginning of the 21st century.²⁴⁶

Ecuador's political history has been marked by frequent changes in government and political instability since gaining independence from Spain in 1822.²⁴⁷ However, the restoration of democracy in 1979 marked a significant change in the country's trajectory, with a move towards progressive, left-leaning, and social democratic governments.²⁴⁸ Rafael Correa won the national elections in the second round, at the end of 2006, after a very turbulent political period which saw eight Presidents in ten years.²⁴⁹ According to Lanzaro's analysis in “Análise de Cojuntura,” the administration of Rafael Correa, who ratified the new Constitution in 2008, can be classified as a populist government.²⁵⁰

The Ecuadorian constitutional biocentric reform was one of the many electoral promises of Correa.²⁵¹ He won by making a very strong stance against the entire political system and

²⁴³ For a general discussion see, Bétaille, *supra* note 81. See also, Philipp Wesche, *Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision*, 33 JOURNAL OF ENVIRONMENTAL LAW 531 (Nov. 2021).

²⁴⁴ Bétaille, *supra* note 81.

²⁴⁵ Boyd, *supra* note 16.

²⁴⁶ Jorge Lanzaro, *Análise de Cojuntura*, 12: 1-20, in CYNTHIA ARNSEN, LA ‘NUEVA IZQUIERDA’ EN AMÉRICA LATINA: DERECHOS HUMANOS, PARTICIPACIÓN POLÍTICA, Y SOCIEDAD CIVIL (Woodrow Wilson International Center for Scholars 1 ed. 2009).

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ Eduardo Gudynas, *Ecología, Economía y Ética del Desarrollo Sostenible* (Abya Yala 2003).

positioning himself close to the major environmentalist and social organisations in the country.²⁵²

Ecuador had shown a pre-existing openness towards recognising the rights to nature, even prior to the 2008 Constitution. The Ecuadorian lawyer, professor, and environmentalist, Ciro Angarita Barón, had already postulated the idea of nature as a subject of law and some of his arguments were included in the 1998 Constitution which already contained some preliminary notions of environmental conservation.²⁵³

The principles of Ciro Angarita Barón were then given full expression in the 2008 Constitution, making the Ecuadorean Constitution noteworthy for its bio-centric perspective and its recognition of nature as a recipient of rights which represent a significant departure from conventional anthropocentric Constitutions.²⁵⁴ The novel approach of the Ecuador Constitution stems from the fact that, for the first time, environmental rights have their own separate chapter in the Constitution, rather than being incorporated as third-generation rights, also known as “economic, social, and cultural rights,” which typically include the “right to a healthy environment,” in most other Constitutions.²⁵⁵

The Biocentric Provisions and the Provisions of a Right to a Healthy Environment

A distinctive aspect of the Ecuadorian Constitution lies in its recognition of indigenous concepts, namely Sumak Kawsay and Pachamama, constituting the components of the broader idea of Sumak Kawsay Yachay.²⁵⁶ This recognition signals a shift towards a holistic and

²⁵² *Id.*

²⁵³ Ciro Angarita Barón, *El Pensamiento Jurídico de Ciro Angarita Barón: Notas Preliminares* (Universidad De Los Andes 1999). See also, Ecuador Const., Decreto Legislativo No. 000. RO/ 1- 11 August 1998, https://www.cancilleria.gob.ec/wpcontent/uploads/2013/06/constitucion_1998.pdf.

²⁵⁴ Barón, *supra* note 345. See also, Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, <https://www.refworld.org/docid/3dbd62fd2.html>.

²⁵⁵ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008.

²⁵⁶ Sumak Kawsay, often translated as “good living” or “buen vivir,” is an indigenous Andean concept that emphasizes living in harmony with nature and community. It encompasses principles of reciprocity, balance, and respect for the interconnectedness of all living beings, promoting well-being and fulfillment for both present and future generations. Pachamama, a Quechua term meaning “Mother Earth,” represents the sacred and holistic view of the Earth as a living entity in indigenous Andean cultures. Pachamama embodies the interconnectedness of all life forms and ecosystems, serving as a symbol of fertility, abundance, and nurturing care. It underscores the reverence and stewardship indigenous peoples hold towards the natural world. Sumak Kawsay Yachay integrates indigenous Andean concepts of Sumak Kawsay (good living) with the notion of Yachay, which means “knowledge” or “wisdom” in Quechua. It represents the holistic understanding that living in harmony with nature and community requires not only material well-being but also wisdom, knowledge, and ethical

sustainable approach to development.²⁵⁷ By acknowledging the interconnectedness of all entities and the imperative of coexisting harmoniously with nature, the Constitution underscores the necessity for a more balanced and equitable stance on economic progress and environmental safeguarding.²⁵⁸

Illustrative of these principles are the articles pertaining to the rights of nature. Article 71 endows nature, or Pachamama, with the right to respect for its existence, life cycles, structure, functions, and evolutionary processes.²⁵⁹ Any person or community can invoke public authorities to uphold these rights, adhering to the Constitution's principles.²⁶⁰

Article 72 underscores nature's right to restoration, independent of the obligation for compensation.²⁶¹ In cases of severe or lasting environmental impact, the State is mandated to devise effective mechanisms for restoration and mitigation.²⁶² Article 73 imposes preventive and restrictive measures on activities jeopardizing species, ecosystems, and natural cycles.²⁶³ The introduction of potentially disruptive genetic elements is strictly prohibited.²⁶⁴

Lastly, Article 74 emphasizes the right of individuals, communities, and nations to benefit from the environment and natural wealth, facilitating a dignified way of life.²⁶⁵ Environmental services are safeguarded from appropriation and are regulated by the State.²⁶⁶

Moving forward, this section proceeds to examine the biocentric provisions and those for a right to a healthy environment collectively. Instead of dissecting them individually, the analysis contextualizes them within the framework of Sumak Kawsay Yachay—a concept that includes

awareness. Sumak Kawsay Yachay emphasizes the importance of education, learning from traditional wisdom, and fostering collective consciousness to achieve sustainable and harmonious living. For more information on the topic see, Michelle P. Bassi, *La Naturaleza O Pacha Mama de Ecuador: What Doctrine Should Grant Trees Standing?*, 11 OREGON REV OF INTL LAW (2009). See also, J. Parga, *Discursos Retrovolucionarios: Sumak Kawsay, Derechos de La Naturaleza y Otros Pachamamismos*, ECUADOR DEBATE (Acerca del Buen Vivir, Quito: Centro Andino de Acción Popular CAAP, no. 84, Diciembre 2011).

²⁵⁷ Bassi, *supra* note 256. See also, Parga, *supra* note 256.

²⁵⁸ Bassi, *supra* note 256. See also, Parga, *supra* note 256.

²⁵⁹ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 71.

²⁶⁰ *Id.*

²⁶¹ *Id.*, Art. 72.

²⁶² *Id.*

²⁶³ *Id.*, Art. 73.

²⁶⁴ *Id.*

²⁶⁵ *Id.*, Art. 74.

²⁶⁶ *Id.*

Pachamama and Sumak Kawsay.²⁶⁷ My argument is that using this I can show how legal principles from utilitarian, positivistic, and indigenous legal traditions converge to inform the formulation of these provisions.

Pachamama

In the Ecuadorean Constitution two concepts of nature are employed and it is defined as follows: “where life is reproduced and occurs.”²⁶⁸ The first is an indigenous conceptualisation called Pachamama (Mother Earth), the second is a Western conceptualisation of nature.²⁶⁹ The Ecuadorean Constitution recognises the importance of nature, specifically Pachamama, as a subject of rights.²⁷⁰ Article 10 of the Constitution establishes that nature or Pachamama shall have rights recognised by the Constitution, and Articles 71 and 72 provide for the enforcement of these rights through legal action.²⁷¹

The concept of Pachamama, rooted in indigenous culture, goes beyond a simple reference to Mother Earth.²⁷² It embodies a holistic worldview that recognises nature as a living entity, a source of life, and a powerful force that sustains all beings on earth.²⁷³ Pachamama emphasizes the interconnectedness of humans and nature and the importance of living in harmony with the natural world.²⁷⁴ It acknowledges the intrinsic value and agency of nature and grants it legal personhood and rights.²⁷⁵ This recognition signifies a shift from viewing nature as a resource to be exploited to recognising it as an independent entity with its own intrinsic value.²⁷⁶

On the other hand, Articles 71 and 72 employ a Western conceptualisation of nature.²⁷⁷ They establish the right to file lawsuits on behalf of nature and require the state to act to remedy harm done to nature and impose sanctions on those responsible.²⁷⁸ These articles provide legal protection for nature based on a Western understanding, which may not fully align with the

²⁶⁷ Parga, *supra* note 348.

²⁶⁸ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 71, § 1.

²⁶⁹ *Id.*

²⁷⁰ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008. *See also*, Kauffman & Martin, *supra* note 6.

²⁷¹ Refugees, *supra* note 342., Art. 71-72.

²⁷² Bassi, *supra* note 256. *See also*, Parga, *supra* note 256.

²⁷³ Bassi, *supra* note 256. *See also*, Parga, *supra* note 256.

²⁷⁴ Bassi, *supra* note 256. *See also*, Parga, *supra* note 256.

²⁷⁵ Parga, *supra* note 256. *See also*, Bassi, *supra* note 256.

²⁷⁶ Parga, *supra* note 256. *See also*, Bassi, *supra* note 256.

²⁷⁷ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 71, 72.

²⁷⁸ *Id.*

indigenous worldview of Pachamama.²⁷⁹ Art. 396 of the Ecuadorian Constitution provides detailed guidance on the responsibilities outlined in Art. 72 to ensure the right to the restoration of nature.²⁸⁰ It establishes a list of parties held liable for environmental harm throughout the processes of production, distribution, marketing, and use of goods or services.²⁸¹ These parties are obligated to assume direct responsibility for preventing environmental impacts, mitigating, and repairing damages, and implementing an ongoing environmental monitoring system.²⁸² Importantly, the article specifies that there is no statute of limitations for legal proceedings related to prosecuting and punishing those responsible for environmental damages.²⁸³

While Articles 71 and 72 confer rights and duties regarding nature, it is important to note that nature is not an active bearer of rights but a recipient of them.²⁸⁴ The recognition of nature as a subject of rights signifies a significant change in legal representation and protection.²⁸⁵ However, mechanisms for effective representation of non-human life forms and the practical implementation of these rights need to be further developed.²⁸⁶

Sumak Kawsay

The Ecuadorean Constitution reflects the global trend of incorporating environmental provisions into constitutions, but it does so in two distinct ways.²⁸⁷

Firstly, the constitution includes traditional provisions that recognise the rights to a healthy environment.²⁸⁸ Article 73 and Article 74 grant individuals and communities the right to enjoy a healthy environment while also prohibiting the appropriation of environmental services.²⁸⁹ Additionally, Article 73 imposes affirmative duties on the State to limit harmful environmental activities, such as the cultivation of Genetically Modified Organisms (GMOs), which could lead to ecosystem destruction and the disruption of natural cycles.²⁹⁰

²⁷⁹ Bassi, *supra* note 256. *See also*, Parga, *supra* note 256.

²⁸⁰ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 396, 72.

²⁸¹ *Id.*, Art. 396, § 2.

²⁸² *Id.*, Art. 396, § 2.

²⁸³ *Id.*, Art. 317.

²⁸⁴ *Id.*, Art. 71, 72.

²⁸⁵ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008. *See also*, Kauffman & Martin, *supra* note 6.

²⁸⁶ Refugees, *supra* note 342. *On this see*, Kauffman & Martin, *supra* note 6.

²⁸⁷ *On this see for instance*, Boyd, *supra* note 154. *See also*, O’Gorman, *supra* note 77.

²⁸⁸ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008.

²⁸⁹ *Id.*, Art. 73, 74.

²⁹⁰ *Id.*, Art. 73, § 2.

Secondly, the constitution incorporates the indigenous concept of the good way of living, known as Sumak Kawsay, in Articles 12-15.²⁹¹ Sumak Kawsay emphasizes living in harmony with nature, recognising the interconnectedness of all things, and promoting social and environmental justice.²⁹² This recognition represents a fundamental shift in the way nature is perceived.²⁹³ Rather than viewing nature as a resource to exploit, Sumak Kawsay acknowledges nature as a living entity with which humans must coexist symbiotically.²⁹⁴

The incorporation of Sumak Kawsay into the Ecuadorean Constitution symbolizes a firm commitment to pursuing a more rounded and sustainable approach to development.²⁹⁵ It signifies an acknowledgment of the intricate interplay between economic growth and environmental protection, emphasizing the need to harmonize these objectives.²⁹⁶ The constitution recognises the rights of nature, placing an emphasis on ecological restoration and the utilization of alternative energy sources.²⁹⁷

In summary, the provisions within the Ecuadorian Constitution are significant in their recognition of nature as a legal entity with independent rights.²⁹⁸ The inclusion of the concepts of Pachamama and Sumak Kawsay represents a shift towards a more biocentric perspective of nature that incorporates indigenous worldviews.²⁹⁹ These provisions on nature are interwoven throughout the constitution, signifying a steadfast commitment to upholding environmental protection standards, which are deemed indispensable for promoting “good living” in Ecuador.³⁰⁰

However, it is important to acknowledge the limitations of the provisions within the constitution pertaining to the pursuit of a good way of living.³⁰¹ These provisions encompass a broad range of issues, including inclusion, equity, education, health, biodiversity, and natural

²⁹¹ *Id.*

²⁹² Parga, *supra* note 256.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.* See also, Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008.

²⁹⁸ On this see for instance, Tănăsescu, *supra* note 129. Kauffman & Martin, *supra* note 6. Kotzé & Calzadilla, *supra* note 232.

²⁹⁹ On this see for instance, Tănăsescu, *supra* note 129. Kauffman & Martin, *supra* note 6. Kotzé & Calzadilla, *supra* note 232.

³⁰⁰ Bassi, *supra* note 256. See also, Parga, *supra* note 256.

³⁰¹ Pietari, *supra* note 56.

resources, and the environment is primarily mentioned in relation to the rights of citizens. The focus is centred on maintaining specific quality levels for the well-being and health of the population.³⁰² In this context, the rights to nature are viewed as an extension of human property rights, with the compromised state of an ecosystem evaluated primarily based on its impact on human property rather than considering biodiversity loss or ecosystem integrity.³⁰³

The Duty of the State

The Ecuadorian Constitution exhibits innovation by not only considering, protecting, and recognizing the rights of nature but also acknowledging that nature, or Pachamama, entails a restorative obligation on the part of the State.³⁰⁴ This distinctive recognition of the state's duty of restoration is articulated in Article 72 of the constitution which strengthens the extension of environmental rights to include the right of restoration.³⁰⁵

Nevertheless, it only intends restoration mainly as a reparation that includes typical provisions for environmental remediation, together with others for compensation to people or communities affected by environmental impacts.³⁰⁶ Moreover, the wording does not make a distinction between ecological rehabilitation as a reduction in deterioration (returning ecosystems to a less degraded situation) and restoration in the strict sense, which implies a return to the initial wild or natural state.³⁰⁷

This weakens the bio centric commitment of the whole section and imprints an anthropocentric idea to the restoration aspect of the whole Ecuadorian environmental commitment.³⁰⁸ Therefore, while these articles on restoration and ecosystem management align with some aspects of biocentrism, for instance by strengthening the extension of the environmental rights, they also provide strong anthropocentric elements due to its strong attachment to environmental engineering and the strict interpretation of restoration mainly as reparation.³⁰⁹

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ On this see for instance, Kauffman & Martin, *supra* note 6. See also, Tănăsescu, *supra* note 27. Tănăsescu, *supra* note 129.

³⁰⁵ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 72, § 1.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ On this see for instance, Pietari, *supra* note 56.

³⁰⁹ *Id.*

The Enforcement Mechanisms

Chapter 9, which includes Articles 83, 395, 396, and 397, elucidates the enforcement mechanisms for the newly established rights.³¹⁰

On this, Art. 83 bestows a duty and an obligation for Ecuadorians to “Respect the rights of nature, preserve a healthy environment and use natural resources rationally, sustainably and durably,” any violation of rights of nature will be considered as a direct violation of the Constitution.³¹¹

Art. 395 delineates the good practices for respecting the environmental principles, the article affirms that environmental principles must always take precedence.³¹² The provision also establishes the integration of various environmental policies already present, guarantees the participation of citizens, make it obligatory to take measures to avoid negative environmental impacts and establishes guidelines on liability.³¹³

The subsequent articles from 396 to 415 encompass a wide range of topics related to the holistic management of natural resources, reflecting the Ecuadorian Constitution's commitment to citizen participation, environmental stewardship, and responsible governance of public affairs.³¹⁴ These provisions uphold the principle of hierarchy and complementarity among all rights, emphasizing the need to strike a balance between different rights to maximize their realisation.³¹⁵ In cases where environmental rights potentially clash with other constitutional rights, a process of evaluation and assessment is carried out through legal or constitutional jurisprudence.³¹⁶ Any limitations imposed in such instances must meet the criteria of reasonableness, proportionality, and necessity.³¹⁷

The articles adopt a thematic approach that covers a broad spectrum, addressing various aspects of environmental policies and providing specific guidelines for environmental management.³¹⁸

³¹⁰ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 83, 395, 396, 397.

³¹¹ *Id.*, Art. 83, § 6.

³¹² *Id.*, Art. 83, § 4.

³¹³ *Id.*, Art. 83, § 3.

³¹⁴ *Id.*, Art. 396, 397, 398, 399, 400, 401, 402, 403, 404, 405.

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*, Art. 397, § 5.

³¹⁸ *Id.*, Art. 14, 15, 16, 17, 18, 19.

They encompass a wide range of topics related to fauna, flora, soils, water, and other natural resources.³¹⁹ This principle of effectiveness is deeply ingrained in the constitutional structures and procedures, providing a framework for the realisation and protection of environmental rights.³²⁰

Furthermore, the constitutional hierarchy places rights of nature that directly contribute to its protection at the highest level.³²¹ This means that, if a favorable interpretation can be made to strengthen their effective force, these rights take precedence over other constitutional rights.³²² Consequently, any environmental harm must be avoided, even if it necessitates relinquishing other constitutional rights.³²³ The provision states that, in cases where doubts arise regarding the scope of legal provisions for environmental issues, the interpretation most favorable for the protection of nature shall prevail.³²⁴ This interpretative rule extends not only to the Constitution itself but also to the entire legal framework encompassing environmental issues, including laws, statutes, and regulations.³²⁵

Art. 397 delineates legal standing in detail, in addition to the reiterating what said in Art. 71, it grants universal jurisdiction.³²⁶ Hence, virtually all legal entities in the world have standing to demand enforcement of rights of nature in Ecuador.³²⁷ This approach is made possible through the legal concept of Writ of Amparo.³²⁸ The Writ of Amparo is a legal remedy or action that allows individuals or groups to seek the protection of their constitutional rights.³²⁹ It serves as a crucial tool for asserting the rights of both individuals and the environment.³³⁰

In Latin American countries, the Writ of Amparo facilitates the inclusion of constitutional rights for natural phenomena.³³¹ This legal instrument empowers individuals and environmental advocates to take legal action on behalf of the environment itself.³³² It

³¹⁹ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008.

³²⁰ *Id.* The concept of the “principle of effectiveness” as related to environmental rights is not tied to a specific article but is a general guiding principle within the Constitution that emphasizes the practical implementation and protection of environmental rights.

³²¹ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008.

³²² *Id.*, Art. 10, § 2.

³²³ *Id.*

³²⁴ *Id.*, Art. 71.

³²⁵ *Id.*

³²⁶ *Id.*, Art. 397.

³²⁷ *Id.*, Art. 397, § 1.

³²⁸ Hector Fix Zamudio, *The Writ of Amparo in Latin America*, 13 LAW. AM. 361 (1981).

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.*

recognizes that the environment has inherent rights and can be a subject of legal protection, even in the absence of direct human injury.³³³

Moreover, the Constitution recognizes and promotes development as an objective but also places emphasis on achieving sustainable development.³³⁴ Economic activities are expected to contribute to the realization of environmental rights, ensuring the availability of resources for future generations through practices such as conservation, reproduction, and sustainable development of nature.³³⁵ This approach goes beyond addressing immediate and direct environmental damage caused by industrial and extractive activities, acknowledging the intrinsic value of nature as an invaluable entity in its own right.³³⁶

Art. 72 and Art. 407 of the Ecuadorian Constitution impose restrictions on the exploitation of non-renewable natural resources within protected and intangible areas.³³⁷ These provisions recognize the need for environmental preservation and establish regulations to ensure the responsible management of extractive resources.³³⁸

When authorizing the development of extractive resources, the Constitution sets out rules and procedures to which public authorities must adhere, to safeguard environmental protection.³³⁹ Art. 407 addresses the contentious issue of concessions for the exploitation of minerals, hydrocarbons, and wood within protected areas, which often give rise to socio-environmental conflicts.³⁴⁰

Key Takeaways

In conclusion, the Ecuadorian Constitution represents a step forward in recognising the rights of nature and incorporating elements of environmental protection, biocentrism, and indigenous rights.³⁴¹ The incorporation of the indigenous concept of Sumak Kawsay and the recognition

³³³ *Id.*

³³⁴ *Id.*, Art. 3, § 5. *See also*, Pietari, *supra* note 56.

³³⁵ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 66, §15. *See also*, Pietari, *supra* note 56.

³³⁶ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008. *See also*, Pietari, *supra* note 56.

³³⁷ Ecuador Const. Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 51, 72, 407.

³³⁸ *Id.*

³³⁹ *Id.*, Art. 51.

³⁴⁰ *Id.*, Art. 407.

³⁴¹ On this topic *see for instance*, Tănăsescu, *supra* note 27. Tănăsescu, *supra* note 129. Kotzé & Calzadilla, *supra* note 232. Bassi, *supra* note 256.

of Pachamama further highlight the commitment to an integrated approach to development and the importance of living in harmony with nature.³⁴²

However, it is important to acknowledge the limitations of the Constitution's provisions. The framing of nature's rights within citizen rights still reflects an anthropocentric and property rights perspective, focusing on maintaining environmental quality for people's well-being.³⁴³ While mechanisms for enforcing nature's rights through legal action and compensation for ecosystem harm are included, effective representation and protection mechanisms for non-human life forms require further development.³⁴⁴

Additionally, there are tensions and contradictions within the constitutional text and the actual practices of the country. The pursuit of conventional economic development through the exploitation of natural resources, particularly in sectors like mining and hydrocarbons, contradicts the aspirations for a more biocentric vision of development.³⁴⁵ The tension between economic considerations and environmental protection remains a challenge that needs to be addressed.³⁴⁶

Comparative Analysis of the Two Legal Frameworks

Taking into consideration the elements brought to light analysing the Ecuadorean Constitution we can see the same clusters also in the Tamaqua municipal ordinance or CBR on these themes: right of nature, right to a healthy environment, a “Mother Nature” rhetoric, and the attempt to confer “standing” on “residents” via a citizen suit provision to create an *Actio Popularis*.

“Mother Nature” and the Right to of Nature

The use of the “Mother Nature” rhetoric, while outside of the main political discourse is heavily present in both the Ecuadorian provisions and the United States ordinances. In the Ecuadorian Constitution the preamble uses rhetorical language like “Pachamama, of which we are a part” and “harmony with nature.”³⁴⁷ The Tamaqua municipal ordinance or CBR while not explicitly including overt rhetorical language that relates to “Mother Nature” clearly states that nature

³⁴² Pietari, *supra* note 56.

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Preamble.

and local communities have an interdependent relationship.³⁴⁸ Furthermore, in both the Ecuadorean provisions and the Tamaqua municipal ordinance or CBR, it is clearly stated that societal harmony with “Mother Nature” is a priority.³⁴⁹

In the Ecuador Constitution, there is an overarching representation of nature using rights discourse.³⁵⁰ However, the Tamaqua municipal ordinance or CBR differs from the Ecuadorian provisions in that the ordinance recognises that nature has rights only in terms of “exist and flourish,” while the Ecuadorian provisions present an evolution of this initial iteration and include the right to “persist, evolve, and regenerate.”³⁵¹

Moreover, contrary to the Ecuadorian Constitutional provisions, in this ordinance rights of nature are part of a package of rights.³⁵² In both cases, rights of nature are broadly defined to encompass the whole of nature rather than a specific ecosystem or specific landscapes.³⁵³ This expansive definition affirms that nature has a right to “exist, persist, evolve, and regenerate” but does not mention how ecosystem services can be maintained.³⁵⁴

The ordinance bestows rights to “nature, ecosystems and natural communities” with language that highlights the strong interlinkages between local communities and the natural environment, in this sense it recalls the strong elements of indigeneity of the Ecuadorean Provisions.³⁵⁵ In this narrative, local communities just like indigenous communities are intrinsic to the local ecosystem and live harmoniously and in communion with it.³⁵⁶

³⁴⁸ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.

³⁴⁹ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Preamble. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.

³⁵⁰ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 71, 72. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.

³⁵¹ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 71, 72. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.5.

³⁵² Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Chapter 7. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.7.

³⁵³ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008. The concept of nature is generally referred to throughout the Constitution, particularly in the Preamble and within articles related to environmental rights and the rights of nature. However, there is not a single, comprehensive definition of nature in the Constitution, the text as a whole acknowledges nature as a living entity deserving of respect and protection, encompassing the ecosystems, flora, fauna, and the Earth's natural processes that sustain life. This recognition forms the basis for the rights of nature in Ecuador's constitutional framework. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.

³⁵⁴ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006. Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008.

³⁵⁵ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Preamble and Art. 57. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.6.

³⁵⁶ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.6.

This narrative has the specific aim to strengthen the existing indigenous territorial rights and to strengthen the link between indigenous people and the local ecosystem to promote local development instead of the kind of development dictated by foreign corporations.³⁵⁷ The same narrative can be retraced in the United States (US) municipal ordinances; here the language is framed in terms of inalienable rights of the community to determine their own type of economic development and in addition the ordinances strip corporations of legal personhood.³⁵⁸

Right to a Healthy Environment

The right of the environment to be healthy is present in both the Ecuador Constitution and the Tamaqua municipal ordinance or CBR.³⁵⁹ The interesting aspect of this shared feature lies in the same legal arguments that is found in both legal texts. In fact, both text link the rights of nature to the right of a healthy environment, just like nature has a right to exist, persist and regenerate so do local communities –in the case of Ecuador these are indigenous communities– have a right to enjoy nature and determine the kind of local development which implicitly presume will always be in the best interest of nature.³⁶⁰

Therefore, the assumption is that local communities have nature's best interest at heart. In this vein, only certain individuals are prohibited from interfering with rights of nature. In the Tamaqua municipal ordinance or CBR these are “Any corporation or its directors, officers, owners, or managers;” in the Ecuadorean Constitution Art. 396 presents an expansive list of parties liable for environmental harm in processes of production, distribution, marketing and use of goods or services which “Shall accept direct responsibility for preventing any environmental impact, for mitigating and repairing the damages caused, and for maintaining an ongoing environmental monitoring system.”³⁶¹ In the Tamaqua municipal ordinance or CBR the argument that a local resident will always act in the best interest of nature reinforces the local self-determination arguments that are also laid out in other sections of the texts.³⁶²

³⁵⁷ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008.

³⁵⁸ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 14.

³⁵⁹ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 14. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006 § 7.7.

³⁶⁰ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Preamble and Art. 57. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.

³⁶¹ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 396, § 2. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 5.

³⁶² Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 2.

Local Self-Determination

Local self-determination reflects the different needs of the local communities in Ecuador and in the US. In the Ecuadorian Constitution the element of indigenist is strongly present, hence the Ecuadorean provision reflects the cosmovision of the indigenous community.³⁶³ In the Tamaqua municipal ordinance or CBR, the notion of community rights is widely employed.³⁶⁴

Actio Popularis as Enforcement Mechanism

By means of attempting to confer “standing” on “residents” as an attempt to create an *Actio Popularis* an enforcement mechanism in the US, and through the use of the Writ of Amparo in Ecuador; both the Ecuador provisions and the Tamaqua municipal ordinance or CBR recognise the right for any individual or organisation to defend, protect, and enforce those rights on behalf of nature, and for payment of recovered damages to the government to provide for the full restoration of nature.³⁶⁵ Under these laws, any person may stand to speak for nature even if standing can pose a significant challenge for parties that seek redress for environmental damages or even environmental degradation that impacts them.³⁶⁶

The Ecuadorian constitutional provisions are explicit in that they allow every person to enforce rights of nature, but they are just a directive for the legislative branch.³⁶⁷ However, Ecuador has created the role of ombudsman specifically to investigate and report on allegations of rights of nature violations brought by people and communities.³⁶⁸ The Tamaqua municipal ordinance or CBR is not as prescriptive but simply states that “Any Borough resident shall have the authority to enforce this ordinance through an action in equity brought in the Court of Common Pleas of Schuylkill County.”³⁶⁹ Nevertheless, in both instances, representation, is voluntary; no person is legally obligated to speak for nature.³⁷⁰ Consequently, the model tends to address

³⁶³ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008.

³⁶⁴ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

³⁶⁵ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 86, 87, 88. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.6, and §12.1.

³⁶⁶ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 86, 87, 88. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.6, § 11.7, §12.1.

³⁶⁷ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008, Art. 71, 72.

³⁶⁸ *Id.*, Art. 211.

³⁶⁹ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 11.4.

³⁷⁰ Ecuador Const., Decreto Legislativo No. 0. RO/ 449 October 2008. Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

rights to nature reactively, with people seeking to defend rights of nature in court when violations are imminent or after they have occurred.³⁷¹

The Tamaqua municipal ordinance or CBR and the provisions in the Ecuadorian Constitution delineating the guardianship model can be considered strong in that they empower anyone to speak for nature. But in another sense, it is weak since no one is obligated to represent nature or fight for its rights.³⁷² The system relies on volunteerism.³⁷³ It also sets up a reactive system in which people are expected to appeal to public authorities, typically through the legal system, to stop an ongoing or impending violation of the rights of nature.³⁷⁴ Those acting for nature require funding and other resources, which are not provided for in the Ecuador Constitution or in local governments budget funding.³⁷⁵ Consequently, the system sets up a collective action problem in which the benefits of protecting rights of nature are broadly diffused, but some individual, group of individuals, or local governments must incur the costs of doing so.³⁷⁶

How Constitutionalizing Nature's Rights Influences Local Legislative Activism

This initial scoping exercise introduced the actors that helped draft the Ecuadorian Constitutional provisions awarding rights to nature and the local ordinance of Tamaqua.

Mindful that the writing process for the Ecuadorian constitutional provisions was assisted by the legal representatives of the CELDF, I went on to compare the wording of the Ecuadorian constitutional provisions with those of municipal ordinance in the US which were passed with the help of CELDF.

Reading the two texts side by side, as I now go on to consider, the similarity becomes evident. Some of the literature had already highlighted this similarity specifically when looking at the

³⁷¹ On this see for instance, Kotzé & Calzadilla, *supra* note 232.

³⁷² Kauffman & Martin, *supra* note 6. And, Craig M. Kauffman, *Mapping Transnational Rights of Nature Networks & Laws: New Global Governance Structures for More Sustainable Development*, International Studies Association Annual Conference, Toronto, Canada.

<http://files.harmonywithnatureun.org/uploads/upload924.pdf> (2020).

³⁷³ Kauffman, *supra* note 464. Kauffman & Martin, *supra* note 6. Kauffman, *supra* note 372.

³⁷⁴ Kauffman & Martin, *supra* note 6.

³⁷⁵ Kauffman & Martin, *supra* note 6. Kauffman, *supra* note 372.

³⁷⁶ Kauffman, *supra* note 372. Kauffman & Martin, *supra* note 6.

legal models establishing the guardianship for rights of nature.³⁷⁷ For instance, Kauffman and Martin highlighted four areas of similarity:

- **Scope of Protection** –Both in the US municipal ordinances and in the Ecuadorian Constitutional provisions nature is conceptualised as a nested ecosystem within the legal ecosystem. These legal provisions, as said before, are not establishing personhood directly but rather establish a wide obligation to respect the integrity of the Ecuadorian ecosystem by stating that nature has intrinsic rights.³⁷⁸
- **Legal Rights** –Right of nature are framed explicitly and incorporated under a wider list of environmental rights.³⁷⁹
- **Legal Representation** –The enforcement mechanism is established by means of an idea of *Actio Popularis* (an attempt to confer “standing” on “residents” to create an enforcement mechanism) whereby anyone can speak for nature, but no one is obliged to.³⁸⁰
- **Redress** –Right of nature are protected only when violations are reported.³⁸¹

This similarity is not only present in the legal arrangements but can be traced more widely when looking at other primary sources. When looking at the GARN website and then at its affiliated organisation CELDF website several themes crop up, romantic idea of what the concept of nature entails; a general legal argument for the recognition of rights of nature which is driven by several other ideas on anti-corporativism, local democracy and indigenous rights; a limited applicability of their provisions, and the wide use *Actio Popularis* as an attempt to confer “standing” on “residents” to create an enforcement mechanism.³⁸²

Furthermore, casting a wider research net and looking at other primary sources like the materials disseminated in local newspapers by the Pachamama Alliance, these themes crop up again. Consider, for example, a letter published by El Comercio in 2008 discussing the proposal of the constitutional text. The letter was written by Humo Romo Castillo co-founder

³⁷⁷ On this see for instance, Tănăsescu, *supra* note 27. Tănăsescu, *supra* note 129. Kauffman & Martin, *supra* note 6. Kauffman, *supra* note 372.

³⁷⁸ Kauffman & Martin, *supra* note 6.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² On this see for instance, Rights of Nature - Global Alliance for the Rights of Nature (GARN), GARN <https://www.garn.org/category/rights-of-nature/>.

of the Pachamama Alliance and published by El Comercio in 2008.³⁸³ In it Humo Romo Castillo concisely provides a narrative of what it means to attribute rights to nature from both a legal and political perspective.³⁸⁴ The key points he makes, which delineate the attributes of the provisions of rights to nature, reaffirm the observations already made from other primary sources like the Ecuadorian Constitution as well as from secondary sources, namely the acceptance of “mother nature rhetoric;” the influence of indigenous religion and culture; the idea that these constitutional rights of nature are envisioned more as a general responsibility to protect natural resources, but not as a legal imperative; the idea that environmental protection should be prioritised over economic development.

From the literature surveyed, it emerged that:

- **From a normative perspective,** the use of terms like rights of nature, rights of natural communities, ecosystems, and natural entities that sustain life such as the term “Mother Earth” or “Pachamama,” are not clearly defined and are used interchangeably creating normative confusion. Also, both biocentric rights theories and anthropocentric rights theories are used sometime in the same legal document.
- **From an institutional perspective,** the evolution and cross-pollination of national and local chapters in different States that are part of the GARN and how their legal strategies are shaped by the legal, social, and political culture of the environment within which the advocacy groups are operating are understudied.
- **From a social action perspective,** these new modes of governance advocated by these groups that include protection of nature and sustainable development, anti-corporatist sentiments, self-determination, and indigenous recognition are little analysed.

Furthermore, from a reading of the US municipal ordinances, a series of themes have emerged in different contexts. Specifically, in the context of legalism, we can identify environmentalism, anti-corporatism, municipalities vs State and some of these themes are also strongly present in the Ecuadorean Constitutional provisions.

This similarity between the Ecuadorean provisions and the Tamaqua municipal ordinance or CBR is recognised in some of the literature. For instance, see Kauffman’s work which talks of

³⁸³ Castillo, *supra* note 56.

³⁸⁴ *Id.*

two models of awarding rights of nature or Tănăsescu scholarly work discussing both the US municipal ordinances and the Ecuador Constitution.³⁸⁵

Therefore, building upon existing literature recognising these shared characteristics, I contend that these parallels bear the semblance of a crosspollination between two distinct legal systems, underpinned by the similarity of legal arguments between of indigenous and Roman legal traditions. This convergence, in turn, facilitated the intermingling of different approaches from geographically distant nations, culminated in the incorporation of this specific interpretation of rights of nature, which I have expounded in the previous sections, within legal frameworks.

In the context of the recognition of rights of nature, the impetus for legal transplantation might have occurred in response to a shared need to address environmental issues derived from an ecological distribution conflict propelling them to collaborate with grassroots organizations. Notably, CELDF, a US-based grassroots organization, was engaged to draft provisions safeguarding rights of nature. This process was underpinned by the precedent set by the Tamaqua Borough municipal ordinance, effectively providing a blueprint for crafting legal mechanisms that align with the ethos of rights of nature. Consequently, the symbiotic exchange of legal ideas transcends borders, as Ecuador draws inspiration from a US municipal ordinance, while simultaneously infusing novel perspectives and approaches into US municipal ordinances. Moreover, this reciprocal exchange owes its existence to a convergence between indigenous and Roman legal traditions that underscores the shared values and perspectives on nature's intrinsic rights. While indigenous legal systems often possess profound reverence for nature's rights, the Roman legal tradition places emphasis on the interconnectedness of legal systems and their potential for synergy. This intersection of divergent legal heritages paved the way for a nuanced dialogue between legal frameworks, transcending national boundaries.

This phenomenon of crosspollination, propelled by grassroots movements, could be construed as an example of legal transplantation. Notably, this legal transplant is not a unilateral process; rather, it manifests bidirectionally, exerting a reciprocal influence on the evolution of US municipal ordinances. The concept of legal transplantation pertains to the migration of legal regimes, laws, policies, and rules from one jurisdiction or legal framework to another. Often orchestrated by lawyers, individuals affiliated with Non-Governmental Organisations (NGOs),

³⁸⁵ Kauffman, *supra* note 372. Tănăsescu, *supra* note 27. Tănăsescu, *supra* note 129.

and grassroots organizations in both the originating and recipient countries, this transfer of legal principles occurs in response to shared concerns or challenges.

CONCLUSION

The analysis of the Ecuadorian constitutional provisions and the Tamaqua ordinance reveals a significant trend toward recognizing and institutionalizing the rights of nature. This shift underscores the growing political and legal acknowledgment of nature's rights, emphasizing community autonomy and environmental stewardship. The exploration of these rights, catalyzed by Ecuador's pioneering constitutional framework and observed in evolving US municipal ordinances, demonstrates how the concept is transitioning from a fringe idea to a practical tool for self-determination and local governance. This evolving understanding highlights the increasing integration of environmental rights into legal and political discourse, offering a promising avenue for further development and application.

In the next chapter, I will set the stage for analysing the municipal ordinances or CBRs passed by US municipalities with the aid of CELDF.

CHAPTER TWO

The Strategy of Municipal Activism

INTRODUCTION

Municipal activism in the United States (US) represents a dynamic force in the nation's political landscape.³⁸⁶ At its core, it is a manifestation of grassroots democracy, where local governments, often cities and towns, lead the charge in initiating transformative changes that reverberate across the nation.³⁸⁷ This form of civic engagement and local governance plays a crucial role in shaping the social, economic, and environmental fabric of the US.³⁸⁸ Unlike larger, more centralized forms of government, cities and towns can swiftly respond to emerging issues and implement innovative solutions and serve as laboratories for testing and refining new approaches to governance, policy-making, and community development.³⁸⁹

The municipal activist agenda encompasses a wide range of issues and initiatives, reflecting the unique needs and priorities of each locality.³⁹⁰ From combating climate change and promoting social equity to protecting natural resources and expanding affordable housing, municipal activists engage with a multifaceted set of challenges.³⁹¹ This breadth of focus ensures that local governments address the most pressing concerns facing their communities.³⁹²

³⁸⁶ On this see for instance, Lori Riverstone-Newell, *Bottom-Up Activism: A Local Political Strategy for Higher Policy Change*, 42 PUBLIUS: THE JOURNAL OF FEDERALISM 401 (Jan. 2012).

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

This chapter aims to explore the Community Environmental Legal Defense Fund (CELDF), which assists municipalities in the US with their activism strategies primarily through the passing of Community Bills of Rights or CBRs. It addresses the research question: How do the CBRs promoted by municipalities with the assistance of CELDF fit into a pattern of legal activism in the United States?

The chapter's objectives are twofold. Firstly, it compares adversarial legalism with what I term legislative activism. Secondly, the analysis identifies municipal activism as a form of legislative activism, particularly assisted by CELDF, a grassroots organization focused on environmental and social justice. The study explores the methods, motivations, and impacts of municipal legislative activism influenced by CELDF, illuminating the role of such activism in driving environmental and social change.

Understanding CELDF as a movement requires examining legal movements in general. Section I delves into their characteristics, objectives, and strategies, providing a framework to distinguish CELDF's approach from other social movements.

Analysing legal movements in the context of the US involves exploring adversarial legalism, a defining feature of the US legal system, and (what I call) legislative activism—a strategic approach for social and political change through legislation. Section II dissects how these operate within the US legal framework, offering insights into CELDF's strategies.

Section III compares CELDF with historical instances of legislative activism, notably the agrarian movements. Shared philosophical foundations, educational strategies, and legislative tools for preserving community rights and local self-governance are highlighted.

This chapter contributes to existing literature by examining a specific strand of adversarial legalism in connection to CELDF. It focuses on legislative activism, aligning with Tocqueville's observation that, in the US, citizens use legal means to bring about social change. By situating municipalities' activities with CELDF within legal and adversarial movement frameworks, it broadens understanding of activist tactics. This research addresses a gap by analysing legislative activism's role in municipalities, aided by CELDF, to achieve environmental and social justice objectives.

This study aims at enriching scholarly discourse on legal movements utilizing legislative tools for social and political goals. By highlighting the uniqueness of legislative activism within adversarial legalism, it aims at enhancing the comprehension of how municipalities, aided by grassroots organizations like CELDF, leverage legal and legislative mechanisms to drive democratic change.

DEFINING LEGAL ADVOCACY

Understanding the Community Environmental Legal Defense Fund (CELDF) as a movement that is influenced by legal activism is important for several reasons. Firstly, comprehending CELDF within the broader context of legal movements provides insights into its characteristics, objectives, and strategies. By examining the general framework of legal movements, it is possible to better understand CELDF's unique approach and distinguish it from other types of grassroots movements. Exploring the characteristics of legal movements allows to grasp the specific nature of CELDF's activism. Legal movements typically rely on litigation and legislation to advance social goals and challenge existing norms and policies. By understanding these common characteristics, it is possible to gain insight into how CELDF helps municipalities use legal and legislative avenues to advocate for the recognition of new rights to address the ecological distribution conflict. This understanding allows us to grasp the distinctive strategies and tactics employed by CELDF to aid the municipalities in effecting change.

The next sections will therefore be dedicated to reviewing the scholarly literature on legal activism and then to present CELDF within this context.

Definition of a Social Movement

Scholarly literature defines social movement as a continuous network of connections between powerholders and activists.³⁹³ Social movements are dynamic entities that evolve, transform,

³⁹³ The literature surveyed to summarize the specific characteristic of the birth of social movements include: Frances Fox Piven & Richard Cloward, *Poor People's Movements: Why They Succeed, How They Fail* (Knopf Doubleday Publishing Group Aug. 2012). Dieter Rucht, *Research on Social Movements : The State of the Art in Western Europe and the USA*, COLORADO: WESTVIEW PRESS 392-420 (1990). Sidney G. Tarrow, *Struggling To Reform: Social Movements and Policy Change During Cycles Of Protest* (Center For International Studies, Cornell University 1983). Margit Mayer, *Social Movement Research in the United States:*

and intersect with other organisations.³⁹⁴ Activists, lacking formal representation, voice their demands through protests to powerholders to establish new mechanisms for implementing change, particularly in terms of altering power distribution and its exercise.³⁹⁵

They can be identified by their distinct characteristics:³⁹⁶

- **Distinctive goals:** Social movements pursue both short-term goals, addressing immediate grievances and seeking to modify existing power structures, as well as long-term goals focused on achieving a more equitable society.³⁹⁷
- **Strategies of social mobilization:** Social movements employ various strategies, including media, campaign, and symbolic approaches. For instance, protests or disruptive actions may be employed to challenge prevailing social practices.³⁹⁸
- **“Rights Consciousness Rising” or “Consciousness Awareness:”** Social movements undergo a cognitive transformation, transitioning from the constitution of the movement to its establishment. This process involves activists recognising the injustices they have experienced and acknowledging that existing power relationships perpetuate these grievances. The fulfilment of these two steps fosters the movement's collective identity.³⁹⁹

The emergence of social movements is closely tied to historical periods marked by changes in authority and power structures.⁴⁰⁰ These periods signify societal responses to the need for new values to address perceived grievances and aspirations.⁴⁰¹ Scholarly consensus suggests that movements typically form when both the State and the elite anticipate potential challenges to their values from the wider society.⁴⁰² This concept revolves around the idea of cycles or waves of protests arising at specific political junctures, creating unique political opportunities.⁴⁰³ Such

A European Perspective, in SOCIAL MOVEMENTS: CRITIQUES, CONCEPTS, CASE-STUDIES 168 (Stanford M. Lyman ed., Palgrave Macmillan UK 1995).

³⁹⁴ On this see, Charles Tilly, *Big Structures, Large Processes, Huge Comparisons* (Russell Sage Foundation Jan. 1984). Piven & Cloward, *supra* note 393. Tarrow, *supra* note 393. Mayer, *supra* note 393.

³⁹⁵ Tilly provides a definition of a social movement within his bigger systematic historical and comparative analysis of the structural changes which provoked transformative social changes between the 19th and 20th century. Tilly, *supra* note 394, p.306.

³⁹⁶ This bias is also reflected in the legal framework and expressed through legal discourses of the societies which the activists seek to change. On this see *for instance*, Tilly, *supra* note 394.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² On this see *for instance*, Piven & Cloward, *supra* note 393. Mayer, *supra* note 393. Tarrow, *supra* note 393.

⁴⁰³ Tilly, *supra* note 394.

opportunities arise when the costs of collective action are low, the likelihood of success and rewards is high, and resources for mobilization are plentiful.⁴⁰⁴ Taylor argues that these waves are not isolated events but rather part of a continuum that rises and falls in response to pivotal moments in movement mobilization.⁴⁰⁵ Furthermore, the organisational structure of movements evolves over time, with earlier structures exposing vulnerabilities in the political system and becoming models for future advocacy groups.⁴⁰⁶

In conclusion, understanding the definition and framing of social movement entities is crucial for analysing how advocacy groups employ litigation and legislative tactics to bring about change and how social movements intersect and interact with the legal and legislative system.⁴⁰⁷

The Interplay Between Social Movements and the Law: A Symbiotic Relationship

The relationship between social movements and the law is a dynamic and mutually influential one.⁴⁰⁸ Social movements utilize the law to drive social, political, and economic transformations, while the legal framework itself evolves in response to the demands and

⁴⁰⁴ Tilly, *supra* note 394. An example of instrumental action to achieve political opportunity could be that of the Greensboro sit-ins, organised by the Civil Rights Movement. The Greensboro sit-ins were a series of non-violent protests at the Woolworth department store in the 1960s that led to the removal in the southern United States of the department store's policy of racial segregation. See, Timothy J. Minchin, *Making Best Use of the New Laws: The NAACP and the Fight for Civil Rights in the South, 1965-1975*, 74 THE JOURNAL OF SOUTHERN HISTORY 669 (Southern Historical Association 2008).

⁴⁰⁵ Taylor argues that political opportunities and indigenous organisational base are major factors in the rise and decline of social movements. Taylor surveyed social movements organisational theory to then developed an innovative theory of social movement continuity. The paper uses the case study of women's right activism from 1945 to 1960 charting the inception and evolution of the movement to test her theory on social movement continuity. See, Verta Taylor, *Social Movement Continuity: The Women's Movement in Abeyance*, 54 AMERICAN SOCIOLOGICAL REVIEW 761 (American Sociological Association, Sage Publications, Inc. 1989).

⁴⁰⁶ Tarrow, *supra* note 393, p. 23. See also, Taylor, *supra* note 405. See also the analysis of McAdam. In his book McAdam presents arguments to explain the rise and decline of black movements focusing on the foundational role some institutions had in helping and sustaining black movements. The book discusses the civil rights movement within the broader scholarship on the origin of social movements and the theories of collective action. Doug McAdam, *Political Process and the Development Of Black Insurgency, 1930-1970* (University Of Chicago Press Nov. 1999).

⁴⁰⁷ For more context on the literature used for writing this paragraph I relied primarily on the work of Piven and Cloward and on that on McAdam. Piven and Cloward in their book offer a theory on how and why epochs of unrest and mass movement emerge. In the book they also present four case studies which they use to exemplify and to corroborate their arguments. Among the arguments they bring forth, they emphasize the important role social and economic institutions and their role as instruments of the elites in the structural crises the precede the rise of social movements. See, Piven & Cloward, *supra* note 393.

⁴⁰⁸ On this see, Patricia Gagné & Matthew Renfro-Sargent, *Introduction: Social Movements in the New Century*, 37 SOCIOLOGICAL FOCUS 187 (Taylor & Francis, Ltd. 2004).

appeals of these movements.⁴⁰⁹ This symbiotic relationship underscores the pivotal role of legal practices in the formation and progress of a movement.⁴¹⁰ Within the realm of social advocacy, the interdependence between law and social movements becomes evident as activists work to enforce existing laws and establish new ones.⁴¹¹ Therefore, social movements find themselves both constrained by and emerging from the legal framework.⁴¹²

While adhering to legal constraints, social movements strategically employ the law (both to change existing laws and establish new ones) to advocate for the recognition and creation of new rights, thereby catalysing societal change.⁴¹³ Sargent and Gagné highlight this dual nature, emphasizing that social movements operate within legal boundaries while drawing inspiration from the law to defend existing rights and establish new ones.⁴¹⁴ The judicial-legislative system becomes fertile ground for collective action, serving as a catalyst for social movements.⁴¹⁵ McCann posits that the legal framework serves as a conduit for normative principles and strategic resources that propel social objectives forward.⁴¹⁶

Furthermore, the essence of utilizing the law as a catalyst for change lies in translating desires and aspirations into assertions of rights and legitimate claims.⁴¹⁷ Litigation can be strategically employed to expand and refine political strategies, and the dynamics and context surrounding litigation can either empower or disempower citizens.⁴¹⁸ Legal discourses aid in synthesizing the ideology of a movement and facilitate access to previously inaccessible state or elite institutions, thereby fostering inclusivity.⁴¹⁹ Moreover, the law can be employed as a strategy to unite individuals sharing common goals and principles, enabling coordinated negotiations and advocacy for the recognition and establishment of new rights.⁴²⁰ Skocpol argues that grassroots movements with broad membership bases wield greater influence, promote

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ Scott L. Cummings, *The Social Movement Turn in Law*, 43 LAW & SOCIAL INQUIRY 360 (2018), p. 6.

⁴¹⁴ Gagné & Renfro-Sargent, *supra* note 408.

⁴¹⁵ *Id.*

⁴¹⁶ McCann talks of law as a resource “That citizens use to structure relations with others, to advance goals in social life, to formulate rightful claims, and to negotiate disputes where interest, wants, or principles collide”. Michael McCann, *Law and Social Movements: Contemporary Perspectives*, 2 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 17 (Jan. 2006), p. 22.

⁴¹⁷ *Id.* See also, Gagné & Renfro-Sargent, *supra* note 408. Cummings, *supra* note 413.

⁴¹⁸ On this see, Gagné & Renfro-Sargent, *supra* note 408. McCann, *supra* note 416. Cummings, *supra* note 413.

⁴¹⁹ On this see, McCann, *supra* note 416. Cummings, *supra* note 413. Gagné & Renfro-Sargent, *supra* note 408.

⁴²⁰ McCann, *supra* note 416.

democratic principles, and prove more effective in achieving social change compared to centralized advocacy groups funded by influential donors.⁴²¹ Consequently, the legal framework undergoes transformation to reflect societal values, leading to a symbiotic partnership between law and social movements.⁴²² Scheingold introduces the concept of the “Myth of Rights,” wherein the reshaping of the law and legal ideology resulting from social mobilization contributes to legitimization and political acquiescence, transforming initial notions of rights into recognised legal ideals.⁴²³

The resultant snowball effect establishes a cycle wherein successive judicial triumphs reinforce increased legitimacy.⁴²⁴ This, in turn, escalates the demand to safeguard existing rights while simultaneously advocating for the establishment of new ones.⁴²⁵ This phenomenon is examined by Sargent and Gagné, who underline the interplay between socio-cultural actions and values within these movements and the socio-legal structures ingrained in legal institutions.⁴²⁶ Sargent and Gagné’s analysis sheds light on the practical utility of employing legal tactics across various dimensions:

- **Advancing Policymaking Structures:** These strategies reshape power dynamics and advocate for enhanced governmental responsibility and accountability.⁴²⁷
- **Expanding Networks and Advocacy:** Mobilizing new constituencies and forging alliances becomes more effective, thereby strengthening collective advocacy efforts.⁴²⁸
- **Resource Mobilization:** The consistent pressure of litigation and leveraging demands for participation in the creation and execution of redistributive programs secures novel and augmented resources.⁴²⁹
- **Resource Redistribution:** Existing redistributive reforms are extended, and more comprehensive structures are developed to facilitate resource distribution.⁴³⁰

⁴²¹ Theda Skocpol, *Diminished Democracy: From Membership to Management in American Civic Life* (University Of Oklahoma Press Jun. 2013).

⁴²² *Id.*

⁴²³ Scheingold provides a theoretical analysis on the evolution of the idea of rights and on right’s ideologies in US politics. Stuart A. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (University Of Michigan Press Oct. 2010).

⁴²⁴ Gagné & Renfro-Sargent, *supra* note 408.

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *Id.*

⁴³⁰ *Id.*

In conclusion, the benefits of involving the law in social mobilization can be summarized in three key points: providing normative principles and strategic resources, aiding in the construction and recognition of new rights, and defending existing rights. Social advocacy is characterised by the fusion of legal and political participation. The utilization of the legal framework plays an instrumental role in effecting change, as legal action supports and reinforces political action. This process encourages the assertion of new interests while reaffirming the established values of the legal order.

Harnessing the Power of Legal Advocacy: Exploring its Practical Significance

The inclination to consistently resort to the judiciary for redress faces scrutiny within the literature. Cummings critiques the evolving relationship between advocacy group lawyers and the transformation of the judiciary into activist courts.⁴³¹ He argues that this evolution can foster a counter-majoritarian legal framework that deviates from the democratic will inherent in elected legislative bodies.⁴³² Cummings also suggests that the systematic engagement of activist lawyers might incline them to prioritize their individual visions of justice over the collective interests of the groups they represent.⁴³³ Moreover, Skocpol raises concerns about professionalization within mobilization efforts.⁴³⁴ The transformation of advocacy groups into professional entities marked by elitism and adept management could potentially result in a democratic deficit in the articulation of grievances and the determination of movement goals.⁴³⁵

Approaching the issue from an activist perspective, Galanter and Epp contend that the outcomes of judicial strategies vary based on the resources available to an organization.⁴³⁶ They argue that well-endowed litigants, functioning as *de facto* repeat players, tend to experience greater success in courts due to their capacity to sustain long-term litigation techniques.⁴³⁷ This context places adversarial legalism at the forefront, where better-funded litigants possess the

⁴³¹ Cummings, *supra* note 413.

⁴³² *Id.*

⁴³³ *Id.*

⁴³⁴ Skocpol, *supra* note 421.

⁴³⁵ *Id.*

⁴³⁶ Marc Galanter, *Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOCIETY REVIEW 95 (Wiley, Law and Society Association 1974). Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (University Of Chicago Press Oct. 1998).

⁴³⁷ Galanter, *supra* note 436. Epp, *supra* note 436.

ability to sustain extended legal strategies yielding more favourable outcomes.⁴³⁸ Epp and Galanter's insights underscore the pivotal role of resources, encompassing financial means and temporal commitments, as the underlying framework supporting legal mobilization.⁴³⁹

In this landscape, the work of Rebecca Mae Salokar, particularly "Sexual Identities, Queer Politics," offers an argument that harmonizes the potential downsides of adversarial legalism by advocating for a balanced utilization of both legal and legislative tools.⁴⁴⁰ Salokar delves into the intricate intersection between these tools within the context of queer politics and the LGBTQ+ movement.⁴⁴¹ Her argument emphasizes the symbiotic relationship between legislative tools and litigation strategies, highlighting their collective contribution to the advancement of rights.⁴⁴² Her discourse accentuates the pivotal roles played by both legislative tools and litigation strategies in the pursuit of rights.⁴⁴³ These approaches are perceived as complementary and mutually reinforcing, each playing a distinct role in shaping the trajectory of specific polity outcomes.⁴⁴⁴

Salokar underlines the importance of legislative tools in crafting legal frameworks that cater to the specific needs and rights of communities.⁴⁴⁵ Legislative initiatives serve as essential mechanisms for institutionalizing the advocated rights and protections.⁴⁴⁶ These legislative actions provide the foundation upon which the broader movement can construct its advocacy, utilizing legal norms to advocate for broader societal transformation.⁴⁴⁷ Simultaneously, litigation strategies empower activists and advocacy groups to push the boundaries of legal interpretations.⁴⁴⁸ High-profile litigation cases function as vehicles for heightened visibility and igniting public discourse.⁴⁴⁹ These cases often lead to judicial decisions that set legal precedents with implications extending far beyond the individual cases.⁴⁵⁰

⁴³⁸ Galanter, *supra* note 436. Epp, *supra* note 436.

⁴³⁹ Galanter, *supra* note 436. Epp, *supra* note 436.

⁴⁴⁰ Rebecca Mae Salokar, *Ten: Beyond Gay Rights Litigation: Using a Systemic Strategy to Effect Political Change in the United States*, in MARK BLASIUS, *SEXUAL IDENTITIES, QUEER POLITICS* (Princeton University Press Jan. 2001).

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

In essence, Salokar's argument underscores that the relationship between legislative tools and litigation strategies is not one of contradiction, but rather one of intersection and mutual reinforcement.⁴⁵¹ Legislative advancements lay the groundwork for litigation by establishing a legal framework; conversely, successful litigation can contribute to the momentum for legislative change by focusing attention on gaps in existing laws and the urgency of addressing them.⁴⁵²

THEORIES OF ADVOCACY IN THE UNITED STATES

Adversarial Activism

Scholarship on the phenomenon of the judicialization of political issues revolves around the structural analysis of Prof. Robert Kagan and Dr. Gordon Silverstein.⁴⁵³ Their premise is that the lack of regulatory framework in the United States (US) is the product of a very weak governmental hierarchy, weakness that is reflected also on the mechanisms to bring about policy changes and social justice.⁴⁵⁴ Their analysis critiques the ideals of “responsive law” and “reactive government” that forms the basis of the United States system of government.⁴⁵⁵

Dr. Silverstein introduces the concept of juridification, illustrating how the judiciary has gradually become the arbitrator in areas of social life that were once subject to political processes.⁴⁵⁶ This transition eliminates negotiation and compromise by creating unambiguous statutes, legal frameworks, and automated legal checks.⁴⁵⁷ He describes juridification as the result of a dialogue among various polity constituents, including legislators, policy entrepreneurs, and ordinary citizens, pursuing different paths to the same objective.⁴⁵⁸

This shift contradicts the vision of the judiciary laid out by the founding fathers of the US Constitution. Alexander Hamilton's Federalist No. 78 underscores that the judiciary is meant

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ Kagan, *supra* note 36. Silverstein, *supra* note 37.

⁴⁵⁴ Kagan, *supra* note 36. Silverstein, *supra* note 37.

⁴⁵⁵ For a general introduction on this topic *see*, Phillippe Nonet & Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (Transaction Publishers 2nd Edition 2009).

⁴⁵⁶ Silverstein, *supra* note 37.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

to be the weakest branch, providing support to the legislative and executive branches.⁴⁵⁹ This role envisioned by Hamilton rejects policy judgments in favour of implementation.⁴⁶⁰

Dr. Silverstein discusses how the US historically relied on a partially regulated court system, echoing the desire of US colonies to limit distant central government power.⁴⁶¹ This philosophy aimed to safeguard individual and communal interests.⁴⁶² However, over time, decentralization and locally selected judges led to the intertwining of legal and political decisions, particularly evident during the Warren Court era.⁴⁶³ This tendency towards decentralization is reinforced by the fragmented political culture focused on rights and universal justice.⁴⁶⁴ Power is perceived as corruptible, leading to the division of authority between Congress and the Presidency.⁴⁶⁵ This fragmentation paves the way for adversarial legalism, a method of policymaking that arose due to the political culture's focus on rights, mirrored by the structure of government.⁴⁶⁶

Instead, Prof. Kagan argues that two factors contributed to a weak governmental hierarchy: a fragmented regulatory framework and the economic structure.⁴⁶⁷ This unique combination gave rise to adversarial legalism, where competing parties strive to shape regulatory frameworks and influence policy decisions through the courts.⁴⁶⁸ The increasing judicialization of political issues is rooted in this weak governmental structure and incentivizes the use of adversarial legalism to address political and economic concerns.⁴⁶⁹ This results in a “reactive approach to governance.”⁴⁷⁰ The judicialization of political matters serves as a tool for both political and economic interests to check corporations' power and challenge discriminatory policies.⁴⁷¹ This development aligns with the broader US distrust of government and the preference for solving complex political issues through legal means.⁴⁷²

⁴⁵⁹ *Founders Online: The Federalist No. 78, [28 May 1788]* (University of Virginia Press), <http://founders.archives.gov/documents/Hamilton/01-04-02-0241>.

⁴⁶⁰ *Id.*

⁴⁶¹ Silverstein, *supra* note 37.

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ Kagan, *supra* note 36.

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² *Id.*

To conclude, the phenomenon of the judicialization of political issues is born both from the political tradition of fragmentation of power, and from the legal structures that offer incentives to use the tools of adversarial legal weapons to pursue their interests and goals.⁴⁷³ The fundamental reasons are fourfold: a political structure based on the fragmentation of political power; a political culture that mistrusts accumulation of power, powerful men and in general “big government;” a highly independent and politicised judiciary; and very complex and competitive but at the same time fragmented economic structure whose interests are often in disagreement with the political culture.⁴⁷⁴ These four components have contributed to create an approach to governance that however active and attentive is also decentralised, legally constrained, and litigious.⁴⁷⁵

Legislative Activism

I define legislative activism as a strategic approach aimed at enacting social and political change through legislative channels. The argument I put forth is that this strategy of legislative activism aligns with the conceptual framework proposed by Prof. Kagan and embodies a distinct manifestation of resorting to law and legal mechanisms, as famously suggested by Tocqueville, within the uniquely US context.⁴⁷⁶ Legislative activism is well documented with the scholarship on this topic, primarily in relation to the scholarship on agrarian movements – mostly regarding the first manifestation, in the 1890s– even if it not defined as such.⁴⁷⁷

⁴⁷³ *Id.* See also, Silverstein, *supra* note 37. And, R. Shep Melnick, *Adversarial Legalism, Civil Rights, and the Exceptional American State*, (Routledge 2017).

⁴⁷⁴ Kagan, *supra* note 36. Silverstein, *supra* note 37. See also, Melnick, *supra* note 473.

⁴⁷⁵ Kagan, *supra* note 36. Silverstein, *supra* note 37. See also, Melnick, *supra* note 473.

⁴⁷⁶ Kagan, *supra* note 36. On this this phenomenon of political issues becoming also juridical issues, in the 1820s and 1830s, Alexis de Tocqueville wrote: “*Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.*” Tocqueville also discussed how the language of the law permeates every aspect of society, creating a Juridification of society: “*All parties are obliged to borrow, in their daily controversies, the ideas, and even the language, peculiar to judicial proceedings. Hence, the spirit of the law, which is produced in the schools and courts of justice, gradually penetrates beyond their walls into the bosom of society, where it descends to the lowest classes, so that at last the whole people contract the habits and the tastes of the judicial magistrate.*” TOCQUEVILLE, *supra* note 35.

⁴⁷⁷ On this topic the literature surveyed include, Morgan W. Scott, *History of The Wheel and Alliance and the Impending Revolution* (C.B. Woodward 1891). Ian Hartman, ‘*Built This Way*’: *Historicizing the Corporate State in a New Era of Populism, or Why the 1890s Matter*, 13 CULTURAL STUDIES CRITICAL METHODOLOGIES 154 (May 2013). Elisabeth S. Clemens, *The People’s Lobby: Organizational Innovation and the Rise of Interest Group Politics in the United States, 1890-1925* (University Of Chicago Press Feb. 1997). Alan Okagaki, *How Political Parties Respond to Crisis: Lessons from the 1890s*, (ScholarWorks at University of Montana 2022). <https://scholarworks.umt.edu/gsrc/2022/330/6>.

Indeed, the agrarian movements of the 1890s serve as useful case studies of legislative activism in action. Confronted with economic challenges and monopolistic practices that disproportionately impacted farmers and rural communities, these movements strategically employed legislative routes to assert their rights, question prevailing norms, and drive systemic shifts.⁴⁷⁸ Their central objective was not limited to localized solutions; instead, they saw legislative tools as vehicles for initiating broader societal transformations.⁴⁷⁹

At the heart of their approach lay what I would call a legislative activist strategy, a recognition of the transformative potential of laws and policies.⁴⁸⁰ By advocating for reforms such as cooperative economics, equitable taxation, and fair pricing, the agrarian movements harnessed legislative avenues to shape the course of the rural United States of America.⁴⁸¹ What sets these movements apart is their departure from conventional political tactics; they emphasized education, community organization, and cooperative efforts to empower rural communities, equipping them to navigate the legislative process effectively. Morgan's analysis further underscores their innovative strategies that transcended adversarial methods, instead prioritizing grassroots empowerment and informed engagement.⁴⁸²

Morgan's work demonstrates that the agrarian movements of the 1890s did not regard legislative avenues merely as mechanisms for incremental change.⁴⁸³ Rather, they recognized these avenues as potent catalysts for profound societal transformation.⁴⁸⁴ These movements manoeuvre through the complex terrain of policy-making, addressing the pressing concerns of agrarian communities.⁴⁸⁵ Through strategic advocacy for legislative reforms aligned with their constituents' needs—such as cooperative economics, equitable taxation, and fair pricing—the agrarian movements harnessed legislative activism as a formidable tool to reshape the socio-economic and political fabric of the rural United States of America.⁴⁸⁶

⁴⁷⁸ *On this see*, Clemens, *supra* note 477.

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ Mooney & Hunt, *supra* note 473. *See also*, Scott, *supra* note 477.

⁴⁸² Scott, *supra* note 477.

⁴⁸³ *Id.*

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

Moreover, Morgan's study delves into the novel strategies that characterized these movements.⁴⁸⁷ Acknowledging that conventional political methods might fall short in achieving transformative change, the agrarian movement of the 1890s ventured beyond the ordinary.⁴⁸⁸ Their emphasis on education, community mobilization, and cooperative endeavours aimed to empower rural communities with the requisite knowledge and tools to actively engage with legislative processes.⁴⁸⁹ Morgan's analysis underscores that these movements did not merely rely on legislation in isolation; they grasped the importance of fostering collective agency and informed participation to navigate the intricate realm of legislative activism effectively.⁴⁹⁰

The central argument that emerges from Morgan's scholarship is that legislative activism emerged as a multifaceted instrument within the agrarian movement of the 1890s.⁴⁹¹ It was more than a tool to address discrete issues; it represented a strategy to challenge and overhaul the prevailing status quo.⁴⁹² By championing legislation that resonated with their constituents, these movements aimed not only for immediate remedies but for enduring change.⁴⁹³ Their pursuit of legislative reforms reflected a broader vision of socio-economic transformation, with each legislative victory serving as a building block in the construction of a more equitable future.⁴⁹⁴

In conclusion, the enduring impact of the agrarian movements, as elucidated by Morgan's analysis, underscores the lasting legacy of legislative activism.⁴⁹⁵ These movements transcended mere localized advocacy, fundamentally shaping the trajectory of rural development and socio-political discourse.⁴⁹⁶ Their emphasis on legislative avenues as mechanisms for transformation resonates profoundly with contemporary movements grappling with analogous challenges—be it economic inequality, social justice, or political representation.⁴⁹⁷

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.*

⁴⁹⁶ *On this see for instance, Mooney & Hunt, supra note 473.*

⁴⁹⁷ *Id.*

US MUNICIPALITY ACTIVISM AND CELDF

The Community Environmental Legal Defense Fund (CELDF)

In 1995 in Pennsylvania Thomas Linzey and Stacy Schmalzer founded the Community Environmental Legal Defense Fund (CELDF), a grassroots not-for-profit public interest firm.⁴⁹⁸ CELDF has been a leader in championing rights for communities in the US and internationally.⁴⁹⁹

The foundational concept of ecological distribution conflicts, rooted in the unequal apportionment of environmental benefits and burdens, constitutes a pivotal lens through which to comprehend the ethos of the CELDF and the principles it champions.⁵⁰⁰ These conflicts occur when certain communities or ecosystems bear the adverse consequences of resource extraction or environmental degradation, while others enjoy the advantages without sharing the associated burdens.⁵⁰¹

CELDF is a member of the Global Alliance for the Rights of Nature (GARN), a global alliance of grassroots organisations.⁵⁰² CELDF's legal tactics aim to address historical injustices by incorporating ecosystem services into international and domestic laws through legislation, subordinate rules and regulations, or adjudication and has used strategic mobilization to bring changes that better reflect local communities' interests. These provisions recognise the rights of "natural communities" to a healthy environment and sustainable development, understanding nature and "natural communities" as interconnected ecosystems within the legal framework. While not establishing personhood directly, these provisions create a broader obligation to respect the integrity of the local ecosystem by recognising the intrinsic rights of nature.

⁴⁹⁸ However, the organization never defines with clarity what is their definition of community. Therefore, a general, unspecified definition of community is usually employed on its website and material. Nevertheless, inferences about what CELDF means when talking about community and its goals toward furthering community rights can be made by analysing the claims that CELDF make, these can be extrapolated from the Community Bills of Rights. I present evidence and analysis of these claims in the next chapter. See, CELDF Mission Statement. About Us, CELDF <https://web.archive.org/web/20010616134131/http://www.celdf.org/aboutus.html>.

⁴⁹⁹ CELDF on rights of nature. Fighting for Nature's Rights, CELDF, <https://celdf.org/rights-of-nature/>. Global Alliance for the Rights of Nature -About GARN, GARN <https://www.garn.org/about-garn/>.

⁵⁰⁰ On this see, Martinez-Alier, *supra* note 108.

⁵⁰¹ *Id.*

⁵⁰² Global Alliance for the Rights of Nature -About GARN, <https://www.garn.org/about-garn/>. See the webpage listing the GARN members. Members - Global Alliance for the Rights of Nature (GARN), GARN <https://www.garn.org/our-members/>.

In CELDF's vision, community-led decision-making emerges as the bedrock for achieving both economic sustainability and ecological integrity. Thomas Linzey argues that CELDF's Community Rights work is a "Paradigm shift, a move away from unsustainable practices that harm communities, and a move toward local self-government."⁵⁰³

CELDf specifically makes a reference to the idea of community as a pillar around which grassroots organising, rights declaration, and autonomous governance take place. For CELDF a community is an "Entity that can mobilize its members to defend those rights toward creating a society less vulnerable to the exploitation of its vital resources by corporate enterprises."⁵⁰⁴

My view is that CELDF's approach, defined by considering communities as an entity capable of mobilizing its members to safeguard rights and foster a society less vulnerable to exploitation by corporate enterprises, aligns with the goal of addressing ecological distribution conflicts.⁵⁰⁵ By advocating for the rights of nature and empowering communities to protect their local ecosystems, CELDF aims to challenge prevailing power dynamics that perpetuate environmental injustices.⁵⁰⁶ Granting legal personhood and rights of nature serves to rebalance power dynamics by acknowledging the intrinsic value and rights of ecosystems and natural entities.⁵⁰⁷ This approach challenges the conventional legal framework that treats nature as mere property, providing communities with a legal foundation to assert their entitlement to a healthy environment.⁵⁰⁸ Through community mobilization and grassroots activism, CELDF strives to confront ecological distribution conflicts by empowering communities to safeguard their local resources and contest the exploitation of vital resources by corporate entities.⁵⁰⁹

⁵⁰³ Community Rights - Community Environmental Legal Defense Fund, CELDF, <https://celdf.org/community-rights/>. On this see also, Wendy Lynne Lee, *Eco-Nihilism: The Philosophical Geopolitics of the Climate Change Apocalypse* (Lexington Books Feb. 2017). Thomas Linzey & Daniel E. Brannen Jr, *A Phoenix From The Ashes: Resurrecting a Constitutional Right of Local, Community Self-Government in the Name of Environmental Sustainability*, 8 ARIZONA JOURNAL OF ENVIRONMENTAL LAW AND POLICY (2017). And, *The Right to Local Self-Government*, CELDF, <https://celdf.org/2014/09/the-right-to-local-self-government/>.

⁵⁰⁴ CELDF on community rights, Community Rights - Community Environmental Legal Defense Fund, CELDF, <https://celdf.org/community-rights/>. On this see also, Lee, *supra* note 503.

⁵⁰⁵ Martinez-Alier, *supra* note 108. See also, Community Rights - Community Environmental Legal Defense Fund, CELDF, <https://celdf.org/community-rights/>.

⁵⁰⁶ CELDF on rights of nature. Rights of Nature: Timeline - CELDF - Protecting Nature and Communities, CELDF <https://celdf.org/rights-of-nature/timeline/>.

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*

⁵⁰⁹ CELDF on community rights. CELDF Community Rights Do-it-Yourself Guide to Lawmaking, CELDF <http://celdf.org/wp-content/uploads/2019/11/DIY-Guide-2019-FINAL-2.pdf> 535.

Therefore, the approach that CELDF employs aligns with the broader concept of legal movements by considering a community as a mobilizing entity.⁵¹⁰ It challenges the conventional view of nature as mere property by advocating for legal personhood and rights of nature.⁵¹¹ This strategy rebalances power dynamics and aims to confront ecological distribution conflicts through community mobilization and grassroots activism.⁵¹²

At the local level in the US, CELDF aids municipalities, organised in community chapters, confronting established legal norms through the introduction of Community Bills of Rights (CBRs).⁵¹³ These CBRs become instrumental in acknowledging both community rights and community's inherent rights to local self-governance, while also serving as a mechanism to seek justice in shielding their economy, environment, and natural resources from the encroachment of industrial corporations.⁵¹⁴ Notably, since 2006, CELDF has explicitly incorporated provisions for the rights of nature within all its CBRs.⁵¹⁵

While legislative activism remains the cornerstone of CELDF's approach, my argument, which will unfold across the upcoming sections, and chapters, is that the organization also actively engages in a dialogue with the courts, refining its legislative tools and strategies, seeking clarity and validation for proposed laws and ordinances.⁵¹⁶ In this context, the courts function as platforms for discourse and as instruments for reinforcing and bolstering legislative changes pursued by CELDF.⁵¹⁷

Moreover, their influence and impact extend beyond the US, as they have actively associated themselves with legal successes in different parts of the world and facilitated the exchange of

⁵¹⁰ McCann, *supra* note 416. See also, Cummings, *supra* note 413.

⁵¹¹ CELDF on rights of nature. Rights of Nature: Timeline - CELDF - Protecting Nature and Communities, CELDF <https://celdf.org/rights-of-nature/timeline/>.

⁵¹² Martinez-Alier, *supra* note 108.

⁵¹³ CELDF. What's in a Community Bill of Rights (CBOR)?, CELDF, <https://celdf.org/2015/08/whats-in-a-community-bill-of-rights-cbor/>.

⁵¹⁴ *Id.*

⁵¹⁵ Rights of Nature FAQs, CELDF, <https://celdf.org/2016/03/rights-nature-faqs/>.

⁵¹⁶ CELDF, *supra* note 75. See also, *Synagro-WWT, Inc. v. Rush Township*, 204 F. Supp. 2d 827 (M.D. Pa. 2002). *Synagro-WWT, Inc. v. Rush Township*, 299 F. Supp. 2d 410 (M.D. Pa. 2003).

⁵¹⁷ CELDF, *supra* note 75. See also, *Synagro-WWT, Inc. v. Rush Township*, 204 F. Supp. 2d 827 (M.D. Pa. 2002). *Synagro-WWT, Inc. v. Rush Township*, 299 F. Supp. 2d 410 (M.D. Pa. 2003).

legal ideas and strategies between regions.⁵¹⁸ In fact, through collaborations, knowledge sharing, and participation in the GARN, as well as indigenous nations like the Anishinaabekwe (Ojibwe) Nation and other local grassroots organisations such as the Pachamama Alliance, CELDF has contributed to the broader global movement for the recognition of community rights, and rights of nature.⁵¹⁹ In doing so, the legal activism promoted by CELDF plays a role in advancing the resolution of ecological distribution conflicts in the US and abroad by using the law as a tool for social change.⁵²⁰ Moreover, I posit, the cross-border exchange of these ideas highlights the potential for innovative legal production and the inter-legality between the North and the Global South.⁵²¹

In conclusion, CELDF's legal activism demonstrates the practical significance of utilizing legal advocacy within social movements. By directly addressing the imbalanced distribution of environmental benefits and burdens, CELDF strives to cultivate a more equitable and sustainable society. Through its emphasis on community rights and rights of nature, CELDF plays a crucial role in advancing the resolution of ecological distribution conflicts both within the US and on a global scale. By using the law as a tool for social change, CELDF fosters a legal framework that promotes environmental justice and empowers communities to protect their local ecosystems.

Presenting the municipalities and CELDF Strategy of Activism

As already mentioned in the previous section all the Community Bills of Rights (CBRs) are passed thanks to the lobbying and organising of local chapters instituted by the Community Environmental Legal Defense Fund (CELDf). In fact, since 1997 CELDF's founders have encouraged a form of local community activism that tries to force a change in state local

⁵¹⁸ Rights of Nature - 2017 Symposium and Building a Movement, CELDF, <https://celdf.org/2017/12/rights-nature-2017-symposium-building-movement/>. See also, Hiroshi Fukurai & Richard Krooth, *Earth Jurisprudence, the Rights of Nature, and International Rights of Nature Tribunals*, in ORIGINAL NATION APPROACHES TO INTER-NATIONAL LAW: THE QUEST FOR THE RIGHTS OF INDIGENOUS PEOPLES AND NATURE IN THE AGE OF ANTHROPOCENE 213 (Hiroshi Fukurai & Richard Krooth eds., Springer International Publishing 2021).

⁵¹⁹ Rights of Nature - 2017 Symposium and Building a Movement, CELDF, <https://celdf.org/2017/12/rights-nature-2017-symposium-building-movement/>.

⁵²⁰ *Id.* See also, Martinez-Alier, *supra* note 108.

⁵²¹ In support of this argument see for instance, Community Partner, International Meeting: Rights of Nature Experiences, CELDF, <https://celdf.org/2021/10/international-meeting-rights-of-nature-experiences/>.

relationship through the passing of CBRs.⁵²² CELDF's founders argue that the United States (US) has a "democracy problem" and for them the only way to redress this is to change the existing legal structure to promote a community right of local self-government not just at state level but eventually also at federal level.⁵²³ The organisation advocates for change in the state-local relationship done at both constitutional level and local level, "What you're seeing is not just a legal strategy, it's an organising strategy. It's a seismic shift [...] that must happen."⁵²⁴

The primary organising sites have been municipalities aggrieved by corporations that exploit their local resources and, in the process, create environmental damage to the local community.⁵²⁵ The process starts with educational programs for the municipalities with the aim to give to all interested parties in a community the possibility of critically examine the historical legal documents that have, according to CELDF, eradicated community rights including the right of local self-government and favoured an expansion of corporate rights.⁵²⁶ Therefore, CELDF's organisers assert that the aim of the course is to spark awareness in the interested parties in a community of their disempowered status under hegemonic federal and state statutes and the limited amount of recourse they have under conventional regulatory organising.⁵²⁷

Moreover, through the teachings of the Democracy Schools, the interested parties in a community learn about the unlimited amount of corporate power present in the US legal and political structure, and about the limits of conventional regulatory organising.⁵²⁸

It is at this point that CELDF's organisers offer municipalities the opportunity to organise as a local grassroots activist group and write a municipal ordinance or CBR against further corporate incursion to protect the rights of local communities and assure the rights of their natural environment.⁵²⁹

⁵²² CELDF Mission Statement. About Us, CELDF <https://web.archive.org/web/20010616134131/http://www.celdf.org/aboutus.html>. See also, CELDF - Community Rights Pioneers - Protecting Nature and Communities, CELDF, <https://celdf.org/>.

⁵²³ Erin West, *Could the Ohio River Have Rights? A Movement to Grant Rights to the Environment Tests the Power of Local Control*, EHN, (Feb. 04, 2020), <https://www.ehn.org/ohio-river-nature-rights-2645014867.html>.

⁵²⁴ *Id.*

⁵²⁵ CELDF Mission Statement. About Us, CELDF <https://web.archive.org/web/20010616134131/http://www.celdf.org/aboutus.html>. See also, CELDF Community Rights Pioneers Protecting Nature and Communities, CELDF (2020), <https://celdf.org/>.

⁵²⁶ Democracy School - Learn More about Community Rights, CELDF, <https://celdf.org/democracy-school/>. See also, Grossman, *supra* note 71.

⁵²⁷ Democracy School - Learn More about Community Rights, CELDF, <https://celdf.org/democracy-school/>.

⁵²⁸ *Id.*

⁵²⁹ Grossman, *supra* note 71.

These local chapters lend their help in the drafting stage of the CBRs, promote consensus, and are responsible for the general strategy.⁵³⁰ CELDF's founders argue that, "Through the county chapters, we are accelerating our local organising as we build a critical mass of support for making higher level change."⁵³¹

Ben Price, one of CELDF Community Rights Organisers focusing on communities in Pennsylvania, describes this approach,

Passing local ordinances is not simply a legal strategy. It looks like a legal strategy because we use local laws to create a movement, a historic community rights movement, and that includes nature in the definition of community. The local ordinances aren't necessarily designed to change laws, but to force a conflict between laws and values that will compel people to rethink the basic assumptions of our society.⁵³²

In other words, this educational program identifies a common enemy: the state and the corporations and offers a solution to combating it: community organising using municipal ordinances as a strategy of activism.⁵³³ CELDF is basically promoting a practice of legislating for social change, a movement constituted of social activists advocating for the recognition of community rights with nature included in their idea of the community.⁵³⁴

What I have found researching this phenomenon is that CELDF's timeline of activism exhibits a clear evolutionary chronology in terms of goals and in terms of strategy.

Evolution, in Terms of Goals

⁵³⁰ Thomas Linzey, *We The Peopletoc: Stories From the Community Rights Movement in the United States* (Oakland, California: Pm Press 2016).

⁵³¹ Where We Work, CELDF, <https://celdf.org/where-we-work/>.

⁵³² Jason Mark, *Can We Save the Environment and Our Communities By Giving Nature Legal Rights?*, Alternet.Org, (Mar. 26, 2012), <https://www.alternet.org/2012/03/canwesavetheenvironmentandourcommunitiesbygivingnaturelegalrights>. Here Ben Price refers to CBRs as local ordinances. For the purposes of legal understanding, the distinction between a municipal ordinance and a local ordinance may vary in different jurisdictions. While the former typically refers to laws enacted by a specific city or municipality, the latter is a more general term encompassing ordinances from various local government entities, including cities, towns, counties, and more. Terminology and scope might differ based on the local legal system. Because this thesis is on municipal activism, I use, in most cases, the term municipal ordinance instead of local ordinance, however the term local ordinance is sometimes also used.

⁵³³ Davis-Cohen, *supra* note 8.

⁵³⁴ *Id.*

CELDF's organisers promoted a strategy of passing CBRs to establish a right to community self-government and to abolish the personhood of corporations.⁵³⁵

Early CBRs were more aligned with grassroots movements that critiqued and lobbied against corporate personhood and corporate power (e.g., Occupy Movement) by demanding the recognition of community rights.⁵³⁶

Their strategy evolved in 2006 where they also sought to pass CBRs that established rights of nature and "natural communities," in the form of a nested ecosystem within the legal ecosystem.⁵³⁷ These legal provisions, as said before, are not bestowing personhood directly but rather establish a wide obligation to respect the integrity of the local ecosystem by stating that nature has intrinsic rights.⁵³⁸ I posit that they are akin to the legal manifestation of someone declaring himself to be, in Christopher Stone's words, a "friend" of the local natural ecosystem.⁵³⁹

Afterwards, in 2017, CELDF's organisers for the first time helped municipalities (organised in community chapters) pass the Lake Erie CBR, which awarded personhood to a body of water.⁵⁴⁰ I posit that, because CELDF is part of the international GARN alliance, CELDF's community organisers were inspired by the recent positive legal outcomes of the case of the decision of the Columbia constitutional court Atrato River Decision T-622/16 in 2016, and the 2017 Whanganui River Claims Settlement Act of New Zealand both of which recognised that a river could be a subject of rights.⁵⁴¹

⁵³⁵ CELDF Community Rights Do-it-Yourself Guide to Lawmaking, CELDF <http://celdf.org/wp-content/uploads/2019/11/DIY-Guide-2019-FINAL-2.pdf>

⁵³⁶ "Corporate personhood" refers to the legal doctrine that grants corporations certain rights similar to those of individuals, such as freedom of speech and due process. Grassroots movements like the Occupy Movement argued that this legal framework allowed corporations to wield disproportionate influence over political and economic decisions, often at the expense of local communities. *Wikipedia: Occupy movement*, Wikipedia, https://en.wikipedia.org/wiki/Occupy_movement. For the text of early CELDF Community Bills of Rights see for instance, Southampton Township Franklin County, Pennsylvania Ordinance No. 2000-1999, <https://web.archive.org/web/20001031115126/http://www.celdf.org/>.

⁵³⁷ On this see for instance, Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

⁵³⁸ *Id.*

⁵³⁹ Stone, *supra* note 70. And, Stone, *supra* note 62.

⁵⁴⁰ Press Release: Major Developments for Lake Erie Bill of Rights, CELDF, <https://celdf.org/2019/07/press-release-major-developments-for-lake-erie-bill-of-rights/>.

⁵⁴¹ Corte Constitucional de Colombia, T-622/16 The Atrato River as a "subject of rights", <https://www.corteconstitucional.gov.co/english/Decision.php?IdPublicacion=9336>. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 No, Public Act – New Zealand Legislation, <https://www.legislation.govt.nz/act/public/2017/0007/latest/whole.html>. See also, CELDF's Ongoing

In other words, initially their agenda and their actions were exclusively aimed at, “Taking back control and political agency from the state to protect local citizens.”⁵⁴² Subsequently municipal ordinances have included provisions to redress environmental issues and provisions that recognise rights of nature as a wide obligation to respect the integrity of the local ecosystem.⁵⁴³ Finally, given the recent global development that started to recognise bodies of water as subject of rights, in 2017, CELDF’s organisers helped municipalities (organised in community chapters) pass a CBR that awarded personhood to Lake Erie.⁵⁴⁴

Evolution, in Terms of Strategy

Initially, their legislative strategy, was to use the courts strategically to ask them to look for constitutional issues that constitute a systemic violation of the community right to local self-government. However, the strategy has evolved when lower court judges avoided any questions of constitutional issues of rights violation raised by a local law that challenges state law and overturned the municipal ordinances for non-constitutional reasons –because the municipal ordinances conflicted with state law. I will demonstrate this strategy in the next sections of this chapter.

The strategy of moving beyond municipal ordinances or CBRs to State Constitutional Amendments has a clear logic. Because some of the CBRs have been declared unconstitutional or preempted, CELDF is trying to enshrine a community right to local self-government into state constitutions.⁵⁴⁵ Therefore, CELDF it is now promoting CBRs state constitutional amendments to recognise an obligation to community rights with a view of eventually doing the same at federal level.⁵⁴⁶ Hence, the strategy has changed from the early days of CELDF activism. If initially their strategy was to municipal ordinances for the recognition of a community right to local self-government, today they are trying to pass these CBRs at every level of government.⁵⁴⁷

Commitment to Expanding Community Rights, CELDF, <https://celdf.org/2022/02/celdfs-ongoing-commitment-to-expanding-community-rights/>.

⁵⁴² CELDF on community rights, *supra* note 603, Mission Statement, para. 1.

⁵⁴³ On this *see for instance*, Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

⁵⁴⁴ Lake Erie Bill of Rights Toledo Lucas County, OH-2017 (Lake Erie Bill of Rights, Charter of the City of Toledo, Ch. XVII, §§ 253-260).

⁵⁴⁵ CELDF Community Rights Paper #1: The Spirit of ‘73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>.

⁵⁴⁶ *Id.*

⁵⁴⁷ Linzey, *supra* note 530.

Therefore, CELDF helps local chapters craft amendment to state constitutions for a recognition of a community right to local self-government.⁵⁴⁸ The end goal is bringing together a constitutional convention to draft a new State Constitution, to be ratified by popular referendum to address deficiencies in the charters of the states and ultimately even in the charter of the United States of America—the Constitution.⁵⁴⁹

In parallel it has also helped municipalities adopt Home Rule, and helps municipalities amend their municipal Home Rule charters to include the provisions found in the municipal ordinances or CBRs.⁵⁵⁰

From this moment on, CELDF as an activist movement started redefining its activities as a civil disobedience type of activism to bring about structural change in the state and local relationship and eventually to restructure all three levels of government,

We don't call it 'civil disobedience through Municipal Lawmaking' for nothing. It's about seizing the municipality and turning it like a torpedo up against the state and federal structure of law. Knowing we're in ecological collapse and knowing that the end of the world is at hand, you just begin doing whatever it takes to solve those problems yourself.⁵⁵¹

The concept of civil disobedience, as distinct from legal activism, carries significant implications for movements seeking structural change in governance. While legal activism typically operates within existing legal frameworks to challenge specific laws or policies, civil disobedience involves deliberately breaking laws or norms perceived as unjust to draw attention to broader issues and provoke societal change.

⁵⁴⁸ On the right to local self-government *see*, CELDF on the right to local self-government, *supra* note 603. The argument I am making will be demonstrated in the next sections.

⁵⁴⁹ Linzey, *supra* note 530.

⁵⁵⁰ US Home Rule refers to the authority granted to local governments by state law to enact and enforce ordinances, regulations, and policies governing local affairs within their jurisdiction. Under Home Rule, municipalities have a degree of autonomy to manage their own internal affairs, such as zoning, taxation, public services, and law enforcement, without direct interference from the state government. This system allows communities to tailor laws and policies to their unique needs and preferences, promoting local control and decision-making. However, the scope of Home Rule powers can vary significantly between states, as it is ultimately subject to the limitations and regulations imposed by state constitutions and statutes. CELDF Home Rule - Learn More about Home Rule, CELDF <https://celdf.org/home-rule/>. *Id.*

⁵⁵¹ Linzey & Campbell, *supra* note 143, p. 2.

In the context of CELDF's evolution, the shift towards civil disobedience signifies a strategic redefinition of activism aimed at challenging the fundamental structures of governance. By engaging in acts of civil disobedience, CELDF seeks to disrupt the status quo and highlight the inadequacies of existing legal and political systems in addressing pressing social and environmental concerns. This form of activism serves not only to challenge specific laws or policies but also to question the legitimacy of the entire system within which those laws are made and enforced.

Furthermore, by framing its actions as civil disobedience, CELDF aligns itself with a tradition of resistance and moral protest that transcends mere legalistic approaches. Civil disobedience emphasizes the moral imperative to confront injustice and uphold higher principles of equity, democracy, and environmental stewardship, even at the expense of legal repercussions. Through civil disobedience, CELDF aims not only to shift power dynamics between state and local governments but also to fundamentally restructure the relationship between citizens and their governing institutions at all levels.

In this way, civil disobedience becomes a potent tool for catalyzing systemic change, challenging entrenched power structures, and advancing the vision of a more just, equitable, and sustainable society. By embracing civil disobedience, CELDF underscores its commitment to transformative activism aimed at reshaping the very foundations of governance.

I will give more evidence of their strategy using examples from the Community Bill of Rights passed by CELDF in the next chapter.

Defining the Type of Activism that the municipalities employ with the aid of CELDF

As mentioned in the previous section, I argue that the municipalities' strategy fostered with the aid of the CELDF employs the judiciary in a manner aligned with Prof. Kagan's concepts, yet it constitutes a unique manifestation of the US practice of resorting to law and legal mechanisms, as suggested by Tocqueville.⁵⁵²

⁵⁵² Tocqueville, *supra* note 37. Kagan, *supra* note 36.

I have termed this approach legislative activism. In the context of the municipalities' activism—shaped and driven by CELDF—employing this strategy signifies for four things in terms of strategy and objectives. Firstly, it underscores collaborative engagement over confrontational tactics.⁵⁵³ Secondly, it emphasizes legislative solutions as opposed to over-reliance on litigation.⁵⁵⁴ Thirdly, it places priority on community empowerment and the recognition of community rights.⁵⁵⁵ Fourthly, it adopts a rights-based approach aimed at expanding the scope of legal entitlements.⁵⁵⁶ Finally, CELDF's objective is to drive lasting systemic change by challenging the foundational legal and economic structures.⁵⁵⁷

By embracing a collaborative and proactive stance centred on legislative solutions, community empowerment, and a rights-based perspective, CELDF sets itself apart from conventional adversarial activism.⁵⁵⁸ This involves the enactment of CBRs, which take the form of Home Rule Charters, Home Rule amendments, and amendments to State Constitutions.⁵⁵⁹ Although these CBRs have no legal validity, they serve as tools of social activism, compelling policy, and legal transformations in favour of recognizing community rights and the right to community self-governance.⁵⁶⁰ Its ultimate aspiration is to bring about fundamental shifts within legal and governance systems, ensuring the safeguarding of both communities and the environment.⁵⁶¹

⁵⁵³ On this see for instance, Linzey & Campbell, *supra* note 143.

⁵⁵⁴ On this see for instance, Thomas, *We The People: Stories From the Community Rights Movement in the United States* (Oakland, California: Pm Press 2016).

⁵⁵⁵ On this see for instance, CELDF on community rights. CELDF Community Rights Do-it-Yourself Guide to Lawmaking, CELDF <http://celdf.org/wp-content/uploads/2019/11/DIY-Guide-2019-FINAL-2.pdf> 535.

⁵⁵⁶ On this see for instance, Ben Price, *How Wealth Rules The World, Saving Our Communities and Freedoms From the Dictatorship of Property*, (Berrett-Koehler Publisher 2019).

⁵⁵⁷ On this see for instance, Thomas Linzey, *Community Rights: Because Climate Conferences Won't Stop Climate Change*, In *These Times*, (Jan. 17, 2017) <https://inthesetimes.com/article/fracking-ban-rights-of-nature-corporate-power-climate-change-thomas-linzey>.

⁵⁵⁸ On this see for instance, Thomas Linzey, *Community Rights: Because Climate Conferences Won't Stop Climate Change*, In *These Times*, (Jan. 17, 2017) <https://inthesetimes.com/article/fracking-ban-rights-of-nature-corporate-power-climate-change-thomas-linzey>. See also, Summer Hess, *One-Block Revolution: 20 Years Of Community Building* a Book by Summer Hess (Jan. 2021).

⁵⁵⁹ What's in a Community Bill of Rights (CBOR)?, CELDF, <https://celdf.org/2015/08/whats-in-a-community-bill-of-rights-cbor/>. See also, CELDF Community Rights Do-it-Yourself Guide to Lawmaking, CELDF <http://celdf.org/wp-content/uploads/2019/11/DIY-Guide-2019-FINAL-2.pdf>.

⁵⁶⁰ On this see, Justin Nobel, *The Rights of Nature Movement Goes on Trial*, *Rolling Stone*, (Oct. 1, 2018), <https://www.rollingstone.com/politics/politics-news/the-rights-of-nature-movement-goes-on-trial-125566/>. And, Richard Valdmanis, *Green Group's Unconventional Fight against Fracking*, Reuters, (June 29, 2015) <https://www.reuters.com/article/us-usa-fracking-lawsuits-insight-idUSKCN0P90E320150629>.

⁵⁶¹ Nobel, *supra* note 560. Valdmanis, *supra* note 560.

CELDF strives to foster collaborative initiatives with the communities of municipalities.⁵⁶² Its mission centres on building coalitions and partnerships to establish laws and policies safeguarding community rights and environmental well-being.⁵⁶³ Through the utilization of legislative tools, CELDF endeavours to help municipalities draft and advocate for CBRs that acknowledge the rights of both communities and ecosystems.⁵⁶⁴

However, I posit that CELDF, within its role of aiding municipalities in asserting their rights to community autonomy, participatory democracy, and communal stewardship of local ecosystems, while restraining state and corporate influence, employs a dual approach of litigation and legislation, through the use of CBRs as its legislative tools.⁵⁶⁵ CELDF's intention to proliferate CBRs containing explicit political language and interpretational doctrines, aimed at fostering litigation, underpins their strategy to challenge and reshape legal paradigms.⁵⁶⁶ The very essence of CBRs operates as models, fashioned through an ongoing dialogue between CELDF and the courts, particularly as a response to state preemption laws.⁵⁶⁷ I posit that, each component of the CBRs is calibrated to echo this ongoing dialogue, rendering it more than just a legislative instrument – it transforms into a political tool. This symbiotic exchange drives the evolution of CBRs, evolving alongside legal confrontations encountered by municipalities. CELDF harnesses the CBRs to channel its concerns, aspirations, and foundational principles within each municipality it engages with. The vitality of a CBR stems from its living, adaptable nature. Deliberately structured by CELDF's lawyers to engage in an ongoing conversation with the courts, the language and provisions enclosed within the CBRs are selected to align with

⁵⁶² On this see for instance, National Community Rights Network (NCRN), CELDF, <https://celdf.org/where-we-work/community-rights-networks/>.

⁵⁶³ On this see for instance Ben Price's foreword of Alexandra Reed Lajoux "Empowering Municipal Sustainability. A guide for Town, Cities and, Citizens." (Ben Price is the National Organizing Director at Community Environmental Legal Defense Fund). Ben Price, BOOK FOREWORD: Empowering Municipal Sustainability, CELDF, <https://celdf.org/2021/10/book-foreword-enabling-municipal-sustainability/>. See also, Linzey & Campbell, *supra* note 143.

⁵⁶⁴ On this see for instance, Thomas Linzey, Thomas Linzey, *Hey Liberal, You're Late, but Welcome to the Local-Control Party*, In *These Times*, (Mar.1, 2018) <https://inthesetimes.com/article/community-rights-thomas-linzey-celdf-think-globally-enact-locally>.

⁵⁶⁵ On this see, Linzey & Brannen Jr, *supra* note 503. I will discuss this further in chapter III, presenting legal arguments made by the CELDF legal team in several briefs submitted to state and federal courts in defence of several municipal communities whose Community Bill of Rights (here as municipal ordinances) were challenged either by the State or by corporations.

⁵⁶⁶ Linzey & Brannen Jr, *supra* note 503.

⁵⁶⁷ In chapter III I will demonstrate how the Community Bills of Rights have evolved in response to lawsuits primarily referring to the cases of *Synagro-WTT Inc. v. Rush Township*. *Synagro-WWT, Inc. v. Rush Township*, 204 F. Supp. 2d 827(M.D. Pa. 2002). And, *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 (Signed Jan. 19, 2015). And, *Pa. Gen. Energy Co. v. Grant Twp.*, C.A.No. 14-209ERIE (W.D. Pa. Sep. 30, 2016).

CELDF's core values and objectives. This precision ensures that the CBRs not only embodies CELDF's ethos but also flexibly navigates the distinct dynamics of each legal challenge and ensuing judicial interaction. I will demonstrate this later, in chapter III.

In conclusion, CELDF's unique approach, recognized as legislative activism, stands apart from adversarial activism through its collaborative ethos, legislative focus, community empowerment, and emphasis on expanding legal rights.⁵⁶⁸ By embracing collaboration and proactivity, centred on legislative solutions and community rights, CELDF endeavours to create substantial shifts in legal and governance frameworks, thereby securing the welfare of both communities and the environment.⁵⁶⁹ In this context, it's worth noting the resemblance between the legislative activism pursued by CELDF and the agrarian movements of the 1890s and 1930s even though there are instances where it has reinterpreted their ideas to attain distinct objectives. This influence is discernible across various dimensions: ideas, strategies, goals, and legal tools. Therefore, the next section will discuss CELDF's parallelism and diversity with earlier iterations of legislative activism –the first iteration of the agrarian movements (1890s) in the areas of philosophical ideas, strategy, and tools (these also be discussed in further detail in chapter three).

ANALYZING MUNICIPAL ACTIVISM: A COMPARATIVE STUDY OF CELDF AND THE FIRST ITERATION OF THE AGRARIAN MOVEMENTS

Sections I and II have laid the groundwork for understanding legal movements, their differentiation from other social movements, and their significance within the US legal system characterised by adversarial legalism. Further to this, having comprehended the dynamics of adversarial legalism and what I call legislative activism, it is now possible to grasp the strategies and tactics employed by the municipalities with the aid of the CELDF. Moreover, examining the characteristics and strategies of legal movements and their interaction with adversarial legalism, it is now possible to appreciate the distinctive approach of the municipalities' activism pursued with the aid of CELDF in pursuing the recognition of specific rights to achieve social and environmental justice. This understanding allows us to categorize and analyse the approach that CELDF fosters to the municipalities and sheds light on its advocacy efforts to address environmental and community rights issues.

⁵⁶⁸ For a summary on this *see for instance*, Linzey & Campbell, *supra* note 143.

⁵⁶⁹ *Id.*

This section focuses on providing a classification of the type of activism that CELDF fosters to the municipalities, its tools of activism and its philosophical background. It does so by doing a comparison analysis between the agrarian movement of the 1890s against what CELDF discusses about its method, strategy, and in its website and in its publications.⁵⁷⁰

A comparison between the strategy of the CELDF movement and the agrarian movements

The most obvious difference between the CELDF movement and the agrarian movement, is its inception: the CELDF movement is a grassroots movement whereas the first iteration of the agrarian movement in the 1890s finds its beginnings in “A discourse-against emanating from above, and not with some form of 'grassroots resistance' from below.”⁵⁷¹ Therefore, while CELDF movement was born as a grassroots movement giving expression to ideas shared by the local communities, the earliest agriculturalist movement disseminated ideas shared by a small elite to the masses.⁵⁷²

They however share the same ideas. To illustrate these concepts, it proves valuable to reference Inge's compilation of agrarian writings in US literature.⁵⁷³ Inge undertook the task of editing a compendium that included various agrarian writings and complemented it with an introduction that outlined five prominent themes, three of which are highly relevant to this research:

- 1. Religion:** The act of farming serves as a reminder to humanity of its limited existence and reliance on a higher power, emphasizing the role of God in agricultural pursuits.⁵⁷⁴

⁵⁷⁰ For an introduction on the agrarian movement of the 1890s, the Farmers' Alliance, *see, Farmers' Alliance | Description, History, Significance, & Facts*, Britannica, <https://www.britannica.com/topic/Farmers-Alliance>. *See also*, Lawrence Goodwyn, *Democratic Promise: The Populist Moment in America* (Oxford University Press 1976).

⁵⁷¹ Tom Brass, *The Agrarian Myth, the 'New' Populism and the 'New' Right*, 32 *ECONOMIC AND POLITICAL WEEKLY* PE27 (Economic and Political Weekly 1997). *See also*, Scott, *supra* note 477.

⁵⁷² Brass, *supra* note 671. Linzey & Campbell, *supra* note 143. On this, both in the literature and in the material that CELDF publishes, CELDF is classified as a grassroots movement. On this *see for instance*, Kauffman & Martin, *supra* note 6. Jeffrey Kaplan, *Consent of the Governed, The Reign of Corporations and the Fight for Democracy*, 61 *Orion* I (2003). <https://ratical.org/corporations/CotG.html>.

⁵⁷³ M. Thomas Inge, *Agrarianism in American Literature* (Odyssey Press 1969).

⁵⁷⁴ *Id.*

2. **Romance:** The advancement of technology is viewed as a corrupting force, whereas the natural world, often associated with the concept of nature, is seen as a source of redemption and purity.⁵⁷⁵
3. **Moral Ontology:** Engaging in farming activities fosters a sense of harmony and integration, contrasting with the alienation and fragmentation prevalent in modern society.⁵⁷⁶

The CELDF movement is animated by the same ideas. For if I replace the term “Farming” and “God” with that of “Nature” here defined by CELDF as, “Living from, with, in, and as Nature” I can demonstrate parallels between Inge’s three themes of the agrarian movement and mirrors those forwarded by CELDF.⁵⁷⁷ Nature is defined as a harmonious entity and its needs are inseparable from those of the community and vice versa.⁵⁷⁸ In this sense, nature reminds the community of their finitude and dependence on their local ecosystem.⁵⁷⁹ A local economy overly dependent on corporations for their economic well-being corrupts the ability of local communities to care for nature.⁵⁸⁰ In this sense local is best.⁵⁸¹ Nature is included in the definition of local community which is inherently harmonious and integrated.⁵⁸² A harmonious and integrated local community can make the best decisions on local issues using the tools of participatory direct democracy.⁵⁸³ In other words, my view is that CELDF is inspired by the idealized 19th century romantic ideas of a self-sufficient local community living “naturally” in harmony with nature.⁵⁸⁴ Here, the emphasis is on nature and communities living together in perfect agreement in a depoliticized form of community.⁵⁸⁵

Turning the attention to the parallelism in term in strategy I posit that, these are evident. The campaign strategy of the Alliance leaders (the founders of the agrarian movement) was,

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

⁵⁷⁷ Kai Huschke, Sneak Peek! - End of Year Newsletter 2022: We Are Nature, CELDF, <https://celdf.org/2022/11/sneak-peek-end-of-year-newsletter-2022-we-are-nature/>. For more context see also the other CELDF documents I have listed in the introductory chapter.

⁵⁷⁸ *Id.*

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ *Id.*

⁵⁸⁴ For a general introduction on this topic see, Russell Goodman, *Transcendentalism*, (Jun. 2003), <https://plato.stanford.edu/entries/transcendentalism/>.

⁵⁸⁵ Huschke, *supra* note 577.

“Agitation, education, organisation.”⁵⁸⁶ Their objective was a revolution in government policies. CELDF adopts the same objective even if it does not share the same motto. Its objective, similarly, is to change government policies in the areas of corporate rights and environmental protection, and to do that by pushing for the adoption of a community right of democratic self-government.⁵⁸⁷ In fact, Thomas Linzey, co-founder of CELDF, thinks current state and federal rules do not do enough, “What we’ve worked on for the past 15 years is creating a legal argument that says the city does have that authority, and the city authority can override the state permit. And that’s still a radical notion in legal circles.”⁵⁸⁸

Moreover, the Farmers Alliance of the late nineteenth century had educational programs all over the country.⁵⁸⁹ The Alliance had a national university which employed, “Hundreds of college-educated as well as self-taught teachers, who were able to stimulate thought and lend inspiration to their fellows.”⁵⁹⁰

CELDf similarly created an educational program albeit on a much smaller scale called the Daniel Pennock Democracy School.⁵⁹¹ The curriculum of the school is developed to explore the idea for a recognition of community rights of local self-government.⁵⁹² Specifically, from their website the curriculum analyses, “Why democratic self-government is impossible when corporations wield constitutional rights against communities to deny the rights of the people.”⁵⁹³

I have discussed in section I that all the CBRs that are the focus of my research are passed thanks to the lobbying and organising of national, state, and local chapters instituted by CELDF. In fact, these local chapters of advocacy centred on the institution of Democracy Schools, the Daniel Pennock Democracy School, that train community residents, “To confront

⁵⁸⁶ Homer Clevenger, *The Teaching Techniques of the Farmers’ Alliance: An Experiment in Adult Education*, 11 THE JOURNAL OF SOUTHERN HISTORY 504 (Southern Historical Association 1945), p. 504. *See also*, Scott, *supra* note 577.

⁵⁸⁷ Linzey & Brannen Jr, *supra* note 503.

⁵⁸⁸ *Could the Ohio River Have Rights? A Movement to Grant Rights to the Environment Tests the Power of Local Control - EHN*, <https://www.ehn.org/ohio-river-nature-rights-2645014867.html>.

⁵⁸⁹ Clevenger, *supra* note 686.

⁵⁹⁰ C.S. Walker, *The Farmers’ Movement*, 4 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 94 (SAGE Publications Inc Jan. 1894), p. 704-793. *See also*, Clevenger, *supra* note 686, p.505.

⁵⁹¹ Democracy School, COMMUNITY RIGHTS LANE COUNTY, CELDF, <https://communityrightslanecounty.org/democracyschool/>.

⁵⁹² Kaplan, *supra* note 572.

⁵⁹³ *Id.*

the usurpation by corporations of the rights of communities, people, and earth.”⁵⁹⁴ Therefore, when comparing the organisational structure of the Farmers Alliance with the structure of CELDF Democracy School, it can be seen that the latter is a pale imitation of the structure of the Farmers Alliance of the late 19th century both in size, scope, and type of education.⁵⁹⁵ The objective however is the same. This is best exemplified by the description that Morgan makes in his book (*History of the Wheel and Alliance and the Impending Revolution*),

[...] Without disturbing party lines or affiliations or provoking feelings of party strife, [...] we shall discuss and investigate laws, public measures, and government policies that affect the producing masses. We shall approve the good and condemn the bad through the ballot. Our program shall be unfaltering hostility to all class legislation, tyranny and monopoly, excessive taxation, lavish expenditure, and all the wrongs and abuses by government. We shall try to understand the organisation, powers, and purposes of government and qualify ourselves to judge correctly the merits of candidates for office.⁵⁹⁶

Comparing the Farmers Alliance Universities with the CELDF Democracy School it can be observed that the structure of their educational programs is also the same. In the Farmers Alliance Universities, the outline of their presentation first called for an analysis of the farmers' condition, then for determining the cause, and finally the proposal of remedies.⁵⁹⁷ In CELDF Democracy School, the outline of their presentation first analyses the historical legal documents that have facilitated the exploitation of local natural resources by corporations, thereby often creating environmental damages to those local communities.⁵⁹⁸ Then, as a proposal of remedy local chapters are created to draft a municipal ordinance.⁵⁹⁹ CELDF argues that, “Through the county chapters, we are accelerating our local organising as we build a critical mass of support for making higher level change.”⁶⁰⁰

⁵⁹⁴ Thomas Linzey, *Community Rights: Because Climate Conferences Won't Stop Climate Change*, In These Times, (Jan. 17, 2017) <https://inthesetimes.com/article/fracking-ban-rights-of-nature-corporate-power-climate-change-thomas-linzey>. See also, Democracy School - Learn More about Community Rights, CELDF, <https://celdf.org/democracy-school/>.

⁵⁹⁵ Regarding the organisational structure of the agrarian movement see for instance, Clevenger, *supra* note 686. Regarding the organisational structure of CELDF see chapter III. See also, *Community Environmental Legal Defense Fund*, BALLOTPEDIA, https://ballotpedia.org/Community_Environmental_Legal_Defense_Fund.

⁵⁹⁶ Scott, *supra* note 577.

⁵⁹⁷ *Id.*

⁵⁹⁸ Linzey, *supra* note 530.

⁵⁹⁹ *Id.*

⁶⁰⁰ Where We Work, CELDF, <https://celdf.org/where-we-work/>.

However, the aim of these educational program sponsored by the agrarian movement have an objective that is radically different from that of the CELDF movement. The aim of the Farmers Alliance was to unite fellow farmers across states to change the mind of most farmers, especially from the South, since their belief still resided in Thomas Jefferson's doctrine of state rights and the convenient (but spurious quote often attributed to him), "The least government is the best government."⁶⁰¹ Therefore, for the Farmers Alliance, their purpose was to create a stronger federal state with a strong government and unified and coordinated policy. For example, this can be evidenced by the fact that local farm clubs were then expanded into a state organization. Clevenger describe the process, "[...] By the middle 1880's several state organizations had been perfected. Then came the urge to nationalize the movement."⁶⁰²

CELDF aim is very different, its mission is to make true of Thomas Jefferson's doctrine of state rights and the convenient (but spurious quote) often attributed to him, "The least government is the best government,"⁶⁰³ and to use local government as a laboratory of democracy for the implementation of a community right to local self-government. In this sense, CELDF activist chapters are local enterprises with no intention of creating a state or national movement.⁶⁰⁴ The aim of CELDF is the recognition of the right of local democracy and local community self-government in state and federal constitutions, specifically enshrining the recognition of communities as "self-determining."⁶⁰⁵

In other words, if for the Farmers Alliance the forces in motion were centripetal towards centralization, with CELDF the forces in motion are centrifugal toward decentralization.⁶⁰⁶ Both movements however, advocate for novel ideas of local governance. Through this process,

⁶⁰¹ There is no record of Jefferson ever saying this, though the quote is often misattributed to him. The phrase "that government is best which governs least" is often credited to Henry David Thoreau, in his 1849 "Civil Disobedience", or "Resistance to Civil Government." Henry David Thoreau, *Resistance to Civil Government* (Civil Disobedience), in THOREAU: POLITICAL WRITINGS 1 (Henry David Thoreau & Nancy L. Rosenblum eds., Cambridge University Press 1996), Britannica, <https://www.britannica.com/topic/Civil-Disobedience-essay-by-Thoreau>.

⁶⁰² Clevenger, *supra* note 586.

⁶⁰³ Thoreau, *supra* note 601.

⁶⁰⁴ Where We Work, CELDF, <https://celdf.org/where-we-work/>.

⁶⁰⁵ CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>.

⁶⁰⁶ On this for the agrarian movements *see*, Scott, *supra* note 577.

therefore, state chapters (in the case of the agrarian movements) and activist chapters (municipalities in the case of CELDF) become “laborator[ies] of democracy.”⁶⁰⁷

For the agrarian movements, the democratic process that is happening at the state level centred in the creation a stronger federal state with a strong government and unified and coordinated policy.⁶⁰⁸ In the case of CELDF the local democratic process that is happening at the substate level is centres on the recognition of a radical idea of a community right to local self-government.⁶⁰⁹

The philosophical background

The agrarian movement drew strong influence from the early conservationist movement and its philosophy of transcendentalism.⁶¹⁰

The most famous author among the transcendentalists is Henry David Thoreau.⁶¹¹ Thoreau's influential book, “Walden,” serves as a testament to his deep connection with nature and his belief in its intrinsic worth.⁶¹² In this seminal work, Thoreau immerses himself in the wilderness, deliberately living in close communion with the environment.⁶¹³ His observations and reflections emphasize the importance of preserving the natural world as a source of inspiration, solace, and spiritual renewal.⁶¹⁴

The agrarian movement, characterized by a pastoral reverence for natural ecosystems, viewed the local environment as inherently harmonious and worthy of preservation.⁶¹⁵ Their ethos

⁶⁰⁷ *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932).

⁶⁰⁸ Scott, *supra* note 577.

⁶⁰⁹ CELDF Community Rights Paper #1: The Spirit of ‘73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>.

⁶¹⁰ For an introduction on the conservationist movement in the US *see*, Dorceta E. Taylor, *The Rise of the American Conservation Movement: Power, Privilege, and Environmental Protection* (Duke University Press 2016).

⁶¹¹ Rick Anthony Furtak, *Henry David Thoreau*, *The Stanford Encyclopaedia of Philosophy* (Edward N. Zalta & Uri Nodelman eds., Metaphysics Research Lab, Stanford University Spring 2023 ed. 2023). <https://plato.stanford.edu/entries/thoreau/>.

⁶¹² Henry David Thoreau, *Walden* (Thomas Y. Crowell & Company 1910).

⁶¹³ *Id.*

⁶¹⁴ *Id.*

⁶¹⁵ On this *see for instance*, Arabella A Paulovich, *The Idea of Wilderness and United States Land Use Policy: American Transcendentalism, Preservation, and Conservation, 1835-1914.*, College of Arts & Sciences Senior Honors Theses (Jan. 2021). *See also*, Jennifer K. Ladino, *Reclaiming Nostalgia: Longing for Nature in American Literature* (University Of Virginia Press Dec. 2012).

centred on fostering self-sufficient local communities living in harmony with their surroundings.⁶¹⁶

In parallel, CELDF draws inspiration from the transcendentalist ideals, echoing the agrarian movement's sentiments. In fact, CELDF's advocacy extends to championing a specific form of nature's rights integrated into the fabric of local ecosystems and communities.⁶¹⁷ This vision aligns with the agrarian perspective, positing that regional ecosystems play a vital role in sustaining local communities and must be preserved accordingly.⁶¹⁸ The rights of nature, as envisioned by CELDF, are akin to communal rights of access to the local natural environment, safeguarding the community's self-sufficiency derived from its harmonious relationship with nature.⁶¹⁹

The concept of the “scenic right of the community” advocated by CELDF further underscores their commitment to preserving local ecosystems.⁶²⁰ This notion, emphasizing nature's intrinsic worth and its role in shaping national identity, resonates with the transcendentalists' ideals.⁶²¹ By drawing from the transcendentalists' vision, CELDF recognizes that preserving scenic beauty is essential for community well-being and ecological sustainability.⁶²²

The connection between the philosophical insights of the transcendentalists and CELDF's practical initiatives demonstrates the evolution of ideas over time and their integration into contemporary environmental advocacy. This link underscores the enduring relevance of

⁶¹⁶ On this see for instance, Paulovich, *supra* note 615. See also, Ladino, *supra* note 615.

⁶¹⁷ On this see for instance, Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006, § 7.6. “Borough residents, natural communities, and ecosystems shall be considered to be “persons” for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.”

⁶¹⁸ CELDF, *Rights of Nature Principles*, CELDF, <https://celdf.org/2021/08/rights-of-nature-principles/>.

⁶¹⁹ On this see, CELDF, *supra* note 35. CELDF, *Rights of Nature Principles*, CELDF, <https://celdf.org/2021/08/rights-of-nature-principles/>.

⁶²⁰ On this see for instance, US Easton, The Town of Easton Rights to a Sustainable Energy Future and Community Self Government Ordinance, Easton, Grafton County, NH - 2012.

⁶²¹ For example, Thoreau's idea of nature's scenic rights aligns with CELDF's concept of including nature within the definition of community. Therefore, Thoreau's thinking and CELDF's idea of scenic rights, reveals a shared commitment to recognising the intrinsic value of nature and empowering communities to protect their local environments. Moreover, I posit that Thoreau's understanding of nature's scenic rights, which encompass the idea that nature possesses inherent value beyond its utilitarian function, resonates with CELDF's concept of community rights. On this see, Furtak, *supra* note 607. See also, Legal Rights of Nature Principles Proposed by Community Environmental Legal Defense Fund Legal Services, CELDF, <https://celdf.org/legal-services/>.

⁶²² This concept emphasizes the preservation of the local ecosystem in its untouched state, as highlighted by John Muir in his famous walk that praised the US wilderness. Muir states, “The most distinctive, and perhaps the most impressive, characteristic of US scenery is its wilderness.” The argument posits that nature holds intrinsic worth and is part of the national identity. On this see, Muir, *supra* note 100.

environmental philosophy and its transformative potential in shaping legal and social frameworks. Through this exploration, it is possible to appreciate the impact that philosophical foundations can have on practical strategies for environmental change.

The Tools of Activism

These philosophical ideas can be gleaned in the legislative tools promoted by the agrarian movement of the 1890s and the 1930s: the anti-corporate farming statutes.⁶²³ The agrarian movement developed in response to capital accumulation and corporate expansion, in the first iterations; and against the expansion of farm corporations in the second iteration.⁶²⁴ The agrarian movement aimed at preserving rural life.⁶²⁵

For example, a plank in the farmers' alliance platform of 1891 stated,

We demand the passage of laws prohibiting alien ownership of land and that congress take prompt action to devise some plan to obtain all lands now owned by alien and foreign syndicates, and that all land held by railroads and other corporations in excess of such as is actually used and needed by them be reclaimed by the government, and held for actual settlers only [...]⁶²⁶

The CELDF legislative tool the Community Bill of Rights or CBRs (a municipal ordinance) includes verbatim the wording of the anti-corporate farming ordinances in their corpus.⁶²⁷ From this it can be understood that CELDF's purpose is to limit corporate influence, specifically in relation to three ideas that emerge from the arguments present in the CBRs.⁶²⁸ These are: anti-corporate stances and community rights of local self-government. Moreover, the anticorporate ordinances also fulfil the function of preservation of a more traditional way of life –that of a

⁶²³ For an introduction on this topic see, Brian F. Stayton, *A Legislative Experiment in Rural Culture: The Anti-Corporate Farming Statutes Cultural Preservation Symposium: Essays & Articles*, 59 UMKC L. REV. 679 (1990–1991).

⁶²⁴ For a summary introduction on this topic see, *Agrarianism Definition, Ideals, History, & Proponents*, Britannica, <https://www.britannica.com/topic/agrarianism>.

⁶²⁵ *Id.*

⁶²⁶ John Donald Hicks, *The Populist Revolt: A History of The Farmers' Alliance and the People's Party* (U Of Minnesota Press 1931), 433.

⁶²⁷ Thomas Linzey, *Of Corporations, Law, and Democracy - Schumacher Center for a New Economics*, <https://centerforneweconomics.org/publications/of-corporations-law-and-democracy/>.

⁶²⁸ On this see for instance, CELDF's Ben Price on Local Self Governance and Rights of Nature (Parts 1 through 3), CELDF, <https://celdf.org/2011/08/celdfs-ben-price-on-local-self-governance-and-rights-of-nature-parts-1-through-3/>.

small community locally regulated by a form of direct democracy.⁶²⁹ In this sense CELDF, re-using this tool: the anti-corporate farming ordinances, is fighting for a recognition of powers to the community understood as popular sovereignty powers.⁶³⁰ I will expand on all these points in the next chapter.

Other legislative instruments that buttress the idea of community rights

I posit that CELDF brings this further by using two other instruments that, in my view, epitomize community rights: zoning laws and Bill of Rights. Specifically looking at zoning laws these can be seen as the successors of the 19th century laws of nuisance which have been traditional regulatory instruments of the states governing the economy in the public interest, understood in practice as rights of the community.⁶³¹ A Bill of Rights here should be seen as a Community Bill of Rights asserting rights that are essential rights enjoyed by the community and should be protected against corporate and state interests.⁶³² I will expand on all these points in the next chapter.

Both legislative instruments reinforce what has been said before, the zoning ordinances help preserve the local character of a community and limit land use only to those economic activities that the community approves, and the Bill of Rights lists the rights enjoyed by the community hence guiding further legislative activity (I will expand on this point in the next chapter).

Preservation of the Structure of the Local Community

From this analysis it becomes evident that the type of legislative activism advocated by both iterations of the agrarian movement advocates for ideas expressed through the means of protective legislation.⁶³³ CELDF similarly argues that the current environmental laws and regulation do not protect the community and therefore, protective legislation is necessary to protect the community and its values from corporate interests and state influence.⁶³⁴ I will expand on these points in the next chapter.

⁶²⁹ On this see for instance, Thomas Linzey, *Of Corporations, Law, and Democracy - Schumacher Center for a New Economics*, <https://centerforneweconomics.org/publications/of-corporations-law-and-democracy/>.

⁶³⁰ *Id.*

⁶³¹ On this see, William J. Novak, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (Univ Of North Carolina Press 1996).

⁶³² *Definition of Bill of Rights*, <https://www.merriam-webster.com/dictionary/bill+of+rights>.

⁶³³ This is a conclusion I have drawn from the literature on this topic. For an introduction on this topic see, Melvyn Stokes & Lawrence Goodwyn, *Democratic Promise: The Populist Movement in America*, 11 JOURNAL OF AMERICAN STUDIES 430 (Cambridge University Press Dec. 1977).

⁶³⁴ *Episode 37 – Rights of Communities, Rights of Nature.*, LAWPOD, <https://lawpod.org/podcast/episode-37-rights-of-communities-rights-of-nature/>.

Based on this analysis, in my view, two arguments emerge concerning CELDF's advocacy for the recognition of a community's right to local self-government –these have in turn being adopted by the municipalities—. Firstly, it involves challenging established norms of corporate and federal power, aiming to devolve power from state and federal governments to municipalities.⁶³⁵ Secondly, it entails challenging the traditional Doctrine of Police Powers, by advocating for the recognition of Police Powers to municipalities and transitioning from an enumerated interpretation of police powers to a rights-based interpretation of Police Powers that recognises community rights (I will expand on this point in the next chapter).⁶³⁶

CONCLUSION

CELDf stands out as an organisation that sponsors the use of legislative activism to promote social and environmental justice. Legislative activism, as promoted by CELDF, involves advocating for social change by helping municipalities pass new laws (the municipal ordinances or CBRs) rather than relying solely on litigation.⁶³⁷ Through collaborative efforts with communities, grassroots organisations, and local governments, CELDF advocates for the recognition of community rights to local democracy and self-determination (with nature included in the definition of community).⁶³⁸ Their approach focuses on enacting change through legislation and policy reform, with the aim of creating a more equitable and sustainable society.⁶³⁹ However, while legislative activism diverges from traditional adversarial activism, CELDF (more specifically its founder – Thomas Linzey) recognises the role of the judiciary in interpreting and enforcing laws, simply it is not convinced that the type of change his organisation is advocating for the municipalities will arrive from judicial outcomes.⁶⁴⁰

⁶³⁵ Ben Price, *The Corporate State Ascends: Municipal Corporations Become Its Colonies*, CELDF. <https://celdf.org/wp-content/uploads/2015/08/The-Corporate-State-Ascends-Municipal-Corporations-become-its-Colonies1.pdf>. See also, Davis-Cohen, *supra* note 8.

⁶³⁶ On this see for instance, Lanteigne, *supra* note 23. Annette Aurelie Desmarais, Priscilla Claeys, Amy Trauger, *Public Policies for Food Sovereignty: Social Movements and the State* (Routledge Jul. 2017). Stephen R. Miller, *Community Rights and the Municipal Police Power*, 55 SANTA CLARA L. REV. 675 (2015).

⁶³⁷ On this see, CELDF Community Rights Do-it-Yourself Guide to Lawmaking, CELDF <http://celdf.org/wp-content/uploads/2019/11/DIY-Guide-2019-FINAL-2.pdf>.

⁶³⁸ On this see, Linzey & Brannen Jr, *supra* note 503.

⁶³⁹ On this see, CELDF - Community Rights Pioneers - Protecting Nature and Communities, CELDF, <https://celdf.org/>.

⁶⁴⁰ Davis-Cohen, *supra* note 8.

CELDF's strategy finds inspiration from earlier iterations of legislative activism, such as the agrarian movements of the past.⁶⁴¹ Both movements share the idea of self-sufficient local communities living in harmony with nature and emphasize the negative effects of corporate influence.⁶⁴² CELDF's legislative activism aims for the recognition of the right to community self-government in state and federal constitutions, aligning with the principles of local governance and minimal government intervention.⁶⁴³

The primary scope of the movement is to see recognised a community right to local self-government.⁶⁴⁴ In other words, it seems that the primary question that CELDF is trying to address is one of local sovereignty.⁶⁴⁵ Specifically, it seems, that CELDF makes the case that local sovereignty will be achieved by awarding Police Powers to the municipalities and changing how Police Powers are interpreted –from a limited enumerate doctrine to a rights-based doctrine that includes the recognition of community rights.⁶⁴⁶ At the heart of CELDF's argument is the belief that municipalities, as integral components of the democratic fabric, should possess inherent Police Powers that enables them to regulate and govern in the best interests of their communities.⁶⁴⁷ This inherent authority would empower local governments to make decisions autonomously, free from the need for state-mandated grants of power.⁶⁴⁸

In essence, CELDF's vision calls for a recalibration of the relationship between states and municipalities, moving away from a hierarchical structure dependent on state delegation of authority. Instead, they advocate for a decentralized approach where local governments are entrusted with the responsibility of safeguarding the well-being, rights, and values of their communities through the exercise of Police Powers.

⁶⁴¹ For an introduction on this topic see, Stayton, *supra* note 623.

⁶⁴² On this comparison see, *Agrarianism | Definition, Ideals, History, & Proponents | Britannica*, *supra* note 728. And, Legal Rights of Nature Principles Proposed by Community Environmental Legal Defense Fund Legal Services, CELDF, <https://celdf.org/legal-services/>.

⁶⁴³ Davis-Cohen, *supra* note 8.

⁶⁴⁴ Thomas Linzey, *Community Rights: Because Climate Conferences Won't Stop Climate Change*, In These Times, (Jan. 17, 2017) <https://inthesetimes.com/article/fracking-ban-rights-of-nature-corporate-power-climate-change-thomas-linzey>.

⁶⁴⁵ *Id.*

⁶⁴⁶ *Id.* On this see also, Lanteigne, *supra* note 23. Desmarais et. al., *supra* note 636. Miller, *supra* note 636.

⁶⁴⁷ On this see for instance, Thomas Linzey, *Community Rights: Because Climate Conferences Won't Stop Climate Change*, In These Times, (Jan. 17, 2017) <https://inthesetimes.com/article/fracking-ban-rights-of-nature-corporate-power-climate-change-thomas-linzey>. Miller, *supra* note 636. Lanteigne, *supra* note 23.

⁶⁴⁸ On this see for instance, Thomas Linzey, *Community Rights: Because Climate Conferences Won't Stop Climate Change*, In These Times, (Jan. 17, 2017) <https://inthesetimes.com/article/fracking-ban-rights-of-nature-corporate-power-climate-change-thomas-linzey>. Lanteigne, *supra* note 23.

This is evinced by the types of claims that CELDF makes in the CBRs:

The first is in the form of a recognition –The CBRs affirm that the municipality has a community right (with nature included in the definition).⁶⁴⁹ This community right allow the local communities to enact a CBR that supersede state, federal, and international law.⁶⁵⁰ The community right also include right to defend and to defense and the right to a local community government.⁶⁵¹

The second stems from the first, and it is in the form of a prohibition –The recognition of a community right allows the local municipality the right to pass a CBR to ban corporate or governmental activity that does not align with the local municipality wishes.⁶⁵²

In summary, the chapter has contextualized CELDF's approach within the broader history of legal activism in the United States, providing insights into the practical significance and challenges associated with using the law as a tool for social change. The chapter underscores the significance of legal advocacy within social movements and highlights the unique approach of legislative activism fostered by CELDF to the municipalities. By employing legislative strategies and advocating for community rights, CELDF seeks to bring about social and environmental justice at the municipal level.

To build onto this initial analysis of the legislative activism employed by municipalities with the aid of CELDF and place it within the wider political/historical/jurisprudential contemporary context, it is necessary to further dissect the claims that CELDF is making. Therefore, the next chapter will introduce and dissects its CBRs as a legislative instrument, and the claims that CELDF makes in the CBRs.

⁶⁴⁹ Legal Rights of Nature Principles Proposed by Community Environmental Legal Defense Fund Legal Services, CELDF, <https://celdf.org/legal-services/>.

⁶⁵⁰ Davis-Cohen, *supra* note 8.

⁶⁵¹ Legal Rights of Nature Principles Proposed by Community Environmental Legal Defense Fund Legal Services, CELDF, <https://celdf.org/legal-services/>. See also, Ben Price, The Corporate State Ascends: Municipal Corporations Become Its Colonies, CELDF. <https://celdf.org/wp-content/uploads/2015/08/The-Corporate-State-Ascends-Municipal-Corporations-become-its-Colonies1.pdf>.

⁶⁵² Ben Price, The Corporate State Ascends: Municipal Corporations Become Its Colonies, CELDF. <https://celdf.org/wp-content/uploads/2015/08/The-Corporate-State-Ascends-Municipal-Corporations-become-its-Colonies1.pdf>.

CHAPTER THREE

Unveiling Patterns and Trends: Analysis of the Community Bills of Rights (1998-2019) -Part I

INTRODUCTION

In the previous chapter, the Community Environmental Legal Defense Fund (CELDF) was introduced within the broader context of legal and adversarial movements. This contextualization aimed to provide an understanding of the factors that shape the activist tactics employed by CELDF.

The chapter presented arguments highlighting how CELDF utilizes legislative tools to establish community rights, including the recognition of nature as part of the community. The primary objective of the previous chapter was to introduce and explore the municipal activism fostered by the CELDF and their distinctive approach to activism in the United States (US). This understanding sets the stage for addressing the second research question.

Building upon the previous chapter, the aim of this chapter is to delve further into the municipal legislative strategy, focusing specifically on the utilization of Community Bills of Rights (CBRs). Through an analysis of these legislative tools, the chapter aims to explore how CELDF helps municipalities with the recognition of community rights, anti-corporatism, the dynamics between municipalities and states, as well as environmentalism. These aspects are integral to the political, social, and judicial culture of the US.

The overarching research question that this chapter seeks to address is: How can we account for the widespread adoption of municipal ordinances which purport to grant rights of nature but have little prospect of being upheld in state and federal courts?

Additionally, the chapter aims to examine the extent to which this movement represents a radical approach to environmentalism, considering that these CBRs often stem from a conservative ideology and mindset.

The conservative ideology and mindset underlying CBRs and similar legislative activism in municipalities can be attributed to several key factors. Firstly, these initiatives often reflect a desire to assert local autonomy and resist what is perceived as overreach by higher levels of government or corporate interests. This aligns with conservative principles of limited government and local control.

Secondly, CBRs often aim to curb the influence of corporations and protect local communities from what is seen as corporate exploitation or infringement on local rights. This anti-corporate sentiment resonates with conservative critiques of excessive corporate power and a preference for small businesses and local enterprise.

Moreover, the emphasis on local democracy and community self-government inherent in CBRs reflects a conservative commitment to decentralized decision-making and a distrust of centralized authority. This aligns with conservative values of individual liberty and self-determination.

Overall, the conservative ideology and mindset underlying CBRs are characterized by a belief in limited government, resistance to corporate influence, and a preference for local control and community self-governance. These principles shape the objectives and strategies of municipal activism, challenging conventional perceptions of environmental advocacy and legal reform.

The analysis focuses on the CBRs passed by municipalities organised in community chapters with the assistance of CELDF, highlighting local activism against state and corporate interests. The chapter demonstrates how these themes intersect within the context of CELDF's activism, specifically examining:

- The concept of community rights, including the inclusion of nature as part of the community's definition.
- The dynamics between municipalities and the states, as well as the foundations of local democracy in the US.
- The influence of anti-corporate sentiments on these themes.
- The convergence of these themes, although separate within the political and legal landscape of the US in the municipal ordinances passed by municipalities with the assistance of CELDF, to portray a picture of grassroots activism.

Additionally, the chapter explores the idea of municipalities as emerging laboratories of democracy based on the themes emerging from a dataset of CBRs passed by municipalities with CELDF's support between 1998 and 2019. It discusses how these CBRs establish a particular legislative environment and address important themes in the US.

To be able to dissect the municipalities form of activism, its evolution, and the CBRs that the municipalities (organised in community chapters) pass with the help of CELDF, an analysis must be done to capture the different facets on this activist movement.

The chapter is divided into two parts. The first part provides a descriptive analysis of the municipalities' movement fostered by the CELDF. This analysis focuses on examining the CBRs passed by municipalities and their responses to state assertions of preemption.

To conduct this analysis, a dataset of CBRs passed between 1998 and 2019 is utilized. The aim is to provide an analysis of these bills passed by municipalities with the assistance of CELDF. The analysis employs various methods, including legal analysis, descriptive analysis, qualitative and quantitative analysis, temporal analysis, and textual analysis, to capture the breadth of CELDF's activist work over the past two decades.

In this section, the analysis process is done in five stages: The first stage involves a vertical analysis of each CBRs in the dataset. First CELDF's strategy is presented, then CBRs are classified based on their type, such as Constitutional Amendments, Home Rule charters, Home Rule charter amendments, amendments to municipal codes, county ordinances, and local Acts. The types of CBRs mentioned differ mainly in their legal status, scope, and the level of government they pertain to:

1. **Constitutional Amendments:** These are changes or additions made to a constitution, either at the state or federal level. Constitutional amendments typically require a more rigorous and formal process than other types of CBRs. Once approved, they become part of the highest law of the land and hold significant legal weight.
2. **Home Rule Charters:** Home rule charters are documents that establish the framework for local self-government in municipalities. They outline the powers and responsibilities of local government entities, such as city councils or boards of commissioners. Home rule

charters can include provisions related to community rights and environmental protections.

3. **Home Rule Charter Amendments:** These are changes or updates made to existing home rule charters. Similar to constitutional amendments, they require a formal process for approval, often involving public hearings, voter referendums, or legislative action.
4. **Amendments to Municipal Codes:** Municipal codes are sets of laws and regulations enacted by local governments to govern their jurisdictions. Amendments to municipal codes involve adding, revising, or repealing specific provisions within these codes. They can include provisions related to community rights and environmental protections, among other topics.
5. **County Ordinances:** County ordinances are laws enacted by county governments to regulate activities within their jurisdictions. Like municipal codes, they address a wide range of issues, including land use, public health, and environmental protection. County ordinances can include provisions inspired by CBRs to empower local communities and protect natural resources.
6. **Local Acts:** Local acts are laws passed by state legislatures that apply only to specific localities or municipalities within the state. These acts can address various issues, such as governance structure, taxation, and land use planning. Local acts may incorporate provisions related to community rights and environmental protections, depending on the specific needs and priorities of the affected communities.

Overall, while the types of CBRs may vary in their legal form and level of government, they share the common goal of empowering communities to assert their rights and address local concerns, including those related to environmental sustainability and social justice.

This stage also considers the possibility that some CBRs may have been passed with declaratory intent rather than seeking specific solutions with legal effects. Furthermore, evidence is provided to establish the link between local community organising and the passage of these CBRs. The second stage is a horizontal analysis that examines the number of CBRs passed between 1997 and 2019, tracking their evolution over time. The third and the fourth stages, building upon the

vertical and horizontal analyses, presents a textual analysis of the CBRs and identifies the emerging themes. The fifth stage investigates which CBRs have been preempted by legal challenges in court. The reasons for such challenges and the methods employed are examined. Overall, these stages contribute to an understanding of the activism of the municipalities conducted with CELDF's help by examining the CBRs through various analytical approaches.

THE FIVE STAGES OF ANALYSIS

The CBRs function as a legislative tool employed by the CELDF to further its objectives.

Before delving into the analysis of chapter three, I would like to provide three important disclaimers.

1. Specific CBRs have been selected to highlight the elements that support the arguments presented in this chapter and to illustrate several pertinent aspects that have already been analysed in previous chapters of this thesis. These specific CBRs are integrated into each stage of the analysis, offering a view of the various dimensions of the CBRs and the legal challenges the legal arguments they incorporate have encountered.
2. For a list of the CBRs I have gathered, please refer to the appendix, especially when reading the five stages of analysis. Throughout the chapter I have also included in brackets information about the type of CBRs, such as Constitutional Amendments, Home Rule charters, Home Rule charter amendments, amendments to municipal codes, county ordinances, and local Acts, to clarify the specific types of CBRs under discussion.
3. In the following section, all my analysis, when citations are not explicitly included, is drawn from an examination of the text of the CBRs in conjunction with the materials published by CELDF, as mentioned in the introduction of this research.

With these clarifications in mind, I will now proceed with the analysis of this legislative instrument.

Vertical Analysis

This section provides a vertical analysis, in other words a State-by-State analysis, of the CBRs passed by the CELDF between 1998 and 2019. In this section I start with classifying each CBR– among those present in the dataset– based on type: whether they are Constitutional Amendments, Home Rule charters, Home Rule charter amendments, amendment to municipal codes, county ordinances, and local Acts. Then, I provide evidence of the link between local community organising and the passing of CBRs.

The dataset (see appendix) collects 107 CBRs passed between 1998 and 2019. Figure 1 shows that these CBRs have been passed in municipalities in 12 states: Virginia, California, Oregon, Colorado, Pennsylvania, New York, New Jersey, New Mexico, New Hampshire, Maryland, Maine.

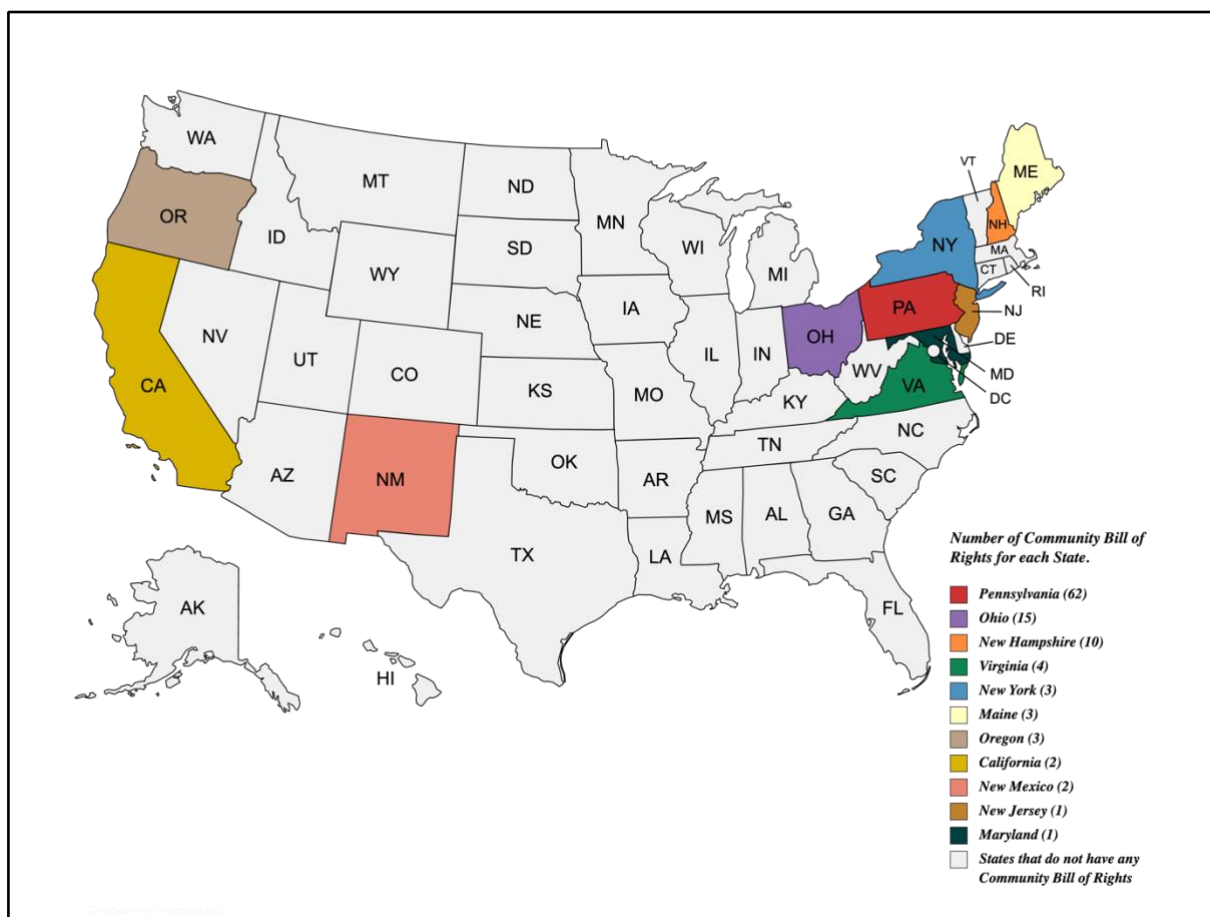


Figure 1

Figure 2 show clusters of high passage with most CBRs being passed in Pennsylvania (62). Then there are, by the number of CBR passed, Ohio (15), New Hampshire (10), Virginia (4),

New York (3), Maine (3), Oregon (3), New Mexico (2), California (2), Colorado (2), New Jersey (1), Maryland (1).

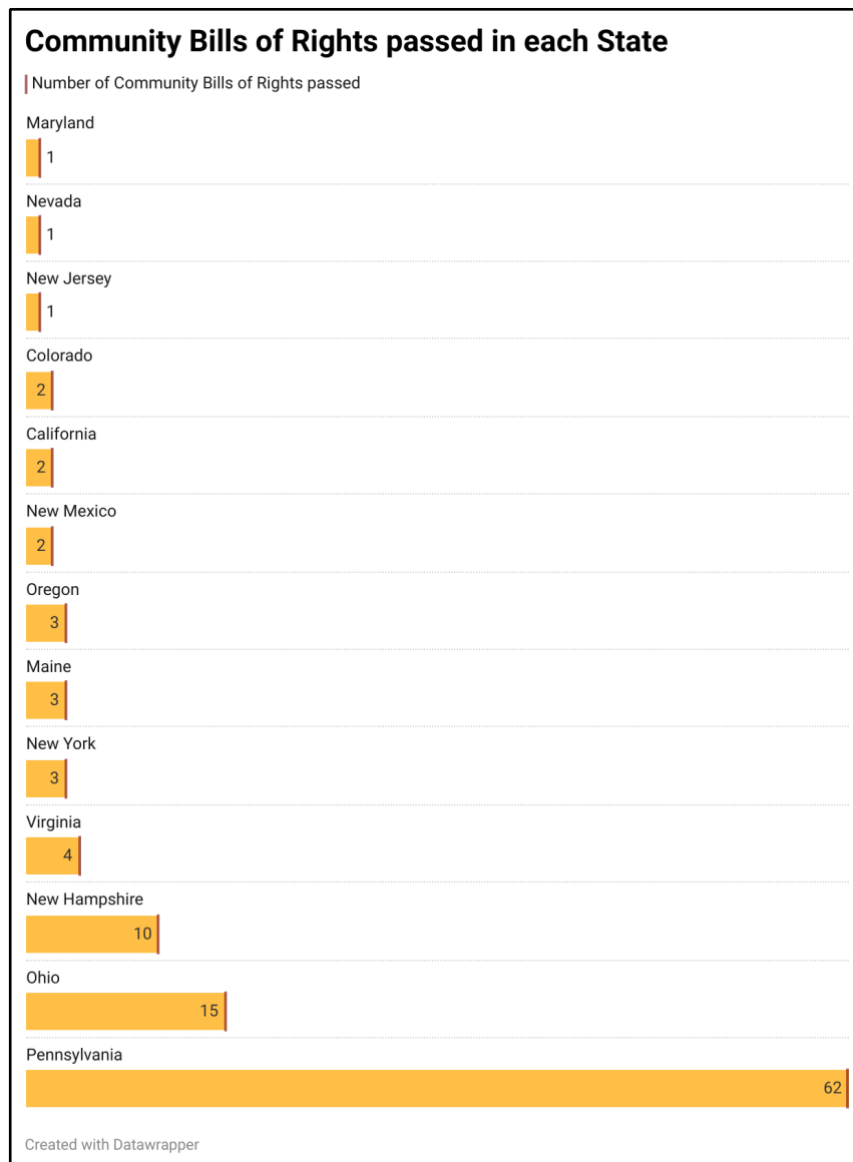


Figure 2

In the dataset (see appendix) the CBRs (all types) have been organised according to the four US census regions. These are the Northeast, Midwest, South, and West regions.

Northeast – The Northeast Region Includes the States of Pennsylvania, Maine, New Hampshire, New Jersey, New York.

Table 1 shows the northeast region of the US to have the most prolific legislative activity.

Pennsylvania is the state with the highest number of CBRs, displaying quite a variety of legislative activity. The municipalities –some of them organised in local community chapters that refer to the Pennsylvania national community chapter– have enacted (between 1998 and 2019) fifty-three municipal ordinances, three Home Rule charter amendments, three proposed Home Rule charters, one Local legislative Act, and one amendment to the municipal code. Also, the national community chapter has crafted and introduced a State Constitutional Amendment in 2019.

Then there are, in terms of CBRs introduced and/or passed, New York and New Hampshire. The municipalities in those states –some of them organised in national community chapters, and in the case of New Hampshire further organised in local community chapters that refer to their national community chapter– have enacted, respectively, one Home Rule Charter amendment, two municipal ordinances, and nine municipal ordinances. Also, the New Hampshire national community chapter has drafted and introduced one State Constitutional Amendment in 2019.

Finally, three municipalities, organised in local community chapters, in Maine, and New Jersey have enacted respectively two and one municipal ordinances.

STATE	CELDF state & local organising chapters		Type and number of Community bills of Rights passed	
Pennsylvania	<i>Pennsylvania Community Rights Network</i>	<i>West Chester</i>	State	1
		<i>Community Rights Alliance</i>	Constitutional Amendment	
		<i>East Run Hell Benders Society</i>	Home Rule Charter	3
			Home Rule Charter Amendment	3
			Local legislative Act	1
			Amendment to the municipal code	1
			Local Ordinances	53
Maine	<i>Protecting Our Water and Wildlife Resources (POWWR)</i>		Local Ordinances	3
New Hampshire	<i>New Hampshire Community Rights Network (NHCRN)</i>	<i>Danbury Residents Against Wind Turbines</i>	State Constitutional Amendment	1
		<i>New Hampshire Wind Watch</i>	Local Ordinances	9

Table 1

Midwest – The Midwest region includes the state of Ohio.

Table 2 shows that in the Midwest region only the municipalities of the state of Ohio have passed CBRs –which has a state community chapter and several local community chapters created by the municipalities that introduced and passed CBRs– the municipalities have enacted four municipal ordinances and introduced and/or enacted four Home Rule Charter Amendments.

STATE	CELDF state & local organising chapters		Type and number of Community Bills of Rights passed	
Ohio	Ohio Community Rights Network	Toledoans for Safe Water	State Constitutional Amendment	1
		Slow Down Fracking	Home Rule Charter	5
			Home Rule Charter Amendment	4
			Local Ordinances	4

Table 2

South – The South Region Includes the State of Maryland, Virginia.

Table 3 shows that in the South region only the municipalities of the states of Maryland and Virginia have enacted respectively one and four municipal ordinances.

STATE	CELDF state & local organising chapters	Type and number of community bill of rights passed
Maryland	<i>N/A</i>	Local Ordinances 1
Virginia	<i>N/A</i>	Local Ordinances 4

Table 3

West – The West Region Includes the States of New Mexico, California, Oregon, Colorado.

Table 4 shows that in the West region only the states of Colorado, California, Oregon, and New Mexico, have introduced and/or passed CBRs with the aid of CELDF.

In those states, some of them are organised in national community chapters like Oregon and Colorado which are in turn organised in local community chapters that refer to their national community chapters; others like California and New Mexico are simply organised in local community chapters representing the municipality.

The municipalities of New Mexico, and California, organised in local community chapters, enacted respectively one, and two municipal ordinances. Also, the municipality of Santa Monica in California enacted one amendment to the municipal code.

The municipalities of Oregon and Colorado, organised in local community chapters that refer to their respective national community chapters, enacted both one municipal ordinances. Also, they have introduced respectively two and one State Constitutional Amendment in 2014 and in 2017.

STATE	CELDF state & local organising chapters	Type and number of community bill of rights passed
New Mexico	New Mexico Coalition for Community Rights (NMCCR)	Local Ordinances 2
California	Community Rights Network of Mendocino County	Local Ordinances 2
	People Against Chemical Trespass (P.A.C.T.)	Amendment to the municipal code 1
	Women International League for Peace and Freedom	
Oregon	Oregonians for Lincoln County Community Rights	State Constitutional Amendment 2
		Local Ordinances 1

Table 4

When comparing all four regions of the US, it becomes evident that some regions exhibit significantly lower levels of legislative activity than others. I will now mention three hypotheses, that I will examine in more depth in the following sections of this chapter, as to why I think this is the case.

The first hypothesis pertains to the type of legal instrument utilized by the CBRs (municipal ordinances). I posit that CELDF incorporates into its legal framework, the CBRs (municipal ordinances), a template akin to that of a zoning ordinance, which forms the structural foundation of the CBRs. Consequently, the northeast region demonstrates the highest legislative activity, primarily because in these states, zoning laws are permitted, at the very least, at the county level. Moreover, some of these states also allow township zoning, with zoning serving as an extensively employed regulatory tool. I will elaborate more on this point in the next sections of this chapter.

The second hypothesis is linked to the governance structure of certain states within the northeast region of the US. Specifically, Pennsylvania boasts the highest number of Home Rule Municipalities, along with certain municipalities operating under optional third-class city charters, granting them broader legislative powers. I will explore the implications of this further in the subsequent sections of this chapter.

The third hypothesis is associated with the activist framework of CELDF. CELDF was established as a charitable organization in Pennsylvania in 1996, and as a result, the northeast region is where the organization enjoys the highest recognition and is most actively engaged.⁶⁵³

Horizontal Analysis

This section presents a horizontal analysis to determine how many CBRs have been passed in the years 1997-2019 and to track the evolution of the CBRs in terms of time.

How many Community Bills of Rights have been passed?

⁶⁵³ CELDF Pennsylvania, <https://celdf.org/pennsylvania/>.

Figure 3 shows the number of CBRs (all types) collected by the dataset, around 107 have been passed by 12 US States since 1998. The year 2006 saw the highest number of introduced CBRs (municipal ordinances): 15. This coincided with the passing of the Tamaqua CBR (municipal ordinance) that recognised the idea of rights of nature by way of a CBR with rights of nature attached to the regional ecosystem.⁶⁵⁴ The trend dropped only slightly in 2007-2008 with eight ordinances passed. After 2008, the numbers dropped steadily over the years until 2019. In fact, if in 2008 about eight CBRs (municipal ordinances) were passed, between 2017 and 2019 on average only about two were passed and they all include a provision recognising rights of nature, recognising rights to a specific natural ecosystem.

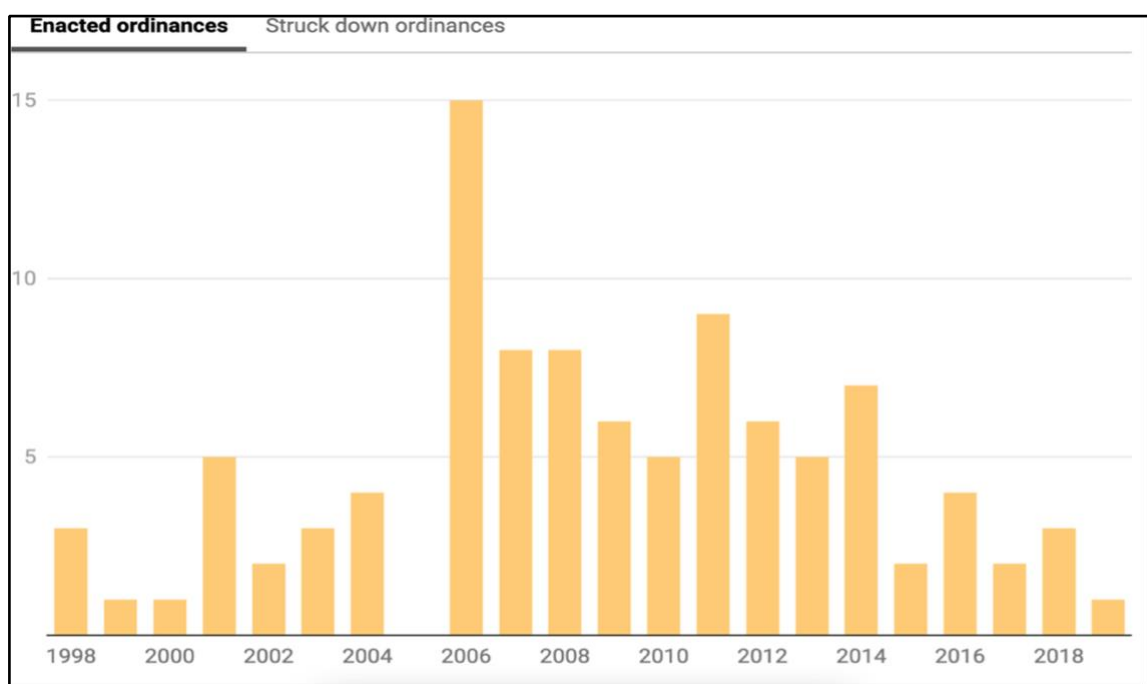


Figure 3

The graph in figure 4 shows the number of CBRs (municipal ordinances) struck down in the period 1998-2019. The graph underscores a trend that emerged during the period spanning from 2014 to 2019: nearly all the CBRs (municipal ordinances) enacted during this period became subjects of legal challenges. The significant drop in 2019, where only one CBR (municipal ordinance) passed, can be attributed, in my view, to two primary factors:

⁶⁵⁴ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

Firstly, the protracted and costly legal battles that unfolded between municipalities and corporations, resulting in the erosion of the provisions outlined in the CBRs (municipal ordinances).⁶⁵⁵ In this regard, while communities have striven to regain control over their economic and community development by attempting to preempt state and federal laws on these matters, such efforts have encountered numerous legal challenges and have consistently been deemed unconstitutional.⁶⁵⁶

Secondly, municipalities have faced challenges transitioning from the initial discussion phase to the final charter amendment stage, acquiring sufficient ballot signatures, or successfully navigating the legislative process.⁶⁵⁷

⁶⁵⁵Legal battles erode provisions in the bills as some provisions within the Community Bills of Rights (CBRs) are nullified by the court, while others are upheld. This legal process, in turn, leads to the bills losing a substantial portion of the CBRs provisions. On this I will elaborate later in the chapter, for an introduction on this topic *see for instance*, Stuart R. Butzier, *No Mora Moratorium on Drilling*, Legal knowledge portal TELFA, (Apr. 30, 2015), <https://www.telfa.law/no-mora-moratorium-on-drilling/>. Marita Noon, *Mora County's Drilling Ban: Moral High Ground or Moronic?* – *The Heartland Institute*, (Apr. 30, 2014), <https://heartland.org/opinion/mora-countys-drilling-ban-moral-high-ground-or-moronic/>.

⁶⁵⁶ On this *see for instance*, Valdmanis, *supra* note 560.

⁶⁵⁷ On this *see for instance*, HKW, PR: Youngstown Residents: Unshakable Determination as They Look Ahead to Next Community Bill of Rights, CELDF, <https://celdf.org/2016/11/pr-youngstown-residents-unshakable-determination-look-ahead-next-community-bill-rights/>. *And*, Hall et al., *supra* note 11.

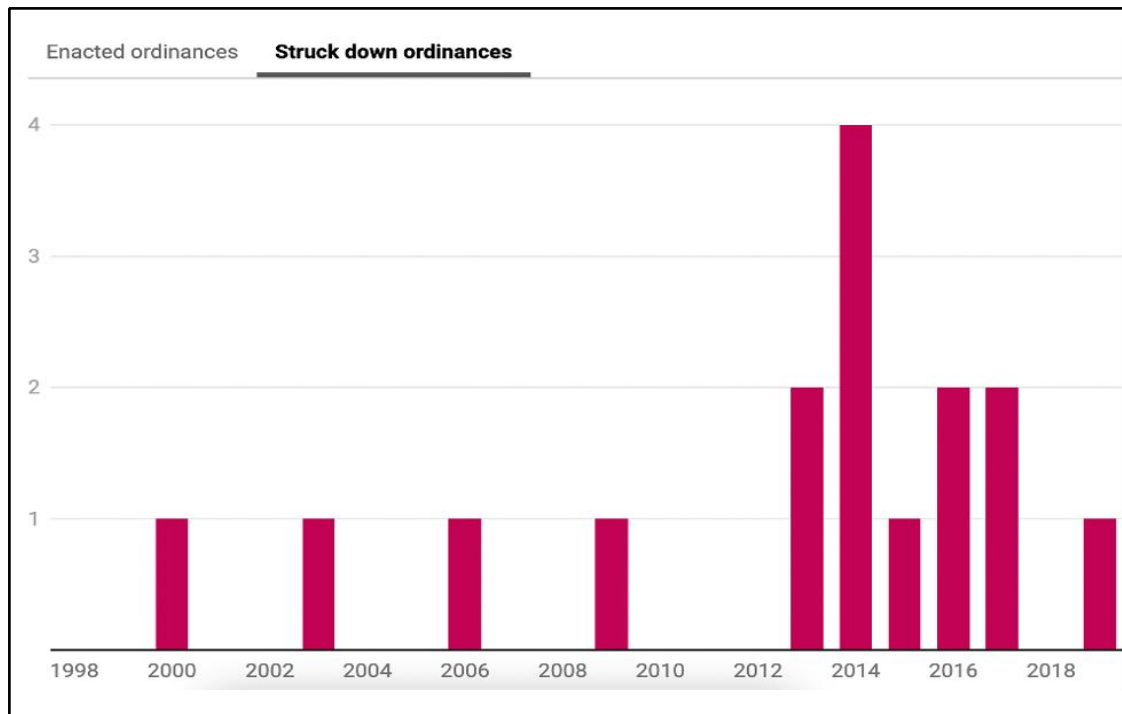


Figure 4

Finally, figure 5 offers a general view of the struck down ordinances between 1998 and 2019, a summary in percentage point of how many ordinances have been introduced, and how many have been struck down between 1998 and 2019.

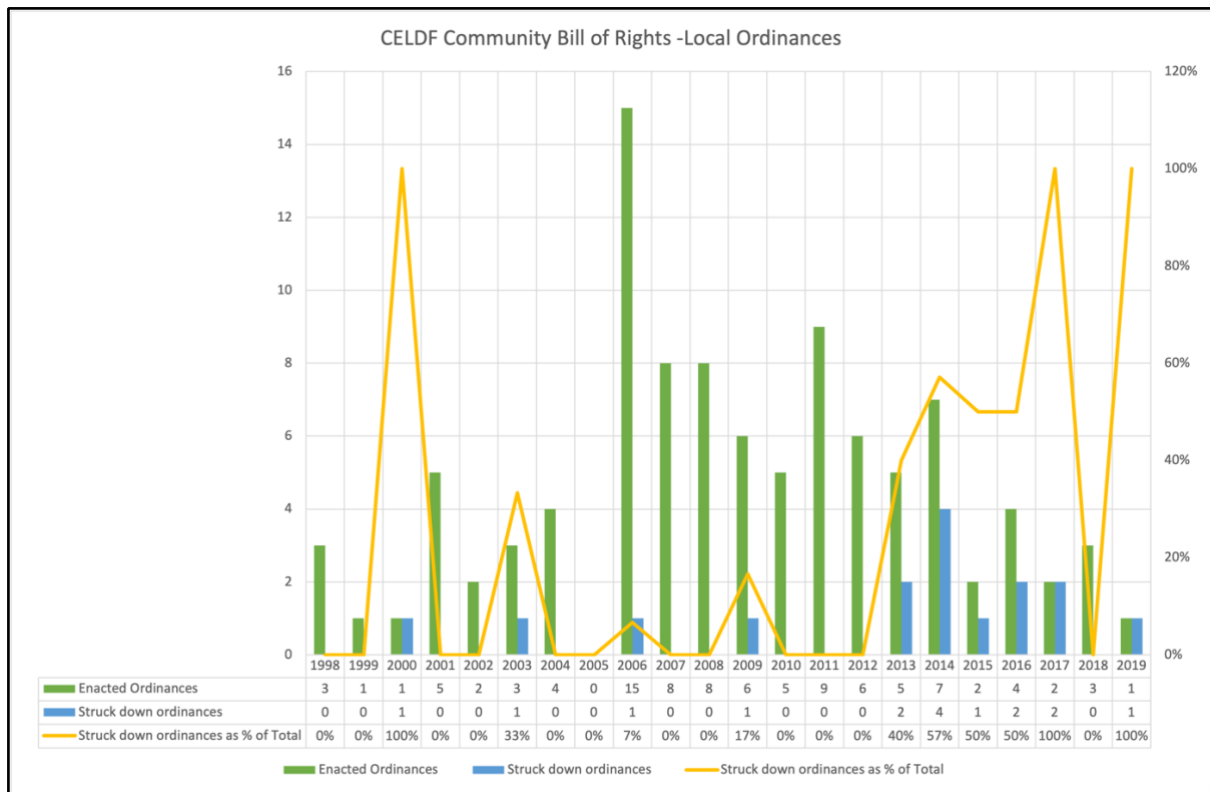


Figure 5

Charting the Evolution of the Community Bills of Rights

As depicted in Figure 6, there are two distinct chronological groupings of CBRs: those enacted between 1998 and 2006, and those enacted between 2006 and 2019. Within these two chronological groupings, there are four subcategories, representing CBRs passed during the following time intervals: 1998-1999, 2000-2005, 2006-2016, and 2017-2019. Additionally, a third and fourth chronological sequence is observed, indicating the evolution of the types of CBRs over time.

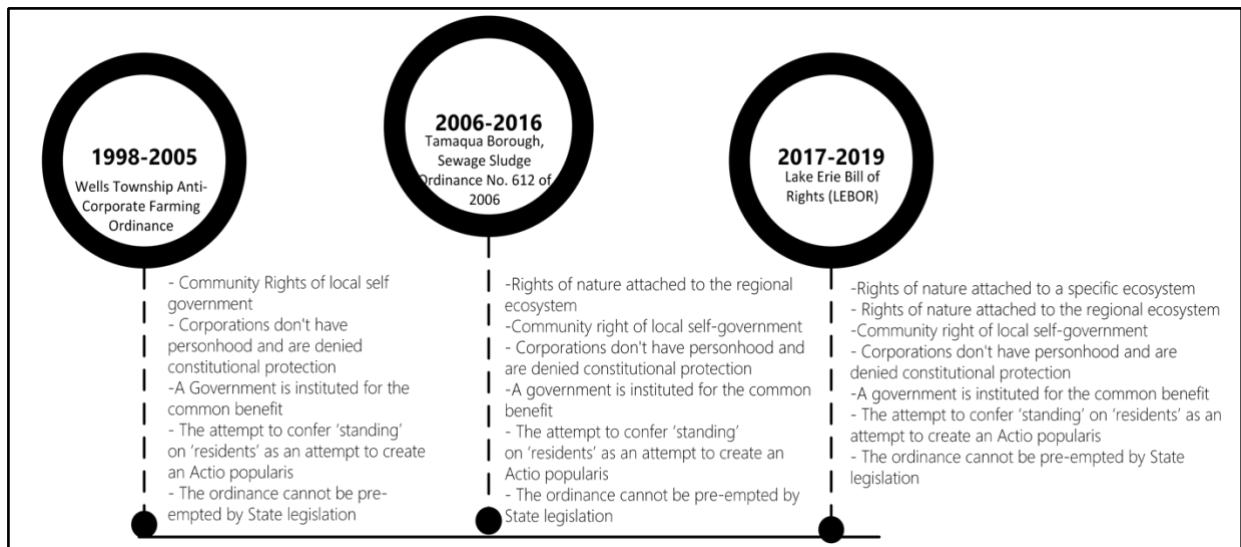


Figure 6

Initially, CELDF primarily assisted municipalities organized within community chapters in passing various types of CBRs (municipal ordinances). However, CELDF's focus has since expanded, with committees currently engaged in the following activities:

- Assisting municipalities whose CBRs (municipal ordinances) have been invalidated by the courts in adopting Home Rule and crafting new municipal charters that incorporate the provisions found in the CBR (municipal ordinance).
- Assisting counties with Home Rule Authority that are seeking to amend their existing municipal charters to include the provisions found in the CBRs (municipal ordinances).
- Facilitating the passage of CBRs in the form of state constitutional amendments to counter state preemption.

The next sub-section will analyse these three activities in further detail.

Empowering Communities: Examining the Evolution of Community Bills of Rights (1998-2019)

Starting with the first point, in this section, I now delve into the analysis of each of these four subcategories, each representing CBRs that were passed during specific time intervals: 1998-1999, 2000-2005, 2006-2016, and 2017-2019.

Community Bills of Rights Passed Between 1998 to 2005

These CBRs do not mention the rights of nature or the rights of “natural communities.” The most significant common characteristic among these municipal ordinances is their assertion of local democracy against corporations. Additionally, all these early versions of CBRs were enacted in Pennsylvania, which is where CELDF was founded. It is also the place where the first local chapter, the Pennsylvania Community Rights Network, was established by CELDF to mobilize the action of municipalities' communities.

These ordinances declare that all corporate charters are considered invalid under the town's law. They provide a detailed explanation of which elements of the corporate charter are deemed unacceptable and therefore non-valid.

An example of this is the *Southampton Township Farm Ownership Ordinance* passed in March 1999.⁶⁵⁸ The CBR (municipal ordinance) provides a detailed explanation of the reasons why they are banning corporate charters, among other reasons they state;

Farm ownership by families and non-corporate entities offers stability and encourages a rural quality of life in Franklin County (and that) compensation for any harms caused by corporate farming may be difficult to obtain through a corporation, and that corporations have fewer reasons to respect the natural environment and township community than do natural persons.⁶⁵⁹

Therefore, the critiques outlined in the CBRs (municipal ordinances) target the legal framework of corporations. Specifically, they challenge the legal constructs of corporate limited liability and syndicate ownership, question corporate claims, and provide arguments against their detrimental impact on the environment. A deliberate effort is made to exclude corporations with criminal histories or a consistent record of law violations from operating in the local municipality. Furthermore, the CBRs (municipal ordinances) level claims against both state and corporate entities, aiming to curtail corporations' state-granted authority and their assertions of civil and constitutional privileges. In all cases, the CBRs (municipal ordinances) establish local laws that enable the creation of small-scale government bodies and impose liabilities on those who violate the ordinances. Importantly, none of these CBRs (municipal ordinances) include provisions related to the rights of nature.

⁶⁵⁸ Southampton Anti-Corporate Farming Ordinance Southampton Township, Franklin County, PA –1999. For the text of the ordinance see, *The Community Environmental Legal Defense Fund: Southampton Township Farm Ownership Ordinance*, <https://web.archive.org/web/20101019042605/http://celdf.org/article.php?id=759>.

⁶⁵⁹ *Id.*, §3.

Community Bill of Rights Passed Between 1998 -1999

The earliest entries in the dataset of CBRs (municipal ordinances) date back to 1998 and exclusively target corporate rights. Among these, two are anti-corporate farming ordinances (Wells Township in 1998 and Southampton Township in 1999).⁶⁶⁰ One focuses on Environmental Protection (Wayne Township 1998), while another pertains to the establishment of an Environmental Advisory Council within the township, outlining operational procedures and the council's powers (Exeter Township 1998).⁶⁶¹

The wording of these earlier CBRs (municipal ordinances) aligns more closely with the philosophy of grassroots movements, such as the Occupy Movement, which critique and advocate against corporate personhood and corporate influence.⁶⁶²

The CBRs (municipal ordinances) enacted by Wayne Township in 1998 and Southampton Township in 1999 exhibit similar structures and narratives.⁶⁶³ Given this resemblance, it is reasonable to assume that they may have originated from a model municipal ordinance. Despite addressing different issues, Southampton Township's municipal ordinance recognizes the significance of family-owned farms in the community and prohibits all non-family-owned industrial agriculture, while Wayne Township's municipal ordinance explicitly bars corporations with criminal histories from operating within the township. In both cases, local citizens declare that the municipality does not recognize corporations as legal persons. They emphasize that the municipal ordinances were crafted for the “Health, safety, and welfare of its citizens” and imposes liabilities on “Any person, corporation, or municipality that harms a natural community or ecosystem.”⁶⁶⁴

Community Bills of Rights Passed Between 2000-2005

⁶⁶⁰ Community Rights Ordinances Timeline, COMMUNITY RIGHTS US, <https://communityrights.us/community-rights-ordinance-campaigns-across-the-us/ordinances-timeline/>.

⁶⁶¹ 2008 Model Municipal Ordinances to Control Corporations, CELDF February 13, http://www.precaution.org/lib/08/prn_celdf_ordinances.080213.htm.

⁶⁶² *Id.* See also, Wikipedia entry, *supra* note 536.

⁶⁶³ *Id.*

⁶⁶⁴ *Id.*

The CBRs (municipal ordinances) passed between 2000 and 2005 address various issues and probably largely originate from a model ordinance developed by CELDF in collaboration with the state organizing group, the Pennsylvania Community Rights Network.⁶⁶⁵

Some of these ordinances prohibit corporations from disposing of sewage sludge (Buffington Township 2000, East Mahoning (2) 2004, Rayne Township 2004). Others forbid agribusiness corporations, sewage sludge, and noxious agricultural odours. These provisions are derived from another model ordinance that was adopted without amendments by many municipalities between 2001 and 2004 (Cumberland County 2000, Fulton County 2001, Bedford County 2001, East Wheatfield 2001, Monroe Township 2001, Windham Township 2002, East Mahoning 2004, Rayne Township 2004).⁶⁶⁶

The CBRs (municipal ordinances) aim to “Eliminate corporate claims to civil and constitutional privileges” and reject the “History of state and federal public officials restricting the rights of citizens while expanding the rights of corporations and their owners.”⁶⁶⁷

For this reason, the townships, by enacting these CBRs (municipal ordinances), establish a “Binding law declaring that corporations operating in the township may not employ legal privileges – historically used by corporations to override democratic decision-making – to prevent the township from enacting laws that safeguard residents from toxic sewage sludge.”⁶⁶⁸

The last three CBRs (municipal ordinances) enacted during this period prohibit surface mining ownership and control (Saint Thomas Township 2003), assert the right to water supply protection (Rockland Township 2004), and ban corporate rights while asserting self-government rights (Porter Township 2002, Haines Center County 2003).⁶⁶⁹

All these CBRs (municipal ordinances) passed between 1998 and 2005 include identical concluding clauses. These clauses state that government is instituted for the common benefit,

⁶⁶⁵ PA COMMUNITY RIGHTS NETWORK - Home, CELDF, <http://www.pacommunityrights.org/>.

⁶⁶⁶ On this see, CELDF, *supra* note 568.

⁶⁶⁷ CELDF, *In U.S. First, Local Government Refuses to Recognize Corporate Claims to Civil Rights*, ★ Reclaim Democracy!, (Dec. 13, 2002), https://reclaimdemocracy.org/porter_township_ordinance/.

⁶⁶⁸ *Id.*

⁶⁶⁹ Community Rights Ordinances Timeline, COMMUNITY RIGHTS US, <https://communityrights.us/community-rights-ordinance-campaigns-across-the-us/ordinances-timeline/>.

that the township does not recognize corporations as legal persons, and as a result, denies them constitutional protection.⁶⁷⁰ The concluding clauses also impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem.⁶⁷¹ They grant legal standing to any town resident who wishes to enforce the ordinance.⁶⁷² Finally, they declare that the CBRs (municipal ordinances) cannot be preempted by state legislation and classify any violation of the ordinance as a criminal offense.⁶⁷³

Community Bills of Rights Passed Between 2006 to 2019

These CBRs (municipal ordinances) introduce rights of nature or rights to “natural communities.”⁶⁷⁴ Indeed, starting in 2006, CELDF's strategy evolved to include assistance to municipalities (organized in community chapters) in incorporating ideas related to rights of nature and rights to “natural communities” into their CBRs (municipal ordinances).⁶⁷⁵ This expansion occurred alongside the establishment of community rights of local self-government and the removal of corporate personhood.⁶⁷⁶ Within this category, a sub-category is formed by CBRs (municipal ordinances) that include rights of nature in two different ways:

The first category addresses the concept of rights of nature through a CBR (municipal ordinance) that grants rights to the regional ecosystem, which or may not grant rights to nature directly. All municipal ordinances falling under this category were enacted between 2006 and 2016.⁶⁷⁷ Tamaqua was the first community to legally recognize an enforceable right to their local ecosystem (while not granting rights to nature directly), as stated the municipal ordinance passed on September 19th, 2006. Section 7.7 of this municipal ordinance or CBR declares: “All residents of Tamaqua Borough possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna. All residents of the Borough possess a fundamental and inalienable right to the integrity of their bodies, and thus have a right to be free from unwanted invasions of their bodies by pollutants.”⁶⁷⁸ These rights are supported by a grant of standing to: “Borough residents, natural

⁶⁷⁰ *Id.*

⁶⁷¹ *Id.*

⁶⁷² *Id.*

⁶⁷³ *Id.*

⁶⁷⁴ *Id.*

⁶⁷⁵ *Id.*

⁶⁷⁶ *Id.*

⁶⁷⁷ *Id.*

⁶⁷⁸ Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006.

communities, and ecosystems shall be considered 'persons' for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems.”⁶⁷⁹

The second category encompasses CBRs (municipal ordinances) passed between 2017-2019, which address the concept of rights of nature by bestowing rights to nature upon a specific ecosystem.⁶⁸⁰ Toledo Ohio in 2017 was the first municipality to pass such a Community Bill of Rights (CBR) awarding rights of nature to a specific ecosystem and granting personhood to the entire Lake Erie Ecosystem.⁶⁸¹

Rights of Lake Erie Ecosystem. Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve. The Lake Erie Ecosystem shall include all-natural water features, communities of organisms, soil as well as terrestrial and aquatic sub-ecosystems that are part of Lake Erie and its watershed.⁶⁸²

From Setbacks to Strength: CELDF's Role in Empowering Municipalities Through Home Rule

In this sub-section I focus on the second and third points mentioned at the beginning of this section. This includes examining how CELDF's focus has expanded to include the following activities: assisting municipalities whose Community Bills of Rights or CBRs (municipal ordinances) have been invalidated by the courts in adopting Home Rule by crafting new municipal charters that incorporate the provisions found in the CBRs (municipal ordinances); aiding counties with Home Rule Authority seeking to amend their existing municipal charters to include the provisions found in the CBRs (municipal ordinances); and assisting municipalities in drafting constitutional provisions and facilitating the passage of CBRs in the form of state constitutional amendments to counter state preemption.

Before I start with the analysis it is worth to briefly discuss how cities and counties establish their legal existence and define their powers and government structure.

⁶⁷⁹ *Id.*, § 7.

⁶⁸⁰ Community Rights Ordinances Timeline, COMMUNITY RIGHTS US, <https://communityrights.us/community-rights-ordinance-campaigns-across-the-us/ordinances-timeline/>.

⁶⁸¹ Press Release: Major Developments for Lake Erie Bill of Rights, CELDF, <https://celdf.org/2019/07/press-release-major-developments-for-lake-erie-bill-of-rights/>.

⁶⁸² Lake Erie Bill of Rights Toledo Lucas County, OH-2017 (Lake Erie Bill of Rights, Charter of the City of Toledo, Ch. XVII, §§ 253-260), § 1.

To establish their term of existence and delineate the powers and structure of city or county government, cities and counties adopt a charter, serving as a local “Constitution.”⁶⁸³ The charter empowers cities and counties to govern at the local level and serves as the foundational document for all other regulations.⁶⁸⁴

Most states recognize two types of charters: general law charters and home rule charters. Most municipalities and counties operate under a general law charter, which is created by and aligns with state law. However, some jurisdictions adopt a home rule charter, which carries the same legal weight as state laws but does not supersede them.⁶⁸⁵ This autonomy granted by home rule charters provides cities and counties with a level of independence from the state legislature.⁶⁸⁶

Counties Seeking Home Rule Authority to Draft a New Municipal Charter

With the help of CELDF, some of the municipalities whose Community Bills of Rights or CBRs (municipal ordinances) have been struck down by the courts, have tried to seek Home Rule authority and have drafted a new municipal charter to include the provisions found in the CBRs (municipal ordinance). CELDF describes the process as such:

We are working with communities on Home Rule efforts, as communities are finding that the writing of a local charter of governance allows citizens and municipalities a much broader foundation to work from than the framework of a single ordinance. Adopting a rights-based home rule charter is an obvious step toward community assertion of the inalienable right to local self-government, and a fulfilment of the long-postponed ideals of the American Revolution.⁶⁸⁷

Table 5 shows some examples of municipalities that tried to adopt Home Rule by passing a new charter that included the original CBRs (municipal ordinances). The table shows how some have been successful (in green)—albeit being later subjected to court challenges—, while others (in red) have tried but have not received enough ballot signatures.⁶⁸⁸ The municipalities

⁶⁸³ Anna Motty-Kuźma, *American Local Government*, 21 POLITEJA (Księgarnia Akademicka 2008).

⁶⁸⁴ *Id.*

⁶⁸⁵ *Id.*

⁶⁸⁶ *Id.*

⁶⁸⁷ CELDF Home Rule - Learn More about Home Rule, CELDF <https://celdf.org/home-rule/>.

⁶⁸⁸ For an idea on the type of challenges the municipalities have encountered see, *Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative (November 2015)*, BALLOTPEDIA,

that succeeded in adopting Home Rule and passing a new charter that included the original CBR (municipal ordinance) provision were in Pennsylvania, Blaine Township in 2009, Highland and Grant Township in 2016 (in green).⁶⁸⁹ Others have not succeeded in passing a new charter; many were proposed in Ohio between 2013 and 2017, these are Medina, Fulton, Portage, Meigs, and Athens (2).⁶⁹⁰ I now move on to provide examples and quotes from the Home Rule Charters that echo CELDF's ideology, thus strengthening my argument.

[https://ballotpedia.org/Athens_County_Home_Rule_Charter,_Community_Bill_of_Rights_and_Fracking_Waste_Prohibition_Initiative_\(November_2015\)](https://ballotpedia.org/Athens_County_Home_Rule_Charter,_Community_Bill_of_Rights_and_Fracking_Waste_Prohibition_Initiative_(November_2015)).

⁶⁸⁹ Grant Township Rights-Based Home Rule Charter, PA - 11/8/2016. Blaine township Home Rule Charter, PA - 2009.

⁶⁹⁰ Medina County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, OH - 11/2013. Athens County, Ohio, Oil and Gas Restrictions and Home Rule Charter Initiative, OH - 11/2017 and Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH - 11/2017. Fulton County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, OH - 11/15. Portage County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH - 11/2015. Meigs County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, OH - 11/15.

STATE	PROPOSED HOME RULE CHARTERS	STATUS
Pennsylvania	Blaine Township, Study Commission Final Report and Home Rule Charter, Blaine Township, Corporate Mining & Democratic Self-Government Ordinance, Washington County, PA - 8/29/2009.	Legal challenge. <i>Range Resources — Appalachia v. Township</i> <i>649 F. Supp. 2d 412 (W.D. Pa. 2009).</i>
	Highland Township, Rights-Based Home Rule Charter, Highland Township, Elk County, PA - 11/8/2016	Enacted. Legal challenge <i>Seneca Res. Corp. v. Twp. of Highland, Elk City., Pennsylvania</i> , 863 F.3d 245 (3d Cir. 2017)
	Grant Township, Community Bill of Rights Ordinance, Grant Township, Indiana County, PA - 6/1/2014	Enacted. Legal challenge. <i>Penn Ridge Coal, LLC et al v. Blaine Township. Commonwealth v. Grant Twp.</i> , 139 F. Supp. 3d 706 (W.D. Pa. 2015)
Ohio	Medina County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Medina County OH –11/2013	Ballot blocked by Secretary of State Jon Husted. Legal challenge.
	Athens County, Ohio, Oil and Gas Restrictions and Home Rule Charter Initiative, Athens County OH – 11/2017	<i>State ex rel. Walker v. Husted., State ex rel. Walker v. Husted</i> , 144 Ohio St. 3d 361, 43 N.E.3d 419, 2015 Ohio 3749 (Ohio 2015)
	and Athens County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Athens County OH –11/2017	
	Fulton County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Fulton County OH –11/15	
	Portage County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Portage County OH –11/2015	Not enough ballot numbers received
	Meigs County, Home Rule Charter, Community Bill of Rights and	Not enough ballot numbers received

Table 5

Wording Found in the New Municipal Charters

When reading the proposed Home Rule Charters, it becomes apparent that the provisions contained in both are virtually identical. The primary distinction between these proposals lies in the specific economic activities they prohibit, a distinction I will delve into later in this chapter.

This uniformity stems from the collaborative efforts of CELDF's lawyers and representatives from CELDF's state chapters, working closely with their local counterparts who represent the interests of municipalities.⁶⁹¹ Together, they have drawn upon provisions from municipal ordinances (CBRs) that were previously enacted by these municipalities but were subsequently preempted or invalidated by the courts.⁶⁹²

While the language in some of the Home Rule Charters submitted for ballot approval, with CELDF's guidance, closely adheres to traditional legal documents, it still bears the unmistakable influence of CELDF's political ideology. A prime example of this alignment can be seen in the Home Rule charter proposals introduced in Ohio and in the municipalities of Grant and Highland Township in Pennsylvania.⁶⁹³ Others, like the one proposed by Blaine Township in Pennsylvania are a textbook case of a political manifesto.⁶⁹⁴ Nevertheless, all the proposed Home Rule Charters start with a statement of intent that makes reference to the Declaration of Independence –whose principles have been incorporated in their own State Constitution–, which states that:

⁶⁹¹ CELDF Community Rights Pioneers Protecting Nature and Communities, CELDF (2020), <https://celdf.org/>.

⁶⁹² On this topic *see for instance*, Hall et al., *supra* note 11.

⁶⁹³ Highland Township Rights-Based Home Rule Charter - Highland Township, Elk County, PA - 11/8/2016. Grant Township Rights-Based Home Rule Charter, PA - 11/8/2016. Medina County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, OH –11/2013. Athens County, Ohio, Oil and Gas Restrictions and Home Rule Charter Initiative, OH –11/2017 and Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH –11/2017. Fulton County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, OH –11/15. Portage County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH –11/2015. Meigs County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, OH –11/15.

⁶⁹⁴ Blaine township Home Rule Charter, PA –2009.

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 necessary⁶⁹⁵

Based on this premise CELDF fosters this idea to the municipalities that, because their state Constitution asserts that the political power is inherent to the people –which they interpret to be not the “individual” but “the community”– the people have the right to dissolve the previous form of government and to seek Home Rule to see several rights recognised. These rights are then listed in the next section of the proposed Home Rule Charter. For example, the Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative states:

We hereby declare that we deem it necessary to alter the current County government in order to institute one that will guarantee to all of the people their equal protection and benefit. We secure for ourselves and for our successors the right of self-determination, by establishing a County government that provides for initiative and referendum rights, the exercise by the people of the County through their local representatives of all powers vested in but not limited to municipalities, and the power to articulate and protect fundamental rights free from preemption by other levels of government. [We seek also for] people in all incorporated and unincorporated parts of the county may exercise all powers including, but not limited to, those vested by the Constitution and laws of Ohio in home rule municipalities.⁶⁹⁶

In other words, the rights that the community seek to have recognised are, the right of the city's residents to self-governance; the ability to pass legislation without said legislation being preempted by other levels of government; the ability to exercise unlimited legislative power even if it exceeds that prescribed by the Home Rule Doctrine. Moreover, some of the Home Rule Charters like the one submitted to the ballot by local representatives of Grant municipality

⁶⁹⁵ *Declaration of Independence: A Transcription*, National Archives, [1776]

<https://www.archives.gov/founding-docs/declaration-transcript>, para. 2. The principles of popular sovereignty, the right to alter or abolish government, and the idea that all power is inherent in the people are foundational concepts in US political thought. These principles are often expressed in various ways in the preambles, declarations of rights, or other sections of state constitutions across the US.

⁶⁹⁶ Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH –11/2017, Art. 1 § 101.

with the help of CELDF, further reaffirm these points by also including in the provisions of the proposed Home Rule Charter an explicit call for constitutional changes at State and Federal level.

Article V, Section 701. Grant Township Home Rule Charter proposal states,

Through the adoption of this Charter, the people of Grant Township call for amendment of the Pennsylvania Constitution and the federal Constitution to recognise a right of local community self-government free from governmental preemption and nullification by corporate “rights” and powers.⁶⁹⁷

The Home Rule Charters then follow with the standard list of rights that always appear in these declarations which I have already explained in detail in other sections. In short, these community rights include **environmental rights**; these can be rights awarded to nature as a wider proviso to protect the local ecosystem or attached to a specific ecosystem, more general environmental right to sustainability and a healthy environment; **workers’ rights** –e.g., rights to a sustainable livelihood or to fair compensation–; **democratic rights**, such as the right to local community self-government, to local democracy, and to local political representation.

The Home Rule Charters then continue with a provision prohibiting certain types of economic activity within the county. Each county prohibits a different kind of economic activity. For example, the Home Rule Charter proposed by Medina County prohibits the siting or operation of equipment to support extraction of oil or gas.⁶⁹⁸ Athens County Home Rule Charter proposal prohibits class II injection wells.⁶⁹⁹

The proposed Home Rule Charters also have provisions which are specific to CELDF political agenda and represent CELDF posturing. For example, the following are taken from the Athens County proposed Home Rule Charter.⁷⁰⁰

⁶⁹⁷ Grant Township Rights-Based Home Rule Charter, PA - 11/8/2016, Art. 5 § 701.

⁶⁹⁸ Medina County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, OH – 11/2013.

⁶⁹⁹ Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH –11/2017.

⁷⁰⁰ *Id.*

- Section 1.06 Right to Municipal Autonomy. The recognition that under the new Home Rule Charter not only counties have the right to local self-government but also every municipality has the right of local self-government. Moreover, the authority of the local municipality shall prevail over county authority in case of conflicting legislation.

The residents of every municipality (incorporated City, Village, and Township) in the County of Athens shall retain the right to local self-government and other rights as secured by this Charter. The adoption of this Charter shall not preempt the exercise of power by the people within any municipality in the County, and in case of conflict between the exercise of powers granted by this Charter and the exercise of powers by municipalities, the powers of the municipality shall prevail within its jurisdiction.⁷⁰¹

- Section 1.12 Rights Secured against Corporations. The proposed Home Rule Charters seek to strip corporations of legal personhood which is applied not only in case the corporation infringes the proposed charter or other local legislation, but also extend to state and federal legislation. Further to this, the proposed charters assert that the corporations will lose legal personhood if they attempt to challenge the proposed charter on the grounds that the proposed charter violates state or federal preemptive laws or that the provisions found in the proposed charter exceed the county's power. (These last two provisions are a direct response to the numerous lawsuit the CBR has sustained precisely on those grounds –I will discuss these in the next sections)

[Corporations] that violate rights secured by this Charter or other local enactment, or seek to violate those rights or enactments, shall not be deemed to be “persons” to the extent that such treatment would interfere with the rights, or protections of rights, secured by this Charter or other local enactments, nor possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights enumerated for

⁷⁰¹ Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH –11/2017, § 1.06.

people and nature by State and federal constitutions, this Charter, or other local enactments.⁷⁰²

“Rights, powers, privileges, or immunities” shall include standing to challenge this Charter or other local enactments, the power to assert state or federal preemptive laws in an attempt to overturn this Charter or other local enactments, and the power to assert that the people of the County lack the authority to adopt this Charter or other local enactments.⁷⁰³

[...] no permit, license, privilege, charter, or other authority issued by any state, federal, or international entity shall be deemed valid within the County if it limits or reverses the rights, prohibitions and regulations secured by this Charter or enacted by the County to protect rights.⁷⁰⁴

- Section 1.15 Rights against Eminent Domain. This provision states that the use of eminent domain by the state or by a corporation is prohibited within the county.

All residents of the County of Athens have the right to hold private property without threat of expropriation or taking by corporate entities for purposes of private gain rather than public use. The power of taking private property shall not be delegated. The taking of private property for development and transportation of oil and gas resources and/or waste products by corporations for profit does not constitute public use.⁷⁰⁵

Counties with Home Rule Authority Seeking to Amend the Existing Municipal Charter

Table 6 shows the other municipalities that with the help of CELDF, primarily in Pennsylvania, have amended their municipal Home Rule charters to include the provisions found in their Community Bill of Rights or CBRs (municipal ordinances).

⁷⁰² Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH –11/2017, § 1.12.

⁷⁰³ *Id.*, § 1.11.

⁷⁰⁴ *Id.*, § 1.12.

⁷⁰⁵ *Id.*, § 1.15.

STATE	AMENDMENTS TO HOME RULE CHARTERS	STATUS
<i>New York</i>	Protection of Natural Resources CHAPTER 162 Home Charter Amendment, Wales, Erie County, NY - 2011	Adopted
<i>Pennsylvania</i>	West Chester Borough, Community Bill of Rights Home Rule Charter Amendment, West Chester Borough, Chester County, PA - 11/4/2015 State College Borough, Community Bill of Rights Home Rule Charter Amendment, State College Borough, Centre County, PA - 11/8/2011 Ferguson Township, Petition to Amend Home Rule Charter with Community Bill of Rights Protection from Shale Gas Drilling & Fracking Ferguson Township, Centre County, PA - 11/2012	Adopted
<i>Ohio</i>	Youngstown, Community Bill of Rights Charter Amendment, Youngstown, Mahoning County, OH - 11/8/2016	Enough ballot numbers received. However, due to the similarity of the proposed charter with that of Medina, Athens and Fulton, which have been challenged by the Secretary of State (Jon Husted), the local representatives decided to stop the ballot process. Legal challenge – Challenge from Youngstown electors to the Mahoning County Board to place the proposed amendment to the Youngstown city charter on the May 2018 ballot, citing abuse of discretion in finding that proposed charter amendment exceeds city’s legislative power. <i>State ex rel. Khumprakob v. Mahoning Cnty. Bd. of Elections, 153 Ohio St. 3d 581, 109 N.E.3d 1184, 2018 Ohio 1602 (Ohio 2018)</i>
	Mansfield Charter Amendment for a Community Bill of Rights & Protection from Shale Gas Drilling & Fracking Mansfield, Richland County, OH - 11/6/2012	Adopted

Table 6

Just as observed in the case of the proposed Home Rule Charter, CELDF's attorneys and representatives from CELDF's state chapters have once again collaborated with their local

chapters, acting as representatives of the municipalities.⁷⁰⁶ Together, they have crafted all the provisions found in the proposed Home Rule Charter amendments, drawing upon language from the municipal ordinances (CBRs) previously enacted by these municipalities, which had either been preempted or invalidated by the courts.

In Pennsylvania, all the Home Rule Amendments that received approval from municipalities with the assistance of CELDF are affiliated with the Envision Spokane project's local chapter.⁷⁰⁷ This community project encompasses neighbourhood advocates, labour union locals, and community activists who, with CELDF's support, endeavour to pass Community Bill of Rights in Pennsylvania.⁷⁰⁸

Examples of Home Rule Amendments can also be found outside Pennsylvania, such as the Erie County Home Rule Amendment in the state of New York, which was passed by the local municipality with CELDF's assistance in 2011.⁷⁰⁹ Similarly, the Home Rule Amendments in Ohio, specifically in Youngstown, Mansfield, and Toledo, serve as notable instances.⁷¹⁰

The overarching goal of this project is to establish Home Rule local laws that are more stringent than state laws.

Wording Found in the Amended Municipal Charters

The amendments proposed to the Home Rule Charters, with the assistance of CELDF, by county representatives take the form of a traditional Bill of Rights.

In its most conventional form, a Bill of Rights is a compendium enumerating all the rights held by individuals while placing limitations on the powers of the State.⁷¹¹ In the context of these proposed amendments to the Home Rule Charters, the Bill of Rights lists all the fundamental rights of local citizens within a municipality or county, aiming to safeguard these rights against infringement by either the state or corporate entities. These combined rights are defined by CELDF as “community rights” or “collective rights.”⁷¹²

⁷⁰⁶ *Legal Services*, CELDF, <https://celdf.org/legal-services/>.

⁷⁰⁷ *Envision Spokane - Community Rights over Corporate Rights*, <https://envisionspokane.org/>.

⁷⁰⁸ *Id.*

⁷⁰⁹ Protection of Natural Resources CHAPTER 162 Home Charter Amendment Wales, Erie County, NY – 2011.

⁷¹⁰ City of Youngstown "Community Bill of Rights" and Fracking Ban Initiative Charter Amendment, OH – 11/15. Mansfield Charter Amendment for a Community Bill of Rights & Protection from Shale Gas Drilling & Fracking Mansfield, Richland County, OH - 11/6/2012. Lake Erie Bill of Rights Toledo Lucas County, OH- 2017 (Lake Erie Bill of Rights, Charter of the City of Toledo, Ch. XVII, §§ 253-260).

⁷¹¹ See Merriam Webster Definition of Bill of Rights. Definition of Bill of Rights, <https://www.merriam-webster.com/dictionary/bill+of+rights>.

⁷¹² West Chester Borough Community Bill of Rights Home Rule Charter Amendment, PA – 11/4/2015, § 904.

The wording of the Home Rule Charter Amendments remains consistent because CELDF has aided the representatives of municipalities in drafting all the provisions found in the charter. As mentioned in the previous section, the Bill of Rights outlines a standardized set of rights for the community, including environmental, democratic, and worker's rights. Moreover, it incorporates provisions specific to the CELDF's political agenda, such as the elimination of corporate personhood, the right to local self-government, and the prohibition of certain economic activities within the county.

CELDf's political objectives also find expression in the concluding sections of these amendments. These concluding sections explicitly advocate for amendments to both the state and federal constitutions to recognize the right of local communities to self-govern.

[...] Through the adoption of this amendment, the people of West Chester Borough call for amendment of the Pennsylvania Constitution and the federal Constitution to recognise a right of local community self-government free from governmental preemption and nullification by corporate “rights.”⁷¹³

Charting the Adoption of These Amendments

In Pennsylvania, all Home Rule Amendments proposed by CELDF and the Envision Spokane project to municipalities, with their subsequent assistance in passing, have successfully met the ballot quorum requirements and have been incorporated into their respective Home Rule Charters. Additionally, in New York, the Erie County Home Rule Amendment has been officially adopted.

In Ohio, only the municipalities of Mansfield and Toledo were able to secure the necessary ballot quorum and have had their amendments added to their respective Home Rule Charters.⁷¹⁴ However, in the case of Youngstown municipality, despite achieving

⁷¹³ West Chester Borough Community Bill of Rights Home Rule Charter Amendment, PA – 11/4/2015, § 904 F.

⁷¹⁴ On this see, *Toledo, Ohio, Question 2, ‘Lake Erie Bill of Rights’ Initiative (February 2019)*, BALLOTPEDIA, [https://ballotpedia.org/Toledo,_Ohio,_Question_2,_%22Lake_Erie_Bill_of_Rights%22_Initiative_\(February_2019\)](https://ballotpedia.org/Toledo,_Ohio,_Question_2,_%22Lake_Erie_Bill_of_Rights%22_Initiative_(February_2019)).

the ballot quorum, they chose not to pass the amendment.⁷¹⁵ This decision was influenced by the strong resemblance between the proposed amendment and the Home Rule Charters of Medina, Athens, and Fulton, all of which faced legal challenges initiated by the Secretary of State, Jon Husted.⁷¹⁶

Lastly, as observed in the section analysing the proposed Home Rule Charters of various municipalities, certain Home Rule Charter amendments have faced legal challenges due to concerns about their constitutionality. Notably, Toledo municipality's proposed Home Rule Amendment falls into this category, and I will delve further into these challenges later in this chapter.

From Setbacks to Strength: CELDF's Role in Passing State Constitutional Amendments for the Recognition of Community Rights

Sponsored by CELDF with the aid of its local chapters, specific committees craft Community Bills of Rights or CBRs (Constitutional Amendments) recognising the right to community self-government and rights of nature.⁷¹⁷ Table 7 shows where these have been proposed: Colorado, New Hampshire, Ohio, Oregon, Pennsylvania.

⁷¹⁵ On this see, Rob Magee, *CELDf's Worst Year Yet: Ohio Supreme Court Rejects Youngstown 'Bill of Rights' Appeal*, (Oct. 16, 2017), <https://www.thedailydigger.com/2017/10/celdfs-worst-year-yet-ohio-supreme.html>. CELDF, A Win for People's Democratic Rights in the Ohio Supreme Court, CELDF, <https://celdf.org/2017/12/win-peoples-democratic-rights-ohio-supreme-court/>. See also, *State ex rel. Monroe v. Mahoning Cnty. Bd. of Elections*, 997 N.E.2d 524, 137 Ohio St. 3d 62 (Ohio 2013).

⁷¹⁶ *Medina County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative* (November 2015), BALLOTPEDIA, [https://ballotpedia.org/Medina_County_Home_Rule_Charter,_Community_Bill_of_Rights_and_Fracking_Prohibition_Initiative_\(November_2015\)](https://ballotpedia.org/Medina_County_Home_Rule_Charter,_Community_Bill_of_Rights_and_Fracking_Prohibition_Initiative_(November_2015)). *Athens County, Ohio, Oil and Gas Restrictions and Home Rule Charter Initiative* (November 2017), BALLOTPEDIA, [https://ballotpedia.org/Athens_County,_Ohio,_Oil_and_Gas_Restrictions_and_Home_Rule_Charter_Initiative_\(November_2017\)](https://ballotpedia.org/Athens_County,_Ohio,_Oil_and_Gas_Restrictions_and_Home_Rule_Charter_Initiative_(November_2017)). *Fulton County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative* (November 2015), BALLOTPEDIA, [https://ballotpedia.org/Fulton_County_Home_Rule_Charter,_Community_Bill_of_Rights_and_Fracking_Prohibition_Initiative_\(November_2015\)](https://ballotpedia.org/Fulton_County_Home_Rule_Charter,_Community_Bill_of_Rights_and_Fracking_Prohibition_Initiative_(November_2015)).

⁷¹⁷ On this see for instance, Susquehanna A Publication of the Community Environmental Legal Defense Fund, Vol. 15 Issue #2, Summer 2013. https://celdf.org/wpcontent/uploads/2015/08/Susquehanna_Summer_2013.pdf

STATE	CONSTITUTIONAL AMENDMENTS	INTRODUCED BY	OUTCOME
COLORADO	Colorado Environmental Rights Amendment –.2014	Colorado Community Rights Network.	Did not receive enough ballot signatures.
	Colorado Environmental Rights Amendment–Proposed Initiative 2015-2016 #40.	Coloradans for Safe and Clean Energy and U.S. Rep. Jared Polis.	Did not receive enough ballot signatures.
	[The same Amendment so art. II adding § 32 was repropoed in 2016 under the title of Colorado Environmental Rights Amendment –Proposed Initiative 2015-2016 #40. https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2015-2016/40Final.pdf]		
OREGON	Oregon Environmental Rights Amendment–2017.Initiative Petition 2016-055 (IP 55).	Oregon Community Rights Network.	The State Attorney blocked ballot access. [See <i>Geddry v. Richardson</i> , 437 P.3d 1163, 296 Or. App. 134 (2019).]
	(2) LC 2526 2019	Oregon Community Rights Network	Introduced
OHIO	Ohio Environmental Rights Amendment –2017/.2019	Ohio Community Rights Network and Gwen Fischer from Portage County Community Rights Group.	Introduced to the legislature. Did not receive enough ballot signatures.
NEW HAMPSHIRE	Constitutional amendment concurrent resolution 8, N.H. 8, (2019).	Introduced and sponsored with bi-partisan support (Democrat 9-1).	Introduced to the legislature. Did not receive enough ballot signatures
	[Constitutional amendment concurrent resolution 4, N.H. 4, (2019).]	Representatives: Suzanne Smith, Janice Schmidt, Raymond Howard, Stephen Darrow, Wayne Burton, Charlotte DiLorenzo, Steven Rand, and Vincent Paul Migliore.	Inexpedient to legislate.

Table 7

The strategy devised by CELDF's founders involves a two-fold approach. Firstly, in conjunction with the enactment of CBRs as municipal ordinances and the establishment of the right to local self-government, they also advocate for the promotion and adoption of CBRs as Constitutional Amendments at the state level. This dual approach aims to address the challenge posed by state preemption of CBRs, especially when enacted as municipal ordinances. Furthermore, CELDF's founders contend that the passage of CBRs (State Constitutional Amendments) would imbue the principles they champion with enduring significance. It would enhance the understanding of these principles within the framework of established legal norms and serve as a procedural guide for legislative and administrative processes.

The wording in all CBRs (State Constitutional Amendments) remains consistent. These CBRs (State Constitutional Amendments) primarily focus on recognizing the community's right to local self-government. They affirm the entitlement of communities to enact more stringent environmental protections at the local level than those currently established at the state and federal levels, including the safeguarding of rights of nature. Importantly, these amendments also prohibit any form of interference by corporations or government entities in this process.

An example is the Colorado Community Rights Amendment, officially designated as *Proposed Initiative to add §32 to Article II*. The title of the amendment, as designated by the Colorado Secretary of State, is as follows,

An amendment to the Colorado constitution concerning a right to local self-government, and, in connection therewith, declaring that the people have an inherent right to local self-government in counties and municipalities, including the power to enact laws to establish, protect, and secure rights of natural persons, communities, and nature, as well as the power to define or eliminate the rights and powers of corporations or business entities to prevent them from interfering with those rights; and exempting such local laws from preemption or nullification by any federal, state, or international law if the local laws do not restrict fundamental rights

or weaken legal protections for natural persons, their local communities, or nature.⁷¹⁸

In fact, the language in the Amendment aims at the recognition of a right to local self-government that would include, without limitation, the power to enact local laws to protect health, safety, and welfare by establishing the rights of people, their communities and nature and secure those rights using prohibitions and other means. Also, establish, define, alter, or eliminate the rights, powers and duties of corporations and other business entities operating or seeking to operate in the community. Finally, establish the right of communities to secure greater environmental protection. Controversially, the Amendment also seeks to empower local communities to enact laws that would be, “Immune from preemption or nullification by state law, federal law, or international law.”⁷¹⁹

Another example of constitutional amendment is the Pennsylvania amendment proposed in accordance with Article XI of the State Constitution. Amendment to Article I to add section § 29 titled Right to local self-government. – securing the right to local self-government, H.B. 1813, (2019).⁷²⁰

As will also become apparent in the CBRs that will be examined later, the amendment is heavily influenced by the ideas of Thomas Linzey on the inherent right of local democracy and on local community self-government.⁷²¹

The opening of the amendment has a clear declaratory purpose and reiterates the idea that local community self-government is a foundation element present in the US Constitution. Further to this, the US Constitution affords the right for all the municipalities to exercise their right to self-legislate in matters of local authority.

All political power is inherent in the people and all free governments are founded on their authority and instituted for their peace, safety and happiness, the people

⁷¹⁸ Constitutional amendment – securing the right to local self-government, Proposed Initiative 2015-2016 #40 (2015-2016).

⁷¹⁹ Constitutional amendment – securing the right to local self-government, Proposed Initiative 2015-2016 #40.

⁷²⁰ Constitutional amendment – securing the right to local self-government, H.B. 1813, (2019).

⁷²¹ Linzey & Brannen Jr, *supra* note 503. See also, Linzey et al., *supra* note 51.

have an inherent and inalienable right to local self-government which includes, without limitation, the power to enact local laws⁷²²

Specifically for local laws it refers to the desire of local communities to enact local laws to recognise rights of nature, to limit corporate power in matters of local economic development, and to circumscribe all corporate or government interference in the process.

In the Amendment, rights of nature are broadly defined and include the right to health, safety, and welfare of local communities, “Protecting health, safety, and welfare by establishing the rights of people, their communities and nature and by securing those rights using prohibitions and other means.”⁷²³

Also, the Amendment seek to prohibit corporate or government interference in the process,

[And] establishing, defining, altering or eliminating the rights, powers, and duties of corporations and other business entities operating or seeking to operate in the community, to prevent infringement of locally enacted rights and violation of the prohibitions and other means by which those rights are secured.⁷²⁴

Finally, the amendment establishes measures against pre-emption, and it makes clear that any pre-emption measure should be set as a floor for standards rather than as a ceiling,

Local laws shall not be subject to pre-emption by international, Federal or State laws, provided that a local law does not (1) infringe or restrict fundamental rights of individuals, their communities or nature secured by the Constitution of Pennsylvania or international law: or (2) minimize protections for health, safety, and welfare provided by international, Federal and State law.⁷²⁵

In sum, all the proposed amendments display similar wording. The amendments aim at establishing the right of communities to secure greater environmental protection at the local level including recognising rights of nature, promoting the right of local self-government,

⁷²² Constitutional amendment – securing the right to local self-government, H.B. 1813, (2019). Amendment to article I with inclusion of § 29 (b,1).

⁷²³ *Id.*

⁷²⁴ *Id.*

⁷²⁵ Constitutional amendment – securing the right to local self-government, H.B. 1813, (2019). Amendment to article I with inclusion of § 29 (c).

establishing measures against pre-emption, and prohibiting corporate or government interference in the process.

To conclude, figure 7 shows all the enacted and stricken state constitutional amendments between 2014 to 2019. Figure 7 also shows how the phenomenon is still quite niche and none of the proposed amendments have yet been enacted. This is most likely because the wording proposed in the amendments is overbroad and without legal validity. This is particularly so in the more controversial part of the amendment, which asserts the ability of local laws to supersede state, federal and international law.

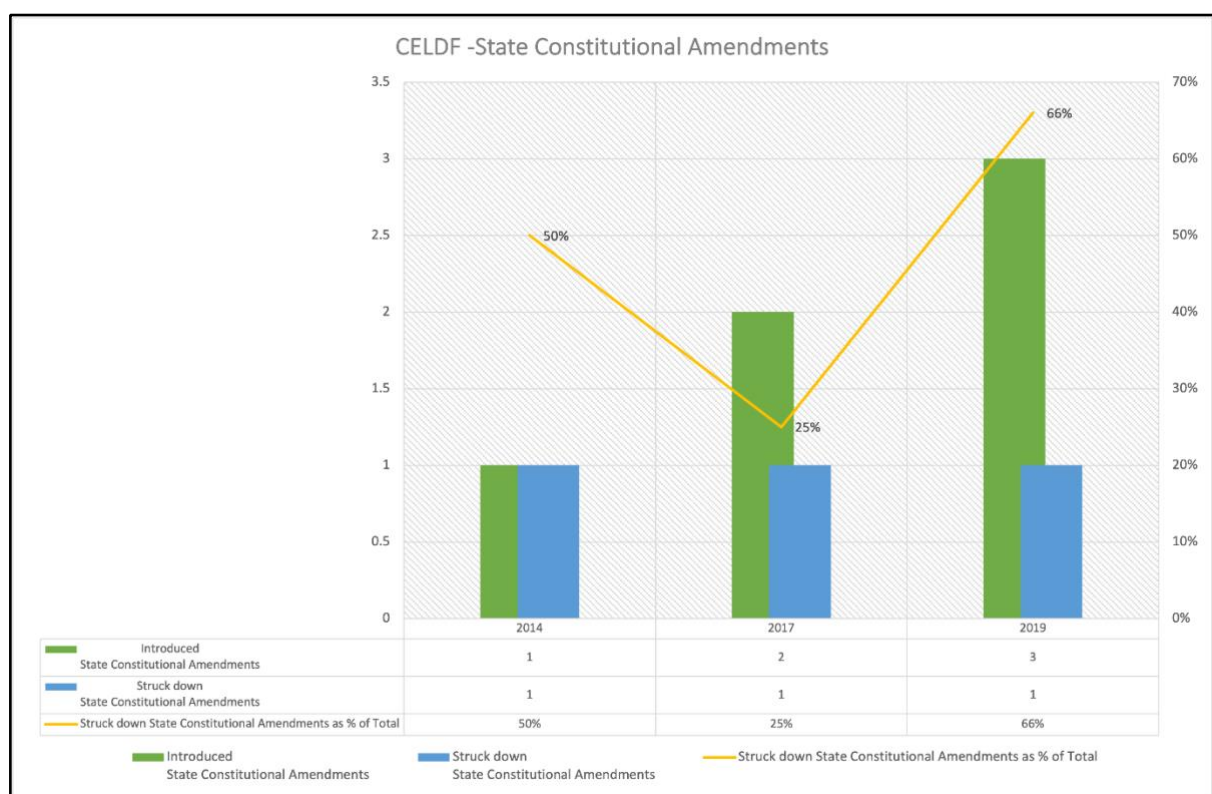


Figure 7

Textual Analysis

Having done an analysis of the Community Bills of Rights (CBRs) vertically, and horizontally I will now continue with a textual analysis.

Anatomy of a Community Bill of Rights

CELDF on its website offers some examples of a model Community Bill of Rights (CBR). The same models have been used repeatedly with little variation. In the models are present all the elements already introduced in the previous section. The most used has been CELDF first municipal ordinance in 1998, the Southampton Township Farm Ownership Ordinance, albeit updated and expanded over the years, for all other ordinances passed from 1998 until today.⁷²⁶

These municipal ordinances, referred to as Community Bills of Rights (CBRs), have become a foundational category for numerous legal initiatives within the activist movement. They manifest in various forms, such as state constitutional amendments, state legislation, Home Rule charters, municipal or county ordinances, and charter amendments.

A CBR, regardless of its legislative vehicle, shares distinctive attributes. Typically enacted at the county, borough, town, or city level, a CBR serves to shield communities from environmental and economic threats posed by corporate activities. It prominently declares that corporations lack legal personhood within the specified local jurisdiction and, consequently, prohibits a broad spectrum of industrial activities conducted by corporations in that area. Moreover, it firmly establishes community rights to local self-government and participatory democracy. In essence, a CBR asserts its independence from state authority, carving out a unique identity for municipalities that is not reliant on the state.

In addition to these fundamental components, a CBR includes a formal statement that recognizes a set of rights, which have expanded over time to encompass various categories. These rights provide the legal basis for local communities to take action against infringements by external parties. These encompass environmental rights, ranging from protections for nature as a whole ecosystem to specific ecological entities. Community rights also encompass broader environmental rights associated with sustainability and a healthy environment, along with workers' rights, such as the right to a sustainable livelihood and fair compensation. Democratic rights, such as the right to local community self-government, local democracy, and local political representation, are integral elements of CBR.

⁷²⁶ Southampton Anti-Corporate Farming Ordinance Southampton Township, Franklin County, PA –1999. See also, What's in a Community Bill of Rights (CBOR)?, CELDF, <https://celdf.org/2015/08/whats-in-a-community-bill-of-rights-cbor/>.

Typically, CBRs also establish provisions its enforcement, allowing any community member, individually or collectively, to act on behalf of the entire community. This effort to confer community standing can be seen as an attempt to create an enforcement via a citizen suit provision where they attempt to confer “standing” on “residents” to create an *Actio Popularis*.⁷²⁷

Therefore, all CBRs include these elements:

The Preamble: Defining Principles and Grievances. At the heart of every CBR lies a preamble, which serves as a foundational statement of principles or a declaration of grievances. This preamble sets the tone for the entire municipal ordinance (or CBR), expressing the community's commitment to asserting its rights and addressing the perceived injustices or threats it faces.

Defining Terms: The Section on Definitions. To avoid legal ambiguity and misunderstanding, CBRs typically include a section on definitions. This part of the municipal ordinance enumerates and clarifies key terms and concepts that are central to the rights being asserted. It ensures that all stakeholders have a shared understanding of the municipal ordinance's language.

The Corpus of Rights: Enumerating Community Rights. A pivotal section of a CBR is the enumeration of community rights. Over time, the rights listed in CBRs have expanded to encompass various categories. These may include environmental rights, such as the right to clean air and water, community rights related to local self-governance, and participatory democracy, as well as workers' rights and democratic rights, among others. These rights are often drawn from standardized lists but may evolve to address emerging concerns.

Prohibitions: Safeguarding Community Rights. In alignment with the enumerated rights, CBRs contain sections that outline prohibitions. These prohibitions serve to protect the rights secured in the previous section. They restrict specific corporate activities or practices that could infringe upon community or environmental rights. For example, they may prohibit activities harmful to the local ecosystem or corporate practices that threaten community self-governance.

⁷²⁷ What's in a Community Bill of Rights (CBOR)?, CELDF, <https://celdf.org/2015/08/whats-in-a-community-bill-of-rights-cbor/>.

Enforcement and Corporate Powers: Balancing Authority. One of the critical aspects of CBRs is the enforcement mechanism. These mechanisms have evolved over time to address violations comprehensively. While earlier versions focused primarily on violations of community rights, newer iterations explicitly cover ecosystem rights violations. This demonstrates an increased emphasis on environmental protection. Simultaneously, CBRs often nullify the Commerce Clause and Contract Clause concerning corporate powers when violations occur. Corporations that are found in violation of CBRs may lose their legal personhood, reinforcing the prioritization of community rights over corporate interests.

Incorporating Constitutional Advocacy: Beyond Local Change. CBRs extend beyond local governance and often advocate for broader constitutional change. Many CBRs now include provisions that call for amendments to state and federal constitutions. These amendments are aimed at recognizing the right to local community self-government and repealing state pre-emption laws, reflecting a desire for systemic change.

Severability and Repeal Provisions: Legal Resilience. To ensure the legal robustness of CBRs, they typically include severability and repeal provisions. Severability provisions prevent the entire municipal ordinances from being overturned if certain sections are found illegal. Repeal provisions ensure that sections of prior local laws conflicting with the CBR are repealed.

The evolution of CBRs is marked by several significant shifts. Initially focused on community and anti-corporate rights, CBRs expanded to encompass ecosystem rights. Enforcement mechanisms were strengthened, and there was a greater emphasis on nullifying corporate powers. CBRs also began advocating for constitutional change to address systemic violations of community and ecosystem rights.

CELDF's founders contend that this strategic approach serves two primary objectives. First, it aims to recognize and codify the civil and political rights of local communities. Second, it seeks to strip corporations of any remnants of power, privilege, and authority, ultimately establishing a community's right to local self-government and an autonomous identity separate from the state. According to CELDF's founders, only through achieving these twin goals can local communities attain economic and environmental sustainability.

In conclusion, the CBRs reflects a multifaceted legal strategy that seeks to empower local communities, challenge corporate influence, and advocate for environmental and community rights protection. The evolution of CBRs showcases their adaptability in response to legal challenges, emerging concerns, and the broader landscape of municipal activism in the US.

Manifesting Change: The Evolving Language of Community Bills of Rights

I will now analyse the content of the CBRs. I will just focus the examples on municipal ordinances, local acts, and amendments to the municipal code since all the other type of CBRs have been analysed in the preceding sections of this chapter. Moreover, because of this structure of activism –which relies on CELDF’s lawyers to draft a model CBRs which is then slightly altered by the interested parties addressing specific local concerns– all CBRs have the same structure and contain the same arguments, wording, and provisions (as discussed in the previous section). The aspects highlighted by the CBRs can be categorized into two overarching groups:

The first group concerns the language and themes in Community Bills of Rights.

The content and language within the CBRs, some of which have faced legislative preemption by states or legal challenges in courts (which can also be viewed as a form of preemption), convey a distinct political and legal stance on specific issues. These issues encompass community rights, anti-corporatism, the power dynamic between municipalities and states (particularly the assertion of an inherent community right to local self-government), and environmentalism, with a specific focus on recognizing and granting rights of nature.

The phrasing and language employed in the provisions of the CBRs serve as a manifestation of the concept of decentralism, emphasizing the importance of local decision-making and autonomy.

The second group concerns the strategic evolution of the Community Bills of Rights.

The strategy and evolution of the CBRs not only position them as legislative proposals but also as political manifestos. These CBRs represent a declaratory legislative exercise, signifying a broader movement's commitment to advancing its ideals and principles.

Examining how the nature and wording of the provisions in CBRs have evolved from 1998 to 2019 offers insights into the changing strategies employed by CELDF. These strategic shifts

reflect the organization's adaptability and responsiveness to evolving social, legal, and environmental contexts.

In summary, the language and content of CBRs convey a specific set of themes and principles, while their strategic evolution illustrates CELDF's commitment to its cause and its ability to adapt to changing circumstances over the years.

The language in the Community Bills of Rights

The CBRs make four assertions in relation to municipal power that have consistently been either preempted by the state legislation or struck down by the courts as unconstitutional. These four arguments also signal a specific political and legal posturing on specific themes, namely: community rights, anti-corporatism, municipalities *versus* the states (specifically the idea of an inalienable community right to local self-government), and environmentalism (specifically the idea of recognising and awarding rights of nature).

The first assertion that the Community Bills of Rights make is that the local municipality has the power to pass legislation that includes provisions for a blanket ban on certain economic activities.

In fact, in 1999, with the help of CELDF, five townships in two counties adopted a CBR that, in direct opposition with state law, prohibited all corporations –aside from family-owned corporations– from farming or owning farmland in that area.⁷²⁸

From then on, all the CBRs passed by the municipalities with the help of CELDF present in the dataset ban some type of economic activity performed by the corporations in the area.

In sum, the CBRs include provisions that ban specific types of economic activity in the local municipality. Some of the CBRs also ban the corporations from owning farmland or other natural resources in the municipalities.

⁷²⁸ CELDF, *In U.S. First, Local Government Refuses to Recognize Corporate Claims to Civil Rights*, ★ Reclaim Democracy!, (Dec. 13, 2002), https://reclaimdemocracy.org/porter_township_ordinance/.

The table 8 shows, for comparison, two provisions found in the CBRs on this argument.

Table 8

<i>Mora County Community Water Rights and Local Self-Government Ordinance Mora County, NM- 4/29/2013.</i>	<i>Grant Township Community Bill of Rights Ordinance Grant Township, Indiana County, PA - 6/1/2014.</i>
Section 5.1: It shall be unlawful for any corporation to engage in the extraction of oil, natural gas, or other hydrocarbons within Mora County. Section 5.3: It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation to deposit, store, transport or process waste water, "produced" water, "frack" water, brine or other materials, chemicals or by-products used in the extraction of oil, natural gas, or other hydrocarbons, into the land, air or waters within Mora County. Section 5.4: It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation to construct or maintain infrastructure related to the extraction of oil, natural gas, or other hydrocarbons within Mora County. "Infrastructure" shall include, but not be limited to, pipelines or other vehicles of conveyance of oil, natural gas, or other hydrocarbons, and any ponds or other containments used for wastewater, "frack" water, or other materials used during the process of oil, gas, or other hydrocarbon extraction. Section 5.7: No permit, license, privilege or charter issued by any state or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Ordinance or deprive any County resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Treaty of	Section 3 - Statements of Law - Prohibitions Necessary to Secure the Bill of Rights (a) It shall be unlawful within Grant Township for any corporation or government to engage in the depositing of waste from oil and gas extraction. (b) No permit, license, privilege, charter, or other authority issued by any state or federal entity which would violate the prohibitions of this Ordinance or any rights secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be deemed valid within Grant Township.

The second argument that the Community Bill of Rights make is that the municipalities have an intrinsic community right to local self-government (and in some instances also of self-determination).

CELDF's lawyers argue that community rights are recognised in the foundational documents of the US. These community rights or the rights enjoyed by the community include a long list of rights that are aimed at protecting the public health, safety, and general welfare of the community –which I would argue constitute a request of recognition of police powers to the municipalities and an expansion of the definition of the Doctrine of Police Powers (I will elaborate more on this later in the chapter) Included in this list of rights is the right of local self-government.

Further to this, they say that a right to local self-government is the basis upon which US constitutionalism rests. In other words that local, community self-government is the foundation of the US system of constitutional law, and that local self-governance is both deeply rooted in the “United States history and tradition and fundamental to any scheme of ordered liberty.”⁷²⁹

Therefore, CELDF's lawyers argue that, since community rights are fundamental to US constitutionalism, the municipalities, as communities that have rights, also have the inherent right to local self-government. Moreover, because municipalities as communities that have an inherent right to local self-government (which is included in the broader definition of community rights) and are therefore sovereign entities, sovereignty and the consequential exercise of Police Powers should not be the exclusive preserve of the states. This is because the municipalities possess community rights which include an inherent right to local self-government that allows them to retain their sovereignty and autonomy and consequently allows them to exercise independent governance –hence free and unlimited exercise of Police Powers. The CBRs is therefore a valid exercise of the right to self-government.

Based on this logic, the CBRs, state that the community right to local self-governance trumps established norms of federal supremacy and preemption, as well as established norms of local government subordination to state governments enshrined in Dillon's Rule.⁷³⁰ For this reason,

⁷²⁹ Grant Township Community Bill of Rights Ordinance Grant Township, Indiana County, PA - 6/1/2014.

⁷³⁰ Dillon's Rule is a legal principle that states that local governments, such as municipalities or counties, possess only those powers that are expressly granted to them by state governments. In other words, local governments have limited authority and can only exercise powers that have been specifically delegated to them

in the CBRs there are provisions affirming that any legislative rule passed by the local municipality trumps state and federal law.

The table 9 shows, for comparison, two provisions found in the CBRs on this argument.

by the state constitution or statutes. If there is any ambiguity regarding the scope of a local government's authority, Dillon's Rule dictates that such ambiguity should be resolved in favor of the state government rather than the local government. This principle is named after John Forrest Dillon, a former judge and legal scholar who articulated it in the late 19th century.

<i>Mora County Community Water Rights and Local Self-Government Ordinance Mora County, NM- 4/29/2013.</i>	<i>Grant Township Community Bill of Rights Ordinance Grant Township, Indiana County, PA - 6/1/2014.</i>
Section 5.1: It shall be unlawful for any corporation to engage in the extraction of oil, natural gas, or other hydrocarbons within Mora County. Section 5.3: It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation to deposit, store, transport or process waste water, "produced" water, "frack" water, brine or other materials, chemicals or by-products used in the extraction of oil, natural gas, or other hydrocarbons, into the land, air or waters within Mora County. Section 5.4: It shall be unlawful for any corporation, or any director, officer, owner, or manager of a corporation to use a corporation to construct or maintain infrastructure related to the extraction of oil, natural gas, or other hydrocarbons within Mora County. "Infrastructure" shall include, but not be limited to, pipelines or other vehicles of conveyance of oil, natural gas, or other hydrocarbons, and any ponds or other containments used for wastewater, "frack" water, or other materials used during the process of oil, gas, or other hydrocarbon extraction. Section 5.7: No permit, license, privilege or charter issued by any state or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Ordinance or deprive any County resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Ordinance, the Treaty of	Section 3 - Statements of Law - Prohibitions Necessary to Secure the Bill of Rights (a) It shall be unlawful within Grant Township for any corporation or government to engage in the depositing of waste from oil and gas extraction. (b) No permit, license, privilege, charter, or other authority issued by any state or federal entity which would violate the prohibitions of this Ordinance or any rights secured by this Ordinance, the Pennsylvania Constitution, the United States Constitution, or other laws, shall be deemed valid within Grant Township.

Table 9

In addition, some CBRs go a step further also including provisions citing a right to self-determination (or as per the CBR's wording a "right of separation"). One example is the Blaine Township Community Bill of Rights –Table 10.

Section 7. People’s Right to Self-Governance and Right of Separation. The foundation for the making and adoption of this law is the people’s fundamental and inalienable right to govern themselves, and thereby secure our rights to life, liberty, property, and pursuit of happiness. Any attempts to use county, state, or federal levels of government - judicial, legislative, or executive - to preempt, amend, alter, or overturn this Ordinance or parts of this Ordinance, or to intimidate the people of Blaine Township or their elected officials, shall require the Board of Supervisors of Blaine Township to hold public meetings that explore the adoption of other measures that expand local control and the ability of residents to protect their fundamental and inalienable right to self-government. ***Such consideration may include actions to separate the municipality from the other levels of government used to preempt, amend, alter, or overturn the provisions of this Ordinance or other levels of government used to intimidate the people of Blaine Township or their elected officials.*** (Emphasis added)

Table 10

The third argument that the Community Bills of Rights make is that corporate personhood is not a valid legal doctrine.

The CBRs implicitly include strong critiques against the corporation legal setup. Specifically, the legal recognition of corporate limited liability, and syndicate ownership; their state-based authority, and the use of eminent domain (which the CBRs explicitly ban).

The provisions in the CBRs do two things:

1. Strip the corporation of personhood
2. Require corporations to submit extensive disclosure documents prior to commencing the economic activity. Moreover, if during this discovery process the corporations are found to be in violation of the law the permit to undertake economic activity in the local municipality is revoked.

The table 11 shows, for comparison, two provisions found in the Bill of Rights on this argument:

<i>Mora County Community Water Rights and Local Self-Government Ordinance Mora County, NM- 4/29/2013.</i>	<i>Grant Township Community Bill of Rights Ordinance Grant Township, Indiana County, PA - 6/1/2014.</i>
Section 5.5: Corporations in violation of the prohibitions enacted by this ordinance, or seeking to engage in activities prohibited by this ordinance, shall not have the rights of "persons" afforded by the United States and New Mexico Constitutions, nor shall those corporations be afforded rights under the 1st or 5th amendments to the United States Constitution or corresponding sections of the New Mexico Constitution, nor shall those corporations be afforded the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the New Mexico Constitution. Section 5.6: Individuals or corporations in violation of the prohibitions enacted by this ordinance, or seeking to engage in activities prohibited by this ordinance, shall not possess the authority or power to enforce State or federal preemptive law against the people of Mora County, or to challenge or overturn County ordinances adopted by the Mora County Commission, when that enforcement or challenge interferes with the rights asserted by this ordinance or interferes with the authority of the county to protect the health, safety, and welfare of its residents. Section 5.7: No permit, license, privilege or charter issued by any state or federal agency, Commission or Board to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Ordinance or deprive any County resident(s), natural	Section 4 - Enforcement (a) Any corporation or government that violates any provision of this Ordinance shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and violation of each section of this Ordinance, shall count as a separate violation. Section 5 - Enforcement - Corporate Powers (a) Corporations that violate this Ordinance, or that seek to violate this Ordinance, shall not be deemed to be "persons," nor possess any other legal rights, privileges, powers, or protections which would interfere with the rights or prohibitions enumerated by this Ordinance. "Rights, privileges, powers, or protections" shall include the power to assert state or federal preemptive laws in an attempt to overturn this Ordinance, and the power to assert that the people of the municipality lack the authority to adopt this Ordinance.

Table 11

The fourth legal argument the Community Bill of Rights make (from 2006 onward) is that local natural ecosystems are part of the community to which they belong and because of that are entitled to all the rights of the community to which they belong, and that the community enjoys.

On this argument there is a great variability among the provisions found in the CBRs.

Most of the CBRs include provisions for a specific type of right of nature, one attached to a local natural ecosystem and conflated in the definition of local community. These provisions of rights of nature should be viewed in the context of community rights. In this sense these rights of nature as envisioned by CELDF are actually communal rights of access and management of the local natural environment. Hence, I argue that CELDF rights of nature should be interpreted as a community right to manage the local resources communally. The wording of this specific provision has evolved over time from the first municipality (Tamaqua borough) that included this provision in their CBR.⁷³¹

The table 12 shows, for comparison, the provision found in the Tamaqua borough Community Bill of Rights against the Grant township Community Bill of Right passed a few years later.

⁷³¹ The same argument has also been advanced by the literature on this topic, specifically by Tănăsescu. Tănăsescu argues that the Community Bills of Rights do not create a separate legal personality for nature; on the contrary they list rights that can be protected by communities on behalf of nature. This creates an idea of responsibility on the part of the community to protect their ecosystem against external threats. These external threats are clearly identified and named; they are the private interest of corporations and the hostile policies of state and federal governments which push for practices that destroy the local ecosystem. However, natural communities and ecosystem are linked together and are presented as persons worthy of protection from external harm. Therefore, in this way they are given standing. Moreover, the interests of nature must prevail over the property interest of the communities. The municipal ordinance of Tamaqua Borough and Mahanoy Township is a good example of how the municipal ordinances or CBRs provide standing, their wording is almost exact and states that: "Borough residents, natural communities, and ecosystems shall be considered to be persons." Tamaqua Borough, Schuylkill County, Pennsylvania Ordinance No. 612 of 2006. Tănăsescu, *supra* note 27, p. 111. Tănăsescu, *supra* note 129.

<i>Tamaqua Borough Corporate Waste & Local Control Ordinance Tamaqua Burrough, Schuylkill County, PA - 5/1/2007.</i>	<i>Grant Township Community Bill of Rights Ordinance Grant Township, Indiana County, PA - 6/1/2014.</i>
§ 273-16 Statements of law. G. All residents of Tamaqua Borough possess a fundamental and inalienable right to a healthy environment, which includes the right to unpolluted air, water, soils, flora, and fauna. All residents of the Borough possess a fundamental and inalienable right to the integrity of their bodies, and thus have a right to be free from unwanted invasions of their bodies by pollutants. F. Borough residents, natural communities, and ecosystems shall be considered to be "persons" for purposes of the enforcement of the civil rights of those residents, natural communities, and ecosystems. ” and then “The Borough of Tamaqua, along with any resident of the Borough,' shall have standing to seek declaratory, injunctive, and compensatory relief for damages caused to natural communities and ecosystems within the Borough, regardless of the relation of those natural communities and ecosystems to Borough residents or the Borough itself.	Section 2 - Statements of Law -A Community Bill of Rights (d) Rights of Natural Communities and Ecosystems. Natural communities and ecosystems within Grant Township, including but not limited to, rivers, streams, and aquifers, possess the right to exist, flourish, and naturally evolve. Section 4 – Enforcement (a) Any corporation or government that violates any provision of this Ordinance shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and violation of each section of this Ordinance, shall count as a separate violation.

Table 12

Table 13 shows that other CBRs, while including provisions for a specific type of right of nature attached to a local natural ecosystem and conflated in the definition of local community, expand the definition of community to include in the definition relationships that draw on indigenous cosmology. One example is the Mora Township CBR.

Section 3.6: 'La querencia de la Tierra' shall mean the loving respect which Mora County residents have towards the land and the Earth, which is rooted in our indigenous worldview -the Earth is living and holy, is the habitat that sustains us, and is composed of all-natural and living systems, flora and fauna -interrelated, interdependent and complementary- which share our common destiny: The right to live free from contamination.

Section 4.3. Rights of Natural Communities: Natural communities and ecosystems, including, but not limited to, wetlands, streams, rivers, aquifers, and other water systems, possess inalienable and fundamental rights to exist and flourish within Mora County against oil and gas extraction. Residents of the County, along with the Mora County Commission, shall possess legal standing to enforce those rights on behalf of those natural communities and ecosystems. Natural communities and ecosystems protected by this ordinance shall be protected on all lands within Mora County, including those owned by the state and federal government

Section 4.7. Rights of La Querencia de la Tierra: The farm-based indigenous/mestizo (mixed blood) people who created the original Mora County culture considered the Earth to be living and holy; thus, they referred to their homeland as "La Querencia de la Tierra," Love of the Land. This sacredness connotes an intrinsic right of the land to exist without defilement.

Table 13

Table 14 shows how others still do not include provisions for rights of nature; instead, they protect their local natural environment provisions affirming that the local water is subject to the Public Trust. One example is the Barnstead Township CBR.

We the people of Barnstead declare that all of our water is held in the public trust as a common resource to be used for the benefit of Barnstead residents and of the natural ecosystems of which they are a part. We believe that the corporatization of water supplies in this community – placing the control of water in the hands of a corporate few, rather than the community – would constitute tyranny and usurpation; and that we are therefore duty bound, under the New Hampshire Constitution, to oppose such tyranny and usurpation. That same duty requires us to recognise that two centuries’ worth of governmental conferral of constitutional powers upon corporations has deprived people of the authority to govern their own communities and requires us to take affirmative steps to remedy that usurpation of governing power.

Table 14

Finally, for completeness (while technically not a municipal ordinance but a proposal for the adoption of a Home Rule Charter), Table 15 shows how the Toledo Municipality CBR departs from the traditional provision found in all other CBRs and includes provisions recognising rights to a body of water, the Lake Erie. Hence, the CBRs (Home Rule charter proposal) passed by the municipality of Toledo awards rights of nature to a specific ecosystem: a body of water, specifically, a lake and its ecosystem, to which it grants personhood for the first time. In this case, they expand the rights-based strategy to apply to the whole Lake Erie ecosystem.⁷³²

⁷³² Lake Erie Bill of Rights Toledo Lucas County, OH-2017 (Lake Erie Bill of Rights, Charter of the City of Toledo, Ch. XVII, §§ 253-260).

[...] And since all power of governance is inherent in the people, we, the people of the City of Toledo, declare and enact this Lake Erie Bill of Rights, which establishes irrevocable rights for the Lake Erie Ecosystem to exist, flourish and naturally evolve, a right to a healthy environment for the residents of Toledo, and which elevates the rights of the community and its natural environment overpowers claimed by certain corporation

Section 1 – Statements of Law – A Community Bill of Rights

(a) Rights of Lake Erie Ecosystem. Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve. The Lake Erie Ecosystem shall include all-natural water features, communities of organisms, soil as well as terrestrial and aquatic sub-ecosystems that are part of Lake Erie and its watershed.

Table 15

I will further elaborate on these four arguments made by CELDF’s lawyers and included as provisions in the CBRs passed by municipalities with the help of CELDF later in the analysis.

The Evolution of the Language in the Community Bills of Rights

The CBRs function as a political manifesto, embodying a declaratory legislative exercise. This is evident through the preamble included in all CBRs, signifying municipalities' adoption of specific themes as a form of political positioning. These themes are not static but dynamic, evolving over time. The evolution is reflected in the changing provisions of the CBRs, indicating a shift in thought on various issues such as community rights, anti-corporatism, municipal autonomy versus state authority (particularly the concept of an inherent community right to local self-government), and environmentalism (specifically the recognition and granting of rights to nature).

In essence, CBRs articulate the values, beliefs, and priorities of the municipalities that enact them. Through their provisions and preamble, CBRs express a collective political stance on key issues like community rights, environmental protection, and local autonomy. By enshrining these principles into law, municipalities use CBRs to assert their political identity and advocate for specific policy objectives. Thus, CBRs not only serve as legal documents but also as symbolic statements of political ideology and intent.

As this political posturing has evolved overtime, in turn, the CBRs, which resemble a composite legal artifact, have changed, and evolved to better serve the newer political stances.

The first CBRs passed by municipalities with the help of CELDF initially only include arguments in favour of banning specific economic activities. I would argue that the first CBRs (passed in 1998) resembled closely zoning ordinances limiting the type of economic activist that could be conducted within the township borders.⁷³³

Then these arguments expand to include also specific anti-corporate arguments. The provisions stating that corporations did not possess legal personhood are included in the CBRs in response to legal challenges faced by some municipalities in the early 2000. In 2000 Rush Township, after passing a CBR with the help of CELDF, was then sued by the transnational hauler Synagro-WWT, Inc. because the CBR included provisions that were in direct conflict with state law and violated the company's constitutional right of due process.⁷³⁴ Therefore, successive CBRs started to include provisions arguing that the ability of corporations to take actions in the courts should be abolished along with all corporate charters.

Later, the CBRs include arguments about redefining the relationship of municipalities with the state and federal government in favour of decentralism –represented by the idea of an inalienable community right to local self-government. I will argue later in the analysis that this argument constitutes a typical example of the concept of decentralism.⁷³⁵ The fundamental assumption is that the governance process should not be in the hands of the state or the federal government (which colludes with the corporations and represent their best interests) but should be at community level (representing the family and the individual).⁷³⁶

Finally, starting from 2009, the CBRs also include environmental provisions. These environmental provisions are not the same in all CBRs but display a lot of variety depending on the political position taken by the local municipality on this topic. Some prefer to include measures that rest on traditional and well-established legal doctrines like the Doctrine of Public Trust; others prefer to ground their claims by reference to more novel legal doctrines such as

⁷³³ CELDF, *In U.S. First, Local Government Refuses to Recognize Corporate Claims to Civil Rights*, ★ Reclaim Democracy!, (Dec. 13, 2002), https://reclaimdemocracy.org/porter_township_ordinance/.

⁷³⁴ *Synagro-WWT, Inc. v. Rush Township*, 204 F. Supp. 2d 827(M.D. Pa. 2002). *Synagro-WWT, Inc. v. Rush Township*, 299 F. Supp. 2d 410 (M.D. Pa. 2003).

⁷³⁵ *Decentralization - Federalism in America*, <http://encyclopedia.federalism.org/index.php/Decentralization>.

⁷³⁶ *Id.*

the assertion and recognition of rights of nature either attached to a local natural ecosystem and conflated in the definition of local community or to a specific ecosystem.

From a Legal Perspective, What is a Community Bill of Rights?

I now turn to explore the features of the CBRs as a legislative instrument. By analysing its characteristics, it is possible to gain a deeper understanding of the role played by these bills in CELDF's activism and their broader significance in the pursuit of environmental justice. In this section, my original contribution to the analysis has been to dissect the CBRs passed by the municipalities and examine the structure and the wording present in each of the sections. The aim has been to retrace where CELDF's founders have found inspiration crafting these CBRs.

This analysis almost exclusively applies to municipalities because the CBRs passed by municipalities have the classic structure of a Bill of Rights. For example, CBRs of cities like Pittsburgh or Santa Monica are more akin to a Climate Bill of Rights.⁷³⁷ These municipal ordinances do not aim to establish community rights or have a say in what kind of economic developments are allowed in a city but only to declare that the city and its inhabitants have a right to healthy environment and a right to a sustainable economic development (although without going into any detail on how to achieve that).

The CBRs in the form of municipal ordinances promoted by CELDF is a composite legal artifact. In fact, from analysing the wording of these CBRs, I can see that it exhibits the structure and wording found in other more well-established legal instruments. Reading the CBRs (municipal ordinances), I can observe that the wording exhibits structures found in other more well-established legal instruments. These are: Anti-corporate farming ordinances, zoning ordinances, Bill of Rights.

In this section I will examine them one by one. First, I will provide an overview of each instrument by relying on the secondary literature. Then, I will show in tabular form their

⁷³⁷ On this primarily refer to the appendix, *see also*, Rights of Nature on the Santa Monica City Council Agenda, CELDF, <https://celdf.org/2013/03/rights-of-nature-on-the-santa-monica-city-council-agenda/>. Rights of Nature Principles, CELDF, <https://celdf.org/2021/08/rights-of-nature-principles/>. CELDF, Blog: U.S. Mayors Embrace Community Rights, Condemn Legalization of Corporate Violence, CELDF <https://celdf.org/2016/07/blog-u-s-mayors-embrace-community-rights-condemn-legalization-corporate-violence/>.

similarity with the CBRs (municipal ordinances) passed by counties and townships between 1999 and 2019.

The Community Bills of Rights: A Composite Legal Instrument

Reading the CBRs, I can observe that the wording exhibits structures found in other more well-established legal instruments. These are:

Anti-corporate farming ordinances. This is where their strong anti-corporate stance comes from.

Zoning ordinances. This is where the general structure of the municipal ordinances comes from. In fact, the planning structure, the adoption mechanisms, and the enforcing mechanisms strongly follow those of a zoning ordinance.

Bill of Rights. The section in the CBRs listing all the rights enjoyed by the local community follows the model of a legal charter. Just like a Bill of Rights this section lists all the rights enjoyed by the citizens of that community with the purpose of protecting those rights against infringement from the corporations or the state. CELDF has named this composite list of rights “community rights.” Some municipal ordinances include legal doctrines that employ a stewardship framework to articulate rights attributed to nature. These doctrines are integrated within the section, establishing a conceptual approach that emphasizes the responsible care and management of the local natural environment.

In this section I will examine them one by one. First, I will provide an overview of each instrument. Then, I will show in tabular form their similarity with the CBRs (municipal ordinances) passed by counties and townships between 1999 and 2019.

Anti-Corporate Farming Ordinances

Starting with the anti-corporate farming ordinances, their influence can be traced by reading the corpus of the municipal ordinances specifically in relation to three ideas that emerge from the arguments present in these CBRs (municipal ordinances). These are: anti-corporate stances, the idea of local democracy, and of local self-government.

What Thomas Linzey (CELDF's founder) has done to fight corporate power and to assert a community right to local self-government is tapping into an already established rich tradition of fighting corporate power using the law as a tool to limit corporate agency and reach.⁷³⁸

Thomas Linzey addressing the Shumacher Centre for a new economics admits it so himself when he mentions being inspired by Amendment E from South Dakota in his drawing of the ordinance, "Deprived of the pride of authorship we stole Amendment E from South Dakota's Constitution and brought it back to Pennsylvania."⁷³⁹

In fact, anti-corporate statutes are not a recent invention but find their roots back into the Middle Ages in the form of Mortmain Statutes.⁷⁴⁰ These statutes were enacted to limit the donation of land to religious and charitable corporations and prevent them from holding the donated land in perpetuity.⁷⁴¹ Example of these are the Provisions of Westminster and the Magna Carta.⁷⁴²

This Anglo-Saxon tradition while strongly present in the English common law system never quite took flight in the US legal tradition.⁷⁴³ Nevertheless, it has inspired certain states to enact laws restricting the amount of land a corporation could hold for a plethora of purposes among them for religious or charitable purposes.⁷⁴⁴

Therefore, this is where the anti-corporate farming ordinances find their historical purpose.⁷⁴⁵ In fact, states that, in the 1930s and 1970s, launched a movement (inspired by the earlier iteration of the agricultural movement) to fight corporate power on agricultural land have resumed this old legal tool to craft anti-corporate farming ordinances to fight corporate land

⁷³⁸ On this topic see, Stayton, *supra* note 623. Also, *What Are Anti-Corporate Farming Laws and Should I Be Concerned?*, Farm Commons, <http://farmcommons.org/pathway/what-are-anti-corporate-farming-laws-and-should-i-be-concerned/>.

⁷³⁹ CELDF, *In U.S. First, Local Government Refuses to Recognize Corporate Claims to Civil Rights*, ★ Reclaim Democracy!, (Dec. 13, 2002), https://reclaimdemocracy.org/porter_township_ordinance/. The South Dakota's Constitutional Amendment E was ruled unconstitutional on August 19, 2003, by the 8th Circuit Court of Appeals in St. Louis, MO. The appellate court found the law that South Dakota voters put in place in 1998 to be in violation of the Interstate Commerce Clause. *South Dakota Farm Bureau, Inc. v. Hazeltine* 340 F.3d 583 (8th Cir. 2003), *affg* 202 F. Supp. 2d 1020 (D. S.D. 2002).

⁷⁴⁰ Peter Karsten, *Heart Versus Head: Judge-Made Law in Nineteenth-Century America* (Univ Of North Carolina Press 1997).

⁷⁴¹ On this see, John R. Cunningham, *Mortmain Statutes: The Dead Hand Still Survives*, 27 IDAHO L. REV. 49 (1990–1991).

⁷⁴² *Id.*

⁷⁴³ *Id.*

⁷⁴⁴ Fred L. Morrison, *State Corporate Farm Legislation Symposium: Agricultural Law and Policy*, 7 U. TOL. L. REV. 961 (1975–1976).

⁷⁴⁵ *Id.*

acquisition and to protect family farmers from the intrusion of large corporations into agricultural production.⁷⁴⁶

To this day nine states have laws prohibiting corporate farms: Kansas, North Dakota, South Dakota, Minnesota, Iowa, Missouri, Wisconsin, Oklahoma, and Nebraska. These laws are quite wide ranging and address the problem of excessive corporate reach and corporate power in different ways.⁷⁴⁷ I will now show the nature of these laws by providing a quick excursus of the major themes present in them.

Some pose limitations to the type of work corporations can be engaged with.⁷⁴⁸ For instance, Kansas anti-corporate farming laws prohibit the formation of a corporation for certain types of animal husbandry.⁷⁴⁹

Others pose limitations to the establishment of corporations.⁷⁵⁰ For instance, Kentucky and Missouri prohibit corporate holdings of realty, except such as is proper and necessary for carrying on the corporation's legitimate business affairs, for longer than respectively five and fifteen years under penalty of escheat.⁷⁵¹ Oklahoma has a similar law declaring that no corporation may own land outside an incorporated city or village, except such as is necessary and proper for carrying on the business for which the corporation was formed.⁷⁵²

Others still pose limitations to the number of acreages a corporation can hold and control. For instance, Minnesota and Mississippi dictate that no corporation can own or cultivate more than 90,000 square feet of land and 12,500 acreages, respectively.⁷⁵³ Similarly, West Virginia states that a corporation's charter must disclose the number of acres of land to be held by it.⁷⁵⁴

This brief excursus of these anti-corporate farming ordinances shows that the anti-corporate farming ordinances are very prescriptive in nature.⁷⁵⁵ The nature and type of limitation of

⁷⁴⁶ *Id.*

⁷⁴⁷ On their effectiveness see for instance, Rick Welsh et al., *On the Effectiveness of State Anti-Corporate Farming Laws in the United States*, 26 FOOD POLICY 543 (Jan. 2001). Also, Stayton, *supra* note 623.

⁷⁴⁸ Rachel Armstrong, Erin Hannum, Laura Fisher and Lisa Schlessinger, *Farmer's Guide to Anti-Corporate Farming Laws*, Farm Commons (2015). <https://projects.sare.org/wp-content/uploads/Anti-Corp-Farming-Only-FINAL.pdf>.

⁷⁴⁹ *Id.*

⁷⁵⁰ *Id.*

⁷⁵¹ *Id.*

⁷⁵² *Id.*

⁷⁵³ *Id.*

⁷⁵⁴ *Id.*

⁷⁵⁵ Morrison, *supra* note 744.

corporate power is quantified in an exact way and circumscribed to several activities or quantified to a range of land to be owned.⁷⁵⁶

An exception to this is the South Dakota Constitutional Amendment E, see figure 8. The South Dakota Amendment follows thematically the anti-corporate farming ordinance that is already present in the South Dakota legislative corpus but goes much further, as far as banning all types of corporate agricultural and animal husbandry operations.⁷⁵⁷

Figure 8 also shows how Thomas Linzey has been inspired from these anti-corporate legislative instruments, and this becomes evident when reading the earliest CBRs (municipal ordinances). In fact, we can see that the earliest ordinances the Southampton Township Farm Ownership ordinance and the Wells Township Anti-Corporate Farming Community Bill of Rights (municipal ordinances) passed in Pennsylvania in 1999 by municipalities with the help of CELDF are almost a carbon copy of the South Dakota Constitutional Amendment E.

⁷⁵⁶ *Id.*

⁷⁵⁷ On this see, *Banning Corporate Ownership – South Dakota*, INSTITUTE FOR LOCAL SELF-RELIANCE, <https://ilsr.org/rule/corporate-ownership-limitations/2021-2/>. *South Dakota Prohibit Corporate Farming, Amendment E (1998)*, BALLOTPEDIA, [https://ballotpedia.org/South_Dakota_Prohibit_Corporate_Farming,_Amendment_E_\(1998\)](https://ballotpedia.org/South_Dakota_Prohibit_Corporate_Farming,_Amendment_E_(1998)). See also, Roger A. McEowen & Neil E. Harl, *South Dakota Amendment E Ruled Unconstitutional - Is There a Future for Legislative Involvement in Shaping the Structure of Agriculture?*, 37 CREIGHTON L. REV. 285 (2004).

South Dakota Legislative Research Council Issue Memorandum 98-17 CONSTITUTIONAL AMENDMENT E - CORPORATE FARMING	Southampton Township Farm Ownership Ordinance
Section 21. No corporation or syndicate may acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any real estate used for farming in this state, or engage in farming. The term, corporation, means any corporation organized under the laws of any state of the United States or any country. The term, syndicate, includes any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or any country. A syndicate does not include general partnerships, except general partnerships in which nonfamily farm syndicates or nonfamily farm corporations are partners. The term, farming, means the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or the ownership, keeping, or feeding of animals for the production of livestock or livestock products.	Section 4. Statement of Law. No corporation or syndicate may acquire, or otherwise obtain an interest, whether legal, beneficial, or otherwise, in any real estate used for farming in this Township, or engage in farming. The term "corporation" means any corporation organized under the laws of any state of the United States or any country. The term "syndicate" includes any limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state of the United States or any country. A syndicate does not include general partnerships, except general partnerships in which nonfamily farm syndicates or nonfamily farm corporations are partners. The term, "farming", means the cultivation of land for the production of agricultural crops, fruit, or other horticultural products, or the ownership, keeping, or feeding of animals for the production of livestock or livestock products.

Figure 8

Zoning Ordinances

Looking at the planning, adoption, and enforcement mechanism of the municipal ordinances these follow closely the template of a zoning ordinance.⁷⁵⁸

In fact, like a zoning ordinance they have the same organising structure via the creation of a local committee, the same method of approval via a ballot with a majority rule. They also have the same type of enforcement via a citizen suit provision –in the case of CELDF Community

⁷⁵⁸ On this see outcome of, *State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271, 37 N.E.3d 128, 2015 Ohio 485 (Ohio 2015). The courts have recognized CELDF Community Bills of Rights as zoning ordinances, exemplified by a case in 2015 in Athens County, Ohio. Here, a home rule charter was proposed to enhance local autonomy, with a specific focus on regulating the oil and gas industry and prohibiting fracking waste disposal within the county. Despite a petition, the Ohio Secretary of State initially invalidated the charter due to state law violations and the absence of an alternative government plan. Subsequently, a lawsuit allowed the charter on the ballot but stripped it of local content authority. Notably, the Ohio Supreme Court previously ruled against using local zoning to regulate fracking, showcasing the tension between state and local authorities regarding oil and gas activities within the framework of home rule. The Supreme Court's classification of local regulations related to oil and gas activities as zoning ordinances is pivotal, as it underscores the legal context in which local governments exercise their authority and fuels the ongoing debate over the efficacy of local zoning in regulating industries like oil and gas.

Bills of Rights the provisions –more controversially–attempt to confer “standing” on “residents” as an attempt to create an *Actio Popularis* –in fact, “[A] county board, shall have power to adopt by a majority vote of its membership a zoning resolution which shall have the force and effect of law.”⁷⁵⁹

Zoning ordinances are a regulatory mechanism by districts rooted in the state Police Powers and entrusted to local government by a statute. In other words, zoning regulations find their justification in the Police Powers exercised in the interest of public health, moral, safety, and general welfare. Moreover, zoning ordinances are the physical manifestation of the wishes of a local community that organise to decide their own local modalities of economic development and land use. Capturing the picture of zoning laws enacted in the US feels like crossing a minefield for there is a multitude of enabling laws that are not uniformly enacted across states.⁷⁶⁰

Looking at the total number of enabling laws that are in force, there are 175 different enabling laws in thirty-eight states.⁷⁶¹ This encompasses all kind of zoning not just rural zoning, which is what is relevant to this research since the CBRs primarily aim at regulating economic development of natural resources and land zone use. More than 100 of these acts apply to counties, 50 to towns or townships, and 23 to miscellaneous governmental units. Enabling laws per state range in number from one each in 15 states to thirty-nine in Connecticut.⁷⁶² For the purpose of this research, there is one useful table that help establish the picture produced in 1972.⁷⁶³

Figures 9 and 10 show how, juxtaposing my maps of the CBRs with that made by Solberg & Pfister of enabling laws in 1972 [the red coloured areas are those states where CBRs (municipal ordinances) have been passed] it emerges that the states where zoning laws are allowed at both

⁷⁵⁹ Donald R. Witt, *Model Rural Zoning Enabling Act*, 44 NEB. L. REV. 180 (1965), p. 180.

⁷⁶⁰ Currently, the primary national data sources available for studying local governments in the largest metropolitan areas are limited. These sources include two surveys conducted in 1994 and 2003, which specifically focus on local government practices. In addition, there is a regulatory index compiled from a 2007 survey of local governments. Moreover, attempts have been made to estimate zoning data through court decisions or construction costs in recent papers. However, it is important to note that access to these data varies, with some being publicly accessible while others are not. Furthermore, each of these sources provides distinct insights into zoning or land-use regulations, but they may pertain to different specific time periods. On this issue see the article written by MacDonald *et al.* Graham MacDonald, Solomon Greene, Emma Nechamkin, Graham MacDonald, Solomon Greene, Emma Nechamkin, *We Need Better Zoning Data to Address Pressing Housing and Development Issues*, Urban Institute, (Jan. 15, 2019), <https://www.urban.org/urban-wire/we-need-better-zoning-data-address-pressing-housing-and-development-issues>. For this reason, for this analysis I have mostly relied on the scholarly work of Solberg & Pfister. Solberg & Pfister, *supra* note 49.

⁷⁶¹ Solberg & Pfister, *supra* note 49.

⁷⁶² *Id.*

⁷⁶³ *Id.* (I am relying on the table of Solberg & Pfister)

county and township level –Pennsylvania *in primis*– are also those with the highest activity passing CBRs (municipal ordinances). This is a quite important discovery, and I will come back to that more in depth later in this analysis in the section where I will outline CELDF’s claims and in the conclusion.

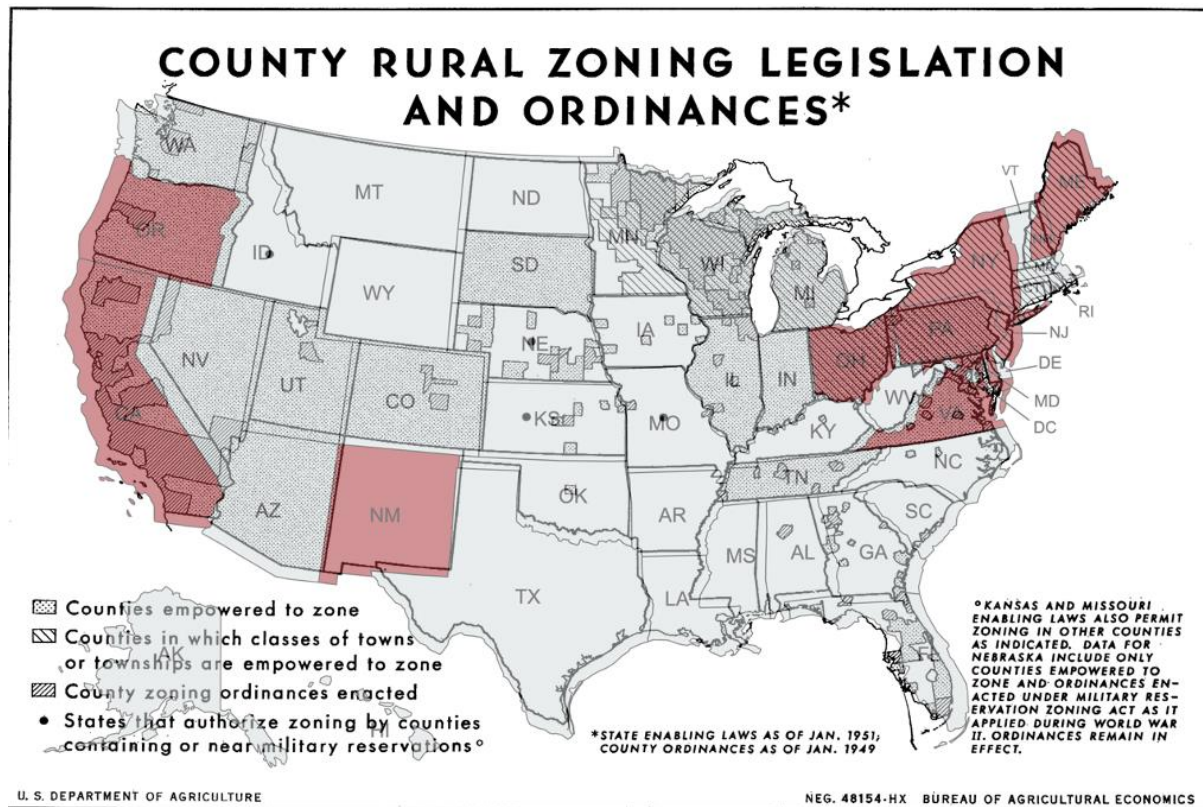


Figure 9

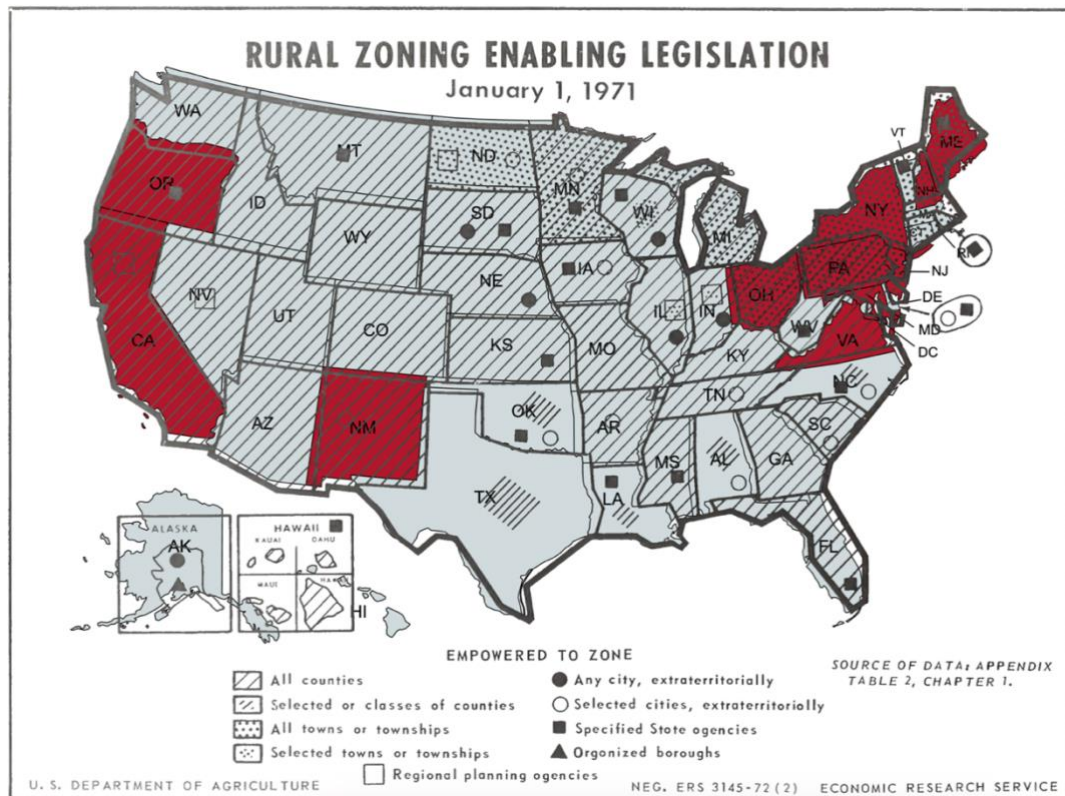


Figure 10

Another important consideration to keep in mind is the fact that the zoning ordinances are rooted in the Police Powers of the state.⁷⁶⁴ The key word here is Police Powers of the state and in the conclusion of this section and more so in the next sections –specifically the one discussing CELDF’s claims–, I will explain why.

Zoning amendments are legally defensible and quite successful; however, their biggest disadvantage is that they can be easily abrogated.⁷⁶⁵ This is because zoning systems are just policy statements of the current township board of supervisors.⁷⁶⁶ Hence, any change to the board of supervisors or in the political climate of the municipality can see the zoning ordinance at best quite substantially weakened in its integrity even by changing the zone of a single lot, or in the worst of case scenario abrogated.⁷⁶⁷

⁷⁶⁴ Joseph Schilling & Leslie S. Linton, *The Public Health Roots of Zoning: In Search of Active Living’s Legal Genealogy*, 28 AMERICAN JOURNAL OF PREVENTIVE MEDICINE 96 (Jan. 2005).

⁷⁶⁵ David Kruft, *Agricultural Zoning*, the Agricultural Law Resource and Reference Center the Dickinson School of Law of the Pennsylvania State University.
https://pennstatelaw.psu.edu/_file/aglaw/Agricultural_Zoning.pdf.

⁷⁶⁶ *Id.*

⁷⁶⁷ *Id.*

Bill of Rights

The section of a CBR (municipal ordinance) that enumerates all the rights that the community feels need to be secured takes the form of a Bill of Rights. The Bill of Rights is made up of a standard list of rights that have been inspired by the work of Thomas Berry, Christopher Stone, and Cormac Cullinan.⁷⁶⁸

The purpose of the section is partly to secure the rights of the local community and partly to advocate for the adoption of a right based framework for the protection of natural resources. Also, the section aims to reinforce the idea of resources held and used by corporations but part of a community trust owned by citizens.

Nested in this section are, in some CBRs, legal doctrines invoking a stewardship model for the articulation of the rights of nature, whereby the agency of nature in law is represented through a steward, or a chosen few. These legal doctrines are: Public Trust and the awarding of legal personhood to specific ecosystems or nature.⁷⁶⁹

Some ordinances include elements of Public Trust. The Public Trust Doctrine is a legal doctrine dealing with the protection of certain resources for public purposes, regardless of ownership.⁷⁷⁰ These resources must be made available to the public, regardless of whether they are under public or private control. That is, they are held in trust for the public.⁷⁷¹

The Roman law of *jus gentium* later evolved in the Public Trust Doctrine which established that the air, the water, the sea, and its shores are common resources held in Public Trust.⁷⁷² This principle later was incorporated in the English common law system and later the US common law system which distinguishes between, “Private property capable of being owned by individuals and certain common resources that the monarch holds in inalienable trust for present and future generations.”⁷⁷³

⁷⁶⁸ For an introduction on the work of these authors see, Berry, *supra* note 66. Berry, *supra* note 70. Stone, *supra* note 70. And, Stone, *supra* note 62. Cullinan, *supra* note 18. And, Cullinan, *supra* note 153.

⁷⁶⁹ For an introduction see, Ryan, *supra* note 140.

⁷⁷⁰ Ryan, *supra* note 140.

⁷⁷¹ Kurki, *supra* note 107, p. 32.

⁷⁷² *Id.*, p. 32.

⁷⁷³ John Studley, *Indigenous Sacred Natural Sites and Spiritual Governance* (Routledge 2018), p. 83.

Other municipal ordinances instead of the Public Trust Doctrine or in addition to it award a right of personhood nature or to natural communities. Consequently, the earth ecosystems are labelled “Nature” and are regarded as having “intrinsic and sacred value.”⁷⁷⁴

From this analysis some conclusions can be drawn.

Why has CELDF Created This Type of Legal Instrument?

My research indicates that CELDF has forged an ad hoc legal tool to address a set of specific concerns: asserts local self-government, limit corporate power and corporate influence, reassert a community right to the local natural resources.

To do so CELDF has discarded more traditional legal instruments that would not have helped address all these concerns. In fact, traditional zoning ordinances would have been a more straightforward legal route to determine local economic development and land zone use at county and municipal level.⁷⁷⁵ Likewise, traditional anti-corporate farming ordinances would have helped limit local corporate influence in economic development.⁷⁷⁶

Moreover, while some Public Trust provisions are evidenced in some townships and municipalities in the US their presence is quite circumscribed and limited only to riparian ecosystems.⁷⁷⁷ Public trust provisions would not have awarded rights of nature, award right to people in respect to nature, or protect the expansive list of composite rights the CBR want to protect. Among these rights are, **workers’ rights**, right to a sustainable livelihood or to fair compensation; and **democratic rights**, like the right to local community self-government to local democracy and to local political representation.

In my view, the most important provisions—those related to limit corporate influence in local economic development, those related to the creation, adoption, and enforcement of the CBRs (municipal ordinances) come from traditional anti-corporate farming ordinances and zoning ordinances. The rest of the CBRs takes the form of a Bill of Rights listing all the of the most important rights to the local citizens of a municipality or a county with the purpose is to protect

⁷⁷⁴ Ryan, *supra* note 140.

⁷⁷⁵ Witt, *supra* note 766.

⁷⁷⁶ Stayton, *supra* note 623.

⁷⁷⁷ Ryan, *supra* note 140.

those rights against state or corporate infringement. These composite rights are defined by CELDF as “community rights.”⁷⁷⁸

Provisions awarding rights of nature or to “natural communities” have emerged much later, in 2016, and do not possess a position of relevance in the CBRs (municipal ordinances), but rather are absorbed into the Bill of Rights section of the municipal ordinances along with all other community rights enjoyed by the local citizens.⁷⁷⁹ Therefore, these CBRs can be seen as being a strong statement from municipalities asserting their position against corporate power and their requests of local self-government.

In other words, what effectively CELDF has done was to make an *ad hoc* legal instrument choosing the legal provisions present in other legal tools that most suited its objectives while discarding those provisions that did not.

Furthermore, choosing these three legal instruments has not been a casual choice at all. In fact, Thomas Linzey (CELDf’s founder) has chosen these legal instruments for specific reasons which I will explain now.

The South Dakota Amendment E is a revisiting, in the form of an outright ban of all types of corporate agriculture and animal husbandry, of the more traditional anti-corporate farming ordinances which traditionally were very prescriptive in what kind of corporate influence they sought to limit.⁷⁸⁰

Zoning ordinances play a critical role in shaping the physical and functional characteristics of communities.⁷⁸¹ They help manage growth, protect property values, and balance the competing interests of property owners and the broader community.⁷⁸² Local governments often review and update zoning ordinances to adapt to changing needs and development patterns.⁷⁸³ Zoning ordinances are closely related to the concept of Police Powers, which is a fundamental authority granted to governments, particularly at the local level, to regulate and promote the health, safety, and general welfare of the community.⁷⁸⁴ In my view, CELDF—in choosing the structure of a zoning ordinance in its CBRs— is demonstrating how communities could express their

⁷⁷⁸ On this topic see, CELDF’s Ongoing Commitment to Expanding Community Rights, CELDF, <https://celdf.org/2022/02/celdfs-ongoing-commitment-to-expanding-community-rights/>.

⁷⁷⁹ On this see, Lake Erie Bill of Rights Toledo Lucas County, OH-2017 (Lake Erie Bill of Rights, Charter of the City of Toledo, Ch. XVII, §§ 253-260).

⁷⁸⁰ McEowen & Harl, *supra* note 764.

⁷⁸¹ Witt, *supra* note 766.

⁷⁸² *Id.*

⁷⁸³ *Id.*

⁷⁸⁴ Schilling & Linton, *supra* note 771.

Police Power if granted to them. In fact, CELDF expressly with its CBRs proposes two things. Firstly, to award Police Powers to the municipalities. On this CELDF argues that the municipalities, as integral components of the democratic fabric, should possess inherent Police Powers that enables them to regulate and govern in the best interests of their communities.⁷⁸⁵ This inherent authority would empower local governments to make decisions autonomously, free from the need for state-mandated grants of power.⁷⁸⁶ Secondly, to redefine Police Powers (which have been traditionally seen as) a residual and enumerated formulation of power of the local government on matters of public health, safety, welfare, and morals –the *Lochner* Doctrine–, to a rights-based doctrine based on a community right to local self-government.⁷⁸⁷

The legal instruments encompassing Mortmain Statutes, anti-corporate farming ordinances, and Public Trust provisions converge on the principle that local resources should be under the ownership and control of the local community rather than corporations.⁷⁸⁸ Referencing these legal instruments in the CBRs signals that the central objective of these CBRs, when manifested as municipal ordinances, primarily revolves around asserting and upholding a fundamental community right.

To conclude, once the CBRs (municipal ordinances) are dissected it starts to become clear that these ordinances are addressing several longstanding issues: the relationship between the municipalities and the state, and the long history of fighting corporate rights in the US.

Thematic Analysis

Having done an analysis of the Community Bills of Rights (CBRs) vertically, horizontally, and textual –I now present the themes that have emerged. At a macro level, when scrutinizing the language of the CBRs, these themes follow a consistent pattern of rights declaration and the prohibition of certain economic activities. Simultaneously, CBRs aim to challenge and negate the concept of corporate personhood. For a detailed list of all ordinances and their themes see the appendix.

⁷⁸⁵ On this see, Miller, *supra* note 636.

⁷⁸⁶ *Id.*

⁷⁸⁷ *Id.*

⁷⁸⁸ On these types of legislation see, Cunningham, *supra* note 748. Ryan, *supra* note 140. Stayton, *supra* note 623.

Regarding the prohibitions found in municipal ordinances, they fall into two categories: the first category prohibits specific economic activities within the local municipality, while the second category directly targets corporations engaged in these economic activities. Concerning the first type of prohibition, certain ordinances target specific economic activities. Notably, the CBRs prohibits fossil fuel extraction and associated businesses, including fossil fuel pipelines, oil, and coal trains, frack sand mining, and gravel extraction. Furthermore, CBRs also forbid various other economic activities, such as mining, high voltage power lines, toxic trespass, aerial pesticide spraying on forests and farmland, GMO agriculture, factory farms, water withdrawal for bottling, sewage sludge dumping, the transport, use, and discharge of toxic substances, as well as the hauling or disposal of specific toxic waste materials. Turning to the second type of prohibition, CBRs restrict corporations from engaging in farming or land ownership, corporate land development, and corporate retailing businesses. They also bar corporations with a history of legal violations from conducting business within the local municipality. Moreover, all CBRs reject the concept of corporate personhood. They strip corporations of this status and explicitly ban the corporate use of eminent domain. Across all CBRs, a strong anti-corporate discourse prevails, along with a consistent tendency to curtail the legal authority of corporations in court proceedings.

When examining the types of rights that CBRs seek to establish, they can be categorized into three macro groups:

The first of the three macro-groups centres on the recognition of a community's right to local self-government and self-determination. CBRs implicitly seek to redefine municipalities as communities entitled to community rights. CELDF argues for the universal applicability of community rights, emphasizing the urgent need to establish communitarian democratic authority and decentralize decision-making to the municipalities. This shift, as advocated by CELDF, would prioritize the protection of local communities under the law and elevate the role of law in safeguarding their interests.

Connected to this point, CELDF also advocates for the recognition of independent political and legislative powers for municipalities, effectively asking for an acknowledgment of popular sovereignty. Because CELDF envisions municipalities as communities, this independent power should be seen as a recognition of popular sovereignty. While not explicitly mentioned in the CBRs themselves, these powers become evident when examining the provisions within

CBRs aimed at regulating the economy in the public interest. One such provision delineates the collective use of resources by local citizens, managed for the community's best interests. Another identifies economic activities that harm the local environment or infringe upon local worker's rights, thus violating the community's right to determine their own economic development and land use modalities.

Moreover –although not explicitly stated in the CBRs themselves– CELDF in the published materials, trace the concept of community self-government back to the antebellum period. They argue that their demand for local self-government aligns with the historical idea of self-determination, where municipalities enjoyed independence in governance without interference from state or federal authorities. This perspective advocates for the reassignment of legal primacy to protect local communities and limit corporate influence.

The second and third of the macro-groups are the recognition of a standard list of rights and the recognition of the right for nonviolent direct action. Regarding the first, the CBRs establish an extensive list of rights for the community, spanning environmental rights (e.g., rights of Nature and clean water), political rights (e.g., accountable police force, fair elections), and economic rights (e.g., sustainable economy, infrastructure, and energy). Regarding the second, the CBRs secure the right to nonviolent direct action as a legal enforcement tool, provide sanctuary from state and federal violations of established rights, and ensure fair taxation for corporations not banned from their respective territories.

In conclusion, the CBRs serve as a political manifesto, symbolizing the municipalities and CELDF's specific jurisprudential and political ideals. The municipalities with CELDF as conduit employ the law symbolically to advocate for the recognition of these rights and to achieve their political objectives. In the next sections of this chapter, I will delve deeper into their claims to gain a better understanding of their activist movement.

Legal Analysis

This section presents an analysis of the challenges encountered by municipalities that have enacted CBRs. It delves into the substantive claims raised in lawsuits against these local legislative initiatives and evaluates their potential impact on the wider community rights movement. Since the inception of the first CBRs in 1998, legal challenges rooted in allegations

of state law violations have been mounted against these municipal ordinances, often with the guidance of the CELDF.⁷⁸⁹

It is important to note that while this section provides an analysis of some of the challenges faced by municipalities that have enacted CBRs, it is not intended to serve as a comprehensive evaluation. The dataset presented here only includes a selection of key challenges, as tracking every legal case has proven challenging.

Nevertheless, the scope of this analysis is to shed light on the core areas where legal challenges against CBRs predominantly arise. These key areas encompass violations of state law, conflicts with higher levels of government regulations, constitutional arguments, and the rejection of corporate personhood. By delving into these dimensions, I try to offer a view of the intricate legal landscape surrounding CBRs and their far-reaching implications for the broader community rights movement.

Table 16 shows some of the legal challenges faced by those municipalities that have passed Community Bills of Rights with the aid of CELDF to give a flavour of the challenges encountered by the Community Bills of Rights (this is not a comprehensive list, the challenges listed are only those discussed in this section –for a longer list refer to the appendix [a comprehensive list has not been possible due to challenges in retrieving the information, see introductory section]–). Legal challenges to the legitimacy of these CBRs were initiated by corporations against the municipalities. Notably, the community organizations that initially introduced and endorsed these CBRs were not directly involved as parties in these lawsuits. The cases in Colorado were brought before state courts, while the remaining cases were filed at the federal level. The legal disputes exhibited differences in terms of their intricacy, level of conflict, and duration, primarily due to non-parties attempting to intervene in certain cases and the initiation of additional legal actions.

The subsequent arguments presented in this section will make references to the table. Nevertheless, owing to the consistent legal arguments encountered in the challenges against the CBRs, when necessary, one illustrative example (from the list of CBRs presented in the

⁷⁸⁹ On this see, *Synagro-WWT, Inc. v. Rush Township*, 299 F. Supp. 2d 410 (M.D. Pa. 2003).

table) will be provided for each of the core areas where legal disputes involving CBRs primarily emerge.

COURT PREEMPTION –THE LAWSUITS					
Colorado					
CBRs (municipal ordinances)	Case	Claimants	Defendants	Case description	Main arguments
City of Lafayette, Climate Bill of Rights, Lafayette, Boulder County, CO - 3/21/2017	<i>Colorado Oil & Gas Assoc. v. City of Lafayette</i> (Dist. Ct., Boulder Cnty. 2014)	Colorado Oil and Gas Association.	City of Lafayette.	The City of Lafayette had enacted a Community Bill of Rights ordinance that aimed to restrict or ban hydraulic fracturing and drilling for oil and gas within its jurisdiction. The city argued that it had the authority to regulate such activities to protect its environment and public health. In contrast, the Colorado Oil & Gas Association contended that state law preempted the city's regulations. They asserted that the Colorado Oil and Gas Conservation Act and the regulations established by the state's oil and gas regulatory	Preempted by state and federal laws governing these activities.

				agency (COGCC) took precedence over local regulations. COGA argued that the city's regulations were invalid due to state preemption. The central issue in the case was whether the City of Lafayette had the legal authority to regulate oil and gas activities within its boundaries or if such authority was preempted by state law. Ultimately, the court ruled in favor of COGA, emphasizing that state law preempts local regulations in this context. This decision reaffirmed the state's primary role in regulating oil and gas activities within Colorado, limiting the authority of municipalities to impose their own restrictions.	
New Mexico					

CBRs (municipal ordinances)	Case	Claimants	Defendants	Case description	Main arguments
Mora County, Community Water Rights and Local Self-Government Ordinance, Mora County NM - 4/29/2013. .	<i>SWEPI, LP v. Mora County</i> , 81 F. Supp. 3d 1075 (D.N.M. 2015).	Swepi, LP.	Mora County Board of County Commissioners et al.	This case involved a dispute between SWEPI, LP, a subsidiary of Royal Dutch Shell, and Mora County, a county in New Mexico, over the county's attempt to regulate hydraulic fracturing (fracking) and oil and gas development within its jurisdiction. The case revolved around Mora County's Ordinance No. 21, which sought to ban hydraulic fracturing, the extraction of oil and gas, and the disposal of waste associated with such activities within the county. SWEPI, LP challenged the ordinance in court, arguing that it was preempted by state and federal law and that it	Preempted by state and federal laws governing these activities. The county's attempt exceeded its legal authority and contradicted existing legal frameworks. The ordinance violated the Supremacy Clause, asserting federal and state laws' authority over municipal ordinances. The ordinance was deemed overbroad, particularly infringing upon First Amendment property rights. The ordinance's provisions and the New Mexico Oil and

				violated the company's constitutional rights. The central legal issues in this case included whether Mora County had the authority to regulate oil and gas activities within its boundaries and whether the county's ordinance was in violation of higher-level legal frameworks. It also involved a discussion of constitutional questions related to property rights and due process..	Gas Act, which granted regulatory authority to the state's Oil Conservation Commission and Oil Conservation Division are in conflict. Mora County does not have “A community right to local self-government” The unconstitutional elements of the ordinance cannot be separated from the rest of its provisions.
Ohio					
CBRs (municipal ordinances)	Case	Claimants	Defendants	Case description	Main arguments
Lake Erie, Bill of Rights, Toledo Lucas County, OH- 2017	<i>Drewes Farms P'ship v. City of Toledo</i> , 441 F. Supp. 3d 551 (N.D. Ohio 2020).	Drewes Farms Partnership, and State of Ohio.	City of Toledo.	The case revolved around a dispute between Drewes Farms Partnership and the City of Toledo, Ohio, regarding the "Lake Erie Bill of Rights" ordinance.	The ordinance was void for vagueness under the Due Process Clause

	& Order Invalidating Lake Erie Bill of Rights. <i>Drewes Farms P'ship v. City of Toledo</i>, 441 F. Supp. 3d 551 (N.D. Ohio 2020).			This municipal ordinances, passed by the city, aimed to bestow legal rights upon Lake Erie and its ecosystem, enabling citizens to bring lawsuits on behalf of the lake if they believed its rights were infringed. The central issue in this case was the constitutionality and enforceability of a municipal ordinance that sought to grant legal rights to natural entities like a body of water. Drewes Farms Partnership contended that the ordinance was unconstitutional and unenforceable, alleging that it violated the Due Process Clause of the Fourteenth Amendment.	The ordinance violated the Fourteenth Amendment's Due Process Clause The ordinance's unconstitutional phrases were not severable from the rest of the provision. Lack of legal standing nature or ecosystems, making it unsuitable for asserting legal claims, as standing traditionally requires human or corporate entities. Preempted by State and Federal Law. The ordinance is vague and overly broad, potentially leading to legal conflicts due

					to its lack of clarity in defining prohibited actions.
Pennsylvania					
CBRs (municipal ordinances)	Case	Claimants	Defendants	Case description	Main arguments
Grant Township, Community Bill of Rights Ordinance Grant Township, Indiana County, PA - 6/1/2014	<i>Pa. Gen. Energy Co. v. Grant Twp.</i> , C.A.No. 1:14-cv-209 (W.D. Pa. Mar. 31, 2019). <i>Pa. Gen. Energy Co. v. Grant Twp.</i> , C.A. No. 14-208, (W.D.Pa.). (Memorandum Opinion, filed March 3, 2017).	Pennsylvania General Energy Company, LLC.	Grant Township.	Pennsylvania General Energy Company, LLC, an oil and gas company, initiated legal proceedings to challenge the constitutionality, validity, and enforceability of a township ordinance that aimed to establish a Community Bill of Rights. The company sought declaratory and injunctive relief. In response, the township filed a counterclaim, contending that the company's challenge to the ordinance constituted a violation of the inalienable rights of the township's residents.	The ordinance was pre-empted in part. Statements that the ordinance - would trump Pennsylvania law when there was a conflict between state and local law was pre-empted. - Would divest corporations of their rights as persons was pre-empted. - Asserted that violators of the ordinance would not possess any other

	& <i>Pa. Gen. Energy Co. v. Grant Twp. E. Run Hellbenders Soc'y Inc.</i>, 658 F. App'x 37 (3d Cir. 2016).				legal rights, including power to assert state or federal pre-emption in an attempt to overturn ordinance, was pre-empted. The natural ecosystem of the local municipality cannot be a party in the lawsuit

Violation of State Law

Private individuals, including corporations, are empowered by state laws to challenge municipal ordinances.⁷⁹⁰ One of the primary substantive claims against Community Bills of Rights (CBRs) is that certain provisions exceed, duplicate, or conflict with state laws regulating specific industries. Corporations argue that CBRs are preempted by state law and seek injunctions to invalidate them for exceeding local authority. Privately enforceable state laws allow corporations to challenge local laws that impose stricter provisions or duplicate and conflict with state laws.⁷⁹¹ Moreover, these state laws preclude municipalities from passing legislation mandating stricter environmental standards or banning certain types of industries.⁷⁹² State laws setting a ceiling on the types of provisions that can be included in local legislative proposals are adopted either by state legislatures or by Congress.⁷⁹³ Among these, the most prolific form of state laws constituting a form of ceiling preemption usually regulates farm operations and oil and gas extraction.⁷⁹⁴

Exceeding Municipal Powers

Proponents of CBRs –CELDF and the municipalities– assert that local communities possess an inherent right to safeguard their well-being and assert their autonomy.⁷⁹⁵ Their argument hinges on the idea that CBRs are a vehicle for local self-determination, affording communities the means to address specific concerns that existing regulations inadequately accommodate.⁷⁹⁶

The inception of this legal debate can be traced back to 1999, when five townships with the aid of CELDF across two counties adopted a CBR (municipal ordinance).⁷⁹⁷ This initiative took a direct stance against state law by categorically prohibiting corporations from engaging in

⁷⁹⁰ E.g., *Colorado Oil & Gas Assoc. v. City of Lafayette*, (Dist. Ct., Boulder Cnty. 2014).

⁷⁹¹ On this topic see, James T. O'Reilly, *Federal Preemption of State and Local Law: Legislation, Regulation, and Litigation* (American Bar Association 2006).

⁷⁹² *Id.*

⁷⁹³ *Id.*

⁷⁹⁴ *Id.*

⁷⁹⁵ On this see for instance, Thomas Linzey, Elizabeth Dunne, Daniel E. Brannen Jr., *The People's Right to Local Community Self-Government: Grant Township V. Pennsylvania General Energy Company* (Lulu 2015).

⁷⁹⁶ *Id.*

⁷⁹⁷ CELDF, *In U.S. First, Local Government Refuses to Recognize Corporate Claims to Civil Rights*, ★ Reclaim Democracy!, (Dec. 13, 2002), https://reclaimdemocracy.org/porter_township_ordinance/.

farming activities or acquiring farmland. Therefore, a common thread among these CBRs is their prohibition of various economic activities carried out by corporations within the local area. In essence, the CBRs curtail a wide array of economic activities linked to specific corporations operating within the locality. Some even go as far as to impose restrictions on corporate ownership of farmland or other natural resources within the municipality.

Hence, another substantial claim that surfaces in the legal discourse is the contention that municipalities have transgressed their authorized powers conferred by the state.⁷⁹⁸ The crux of this argument asserts that these municipalities have ventured beyond their prescribed scope by enacting CBRs that impose sweeping bans on specific economic activities or curtail corporate ownership of farmland and natural resources.⁷⁹⁹ Such provisions, according to legal authorities, delve into domains that have traditionally been within the purview of state or federal regulations, thus transcending the sphere of local governance.⁸⁰⁰

Regarding these first two points, violation of state law, and exceeding municipal powers, the case of *Colorado Oil & Gas Assoc. v. City of Lafayette* is a useful example.⁸⁰¹ The Colorado Oil and Gas Association (COGA) brought a legal challenge against the City of Lafayette, Colorado, regarding the adoption of Ballot Measure 300, commonly referred to as the “Charter Amendment.”⁸⁰² This amendment, added to the Lafayette City Charter, sought to prohibit all oil and gas extraction activities within the city's jurisdiction.⁸⁰³

COGA's primary argument in this case was that the Charter Amendment was pre-empted by the Colorado Oil and Gas Conservation Act (COGCCA), a state law governing oil and gas activities.⁸⁰⁴ COGA contended that the COGCCA took precedence over the local Charter Amendment, asserting that the state's regulatory framework for resource development and conservation superseded any conflicting municipal ordinances.⁸⁰⁵

⁷⁹⁸ On this topic see, Richard Briffault, *Home Rule for the Twenty-First Century*, 36 THE URBAN LAWYER 253 (American Bar Association 2004).

⁷⁹⁹ On this see for instance the case of order granting motion for summary judgment *Colorado Oil & Gas Assoc. v. City of Lafayette* (Dist. Ct., Boulder Cnty. 2014). I will use this case later in this sub-section to demonstrate the arguments I am presenting.

⁸⁰⁰ Order granting motion for summary judgment *Colorado Oil & Gas Assoc. v. City of Lafayette* (Dist. Ct., Boulder Cnty. 2014).

⁸⁰¹ *Id.*

⁸⁰² *Id.*

⁸⁰³ *Id.*

⁸⁰⁴ *Id.*

⁸⁰⁵ *Id.*

The court's ruling favoured COGA's position.⁸⁰⁶ It emphasized that the Charter Amendment's outright ban on oil and gas drilling conflicted with the COGCCA's objectives, which aimed to promote responsible and balanced development while preventing waste in resource extraction.⁸⁰⁷ The court underscored the importance of legislative intent as articulated in the COGCCA.⁸⁰⁸

As a result of the court's decision, the Charter Amendment was invalidated and deemed unenforceable.⁸⁰⁹ This ruling set a legal precedent, reaffirming the supremacy of state law over municipal ordinances in oil and gas regulation matters.⁸¹⁰ The court's issuance of a permanent injunction against the Charter Amendment further ensured that the city could not proceed with implementing its drilling ban.⁸¹¹

Recognition of Community Self-Government

CBRs often feature provisions that explicitly acknowledge the recognition of the right to local self-government within both the State constitution and the federal constitutional framework. In essence, these provisions underscore the customary foundational role of community self-government in the US system of constitutional law in the antebellum era.⁸¹²

Furthermore, proponents of CBRs put forth the argument that, by virtue of the right to local self-government, any legislation enacted by the local municipality holds precedence over state and federal laws.⁸¹³ In simpler terms, CBRs assert that the right to self-governance takes precedence over established norms of federal supremacy and preemption.⁸¹⁴ This stance challenges conventional notions of local government subordination to state authorities, as outlined in Dillon's Rule.⁸¹⁵

⁸⁰⁶ *Id.*

⁸⁰⁷ *Id.*

⁸⁰⁸ *Id.*

⁸⁰⁹ *Id.*

⁸¹⁰ *Id.*

⁸¹¹ *Id.*

⁸¹² On this topic see, Novak, *supra* note 631.

⁸¹³ Linzey et al., *supra* note 795.

⁸¹⁴ *Id.*

⁸¹⁵ Briffault, *supra* note 798.

As a result of this perspective, proponents contend that CBRs should be recognized as valid exercises of the right to self-government, effectively constituting an exercise of Police Powers within the framework of local governance.⁸¹⁶ This assertion reflects their belief in the primacy of local decision-making in matters that directly impact the community's well-being and values.⁸¹⁷

However, courts have rejected arguments based on customary rules from the antebellum era, reiterating that municipalities only possess powers given expressly by the state.⁸¹⁸ The courts assert that municipalities do not have the authority to exercise Police Powers or override constitutional rights conferred upon corporations by the US Supreme Court (I will show the following sections of this chapter).⁸¹⁹ Further to this the courts reiterate that the municipalities have only those powers which are considered indispensable to their local administrative purposes plus some others which are given expressly by the State.⁸²⁰ The powers awarded to the municipalities are restricted to a range of subjects and do not include the possibility to exercise Police Powers.⁸²¹

The courts' rejection of arguments based on customary rules from the antebellum era is rooted in the principle of legal positivism, which emphasizes that the law derives its authority from written sources, such as statutes and constitutions, rather than from longstanding customs or traditions.⁸²² Under this principle, the powers and limitations of municipalities are determined by state law and constitutional provisions, rather than historical practices or community sentiment.⁸²³

Moreover, the courts have emphasized that municipalities are subordinate to state and federal law, particularly when it comes to matters of constitutional rights.⁸²⁴ The US Supreme Court has consistently recognised certain constitutional protections for corporations, such as the

⁸¹⁶ Linzey et al., *supra* note 795.

⁸¹⁷ *Id.*

⁸¹⁸ On this see for instance the case of *Swepi LP vs. Mora County*. I will use this case later on in this sub-section to demonstrate the arguments I am presenting. *SWEPI, LP v. Mora County*, 81 F. Supp. 3d 1075.

⁸¹⁹ *Id.*

⁸²⁰ *Id.*

⁸²¹ Briffault, *supra* note 798.

⁸²² Leslie Green & Thomas Adams, *Legal Positivism*, The Stanford Encyclopaedia of Philosophy (Edward N. Zalta ed., Metaphysics Research Lab, Stanford University Winter 2019 ed. 2019). <https://plato.stanford.edu/entries/legal-positivism/>.

⁸²³ *Id.*

⁸²⁴ *SWEPI, LP v. Mora County*, 81 F. Supp. 3d 1075.

rights to free speech, due process, and equal protection under the law.⁸²⁵ These constitutional rights are deemed fundamental and cannot be overridden by local legislation.⁸²⁶

While CBRs may assert that local self-government should prevail over corporate rights conferred by the Supreme Court, courts have consistently rejected this argument.⁸²⁷ They maintain that municipalities lack the authority to disregard or nullify constitutional rights, regardless of the level of support within the community.⁸²⁸

For example, in cases where CBRs have attempted to curtail corporate rights, particularly those established by the Supreme Court's interpretation of the Constitution, courts have invalidated or modified these provisions.⁸²⁹ The court's rationale is grounded in the supremacy of federal law and the constitutional framework that establishes fundamental rights and protections for individuals and corporations alike.⁸³⁰

First Amendment Concerns

Certain provisions within CBRs have faced legal challenges rooted in the First Amendment, asserting that these provisions encroach upon the freedom of speech and commercial expression.⁸³¹ This claim stems from the contention that the language employed in CBRs tends to be vague and that the provisions possess the potential for overbreadth.⁸³² Such overreach could encompass constitutionally protected forms of expression and consequently create significant barriers to the exercise of First Amendment rights.⁸³³

Moreover, courts have expressed apprehensions regarding the chilling effect that these provisions can exert on the exercise of both individuals' and businesses' First Amendment rights.⁸³⁴ The primary concern revolves around the prospect of ordinances criminalizing forms of expression that are constitutionally protected or imposing disproportionately severe

⁸²⁵ *Id.*

⁸²⁶ *Id.*

⁸²⁷ *Id.*

⁸²⁸ *Id.*

⁸²⁹ *Id.*

⁸³⁰ *Id.*

⁸³¹ *Id.*

⁸³² *Id.*

⁸³³ *Id.*

⁸³⁴ *Id.*

penalties.⁸³⁵ This, in turn, raises the spectre of self-censorship driven by the apprehension of punitive consequences.⁸³⁶

Furthermore, courts have duly recognized that the imposition of severe penalties in cases of CBR violations can significantly deter individuals and businesses from exercising their First Amendment rights.⁸³⁷ The fear of potential reprisals or punitive measures acts as a deterrent, stifling free speech and the freedom of commercial expression.⁸³⁸

In response to these concerns, courts underscore the importance of enacting narrowly tailored restrictions.⁸³⁹ Such restrictions should be explicitly designed to directly advance compelling governmental interests while meticulously respecting the fundamental tenets of free speech and commercial expression.⁸⁴⁰ This delicate balance is essential to safeguarding individual rights while allowing local governments to pursue legitimate objectives.⁸⁴¹

On these two points, infringing on First Amendment rights and the validity that the municipalities have an inherent right of local self-government, the case of *SWEPI, LP v. Mora County* is a useful example.⁸⁴² Mora County Community Bill of Rights (CBR) faced a federal court challenge initiated by SWEPI (It used to be called Shell Western E&P Inc.), a Shell Oil Corporation that held a drilling permit from the State of New Mexico for operations within Mora County.⁸⁴³ SWEPI filed a lawsuit against the county and its three commissioners, asserting a range of constitutional and state claims.⁸⁴⁴ Subsequently, SWEPI sought a judgment on the pleadings.⁸⁴⁵ In the context of its constitutional claims, which were grounded in the federal Civil Rights Act, SWEPI contended, among other arguments, that Ordinance 2013-01 ran afoul of the Supremacy Clause, violated its Substantive Due Process rights, and encroached upon its rights under the Equal Protection Clause and the First Amendment.⁸⁴⁶

⁸³⁵ *Id.*

⁸³⁶ *Id.*

⁸³⁷ *Id.*

⁸³⁸ *Id.*

⁸³⁹ *Id.*

⁸⁴⁰ *Id.*

⁸⁴¹ *Id.*

⁸⁴² *Id.*

⁸⁴³ *Id.*

⁸⁴⁴ *Id.*

⁸⁴⁵ *Id.*

⁸⁴⁶ *Id.*

Mora County, on the other hand, mounted a defence asserting, among other points, that its law was rationally based and crucial for the protection of public health and safety.⁸⁴⁷ Additionally, Mora County argued that the right to self-government, encompassing the authority to adopt the ordinance, was vested in the county's residents, drawing support from the Declaration of Independence and the Treaty of Guadalupe Hidalgo.⁸⁴⁸

The opinion of the federal district court judge ultimately ruled that the ordinance impinged on SWEPI's civil rights by conflicting with both the Supremacy Clause and First Amendment guarantees.⁸⁴⁹ Concerning the discord between Mora County's law and federal law, the court asserted the following,

The Supreme Court has unequivocally established that corporations qualify as 'persons' under the Equal Protection Clause, thus entitled to its safeguards. The Supreme Court has similarly recognized that corporations possess First Amendment rights. The Ordinance, in stark contradiction to the Constitution and established Supreme Court precedent, proclaims that corporations found in violation of, or seeking to contravene, the Ordinance forfeit their First and Fifth Amendment rights. In this regard, Mora County lacks the jurisdiction to negate constitutionally conferred rights.⁸⁵⁰

The court addressed the argument made by the defendants, contending that Mora County residents possessed the right to pass the municipal ordinance, including provisions that stripped corporations of their constitutional rights.⁸⁵¹ They cited the Declaration of Independence and the Treaty of Guadalupe Hidalgo as supporting these rights.⁸⁵² However, the court dismissed this argument, asserting that the defendants' interpretation was flawed,⁸⁵³

The Defendants argue that Mora County residents' right to self-government provides them with the right to pass the Ordinance, including the provisions stripping corporations of their constitutional rights (...) They argue that the

⁸⁴⁷ *Id.*

⁸⁴⁸ *Id.*

⁸⁴⁹ *Id.*

⁸⁵⁰ *Id.* at 1172-1173.

⁸⁵¹ *Id.*

⁸⁵² *Id.*

⁸⁵³ *Id.*

Declaration of Independence and the Treaty of Guadalupe Hidalgo provide, or at least recognize, these rights (...) The Defendants are, however, mistaken.⁸⁵⁴

Given that these prohibitions constituted the core of the municipal ordinance, the court chose not to sever them from the remaining provisions, resulting in the nullification of the entire ordinance.⁸⁵⁵

Rejection of Corporate Personhood

The provisions within CBRs aimed at revoking corporate personhood and eliminating corporate limited liability have encountered substantial legal challenges. CELDF and the municipalities critique the legal recognition of corporate personhood arguing that it grants corporations excessive rights and privileges, enabling them to wield significant influence in political and economic spheres.⁸⁵⁶ In response to these concerns, some CBRs have included provisions seeking to nullify or restrict corporate personhood, treating corporations as entities devoid of legal rights and subjecting them to more stringent regulations.

Nevertheless, these provisions have faced legal opposition primarily based on the Supremacy Clause of the US Constitution (Art. 6 §2).⁸⁵⁷ The Supremacy Clause establishes that federal law takes precedence over conflicting state and local laws.⁸⁵⁸

The courts have consistently found these provisions to be in violation of the Supremacy Clause of the US Constitution.⁸⁵⁹ This clause establishes that municipalities cannot enact municipal ordinances that directly contradict established legal precedents.⁸⁶⁰ Consequently, the provisions found in the CBRs (municipal ordinances) that aim to strip corporations of personhood are deemed invalid.

The concept of corporate personhood, which bestows certain legal rights and protections upon corporations, has been affirmed and upheld by the US Supreme Court in several landmark

⁸⁵⁴ *Id.* at 1172-1173.

⁸⁵⁵ *Id.*

⁸⁵⁶ On this *see*, Linzey et al., *supra* note 795.

⁸⁵⁷ Cyd Oldham & Kailyn Champlin, *Supremacy Clause - Definition, Examples, Cases*, Legal Dictionary (Mar. 13, 2016), <https://legaldictionary.net/supremacy-clause/>.

⁸⁵⁸ *Id.*

⁸⁵⁹ *Pa. Gen. Energy Co. v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015).

⁸⁶⁰ Oldham & Champlin, *supra* note 857.

cases.⁸⁶¹ The Court's decisions have affirmed that corporations, as legal entities, are entitled to specific constitutional protections, including freedom of speech and due process.⁸⁶² These rulings have firmly established corporate personhood as a fundamental aspect of US jurisprudence.⁸⁶³ Provisions that seek to nullify corporate personhood and limited liability are viewed as conflicting with the constitutional rights bestowed upon corporations by the US Supreme Court.⁸⁶⁴ The courts have stated that municipalities do not possess the authority to annul or disregard these constitutional rights.⁸⁶⁵

The CBRs attempt to abolish corporate personhood and strip corporations of their legal rights, courts consistently rule against such provisions. The CBRs provisions seeking to negate corporate personhood may undermine the functioning of the economy and commercial activities. Corporate limited liability, for instance, is a legal concept that shields shareholders from personal liability for the debts and obligations of the corporation.⁸⁶⁶ It is regarded as a crucial aspect of corporate law that encourages investment and entrepreneurship.⁸⁶⁷ Therefore, abolishing limited liability would discourage business activities and hinder economic growth.⁸⁶⁸

The courts emphasize that municipalities lack the authority to override or nullify the constitutional rights conferred upon corporations by the Supreme Court.⁸⁶⁹ The recognition of corporate personhood, as established by legal precedent, is considered a matter of federal law, and municipal ordinances cannot unilaterally undermine or disregard these constitutional principles.⁸⁷⁰ The court's opinion specifically states that, “The Township does not have the

⁸⁶¹ Susanna K. Ripken, *Corporations Are People Too: A Multi-Dimensional Approach to the Corporate Personhood Puzzle*, 15 FORDHAM J. CORP. & FIN. L. 97 (2009–2010).

⁸⁶² *Id.*

⁸⁶³ *Id.*

⁸⁶⁴ *Id.*

⁸⁶⁵ On this *see for instance* the case of *Pennsylvania General Energy Co. v. Grant Township*. I will use this case later on in this sub-section to demonstrate the arguments I am presenting. *Pa. Gen. Energy Co. v. Grant Twp.*, C.A. No. 14-208, (W.D.Pa.). (Memorandum Opinion, filed March 3, 2017).

⁸⁶⁶ On this topic *see*, Gordon Smith & Cynthia A. Williams, *Business Organizations: Cases, Problems, and Case Studies* (Aspen Publishing Sep. 2018).

⁸⁶⁷ *Id.*

⁸⁶⁸ *Id.*

⁸⁶⁹ *Pa. Gen. Energy Co. v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015). *See also*, *Pa. Gen. Energy Co. v. Grant Twp.*, C.A. No. 14-208, (W.D.Pa.). (Memorandum Opinion, filed March 3, 2017).

⁸⁷⁰ *Id.*

legal authority to annul constitutional rights conferred upon corporations by the US Supreme Court.”⁸⁷¹

In light of these legal arguments, courts consistently rule that CBRs provisions attempting to strip corporations of legal personhood and abolish limited liability are invalid. The Supremacy Clause of the US Constitution, combined with the recognition of corporate personhood by the Supreme Court, establishes a clear framework within which municipalities cannot unilaterally alter or disregard these established legal principles.

An example of this is the case of *Pennsylvania General Energy Co. v. Grant Township* where a legal dispute arose after Grant Township approved a CBR in June 2014.⁸⁷² This municipal ordinance or CBR prompted Pennsylvania General Energy Company (PGE) to file a lawsuit against Grant Township, alleging that it violated the corporation's constitutional rights, particularly its corporate personhood.⁸⁷³

PGE's primary argument centred on the violation of the Equal Protection Clause of the US Constitution, contending that the municipal ordinance or CBR treated corporations differently from natural persons regarding oil and gas activities within the township.⁸⁷⁴ Magistrate Judge Susan Baxter, in an October 2015 ruling, determined that the municipal ordinance, designed to safeguard the rights of nature, fundamentally infringed upon corporate constitutional rights.⁸⁷⁵ She emphasized that oil and gas development, including waste management, constituted a legitimate business activity within Pennsylvania.⁸⁷⁶

Regarding PGE's First Amendment claims, Judge Baxter stated: “The court upheld PGE's First Amendment claims, rooted in the Petition Clause, as the ordinance appeared to prohibit PGE from seeking legal remedies for violations of its federal civil rights and from asserting that the township's charter provision was preempted by state law.”⁸⁷⁷

Additionally, concerning the Substantive Due Process claim, she explained,

⁸⁷¹ *Id.*

⁸⁷² *Id.*

⁸⁷³ *Id.*

⁸⁷⁴ *Id.* 25-27.

⁸⁷⁵ *Id.* at 20.

⁸⁷⁶ *Id.* at 29-31.

⁸⁷⁷ *Id.* at 31.

The court also supported PGE's Substantive Due Process claim, asserting that Due Process safeguards individuals from arbitrary or irrational legislation. To assess whether Grant Township's Ordinance was irrational and arbitrary, the court examined not only the ordinance's language but also statements made by the township, or its representatives found in the record. These statements, including one by a township attorney, asserted that a community bill of rights aimed to prioritize inalienable rights over other laws, calling for constitutional changes at state and national levels to recognize and enforce the right to community local self-government, free from state preemption and corporate interference(...). The court noted that these facts, among others, demonstrated irrational and arbitrary behavior that contradicted existing law and diverted from the original intent of the Ordinance.⁸⁷⁸

Nature and Ecosystem Rights

Many CBRs encompass provisions pertaining to the recognition of specific rights tied to the local natural ecosystem, effectively integrating them into the definition of the local community. Other provisions within these bills safeguard the local environment by referencing the Doctrine of Public Trust or by granting personhood status to a particular ecosystem. It is worth noting that most court decisions have refrained from addressing this specific issue, with a couple of exceptions that stand out:

The first instance is evident in the case of *Pa. Gen. Energy Co. v. Grant Twp. E. Run Hellbenders Soc'y Inc.* when the court addressed a legal dispute involving Pennsylvania General Energy Company (PGE) and Grant Township, with the East Run Hellbenders Society as an intervening party.⁸⁷⁹ PGE challenged the constitutionality and legality of Grant Township's CBR (municipal ordinance), which sought to restrict corporate activities related to oil and gas extraction within the township.⁸⁸⁰ Specifically, the case questioned whether the natural ecosystem of the local municipality could be considered a party in the lawsuit, as it

⁸⁷⁸ *Pa. Gen. Energy Co. v. Grant Twp.*, C.A. No. 14-208, (W.D.Pa.). (Memorandum Opinion, p.31 (filed March 3, 2017)).

⁸⁷⁹ *Pa. Gen. Energy Co. v. Grant Twp. E. Run Hellbenders Soc'y Inc.*, 658 F. App'x 37 (3d Cir. 2016).

⁸⁸⁰ *Id.*

lacked legal personhood.⁸⁸¹ The court issued an opinion asserting that the natural ecosystem of the local municipality cannot be a party in the lawsuit.⁸⁸² This conclusion is based on the requirement that a party involved in a lawsuit must possess legal personhood.⁸⁸³ The court's reasoning in this case was articulated as follows:

The plain language of Rule 17 does not permit an ecosystem, such as the Little Mahoning Watershed, to initiate or become a party in a lawsuit, and for this reason alone, we have reservations about including the Watershed as a party in this legal action. However, as this particular matter was not pursued further on appeal and considering the non-precedential nature of this opinion, no specific ruling was made on the matter.⁸⁸⁴

Notably, another significant case unfolded after the adoption of the Lake Erie Bill of Rights (LEBOR).⁸⁸⁵ Drewes Farms Partnership responded promptly, initiating a legal challenge in federal court.⁸⁸⁶ Their challenge revolved around the constitutionality of LEBOR and questioned Toledo's authority to enact it.⁸⁸⁷ Drewes Farms, a farming enterprise spanning five generations, emphasized the critical role of crop fertilization in their operations and asserted their adherence to all relevant legal standards, industry best practices, and scientific recommendations for runoff reduction.⁸⁸⁸

Their lawsuit featured a total of five constitutional claims, alleging violations of civil rights anchored in the First, Fifth, and Fourteenth Amendments.⁸⁸⁹ Significantly, the complaint also incorporated various preemption claims, one of which highlighted the international and multi-

⁸⁸¹ *Id.*

⁸⁸² *Id.*

⁸⁸³ *Id.*

⁸⁸⁴ *Id.* Note 2, p. 2. *See also, Id.* at 41. ("As to the watershed participating as a party, the appellate panel said, "We will refer to the Appellants in the plural throughout this opinion, but we are, at best, dubitante [stet], because we are not convinced that the Little Mahoning Watershed is a proper party (...) The plain language of Rule 17 does not permit an ecosystem (...) 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 (...) we make no specific holding on the question.")

⁸⁸⁵ Lake Erie Bill of Rights Toledo Lucas County, OH-2017 (Lake Erie Bill of Rights, Charter of the City of Toledo, Ch. XVII, §§ 253-260).

⁸⁸⁶ *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020).

⁸⁸⁷ *Id.*

⁸⁸⁸ *Id.*

⁸⁸⁹ *Id.*

state regulation of Lake Erie.⁸⁹⁰ The argument here was that local law should not be applicable within this intricate jurisdictional framework.⁸⁹¹

However, what set Drewes Farms' legal challenge apart from cases involving Mora County and Grant Township was their invocation of the Fifth and Fourteenth Amendments.⁸⁹² These amendments prohibit the enforcement of laws so vague that they fail to provide clear notice of punishable conduct or open the door to arbitrary and discriminatory enforcement. Drewes Farms contended:

The Fifth Amendment prevents the enforcement of criminal laws that are excessively vague, leaving ordinary individuals without clear notice of punishable actions or encouraging discretionary and inconsistent enforcement. LEBOR is constitutionally vague as it lacks specificity regarding actions that could potentially interfere with the asserted rights of Lake Erie and the Lake Erie watershed to 'exist, flourish, and naturally evolve.'⁸⁹³

In January 2020, the district court conducted hearings on Drewes Farms' motion for judgment based on pleadings. Subsequently, on March 3, 2020, the federal district court released its "Order Invalidating Lake Erie Bill of Rights." In this order, the court elaborated:

The Fourteenth Amendment of the United States Constitution safeguards the right to due process, with a crucial element being legal clarity. Laws that are excessively vague, compelling individuals of ordinary understanding to speculate about their meaning, are deemed unconstitutional. Such laws fail to provide fair notice to the innocent and create the risk of arbitrary enforcement by legal authorities. The environmental rights established in LEBOR, even under lenient standards, fall short of the requisite clarity and are therefore deemed void for vagueness.⁸⁹⁴

⁸⁹⁰ *Id.*

⁸⁹¹ *Id.*

⁸⁹² *Id.*

⁸⁹³ *Id.* paras. 68, 71-72. *See, Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

⁸⁹⁴ Order Invalidating Lake Erie Bill of Rights. *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020), paras. 556.

To conclude, in response to legal challenges, CELDF and municipalities have adapted their approach and modified the language of their model CBRs. They have included provisions emphasizing the supremacy of local law and stripping corporations of legal personhood to prevent challenges. However, such adaptations have been seen as political posturing, and some courts have referred CELDF lawyers to disciplinary action for filing what they consider to be frivolous lawsuits.

The lawyers of the Community Environmental Legal Defense Fund (CELDF) have responded to these lawsuits by counselling municipalities to include increasingly explicit provisions stating the community's right to local self-government, the abolition of corporate personhood, and the primacy of municipal law over state and federal law.⁸⁹⁵

The founder of the Community Environmental Legal Defense Fund (CELDF) argues that existing state and federal regulations fall short in their effectiveness, stating, “What we've worked on for the past 15 years is actually creating a legal argument that says the city does have that authority, and the city authority can override the state permit. And that's still a radical notion in legal circles.”⁸⁹⁶

These adaptations are aimed at addressing the specific concerns raised in the legal challenges and strengthening the legal standing of CBRs. Therefore, the strategic goal of these lawsuits, although not the ultimate goal, is to prompt the court to examine the constitutional issues stemming from the systemic violation of community rights.

One common adaptation involves emphasizing the supremacy of local law over state and federal law. By asserting the primacy of local legislation, proponents of the CBRs seek to establish that the rights and protections granted at the local level cannot be overridden or preempted by higher levels of government. This approach aims to provide a solid legal foundation for CBRs and protect them from challenges based on conflicts with state or federal laws. For example, municipalities started passing CBRs, including specific provisions about how they would trump state law if there was a conflict between state and local law.

⁸⁹⁵ *Legal Services*, CELDF, <https://celdf.org/legal-services/>.

⁸⁹⁶ Linzey & Brannen Jr, *supra* note 503.

Another adaptation involves provisions that strip corporations of legal personhood. By removing the legal recognition of corporations as persons, proponents of CBRs aim to level the playing field and prevent corporations from asserting constitutional rights that could undermine the community's ability to govern itself. This adaptation challenges the concept of corporate personhood, which has been recognized by the US Supreme Court and grants the corporation certain constitutional rights. For example, municipalities started to include provisions that stripped corporations of legal personhood so that they would not have the faculty to challenge the CBRs (municipal ordinances).

However, these adaptations have not been without controversy for such modifications seem like merely political posturing and attempts to circumvent the legal challenges rather than addressing the substantive concerns raised. They view these adaptations as tactics that may not hold up in court or provide effective long-term solutions.

In some cases, courts have not looked favourably upon these adaptations. Some judges have expressed scepticism about the modified language of CBRs and have imposed legal consequences for the defendants.⁸⁹⁷ These consequences have included sanctions and court orders to compensate the parties they sued, with allegations of “harassment,” “unrestrained obstruction,” and presenting “baseless claims and defences” in their legal arguments.⁸⁹⁸ Also, in one specific instance, CELDF lawyers have been referred to disciplinary action for what they consider to be filing frivolous lawsuits.⁸⁹⁹

Specifically, in January 2018, US Magistrate Judge Susan Paradise Baxter issued a ruling in the US District Court for the Western District of Pennsylvania.⁹⁰⁰ The ruling involved sanctions against two attorneys associated with CELDF. These attorneys were penalized for advancing what the court deemed “discredited” arguments based on community rights in opposition to

⁸⁹⁷ *On this see*, Valdmanis, *supra* note 560.

⁸⁹⁸ *Id.*

⁸⁹⁹ Winston et al., *Environmental Attorneys Sanctioned for “Frivolous” Litigation Efforts*, Lexology, (Jan. 29 2018) <https://www.lexology.com/library/detail.aspx?g=0fbf1e9b-4f70-4e95-84c5-f48413bed480>.

⁹⁰⁰ *Pa. Gen. Energy Co. v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015). *See also*, *Pa. Gen. Energy Co. v. Grant Twp.*, C.A. No. 14-208, (W.D.Pa.). (Memorandum Opinion, filed March 3, 2017).

the issuance of an injection well permit by the United States Environmental Protection Agency (USEPA).⁹⁰¹

Pennsylvania General Energy Company, LLC (PGE), a private oil and gas exploration and development firm, had received a permit from USEPA in 2014 to convert a gas well in Grant Township into an injection well.⁹⁰² CELDF had assisted Grant Township in adopting a CBR that effectively prohibited corporations from depositing waste from oil and gas extraction within the township.⁹⁰³ It also invalidated any permits or authorities issued by state or federal entities that conflicted with this prohibition.⁹⁰⁴ The court noted that CELDF had supported similar “local control” efforts in other municipalities aimed at giving them the power to ban fracking and preempt state and federal laws.⁹⁰⁵ However, such municipal ordinances had consistently been declared unconstitutional in court.⁹⁰⁶

PGE initiated legal action challenging the constitutionality and validity of the CBR, and during the litigation, it sought sanctions against CELDF's attorneys for their alleged pursuit of frivolous and unfounded legal claims, which they believed were meant to harass and increase litigation costs.⁹⁰⁷ The court agreed with PGE, stating that CELDF's attorneys had acted in bad faith and without well-intentioned zeal.⁹⁰⁸ The court highlighted that CELDF had repeatedly raised identical arguments in prior cases, even though these arguments had consistently failed in various jurisdictions.⁹⁰⁹ As a result of the sanctions, the two CELDF attorneys were collectively fined \$52,000.⁹¹⁰ Furthermore, CELDF's Executive Director, Thomas Linzey, was referred to the Disciplinary Board of the Supreme Court of Pennsylvania for potential further disciplinary action.⁹¹¹

This suggests that courts may view the modifications as insufficient or lacking in legal merit, raising questions about the effectiveness of these adaptations in withstanding legal scrutiny.

⁹⁰¹ Winston et al., *supra* note 899.

⁹⁰² *Pa. Gen. Energy Co. v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015).

⁹⁰³ *Id.*

⁹⁰⁴ *Id.*

⁹⁰⁵ *Id.* at 25-27

⁹⁰⁶ *Id.*

⁹⁰⁷ *Id.*

⁹⁰⁸ *Id.* at 20

⁹⁰⁹ *Id.* at 31

⁹¹⁰ *Id.* at 24-25. *See also*, Winston et al., *supra* note 899.

⁹¹¹ *Id.* at 24-25. *See also*, Winston et al., *supra* note 899.

Moreover, lower court judges are less likely to consider constitutional issues if they can find a non-constitutional reason for striking down the law.⁹¹² Thus, if a law can be invalidated based on its conflict with state law, lower courts are less inclined to explore the constitutional issues raised by a local law challenging state law violations of rights.⁹¹³

It is not just courts that are against this type of legislative activity, States have enacted hyper-preemption laws imposing penalties or civil liability on municipalities with the aim of curbing the proliferation of the CBR.⁹¹⁴ An example of this is the Pennsylvania Right to Farm laws (Act 38, ACRE).⁹¹⁵

In the year 2000, Buffington Township concerned about the environmental impacts and potential health hazards associated with the practice of depositing sewage sludge within their community, the township took proactive measures to safeguard its residents and the local environment.⁹¹⁶ To address this concern, Buffington Township, with the assistance of the CELDF, enacted a CBR. This CBR was designed to assert the community's right to determine its own environmental and health standards, effectively banning agribusiness corporations from depositing sewage sludge within the township's boundaries.⁹¹⁷

What makes the case particularly significant is the subsequent response at the state level. In response to Buffington Township's actions and similar municipal ordinances that aimed to exert greater control over certain industries or practices, the Pennsylvania legislature chose to

⁹¹² On this topic *see for instance*, Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (Wolters Kluwer Jun. 2019).

⁹¹³ *Id.*

⁹¹⁴ *For example*, The Pennsylvania Senate has approved Act 38 ACRE. An act that curtails township authority over corporate factory farms and sewage sludge land application. Local Senator Terry Punt co-sponsored and supported the act. This act expands Pennsylvania's "Right to Farm" Law, preventing municipalities from imposing restrictions on agricultural operations through municipal ordinances. Moreover, it empowers factory farm corporations to sue and seek attorney fee recovery from townships adopting such ordinances. *ACRE/Pennsylvania Act 38*, PENN STATE LAW | UNIVERSITY PARK, PA., <https://pennstatelaw.psu.edu/academics/research-centers/agricultural-law/resource-areas/acrepennsylvania-act-38>. The Act was passed in direct response of the proliferation of Community Bills of Rights *see*, CELDF - The Community Environmental Legal Defense Fund, CELDF <https://web.archive.org/web/20030505115349/http://www.celdf.org:80/press.asp?iStatus=view&pid=3>.

⁹¹⁵ Act 38, *supra* note 914.

⁹¹⁶ Buffington Township Bans Corporations from Dumping Sewage Sludge, Buffington Township, Indiana County, PA - 2000.

⁹¹⁷ On the Community Bill of Right and the issue it is trying to address *see*, Angela Malek, *Sludge Debate Probably Headed To Court*, TribLIVE.com, (May 14, 2012) <https://archive.triblive.com/news/sludge-debate-probably-headed-to-court/>.

amend the Right to Farm laws, leading to the emergence of Act 38, ACRE (Agriculture, Communities and Rural Environment).⁹¹⁸

Act 38, ACRE introduced changes to the legal landscape by curtailing both township authority over corporate factory farms and sewage sludge land application, and the extent to which municipalities could control corporate activities in the agricultural sector using municipal ordinances.⁹¹⁹ It was an illustration of the state asserting its authority to set limits on the reach of municipal ordinances, particularly when it came to industries deemed critical to the state's economy or interests.⁹²⁰

Despite the challenges and varying responses, the legal battles surrounding CBRs have sparked important conversations about the balance of power between local communities and corporate interests. They have also shed light on the broader issue of corporate influence in the legal system and the need for communities to assert their rights and self-governance in the face of external pressures.

Ultimately, the response and adaptation of CELDF and municipalities to legal challenges are ongoing processes that reflect the evolving nature of the community rights movement. As the movement continues to gain traction and gather support, further refinements and adaptations are likely to be made to strengthen the legal standing and effectiveness of CBRs. These ongoing efforts highlight the determination of municipalities to assert their rights and shape their own destinies, even in the face of legal obstacles and criticism.

CONCLUSION

The examination of CBRs from 1998 to 2019 offers a view of their evolution, strategic implementation, and the legal challenges they face. CBRs, as local legislative tools, have been pivotal in asserting community sovereignty and addressing issues related to environmental protection, corporate influence, and self-governance.

⁹¹⁸ CELDF - *The Community Environmental Legal Defense Fund*, <https://web.archive.org/web/20030505115349/http://www.celdf.org:80/press.asp?iStatus=view&pid=3>.

⁹¹⁹ For a list of the legal challenges encountered by the Community Bills of Rights *see*, ACRE – Agriculture, Communities and Rural Environment, Pennsylvania Office of Attorney General, <https://www.attorneygeneral.gov/resources/acre/>. *See also*, Act 38, *supra* note 914.

⁹²⁰ Pennsylvania Office of Attorney General on challenges to ACRE, *supra* note 919.

The vertical analysis reveals a distinct geographic distribution of CBRs, with notable concentrations in Pennsylvania and varying levels of activity across other states. This regional disparity is influenced by factors such as legal frameworks, local governance structures, and CELDF's grassroots activism. The horizontal analysis underscores a fluctuating trend in CBR adoption, marked by peaks and declines, and highlights CELDF's adaptive strategies, including transitioning from municipal ordinances to more robust Home Rule charters and state constitutional amendments.

The textual analysis demonstrates how CBRs have evolved from focusing primarily on regulating economic activities to encompassing broader issues such as rights of nature and community self-governance. This evolution reflects a strategic shift towards addressing systemic challenges and advocating for more comprehensive local control and environmental protection.

Legally, CBRs face significant hurdles, particularly concerning preemption by state laws, challenges to corporate personhood, and recognition of ecosystem rights. The resistance from state legislatures, exemplified by Pennsylvania's Act 38, ACRE, illustrates the contentious interplay between local autonomy and state interests. Despite these challenges, CELDF and local communities have shown resilience and adaptability by refining their legal strategies and advocating for broader constitutional changes to bolster the efficacy of CBRs.

In summary, CBRs embody a multifaceted approach to local governance, reflecting a broader movement for democratic empowerment and environmental stewardship. The strategic evolution of CBRs, coupled with ongoing legal and political challenges, underscores the dynamic nature of this grassroots effort. As communities continue to navigate these complexities, the enduring commitment to asserting local rights and challenging corporate dominance remains a central theme in the pursuit of a more equitable and sustainable future.

CHAPTER FOUR

Unveiling Patterns and Trends: Analysis of the Community Bills of Rights (1998-2019) -Part II

INTRODUCTION

In this second part I examine the claims made by the CELDF movement which the municipalities have adopted. It engages in a dialogue between the municipalities' activism and the legal, historical, political, and jurisprudential foundations of community rights, anti-corporatism, state-municipal relationships, and environmental rights within the US.

Overall, the third and fourth chapters examine CELDF's legislative activism through an analysis of its legal instrument –the CBRs– shedding light on the intersection between the municipalities' strategy and theories of legal advocacy in the US. The chapter concludes by summarizing the findings and considering how the municipalities activism and its employed legal tools fit within the historical context of activism in the US. The discussion frames the municipalities and the CELDF as a radical grassroots movement advocating for a community right to local self-government rather than solely an environmental rights movement.

These chapters contribute to the existing scholarly literature on legal environmental movements by expanding on the intersection between the strategy CELDF fosters to the municipalities and theories of legal advocacy in the US through an analysis of its legal instrument: The CBRs. It sheds light on the intersection between CELDF's strategy and theories of legal advocacy in the US.

The research prompts the conclusion that that the legislative activism of the municipalities, specifically through the CBRs, serves as a political tactic that taps into themes of anti-corporatism, small government, and assertions of local democracy. Although ostensibly repurposed for environmentalism, these tactics have their roots in a conservative ideology and mindset. This finding highlights the complex political dynamics behind the municipalities' activism and provides insights into the broader historical context of activism in the US.

Furthermore, the discussion challenges the perception of the municipalities and CELDF solely as an environmental rights movement by framing it as a radical grassroots movement advocating for the recognition of Police Powers for municipalities, and for a redefinition of Police Powers towards a rights-based doctrine that includes the community right to local self-government. This perspective deepens the understanding of objectives pursued by the municipalities and CELDF and its broader implications for legal advocacy and governance structures in the US.

AN EXAMINATION OF THE CLAIMS FOUND IN COMMUNITY BILLS OF RIGHTS

Premise

A common law framework for distributing the Police Power of the State between it and the municipalities includes three important policy considerations that shape their relationship.⁹²¹

- ***The certainty principle*** or how the state and local relationship is defined. Ideally it should be in unambiguous terms with a clear set of responsibilities to allow for a smooth and efficient operation of the state and local machinery.⁹²²
- ***The supremacy principle*** or the ability for the state to retain ultimate control over municipal affairs to ensure uniform lawmaking and policymaking.⁹²³
- ***The governmental role*** or the ability for municipalities to address all the problems that are not or cannot be solved by the state legislature.⁹²⁴

Part of this relationship is also defined by the sovereignty principle.⁹²⁵ While state sovereignty is quite a thin concept in the modern constitutional order, courts still tend to refer to the interest of the sovereign state when considering federalist challenges.⁹²⁶ This does not happen at the local level since local sovereignty cannot be found in any sphere that regulates the relationship between the state and the municipalities.⁹²⁷

⁹²¹ On this topic see *for instance*, David J. Mc Carthy, Local Government Law in a Nutshell (West Publishing Company 1995).

⁹²² *Id.*

⁹²³ *Id.*

⁹²⁴ *Id.*

⁹²⁵ *Id.*

⁹²⁶ *Id.*

⁹²⁷ *Id.*

This happens because local governments are creatures of state law, the authority of local governments is limited to the powers enumerated in state constitutions and law and the authority is quite limited.⁹²⁸ Moreover, the Constitution of the United States (US) does not provide any substantive protections for local policymaking.⁹²⁹

As can be evidenced with the work of CELDF and their Community Bills of Rights (CBRs), it is becoming quite fashionable for municipalities to vocally request the possibility for some type of local sovereignty to address local issues and to legislate on local matters.

On this, Professor Paul Diller has argued that local governments may be more suited to experimentation than state governments because there are fewer “veto gates” opportunities for lobbyist to block policy experiments.⁹³⁰ For example, unlike state legislatures which are almost all bicameral, local government experimentation can be put in place with the vote of the city council.⁹³¹

Justice Brandeis discussed how sub-federal jurisdictions can be seen as successful laboratory of democracy for the national level.⁹³² However, the same can be said when looking at state local relationship, with local government acting as agents of change that influence the state level. In other words, local policy ideas can proliferate not just vertically, but also horizontally.

Redefining Municipal Sovereignty

The municipal ordinances (or CBRs) are addressing several longstanding issues: the relationship between the municipalities and the state, specifically in the incarnation of Police Powers and the long history of fighting corporate rights in the United States (US). The municipal ordinances (or CBRs) therefore present arguments that address numerous concerns from supremacy and preemption, state law interpretation of local government power, and corporate personhood doctrines. All these arguments made by the CELDF and found in the municipal ordinances point to the assertion and recognition of a community right of local self-government.

⁹²⁸ *Id.*

⁹²⁹ *Id.*

⁹³⁰ Paul A. Diller, *The Political Process of Preemption*, 54 UNIVERSITY OF RICHMOND LAW REVIEW (2020).

⁹³¹ *Id.*

⁹³² *New State Ice Co. v. Liebmann*, 285 U.S. 262, 52 S.Ct. 371, 76 L.Ed. 747 (1932).

These arguments –which I will from now on call claims– have been gradually uncovered in chapter II and the previous sections in this chapter but have not been addressed in a systematic way. This is the purpose of this section.

Specifically, this section tries to make the case that all the claims made by CELDF constitute various facets of one overarching claim. This overarching claim is the recognition of a community right to local self-government. This request of recognition of a community right to local self-government takes a specific form: to change the doctrine of Police Powers in favour of a recognition of community rights, to recognise Police Powers to municipalities and in particular the recognition of a community right to local sovereignty.

In fact, I posit that CELDF aims to change how the state and local relationship is defined – towards a redefinition of the relationship in favour of the local municipality and aims to change the distribution of power in the areas of lawmaking and policymaking between the state and local municipality –toward a recognition of local sovereignty.

Since the purpose of this section is to analyse the CELDF claim that the municipalities have a community right of local self-government that has been violated by recent jurisprudential doctrine is it necessary to first open a parenthesis to discuss the legal relationship between the state government and the municipal government as expressed in the scholarship.

First Claim, Addressing Local Self-Governance

Dillon's Rule

In the 1700s, the relationship between Parliament and local government in England revolved around the granting of chartered powers to municipalities.⁹³³ This system was replicated in colonial North America, resulting in the exclusive adherence to the grant approach in the US.⁹³⁴

By the 19th century, the grant approach type of relationship between state and local governments came under discussion, notably in Judge John Dillon's 1868 court ruling in *City*

⁹³³ Gary T. Schwartz, *Reviewing and Revising Dillon's Rule* University of Virginia Law School of Law John M. Olin Foundation: Symposium on Law and Economics of Local Government, 67 CHI.-KENT L. REV. 1025 (1991). For a historical overview see, Nikolas Bowie, *The Constitutional Right of Self-Government*, 130 Yale L.J. 1652 (2021).

⁹³⁴ Schwartz, *supra* note 933. Bowie, *supra* note 933.

of *Clinton v. Cedar Rapids & Missouri*.⁹³⁵ Dillon's rulings established a doctrine of complete subservience of municipal corporations to state legislatures based on a charter-type conceptualization of municipal power.⁹³⁶

The rule that now bears his name - Dillon's Rule - states that,

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation-not simply convenient, but indispensable.⁹³⁷

In other words, Dillon's Rule affirms that, in the absence of a specific grant of Home Rule authority, a municipality is presumed to be akin to a corporation and thus powerless except for powers expressly or impliedly granted to it.⁹³⁸ The courts must construe local authority narrowly.⁹³⁹

Dillon's Rule initially sought to limit the powers of big city political machines, later applying to state-local relations as well, where local governments owe their existence to states and are thus subjects of state governments.⁹⁴⁰ The rule aimed to clarify the relationship between municipalities and the state, emphasizing the benefits of corporate charters for society and promoting the certainty principle while favoring the supremacy principle at the expense of a governmental role for municipalities.⁹⁴¹

Under Dillon's Rule, individual local units of government have no inherent authority to regulate; they are classified as comparable to administrative units created by the state.⁹⁴²

⁹³⁵ *City of Clinton v. Owners of the Property Situated within Certain Described Boundaries*, 191 N.W.2d 671 (Iowa 1971).

⁹³⁶ See, John Forrest Dillon, *The Law of Municipal Corporations* (James Cockcroft 1873).

⁹³⁷ *City of Clinton v. Owners of the Property Situated within Certain Described Boundaries*, 191 N.W.2d 671 (Iowa 1971).

⁹³⁸ Briffault, *supra* note 798.

⁹³⁹ *Id.*

⁹⁴⁰ On this topic see for instance, Schwartz, *supra* note 933.

⁹⁴¹ *Id.*

⁹⁴² Briffault, *supra* note 798.

Hence, municipalities have only those powers considered indispensable to their local administrative purposes, plus some others expressly granted by the state.⁹⁴³ Dillon's Rule articulates that this interpretation allows for local governments to have a narrowly drawn "Constitution" mirroring a corporate charter, preventing municipalities from passing any type of legislation on topics not enumerated within the charter.⁹⁴⁴ The doctrine also minimizes municipal authority by considering municipalities as agents of the state.⁹⁴⁵

Bowman asserts that if states were to adopt the most rigid interpretation of Dillon's Rule, "Any doubt regarding the legality of a specific local government power is resolved in favor of the state."⁹⁴⁶ Dillon's rule, therefore, is a narrow judicial construction based on the Ninth and Tenth Amendments of the Constitution, which argue that outside of the enumerated powers of the federal government, all other powers rest with the states and their citizens.⁹⁴⁷

This strictly defines the relationship between local authorities and the states, with the states having numerous and indefinite powers, including the creation of municipalities.⁹⁴⁸ However, municipalities can only have those powers explicitly awarded by the states, through state statutes or constitutions, or a combination of both.⁹⁴⁹

In other words, the powers awarded to municipalities are interpreted in the narrowest sense unless there is a Home Rule provision or any other directive permitting a broader judicial interpretation. The case of *Hunter v. Pittsburgh* illuminates this point.⁹⁵⁰ The US Supreme Court opined that:

Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. The number, nature, and duration of the powers conferred upon

⁹⁴³ *Id.*

⁹⁴⁴ *Id.*

⁹⁴⁵ *Id.*

⁹⁴⁶ Ann O'M. Bowman, Richard C. Kearney, Carmine P. F. Scavo, *State and Local Government* (Cengage Learning Jan. 2021), p. 3. *See also*, Ann O'M. Bowman & Richard C. Kearney, *Are U.S. Cities Losing Power and Authority? Perceptions of Local Government Actors*, 48 URBAN AFFAIRS REVIEW 528 (Sage Publications Inc Jan. 2012).

⁹⁴⁷ *See also*, Briffault, *supra* note 798.

⁹⁴⁸ *Id.*

⁹⁴⁹ *Id.*

⁹⁵⁰ *Hunter v. Pittsburgh* - 207 U.S. 161, 28 S. Ct. 40 (1907).

these corporations and the territory over which they shall be exercised rest in the absolute discretion of the State. The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects, the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.⁹⁵¹

Under Dillon's Rule, some state legislatures have granted local governments Home Rule powers that permit local areas to tailor their public policies to meet local needs without consulting the state legislature.⁹⁵² In practice, most grants of home rule give authority in respect of "local affairs" or "local matters."⁹⁵³ What constitutes a "local matter" will be interpreted by the state judiciary.⁹⁵⁴

In conclusion, the Dillon's Rule is a legal fiction; many US city governments predate the existing US state governments.⁹⁵⁵ Nevertheless, today, while most states give municipalities a measure of local autonomy, most state-local relationships are governed by Dillon's Rule.⁹⁵⁶ Therefore, the Rule's canons have come to largely, if not universally, define the legal standing of local governments as subordinate to states.⁹⁵⁷

Cooley Doctrine

At the end of the 19th and the beginning of the 20th century, there was a general dissatisfaction among local authorities, leading them to request more substantive policymaking authority from the states.⁹⁵⁸ In 1871, in the case of *People v. Hurlbut*, Judge Thomas Cooley challenged the validity of the Dillon Rule, arguing that:

⁹⁵¹ *Id.*

⁹⁵² Briffault, *supra* note 798.

⁹⁵³ *Id.*

⁹⁵⁴ *Id.*

⁹⁵⁵ Lynn A. Baker & Clayton P. Gillette, *Local Government Law: Cases and Materials* (Foundation Press 2004).

⁹⁵⁶ *Id.*

⁹⁵⁷ *Id.*

⁹⁵⁸ On this *see*, Briffault, *supra* note 798.

The state may mould local institutions according to its views of policy or expediency; but local government is a matter of absolute right; and the state cannot take it away. Local governments have a right to exist, function, and appoint or elect their own officers in accordance with their own wishes.

Throughout history, the courts have used the Police Power as a proxy for the distribution of power between the federal, state, and local governments. As a power of sovereign authority in a democratic society, it is linked to the powers delegated to the federal government and reserved to the people to the extent there is some element of an inherent right to local self-governance.⁹⁵⁹

What Judge Thomas Cooley was asserting is that local governments possess inherent rights to exercise local self-government.⁹⁶⁰ He argued that municipalities maintain a fundamental and inherent right to govern themselves autonomously within their defined territories, like the state's exercise of Police Powers.⁹⁶¹

Cooley's perspective was rooted in the historical evolution of legal principles.⁹⁶² Throughout history, courts have often employed the concept of Police Powers as a means to distribute authority among the federal, and state levels of government.⁹⁶³ These Police Powers, which represents sovereign authority in a democratic society, is intricately connected to the powers delegated to the federal government and the rights retained by the people.⁹⁶⁴

In essence, Cooley was contending that local self-governance is an integral aspect of democratic governance and should be recognized as an inherent right.⁹⁶⁵ He believed that local communities should have the autonomy to make decisions and regulate matters within their boundaries, so long as such actions do not infringe upon the broader constitutional framework or the fundamental rights of citizens.⁹⁶⁶ Cooley's arguments laid the foundation for the idea that

⁹⁵⁹ *People v. Hurlbut*, 200 Misc. 12, 109 N.Y.S.2d 233 (N.Y. Misc. 1951).

⁹⁶⁰ Briffault, *supra* note 905. David J Barron, *Promise of Cooley's City: Traces of Local Constitutionalism*, UNIVERSITY OF PENNSYLVANIA LAW REVIEW 147 (1999). *See also*, Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule*, 84 N.C. L. REV. 1983 (2005–2006).

⁹⁶¹ Briffault, *supra* note 798. Barron, *supra* note 960. Bluestein, *supra* note 960.

⁹⁶² Briffault, *supra* note 798. Barron, *supra* note 960. Bluestein, *supra* note 960.

⁹⁶³ Briffault, *supra* note 798. Barron, *supra* note 960. Bluestein, *supra* note 960.

⁹⁶⁴ Briffault, *supra* note 798. Barron, *supra* note 960. Bluestein, *supra* note 960.

⁹⁶⁵ Barron, *supra* note 960.

⁹⁶⁶ *Id.*

municipalities possess a form of inherent sovereignty and a right to exercise self-governance—a perspective that contributed to the development of Home Rule and similar principles in the US.⁹⁶⁷

The municipalities' response to Judge Thomas Cooley laid the groundwork for the political movement that helped establish Home Rule and its intermediate variations in the late 20th century to free themselves from the constraints of Dillon Rule.⁹⁶⁸

When a local municipality adopts Home Rule, it gains the authority to draft a local constitution outlining its government structure, powers, and limitations.⁹⁶⁹ It can also pass legislation within the scope of powers granted by the state. Consequently, a municipality with Home Rule powers enjoys greater local control and the ability to craft responsive legislation to address the needs and concerns of its citizens, in contrast to a municipality subject to regulations imposed by state legislators.⁹⁷⁰ Additionally, Home Rule serves as a safeguard against undue state interference, empowering local citizens.⁹⁷¹ In specific situations, a state may permit a municipality to raise taxes to fund essential services, including initiatives such as nature conservation.⁹⁷²

For the state, there are several advantages to when municipalities adopt Home Rule:

- **Decentralization of Power:** Home Rule grants municipalities a degree of autonomy in decision-making.⁹⁷³ This decentralization reduces the need for state government to micromanage local affairs, saving resources and time.⁹⁷⁴
- **Tailored Policies:** Local governments under Home Rule can tailor policies and regulations to better suit their specific local needs and preferences.⁹⁷⁵ This flexibility leads to more effective governance at the local level, benefiting both the municipality and the state as a whole.⁹⁷⁶
- **Innovation and Experimentation:** Municipalities often serve as laboratories for policy experimentation.⁹⁷⁷ With Home Rule or adherence to the Cooley Doctrine, they can test

⁹⁶⁷ *Id.*

⁹⁶⁸ Sarah Fox, *Home Rule in an Era of Local Environmental Innovation*, 44 *ECOLOGY L. Q.* 575 (2017).

⁹⁶⁹ Baker & Gillette, *supra* note 955.

⁹⁷⁰ *Id.*

⁹⁷¹ *Id.*

⁹⁷² *Id.*

⁹⁷³ *Id.*

⁹⁷⁴ *Id.*

⁹⁷⁵ *Id.*

⁹⁷⁶ *Id.*

⁹⁷⁷ *Id.*

new ideas and policies.⁹⁷⁸ Successful local innovations can inform state-level policies, potentially improving governance statewide.⁹⁷⁹

- **Citizen Engagement:** Local self-governance encourages citizen participation in decision-making.⁹⁸⁰ Residents tend to be more engaged and invested in local politics, which can lead to a more informed and active citizenry.⁹⁸¹ This civic engagement can positively impact state-level politics and governance.⁹⁸²
- **Efficiency:** Local governments with authority to make decisions based on local needs can operate more efficiently.⁹⁸³ This efficiency can result in cost savings for both the municipality and the state government.⁹⁸⁴
- **Conflict Resolution:** Granting Home Rule can help resolve conflicts between state and local governments by providing a legal framework for defining their respective powers and responsibilities.⁹⁸⁵ This reduces legal disputes and associated litigation costs.⁹⁸⁶
- **Fiscal Responsibility:** Municipalities with Home Rule (Cooley Doctrine Powers) or Cooley Doctrine often raise revenue through local taxation – They are, however, all subject to the overriding authority of the state—.⁹⁸⁷ This can relieve the state's budget burden and enable local governments to make fiscal decisions tailored to their unique circumstances.⁹⁸⁸
- **Local Accountability:** With increased authority over local matters, municipalities become directly accountable to their residents for policy outcomes.⁹⁸⁹ This enhanced transparency and responsiveness can improve local governance.⁹⁹⁰

However, there are also disadvantages to adopting Home Rule:

⁹⁷⁸ *Id.*

⁹⁷⁹ *Id.*

⁹⁸⁰ *Id.*

⁹⁸¹ *Id.*

⁹⁸² *Id.*

⁹⁸³ *Id.*

⁹⁸⁴ *Id.*

⁹⁸⁵ *Id.*

⁹⁸⁶ *Id.*

⁹⁸⁷ *Id.*

⁹⁸⁸ *Id.*

⁹⁸⁹ *Id.*

⁹⁹⁰ *Id.*

- Fragmentation and Loss of Accountability: Home Rule municipalities are not required to collaborate with other Home Rule municipalities, potentially leading to fragmentation.⁹⁹¹ Frequent amendments to Home Rule charters can create instability.⁹⁹²
- Excessive Legislative Power: The most significant drawback of Home Rule adoption is the substantial legislative power it confers upon municipalities, often with limited oversight.⁹⁹³
- Fragmentation of Legislation: Home Rule can contribute to fragmentation of the rule of law and legislative frameworks, making it challenging to address broader regional issues.⁹⁹⁴
- Parochialism and Discrimination: Fragmented legislative frameworks enacted by local administrations may result in parochialism and discriminatory practices.⁹⁹⁵

To mitigate these issues, states have developed preemption measures distinguishing between “good-faith” local policy experiments and exclusionary, parochial municipal ordinances.⁹⁹⁶ State authority can override Home Rule if it conflicts with state interests or legislation.⁹⁹⁷

Overall, the impact and significance of Home Rule may vary widely among states and municipalities, moreover, it must be said that the difference between Home Rule jurisdictions and non-Home Rule jurisdictions is often of little practical significance.⁹⁹⁸ The implied powers of non-Home Rule jurisdictions can be quite broad. And even in Home Rule jurisdictions, local government authority is often limited.⁹⁹⁹ Bowman *et al.* have tried to systematize and to quantify the exact nature of local authority among the states granting Home Rule to municipalities.¹⁰⁰⁰ The conclusion has been that generally local governments have been losing power and authority to states for the last 40 years.¹⁰⁰¹

⁹⁹¹ *Id.*

⁹⁹² *Id.*

⁹⁹³ *Id.*

⁹⁹⁴ *Id.*

⁹⁹⁵ *Id.*

⁹⁹⁶ On this see, Diller, *supra* note 930.

⁹⁹⁷ *Id.*

⁹⁹⁸ Bowman & Kearney, *supra* note 946.

⁹⁹⁹ *Id.*

¹⁰⁰⁰ *Id.*

¹⁰⁰¹ *Id.* For contextual information, as of today, thirty-one states grant some or all local governments some form of legislative Home Rule. The only states that forbid any provisions for some forms of legislative Home Rule are Alabama, Idaho, Indiana, Mississippi, Virginia, and Vermont. However, the amount and type of power varies as well as the government’s ability to access them (See Bowman *et al.*, *supra* note 946).

CELDF's Claims on Local Self-Governance

From the language used in the CBRs, it becomes evident that an implicit assertion is being made regarding the fundamental right of local self-governance. The founders of the CELDF appear to advocate for an alternative legal doctrine, one rooted in the legal principles of collectivism and democratic will, as expounded by Thomas Cooley.¹⁰⁰² However, these claims by CELDF's founders trace their origins back to the early days of US history, a period that significantly influenced the creation, definition, and evolution of state-local relationships.¹⁰⁰³ Within this historical context, Dillon's Rule and its subsequent interpretations are challenged as infringing upon the right of self-governance, which is argued to supersede the established norm of local government subordination to state governments.¹⁰⁰⁴ This contention put forth by CELDF's founders finds its place within the legal and political historical framework outlined in the preceding section.

Their argument unfolds as follows: the earliest constitutional grants delineated the state-local relationship in terms of *imperium in imperio*.¹⁰⁰⁵ This was manifested through a list of powers categorized as either of local interest or a general grant of power, contingent on the state's decision –this, they contend, represents a more accurate interpretation of how state-local relationships were defined in the early days of the republic.¹⁰⁰⁶

To bolster their argument, they refer to Alexis de Tocqueville's assertion that autonomous local government safeguards individual liberty's essence in the US, with local self-governance constituting the core of the US system of government.¹⁰⁰⁷ Tocqueville noted that in the fifty years since sovereignty had transitioned from the Crown to the people, US citizens eagerly

¹⁰⁰² *Home Rule - Learn More about Home Rule*, CELDF, <https://celdf.org/home-rule/>.

¹⁰⁰³ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009).

¹⁰⁰⁴ Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503.

¹⁰⁰⁵ For an historical excursus *see*, Novak, *supra* note 631.

To look at the claims CELDF is making *see*, Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009).

¹⁰⁰⁶ For an historical excursus *see*, Novak, *supra* note 631. To look at the claims CELDF is making *see*, Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009).

¹⁰⁰⁷ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 741. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009).

engaged in the governance of society.¹⁰⁰⁸ For US citizens, focusing solely on their own affairs would result in a significant void in their life.¹⁰⁰⁹

Furthermore, Tocqueville affirmed that only municipalities exercising their right to local self-governance could fend off despotic tendencies witnessed in the old continent.¹⁰¹⁰ He asserted that a nation without local institutions lacks the spirit of liberty that will prevent it falling victim to despotic tendencies.¹⁰¹¹

In addition, CELDF's lawyers argue that this fundamental right of local self-governance traces its origins to pre-revolutionary local government authority.¹⁰¹² This claim gains substance when examining US antebellum history, as Tocqueville again emphasized that real political life thrived in local communities that practiced direct participatory democracy.¹⁰¹³

In essence, Tocqueville encapsulated the political, social, and legislative environment of the antebellum period. During that era, the US was more accurately described as a "confederation of autonomous states."¹⁰¹⁴ Local communities wielded substantial political, social, and legislative authority and enjoyed considerable independence, with minimal federal government interference in local matters.¹⁰¹⁵

CELDf also asserts that after the Civil War, this community right to local self-government was preserved through the Declaration of Independence and the Ninth Amendment of the Constitution.¹⁰¹⁶ This contention aligns with the historical record, as the idea that municipalities possessed powers independent of the state dates to the 17th century.¹⁰¹⁷ During this period,

¹⁰⁰⁸ Tocqueville, *supra* note 37.

¹⁰⁰⁹ *Id.*

¹⁰¹⁰ *Id.*

¹⁰¹¹ *Id.*

¹⁰¹² See, Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹⁰¹³ Tocqueville, *supra* note 37.

¹⁰¹⁴ *Id.*

¹⁰¹⁵ Novak, *supra* note 631.

¹⁰¹⁶ Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503.

¹⁰¹⁷ Novak, *supra* note 631.

local towns operated independently from the monarchy, and the US colonies recognized the paramount importance of local governance.¹⁰¹⁸

Nonetheless, even during those early days, the relationship between the state and local communities, as well as the interplay of democracy and the sense of autonomy between states and local communities, remained contentious.¹⁰¹⁹ Numerous legal treatises of the time addressed these issues, with various arguments advanced in an attempt to define the rules governing state-local relationships.¹⁰²⁰

CELDF's founders argue that this ambiguity was the root cause of the US Revolution and subsequently became the basis for the Declaration of Independence and the genesis of state constitutions.¹⁰²¹ They specifically reference the Ninth Amendment, which stipulates that the enumeration of certain rights in the Constitution should not be interpreted as denying or disparaging other rights retained by the people. Among the fundamental rights retained by the people is the capacity to, "Alter or abolish their form of government whenever they see fit."¹⁰²²

Finally, the language of the municipal ordinances reflects CELDF's contention that the right of self-governance possesses the capacity to supersede the established norms of federal supremacy and preemption. This leads to their second claim, asserting that the proliferation of preemption against local municipal legislations is a consequence of the close relationship between state authorities and corporate interests.

Second Claim, Preemption

¹⁰¹⁸ *Id.*

¹⁰¹⁹ *Id.*

¹⁰²⁰ *Id.*

¹⁰²¹ Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹⁰²² Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015. See also, U.S. CONST. amend. IX. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/ninth_amendment.

The relationship between states and corporations

In the US, municipalities are concerned that some of their policy priorities are being overlooked at the state level due to the close relationships states maintain with corporations.¹⁰²³ Representatives of municipalities argue that this proximity to corporations hampers their ability to address local issues through local legislation.¹⁰²⁴ Moreover, they feel that economic development and environmental regulation are not functioning optimally for a variety of reasons, and they perceive a connection between state authorities and large corporations that may compromise the very goals they were established to achieve or regulate.¹⁰²⁵

This concern among municipal representatives regarding the alliance between corporations and the state runs deep and is rooted in the Home Rule movement that gained strength in the early 20th century, driven by apprehensions of clientelism – the ability of corporations to influence political decision-making.¹⁰²⁶

This perception is not unfounded, as several industries, including firearms and pesticides, have actively and successfully influenced the enactment of state preemption laws, which preempt local regulations.¹⁰²⁷ In numerous instances, a collaborative relationship can be observed between private interests seeking to evade local regulations and state-level legislators.¹⁰²⁸

A striking example of this dynamic can be found in the activities of organizations like the American Legislative Exchange Council (ALEC).¹⁰²⁹ ALEC is a lobbying organization that promotes pro-business interests and aims to foster connections and cooperation between state legislatures and private industries.¹⁰³⁰ It achieves this by providing model legislation, networking opportunities, and lobbying services to its members.¹⁰³¹ ALEC facilitates

¹⁰²³ On this topic see for instance, Molly Jackson, *ALEC's Influence over Lawmaking in State Legislatures*, Brookings, (Dec. 6, 2013) <https://www.brookings.edu/articles/alecs-influence-over-lawmaking-in-state-legislatures/>.

¹⁰²⁴ *Id.*

¹⁰²⁵ *Id.*

¹⁰²⁶ For an introduction on this topic see, Novak, *supra* note 631.

¹⁰²⁷ On this topic see for instance, Rachel Harrison, *States Laws Limit Local Control Over Guns, Favor Gun Rights*, NYU Web Communications, (May 20, 2021) <http://www.nyu.edu/content/nyu/en/about/news-publications/news/2021/may/states-laws-limit-local-control-over-guns>.

¹⁰²⁸ On this topic see for instance, Joseph Blocher, *The Biggest Legal Obstacle to Gun Regulation: State Preemption Laws, Not the Second Amendment*, 111 AM J PUBLIC HEALTH 1192 (Jul. 2021).

¹⁰²⁹ *Home*, AMERICAN LEGISLATIVE EXCHANGE COUNCIL, <https://alec.org/>.

¹⁰³⁰ *About ALEC*, AMERICAN LEGISLATIVE EXCHANGE COUNCIL, <https://alec.org/about/>.

¹⁰³¹ *Id.*

interactions between lawmakers and corporate lobbyists, resulting in the development of model bills that are subsequently introduced in legislatures across the country.¹⁰³² It is worth noting that lobbyists themselves can also propose model bills to ALEC.¹⁰³³ Due to its extensive involvement in shaping legislation, ALEC has acquired the reputation of being a “corporate bill mill.”¹⁰³⁴

For instance, many of these states' laws align closely with the language of ALEC's Model State Preemption Act related to the sale of pesticides.¹⁰³⁵ This Act explicitly restricts local jurisdictions from adopting or maintaining ordinances, rules, regulations, or statutes concerning pesticide sale or use, encompassing various aspects of pesticide-related activities.¹⁰³⁶

No city, town, county, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation or statute regarding pesticide sale or use, including without limitation: registration, notification of use, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information, or product composition.¹⁰³⁷

This corporate intrusion into state lawmaking and policy formulation directly impacts municipalities.¹⁰³⁸ As previously outlined, municipalities are entities created by the state, with states both granting and limiting the powers of these local governments.¹⁰³⁹ State Constitutions or enabling acts broadly grant cities the authority to enact legislation aimed at safeguarding the health, safety, and welfare of their local communities.¹⁰⁴⁰ These grants of authority were

¹⁰³² *Id.*

¹⁰³³ Yvonne Wingett Sanchez O'Dell Rob, *What is ALEC? 'The Most Effective Organization' for Conservatives, Says Newt Gingrich*, Center for Public Integrity, (Apr. 4, 2015) <http://publicintegrity.org/politics/state-politics/copy-paste-legislate/what-is-alec-the-most-effective-organization-for-conservatives-says-newt-gingrich/>.

¹⁰³⁴ *ALEC Corporations - SourceWatch*, https://www.sourcewatch.org/index.php/ALEC_Corporations.

¹⁰³⁵ *State Pesticide Preemption Act*, AMERICAN LEGISLATIVE EXCHANGE COUNCIL, <https://alec.org/model-policy/state-pesticide-preemption-act/>.

¹⁰³⁶ *Id.*

¹⁰³⁷ *Id.*

¹⁰³⁸ On this see for instance, Rachel Harrison, NYU Web Communications, *States Laws Limit Local Control Over Guns, Favor Gun Rights*, <http://www.nyu.edu/content/nyu/en/about/news-publications/news/2021/may/states-laws-limit-local-control-over-guns>.

¹⁰³⁹ Baker & Gillette, *supra* note 955.

¹⁰⁴⁰ *Id.*

established, in part, to enable local governments to carry out routine regulatory functions without requiring explicit authorization from the state legislature.¹⁰⁴¹

However, the balance of power has been disrupted by corporate influence, leading to the enactment of preemptive state legislation designed to prevent municipalities from enacting laws that contradict corporate interests.¹⁰⁴² Consequently, the broad grants of authority bestowed upon local governments have been significantly undermined.¹⁰⁴³ Preemptive legislation restricts or eliminates local control over specific issues or entire categories of regulation.¹⁰⁴⁴

Over time, the cumulative impact of state-level preemptive legislation has eroded the traditional scope of general authority granted to municipalities, significantly limiting its boundaries.¹⁰⁴⁵ In response to this trend, a growing movement of municipalities and cities, including organizations such as CELDF, is employing various legal strategies to resist and challenge these preemptive state efforts.

Supremacy Clause and Preemptive Legislation

The Supremacy Clause of the US Constitution is often viewed as an ambiguous concept, as it involves complex legal principles and interactions between federal, state, and local laws.¹⁰⁴⁶ However, it plays a crucial role in determining the hierarchy of laws and regulations in the US legal system.¹⁰⁴⁷

The US Supreme Court states that the Supremacy Clause “is not a source of any federal rights” simply it governs the priority of rights and duties when our sovereigns' laws conflict.¹⁰⁴⁸ Its primary function is to establish the hierarchy of laws and determine the priority of rights and

¹⁰⁴¹ *Id.*

¹⁰⁴² On this topic see for instance, Harrison, *supra* note 1154. Also, Joseph Blocher, *The Biggest Legal Obstacle to Gun Regulation: State Preemption Laws, Not the Second Amendment*, 111 AM J PUBLIC HEALTH 1192 (Jul. 2021).

¹⁰⁴³ Baker & Gillette, *supra* note 955.

¹⁰⁴⁴ Diller, *supra* note 930. See also, Goodman et al., *supra* note 3.

¹⁰⁴⁵ Bowman et. al., *supra* note 946.

¹⁰⁴⁶ Adam Babich, *The Supremacy Clause, Cooperative Federalism, and the Full Federal Regulatory Purpose*, 64 ADMIN. L. REV. 1 (2012). See also, Goodman et al., *supra* note 3.

¹⁰⁴⁷ *Id.* See also, Goodman et al., *supra* note 3.

¹⁰⁴⁸ *Golden State Transit Corp. v. City of L.A.*, 493 U.S. 103, 107 (1989) (quoting *Chapman v. Hous. Welfare Right Org.*, 441 U.S. 600, 613 (1979)). See also, Babich, *supra* note 1046, p. 2.

duties when there is a conflict between federal and state or local laws.¹⁰⁴⁹ In essence, it ensures that federal law prevails when there is a direct conflict with state or local law.¹⁰⁵⁰ One significant outcome of the Supremacy Clause is that it gives rise to a stand-alone private cause of action for preemption of state and local laws.¹⁰⁵¹ This means that individuals, organizations, or entities affected by a state or local law that they believe is preempted by federal law can take legal action to challenge the law's validity.¹⁰⁵²

The concept of preemption in the context of state and local government relations encompasses various mechanisms through which a higher-level government authority, often the state, restricts or overrides the legal powers of lower-level governments, typically municipalities. These mechanisms serve to define the boundaries of local government authority and determine when state law takes precedence over local regulations. Literature on the topic discussing preemption uses different terminologies to classify the type of pre-emption. Briffault *et al.* argue that preemption can come in four forms: court preemption, executive branch preemption, legislative driven preemption, and referendum pre-emption.¹⁰⁵³ Wagner *et al.* offer a typology of preemption which includes four different types: vacuum, ceiling, floor, and punitive pre-emptions.¹⁰⁵⁴ Professor Scharff refers to punitive preemptions bills as hyper preemption.¹⁰⁵⁵ Finally, preemption laws also vary in scope: they can be very broad or quite specific and targeted.¹⁰⁵⁶

- Court Preemption. Court preemption arises when a local government attempts to legislate in areas beyond its prescribed competence, resulting in the adoption of municipal ordinances.¹⁰⁵⁷ If the state believes that a local municipality has exceeded its enumerated powers, it may resort to the courts to enforce existing rules.¹⁰⁵⁸ Typically,

¹⁰⁴⁹ Babich, *supra* note 1046.

¹⁰⁵⁰ *Id.*

¹⁰⁵¹ *Id.*

¹⁰⁵² *Id.*

¹⁰⁵³ Richard Briffault et al., *The Troubling Turn in State Preemption: The Assault on Progressive Cities and How Cities Can Respond*, 11 ADVANCE 3 (2017).

¹⁰⁵⁴ Wagner Spencer, Nestor M. Davidson, Kim Haddow, Alex Jones, Christiana K. McFarland, and Brooks Rainwater, *Restoring City Rights in an Era of Preemption: A Municipal Action Guide*, Washington, D.C.: National League of Cities (2019). <https://core.ac.uk/download/pdf/80510916.pdf>.

¹⁰⁵⁵ Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship*, 106 GEO. L.J. 1469 (2017–2018).

¹⁰⁵⁶ Goodman et al., *supra* note 3.

¹⁰⁵⁷ Briffault et al., *supra* note 1053.

¹⁰⁵⁸ *Id.*

this type of preemption unfolds when a plaintiff challenges the enforcement of a municipal ordinance, claiming that it exceeds the municipality's legal authority.¹⁰⁵⁹

- **Executive Preemption.** Executive preemption occurs when states issue executive orders, often by governors, preempting cities, and municipalities from legislating on specific issues.¹⁰⁶⁰ These orders effectively assert state authority over particular policy domains and can limit local decision-making in those areas.¹⁰⁶¹
- **Legislative-Driven Preemption.** Legislative preemption unfolds when a state legislature modifies the legal framework governing local governments, thereby diminishing their legal authority to enact municipal ordinances in a specific area.¹⁰⁶² Legislative preemption often arises in response to the passage or potential passage of specific municipal ordinances, prompting state lawmakers to intervene and restrict local autonomy.¹⁰⁶³
- **Referendum Preemption.** Referendum preemption involves subjecting local policy decisions to referendums, which may originate from the legislature but require public approval before becoming law.¹⁰⁶⁴ These referendums serve as a mechanism for direct public involvement in local policy-making decisions.¹⁰⁶⁵

These four types of preemption mechanisms help clarify the state's role in regulating and overseeing local governments. Now, I delve into the different styles or approaches to preemption as classified by Wagner *et al.*¹⁰⁶⁶

- **Vacuum Preemption.** Vacuum preemption occurs when a state preempts local action without establishing a statewide standard or regulation for the relevant policy area.¹⁰⁶⁷ In essence, it creates a policy or regulatory vacuum, wherein cities are prohibited from regulating an activity that the state has chosen not to regulate.¹⁰⁶⁸ The intention here is not to determine which entity should regulate but to deny regulation altogether.¹⁰⁶⁹

¹⁰⁵⁹ *Id.*

¹⁰⁶⁰ *Id.*

¹⁰⁶¹ *Id.*

¹⁰⁶² *Id.*

¹⁰⁶³ *Id.*

¹⁰⁶⁴ *Id.*

¹⁰⁶⁵ *Id.*

¹⁰⁶⁶ Spencer et al., *supra* note 1054.

¹⁰⁶⁷ *Id.*

¹⁰⁶⁸ *Id.*

¹⁰⁶⁹ *Id.*

- Ceiling Preemption. Ceiling preemption entails the state preventing local governments from exceeding a state-imposed policy or regulatory limit.¹⁰⁷⁰ This form of preemption restricts local authorities from tailoring policies to local conditions and is often justified by states as a means of eliminating regulatory hurdles for businesses.¹⁰⁷¹
- Floor Preemption. In contrast to ceiling preemption, floor preemption sets a statewide minimum standard or baseline for a specific policy or regulation.¹⁰⁷² Localities are then free to adopt higher levels of regulation if they choose.¹⁰⁷³ While it does not restrict local governments from setting higher standards, it does establish a minimum threshold that local policies must meet.¹⁰⁷⁴
- Punitive Preemption. Punitive preemption aims to hold local officials accountable, either criminally or civilly, for non-compliance with state law.¹⁰⁷⁵ Penalties can include fines, removal from office for local elected officials, or the withholding of state aid to the local government.¹⁰⁷⁶ Punitive preemption may be imposed or threatened to ensure adherence to state laws.¹⁰⁷⁷

In summary, preemption mechanisms and styles are essential components of the intricate relationship between state and local governments in the US.¹⁰⁷⁸ These mechanisms help clarify the boundaries of local government authority and the role of the state in overseeing and regulating local policies.¹⁰⁷⁹ Understanding the nuances of preemption is crucial for comprehending the dynamics of governance and decision-making at various levels of government.¹⁰⁸⁰

CELDF's Claims on Constitutional Supremacy and Preemption

CELDF's mission is to challenge the proliferation of federal and state pre-emptive laws, which they argue are crafted to favour corporations.¹⁰⁸¹ This trend is exacerbated by the close relationship between state governments and corporate interests, often driven by corporate

¹⁰⁷⁰ *Id.*

¹⁰⁷¹ *Id.*

¹⁰⁷² *Id.*

¹⁰⁷³ *Id.*

¹⁰⁷⁴ *Id.*

¹⁰⁷⁵ *Id.*

¹⁰⁷⁶ *Id.*

¹⁰⁷⁷ *Id.*

¹⁰⁷⁸ *Id.*

¹⁰⁷⁹ *Id.*

¹⁰⁸⁰ Goodman et al., *supra* note 3.

¹⁰⁸¹ Davis-Cohen, *supra* note 8.

campaign donations to political candidates who subsequently pass legislation beneficial to these corporations.¹⁰⁸² CELDF contends that this dynamic severely limits the legislative capacity of municipalities, even within the constraints of the powers granted to them by their respective states.¹⁰⁸³

CELDf firmly argues that preemption should function as a floor rather than a ceiling for regulation.¹⁰⁸⁴ They challenge the prevalent ceiling preemption measures of the 1990s and early 2000s, which prohibited cities from enacting regulations stricter than their respective states.¹⁰⁸⁵ This approach, justified by state governments as a means to eliminate regulatory hurdles for businesses, has curtailed local autonomy.¹⁰⁸⁶

Inspired by Judge Eugene McQuilling's view that municipal corporations in the United States possess an inherent right of local self-government, CELDF focuses its efforts on combating what is known as "ceiling pre-emption."¹⁰⁸⁷ This concept involves state laws preempting local regulations by establishing a maximum threshold, effectively restricting local governments from imposing stricter rules than those set by the state.¹⁰⁸⁸ CELDF's strategy to address ceiling preemption revolves around several key components:

Asserting Local Rights. CELDF's core objective is to empower local communities by championing their rights to self-governance. They contend that municipalities should possess the authority to establish laws and regulations that safeguard the health, safety, and welfare of their residents, even if these regulations surpass state-imposed minimum standards. CELDF frames this as a matter of local self-determination and community rights, aiming to challenge the constraints imposed on local decision-making.

Passing Strong municipal ordinances. CELDF actively encourages communities to adopt CBRs or municipal ordinances that feature robust and stringent regulations. These municipal

¹⁰⁸² *Id.*

¹⁰⁸³ *Id.*

¹⁰⁸⁴ Thomas Linzey, *Rigged: How Our Legal System Prevents Communities from Governing Themselves*, *In These Times*, (Dec. 23, 2016) <https://inthesetimes.com/article/corporate-rights-preemption-fracking-gmos-factory-farms-thomas-linzey>.

¹⁰⁸⁵ *Id.*

¹⁰⁸⁶ *Id.*

¹⁰⁸⁷ See, Diller, *supra* note 930. Baker & Gillette, *supra* note 955. See also, *Hunter v. Pittsburgh* - 207 U.S. 161, 28 S. Ct. 40 (1907).

¹⁰⁸⁸ For an introduction on the topic see, Goodman et al., *supra* note 3.

ordinances are crafted to address specific concerns, such as economic development, environmental protection, public health, and other local priorities. By enacting municipal ordinances with higher standards than state laws, CELDF aims to push the boundaries of ceiling preemption.

Challenging State Preemption Laws. CELDF anticipates legal challenges and conflicts with state-level preemption laws that seek to curtail local authority. When such conflicts arise, CELDF stands ready to defend municipal ordinances in court, arguing that the community's right to self-governance should take precedence. They assert that local communities should have the final say in matters directly impacting their well-being.

In summary, CELDF's overarching strategy to combat ceiling preemption centres on championing the rights of local communities to enact laws aligned with their values and priorities, even when such laws exceed state-mandated minimum standards. By pushing the boundaries of local authority and contesting state preemption, CELDF strives to reshape the legal and political landscape in support of more robust local self-governance.

However, ceiling preemption saw reduced usage by states, and from the mid-2010s onward, it was increasingly replaced by more stringent preemption styles, specifically in the form of vacuum preemption.¹⁰⁸⁹ This shift in trend might explain why, between 2017 and 2019, only an average of two CBRs (municipal ordinances) were passed by municipalities with the assistance of CELDF and subsequently pre-empted. The introduction of these more restrictive preemption styles in the form of vacuum preemption likely contributed to setbacks in the passage of CBRs (municipal ordinances).

In response to this evolving trend, CELDF adapted its strategy in 2014 to counter these newer forms of preemption. They achieved this by assisting municipalities in crafting amendments to State Constitutions aimed at enshrining community rights of local self-government and addressing the challenges posed by these newer, more restrictive preemption styles.

In fact, recognizing that some of the CBRs (municipal ordinances) have been declared unconstitutional or pre-empted, CELDF has expanded its legislative scope to see recognised a community right to local self-government within state constitutions. As part of this effort, CELDF is actively helping municipalities promote CBRs state constitutional amendments to

¹⁰⁸⁹ *Id.*

acknowledge the obligation to uphold community rights, with the long-term objective of pursuing similar recognition at the federal level. In parallel, CELDF has also been instrumental in aiding municipalities in adopting Home Rule and amending their municipal Home Rule charters to incorporate provisions found in the CBRs (municipal ordinances).

The ultimate goal is to convene a constitutional convention to draft a new State Constitution, subject to ratification through a popular referendum. This initiative seeks to address deficiencies in the charters of individual states and, potentially, even in the charter of the United States of America—the Constitution itself.

Third Claim, Corporate Personhood

A History of Corporate Personhood

In the 19th-century case of *Trustees of Dartmouth College v. Woodward*, Chief Justice Marshall provided a foundational definition of a corporation.¹⁰⁹⁰ He described a corporation as an artificial entity, intangible and invisible, brought into existence solely through legal means.¹⁰⁹¹ Its existence and characteristics are determined by the terms set forth in its charter, either explicitly or implicitly.¹⁰⁹² These attributes are carefully designed to serve the specific purpose for which the corporation was created.¹⁰⁹³ Among the key features highlighted by Chief Justice Marshall are immortality and a unique form of identity.¹⁰⁹⁴ Immortality implies that a corporation can endure indefinitely, outlasting the lives of its individual members.¹⁰⁹⁵ This feature allows for a perpetual succession of many individuals who collectively function as a single entity.¹⁰⁹⁶

Furthermore, the case emphasized three crucial aspects of corporate personhood:

- **Continuity in Contracts and Property Ownership.** Corporations possess the capacity to enter into contracts and own property in a continuous manner.¹⁰⁹⁷ This means that even

¹⁰⁹⁰ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819).

¹⁰⁹¹ *Id.*

¹⁰⁹² *Id.*

¹⁰⁹³ *Id.*

¹⁰⁹⁴ *Id.*

¹⁰⁹⁵ *Id.*

¹⁰⁹⁶ *Id.*

¹⁰⁹⁷ *Id.*

as individual shareholders change, the corporation remains a consistent legal entity capable of maintaining contractual obligations and property ownership over time.¹⁰⁹⁸

- **Asset Partitioning.** Corporate personhood involves a clear separation of corporate assets from those of its shareholders.¹⁰⁹⁹ This separation limits the liability of individual shareholders to the extent of their investments, shielding their personal assets from corporate debts and obligations.¹¹⁰⁰
- **Self-Governance by Boards.** Corporations are typically governed by boards of directors, who make decisions on behalf of the corporation, this structure allows for efficient decision-making and management, contributing to the corporation's ability to pursue its stated objectives.¹¹⁰¹

Additionally, the majority opinion in this case established an essential principle regarding constitutional protection. It asserted that (1) states cannot pass laws that retroactively diminish or impair contract rights held by private businesses and corporations –this recognition of constitutional protection shields corporations from undue government interference in their contractual agreements–; (2) corporations possess powers of eminent domain, a right originally attributed to governments but later delegated to corporations starting from the 19th century.¹¹⁰²

In summary, the case of *Trustees of Dartmouth College v. Woodward* provided a foundational definition of a corporation as an artificial legal entity with specific attributes, including immortality, continuity in contracts and property ownership, asset partitioning, and self-governance.¹¹⁰³ This definition has significantly influenced the legal understanding of corporations and their rights, highlighting their unique status as entities created and regulated by law.¹¹⁰⁴

¹⁰⁹⁸ *Id.*

¹⁰⁹⁹ *Id.*

¹¹⁰⁰ *Id.*

¹¹⁰¹ *Id.*

¹¹⁰² *Id.*

¹¹⁰³ *Id.*

¹¹⁰⁴ *Id.*

Over the years, both the US Supreme Court and other federal courts have issued decisions that underscore and affirm the constitutional rights enjoyed by corporations.¹¹⁰⁵ These rights encompass a range of legal principles and protections, significantly shaping the landscape of corporate law and governance in the US.¹¹⁰⁶ This section delves into the recognition of constitutional rights for corporations within the framework of the US Constitution, highlighting key legal decisions that have shaped the intricate relationship between corporations and constitutional protections.

The US Constitution acknowledges that the corporations' benefit from a variety of constitutional rights.¹¹⁰⁷ These rights encompass freedom of speech (First Amendment), safeguards against unreasonable searches and seizures (Fourth Amendment), protection against takings and double jeopardy (Fifth Amendment), and equal protection (Fourteenth Amendment).¹¹⁰⁸ I will now proceed to discuss each of these rights enjoyed by the corporations.

First Amendment - Freedom of Speech. The case of *Citizens United v. Federal Election Commission* (2010) stands as a cornerstone in the recognition of corporate constitutional rights.¹¹⁰⁹ The decision in *Citizens United v. Federal Election Commission* built upon legal precedent established in the 19th century.¹¹¹⁰ In this landmark decision, the US Supreme Court ruled that corporations, along with labour unions, possess the right to engage in political spending as a form of protected speech under the First Amendment.¹¹¹¹ This decision fundamentally transformed campaign finance, granting corporations the ability to allocate significant resources to political advocacy.¹¹¹²

The majority opinion in the case argued that the government cannot suppress political speech based on the speaker's corporate identity.¹¹¹³ This ruling effectively struck down a federal law that banned corporations and unions from spending money in federal elections, asserting that

¹¹⁰⁵ On this topic see for instance, Greg Coleridge, *The System Isn't Broken, It's Fixed: Ending Big Money and Corporations in Our Elections*, 44 U. TOL. L. REV. 541 (2012–2013).

¹¹⁰⁶ *Id.*

¹¹⁰⁷ *Id.*

¹¹⁰⁸ *Id.*

¹¹⁰⁹ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 78 U.S.L.W. 4078 (2010).

¹¹¹⁰ *Id.*

¹¹¹¹ *Id.* See also, U.S. CONST. amend. I. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/first_amendment.

¹¹¹² *Id.*

¹¹¹³ *Id.*

the government cannot censor political speech based on the identity of the speaker, be it natural or corporate.¹¹¹⁴

Additionally, the 2014 case of *Sebelius v. Hobby Lobby Stores* extended the logic of *Citizens United v. Federal Election Commission*, arguing that a corporation is exempt from following state regulation under the Religious Freedom Restoration Act, thereby further expanding the First Amendment rights for corporations.¹¹¹⁵

Fourth Amendment - Search and Seizure. The Fourth Amendment of the US Constitution is a cornerstone of individual privacy and protection against unreasonable searches and seizures by government authorities.¹¹¹⁶ While this amendment is primarily associated with safeguarding the rights of individuals, the case of *Marshall v. Barlow's Inc.* (1978) is a landmark.¹¹¹⁷ The Supreme Court's clarification that corporations do benefit from the Fourth Amendment safeguards ensures protection against unwarranted intrusions by government authorities, marking a significant development in the recognition of corporate constitutional rights.¹¹¹⁸

In the context of *Marshall v. Barlow's Inc.*, the case revolved around a federal agency's attempt to conduct a warrantless inspection of a corporate facility owned by Barlow's, Inc., a private corporation engaged in manufacturing.¹¹¹⁹ The Occupational Safety and Health Act (OSHA) empowered the agency to inspect business premises to ensure compliance with safety regulations, raising the fundamental question of whether such inspections violated the Fourth Amendment rights of the corporation.¹¹²⁰

The Supreme Court's ruling in this case clarified that the Fourth Amendment's protections extended to corporate entities.¹¹²¹ The decision emphasized that corporations, as well as individuals, were entitled to safeguard their premises against unwarranted intrusions by

¹¹¹⁴ *Id.*

¹¹¹⁵ *Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401, 133 S. Ct. 641, 184 L. Ed. 2d 448, 81 U.S.L.W. 3344 (2012). *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753, 78 U.S.L.W. 4078 (2010).

¹¹¹⁶ Coleridge, *supra* note 1105.

¹¹¹⁷ *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 98 S. Ct. 1816 (1978).

¹¹¹⁸ *Id.*

¹¹¹⁹ *Id.*

¹¹²⁰ *Id.*

¹¹²¹ *Id.* See also, U.S. CONST. amend. IV. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/fourth_amendment.

government authorities.¹¹²² In essence, this marked a recognition that corporations possessed a legitimate expectation of privacy in their commercial properties, and government inspections without proper warrants constituted a violation of their Fourth Amendment rights.¹¹²³

By affirming that the Fourth Amendment applied to corporations, the Court affirmed the principle that government actions, including inspections, must adhere to constitutional standards even when directed at corporate entities.¹¹²⁴ This decision underscored the broader significance of constitutional rights and protections in corporate contexts, reinforcing the idea that corporations were entitled to certain legal safeguards, especially in matters of privacy and protection against government intrusion.¹¹²⁵

As a result of *Marshall v. Barlow's, Inc.*, corporations gained a stronger legal foundation to challenge government searches and seizures that might infringe upon their rights.¹¹²⁶ This extension of Fourth Amendment protections to corporations contributed to the evolving landscape of corporate personhood, reflecting the nuanced relationship between constitutional rights and corporate entities within the US legal framework.¹¹²⁷

Fifth Amendment - Takings and Double Jeopardy Clauses. The Takings Clause of the Fifth Amendment stipulates that, “Private property [shall not] be taken for public use, without just compensation.”¹¹²⁸ Although this clause primarily addresses property rights, its interpretation has far-reaching consequences for both individuals and corporations.¹¹²⁹ Two of these are relevant in the context of corporate rights, the Takings Clause, and the Double Jeopardy Clause.¹¹³⁰

While these provisions were not explicitly designed with corporations in mind, they have significant implications for corporate entities.¹¹³¹ In cases involving corporations, the Double

¹¹²² *Id.*

¹¹²³ *Id.*

¹¹²⁴ *Id.*

¹¹²⁵ *Id.*

¹¹²⁶ *Id.*

¹¹²⁷ *Id.*

¹¹²⁸ U.S. CONST. amend. V. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/fifth_amendment.

¹¹²⁹ On this see, Matthew P. Harrington, *Regulatory Taking and the Original Understanding of the Takings Clause*, 45 WM. & MARY L. REV. 2053 (2003–2004).

¹¹³⁰ *Id.*

¹¹³¹ *Id.*

Jeopardy Clause ensures that they cannot be subjected to duplicative legal actions, whether civil or criminal, for the same alleged violations.¹¹³² This protection is particularly relevant in regulatory and compliance matters where corporations may face both civil fines and criminal charges stemming from the same conduct.¹¹³³ The application of the Double Jeopardy Clause underscores the fundamental principle of preventing double punishment for the same offense, providing legal safeguards to protect corporations from excessive or redundant legal actions by government authorities.¹¹³⁴

This principle arose as a result of the landmark case of *Pennsylvania Coal Co. v. Mahon* (1922) in safeguarding against double jeopardy, ensuring protection for corporations from being tried twice for the same offense.¹¹³⁵

In *Pennsylvania Coal Co. v. Mahon*, the case centred on whether a state law that prohibited mining activities that could cause subsidence damage to nearby structures constituted an unconstitutional taking of property without just compensation.¹¹³⁶ While the case did not directly involve a corporation, its implications for Takings Clause jurisprudence were profound.¹¹³⁷

The Supreme Court's decision in *Mahon* introduced the concept of regulatory takings, whereby government regulations that excessively restrict the use of private property could be considered a taking requiring just compensation.¹¹³⁸ This expansion of the Takings Clause's reach had significant ramifications for corporations, as it established a legal framework for challenging government regulations that imposed substantial burdens on business operations or property values.¹¹³⁹

By recognizing the potential for regulatory actions to constitute takings, the Court acknowledged the Fifth Amendment's applicability in scenarios where corporations' property rights were adversely affected by government regulations.¹¹⁴⁰ This interpretation underscored

¹¹³² *Id.*

¹¹³³ *Id.*

¹¹³⁴ *Id.*

¹¹³⁵ *Penna. Coal Co. v. Mahon*, 260 U.S. 393, 43 S. Ct. 158 (1922).

¹¹³⁶ *Id.*

¹¹³⁷ *Id.*

¹¹³⁸ *Id.*

¹¹³⁹ *Id.*

¹¹⁴⁰ *Id.*

the notion that the Takings Clause extended its protections beyond mere physical seizures of property, encompassing regulations that significantly impacted the economic interests of corporations.¹¹⁴¹

In summary, while the Fifth Amendment's Takings and Double Jeopardy Clauses were not explicitly drafted with corporations in mind, their interpretation and application have had substantial implications for corporate entities. *Pennsylvania Coal Co. v. Mahon* established the concept of regulatory takings, broadening the Takings Clause's scope and providing corporations with legal grounds to challenge government regulations that impact their property rights –Additionally, the Double Jeopardy Clause ensures that corporations, like individuals, are shielded from facing multiple legal actions for the same alleged offenses, serving as a fundamental protection against double punishment.¹¹⁴²

Sixth Amendment - Right to Trial by Jury. The Sixth Amendment of the US Constitution guarantees the right to a trial by jury for individuals accused of criminal offenses. However, this fundamental right is not confined to individuals alone; corporate entities facing criminal charges also benefit from the Sixth Amendment's protections.¹¹⁴³ This recognition was solidified through legal precedent, with the case of *Duncan v. Louisiana* (1968) serving as a significant milestone in affirming the applicability of the right to a jury trial to corporations.¹¹⁴⁴

In the case of *Duncan v. Louisiana*, the Supreme Court was confronted with a crucial question: whether the right to a trial by jury, as guaranteed by the Sixth Amendment, was applicable to state criminal proceedings and extended to defendants facing serious criminal charges.¹¹⁴⁵

The case involved an individual defendant, Calvin Duncan, who was charged with simple battery in Louisiana, a charge that could potentially lead to a two-year prison sentence.¹¹⁴⁶ In Louisiana, the law did not provide for a jury trial in cases where the potential punishment did

¹¹⁴¹ *Id.*

¹¹⁴² *Id.*

¹¹⁴³ On this topic see, Peter J. Henning, *The Conundrum of Corporate Criminal Liability: Seeking a Consistent Approach to the Constitutional Rights of Corporations in Criminal Prosecutions*, 63 TENN. L. REV. 793 (1995–1996).

¹¹⁴⁴ *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444 (1968). See also, U.S. CONST. amend. VI. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/sixth_amendment.

¹¹⁴⁵ *Id.*

¹¹⁴⁶ *Id.*

not exceed two years. Duncan argued that this absence of a jury trial option violated his Sixth Amendment rights.¹¹⁴⁷

The Supreme Court ruled in favour of Duncan, holding that the Sixth Amendment's right to a trial by jury was an essential safeguard against arbitrary government action and applied to state criminal proceedings.¹¹⁴⁸ The Court's decision established that the right to a jury trial was a fundamental aspect of the US criminal justice system, protecting individuals from potential abuses of government power.¹¹⁴⁹

While *Duncan v. Louisiana* primarily centred on an individual defendant, its implications extended to corporate entities facing criminal charges.¹¹⁵⁰ The Court's recognition of the right to a jury trial as a cornerstone of due process and fairness in criminal proceedings established a legal precedent applicable to all defendants, including corporations.¹¹⁵¹

As a result of this decision, corporate entities facing criminal charges in state courts enjoy the same Sixth Amendment rights as individuals.¹¹⁵² This means that they have the right to have their case heard before an impartial jury, with the opportunity to present their defense and ensure that justice is served.¹¹⁵³ The case of *Duncan v. Louisiana* underscored the principle that constitutional rights, including those enshrined in the Sixth Amendment, are not exclusive to individuals and extend to corporate defendants facing criminal accusations.¹¹⁵⁴

Seventh Amendment - Right to Jury Trial in Civil Cases. The Seventh Amendment of the United States Constitution guarantees the right to a jury trial in civil cases.¹¹⁵⁵ This fundamental right is a cornerstone of the US legal system, ensuring that disputes involving significant factual controversies are resolved by a jury of impartial peers.¹¹⁵⁶ While the Seventh Amendment explicitly refers to “suits at common law,” this right extends to corporate entities

¹¹⁴⁷ *Id.*

¹¹⁴⁸ *Id.*

¹¹⁴⁹ *Id.*

¹¹⁵⁰ *Id.*

¹¹⁵¹ *Id.*

¹¹⁵² *Id.*

¹¹⁵³ *Id.*

¹¹⁵⁴ *Id.*

¹¹⁵⁵ On this topic see, Phoebe A. Haddon, *Rethinking the Jury*, 3 WM. & MARY BILL RTS. J. 29 (1994).

¹¹⁵⁶ *Id.*

as well.¹¹⁵⁷ The case of *Atlas Roofing Co. v. Occupational Safety and Health Review Commission* (1977) serves as an important legal precedent that affirms the role of corporate entities in disputes subject to a jury trial.¹¹⁵⁸

In the case of *Atlas Roofing Co. v. Occupational Safety and Health Review Commission*, the central issue revolved around whether a corporation could invoke the Seventh Amendment's right to a jury trial in a civil case.¹¹⁵⁹ The case stemmed from a dispute between Atlas Roofing Company and the Occupational Safety and Health Review Commission (OSHRC).¹¹⁶⁰

The OSHRC initiated proceedings against Atlas Roofing Company, alleging violations of occupational safety and health regulations.¹¹⁶¹ Atlas Roofing Company contested these allegations, asserting that they were entitled to a jury trial under the Seventh Amendment.¹¹⁶² They argued that the allegations constituted a civil case in which factual determinations should be made by a jury.¹¹⁶³

The Supreme Court considered whether the Seventh Amendment applied to corporate entities in civil cases. In its ruling, the Court affirmed that the Seventh Amendment's protections extended to corporations and other corporate entities.¹¹⁶⁴ It emphasized that the right to a jury trial was not limited solely to natural persons but encompassed a broader range of litigants, including corporate parties.¹¹⁶⁵

The decision in *Atlas Roofing Co. v. Occupational Safety and Health Review Commission* underscored the principle that corporations have a legitimate interest in seeking jury trials when facing civil litigation.¹¹⁶⁶ This recognition ensures that corporate entities, like individuals, have the opportunity to have factual disputes resolved by impartial juries, promoting fairness and due process in the civil justice system.¹¹⁶⁷

¹¹⁵⁷ U.S. CONST. amend. VII. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/eight_amendment.

¹¹⁵⁸ *Atlas Roofing Co. v. Occupational Safety Comm'n*, 430 U.S. 442, 97 S. Ct. 1261 (1977).

¹¹⁵⁹ *Id.*

¹¹⁶⁰ *Id.*

¹¹⁶¹ *Id.*

¹¹⁶² *Id.*

¹¹⁶³ *Id.*

¹¹⁶⁴ *Id.*

¹¹⁶⁵ *Id.*

¹¹⁶⁶ *Id.*

¹¹⁶⁷ *Id.*

In summary, *Atlas Roofing Co. v. Occupational Safety and Health Review Commission* is a significant case that affirms the applicability of the Seventh Amendment's right to a jury trial to corporate entities in civil cases.¹¹⁶⁸ This legal precedent ensures that corporations can invoke this essential constitutional right when involved in disputes subject to a jury trial, contributing to the equitable resolution of civil controversies in the US.¹¹⁶⁹

Fourteenth Amendment - Equal Protection Clause. The Fourteenth Amendment to the US Constitution is a pivotal constitutional provision that addresses the principle of equal protection under the law.¹¹⁷⁰ While the amendment itself does not explicitly mention corporations, the historic case of *Santa Clara County v. Southern Pacific Railroad Co.* (1886) played a significant role in establishing the legal concept of corporate personhood and indirectly laid the groundwork for equal protection arguments for corporations.¹¹⁷¹

The case of *Santa Clara County v. Southern Pacific Railroad Co.* is renowned for its implications regarding corporate personhood and equal protection under the law. The central issue in this case revolved around property tax assessments in California.¹¹⁷² The Southern Pacific Railroad Company challenged the tax assessments made by Santa Clara County, arguing that they were unconstitutional.¹¹⁷³

In this case the Judge as well as the attorney for the Southern Pacific Railroad Co. in California argued that the 14th Amendment does extend to corporations, because it protects the property rights of the individual shareholders and therefore this protection should also extend to corporations.¹¹⁷⁴

These legal decisions have significantly influenced the status and rights of corporations in the US, reflecting the complex and evolving relationship between constitutional protections and

¹¹⁶⁸ *Id.*

¹¹⁶⁹ *Id.*

¹¹⁷⁰ On this topic see, K. G. Jan Pillai, *Neutrality of the Equal Protection Clause*, 27 HASTINGS CONST. L.Q. 89 (1999–2000). See also, U.S. CONST. amend. XIV. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/fourteen_amendment.

¹¹⁷¹ *Santa Clara Co. v. South. Pac. Railroad*, 118 U.S. 394, 6 S. Ct. 1132 (1886).

¹¹⁷² *Id.*

¹¹⁷³ *Id.*

¹¹⁷⁴ *Id.*

corporate entities. This dynamic legal landscape continues to shape corporate governance, political engagement, and regulatory compliance. The recognition of constitutional rights for corporations remains an ongoing subject of legal scrutiny and debate.

CELDF's Claims on Corporate Personhood

CELDF's arguments need to be considered as, in effect, a two-tiered argument that addresses both the legal structure of corporations and the violation of community rights to local self-governance.

Firstly, in the material that CELDF publishes, it contends that corporate personhood is fundamentally flawed, and it takes issue with various aspects of the corporate legal framework. In particular, CELDF opposes the concepts of corporate limited liability and syndicate ownership, which it believes grant corporations undue privileges.¹¹⁷⁵ Furthermore, CELDF questions the authority of corporations, which are often state-based entities, and their use of eminent domain, a power explicitly banned by the CBRs (municipal ordinances).¹¹⁷⁶ Practically, CELDF challenges the entire concept of a corporation and its corporate personhood, advocating for the abolition of corporations' legal abilities and corporate charters.

The CBRs which explicitly reject the historical trend of favouring corporations' rights over those of citizens and aim to eliminate corporate claims to civil and constitutional privileges, are a reflection of CELDF's political posturing. The ban on the use of eminent domain by corporations, exemplified by municipal ordinances or CBRs such as the one enacted in Newfield, Maine, serves as a compelling illustration of the broader debate surrounding corporate personhood and community rights to self-governance.¹¹⁷⁷ This case vividly demonstrates the power of local communities to take control of their natural resources and protect their interests against corporate entities.

In the context of Newfield, Maine, the community faced a critical issue: Nestlé Corporation's extraction of groundwater from a shared aquifer.¹¹⁷⁸ This aquifer was not just a resource; it was

¹¹⁷⁵ On this see for instance, CELDF, *supra* note 503.

¹¹⁷⁶ *Id.*

¹¹⁷⁷ Newfield Water Rights & Local Self-Governance Ordinance, Newfield, York County, ME - 3/14/2009.

¹¹⁷⁸ Jamilla El-Shafei, *Another Town Says No to Nestlé*, SocialistWorker.org, (Mar.18, 2009), <http://socialistworker.org/2009/03/18/another-town-says-no-to-nestle>.

a vital component of the local ecosystem and a source of clean water for the residents.¹¹⁷⁹ Over time, Nestlé had acquired the rights to extract groundwater, effectively privatizing a resource that had previously been accessible to the community.¹¹⁸⁰

The situation in Newfield was emblematic of a broader concern across the US: the potential exploitation of local natural resources by powerful corporations. It raised questions about the authority of corporations to control and profit from resources that were historically considered communal or public assets.

To address this issue and protect their natural resources, the residents took matters into their own hands. They utilized the democratic process to pass a CBR that explicitly banned Nestlé Corp. from extracting groundwater from the aquifer, effectively placing the decision-making power back into the hands of the local community.¹¹⁸¹

This action demonstrated the community's commitment to asserting its right to govern itself and make decisions regarding the use of its resources. By passing the municipal ordinance or CBR, the residents of Newfield sought to rectify what they perceived as an imbalance in favour of corporations, who had previously been granted the right to exploit these resources.

My argument is that the Newfield case underscores the essence of the debate surrounding corporate personhood and community rights. It highlights the tension between corporate interests and the rights of local communities to determine their own destiny. The ban on eminent domain for corporations, as reflected in this municipal ordinance or CBR, signifies the willingness of communities to challenge the traditional legal privileges afforded to corporations and prioritize the well-being of their residents and environment.

This example also resonates with broader discussions about the role of corporations in society and the extent to which they should be subject to local governance. It showcases the potential for grassroots movements and local initiatives to address perceived injustices related to corporate activities, ultimately shaping the larger narrative surrounding corporate rights and community empowerment in the US.

¹¹⁷⁹ *Id.*

¹¹⁸⁰ *Id.*

¹¹⁸¹ *Id.*

The second tier of CELDF's argument centres on the assertion that corporate personhood infringes upon a community's right to local self-governance.¹¹⁸² CELDF argues that the constitutional rights granted to corporations through corporate personhood undermine the community's ability to govern itself at the local level, as established by community rights ordinances.¹¹⁸³

CELDf's arguments draw inspiration from early US-based works that advocated for the right to local self-government. These works, dating back to the 19th century, emphasized the importance of granting cities autonomy in matters of legislation, development, property rights, and taxation.¹¹⁸⁴ They also promoted the concept of Home Rule to shield cities from state interference.¹¹⁸⁵

CELDf revisits these historical frameworks, arguing that local communities have a fundamental right to self-governance –it does so by critiquing foundational US documents like the Constitution and the Bill of Rights, asserting that throughout US history, corporate personhood has been prioritized over the rights of natural persons.¹¹⁸⁶

Controversially, CELDF's CBRs include provisions asserting that municipalities are entitled to a community right to local self-government. This claim, CELDF argue in its published material, is rooted in historical documents such as the Mayflower Compact, the Exeter

¹¹⁸² Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹¹⁸³ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹¹⁸⁴ Novak, *supra* note 631.

¹¹⁸⁵ *Id.*

¹¹⁸⁶ Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

Compact of 1639, the Articles of Consideration for the United Colonies of 1643, and the Declaration of Independence, which collectively demonstrate a historical tradition of local self-governance.¹¹⁸⁷

Furthermore, CELDF's founder, Thomas Linzey, argues that corporations, being creations of state legislation, enjoy unwarranted protection under the Constitution.¹¹⁸⁸ This assertion is supported by the inclusion of limited liability provisions within the corporate structure and the favoured ability of corporations to accumulate substantial capital, both of which are privileges granted by the state.¹¹⁸⁹

At the heart of Linzey's argument is the idea that corporations owe their existence and many of their legal privileges to state legislation.¹¹⁹⁰ In the US, corporations are typically created and regulated at the state level through the issuance of charters or articles of incorporation.¹¹⁹¹ These charters grant corporations legal status and outline their rights and responsibilities.¹¹⁹² Importantly, this process underscores the state's pivotal role in shaping the nature and function of corporations.

One of the key privileges Linzey highlights is the concept of limited liability.¹¹⁹³ Limited liability shields individual shareholders and corporate officers from personal financial liability for the corporation's debts and actions.¹¹⁹⁴ In essence, this legal doctrine allows corporate entities to separate their financial risks from those of their individual stakeholders.¹¹⁹⁵ While limited liability can promote investment and economic activity, it also bestows a significant benefit on corporations—an advantage that derives from state-granted charters.¹¹⁹⁶

¹¹⁸⁷ Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹¹⁸⁸ CELDF, *supra* note 503.

¹¹⁸⁹ *Id.*

¹¹⁹⁰ *Id.*

¹¹⁹¹ Novak, *supra* note 631.

¹¹⁹² *Id.*

¹¹⁹³ CELDF, *supra* note 503.

¹¹⁹⁴ On this see, *Limited Liability Company (LLC) | Internal Revenue Service*, <https://www.irs.gov/businesses/small-businesses-self-employed/limited-liability-company-llc>.

¹¹⁹⁵ *Id.*

¹¹⁹⁶ *Id.*

Linzey argues that this state-endorsed protection, in the form of limited liability, contributes to the perception of corporations as legal entities separate from their owners.¹¹⁹⁷ This perception is a cornerstone of the corporate personhood doctrine and enables corporations to enjoy certain legal rights and protections typically afforded to individuals.¹¹⁹⁸

Moreover, Linzey points to the favoured capacity of corporations to accumulate substantial capital. State laws that govern the issuance of stock, fundraising, and investment practices empower corporations to amass significant financial resources.¹¹⁹⁹ This ability to access substantial capital enables corporations to wield influence and assert their interests in various spheres, including politics and policymaking.¹²⁰⁰

By highlighting these aspects, Linzey's argument challenges the conventional wisdom that corporations are merely private enterprises operating in a free market.¹²⁰¹ Instead, he underscores that corporations are not solely products of market forces but are deeply intertwined with the legal framework established by state governments.¹²⁰²

Furthermore, Linzey suggests that this state-sanctioned legal framework bestows unwarranted protections upon corporations.¹²⁰³ While these protections are intended to foster economic growth and development, they also raise important questions about the balance of power between corporations and communities, as well as the impact of corporate actions on the environment and public health.¹²⁰⁴

In sum, Linzey's argument serves as a thought-provoking critique of the corporate personhood doctrine and the privileges conferred upon corporations by state legislation. It underscores the critical role that states play in shaping corporate rights and responsibilities and encourages a re-evaluation of the legal status of corporations within the broader context of US governance and society.

¹¹⁹⁷ CELDF, *supra* note 503.

¹¹⁹⁸ *Id.*

¹¹⁹⁹ *Id.*

¹²⁰⁰ *Id.*

¹²⁰¹ *Id.*

¹²⁰² *Id.*

¹²⁰³ *Id.*

¹²⁰⁴ CELDF, *supra* note 503.

Fourth Claim, Community Rights

A History of Community Rights

The roots of community rights in the US can be traced back to the early colonial period, an era characterized by burgeoning self-governance and participatory democracy.¹²⁰⁵ During this formative phase, US communities relished a remarkable degree of autonomy in their local governance structures.¹²⁰⁶ Town meetings and assemblies were the cradle of this burgeoning democracy, providing residents with a platform for collective decision-making on matters of communal import.¹²⁰⁷

In these town meetings, nearly all adult male residents had the opportunity to engage directly in civic affairs.¹²⁰⁸ The agenda encompassed a wide spectrum of local concerns, including taxation, resource allocation, land-use regulations, and conflict resolution.¹²⁰⁹ A striking feature of these assemblies was the intertwining of individual rights with the broader interests of the community.¹²¹⁰ Decisions were forged through collective consensus, underscoring the primacy of shared interests over individual desires.¹²¹¹

This early recognition of collective rights and responsibilities set the stage for the broader acknowledgment of community rights.¹²¹² It laid the foundation for a political culture that cherished local autonomy, direct civic participation, and the idea that individual freedoms must harmonize with the well-being of the community.¹²¹³ These principles would become integral to the ethos of US democracy.¹²¹⁴

The antebellum period, the era preceding the Civil War, witnessed the crystallization of community rights amid profound transformations in US society.¹²¹⁵ The nation expanded

¹²⁰⁵ Howard Lee McBain, *The Doctrine of an Inherent Right of Local Self-Government. II. An Analysis of the Legal Principles and Historical Facts Involved*, 16 COLUMBIA LAW REVIEW 299 (Columbia Law Review Association, Inc. 1916).

¹²⁰⁶ *Id.*

¹²⁰⁷ *Id.*

¹²⁰⁸ *Id.*

¹²⁰⁹ *Id.*

¹²¹⁰ *Id.*

¹²¹¹ *Id.*

¹²¹² *Id.*

¹²¹³ *Id.*

¹²¹⁴ *Id.*

¹²¹⁵ *Id.*

westward, experienced rapid industrialization, and welcomed waves of immigrants, resulting in the emergence of diverse and dynamic communities.¹²¹⁶ These shifts ignited fervent debates about the delicate equilibrium between individual rights and the broader welfare of the community.¹²¹⁷

This period bore witness to disputes over labour rights, property rights, and business regulations, spotlighting the tension between individual liberties and the interests of the community.¹²¹⁸ Professor Kens, in his analysis, argues that these debates reached a zenith in landmark legal cases, such as *Munn v. Illinois* in 1877 and *Charles River Bridge v. Warren Bridge*, which scrutinized the constitutional limits of government regulation concerning community interests.¹²¹⁹

Professor Kens argues that *Munn v. Illinois* and *Charles River Bridge v. Warren Bridge* –two seminal cases in US jurisprudence– offer insights into the intricate relationship between entrepreneurial liberty and community rights.¹²²⁰ These cases illuminate the jurisprudential principles that underpin the enduring balance between individual freedoms and the collective welfare of society, underscoring the notion that community interests should never be sacrificed on the altar of unchecked individualism.¹²²¹

Munn v. Illinois, decided by the US Supreme Court in 1877, epitomizes this delicate equilibrium.¹²²² The case centred on the regulation of private businesses and property rights by the government and raised a fundamental question: can such regulations, ostensibly encroaching upon individual liberties, be justified when they serve the broader common good of the community? The Court's ruling in favour of state regulations in *Munn v. Illinois* solidified the principle that government actions must adhere to constitutional boundaries.¹²²³ They should only infringe upon individual rights when demonstrably in service of the public good.¹²²⁴

¹²¹⁶ *Id.*

¹²¹⁷ *Id.*

¹²¹⁸ *Id.*

¹²¹⁹ Paul Kens, *Property, Liberty, and the Rights of the Community: Lessons from Munn v. Illinois*, 30 BUFF. PUB. INT. L.J. 157 (2011–2012). See also, *Munn v. Illinois*, 94 U.S. 113 (1876). *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837).

¹²²⁰ Kens, *supra* note 1219. See also, *Munn v. Illinois*, 94 U.S. 113 (1876). And, *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837).

¹²²¹ Kens, *supra* note 1219.

¹²²² Kens, *supra* note 1219. See also, *Munn v. Illinois*, 94 U.S. 113 (1876).

¹²²³ Kens, *supra* note 1219.

¹²²⁴ *Id.*

Professor Kens argues that this landmark decision firmly established that entrepreneurial liberty, while valuable, cannot supersede the well-being and rights of the community.¹²²⁵

Further to this, Professor Kens argues that community rights and popular sovereignty were used interchangeably to define the “right of the people,” and this right has been enshrined in the US Constitution as the “unalienable right of popular sovereignty.”¹²²⁶ This, Professor Kens posits, is further confirmed by Chief Justice Taney's opinion in *Charles River Bridge v. Warren Bridge*.¹²²⁷ Professor Kens argues that Chief Justice Taney's opinion in this case articulated a fundamental tenet: government exists to promote the happiness and prosperity of the community it serves.¹²²⁸ This principle underscores the overarching role of government as a guardian of the collective welfare.¹²²⁹ It emphasizes that government actions and policies should be directed toward advancing the common good, even when such actions may limit certain individual liberties.¹²³⁰ In the context of *Charles River Bridge v. Warren Bridge*, the decision prioritized the broader benefit of improved transportation and access for the community over the potential economic interests of a private entity.¹²³¹

Taken together, these cases elucidate the intricate interplay between entrepreneurial liberty and community rights within the framework of US jurisprudence.¹²³² They establish a legal foundation that recognizes the need to protect individual freedoms while safeguarding the rights and well-being of the community.¹²³³ Entrepreneurial liberty, while integral to US society, must operate within constitutional boundaries.¹²³⁴ When individual actions impede the common good, government intervention may be justified to ensure the stability and prosperity of the community.¹²³⁵ These legal landmarks reiterate the enduring commitment of the US legal system to strike a balance between individual liberties and community rights.¹²³⁶ They affirm that the preservation of the community's well-being remains a fundamental objective of

¹²²⁵ *Id.*

¹²²⁶ *Id.*

¹²²⁷ Kens, *supra* note 1219. See also, *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837).

¹²²⁸ Kens, *supra* note 1219. *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837).

¹²²⁹ Kens, *supra* note 1219.

¹²³⁰ *Id.*

¹²³¹ *Id.* See also, *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837).

¹²³² Kens, *supra* note 1219.

¹²³³ *Id.*

¹²³⁴ *Id.*

¹²³⁵ *Id.*

¹²³⁶ *Id.*

government, ensuring that entrepreneurial pursuits contribute to the greater good without undermining the fabric of society.¹²³⁷

Professor Kens analysis serves to validate the critical role of community rights in US constitutional interpretation.¹²³⁸ The “right of the people,” often used interchangeably with community rights, holds a eowed place in the United States Constitution as the “unalienable right of popular sovereignty.”¹²³⁹ This recognition underscores the primacy of the community in shaping the nation's destiny.¹²⁴⁰

Taking a wider historical lens, community rights and the concept of local participatory democracy found resonance in the writings of the earliest environmentalists – the transcendentalists.¹²⁴¹ Figures like Henry David Thoreau, in his work “Slavery in Massachusetts,” invoked Jeffersonian rural democracy as an ideal.¹²⁴² Thoreau's words resonate: “When, in some obscure country town, the farmers come together to a special town-meeting, to express their opinion on some subject which is vexing the land, that, I think, is the true Congress, and the most respectable one that is ever assembled in the United States.”¹²⁴³ In this passage, Thoreau illustrates the alignment between Jeffersonian civic republicanism and environmental transcendentalism, forging an argument for the intrinsic connection between these ideologies.¹²⁴⁴

Firstly, both Jeffersonian civic republicanism and environmental transcendentalism place a resounding emphasis on the common good, the cultivation of civic virtue, and the practice of self-sacrifice, elevating these values above the pursuit of negative liberty and private interest.¹²⁴⁵ They contend that a thriving community depends on individuals who prioritize the

¹²³⁷ *Id.*

¹²³⁸ *Id.*

¹²³⁹ *Id.*

¹²⁴⁰ *Id.*

¹²⁴¹ The transcendentalists, a group of 19th-century US writers and thinkers like Ralph Waldo Emerson and Henry David Thoreau, believed in the inherent goodness of people and nature. They emphasized self-reliance and connecting with higher spiritual truths through personal exploration, with a central focus on nature. They were also active in social reform movements, championing individualism and nonconformity. Their ideas left a lasting impact on US literature, philosophy, and society. See, Barbara L. Packer, *The Transcendentalists* (University Of Georgia Press 2007).

¹²⁴² Henry David Thoreau, 24 *Slavery in Massachusetts* (1854). Delivered at the Anti-Slavery Celebration at Framingham, July 4th, 1854.

¹²⁴³ *Id.*, p. 24.

¹²⁴⁴ *Id.*

¹²⁴⁵ On this topic see, Peter F. Cannavò, *To the Thousandth Generation: Timelessness, Jeffersonian Republicanism and Environmentalism*, 19 ENVIRONMENTAL POLITICS 356 (May 2010).

welfare of the collective over personal gain, underlining the paramount importance of community rights in the preservation of the common good.¹²⁴⁶

Secondly, these ideologies share a fervent advocacy for simplicity over the excesses of luxury and consumption.¹²⁴⁷ They assert that a society grounded in moderation and simplicity not only fosters a stronger sense of community but also ensures the sustainable use of natural resources, aligning with the ethos of environmental stewardship inherent in community rights.¹²⁴⁸

Furthermore, both Jeffersonian civic republicanism and environmental transcendentalism ardently champion participatory politics as an indispensable means to safeguard the common good against the influence of powerful interests.¹²⁴⁹ They contend that active engagement in the democratic process empowers communities to resist undue external pressures and maintain their autonomy, underscoring the vital role of community rights as a bulwark against overbearing forces.¹²⁵⁰

In addition, these ideologies share a common quest for stability in the face of moral or ecological corruption and degradation.¹²⁵¹ Both Jeffersonian civic republicanism and environmental transcendentalism evaluate the economic landscape through the lens of its impact on civic virtue and communitarian values.¹²⁵² They argue that communities should be steadfast in preserving their values and the integrity of their natural environments and they contend that economic systems should prioritize the flourishing of communities and the development of individuals as responsible and virtuous citizens.¹²⁵³ In this light, community rights emerge as a safeguard against economic practices that undermine the communal fabric and a mechanism to ensure the enduring well-being of communities amidst challenges and changes.¹²⁵⁴

¹²⁴⁶ *Id.*

¹²⁴⁷ *Id.*

¹²⁴⁸ *Id.*

¹²⁴⁹ *Id.*

¹²⁵⁰ *Id.*

¹²⁵¹ *Id.*

¹²⁵² *Id.*

¹²⁵³ *Id.*

¹²⁵⁴ *Id.*

In sum, Thoreau's depiction of the convergence of Jeffersonian civic republicanism and environmental transcendentalism in this passage forms a compelling argument.¹²⁵⁵ It underscores the profound unity between these ideologies in their shared commitment to the common good, simplicity, participatory politics, stability, and the evaluation of economics through the prism of civic virtue and communitarian values.¹²⁵⁶ This unity reinforces the central role of community rights in preserving and nurturing the essence of both these influential philosophies, ultimately enriching the broader tapestry of US democracy.¹²⁵⁷

Furthermore, transcendentalists expanded the definition of community to include nature itself. As Curry argues, “The requirements for the sustenance of both political communities and ecological systems are, of course, related. The political community relies upon relatively stable ecological conditions to flourish.”¹²⁵⁸ In other words, for the transcendentalists, community rights encompassed ecological systems, for one could not exist without the other.¹²⁵⁹

In essence, the transcendentalists underscored the broader obligation of communities to nurture and protect their local natural ecosystems because these ecosystems were integral parts of the community and thus shared the same rights.¹²⁶⁰

To conclude, the historical and legal concept of community rights in the US has deep roots dating back to the early colonial period offering a testament to the enduring legacy of early colonial autonomy, the crucible of the antebellum period, the ideals of Thomas Jefferson, and the transcendentalists' expansion of community rights.¹²⁶¹

CELDF's Claims for Community Rights

Within the specific historical, political, and legal context on community rights that has been elaborated upon in the preceding section, CELDF puts forward its claim that local communities should be granted community rights.

¹²⁵⁵ *Id.*

¹²⁵⁶ *Id.*

¹²⁵⁷ *Id.*

¹²⁵⁸ Patrick Curry, *Redefining Community: Towards an Ecological Republicanism*, 9 BIODIVERSITY & CONSERVATION 1059 (Jan. 2000), p. 3-8.

¹²⁵⁹ *Id.*

¹²⁶⁰ On this topic *see*, Robert A. Gross, *The Transcendentalists and Their World* (Farrar, Straus And Giroux Sep. 2021).

¹²⁶¹ *See*, McBain, *supra* note 1205. Kens, *supra* note 1219. Cannavò, *supra* note 1245.

As introduced in the horizontal analysis section, CELDF argues that every community is entitled to community rights. In this sense, CELDF contends that there is an urgency to establish a communitarian democratic authority and decentralize decision-making authority to communities.¹²⁶² According to CELDF, doing so will enable the reassignment of the highest role of the law to the protection of local communities.¹²⁶³

This claim may allude to the Jeffersonian ideals of civil society, where citizens voluntarily participate in democratic processes to create and maintain robust communities.¹²⁶⁴ However, it must be noted that CELDF never explicitly addresses nor defines what constitutes “community rights,” preferring to use the concept fluidly and, over time, expanding its scope (on this refer to chapter I).

In fact, over time, these community rights seem to have expanded to also encompass rights related to nature or “natural communities.” In this regard, CELDF asserts that sustainability demands equal attention to the recognition of communities as self-governing entities and a commitment to the political and legal assertion of the rights of nature.

I argue that, the organization's perspective on the rights of nature draws from more recent arguments supporting these rights as well as the long history of declarations on the right to local self-government.¹²⁶⁵ Moreover, in assisting people to declare and protect the rights of

¹²⁶² On this see, Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). Linzey et al., *supra* note 795. CELDF Community Rights Paper #1: The Spirit of ‘73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹²⁶³ Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of ‘73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹²⁶⁴ On this topic see, Susan Lurie & Michael Hibbard, *Community-Based Natural Resource Management: Ideals and Realities for Oregon Watershed Councils*, 21 SOCIETY & NATURAL RESOURCES 430 (Sep. 2008).

¹²⁶⁵ On contemporary scholarship see, Stone, *supra* note 70. And, Stone, *supra* note 62. Roderick Frazier Nash, *The Rights of Nature: A History of Environmental Ethics* (Univ Of Wisconsin Press Jan. 1989). Peter Burdon, *The Rights of Nature: Reconsidered*, 49 AUSTRALIAN HUMANITIES REVIEW (Nov. 2010).

nature, CELDF's conceptual framework follows Stone's argument that legal rights can ensure the protection of the Earth for future generations.¹²⁶⁶

Further to this I posit that, CELDF is informed by Roderick Nash's historically grounded assertion that indeed possesses rights conferred by the extension of US liberalism to the non-human world.¹²⁶⁷ The organization agrees with Cullinan's argument that, given the dependence of human life on the proper functioning of the Earth, the rights of human and non-human beings are, in fact, indivisible.¹²⁶⁸

CELDf's arguments reveal a pattern of libertarian ideas concerning community rights and the right to local self-government.¹²⁶⁹ These ideas are expressed through advocacy work aimed at preserving and further developing the structure of local communities. CELDF asserts that current environmental laws and regulations do not adequately protect communities from corporate interests and state influence, necessitating protective legislation.¹²⁷⁰

In other words, CELDF harks back to a utopian vision of a time when the nation adhered to a traditional interpretation of the founding fathers' documents.¹²⁷¹ Indeed, CELDF advocates for a return to an era that, in its view, aligns more closely with the original vision of US law as detailed in the country's founding documents.¹²⁷² According to CELDF, this was a time when the state-local relationship was based on local self-governance and the recognition of

¹²⁶⁶ Stone, *supra* note 70. And, Stone, *supra* note 62. On historical scholarly perspectives see, McBain, *supra* note 1312.

¹²⁶⁷ Nash, *supra* note 1265.

¹²⁶⁸ For a general discussion on this topic see, Cullinan, *supra* note 18. Cullinan, *supra* note 153.

¹²⁶⁹ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹²⁷⁰ Davis-Cohen, *supra* note 8.

¹²⁷¹ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹²⁷² Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

community rights.¹²⁷³ It predates the late nineteenth-century rise of Dillon's Rule, mid-nineteenth-century corporate personhood, and the routine pre-emption of local decision-making by federal and state laws.¹²⁷⁴

Therefore, I posit, CELDF calls for the implementation of merged ideals from Jeffersonian republicanism and transcendentalist environmentalism (Thoreau in particular). These ideals encompass civic virtue, attention to the common good, democratic participation, material moderation, political and ecological sustainability, and a respectful but materially engaged relationship with natural ecosystems.

Moreover, CELDF's concept of community rights amalgamates Jeffersonian ideas of communitarian participant democracy with transcendentalist notions of nature as an integral part of the community. CELDF explicitly states, "Together, we are creating a new movement – one that recognizes, secures, and protects the rights of all those living within a community."¹²⁷⁵

Here, Jeffersonian ideas of agrarian, republican virtue merge seamlessly with transcendentalist ideas of ecological safeguarding, particularly reflecting Thoreau's notions of stability and virtue through wilderness preservation.

Fifth Claim, Police Powers

The Doctrine of Police Powers

¹²⁷³ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹²⁷⁴ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹²⁷⁵ CELDF's Ongoing Commitment to Expanding Community Rights. CELDF's Ongoing Commitment to Expanding Community Rights, CELDF, <https://celdf.org/2022/02/celdfs-ongoing-commitment-to-expanding-community-rights/>.

The Doctrine of Police Powers is a foundational and intrinsic concept deeply woven into the nation's legal and constitutional fabric.¹²⁷⁶ It represents a vital component of state sovereignty, granting individual states the authority to formulate and enforce laws and regulations aimed at safeguarding the well-being, public health, safety, morals, and the general welfare of their residents.¹²⁷⁷ This authority, while not explicitly outlined in the US Constitution, is firmly grounded in the principles of federalism and is integral to the nation's system of governance.¹²⁷⁸ The origins of Police Powers can be traced back to English common law, but it gained particular prominence and relevance in the early years of the US.¹²⁷⁹ As the federal government's powers were limited to those explicitly enumerated in the Constitution, states were entrusted with the authority to govern their internal affairs.¹²⁸⁰

The constitutional foundation of Police Powers can be traced to the Tenth Amendment of the US Constitution, which succinctly states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”¹²⁸¹ This amendment underscores the principle of dual sovereignty, highlighting that any powers not expressly granted to the federal government are retained by the states or the people.¹²⁸² In essence, it enshrines the notion that states possess inherent authority to govern their internal affairs, establish regulations, and address issues that directly impact their citizens.¹²⁸³

Moreover, contemporary legal analysis also points to additional constitutional provisions that reinforce the notion of reserving Police Powers to the states. Article I, Section 8 of the Constitution specifies that the federal government's authority is confined to enumerated powers, beyond which lie the states’ Police Powers.¹²⁸⁴ This distinction is underscored by judicial decisions, including the landmark case *United States v. Lopez* (1995), which

¹²⁷⁶ For a brief introduction see, Ilya Shapiro, *State Police Powers and the Constitution*, Cato Institute, (Sept. 15, 2020) <https://www.cato.org/pandemics-policy/state-police-powers-constitution>.

¹²⁷⁷ *Id.*

¹²⁷⁸ Randy E. Barnett, *The Proper Scope of the Police Power*, 79 NOTRE DAME LAW REVIEW (2004), p. 429.

¹²⁷⁹ *Id.*

¹²⁸⁰ *Id.*

¹²⁸¹ U.S. CONST. amend. X. For the text of the amendments see, LII / Legal Information Institute https://www.law.cornell.edu/constitution/tenth_amendment.

¹²⁸² For an introductory reading on this topic see, Calvin R. Massey & Brannon P. Denning, *American Constitutional Law: Powers and Liberties* (Wolters Kluwer Law & Business Jan. 2019).

¹²⁸³ *Id.*

¹²⁸⁴ Barnett, *supra* note 1278. See also, U.S. CONST. Art. I § 8. For the text of the article see, LII / Legal Information Institute, <https://www.law.cornell.edu/constitution/articlei>.

emphasized the clear demarcation between federal authority and state Police Powers.¹²⁸⁵ The *Lopez* ruling articulated that certain matters, particularly those related to public health and safety, remain within the purview of state governments.¹²⁸⁶

Another constitutional aspect supporting the reservation of Police Powers to the states is found in the Ninth and Fourteenth Amendments –Legal scholar Randy Barnett argues that these amendments provide explicit recognition of unenumerated rights.¹²⁸⁷ These rights act as a constraint on the application of Police Powers in a manner that safeguards individual rights, regardless of any powers the Constitution may have reserved to the states through the Tenth Amendment or Article I.¹²⁸⁸ In essence, the Ninth and Fourteenth Amendments serve as a safeguard against the overreach of states’ Police Powers that may encroach upon the fundamental rights of individuals.¹²⁸⁹

The scope of Police Powers encompasses various dimensions of governance. States are empowered to regulate critical areas such as public health, public safety, land use and zoning, environmental protection, and consumer protection –e.g., states can enact laws and regulations to control infectious diseases, impose vaccination requirements, maintain law enforcement agencies, define criminal laws and penalties, and govern land development through zoning ordinances.¹²⁹⁰

While Police Powers provides states with substantial autonomy in addressing local concerns, it is not without limitations. State laws and regulations enacted under Police Powers must adhere to the US Constitution.¹²⁹¹ This means that they cannot infringe upon the individual rights protected by the Bill of Rights, such as freedom of speech, religion, or protection against

¹²⁸⁵ *United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624 (1995).

¹²⁸⁶ *Id.*

¹²⁸⁷ Barnett, *supra* note 1278. See also, U.S. CONST. amend. XIV. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/fourteen_amendment. U.S. CONST. amend. IX. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/ninth_amendment.

¹²⁸⁸ *Id.* See also, U.S. CONST. amend. XIV. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/fourteen_amendment. U.S. CONST. amend. IX. For the text of the amendments see, LII / Legal Information Institute, https://www.law.cornell.edu/constitution/ninth_amendment.

¹²⁸⁹ *Id.*

¹²⁹⁰ *Id.* On this notably, *Jacobson v. Massachusetts* (1905) validated states' authority to mandate smallpox vaccination during outbreaks, highlighting the scope of police power in safeguarding public health *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S. Ct. 358 (1905).

¹²⁹¹ Massey et. al., *supra* note 1282.

unreasonable searches and seizures.¹²⁹² Courts play a pivotal role in assessing the constitutionality of state actions, ensuring they align with the fundamental principles of the federal system of government.¹²⁹³

In conclusion, Police Powers in the US is an indispensable element of state sovereignty, rooted in the principles of federalism. It grants states the authority to enact and enforce laws that promote the welfare of their citizens, covering diverse domains such as public health, safety, and environmental protection.¹²⁹⁴ While not explicitly articulated in the Constitution, Police Powers is enshrined in the Tenth Amendment and has been affirmed through legal precedents.¹²⁹⁵ This authority is expansive but subject to constitutional checks to guarantee the preservation of individual rights within the framework of a federal system of governance.¹²⁹⁶

The traditional interpretation of the Doctrine of Police Powers as an inherent aspect of state sovereignty is subject to vigorous contention by the CELDF.¹²⁹⁷ Contrary to the traditional understanding that Police Powers are vested in states, CELDF posits a contrasting perspective, asserting that also municipalities possess inherent Police Powers.¹²⁹⁸ This stance faces significant challenges and complexities in light of existing legal frameworks.

In its published materials CELDF reference numerous times how the current reservation of Police Powers is quite a recent construction, and for almost a century after the ratification of the Constitution and the Bill of Rights different interpretations of the Police Powers coexisted

¹²⁹² *Id.*

¹²⁹³ *Id.*

¹²⁹⁴ *Id.*

¹²⁹⁵ *Id.* U.S. CONST. amend. X. For the text of the amendments see LII / Legal Information Institute, https://www.law.cornell.edu/constitution/tenth_amendment.

¹²⁹⁶ *Id.*

¹²⁹⁷ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹²⁹⁸ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

together.¹²⁹⁹ The work of Novak is useful in this context to be able to better framework CELDF's claim.

Novak's analysis presents the argument that the Police Powers of both states and local communities remained largely unrestricted by the federal Constitution.¹³⁰⁰ During the era when the 10th Amendment was conceived, it was commonly understood to serve as a foundational basis for regulation.¹³⁰¹ Importantly, there existed a practice of occasionally subordinating individual rights to safeguard the broader interests of the public.¹³⁰² In this context, Police Powers were perceived as plenary, meaning they were comprehensive and not contingent on providing compensation as a condition for their legitimacy.¹³⁰³

In essence, Novak contends that the common law principles underlying Police Powers were rooted in a form of public law that prioritized the well-being of the collective over individualism.¹³⁰⁴ This legal tradition drew from British and European precedents that predated the emergence of Lockean individualism and its subsequent embodiment in US constitutional law.¹³⁰⁵

This perspective found its foundation in the pervasive involvement of the community in all aspects of individual activities, with the community itself seen as an entity possessing distinct rights and prerogatives.¹³⁰⁶ The government, particularly the legislature, served as the representation and embodiment of this communal entity, collectively forming what was referred to as the *res publica* or the public thing.¹³⁰⁷

The *res publica* was fortified by the principle of *Salus Populi Suprema Lex Est*, which translates to “the supreme law is the health of the people.”¹³⁰⁸ This concept was complemented by the aphorism *Sic Utere Tuo Ut Alienum Non Laedas*, which means “Use your own property

¹²⁹⁹ Linzey & Brannen Jr, *supra* note 503.

¹³⁰⁰ Novak, *supra* note 631.

¹³⁰¹ *Id.*

¹³⁰² *Id.*

¹³⁰³ *Id.*

¹³⁰⁴ *Id.*

¹³⁰⁵ *Id.*

¹³⁰⁶ *Id.*

¹³⁰⁷ *Id.*

¹³⁰⁸ *Id.*

in such a way as not to injure another.”¹³⁰⁹ While *Salus Populi* emphasized the community's superior authority over the individual, *Sic Utere* underscored the individual's obligation to fellow individuals.¹³¹⁰ Together, these principles converged in a concerted effort to dismantle monopolistic privileges held by economic elites and to construct a government that diligently avoided upward redistributions of wealth.¹³¹¹

Nowak argues that this theoretical understanding of community rights materialized through a wide array of laws governing everyday activities, including the use of streets, wharves, navigable waterways, trades, the sale of food, labour hours, and worker safety.¹³¹²

However, it's important to note that Jacksonian jurisprudence, which encapsulated these principles, was not extensively reflected in the Supreme Court's constitutional decisions.¹³¹³ The conceptual foundations of police jurisprudence remained largely submerged within the jurisprudence of rights and due process during the 19th century.¹³¹⁴ *Salus Populi* often served as a subtext—a principle toward which the Court occasionally gestured but which had limited practical impact in constitutional adjudication.¹³¹⁵

In summary, Novak's argument underscores the historical underpinnings of Police Powers in the United States, emphasizing their original intent and the subsequent evolution of their interpretation within constitutional jurisprudence.¹³¹⁶

CELDF Claims on the Police Powers

I have described in the previous section how when looking at a traditional interpretation of the Doctrine of Police Powers it affirms that these are only the preserve of the state and the federal government with municipalities having only residual and enumerated powers awarded by the states (*Lochner* Doctrine).

¹³⁰⁹ *Id.*

¹³¹⁰ *Id.*

¹³¹¹ *Id.*

¹³¹² *Id.*

¹³¹³ *Id.*

¹³¹⁴ *Id.*

¹³¹⁵ *Id.*

¹³¹⁶ *Id.*

On the contrary, CELDF asserts that the Police Powers should be viewed not as a constitutional doctrine but as a common law tradition based on the idea of community rights.¹³¹⁷ CELDF expressly with its CBRs (municipal ordinances) proposes to award Police Powers to the municipalities and redefine the Police Powers from a traditional interpretation (i.e., the *Lochner* Doctrine which sees Police Powers as a residual and enumerated formulation of the power of the local government on matters of public health, safety, welfare, and morals), to a rights-based doctrine founded on the recognition of an inherent community right to local self-government.¹³¹⁸

In this sense, to reform the Doctrine of Police Powers CELDF first advocates for the recognition of community rights and then for the recognition that municipalities, as a community that has rights, have also the inherent right to local self-government.¹³¹⁹ Finally, CELDF argues that, because municipalities as a community have an inherent right to local self-government (which is included in the broader definition of community rights) and are therefore sovereign entities, sovereignty and the consequential exercise of Police Powers should not only be the preserve of the states.¹³²⁰ This is because the municipalities possess community rights which include an inherent right to local self-government that allows them to retain their sovereignty and autonomy and consequently allows them to exercise independent governance—hence free and unlimited exercise of Police Powers.¹³²¹

Novak's analysis serves as a valuable tool for summarizing the vision advocated by CELDF, which calls for a departure from contemporary jurisprudential doctrines and political frameworks in favour of embracing tradition.¹³²² It helps to provide context for the somewhat radical claims put forth by CELDF, asserting that Police Powers should not be regarded merely as a constitutional doctrine but, instead, as a common law tradition rooted in the concept of community rights.

Novak articulates this perspective by defining Police Powers as the authority vested in a state or locality to promulgate and enforce public laws that regulate or, in some cases, curtail private

¹³¹⁷ Linzey & Brannen Jr, *supra* note 503.

¹³¹⁸ *Id.*

¹³¹⁹ *Id.*

¹³²⁰ *Id.*

¹³²¹ *Id.*

¹³²² *Id.*

rights, interests, liberties, or property, all in the pursuit of the common good.¹³²³ This common good encompasses public safety, comfort, welfare, morals, or health.¹³²⁴ The expansive scope of Police Powers has led some observers to contend that it constitutes the very essence of governance, serving as the hallmark of sovereignty and statecraft.¹³²⁵

In essence, Novak's characterization of Police Powers underscores the idea that these powers extend beyond mere legal doctrine; they represent a longstanding tradition deeply entrenched in the principles of community well-being and collective interests.¹³²⁶ CELDF's call for a re-evaluation of this tradition challenges contemporary norms and encourages a return to these foundational principles.¹³²⁷

In other words, Novak states that in the 19th century, the locus of authority was the state and the local government, the preferred social unit of governance was self-governed communities, and the preferred method of governance was local regulation.¹³²⁸ At the time Police Powers were seen primarily as absolving two functions: protect the interests of the community (*Salus Populis*), and avoid damage created by individual activities to the communities (*Sic Utere Tuo*).¹³²⁹

Therefore, during the 17th-century common law was effectively the law of the people, and the *Res Publica* and the structure of government were primarily local and autonomous.¹³³⁰ CELDF as an activist movement is advocating precisely for this type of political structure and it is uncovered when reading its CBRs (all types).

CELDf rejects all contemporary jurisprudential interpretations that regulate the relationship between state, federal and local and instead looks back to the antebellum period as a utopian

¹³²³ *Id.*

¹³²⁴ *Id.*

¹³²⁵ *Id.*

¹³²⁶ *Id.*

¹³²⁷ Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³²⁸ Novak, *supra* note 631.

¹³²⁹ *Id.*

¹³³⁰ *Id.*

time.¹³³¹ CELDF's claim takes inspiration from the political and jurisprudential tradition of the antebellum period to create a new order based on an originalist interpretation of the founding fathers' documents.¹³³²

Specifically, CELDF is advocating for a return to the traditional legal antebellum tradition that saw the Police Powers exercised primarily by local officials.¹³³³ This originalist interpretation advocates for a return to community rights where the interests of the community take precedence over private interest (included in this definition of private interests are also corporate interests).¹³³⁴

CELDf's arguments in this sense also reflects the wording of Chancellor James Kent when he says that private interest must be made subservient to the general interest of the community.¹³³⁵ These arguments also mirror the opinion of Supreme Court justice Lemuel Shaw in *Commonwealth v. Alger* about well-ordered societies and civil liberty in self-governing communities. In fact, in this opinion Supreme Court justice Lemuel Shaw affirms, "[...] The power vested in the legislature by the constitution, to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinance, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."¹³³⁶

In other words, in the United States antebellum political and jurisprudential tradition, Police Powers represented the essence of governance, and the hallmark of sovereignty and statecraft.

¹³³¹ Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³³² Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³³³ Novak, *supra* note 631.

¹³³⁴ *Id.*

¹³³⁵ David W. Raack, 'To Preserve the Best Fruits': *The Legal Thought of Chancellor James Kent*, 33 THE AMERICAN JOURNAL OF LEGAL HISTORY 320 (Temple University, Oxford University Press 1989), p. 327.

¹³³⁶ *Alger v. Commonwealth*, 19 Va. App. 252, 450 S.E.2d 765 (Va. Ct. App. 1994).

Police Powers were exercised by municipalities which had the recognition of *Imperium In Imperio*.¹³³⁷ CELDF advocates precisely for this kind of decentralization.¹³³⁸

In fact, while CELDF's interpretation about the relationship between state and local municipality seems to be in line with Cooley's doctrine which argues that the municipalities retain part of their sovereignty and possess an inherent right of local self-government, it is a false parallel.

This is because, CELDF never explicitly refers to Cooley's doctrine in its published material.¹³³⁹ Instead CELDF mentions repeatedly the early days of the republic and antebellum historical tradition arguing that municipalities should retain all aspects of their sovereignty.¹³⁴⁰

CELDF's arguments on Police Powers, might not be immediately obvious when reading their CBRs (all types) but are clearly stated in the books and articles the organisation produces and distribute.¹³⁴¹

In these books and articles, the organisation buttresses its interpretation of the 10th Amendment (that the words found in the 10th Amendment when it refers to "the people" was not to be

¹³³⁷ Novak, *supra* note 631.

¹³³⁸ See, Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³³⁹ E.g., Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³⁴⁰ See, Linzey et al., *supra* note 795. Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF, *supra* note 52. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³⁴⁰ On this see for instance, Miller, *supra* note 636.

¹³⁴⁰ On this see for instance, Miller, *supra* note 636.

¹³⁴¹ Linzey & Brannen Jr, *supra* note 503. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³⁴¹ On this see for instance, Miller, *supra* note 636.

interpreted as the “individual citizen” but as the “local community”) providing further arguments to their claim.¹³⁴²

Specifically, CELDF argues –quite controversially– that both in the preamble and articles of the Constitution and in the Declaration of Independence all mentions of “the people” should be construed as referring to “local community.”¹³⁴³

In fact, with this interpretation, CELDF argues that all modern and contemporary interpretations distort the original intents of the antebellum colonies and the founding fathers, which placed the highest locus of authority in the local colonies.¹³⁴⁴

This pattern toward a recognition of a community rights and therefore the interpretation of the Doctrine of Police Powers as right based doctrine based on the recognition of community rights has been identified by other scholarship.¹³⁴⁵

However, while the scholarship argues that this is a new untested conception, I posit that this is not new, this conception of Police Powers as a right based doctrine based on community rights was the most diffused conception of police powers in the antebellum US.¹³⁴⁶

¹³⁴² Linzey & Brannen Jr, *supra* note 503. Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of ‘73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³⁴² On this see for instance, Miller, *supra* note 636. On this see for instance, Miller, *supra* note 636.

¹³⁴³ Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of ‘73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³⁴³ On this see for instance, Miller, *supra* note 636.

¹³⁴⁴ Linzey et al., *supra* note 795. *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). CELDF Community Rights Paper #1: The Spirit of ‘73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. See also case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³⁴⁵ On this see for instance, Miller, *supra* note 636.

¹³⁴⁶ My argument is based on Novak’s analysis For the current scholarship’s view on this specific claim advocated by CELDF see, Miller, *supra* note 636.

As mentioned in the previous section, the Doctrine of Police Powers has never been defined in a fixed way – their meaning has changed over time.¹³⁴⁷ What CELDF is advocating is to revert to an older interpretation of the Police Powers. It is doing so by unearthing antebellum ideas of community rights and the right of self-government (a modern construct to mean self-determination).

CONCLUSION

In summary, the exploration of municipal ordinances conferring rights upon natural phenomena, even in the face of legal challenges, reveals a form of legal activism deeply rooted in US history and ideology.

The prevailing legal framework often constrains the flexibility of local governments, fostering the perception that state legislatures may not fully engage with or adequately resolve local concerns. Consequently, municipalities find themselves at a crossroads: they must choose between pushing the boundaries of their legislative authority through innovative municipal ordinances or leaving the demands of their local constituents unmet. In recent years, an increasing number of municipalities have boldly embraced the former option, adopting policies and ordinances that may provoke legal scrutiny but are driven by an unwavering commitment to address pressing issues head-on.

The underlying values and ideological influences steering this form of legal activism are firmly anchored in the bedrock of US democracy, accentuating the virtues of localism and a vigilant stance against corporate dominance. This perspective harkens back to earlier expressions of US political thought, from the rediscovery of principles of Jeffersonian democracy to the philosophical arguments of 19th-century transcendentalists. These enduring values have resurfaced in the 20th century through agrarian ordinances, mirroring elements of populist movements characterized by the fusion of agrarian myths and radical political ideologies.

The contemporary municipal ordinances or CBRs exhibit remarkable continuity with their historical antecedents. They do not inherently oppose capitalism but rather challenge the hegemony of large corporations, including those of foreign origin. These municipal ordinances or CBRs proudly embrace direct democracy, with local communities actively participating in

¹³⁴⁷ Novak, *supra* note 631.

the collaborative drafting of municipal ordinances or CBRs—a hallmark of this form of activism. This approach is fundamentally inclusive, emphasizing the inalienable right of every individual to cherish and safeguard their local ecosystem.

Moreover, the romanticized ideal of self-reliant local communities coexisting in harmony with nature, which emerged during the 19th century, continues to imbue this form of legislative activism. These ordinances advance a profound vision of nature as a harmonious entity deserving of rights, a concept that has matured over time to explicitly recognize rights of nature. This narrative draw strength from radical political ideologies, resonating harmoniously with the broader theme of community rights and the assertion of self-determination. It transcends narrow, class-specific identities, advocating instead for community empowerment and fashioned through the lens of the agrarian myth (which romanticizes and idealizes rural life, portraying it as a virtuous and harmonious existence closely connected to the land and nature).

In essence, the municipal ordinances under scrutiny are integral to a rich tradition of legislative activism that seeks to address contemporary environmental imperatives while harnessing the deep-seated values and historical narratives woven into the fabric of US intellectual and social life. Although they ostensibly confer rights upon natural phenomena, these municipal ordinances, at their core, tap into age-old themes of US thought and conviction.

CONCLUSION

The thesis explored a legal phenomenon through a policy analysis approach, remaining sensitive to historical contexts while examining complex legal issues within a methodologically driven framework. This research was set against the backdrop of U.S. municipal activism, with a specific focus on the CELDF and its advocacy for CBRs. To effectively frame the activities undertaken by municipalities with CELDF's assistance, it is crucial to recognize the key actors involved. CELDF, a grassroots organization affiliated with the GARN, has played a pivotal role in fostering environmental activism in the U.S. and internationally, primarily through civil disobedience enacted via legislative or judicial actions.

The collaboration between CELDF and the Pachamama Alliance, a San Francisco-based NGO dedicated to protecting the Amazon rainforest and its indigenous communities, highlights the interconnectedness of these movements. This relationship began when Bill Twist, co-founder of the Pachamama Alliance, was introduced to the concept of awarding rights to nature in 2007 by a colleague who had attended CELDF's Democracy School. This connection led to a deeper collaboration, particularly when the Pachamama Alliance, recognizing an opportunity during the drafting of Ecuador's new constitution, sought CELDF's expertise in advocating for constitutional provisions recognizing the rights of nature. When Ecuador's President Rafael Correa initiated the constitutional convention, the Pachamama Alliance, represented by individuals like Hugo Romo Castillo, saw a chance to institutionalize these concepts, leading to CELDF's crucial role in drafting the rights of nature provisions that became part of Ecuador's 2008 Constitution.

This narrative establishes the clear ties between various loosely connected chapters across the globe affiliated with GARN, with CELDF's involvement in the Ecuadorian Constitutional Convention being a direct result of its extensive history of grassroots activism in the U.S., especially at the municipal level. Since 1998, CELDF has been instrumental in helping local communities pass municipal ordinances or Community Bills of Rights challenging corporate power, and since 2006, these CBRs—like the one in Tamaqua—have increasingly included provisions for the rights of nature.

The thesis investigated these CBRs, conceptualized by CELDF, as legislative instruments aimed at recognizing new rights, including those challenging corporate legal personhood and conferring legal rights to nature. With approximately 400 CBRs enacted, the research analysed their content, evolution, and impact on legal discourse. In the aftermath of the 2010 Citizens United decision, corporate lobbying efforts intensified, particularly targeting state legislatures to curtail municipal authority. Research by Bowman revealed that local governments had been losing power to states over the past four decades. Within this context, the thesis examined how municipal activism, supported by CELDF through CBRs, emerged as a form of legislative resistance. It uncovered the implications of granting legal rights to nature within these municipal frameworks, highlighting the interplay between environmental activism, community rights, and local democracy.

The research identified significant gaps in the existing literature:

1. Ideas: The ambiguity in defining and awarding rights to nature, with legal provisions often blending biocentric and anthropocentric terminology, raised questions about cross-jurisdictional influence and potential legal transplantation.
2. Movement: The evolution and interaction of local chapters like CELDF, which formed international networks such as GARN, indicated a trend of legal transplantation shaped by US. social and political contexts.
3. Framework: The novel governance model advocated by the rights of nature movement, encompassing community rights, local democracy, self-determination, and anti-corporate sentiments, required deeper exploration of the operational dynamics at the local level in the US.

By addressing these gaps, the thesis provided a foundational understanding of the relationship between environmental constitutionalism and the municipal activism taking root in the US. It highlighted the importance of CBRs in legislative activism, emphasizing their contribution to environmental and social justice.

SUMMARY OF THE RESEARCH AND FURTHER RESEARCH AVENUES

KEY TAKEAWAYS

In conclusion, this thesis has explored the concept of rights of nature and its implications for environmental governance and social justice. It has provided valuable insights into the global movement advocating for the recognition of these rights and the strategies employed by grassroots organizations, such as the Global Alliance for the Rights of Nature (GARN) and the Community Environmental Legal Defense Fund (CELDF), to advance environmental rights and promote equitable resource distribution.

The research has revealed that the recognition of rights of nature represents a significant shift in environmental governance, acknowledging the value and rights of ecosystems and natural entities. By advocating for a more equitable and sustainable allocation of environmental resources, this approach holds promise for addressing conflicts related to ecological distribution and safeguarding the well-being of marginalized communities and future generations.

Overall, this thesis has deepened our understanding of law as a powerful tool for environmental activism. It has highlighted the importance of community rights, the role of legislative activism, and the significance of local-level initiatives in driving democratic change. The findings of this research contribute to the scholarly understanding of rights of nature and offer insights for further research and policy discussions on environmental sustainability and democratic rights.

Furthermore, this thesis has made contributions to existing scholarship by addressing gaps in previous research, which are structured around three main areas of investigation. These areas directly correspond to the research questions guiding the analysis, aligning with the tripartite structure of the thesis consisting of three chapters.

The first area of investigation pertains to the normative ambiguity surrounding the concept of rights of nature. Previous research has indicated a lack of clear and consistent definitions for the terms associated with these rights, leading to normative ambiguity. Moreover, the occasional use of both biocentric and anthropocentric rights theories within the same legal document further complicates the understanding of this concept. To address this gap, the thesis explores the ideas surrounding rights of nature from both anthropocentric and biocentric perspectives. It investigates how these ideas intersect with community rights, ecological distribution conflict, and anti-corporatism, providing a more rounded understanding of the concept. Finally, it explores the connection between environmental constitutionalism and local-level legislative activism, addressing the research question regarding the alignment between legal scholarship, indigenous jurisprudential tradition, and the rights of local communities in environmental decision-making.

The second area of investigation focuses on the institutional dynamics of the GARN and the strategies employed by the CELDF to advance environmental rights through legislative activism. Previous literature has given insufficient attention to the evolution and interaction of national and local chapters within GARN and the influence of legal, social, and political contexts on the legal strategies of advocacy groups. To fill this gap, the research analyses the role of CELDF as an actor helping municipalities pass the Community Bills of Rights (CBRs) to and examines the distinction between the municipalities' approach of legislative activism approach and traditional adversarial legalism. By contextualizing the activities of the municipalities aided by CELDF within the broader landscape of legal and adversarial movements, the thesis sheds light on different strategies and their impact on environmental and democratic objectives and how they are influenced by unique legal, political, and social context of the country. This is useful to further understand the process of legal transplantation of the legal construct of rights of nature in other countries.

The third area of investigation addresses the novel modes of governance advocated by some grassroots movement advocating for rights of nature, encompassing nature protection, community rights, sustainable development, anti-corporate sentiments, self-determination, and indigenous recognition. Previous research has conducted insufficient analysis of these modes of governance and their implications. To bridge this gap, the research examines the program of municipal ordinances managed by CELDF, which confer legal personality rights upon natural phenomena while denying corporate bodies their right to legal personality in legal

proceedings. Additionally, the research explores the CBRs developed through collaboration between municipalities and organizations like CELDF. These municipal ordinances safeguard communities from environmental and economic threats posed by corporate activities and assert community rights to self-governance and participatory democracy. By analysing the legal structures and frameworks fostered by CELDF and their implications for challenging corporate power and expanding existing legal frameworks, the research contributes to a deeper understanding of the social action framework of rights of nature movements.

In summary, this thesis has not only addressed gaps in previous research but has also structured its analysis around these gaps, reflecting the tripartite structure of the thesis consisting of three chapters. By examining normative ambiguity, institutional dynamics, and novel modes of governance, the research has made important contributions to the existing scholarship on rights of nature and enriched our understanding of environmental governance, social justice, democratic rights, and legal advocacy.

It is hoped that the findings of this thesis will inform further research and policy discussions on the recognition of rights of nature and make valuable contributions to ongoing efforts aimed at achieving environmental sustainability and upholding democratic rights.

FURTHER RESEARCH AVENUES

The findings of this thesis shed light on the significance of localism and the protection of local communities' rights within the framework of environmental constitutionalism. The recognition of local communities' rights is crucial for ensuring environmental sustainability, justice, and democratic participation.

Building upon these findings, there are several potential avenues for further research that can deepen our understanding and contribute to the advancement of environmental governance and community empowerment.

- **Comparative Analysis:** Conducting a comparative analysis of different countries or regions that have implemented environmental constitutionalism and recognised the rights of local communities can provide valuable insights. Examining the legal frameworks, policy mechanisms, and outcomes in diverse contexts can help identify

best practices and lessons learned. Such research could explore case studies from countries with varying levels of environmental protection and different cultural and socio-political landscapes.

- **Empirical Studies:** Conducting empirical studies to assess the effectiveness of legal mechanisms, such as the amparo or other forms of public interest litigation, in promoting environmental justice is another important research avenue. These studies could examine the impact of legal actions taken by local communities on environmental outcomes, as well as the social and economic implications of such interventions.
- **Community Participation and Decision-making:** Further research can focus on understanding the role of local communities in decision-making processes related to environmental governance. Investigating the extent to which communities are involved in policy formulation, project planning, and resource management can provide insights into the practical implementation of environmental constitutionalism. This research could explore strategies for enhancing community participation and ensuring their voices are heard and respected.
- **Legal Transplantation and Indigenous Law:** Building upon the findings regarding legal transplantation and the affinity between public trust and indigenous law, future research can delve deeper into the dynamics of adopting and adapting legal principles from indigenous legal systems. This research could explore the challenges and opportunities associated with incorporating indigenous legal frameworks within environmental constitutionalism and the potential implications for community empowerment and environmental protection.
- **Policy Implications and Advocacy:** To bridge the gap between research and policy, further investigation is needed to explore the policy implications of recognising the rights of local communities within environmental governance frameworks. Research can focus on understanding how the findings of academic studies, like this thesis, can be effectively communicated and translated into policy recommendations. Additionally, advocacy efforts can be explored to promote the adoption and

implementation of policies that empower communities and protect their environmental rights.

By pursuing these research avenues, scholars and policymakers can advance the understanding of environmental constitutionalism, localism, and the protection of local communities' rights. This knowledge can then be utilized to inform policy discussions, guide decision-making processes, and support initiatives that foster environmental sustainability, justice, and the harmonious coexistence of humans and the natural world.

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The first is a Memorandum of Law in Support of the Motion to dismiss the case of *Penn Ridge Coal, LLC et al v. Blaine Township*.¹³⁴⁸ The Memorandum of Law in Support of the Motion is titled: Making the case that people possess an inalienable right to local self-governance. The document is part of the suite of document submitted by the Blaine municipality to defend (with CELDF's legal counsel) their newly passed CBR or municipal ordinance (which they passed with the help of CELDF) against the legal challenge raised by the company called Penn Ridge Coal.

The second is a legal document produced by the lawyers of CELDF Thomas Linzey and Elizabeth Dunne. The legal document discusses the case of *Grant Township v. Pennsylvania General Energy Company*,¹³⁴⁹ emphasizing the longstanding existence of the right to local, community self-governance as a natural and inherent attribute of the people. The authors argue that, despite its historical recognition during the founding of the nation, the present legal framework fails to acknowledge and safeguard this right. The prevailing legal system, instead, grants rights to corporations through established doctrines while also enforcing state and federal preemption. This brief elucidates the incompatibility between these doctrines and the people's exercise of their right to local community self-governance. It underscores the necessity of shifting away from these doctrines to uphold the primacy of this fundamental right.¹³⁵⁰

The third is a paper produced by CELDF titled "Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government." The paper was published in response to the legal challenge raised by Mary L. Vermillion representative of Independent Petroleum Association

¹³⁴⁸ *Penn Ridge Coal, LLC et al v. Blaine Township*, No. 2:2008cv01452 - Document 45 (W.D. Pa. 2009). <https://celdf.org/wp-content/uploads/2015/08/Making-the-Case-for-the-Right-to-Local-Self-Government.pdf>.

¹³⁴⁹ *Pa. Gen. Energy Co. v. Grant Twp.*, C.A.No. 14-209ERIE (W.D. Pa. Sep. 30, 2016)

¹³⁵⁰ Thomas Linzey, Elizabeth Dunne, Daniel E. Brannen Jr., *The People's Right to Local Community Self-Government: Grant Township V. Pennsylvania General Energy Company* (Lulu 2015).

of New Mexico against the CBR (municipal ordinance) passed by Mora County with the help of CELDF.¹³⁵¹

The fourth is a paper, co-produced by CELDF's founder, Thomas Linzey, titled "A Phoenix From the Ashes: Resurrecting a Constitutional Right of Local, Community Self-Government in the Name of Environmental Sustainability,"¹³⁵² which condenses the legal arguments made by the CELDF legal team in several briefs submitted to state and federal courts in defence of several municipal communities whose CBRs (municipal ordinances) were challenged either by the State or by corporations.

The fifth is a white paper published by CELDF discussing its approach to activism titled "On Community Civil Disobedience in the Name of Sustainability." It advocates for the creation of a novel grassroots movement with the overarching goal of instigating fundamental, systemic transformations within the established framework. The document critiques the prevailing legal system, which predominantly prioritizes ceaseless growth, development, and resource exploitation. It observes that conventional environmental advocacy has conventionally operated within the confines of this system, avoiding a direct confrontation with its core tenets. Despite the passage of significant environmental laws over the past forty years, pressing issues like species decline, environmental pollutants, and global climate change persist and worsen. The white paper emphasizes the necessity of redirecting activism towards challenging the very foundations of the system, rather than merely pursuing peripheral initiatives.¹³⁵³

The sixth is a document, a collection of Community Rights Papers, originally printed between 2014 and 2017 titled "Rebelling Against the Corporate State, Forging a Community Rights Movement." These papers provide a distinct angle by recontextualizing modern and past occurrences through the perspective of community rights.¹³⁵⁴

¹³⁵¹ CELDF Community Rights Paper #1: The Spirit of '73 and the Right to Local Self-Government, CELDF, <https://celdf.org/2015/03/community-rights-paper-1/>. Case: *Mary L. Vermillion, et al. v. Mora County, et al.*; Cause No. 1:13-cv-01095-ACT-GBW; in the United States District Court for New Mexico United States District Court, D. New Mexico. 81 F.Supp.3d 1075 Signed Jan. 19, 2015.

¹³⁵² Thomas Linzey & Daniel E. Brannen Jr, *A Phoenix From The Ashes: Resurrecting a Constitutional Right of Local, Community Self-Government in the Name of Environmental Sustainability*, 8 ARIZONA JOURNAL OF ENVIRONMENTAL LAW AND POLICY (2017).

¹³⁵³ The Community Environmental Legal Defense Fund (CELDF), *On Community Civil Disobedience in the Name of Sustainability : The Community Rights Movement in the United States* (Chicago: Pm Press 2015).

¹³⁵⁴ Community Environmental Legal Defense Fund (CELDF), *Rebelling Against the Corporate State Forging a Community Rights Movement*, (Lulu 2018).

The seventh is a book written by Ben Price the National Organizing Director of CELDF entitled “How Wealth Rules The World, Saving Our Communities and Freedoms From the Dictatorship of Property.” The book delves into CELDF's perspective on property rights, revealing an interpretation that contends the constitution and legal system were deliberately structured to favor the affluent property-owning class over the general population. Price illuminates how this dynamic hinders our capacity to adequately tackle numerous critical social and environmental challenges. The book offers insights into these issues and proposes strategies for overcoming these limitations.¹³⁵⁵

The eighth, ninth, and tenth are three books written by various authors part of the CELDF movement on how to build a community in the municipality to advance community rights through the passing of CBRs, a legislative instrument that can be construed as a constitutional document. These books are: “One-Block Revolution: 20 Years of Community Building,”¹³⁵⁶ “Be the Change: How to Get What You Want in Your Community,”¹³⁵⁷ “We the People: Stories from the Community Rights Movement in the United States.”¹³⁵⁸

Finally, I have availed myself of all CELDF Newsletters (the Susquehanna Volumes) published between 1996 and 2022.¹³⁵⁹

¹³⁵⁵ Ben Price, *How Wealth Rules The World, Saving Our Communities and Freedoms From the Dictatorship of Property*, (Berrett-Koehler Publisher 2019).

¹³⁵⁶ Summer Hess, *One-Block Revolution: 20 Years Of Community Building* a Book by Summer Hess (Jan. 2021).

¹³⁵⁷ Thomas Linzey & Anneke Campbell, *Be The Change : How to Get What You Want in Your Community* (Salt Lake City Gibbs Smith 2009).

¹³⁵⁸ Thomas Linzey, *We The People : Stories From the Community Rights Movement in the United States* (Oakland, California: Pm Press 2016).

¹³⁵⁹ Some are available in CELDF resource archive others are found in Wayback Machine or in other shadow libraries *Resources Archive*, CELDF, <https://celdf.org/resources/>.

CELDF's influenced Municipal Ordinances –SUMMARY

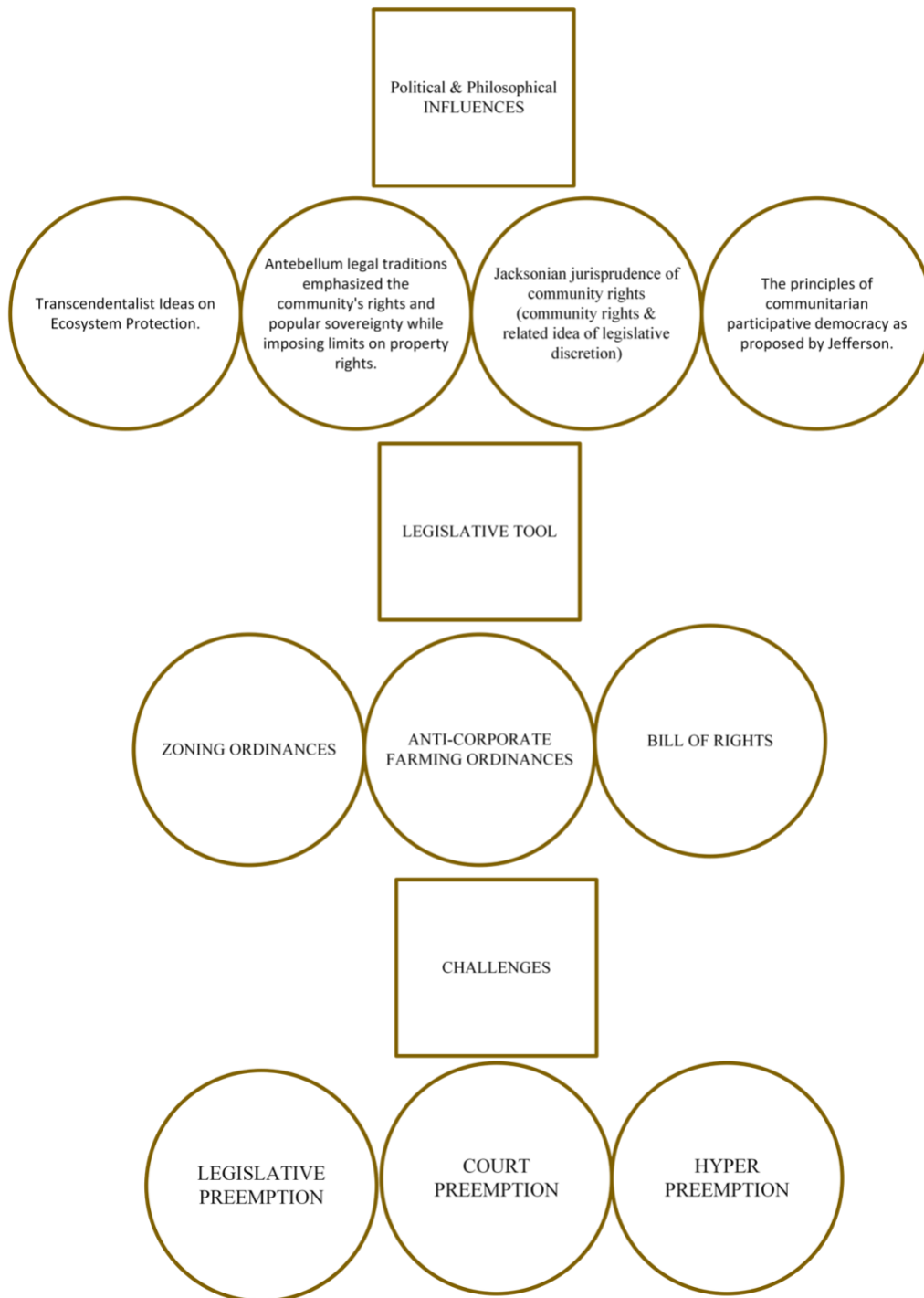


TABLE 1

Year	Name of the Municipal Ordinances or CBRs
2018	Wayne Township Ownership and Control Disclosure Ordinance, Wayne Township, Mifflin County, PA – 2018
	Porter Township Emissions Disclosure Ordinance, Porter Township, Clarion County, PA -2018
	Ponca Nation of Oklahoma- 2018 ¹³⁶⁰
2017	Lincoln County Freedom from Aerially Sprayed Pesticides Ordinance, Lincoln County, OR - Measure 21-177 5/16/2017
	Lake Erie Bill of Rights, Toledo Lucas County, OH-2017
	City of Lafayette Climate Bill of Rights, Lafayette, Boulder County, CO - 3/21/2017
	Athens County, Ohio, Oil and Gas Restrictions and Home Rule Charter Initiative, Athens County OH –11/2017
	Athens County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Athens County OH –11/2017
2016	City of Waterville Community Bill of Rights (Charter Amendment), Waterville, Lucas County, OH - 11/9/2016
	Highland Township Rights, Based Home Rule Charter, Highland Township, Elk County, PA - 11/8/2016
	Youngstown Community Bill of Rights Charter Amendment Youngstown, Mahoning County, OH - 11/8/2016
	Community Bill of Rights to Protect the Waters of Barrington Ordinance, Barrington, Strafford County, NH - 3/8/2016
2015	West Chester Borough Community Bill of Rights Home Rule Charter Amendment, West Chester Borough, Chester County, PA - 11/4/2015

¹³⁶⁰ The Ponca first tribal nation to recognize the rights of nature into statutory law.

	Portage County Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Portage County OH –11/2015	
	Ho-Chunk Nation’s Rights of Nature Constitutional Amendment, Black River Falls, Ho-Chunk Nation - 9/19/2015	
	Meigs County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Meigs County OH -11/15	
2014	City of Niles Community Protection from Shale Gas & Oil Extraction & Waste Disposal Bill of Rights Ordinance, Niles, Trumbull County, OH - 11/4/2014	
	Mendocino County Community Bill of Rights, Fracking & Water Use Initiative, Mendocino County, CA - 11/4/2014	
	Athens Community Bill of Rights & Water Supply Protection Ordinance Athens, Athens County, OH - 11/4/2014	
	Grant Township Community Bill of Rights Ordinance, Grant Township, Indiana County, PA - 6/1/2014	
	Town of Hebron Right to a Sustainable Energy Future & Community Self-Government Ordinance, Hebron, Grafton County, NH - 3/11/2014	
	Town of Danbury Right to a Sustainable Energy Future & Community Self-Government Ordinance, Danbury, Merrimack County, NH - 3/11/2014	
	Town of Alexandria Right to a Sustainable Energy Future & Community Self-Government Ordinance, Alexandria, Grafton County, NH - 3/11/2014	
2013	Town of Grafton Right to a Sustainable Energy Future & Community Self-Government Ordinance, Grafton County, NH- March 2013	
	Oberlin Community Bill of Rights & Obligations Ordinance, Oberlin, Lorain County, OH - 11/5/2013	
	Town of Sangerville Community Bill of Rights (Right to Sustainable Infrastructure), Sangerville, Piscataquis County, ME - 9/18/2013	
	Highland Township Community Rights & Protection from Injection Wells Ordinance, Highland Township, Elk County, PA - 1/2013	
	Mora County Community Water Rights and Local Self-Government Ordinance, Mora County, NM- 4/29/2013	
	Medina County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Medina County OH –11/2013	
2012	Mansfield Charter Amendment for a Community Bill of Rights & Protection from Shale Gas Drilling & Fracking, Mansfield, Richland County, OH - 11/6/2012	

	Ferguson Township Petition to Amend Home Rule Charter with Community Bill of Rights Protection from Shale Gas Drilling & Fracking, Ferguson Township, Centre County, PA - 11/2012	
	Yellow Springs Community Rights & Protection from Shale Gas Drilling & Fracking Ordinance, Yellow Springs, Greene County, OH - 10/1/2012	
	Las Vegas Community Water Rights & Local Self-Governance Ordinance, Las Vegas, San Miguel County, NM - 5/19/2012	
	Town of Easton Right to a Sustainable Energy Future & Community Self-Government Ordinance, Easton, Grafton County, NH – 2012	
	Town of Plymouth Right to A Sustainable Energy Future & Community Self-Government Ordinance, Plymouth, Grafton County, NH – 2012	
2011	Sugar Hill Right to a Sustainable Future & Local Self-Governance Ordinance, Sugar Hill, Grafton County, NH - 3/13/2011	
	City of Pittsburgh Community Protection from Toxic Trespass due to Natural Gas Extraction Ordinance, Pittsburgh, Allegheny County, PA - 12/19/2011	
	State College Borough Community Bill of Rights Home Rule Charter Amendment, State College Borough, Centre County, PA - 11/8/2011	
	Baldwin Community Protection from Natural Gas Extraction Ordinance, Baldwin Borough, Allegheny County, PA - 6/1/2011	
	West Homestead Borough Community Protection from Natural Gas Extraction Ordinance, West Homestead Borough, Allegheny County, PA - 5/10/2011	
	Town of Mountain Lake Park Community Protection from Natural Gas Extraction Ordinance, Mountain Lake Park, Garrett County, MD - 3/3/2011	
	Forest Hills Borough Community Rights & Protection from Natural Gas Exploitation Ordinance, Forest Hills Borough, Allegheny County, PA – 2011	
	Wilkinsburg's Community Protection from Natural Gas Extraction Ordinance, Wilkinsburg Borough, Allegheny County, PA – 2011	
	Protection of Natural Resources CHAPTER 162 Home Charter Amendment, Wales, Erie County, NY – 2011	
2010	Pittsburgh Community Protection from Natural Gas Drilling Ordinance, Pittsburgh, Allegheny County, PA - 11/16/2010	
	Licking Township Community Water Rights & Self-Government Ordinance, Licking Township, Clarion County, PA - 10/12/2010	

	Danby Community Water Rights & Self-Government Ordinance, Danby, Tompkins County, NY - 2010	
	Lehman Township Community Water Rights & Self-Government Ordinance, Lehman Township, Luzerne County, PA - 2010	
	Town of Monroe Local Self-Government Ordinance Warrant Article, Monroe Township, Cumberland County, PA – 2010	
2009	Blaine Township Study Commission Final Report and Home Rule Charter and Blaine Township Corporate Mining & Democratic Self-Government Ordinance, Blaine Township, Washington County, PA - 8/29/2009	
	Newfield Water Rights & Local Self-Governance Ordinance, Newfield, York County, ME - 3/14/2009	
	Town of Shapleigh Water Rights & Local Self-Government Ordinance, Shapleigh, York County, ME - 2/28/2009	
	City of Santa Cruz Local Control, Pesticide & Chemical Trespass Ordinance, Santa Cruz County, CA - 2/2009	
	Van Etten Community Water Rights & Self-Government Ordinance, Van Etten, Chemung County, NY – 2009	
2008	Atkinson Water Withdrawal Control Ordinance Atkinson, Rockingham County, NH - 10/20/2008	
	Place Local Control Sewage Sludge & Chemical Trespass Ordinance, Shrewsbury Township, York County, PA - 9/3/2008	
	Nottingham Water Rights & Local Self-Government Ordinance, Nottingham, Rockingham County, NH - 3/15/2008	
	Mahanoy Township Sewage Sludge Ordinance, Mahanoy Township, Schuylkill County, PA - 2/21/2008	
	Town of Halifax Corporate Mining, Bodily Trespass & Community Self-Government Ordinance, Halifax, Halifax County, VA - 2/7/2008	
	Blaine Township Community Self-Governance & Corporate Takings Prohibition Ordinance, Blaine Township, Washington County, PA - 2008	
	Nockamixon Township Corporate Mining, Bodily Trespass & Democratic Self-Government Ordinance, Nockamixon Township, Bucks County, PA – 2008	
	Newtown Township Comprehensive Plan Ordinance, Newtown Township, Delaware County, PA – 2008	
2007	Donegal Township Democratic Self-Government & Local Control Ordinance Donegal Township, Washington County, PA - 12/18/2007 and Donegal Township Democratic Self-Government & Local Control Ordinance, banning coal mining Donegal Township, Washington County, PA - 12/18/2007	
	Tamaqua Borough Corporate Waste & Local Control Ordinance, Tamaqua Burrough, Schuylkill County, PA - 5/1/2007	
	Blaine Township Disclosure & Protection Ordinance, Blaine Township, Washington County, PA - 2007	
	Bethel Corporate Toxics & Local Self-Governance Ordinance, Bethel Township, Berks County, PA – 2007	

	Borough of North Plainfield Corporate Land Development & Local Self-Government Ordinance, Somerset, North Plainfield County, NJ – 2007	
	Peach Bottom Township Sustainable Agriculture & Community Self-Government Ordinance, Peach Bottom Township, York County, PA – 2007	
	Campbell County Sewage Sludge Ordinance, Campbell County, VA - 2007	
2006	Tamaqua Borough, Sewage Sludge Ordinance No. 612 of 2006, Schuylkill County, PA- 19/09/2006	
	East Brunswick Township Sewage Sludge Ordinance, East Brunswick Township, Schuylkill County, PA - 12/6/2006	
	Montgomery County Anti-Corporate Takings & Securing Local Self-Governance Ordinance, Montgomery County, PA - 11/7/2006	
	Blaine Township Corporate Land Development Ordinance, Blaine Township, Washington County, PA - 10/16/2006	
	Saint Clair Borough Corporate Waste & Local Control Ordinance, Saint Clair Borough, Schuylkill County, PA - 9/1/2006	
	Town of Barnstead Water Rights & Local Self-Government Ordinance, Barnstead, Belknap County, NH - 3/2006	
	Montgomery County Anti-Corporate Takings & Securing Local Self-Governance, Ordinance Montgomery County, VA – 2006	
	Windsor Township Corporate Land Development Ordinance, Windsor Township, York County, PA – 2006	
	Windsor Township Product Retailing Ordinance, Windsor Township, York County, PA – 2006	
	Mahanoy Township Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA – 2006	
	Liberty Township Farm Privacy & Profitability Ordinance, Liberty Township, Westmoreland County, PA – 2006	
	Codorus Township Best Fly Management Practices for Concentrated Agricultural Operations, Codorus Township, York County, PA - 2006	
	Liberty Township Chemical Trespass Ordinance, Liberty Township, Westmoreland County, PA – 2006	
	Mahanoy Township Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA - 2006	
	Windsor Township Product Retailing Ordinance, Windsor Township, York County, PA - 2006	
	Windsor Township Corporate Land Development Ordinance, Windsor Township, York County, PA -2006	
2004	East Mahoning Sewage Sludge Ordinance, East Mahoning, Indiana County, PA -20/04/2004	
	Rayne Township Sewage Sludge Ordinance, Rayne Township, Indiana County, PA - 6/20/2004	
	East Mahoning Sewage Sludge Ordinance, East Mahoning, Indiana County, PA - 6/20/2004	

	Rockland Township Water Supply Protection Act Rockland Township, Venango County, PA – 2004	
2003	Corporate Rights Elimination & Self-Government Ordinance, Licking Township, Clarion County, PA - 3/2003 Corporate Personhood Elimination & Democracy Protection Ordinance, Haines Centre County, PA – 2003 Saint Thomas Township Surface Mining Ownership & Control Ordinance, Saint Thomas Township, Franklin County, PA – 2003	
2002	Porter Township Corporate Rights Ordinance, Porter Township, Clarion County, PA - 12/9/2002 Windham Township Bans Agribusiness Corporations, Windham Township, Bradford County, PA - 4/2002	
2001	East Wheatfield Township Bans Agribusiness Corporations, East Wheatfield Township, Indiana County, PA - 2/1/2001 Bedford County Bans Agribusiness Corporations, Bedford County, PA - 1/2001 Cumberland County Bans Agribusiness Corporations, Cumberland County, PA - 1/2001 Fulton County Bans Agribusiness Corporations, Fulton County, PA - 1/2001 Monroe Township Noxious Agricultural Odors Ordinance, Monroe Township, Cumberland County, PA – 2001	
2000	Buffington Township Bans Corporations from Dumping Sewage Sludge Buffington Township, Indiana County, PA – 2000	
1999	Southampton Township Farm Ownership Ordinance, Southampton Township, Franklin County, PA - 3/1999	
1998	Wayne Township Environmental Protection Ordinance, Wayne Township, Mifflin County, PA – 1998 Creating an Environmental Advisory Council to the Township Exeter Township, Berks County, PA – 1998 Wells Township Anti-Corporate Farming Ordinance, Wells Township, Fulton County, PA – 1998	

TABLE 2

State	Municipal Ordinances or CBRs
California	City of Santa Cruz Local Control, Pesticide & Chemical Trespass Ordinance, Santa Cruz County, CA - 2/2009
	Mendocino, County Community Bill of Rights, Fracking & Water Use Initiative, Mendocino County, CA - 11/4/2014
Colorado	
	City of Lafayette, Climate Bill of Rights, Lafayette, Boulder County, CO - 3/21/2017
Maine	
	Newfield, Water Rights & Local Self-Governance Ordinance, Newfield, York County, ME - 3/14/2009
	Town of Shapleigh, Water Rights & Local Self-Government Ordinance, Shapleigh, York County, ME - 2/28/2009
	Town of Sangerville, Community Bill of Rights (Right to Sustainable Infrastructure), Sangerville, Piscataquis County, ME - 9/18/2013
Maryland	
	Town of Mountain, Lake Park Community Protection from Natural Gas Extraction Ordinance, Mountain Lake Park, Garrett County, MD - 3/3/2011
New Hampshire	

Community Bill of Rights to Protect the Waters of Barrington Ordinance, Barrington, Strafford County, NH - 3/8/2016
Town of Hebron, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Hebron, Grafton County, NH - 3/11/2014
Town of Danbury, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Danbury, Merrimack County, NH - 3/11/2014
Town of Alexandria, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Alexandria, Grafton County, NH - 3/11/2014
Town of Grafton, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Grafton County, NH- March 2013
Town of Easton, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Easton, Grafton County, NH – 2012
Town of Plymouth, Right to A Sustainable Energy Future & Community Self-Government Ordinance, Plymouth, Grafton County, NH – 2012
Sugar Hill, Right to a Sustainable Future & Local Self-Governance Ordinance, Sugar Hill, Grafton County, NH - 3/13/2011
Nottingham, Water Rights & Local Self-Government Ordinance, Nottingham, Rockingham County, NH - 3/15/2008

New Mexico

Mora County, Community Water Rights and Local Self-Government Ordinance, Mora County, NM- 4/29/2013
Las Vegas, Community Water Rights & Local Self-Governance Ordinance Las Vegas, San Miguel County, NM - 5/19/2012

New Jersey

Borough of North Plainfield Corporate Land Development & Local Self-Government Ordinance Somerset, North Plainfield County, NJ – 2007

New York

Protection of Natural Resources CHAPTER 162 Home Charter Amendment Wales, Erie County, NY - 2011
Danby, Community Water Rights & Self-Government Ordinance Danby, Tompkins County, NY - 2010
Van Etten, Community Water Rights & Self-Government Ordinance Van Etten, Chemung County, NY – 2009

Ohio

Lake Erie, Bill of Rights, Toledo Lucas County, OH-2017
Athens County, Ohio, Oil and Gas Restrictions and Home Rule Charter Initiative, OH –11/2017
Athens County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, OH – 11/2017
City of Waterville, Community Bill of Rights (Charter Amendment), Waterville, Lucas County, OH - 11/9/2016
Portage County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Portage County OH –11/2015
Meigs County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Meigs County OH -11/15
City of Niles, Community Protection from Shale Gas & Oil Extraction & Waste Disposal Bill of Rights Ordinance, Niles, Trumbull County, OH - 11/4/2014
Medina County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Medina County OH –11/2013
Mansfield Charter Amendment for a Community Bill of Rights & Protection from Shale Gas Drilling & Fracking Mansfield, Richland County, OH - 11/6/2012

Oregon

Lincoln County, Freedom from Aerially Sprayed Pesticides Ordinance, Lincoln County, OR - Measure 21-177 5/16/2017

Pennsylvania

Wayne Township, Ownership and Control Disclosure Ordinance, Wayne Township, Mifflin County, PA – 2018
Porter Township, Emissions Disclosure Ordinance, Porter Township, Clarion County, PA- 2018
Highland Township, Rights-Based Home Rule Charter, Highland Township, Elk County, PA - 11/8/2016

West Chester Borough, Community Bill of Rights Home Rule Charter Amendment, West Chester Borough, Chester County, PA - 11/4/2015
Grant Township, Community Bill of Rights Ordinance, Grant Township, Indiana County, PA - 6/1/2014
Highland Township, Community Rights & Protection from Injection Wells Ordinance, Highland Township, Elk County, PA - 1/2013
Ferguson Township, Petition to Amend Home Rule Charter with Community Bill of Rights Protection from Shale Gas Drilling & Fracking Ferguson Township, Centre County, PA - 11/2012
City of Pittsburgh, Community Protection from Toxic Trespass due to Natural Gas Extraction Ordinance, Pittsburgh, Allegheny County, PA - 12/19/2011
State College Borough, Community Bill of Rights Home Rule Charter Amendment, State College Borough, Centre County, PA - 11/8/2011
Baldwin, Community Protection from Natural Gas Extraction Ordinance, Baldwin Borough, Allegheny County, PA - 6/1/2011
West Homestead Borough, Community Protection from Natural Gas Extraction Ordinance, West Homestead Borough, Allegheny County, PA - 5/10/2011
Forest Hills Borough, Community Rights & Protection from Natural Gas Exploitation Ordinance, Forest Hills Borough, Allegheny County, PA – 2011
Wilkesburg's Community Protection from Natural Gas Extraction Ordinance, Wilkesburg Borough, Allegheny County, PA – 2011
Pittsburgh, Community Protection from Natural Gas Drilling Ordinance, Pittsburgh, Allegheny County, PA - 11/16/2010
Licking Township, Community Water Rights & Self-Government Ordinance, Licking Township, Clarion County, PA - 10/12/2010
Lehman Township, Community Water Rights & Self-Government Ordinance, Lehman Township, Luzerne County, PA - 2010
Town of Monroe, Local Self-Government Ordinance Warrant Article, Monroe Township, Cumberland County, PA – 2010
Blaine Township, Study Commission Final Report and Home Rule Charter and Blaine Township, Corporate Mining & Democratic Self-Government Ordinance, Blaine Township, Washington County, PA - 8/29/2009
Atkinson Water Withdrawal Control Ordinance, Atkinson, Rockingham County, NH - 10/20/2008
Mahanoy Township ,Sewage Sludge Ordinance, Mahanoy Township, Schuylkill County, PA - 2/21/2008
Place Local Control Sewage Sludge & Chemical Trespass Ordinance, Shrewsbury Township, York County, PA - 9/3/2008

Blaine Township, Community Self-Governance & Corporate Takings Prohibition Ordinance, Blaine Township, Washington County, PA - 2008
Nockamixon Township, Corporate Mining, Bodily Trespass & Democratic Self-Government Ordinance, Nockamixon Township, Bucks County, PA – 2008
Newtown Township, Comprehensive Plan Ordinance Newtown Township, Delaware County, PA – 2008
Donegal Township, Democratic Self-Government & Local Control Ordinance and Local ordinance banning coal mining Donegal Township, Washington County, PA - 12/18/2007
Tamaqua Borough, Corporate Waste & Local Control Ordinance Tamaqua Burrough, Schuylkill County, PA - 5/1/2007
Blaine Township, Disclosure & Protection Ordinance, Blaine Township, Washington County, PA - 2007
Bethel Corporate, Toxics & Local Self-Governance Ordinance, Bethel Township, Berks County, PA – 2007
Peach Bottom Township, Sustainable Agriculture & Community Self-Government Ordinance, Peach Bottom Township, York County, PA – 2007
Tamaqua Borough, Sewage Sludge Ordinance No. 612 of 2006, Schuylkill County, PA- 19/09/2006
East Brunswick, Township Sewage Sludge Ordinance East Brunswick Township, Schuylkill County, PA - 12/6/2006
Montgomery County, Anti-Corporate Takings & Securing Local Self-Governance Ordinance, Montgomery County, PA - 11/7/2006
Blaine Township, Corporate Land Development Ordinance, Blaine Township, Washington County, PA - 10/16/2006
Saint Clair Borough, Corporate Waste & Local Control Ordinance, Saint Clair Borough, Schuylkill County, PA - 9/1/2006
Windsor Township, Corporate Land Development Ordinance, Windsor Township, York County, PA – 2006
Windsor Township, Product Retailing Ordinance, Windsor Township, York County, PA – 2006
Mahanoy Township, Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA – 2006
Liberty Township Farm, Privacy & Profitability Ordinance, Liberty Township, Westmoreland County, PA – 2006
Codorus Township, Best Fly Management Practices for Concentrated Agricultural Operations, Codorus Township, York County, PA - 2006
Liberty Township, Chemical Trespass Ordinance Liberty Township, Westmoreland County, PA – 2006
Mahanoy Township, Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA - 2006
Windsor Township, Product Retailing Ordinance, Windsor Township, York County, PA - 2006
Windsor Township, Corporate Land Development Ordinance, Windsor Township, York County, PA -2006
East Mahoning, Sewage Sludge Ordinance, East Mahoning, Indiana County, PA -20/04/2004

Rayne Township, Sewage Sludge Ordinance Rayne Township, Indiana County, PA - 6/20/2004
Rockland Township, Water Supply Protection Act Rockland Township, Venango County, PA – 2004
Corporate Rights Elimination & Self-Government Ordinance, Licking Township, Clarion County, PA - 3/2003
Corporate Personhood Elimination & Democracy Protection Ordinance, Haines Centre County, PA – 2003
Saint Thomas Township, Surface Mining Ownership & Control Ordinance, Saint Thomas Township, Franklin County, PA – 2003
Porter Township, Corporate Rights Ordinance Porter Township, Clarion County, PA - 12/9/2002
Windham Township Bans Agribusiness Corporations Windham Township, Bradford County, PA - 4/2002
East Wheatfield Township Bans Agribusiness Corporations East Wheatfield Township, Indiana County, PA - 2/1/2001
Bedford County Bans Agribusiness Corporations, Bedford County, PA - 1/2001
Cumberland County Bans Agribusiness Corporations, Cumberland County, PA - 1/2001
Fulton County Bans Agribusiness Corporations, Fulton County, PA - 1/2001
Monroe Township, Noxious Agricultural Odors Ordinance, Monroe Township, Cumberland County, PA – 2001
Buffington Township, Bans Corporations from Dumping Sewage Sludge Buffington Township, Indiana County, PA – 2000
Southampton Township, Farm Ownership Ordinance, Southampton Township, Franklin County, PA - 3/1999
Wayne Township, Environmental Protection Ordinance, Wayne Township, Mifflin County, PA – 1998
Creating an Environmental Advisory Council to the Township Exeter Township, Berks County, PA – 1998
Wells Township Anti-Corporate Farming Ordinance, Wells Township, Fulton County, PA – 1998

Virginia

Town of Halifax, Corporate Mining, Bodily Trespass & Community Self-Government Ordinance Halifax, Halifax County, VA - 2/7/2008
Campbell County, Sewage Sludge Ordinance, Campbell County, VA - 2007
Town of Barnstead, Water Rights & Local Self-Government Ordinance, Barnstead, Belknap County, NH - 3/2006
Montgomery County, Anti-Corporate Takings & Securing Local Self-Governance Ordinance, Montgomery County, VA – 2006

TABLE 3

ORGANISING GROUPS - Community Chapters	MUNICIPAL ORDINANCES or CBRs
Boulder County Protectors of Colorado	City of Lafayette, Climate Bill of Rights, Lafayette, Boulder County, CO - 3/21/2017
Citizens of Alexandria Rights Effort	Town of Alexandria, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Alexandria, Grafton County, NH - 3/11/2014
Colorado Community Rights Network	Colorado Environmental Rights Amendment (2014). The state amendments would establish the right of communities to secure greater environmental protections at the local level than in place at the state and federal level—including securing the Rights of Nature— and prohibit corporate or government interference in that process. State representatives in New Hampshire and Pennsylvania introduced rights-based legislation.
Coloradans for Safe and Clean Energy	Colorado Environmental Rights Amendment –Proposed Initiative 2015-2016 #40.¹³⁶¹ Id.
Community Rights Network of Mendocino County	Mendocino County, Community Bill of Rights, Fracking & Water Use Initiative, Mendocino County, CA - 11/4/2014

¹³⁶¹ The same Amendment so art. II adding § 32 was repropoed in 2016 under the title of Colorado Environmental Rights Amendment –Proposed Initiative 2015-2016 #40.
<https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2015-2016/40Final.pdf>

Danbury Residents Against Wind Turbines (New Hampshire Community Rights Network (NHCRN))	Town of Danbury, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Danbury, Merrimack County, NH - 3/11/2014
East Run Hell Benders Society (Pennsylvania Community Rights Network)	Grant Township, Community Bill of Rights Ordinance, Grant Township, Indiana County, PA - 6/1/2014
Lincoln County Community Rights	Lincoln County, Freedom from Aerially Sprayed Pesticides Ordinance, Lincoln County, OR - Measure 21-177 5/16/2017
New Hampshire Community Rights Network (NHCRN)	New Hampshire Environmental Rights Amendment, Constitutional amendment concurrent resolution 8, N.H. 8, (2019).¹³⁶² The state amendment would establish the right of communities to secure greater environmental protections at the local level than in place at the state and federal level—including securing the Rights of Nature— and prohibit corporate or government interference in that process. State representatives in New Hampshire and Pennsylvania introduced rights-based legislation. Town of Hebron, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Hebron, Grafton County, NH - 3/11/2014 Town of Danbury, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Danbury, Merrimack County, NH - 3/11/2014 Town of Alexandria, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Alexandria, Grafton County, NH - 3/11/2014

¹³⁶² Very similar to another amendment introduced in 2019 (not with the help of CELDF) relating to the right to govern and recognising that the people of the state may enact local laws that protect health, safety, and welfare. This constitutional amendment concurrent resolution provides that the people of the state have the right of local, community self-government. Constitutional amendment concurrent resolution 4, N.H. 4, (2019).

	Town of Grafton, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Grafton County, NH- March 2013
	Town of Easton, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Easton, Grafton County, NH – 2012
	Town of Plymouth, Right to A Sustainable Energy Future & Community Self-Government Ordinance, Plymouth, Grafton County, NH – 2012
	Sugar Hill, Right to a Sustainable Future & Local Self-Governance Ordinance. Sugar Hill, Grafton County, NH - 3/13/2011
	Nottingham, Water Rights & Local Self-Government Ordinance Nottingham, Rockingham County, NH - 3/15/2008
New Hampshire Wind Watch (New Hampshire Community Rights Network (NHCRN))	Town of Hebron, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Hebron, Grafton County, NH - 3/11/2014
New Mexico Coalition for Community Rights (NMCCR)	Mora County, Community Water Rights and Local Self-Government Ordinance, Mora County, NM- 4/29/2013
North Plainfield Citizens for Community Rights	Borough of North Plainfield Corporate Land Development & Local Self-Government Ordinance, Somerset, North Plainfield County, NJ – 2007
Ohio Community Rights Network	Athens County, Ohio, Oil and Gas Restrictions and Home Rule Charter Initiative, Athens County OH –11/2017 Athens County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Athens County OH –11/2017
	City of Waterville, Community Bill of Rights (Charter Amendment), Waterville, Lucas County, OH - 11/9/2016
	Meigs County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Meigs County OH -11/15
	City of Niles, Community Protection from Shale Gas & Oil Extraction & Waste Disposal Bill of Rights Ordinance Niles, Trumbull County, OH - 11/4/2014
	Medina County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Medina County OH –11/2013

	Mansfield Charter Amendment for a Community Bill of Rights & Protection from Shale Gas Drilling & Fracking Mansfield, Richland County, OH - 11/6/2012 Yellow Springs Community Rights & Protection from Shale Gas Drilling & Fracking Ordinance Yellow Springs, Greene County, OH - 10/1/2012
Ohio Community Rights Network (Plus, Gwen Fischer from Portage County Community Rights Group)	Ohio Environmental Rights Amendment –2017/2019. The proposed state amendment aims to grant communities the authority to enact more robust environmental safeguards at the local level, surpassing the standards set by state and federal regulations. This also encompasses the formal recognition of the rights of nature. Equally important, these amendments seek to prohibit any interference by corporations or government entities in this local self-governance process. Specifically, in ohio, these efforts led to the inclusion of section 22 in article i of the state's constitution. This new constitutional provision, known as section 22, establishes the “right of local community self-government.” At the time of researching this thesis the group has achieved sufficient ballot signatures.
Oregonians for Community Rights	Oregon Environmental Rights Amendment, Oregon Environmental Rights Amendment –2017. Initiative Petition 2016-055 (IP 55). The state amendments would establish the right of communities to secure greater environmental protections at the local level than in place at the state and federal level—including securing the Rights of Nature— and prohibit corporate or government interference in that process. State representatives in New Hampshire and Pennsylvania introduced rights-based legislation.
Pennsylvania Community Rights Network	Wayne Township, Ownership and Control Disclosure Ordinance, Wayne Township, Mifflin County, PA – 2018 Porter Township, Emissions Disclosure Ordinance, Porter Township, Clarion County, PA -2018 Highland Township, Rights-Based Home Rule Charter, Highland Township, Elk County, PA - 11/8/2016 West Chester Borough, Community Bill of Rights Home Rule Charter Amendment, West Chester Borough, Chester County, PA - 11/4/2015 Grant Township, Community Bill of Rights Ordinance, Grant Township, Indiana County, PA - 6/1/2014 Highland Township, Community Rights & Protection from Injection Wells Ordinance, Highland Township, Elk County, PA - 1/2013 Ferguson Township, Petition to Amend Home Rule Charter with Community Bill of Rights Protection from Shale Gas Drilling & Fracking Ferguson Township, Centre County, PA - 11/2012 City of Pittsburgh, Community Protection from Toxic Trespass due to Natural Gas Extraction Ordinance Pittsburgh, Allegheny County, PA - 12/19/2011 State College Borough, Community Bill of Rights Home Rule Charter Amendment State College Borough, Centre County, PA - 11/8/2011

Baldwin, Community Protection from Natural Gas Extraction Ordinance Baldwin Borough, Allegheny County, PA - 6/1/2011
West Homestead Borough, Community Protection from Natural Gas Extraction Ordinance, West Homestead Borough, Allegheny County, PA - 5/10/2011
Forest Hills Borough, Community Rights & Protection from Natural Gas Exploitation Ordinance, Forest Hills Borough, Allegheny County, PA – 2011
Wilkinsburg’s Community Protection from Natural Gas Extraction Ordinance, Wilkinsburg Borough, Allegheny County, PA – 2011
Pittsburgh, Community Protection from Natural Gas Drilling Ordinance Pittsburgh, Allegheny County, PA - 11/16/2010
Licking Township, Community Water Rights & Self-Government Ordinance, Licking Township, Clarion County, PA - 10/12/2010
Lehman Township, Community Water Rights & Self-Government Ordinance, Lehman Township, Luzerne County, PA - 2010
Town of Monroe, Local Self-Government Ordinance Warrant Article, Monroe Township, Cumberland County, PA – 2010
Blaine Township, Study Commission Final Report and Home Rule Charter and Blaine Township, Corporate Mining & Democratic Self-Government Ordinance, Blaine Township, Washington County, PA - 8/29/2009
Atkinson Water Withdrawal Control Ordinance Atkinson, Rockingham County, NH - 10/20/2008
Mahanoy Township, Sewage Sludge Ordinance Mahanoy Township, Schuylkill County, PA - 2/21/2008
Place Local Control Sewage Sludge & Chemical Trespass Ordinance, Shrewsbury Township, York County, PA - 9/3/2008
Blaine Township, Community Self-Governance & Corporate Takings Prohibition, Ordinance Blaine Township, Washington County, PA - 2008
Nockamixon Township, Corporate Mining, Bodily Trespass & Democratic Self-Government Ordinance, Nockamixon Township, Bucks County, PA – 2008
Newtown Township ,Comprehensive Plan Ordinance Newtown Township, Delaware County, PA – 2008
Donegal Township, Democratic Self-Government & Local Control Ordinance and Local ordinance banning coal mining Donegal Township, Washington County, PA - 12/18/2007
Tamaqua Borough, Corporate Waste & Local Control Ordinance, Tamaqua Burrough, Schuylkill County, PA - 5/1/2007
Blaine Township, Disclosure & Protection Ordinance Blaine Township, Washington County, PA - 2007
Bethel Corporate Toxics & Local Self-Governance Ordinance, Bethel Township, Berks County, PA – 2007

Peach Bottom Township, Sustainable Agriculture & Community Self-Government Ordinance, Peach Bottom Township, York County, PA – 2007
Tamaqua Borough, Sewage Sludge Ordinance No. 612 of 2006, Schuylkill County, PA- 19/09/2006
East Brunswick Township, Sewage Sludge Ordinance East Brunswick Township, Schuylkill County, PA - 12/6/2006
Montgomery County, Anti-Corporate Takings & Securing Local Self-Governance Ordinance, Montgomery County, PA - 11/7/2006
Blaine Township, Corporate Land Development Ordinance Blaine Township, Washington County, PA - 10/16/2006
Saint Clair Borough, Corporate Waste & Local Control Ordinance Saint Clair Borough, Schuylkill County, PA - 9/1/2006
Windsor Township, Corporate Land Development Ordinance, Windsor Township, York County, PA – 2006
Windsor Township, Product Retailing Ordinance, Windsor Township, York County, PA – 2006
Mahanoy Township, Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA – 2006
Liberty Township, Farm Privacy & Profitability Ordinance Liberty Township, Westmoreland County, PA – 2006
Codorus Township Best Fly Management Practices for Concentrated Agricultural Operations, Codorus Township, York County, PA - 2006
Liberty Township,, Chemical Trespass Ordinance Liberty Township, Westmoreland County, PA – 2006
Mahanoy Township, Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA - 2006
Windsor Township, Product Retailing Ordinance, Windsor Township, York County, PA - 2006
Windsor Township, Corporate Land Development Ordinance, Windsor Township, York County, PA -2006
East Mahoning, Sewage Sludge Ordinance, East Mahoning, Indiana County, PA -20/04/2004
Rayne Township, Sewage Sludge Ordinance, Rayne Township, Indiana County, PA - 6/20/2004
Rockland Township, Water Supply Protection Act, Rockland Township, Venango County, PA – 2004
Corporate Rights Elimination & Self-Government Ordinance, Licking Township, Clarion County, PA - 3/2003
Corporate Personhood Elimination & Democracy Protection Ordinance, Haines Centre County, PA – 2003
Saint Thomas Township, Surface Mining Ownership & Control Ordinance, Saint Thomas Township, Franklin County, PA – 2003
Porter Township, Corporate Rights Ordinance Porter Township, Clarion County, PA - 12/9/2002
Windham Township Bans Agribusiness Corporations Windham Township, Bradford County, PA - 4/2002
East Wheatfield Township Bans Agribusiness Corporations East Wheatfield Township, Indiana County, PA - 2/1/2001
Bedford County Bans Agribusiness Corporations, Bedford County, PA - 1/2001

	Cumberland County Bans Agribusiness Corporations, Cumberland County, PA - 1/2001
	Fulton County Bans Agribusiness Corporations, Fulton County, PA - 1/2001
	Monroe Township, Noxious Agricultural Odors Ordinance, Monroe Township, Cumberland County, PA – 2001
	Buffington Township Bans Corporations from Dumping Sewage Sludge, Buffington Township, Indiana County, PA – 2000
	Southampton Township, Farm Ownership Ordinance, Southampton Township, Franklin County, PA - 3/1999
	Wayne Township, Environmental Protection Ordinance, Wayne Township, Mifflin County, PA – 1998
	Creating an Environmental Advisory Council to the Township Exeter Township, Berks County, PA – 1998
	Wells Township, Anti-Corporate Farming Ordinance, Wells Township, Fulton County, PA – 1998
People Against Chemical Trespass (P.A.C.T.).	City of Santa Cruz, Local Control, Pesticide & Chemical Trespass Ordinance, Santa Cruz County, CA - 2/2009
Portage County Community Rights Group	Portage County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Portage County OH –11/2015
Protecting Our Water and Wildlife Resources (P.O.W.W.R.)	Town of Shapleigh, Water Rights & Local Self-Government Ordinance, Shapleigh, York County, ME - 2/28/2009
Slow Down Fracking	Athens, Community Bill of Rights & Water Supply Protection Ordinance, Athens, Athens County, OH - 11/4/2014
Toledoans for Safe Water West Chester Community Rights Alliance	Lake Erie, Bill of Rights, Toledo Lucas County, OH-2017
	West Chester Borough, Community Bill of Rights Home Rule Charter Amendment, West Chester Borough, Chester County, PA - 11/4/2015
Yes on 21-177! (Lincoln County Community Rights)	Lincoln County, Freedom from Aerially Sprayed Pesticides Ordinance, Lincoln County, OR - Measure 21-177 5/16/2017

TABLE 4

Typology	Municipal Ordinances or CBRs	Approval Process
California		
Community Self Government	City of Santa Cruz, Local Control, Pesticide & Chemical Trespass Ordinance, Santa Cruz County, CA - 2/2009	Ballot
Toxic Materials		
Local Ordinance		
Rights of Nature		
Community Self Government	Mendocino County, Community Bill of Rights, Fracking & Water Use Initiative, Mendocino County, CA - 11/4/2014	Ballot
Water rights		
Fossil Fuel		
Toxic Materials		
Bill of Rights		
Colorado		
Community Self Government	City of Lafayette, Climate Bill of Rights, Lafayette, Boulder County, CO - 3/21/2017	Council Vote
Climate Change		

Bill of Rights		
Maine		
Community Self Government	Newfield, Water Rights & Local Self-Governance Ordinance, Newfield, York County, ME - 3/14/2009	Voters at Special Town Meeting-referendum
Water Rights		
Local Ordinance		
Rights of Nature		
Community Self Government	Town of Shapleigh, Water Rights & Local Self-Government Ordinance, Shapleigh, York County, ME - 2/28/2009	Voters at Special Town Meeting-referendum
Water Rights		
Local Ordinance		
Rights of Nature		
Community Self Government	Town of Sangerville, Community Bill of Rights (Right to Sustainable Infrastructure), Sangerville, Piscataquis County, ME - 9/18/2013	Ballot
Sustainable Infrastructure		Special Town Meeting, the Community Bill of Rights Ordinance was adopted by voters, 86 to 40
Bill of Rights		
Maryland		
Community Self Government	Town of Mountain Lake Park, Community Protection from Natural Gas Extraction Ordinance, Mountain Lake Park, Garrett County, MD - 3/3/2011	Council Vote- Ballot
Fossil Fuel		
Local Ordinance		

New Hampshire		
Community Self Government	Community Bill of Rights to Protect the Waters of Barrington Ordinance, Barrington, Strafford County, NH - 3/8/2016	Special vote at Town meeting Passed at Town Meeting by a vote of 795 to 759
Rights of Nature		
Water Rights		
Toxic Materials		
Bill of Rights		
Community Self Government	Town of Hebron, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Hebron, Grafton County, NH - 3/11/2014	Legislation
Renewable Energy		
Local Ordinance		
Rights of Nature	Town of Danbury, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Danbury, Merrimack County, NH - 3/11/2014	Ballot. Danbury's Town Meeting voted to approve the Community Bill of Rights by a vote of 264-124.
Community Self Government		
Renewable Energy		
Local Ordinance		
Rights of Nature	Town of Alexandria, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Alexandria, Grafton County, NH - 3/11/2014	Ballot. Alexandria's Town Meeting voted to approve the Community Bill of Rights by a vote of 320-119.
Community Self Government		
Renewable Energy		
Local Ordinance		

Rights of Nature		
Community Self Government	Town of Grafton, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Grafton County, NH- March 2013	Ballot.
Renewable Energy		
Local Ordinance		
Rights of Nature		
Community Self Government	Town of Easton,, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Easton, Grafton County, NH – 2012	Voters at special town meeting
Renewable Energy		
Local Ordinance		
Rights of Nature		
Community Self Government	Town of Plymouth, Right to A Sustainable Energy Future & Community Self-Government Ordinance, Plymouth, Grafton County, NH – 2012	Voters at special town meeting
Renewable Energy		
Local Ordinance		
Community Self Government	Sugar Hill, Right to a Sustainable Future & Local Self-Governance Ordinance, Sugar Hill, Grafton County, NH - 3/13/2011	Voters at special town meeting
Sustainable Infrastructure		
Local Ordinance		
Community Self Government	Nottingham, Water Rights & Local Self-Government Ordinance, Nottingham, Rockingham County, NH - 3/15/2008	Voters at special town meeting -The vote in Nottingham was 175 to 111 for the ordinance
Mining		
Water Rights		
Local Ordinance		

Rights of Nature		
New Mexico		
Community Self Government	Mora County, Community Water Rights and Local Self-Government Ordinance, Mora County, NM- 4/29/2013	Board Vote
Water rights		
Local Ordinance		
Community Self Government	Las Vegas, Community Water Rights & Local Self-Governance Ordinance, Las Vegas, San Miguel County, NM - 5/19/2012	Council Vote
Water rights		
Local Ordinance		
New Jersey		
Community Self Government	Borough of North Plainfield, Corporate Land Development & Local Self-Government Ordinance, Somerset, North Plainfield County, NJ – 2007	Ballot
Land Development		
Local Ordinance		
New York		
Home Charter Amendment	Protection of Natural Resources CHAPTER 162 Home Charter Amendment, Wales, Erie County, NY - 2011	Board Vote
Community Self Government	Danby Community, Water Rights & Self-Government Ordinance, Danby, Tompkins County, NY - 2010	Legislation
Water Rights		
Local Ordinance		

Community Self Government	Van Etten, Community Water Rights & Self-Government Ordinance, Van Etten, Chemung County, NY – 2009	Ballot
Water Rights		
Local Ordinance		
	Ohio	
Home Charter Amendment	Lake Erie, Bill of Rights Toledo Lucas County, Lucas County OH-2017	Ballot-approved by 61 percent of the special election voter in February 2019///charter amendment
Community Self Government		
Water Rights		
Bill of Rights		
Home Charter Amendment	City of Waterville, Community Bill of Rights (Charter Amendment), Waterville, Lucas County, OH - 11/9/2016	Legislation- ballot
Community Self Government		
Fossil Fuel		
Toxic Materials		
Water Rights		
Home Charter Amendment	Portage County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Portage County OH –11/2015	Legislation- ballot
Community Self Government		
Fracking		
Home Charter Amendment	Meigs County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Meigs County OH –11/15	Legislation- ballot
Community Self Government		
Fracking		

Community Self Government	Youngstown, Community Bill of Rights Charter Amendment, Youngstown, Mahoning County, OH - 11/8/2016	Legislation- ballot
Bill of Rights		
Charter Amendment		
Community Self Government	City of Niles, Community Protection from Shale Gas & Oil Extraction & Waste Disposal Bill of Rights Ordinance, Niles, Trumbull County, OH - 11/4/2014	Council vote
Fossil Fuel		
Toxic Materials		
Local Ordinance		
Bill of Rights		
Community Self Government	Athens, Community Bill of Rights & Water Supply Protection Ordinance, Athens, Athens County, OH - 11/4/2014	Legislation
Bill of Rights		
Water Rights		
Community Self Government	Oberlin, Community Bill of Rights & Obligations Ordinance, Oberlin, Lorain County, OH - 11/5/2013	Ballot
Water Rights		
Fossil Fuel		
Toxic Materials		
Bill of Rights		
Home Charter Amendment	Medina County Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Medina County OH –11/2013	Legislation- ballot
Community Self Government		
Fracking		
Home Charter Amendment	Mansfield Charter Amendment for a Community Bill of Rights & Protection from Shale Gas Drilling & Fracking, Mansfield, Richland County, OH - 11/6/2012	Home Rule Charter Amendment

Community Self Government		
Fossil Fuel		
Community Self Government	Yellow Springs Community, Rights & Protection from Shale Gas Drilling & Fracking Ordinance, Yellow Springs, Greene County, OH - 10/1/2012	Council vote
Water Rights		
Fossil Fuel		
Toxic Materials		
Local Ordinance		
Oregon		
Community Self Government	Lincoln County, Freedom from Aerially Sprayed Pesticides Ordinance, Lincoln County, OR - Measure 21-177 5/16/2017	Legislation-Ballot
Agriculture		
Toxic Materials		
Local Ordinance		
Pennsylvania		
Community Self Government	Wayne Township, Ownership and Control Disclosure Ordinance, Wayne Township, Mifflin County, PA – 2018	Legislation
Bans Corporate Activities		
Local Ordinance		
Community Self Government	Porter Township, Emissions Disclosure Ordinance, Porter Township, Clarion County, PA -2018	Legislation
Toxic Materials		
Local Ordinance		

Community Self Government	Highland Township, Rights-Based Home Rule Charter, Highland Township, Elk County, PA - 11/8/2016	Board vote Board of Supervisors of Highland Township in Elk County, Pennsylvania
Water Rights		
Fossil Fuel		
Toxic Materials		
Home Rule Charter Amendment		
Community Self Government	West Chester Borough, Community Bill of Rights Home Rule Charter Amendment, West Chester Borough, Chester County, PA - 11/4/2015	Amendment to the Borough of West Chester's Home Rule Charter
Water Rights		
Fossil Fuel		Ballot
Toxic Materials		
Home Rule Charter Amendment		
Bill of Rights		
Community Self Government	Grant Township, Community Bill of Rights Ordinance, Grant Township, Indiana County, PA - 6/1/2014	Legislation
Water Rights		
Fossil Fuel		
Toxic Materials		
Bill of Rights		
Community Self Government	Highland Township, Community Rights & Protection from Injection Wells Ordinance, Highland Township, Elk County, PA - 1/2013	Board Vote

Fossil Fuel		
Local Ordinance		
Community Self Government	Ferguson Township, Petition to Amend Home Rule Charter with Community Bill of Rights Protection from Shale Gas Drilling & Fracking, Ferguson Township, Centre County, PA - 11/2012	In 2012, the Centre County Board of Elections presented a question on the General Election Ballot. This question was addressed to the electors of Ferguson Township, inquiring whether they wished to accept or reject an amendment to the Ferguson Township Home Rule Charter.
Home Rule Charter		
Fossil Fuel		
Bill of Rights		
Community Self Government	City of Pittsburgh, Community Protection from Toxic Trespass due to Natural Gas Extraction Ordinance, Pittsburgh, Allegheny County, PA - 12/19/2011	Council vote
Rights of Nature		
Water Rights		
Toxic Materials		
Local Ordinance		
Community Self Government	State College Borough, Community Bill of Rights Home Rule Charter Amendment, State College Borough, Centre County, PA - 11/8/2011	Amendment to home charter
Water Rights		
Fossil Fuel		
Toxic Materials		
Home Rule Charter Amendment		
Bill of Rights		

Community Self Government	Baldwin, Community Protection from Natural Gas Extraction Ordinance, Baldwin Borough, Allegheny County, PA - 6/1/2011	Legislation
Fossil Fuel		
Local Ordinance		
Community Self Government	West Homestead Borough, Community Protection from Natural Gas Extraction Ordinance, West Homestead Borough, Allegheny County, PA - 5/10/2011	Legislation
Fossil Fuel		
Local Ordinance		
Community Self Government	Forest Hills Borough, Community Rights & Protection from Natural Gas Exploitation Ordinance, Forest Hills Borough, Allegheny County, PA – 2011	Council vote
Fossil Fuel		
Local Ordinance		
Community Self Government	Wilksburg’s Community Protection from Natural Gas Extraction Ordinance, Wilksburg Borough, Allegheny County, PA – 2011	Council vote
Water Rights		
Fossil Fuel		
Toxic Materials		
Bill of Rights		
Community Self Government	Pittsburgh, Community Protection from Natural Gas Drilling Ordinance, Pittsburgh, Allegheny County, PA - 11/16/2010	Council Vote
Fossil Fuel		
Local Ordinance		
Community Self Government	Licking Township, Community Water Rights & Self-Government Ordinance, Licking Township, Clarion County, PA - 10/12/2010	Ballot
Water Rights		

Local Ordinance		
Community Self Government	Lehman Township, Community Water Rights & Self-Government Ordinance, Lehman Township, Luzerne County, PA - 2010	Board Vote- Board of Supervisors for Licking Township, Clarion County, PA, voted unanimously
Water Rights		
Fossil Fuel		
Local Ordinance		
Community Self Government	Town of Monroe, Local Self-Government Ordinance Warrant Article Monroe Township, Cumberland County, PA – 2010	Ballot
Local Ordinance		
Home Rule Charter	Blaine Township, Study Commission Final Report and Home Rule Charter and Blaine Township, Corporate Mining & Democratic Self-Government Ordinance, Blaine Township, Washington County, PA - 8/29/2009	Board Vote
Community Self Government		
Mining		
Local Ordinance		
Community Self Government	Atkinson, Water Withdrawal Control Ordinance, Atkinson, Rockingham County, NH - 10/20/2008	Adopted at a Special Town Meeting on September 12, 2007. Amended at a Special Town Meeting on September 9, 2008. Adopted as a Health Ordinance on October 20, 2008. -Ballot
Water Rights		
Local Ordinance		
Community Self Government	Mahanoy Township, Sewage Sludge Ordinance, Mahanoy Township, Schuylkill County, PA - 2/21/2008	Board Vote
Agriculture		
Toxic Materials		
Local Ordinance		

Community Self Government	Place Local Control Sewage Sludge & Chemical Trespass Ordinance, Shrewsbury Township, York County, PA - 9/3/2008	Board Vote-Board of Supervisors in Shrewsbury Township in York County voted unanimously
Agriculture		
Toxic Materials		
Local Ordinance		
Community Self Government	Blaine Township, Community Self-Governance & Corporate Takings Prohibition Ordinance, Blaine Township, Washington County, PA - 2008	Board Vote
Eminent Domain		
Local Ordinance		
Community Self Government	Nockamixon Township, Corporate Mining, Bodily Trespass & Democratic Self-Government Ordinance, Nockamixon Township, Bucks County, PA – 2008	Board Vote
Mining		
Toxic Materials		
Local Ordinance		
	Newtown Township, Comprehensive Plan Ordinance Newtown Township, Delaware County, PA – 2008	Board Vote
Community Self Government	Donegal Township, Democratic Self-Government & Local Control Ordinance and Local ordinance banning coal mining Donegal Township, Washington County, PA - 12/18/2007	Board Vote
Mining		
Local Ordinance		
Agriculture	Tamaqua Borough, Corporate Waste & Local Control Ordinance, Tamaqua Burrough, Schuylkill County, PA - 5/1/2007	Legislation
Toxic Materials		
Local Ordinance		
Community Self Government	Blaine Township, Disclosure & Protection Ordinance Blaine Township, Washington County, PA - 2007	Board Vote

Bans Corporate Activities		
Local Ordinance		
Community Self Government	Bethel Corporate Toxics & Local Self-Governance Ordinance, Bethel Township, Berks County, PA – 2007	Ballot
Mining		
Toxic Materials		
Local Ordinance		
Toxic Materials		
Local Ordinance		
Community Self Government	Peach Bottom Township, Sustainable Agriculture & Community Self-Government Ordinance, Peach Bottom Township, York County, PA – 2007	Ballot
Agriculture		
Local Ordinance		
Community Self Government	East Brunswick Township, Sewage Sludge Ordinance, East Brunswick Township, Schuylkill County, PA - 12/6/2006	Board Vote
Agriculture		
Toxic Materials		
Local Ordinance		
Community Self Government	Montgomery County Anti-Corporate Takings & Securing Local Self-Governance Ordinance, Montgomery County, PA - 11/7/2006	Board Vote
Eminent Domain		
Local Ordinance		
Community Self Government	Tamaqua Borough, Sewage Sludge Ordinance No. 612 of 2006, Schuylkill County, PA- 19/09/2006	Board Vote
Agriculture		

Toxic Materials		
Local Ordinance		
Community Self Government	Blaine Township, Corporate Land Development Ordinance, Blaine Township, Washington County, PA - 10/16/2006	Board Vote
Land Development		
Local Ordinance		
Toxic Materials	Saint Clair Borough, Corporate Waste & Local Control Ordinance, Saint Clair Borough, Schuylkill County, PA - 9/1/2006	Board Vote
Local Ordinance		
Community Self Government	Windsor Township, Corporate Land Development Ordinance, Windsor Township, York County, PA – 2006	Ballot
Land Development		
Local Ordinance		
Community Self Government	Windsor Township, Product Retailing Ordinance, Windsor Township, York County, PA – 2006	Ballot
Bans Corporate Activities		
Local Ordinance		
Community Self Government	Mahanoy Township, Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA – 2006	Ballot
Sustainable Infrastructure		
Local Ordinance		
Community Self Government	Liberty Township, Farm Privacy & Profitability Ordinance, Liberty Township, Westmoreland County, PA – 2006	Ballot
Sustainable Infrastructure		

Bans Corporate Activities		
Agriculture		
Local Ordinance		
Community Self Government	Codorus Township, Best Fly Management Practices for Concentrated Agricultural Operations, Codorus Township, York County, PA - 2006	Board Vote supervisors
Agriculture		
Local Ordinance		
Community Self Government	Liberty Township, Chemical Trespass Ordinance, Liberty Township, Westmoreland County, PA – 2006	Board Vote supervisors
Agriculture		
Local Ordinance		
Community Self Government	Mahanoy Township, Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA - 2006	Ballot
Sustainable Infrastructure		
Bans Corporate Activities		
Local Ordinance		
Community Self Government	Windsor Township Product Retailing Ordinance, Windsor Township, York County, PA - 2006	Legislation
Bans Corporate Activities		
Local Ordinance		
Community Self Government	Windsor Township, Corporate Land Development Ordinance, Windsor Township, York County, PA -2006	Legislation
Sustainable Infrastructure		

Local Ordinance		
Community Self Government	East Mahoning, Sewage Sludge Ordinance East Mahoning, Indiana County, PA -20/04/2004	Legislation
Agriculture		
Toxic Materials		
Local Ordinance		
Community Self Government	Rayne Township, Sewage Sludge Ordinance, Rayne Township, Indiana County, PA - 6/20/2004	Legislation
Agriculture		
Toxic Materials		
Local Ordinance		
Community Self Government	Rockland Township, Water Supply Protection Act, Rockland Township, Venango County, PA – 2004	Legislation
Bans Corporate Activities		
Water Rights		
Protection Act		
Community Self Government	Corporate Rights Elimination & Self-Government Ordinance, Licking Township, Clarion County, PA - 3/2003	Legislation
Bans Corporate Activities		
Local Ordinance		
Community Self Government	Corporate Personhood Elimination & Democracy Protection Ordinance, Haines Centre County, PA – 2003	Legislation
Bans Corporate Activities		

Local Ordinance		
Community Self Government Mining	Saint Thomas Township, Surface Mining Ownership & Control Ordinance, Saint Thomas Township, Franklin County, PA – 2003	Legislation
Local Ordinance		
Community Self Government Bans Corporate Activities	Porter Township, Corporate Rights Ordinance, Porter Township, Clarion County, PA - 12/9/2002	Board Vote
Local Ordinance		
Community Self Government Bans Corporate Activities Agriculture	Windham Township Bans Agribusiness Corporations, Windham Township, Bradford County, PA - 4/2002	Board Vote
Local Ordinance		
Community Self Government Agriculture	East Wheatfield Township Bans Agribusiness Corporations, East Wheatfield Township, Indiana County, PA - 2/1/2001	Board Vote
Local Ordinance		
Community Self Government Bans Corporate Activities Agriculture	Bedford County Bans Agribusiness Corporations, Bedford County, PA - 1/2001	Board Vote
Local Ordinance		

Community Self Government	Cumberland County Bans Agribusiness Corporations, Cumberland County, PA - 1/2001	Board Vote
Bans Corporate Activities		
Agriculture		
Local Ordinance		
Community Self Government	Fulton County Bans Agribusiness Corporations, Fulton County, PA - 1/2001	Board Vote
Bans Corporate Activities		
Agriculture		
Local Ordinance		
Community Self Government	Monroe Township, Noxious Agricultural Odors Ordinance, Monroe Township, Cumberland County, PA – 2001	Board Vote
Agriculture		
Local Ordinance		
Community Self Government	Buffington Township, Bans Corporations from Dumping Sewage Sludge, Buffington Township, Indiana County, PA – 2000	Board Vote
Bans Corporate Activities		
Agriculture		
Local Ordinance		
Community Self Government	Southampton Township, Farm Ownership Ordinance, Southampton Township, Franklin County, PA - 3/1999	Board Vote
Agriculture		
Local Ordinance		

Community Self Government	Wayne Township, Environmental Protection Ordinance, Wayne Township, Mifflin County, PA – 1998	Board Vote
Bans Corporate Activities		
Local Ordinance		
Creation of Advisory Council	Creating an Environmental Advisory Council to the Township Exeter Township, Berks County, PA – 1998	Board Vote
Local Ordinance		
Community Self Government	Wells Township, Anti-Corporate Farming Ordinance, Wells Township, Fulton County, PA – 1998	Board Vote
Bans Corporate Activities		
Agriculture		
Local Ordinance		
Virginia		
Community Self Government	Town of Halifax, Corporate Mining, Bodily Trespass & Community Self-Government Ordinance, Halifax, Halifax County, VA - 2/7/2008	Council Vote
Mining		
Local Ordinance		
Community Self Government	Campbell County, Sewage Sludge Ordinance, Campbell County, VA - 2007	Ballot
Bans Corporate Activities		
Agriculture		
Local Ordinance		
Community Self Government	Town of Barnstead, Water Rights & Local Self-Government Ordinance, Barnstead, Belknap County, NH - 3/2006	Voters at special town meeting- Annual Meeting,
Water Rights		

Local Ordinance		the town voted 135 to 1 in favour
Community Self Government	Montgomery, County Anti-Corporate Takings & Securing Local Self-Governance, Ordinance Montgomery County, VA – 2006	Ballot
Eminent Domain		
Local Ordinance		

TABLE 5

Sometimes the full text of these municipal ordinances was not available, therefore an effort has been made to look for secondary sources describing the municipal ordinances. The table below offers a summary of the each of the provisions found in these municipal ordinances, differences in the amount of content and structure of the summary ought the fact that sometime the original text of the municipal ordinance was not available.

Charter Amendments are highlighted in light orange, the same municipal ordinances are highlighted in the same colour (pink, blue, fuchsia, green). Model municipal ordinances (in yellow) are also shown.

California	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
City of Santa Cruz Local Control, Pesticide & Chemical Trespass Ordinance, Santa Cruz County, CA - 2/2009	The city of Santa Cruz City Pesticide Application Ordinance Key Provisions 1. Bans on Pesticide Application - Corporations are prohibited from bulk pesticide application within Santa Cruz City. - Individuals and government agencies are also banned from using corporations for bulk pesticide application within the City. 2. Strict Liability and Burden of Proof - Establishes strict liability and burden of proof standards for chemical trespass cases. 3. Empowerment of Residents - Empowers residents to advocate for the rights of natural communities and ecosystems. 4. Assertion of Fundamental Rights

	- Affirms the fundamental and inalienable right of Santa Cruz City residents to self-govern in their community. 5. Continuation of IPM Program - Allows for the continuation of the City of Santa Cruz Integrated Pest Management (IPM) program. 6. Enumerated Fundamental Rights - Lists fundamental rights protected by the ordinance, including the right to water, rights of natural communities, right to self-government, right to a healthy environment, and the right to livelihood and home. 7. People as Sovereign - Defines the legal status of corporations within the City. - States the limitations on their rights and their ability to enforce preemptive laws. - Highlights the liability for corporations that deny the rights of residents and natural communities within the City. - Addresses corporate claims related to "future lost profits." 8. Severability of Provisions - The provisions of this Ordinance are severable. - Explains the repeal of inconsistent prior City Ordinances, limited to resolving the inconsistency.
Mendocino County, Community Bill of Rights, Fracking & Water Use Initiative, Mendocino County, CA - 11/4/2014	The Community Bill of Rights for Mendocino County. This legal framework secures essential rights for natural, chemical-free communities, and ecosystems, maintaining a clean environment, and upholding self-government free from corporate manipulation and undue influence. Key Provisions 1. Ban on Fracking and Related Activities - Prohibits fracking and all related activities and enforces severe criminal penalties for violations.

	2. Right to Community Self-Government - Empowers the community with the right to govern itself, ensuring local control. 3. Right to Clean Water, Air, and Soil - Guarantees access to a pristine environment with clean water, air, and soil, safeguarding public health. 4. Rights of Natural Communities and Ecosystems - Recognizes and protects the rights of natural communities and ecosystems, preserving ecological balance. 5. Right to be Free from Chemical Trespass - Ensures protection from chemical trespass, holding violators accountable for damages caused. 6. Rights as Self-Executing, Fundamental, and Unalienable - Affirms these rights as self-executing, fundamental, and unalienable, safeguarding them for all residents of Mendocino County, now and in the future.

Colorado	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
City of Lafayette, Climate Bill of Rights, Lafayette, Boulder County, CO - 3/21/2017	City of Lafayette Climate Bill of Rights Enforces bans on both corporate and governmental activities. Key Provisions 1. Right to a Healthy Climate - Guarantees every individual the right to a healthy climate.

	2. Right to Local Community Government - Empowers local communities with the right to govern themselves. 3. Right to Defend - Grants the right to defend these climate rights. 4. Right to Defense - Ensures the right to defend the environment and the climate.

Maryland	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
Town of Mountain Lake Park Community Protection from Natural Gas Extraction Ordinance, Mountain Lake Park, Garrett County, MD - 3/3/2011	Community Bill of Rights for the Town of Mountain Lake Park. Enacts a series of rights and prohibitions for the community. Key Provisions 1. Repeal of Prior Ordinances - All ordinances and resolutions related to natural gas extraction enacted before this ordinance are hereby repealed. 2. Ban on Corporate Natural Gas Extraction - Prohibits corporations from engaging in natural gas extraction within the Town, except for pre-existing gas wells, provided they use previously established methods and don't involve further drilling. 3. Denial of Corporate Personhood and Rights - Corporations involved in or seeking natural gas extraction are not considered "persons" under the U.S. and Maryland Constitutions. - They are not entitled to rights under the 1st or 5th amendments to the U.S. Constitution or corresponding Maryland sections.

	- Corporations also do not enjoy protections under commerce or contracts clauses in the U.S. Constitution or corresponding Maryland sections. 4. Definition of Corporations - For this ordinance, corporations includes various types of business entities with limited liability attributes conferred by state laws. 5. Limitations on Corporate Authority - Corporations engaged in natural gas extraction cannot enforce State or federal pre-emptive law against the Town's residents. - They cannot challenge or overturn municipal ordinances when it conflicts with the rights asserted by this ordinance or the municipality's authority to protect residents' health, safety, and welfare. 6. Severability of Provisions - The provisions of this ordinance are severable. 7. Rights Included - Right to Water. - Rights of Natural Communities. - Right to a Sustainable Energy Future. - Right to Self-Government. - People as Sovereign. - Rights as Self-Executing.

New Hampshire	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs

Community Bill of Rights to Protect the Waters of Barrington Ordinance, Barrington, Strafford County, NH - 3/8/2016	Community Bill of Rights to Protect the Waters of Barrington Ordinance. This ordinance enacts a comprehensive set of rights and prohibitions aimed at safeguarding the community's invaluable water resources. Key Provisions 1. Community Bill of Rights - Affirms a robust set of rights specifically designed to protect and preserve the community's vital water sources. 2. Prohibitions on Corporate Activities - Imposes bans on corporate activities, including gravel extraction, water withdrawals, and toxic waste disposal if they encroach upon these essential community rights. 3. Self-Executing Rights - These rights are inherently self-executing, ensuring immediate and automatic protection for the community. 4. Fundamental Rights -Guarantees the community's fundamental rights, including: - Right to Access Water - Grants the community the indispensable right to access water for various purposes. - Right to Clean Air - Ensures the community's entitlement to breathe clean and unpolluted air. - Right to Peaceful Enjoyment of Home - Safeguards the right to the peaceful enjoyment of one's home, free from interference. - Rights to Ecosystems - Formally recognizes and protects the rights of local ecosystems residing within the community. - Right to Scenic Preservation - Preserves the community's cherished right to the scenic beauty that enriches the local environment. - Rights to Self-Government

	- Empowers the community with the right to self-governance, allowing for local control and decision-making. The ordinance ensures the protection and preservation of the community's precious water resources while respecting the rights and values held dear by its residents.
Town of Hebron, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Hebron, Grafton County, NH - 3/11/2014 Town of Grafton, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Grafton County, NH- March 2013 Town of Danbury, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Danbury, Merrimack County, NH - 3/11/2014 Town of Alexandria, Right to a Sustainable Energy Future & Community Self-Government Ordinance, Alexandria, Grafton County, NH - 3/11/2014 Same Ordinance	Local Ordinances to Secure Community Rights and Sustainability The towns of Grafton, Hebron, Danbury, and Alexandria in New Hampshire have independently passed rights-based ordinances aimed at preserving their right to a sustainable energy future and community self-governance. These ordinances are responses to concerns about commercial wind turbines and other unsustainable energy systems encroaching upon their communities. Key Provisions 1. Prohibiting Unsustainable Energy Systems - These ordinances, commonly known as the "Right to a Sustainable Energy Future & Community Self-Government Ordinance," serve to prohibit not only commercial wind turbines but also any other forms of unsustainable energy projects. By doing so, they protect the communities from the potential adverse impacts of such projects. 2. Rights to Local Self-Governance and Sustainable Energy Projects - Towns like Alexandria, Hebron, Barrington, and Danbury have collectively considered introducing warrant articles to expand the rights of their communities. These articles aim to empower local democracy and promote sustainability by granting the towns greater control over the decisions that impact their communities and environment.
Town of Easton, Right to a Sustainable Energy Future & Community Self-	Local Rights-Based Ordinances - Several towns in Grafton County, New Hampshire, including Easton, Plymouth, and Sugar Hill, have enacted rights-based ordinances with shared objectives.

Government Ordinance, Easton, Grafton County, NH – 2012	-Ordinances for a Sustainable Energy Future & Community Self-Government. These ordinances establish the right to a sustainable energy future and community self-governance. These ordinances share a common goal - preventing the construction of high voltage transmission lines, notably within the "Northern Pass" hydroelectric project from Hydro Quebec in Canada.
Town of Plymouth, Right to A Sustainable Energy Future & Community Self-Government Ordinance, Plymouth, Grafton County, NH – 2012	Key Provisions
Sugar Hill, Right to a Sustainable Future & Local Self-Governance Ordinance, Sugar Hill, Grafton County, NH - 3/13/2011	1. Ban on Unsustainable Energy Systems - These ordinances prohibit corporations or individuals, using corporations, from acquiring land for or constructing unsustainable energy systems and associated structures. 2. Definition of "Unsustainable Energy Systems" - "Unsustainable energy systems" encompass those controlled by state and federal energy policies rather than community-controlled ones. - This includes hydroelectric and industrial-scale wind power when not locally or municipally owned, as well as energy systems using non-renewable fuels that produce toxins or violate residents' rights to a sustainable energy future. 3. Denial of Corporate Rights - Corporations in violation of the prohibitions lose the rights and protections afforded to "persons" under the U.S. and New Hampshire Constitutions. - They are also not protected by the commerce or contracts clauses in the U.S. Constitution or corresponding sections in the New Hampshire Constitution. - Furthermore, they do not enjoy the 1st or 5th Amendments to the U.S. Constitution or the corresponding sections in the New Hampshire Constitution. 5. Severability of Provisions - The provisions of these ordinances are severable. 6. Repeal of Inconsistent Prior Ordinances
Same Ordinance	

	- Inconsistent provisions of prior ordinances from the respective towns are repealed to resolve any inconsistencies. 7. Rights Included - Right to a Sustainable Energy Future. - Right to Water. - Rights of Natural Communities. - Right to Scenic Preservation. - Right to Self-Government. - People as Sovereign. - Rights as Self-Executing.
Nottingham, Water Rights & Local Self-Government Ordinance, Nottingham, Rockingham County, NH - 3/15/2008	Nottingham Water Rights & Local Self-Government Ordinance Key Provisions: 1. Declaration of Public Trust for Water - Nottingham residents declare water as a public trust, safeguarded for their benefit and the well-being of natural ecosystems. 2. Opposition to Corporatization - Corporate control over water resources is viewed as a threat to community autonomy, seen as a form of tyranny and usurpation, necessitating active opposition. 3. Duty to Remedy Corporate Usurpation - Acknowledging that corporations have held constitutional powers for two centuries, this ordinance seeks to address the consequent loss of local governance authority. 4. Ban on Corporate and Syndicate Water Withdrawals - Prohibits corporations or syndicates from conducting water withdrawals within Nottingham. - "Corporation" encompasses entities organized under U.S. or foreign state laws. - "Syndicate" includes limited partnerships, limited liability partnerships, business trusts, or Limited Liability Companies organized under U.S. or foreign state laws.

	- "Engage" encompasses physical water extraction, buying, or selling of water within Nottingham. 5. Recognition of Local Self-Government - Local self-government is affirmed as an inherent, inalienable, and fundamental right. 6. Purpose of Government - The government is established for the common benefit of the community. 7. Denial of Corporate Personhood - Corporations are not acknowledged as legal persons, thereby denying them constitutional protections. 8. Granting Rights to Natural Communities and Ecosystems - Natural communities and ecosystems are endowed with fundamental rights, legal personhood, and legal standing. - They are recognized as "persons" for the enforcement of civil rights. 9. Town Action Against Preemption - The town takes active measures to resist preemption by higher authorities. 10. Imposition of Liability for Harm - Liability, including punitive damages, is placed on any individual, corporation, or municipality causing harm to natural communities or ecosystems. 11. Legal Standing for Residents - Town residents are granted legal standing to enforce the ordinance. 12. Criminal Offense for Violations - Violating the ordinance is considered a criminal offense. 13. Severability of Provisions

	- The provisions of this ordinance are severable, meaning that if one part is challenged or invalidated, it doesn't affect the rest of the ordinance.

New Mexico	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
Mora County, Community Water Rights and Local Self-Government Ordinance, Mora County, NM-4/29/2013 Model Ordinance Serves as a model for other communities to follow.	Mora County Community Water Rights and Local Self-Government Ordinance. Key Provisions: 1. Rights Included - Includes the right to clean air and water. - Affirms the right to a healthy environment. - Recognizes the rights of nature. 2. Ban on Interfering Activities - Prohibits activities that would interfere with these rights, such as oil drilling and hydraulic fracturing for shale gas. 3. Protection of Natural Water Sources - Safeguards natural water sources from damage caused by oil, natural gas, or hydrocarbon extraction. 4. Affirmation of Local Autonomy - Affirms the community's right to local autonomy and self-governance. 5. Elimination of Corporate Legal Privileges - Removes legal privileges and powers from corporations that violate the ordinance.

Las Vegas, Community Water Rights & Local Self-Governance Ordinance, Las Vegas, San Miguel County, NM - 5/19/2012	Las Vegas Community Water Rights & Local Self-Governance Ordinance. Key Provisions: 1. Rights Included - Encompasses a comprehensive range of rights, including: - Right to Water. - Right of Water for Agriculture. - Rights of Natural Communities. - Right to a Sustainable Energy Future. - Right to Self-Government. - Assertion of People's Sovereignty. - Rights as Self-Executing. 2. Ban on Corporate Activities - Prohibits corporations from engaging in various activities within the City of Las Vegas and its watersheds. 3. Extraction of Oil, Gas, or Hydrocarbons - Explicitly bans corporations from extracting oil, natural gas, or other hydrocarbons. 4. Water Extraction for Hydrocarbons - Bars corporations and their representatives from extracting water from any source within the city and its watersheds for use in hydrocarbon extraction. 5. Wastewater and By-Products - Restricts corporations from depositing, storing, transporting, or processing wastewater, chemicals, and by-products related to hydrocarbon extraction within the city. 6. Infrastructure Construction and Maintenance

	- Prevents individuals or corporations, including their directors, officers, owners, or managers, from constructing or maintaining infrastructure for hydrocarbon extraction. This includes pipelines and containment ponds. 7. Denial of Corporate Rights - Clearly states that corporations violating the ordinance or attempting prohibited activities will forfeit their rights as persons under the U.S. and New Mexico Constitutions. - Specifies that they won't be protected by the 1st or 5th amendments to the U.S. Constitution or corresponding sections in the New Mexico Constitution. - Emphasizes that corporations will not have the protections of the commerce or contracts clauses within the U.S. Constitution or corresponding sections in the New Mexico Constitution. 8. Severability of Provisions - Ensures that the provisions of this ordinance are severable, meaning that if one part is challenged or invalidated, it won't affect the rest of the ordinance.

New Jersey	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
Borough of North Plainfield, Corporate Land Development & Local Self-Government Ordinance, Somerset, North Plainfield County, NJ – 2007	Borough of North Plainfield Corporate Land Development & Local Self-Government Ordinance. The purpose and scope of the ordinance addresses corporate land development and local self-governance within the Borough of North Plainfield, Somerset County, New Jersey. Key Provisions: 1. Recognition of Local Self-Government - Affirms the inherent, inalienable, and fundamental right of local self-government as a cornerstone of the community's governance.

	2. Purpose of Government - Highlights that the primary role of government is to promote and secure the common benefit of the community, putting the interests of local residents first. 3. Ban on Corporate Land Development - Outlines the key prohibition within the ordinance, which restricts corporations from participating in land development activities within the municipalities with specific exceptions. 4. Denial of Corporate Personhood - Clearly establishes that corporations are not granted legal personhood status, thereby disqualifying them from receiving constitutional protections. 5. Town Action Against Preemption - Demonstrates the town's proactive stance against potential preemption by higher-level authorities, reinforcing its commitment to local autonomy. 6. Imposition of Liability for Harm - Specifies that any individual, corporation, or municipality found responsible for causing harm to a natural community or ecosystem will face liability, including punitive damages. 7. Legal Standing for Residents - Confirms that residents of the town have the legal standing required to enforce the provisions of the ordinance. 8. Criminal Offense for Violations - Highlights that violations of the ordinance constitute criminal offenses. 9. Severability of Provisions - Ensures that the ordinance's provisions are severable, meaning that legal challenges to one part of the ordinance will not affect the integrity of the entire ordinance.

MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
Protection of Natural Resources CHAPTER 162 Home Charter Amendment, Wales, Erie County, NY - 2011	Local Law Amendment: Protection of Natural Resources. Introduces an amendment to Local Law 1-1993, titled "Adoption of Code," which was adopted by the Town Board of the Town of Wales on May 11, 1993. The amendment establishes Chapter 162: Protection of Natural Resources. Key Provisions: 1. Ban on Hydraulic Fracturing for Natural Gas or Oil - Explicitly prohibits hydraulic fracturing for natural gas or oil extraction within the Town of Wales, applying to both individuals and corporations. Some exceptions apply to pre-existing gas wells. 2. Ban on Horizontal Gas Well Drilling - Enforces a ban on horizontal gas well drilling for natural gas or oil extraction within the Town of Wales, with specific exemptions for pre-existing gas wells. 3. Denial of Corporate Rights - Clarifies that corporations found in violation of the prohibition on natural gas extraction will forfeit their legal status as "persons" under the U.S. and New York Constitutions. - Specifies that corporations will not enjoy protections granted by the 1st or 5th amendments to the U.S. Constitution, nor their counterparts in the New York Constitution. - Asserts that corporations will not benefit from the commerce or contracts clauses within the U.S. Constitution or corresponding sections in the New York Constitution. - Expands on the definition of “corporations” to encompass various business entities with State-conferred limited liability attributes. 4. Severability of Provisions - The provisions are severable. 5. Rights Included

	- Lists the fundamental rights secured by this local law, including the right to water, rights of natural communities, the right to self-government, the assertion of people's sovereignty, and the recognition of rights as self-executing.
Danby, Community Water Rights & Self-Government Ordinance, Danby, Tompkins County, NY - 2010	Danby Community Bill of Rights. An ordinance that establishes a set of rights and prohibitions for the Town of Danby, New York, to protect its community interests. Key Provisions: 1. Banning Water Usage for Mining - Prohibits corporations and their key personnel from utilizing corporate entities to extract water from any source within Danby for mining purposes. - Enforces a ban on the use of corporations for depositing waste materials generated by mining activities, including wastewater, produced water, frack water, brine, and other by-products, into the land or waters within the Town of Danby. - Defines the scope of "mining" as any commercial activity within Danby, involving the extraction of water, mineral resources, radioactive materials, petroleum, or fossil fuels from the ground, whether for local use or for export and sale outside the Town. - Specific examples of mining activities, such as long-wall mining, room and pillar mining, mountaintop removal, valley fill, drilling, extraction of natural gas, oil, water, and fracking, are explicitly covered. 2. Corporate Rights Limited - Highlights that corporations chartered by the government draw their existence, authority, and capacity to act from the government of New York State. - In Danby, corporations are explicitly forbidden from denying residents' rights, and they bear liability for any such deprivation or denial. - Emphasizes that corporations are not entitled to the protections of the Contracts Clause or Commerce Clause of the United States Constitution, nor of the First or Fifth Amendments to the U.S. Constitution, or similar provisions in the New York Constitution within Danby. - Specifically addresses that claims for future lost profits by corporations are not recognized as property interests under the law and are not recoverable within Danby.

	3. Corporate Subordination to Residents - Reinforces that the rights of Danby residents, as secured by this Ordinance and other local, state, or federal laws, cannot be subordinated to the claimed rights of corporations. - Highlights that public and private corporations do not enjoy privileges or powers under the law that make community majorities subordinate to them or nullify local laws. - Clarifies that corporations are not recognized as persons under the United States or New York Constitutions, or under any other laws, and thus do not possess the rights of persons under those constitutions and laws within Danby. 4. Rights Affirmed - Affirms the specific rights secured by this ordinance, including the right to local self-government, the right to a healthy environment, the right to water, and the rights of natural communities. 5. Severability of Provisions - Concludes by noting that the provisions of this ordinance are severable, ensuring that inconsistencies with prior ordinances adopted by the Town of Danby are repealed only to the extent necessary to address any inconsistencies.
Van Etten, Community Water Rights & Self-Government Ordinance, Van Etten, Chemung County, NY – 2009	Danby Community Bill of Rights. An ordinance that establishes a set of rights and prohibitions for the Town of Danby, New York, to protect its community interests. Key Provisions 1. Banning Water Usage for Mining - Prohibits corporations and their key personnel from utilizing corporate entities to extract water from any source within Danby for mining purposes. - Enforces a ban on the use of corporations for depositing waste materials generated by mining activities, including wastewater, produced water, frack water, brine, and other by-products, into the land or waters within the Town of Danby.

	- Defines the scope of mining as any commercial activity within Danby, involving the extraction of water, mineral resources, radioactive materials, petroleum, or fossil fuels from the ground, whether for local use or for export and sale outside the Town. - Specific examples of mining activities, such as long-wall mining, room and pillar mining, mountaintop removal, valley fill, drilling, extraction of natural gas, oil, water, and fracking, are explicitly covered. 2. Corporate Rights Limited - Highlights that corporations chartered by the government draw their existence, authority, and capacity to act from the government of New York State. - In Danby, corporations are explicitly forbidden from denying residents' rights, and they bear liability for any such deprivation or denial. - Emphasizes that corporations are not entitled to the protections of the Contracts Clause or Commerce Clause of the United States Constitution, nor of the First or Fifth Amendments to the U.S. Constitution, or similar provisions in the New York Constitution within Danby. - Specifically addresses that claims for future lost profits by corporations are not recognized as property interests under the law and are not recoverable within Danby. 3. Corporate Subordination to Residents - Reinforces that the rights of Danby residents, as secured by this ordinance and other local, state, or federal laws, cannot be subordinated to the claimed rights of corporations. - Highlights that public and private corporations do not enjoy privileges or powers under the law that make community majorities subordinate to them or nullify local laws. - Clarifies that corporations are not recognized as persons under the United States or New York Constitutions, or under any other laws, and thus do not possess the rights of persons under those constitutions and laws within Danby. 4. Rights Affirmed - Affirms the specific rights secured by this ordinance, including the right to local self-government, the right to a healthy environment, the right to water, and the rights of natural communities. 5. Severability of Provisions

	- Concludes by noting that the provisions of this ordinance are severable, ensuring that inconsistencies with prior ordinances adopted by the Town of Danby are repealed only to the extent necessary to address any inconsistencies.

Ohio	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
Lake Erie, Bill of Rights Toledo Lucas County, OH-2017	Community Bill of Rights for Lake Erie. Key Provisions: 1. Rights of Lake Erie Ecosystem - Establishes that Lake Erie and its watershed have the inherent right to exist, flourish, and naturally evolve, including all natural water features, communities of organisms, soil, terrestrial and aquatic sub-ecosystems within Lake Erie and its watershed. 2. Right to a Clean and Healthy Environment - Affirms the right of the people of the City of Toledo to a clean and healthy environment, which includes the well-being of Lake Erie and its ecosystem. 3. Right of Local Community Self-Government - Recognizes that the people of the City of Toledo, both collectively and individually, possess the right to self-government within their local community. They have the right to a governing system that upholds their human, civil, and collective rights. 4. Rights as Self-Executing - Clarifies that all rights established by this law are inherent, fundamental, and unalienable. These rights are self-executing and enforceable against both private and public entities. No additional

	legislation is necessary for the City of Toledo, its residents, or the ecosystems and natural communities protected by this law to enforce its provisions. 5. Enforcement of Rights - States that it is unlawful for any business entity or government to violate the rights outlined in this measure. - Invalidates business permits, licenses, privileges, charters, or other authorizations that conflict with this initiative. - Imposes fines on violating governments or businesses. - Grants the city and its residents the authority to enforce the provisions of the initiative through court action in the Lucas County Court of Common Pleas, General Division.
Athens County, Ohio, Oil and Gas Restrictions and Home Rule Charter Initiative, Athens County OH –11/2017 Athens County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Athens County OH –11/2017	Community Bill of Rights Athens. The amendment outlaws the engagement in activities connected to injecting, depositing, storing, or transporting waste materials, chemicals, or by-products generated during the development of natural gas from shale formations. These activities are strictly prohibited within, upon, or through the land, air, or waters of Athens County, except when granted written legislative consent by Athens County. Key Provisions: 1. Affirmation of Inalienable Rights - Right to Sustainable Water: Ensures access to clean and sustainable water resources. - Right to Clean Air: Guarantees residents the right to enjoy clean and uncontaminated air. - Right to the Peaceful Enjoyment of Home: Protects the right to live peacefully in one's own home. - Right to a Sustainable Energy Future: Affirms the right to access a sustainable energy future. - Right to Self-Government: Reinforces the community's authority to govern itself. - Recognition of People as Sovereign: Acknowledges the ultimate authority of the people. - Rights are Self-Executing: Ensures these rights are inherently enforceable. 2. Provisions and Severability

City of Waterville, Community Bill of Rights (Charter Amendment), Waterville, Lucas County, OH - 11/9/2016	City of Waterville Community Bill of Rights. 1. Prohibition on Hydrocarbon Exploration - The ordinance establishes a strict prohibition preventing any corporation or government entity from commencing new exploration activities for hydrocarbon extraction within the City of Waterville, along with any associated activities. - Specific exceptions may apply.
Youngstown, Community Bill of Rights Charter Amendment Youngstown, Mahoning County, OH - 11/8/2016	Youngstown Community Bill of Rights Charter Amendment. Charter amendment Bill of Rights with the primary aim of safeguarding the interests and well-being of Youngstown's residents. Key Provisions: 1. Protection of Youngstown's Drinking Water - The charter expressly grants residents the right to the protection of their drinking water, acknowledging its fundamental importance. 2. Rights to Clean Water, Air, and Soil - Residents are further endowed with essential rights to enjoy clean water, clean air, and uncontaminated soil, underscoring the significance of these basic environmental resources. 3. City's Responsibility and Strict Liability - The City bears the responsibility for rigorously enforcing these rights, and individuals or entities that infringe upon them will be held strictly liable for their actions, ensuring accountability. 4. Entitlement to Infrastructure Investments - Residents possess the right to benefit from infrastructure investments intended to promote and maintain clean and safe water, air, and soil, emphasizing the significance of appropriate infrastructure.

	5. Empowering Local Community Self-Government - This charter amendment reaffirms the residents' right to exercise self-governance within their local community, underscoring the importance of local decision-making. 6. Provisions and Severability - The provisions outlined in this charter amendment are severable, assuring that if any section is deemed invalid, it will not impact the overall validity of the remaining sections, providing legal clarity and consistency.
Portage County, Home Rule Charter, Community Bill of Rights and Fracking Waste Prohibition Initiative, Portage County OH –11/2015	Community Bill of Rights of Portage County. The amendment outlaws the engagement in activities connected to injecting, depositing, storing, or transporting waste materials, chemicals, or by-products generated during the development of natural gas from shale formations. These activities are strictly prohibited within, upon, or through the land, air, or waters of Portage County, except when granted written legislative consent by the Portage County. Key Provisions: 1. Affirmation of Inalienable Rights - Right to Sustainable Water: Ensures access to clean and sustainable water resources. - Right to Clean Air: Guarantees residents the right to enjoy clean and uncontaminated air. - Right to the Peaceful Enjoyment of Home: Protects the right to live peacefully in one's own home. - Right to a Sustainable Energy Future: Affirms the right to access a sustainable energy future. - Right to Self-Government: Reinforces the community's authority to govern itself. - Recognition of People as Sovereign: Acknowledges the ultimate authority of the people. - Rights are Self-Executing: Ensures these rights are inherently enforceable. 2. Provisions and Severability
Meigs County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, OH –11/15	Community Bill of Rights of Meigs. The amendment outlaws the engagement in activities connected to injecting, depositing, storing, or transporting waste materials, chemicals, or by-products generated during the development of natural gas from shale formations.

	These activities are strictly prohibited within, upon, or through the land, air, or waters of Meigs County, except when granted written legislative consent by Meigs County. Key Provisions: 1. Affirmation of Inalienable Rights - Right to Sustainable Water: Ensures access to clean and sustainable water resources. - Right to Clean Air: Guarantees residents the right to enjoy clean and uncontaminated air. - Right to the Peaceful Enjoyment of Home: Protects the right to live peacefully in one's own home. - Right to a Sustainable Energy Future: Affirms the right to access a sustainable energy future. - Right to Self-Government: Reinforces the community's authority to govern itself. - Recognition of People as Sovereign: Acknowledges the ultimate authority of the people. - Rights are Self-Executing: Ensures these rights are inherently enforceable. 2. Provisions and Severability
City of Niles, Community Protection from Shale Gas & Oil Extraction & Waste Disposal Bill of Rights Ordinance Niles, Trumbull County, OH - 11/4/2014	City of Niles Community Protection from Shale Gas & Oil Extraction & Waste Disposal Bill of Rights Ordinance. Key Provisions 1. Prohibition on Shale Gas and Oil Extraction - The ordinance takes a definitive stance against the initiation of any new projects related to drilling for and extracting shale gas and oil, explicitly disallowing techniques like fracking and other extraction methods. 2. Subordination of Corporate Privileges: - Under this ordinance, corporate privileges are intentionally subordinated to the rights and governance of the people, emphasizing the primacy of community interests over corporate influence.
Athens, Community Bill of Rights & Water Supply Protection Ordinance Athens, Athens County, OH - 11/4/2014	Community Bill of Rights for Athens Residents and Natural Communities. This ordinance establishes a Community Bill of Rights designed to protect the interests of Athens residents and natural communities. Key Provisions:

	1. Prohibition of Shale Gas and Oil Extraction: - The ordinance effectively bans shale gas and oil extraction activities, emphasizing the community's commitment to safeguarding its environment. 2. Elevation of People's Rights and Governance - It elevates the rights and governance of Athens' people above the privileges granted to specific extraction corporations, reaffirming the community's authority over corporate interests. 3. Specific Rights Granted: - Right to Potable Water: The community recognizes the right to access safe and clean drinking water. - Right to a Healthy Environment: Residents are entitled to live in an environment that promotes their well-being. - Right to be Free from Chemical Trespass: Protection is offered against harmful chemical intrusion. - Rights of Natural Communities: Acknowledgement and protection of the rights of the natural environment. - Right to a Sustainable Energy Future: Ensures access to a sustainable energy future. - Right to Self-Government: Reaffirms the community's authority to govern itself. - People as Sovereign: The people are recognized as the ultimate authority. - Rights as Self-Executing
Oberlin, Community Bill of Rights & Obligations Ordinance Oberlin, Lorain County, OH - 11/5/2013	Oberlin Community Bill of Rights The ordinance enforces a ban on gas and oil extraction, along with related activities, which includes the disposal of associated wastes into injection wells within the City and its jurisdiction. This ban is rooted in the protection of civil rights for the people of the City of Oberlin. It addresses the significant threats posed to the health, safety, and welfare of the community, as well as the environment and local neighborhoods. Key Provisions: 1. Removal of Corporate Legal Powers - The ordinance e strips gas and oil extraction corporations of their legal powers and authority in instances where these corporations violate the prohibitions set forth. It acknowledges the inherent illegitimacy and

	injustice of these legal powers, as they have traditionally prioritized the rights of a corporate minority over the rights and political authority of the majority of the people in the City of Oberlin. 2. Enshrined Rights - Right to Community Self-Government: Empowers the community to self-govern. - People as Sovereign: Recognizes the ultimate authority of the people. - Right to Clean Water: Guarantees access to clean and safe water. - Right to Clean Air: Ensures residents enjoy clean and uncontaminated air. - Right to Peaceful Enjoyment of Home: Protects the right to live peacefully in one's own home. - Right to be Free from Chemical Trespass: Prevents harmful chemical intrusions. - Rights of Natural Communities: Acknowledges and safeguards the rights of the natural environment. - Right to a Sustainable Energy Future: Affirms the right to access a sustainable energy future.
Mansfield Charter Amendment for a Community Bill of Rights & Protection from Shale Gas Drilling & Fracking Mansfield, Richland County, OH - 11/6/2012	Community Bill of Rights of Mansfield. The amendment outlaws the engagement in activities connected to injecting, depositing, storing, or transporting waste materials, chemicals, or by-products generated during the development of natural gas from shale formations. These activities are strictly prohibited within, upon, or through the land, air, or waters of the City of Mansfield, except when granted written legislative consent by the City of Mansfield. Key Provisions: 3. Affirmation of Inalienable Rights - Right to Sustainable Water: Ensures access to clean and sustainable water resources. - Right to Clean Air: Guarantees residents the right to enjoy clean and uncontaminated air. - Right to the Peaceful Enjoyment of Home: Protects the right to live peacefully in one's own home. - Right to a Sustainable Energy Future: Affirms the right to access a sustainable energy future. - Right to Self-Government: Reinforces the community's authority to govern itself. - Recognition of People as Sovereign: Acknowledges the ultimate authority of the people. - Rights are Self-Executing: Ensures these rights are inherently enforceable. 4. Provisions and Severability - The provisions of this amendment are designed to be severable.

Medina County, Home Rule Charter, Community Bill of Rights and Fracking Prohibition Initiative, Medina County OH – 11/2013	Community Bill of Right of Medina. The amendment outlaws the engagement in activities connected to injecting, depositing, storing, or transporting waste materials, chemicals, or by-products generated during the development of natural gas from shale formations. These activities are strictly prohibited within, upon, or through the land, air, or waters of the Medina County, except when granted written legislative consent by Medina County. Key Provisions: 1. Affirmation of Inalienable Rights - Right to Sustainable Water: Ensures access to clean and sustainable water resources. - Right to Clean Air: Guarantees residents the right to enjoy clean and uncontaminated air. - Right to the Peaceful Enjoyment of Home: Protects the right to live peacefully in one's own home. - Right to a Sustainable Energy Future: Affirms the right to access a sustainable energy future. - Right to Self-Government: Reinforces the community's authority to govern itself. - Recognition of People as Sovereign: Acknowledges the ultimate authority of the people. - Rights are Self-Executing: Ensures these rights are inherently enforceable. 2. Provisions and Severability The provisions of this amendment are designed to be severable.
Yellow Springs, Community Rights & Protection from Shale Gas Drilling & Fracking Ordinance, Yellow Springs, Greene County, OH - 10/1/2012	Community Bill of Rights - Yellow Springs, Ohio. The ordinance bans gas and oil extraction, injection well placement, and associated activities within Yellow Springs, prioritizing resident rights, health, safety, and neighbourhood well-being. Key Provisions: 1. Prohibition on Waste-Water Disposal - It forbids corporations and individuals using corporations from storing, transporting, or processing extraction-related materials. Deposit of such materials into Yellow Springs' environment is strictly prohibited. 2. Removal of Legal Powers from Corporations

	- The ordinance revokes legal powers granted to gas and oil extraction corporations in Yellow Springs, correcting historical inequities favouring corporations over residents. 3. Denial of Constitutional Protections to Corporations - Corporations violating the ordinance lose “person” rights, including protections under federal and state constitutions, ensuring corporate compliance. 4. Provisions and Severability The ordinance includes severability provisions. 5. Recognise Certain Rights - Right to Water: Guarantees access to clean and safe water. - Rights of Natural Communities: Acknowledges and safeguards the rights of the natural environment. - Right to a Sustainable Energy Future: Affirms the right to access a sustainable energy future. - Right to Local Community Self-Government: Reinforces the community's authority to govern itself. - Recognition of People as Sovereign: Acknowledges the ultimate authority of the people. - Rights are Self-Executing.

Oregon	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
Lincoln County, Freedom from Aerially Sprayed Pesticides Ordinance, Lincoln County, OR - Measure 21-177 5/16/2017	Ban the use of aerial pesticide.

Pennsylvania

MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
Wayne Township, Ownership and Control Disclosure Ordinance, Wayne Township, Mifflin County, PA – 2018	Wayne Township Ordinance for Corporate Exclusion. This ordinance grants authority to the Township Supervisors to exclude corporations with criminal histories from operating within Wayne Township. Key Provisions: 1. Protecting Residents' Health and Safety - The primary purpose of this ordinance is to safeguard the health, safety, and welfare of Wayne Township residents. This is achieved by ensuring that corporations conducting or planning to conduct business within the township do not have a record of consistent legal violations. 2. Ensuring Responsible Corporate Leadership - In addition to corporate history, this ordinance also focuses on the conduct of the Principal Owners, Directors, and Officers of corporations. It aims to prevent those individuals from serving as officers or directors for corporations with a history of consistent legal violations. 3. Preserving Resident Liberty - The ordinance also aims to protect the liberty of Township residents. It ensures that artificial corporate entities causing harm or posing a threat do not infringe on the rights and well-being of the residents. 4. Foundations of Government - The ordinance emphasizes that government exists for the common benefit of the community. 5. Non-Recognition of Corporate Personhood - It specifically rejects the notion of recognizing corporations as legal persons, thereby denying them certain constitutional protections.

	6. Town Action Against Preemption - The ordinance establishes the township's right to take action even when preempted by higher-level government. 7. Liability for Harm to Natural Communities and Ecosystems - Those causing harm to natural communities or ecosystems may be subject to liability, including punitive damages. 8. Legal Standing for Town Residents - Residents are granted legal standing to enforce the ordinance. 9. Criminal Offense for Violations - Violations of the ordinance may result in criminal charges. 10. Provisions and Severability - The ordinance's provisions are severable.
Porter Township, Emissions Disclosure Ordinance, Porter Township, Clarion County, PA -2018	Enables a municipality to require downwind pollutant testing for any incinerator or emission point source that proposes to change a fuel source. Originally drafted to ensure that tire-burning point sources disclose increased amounts.
Highland Township, Rights-Based Home Rule Charter, Highland Township, Elk County, PA - 11/8/2016	Highland Township Rights-Based Home Rule Charter. The charter includes a Bill of Rights that explicitly prohibits corporations from depositing, storing, treating, injecting, or processing wastewater, produced water, frack water, brine, or any related materials and by-products used in shale gas extraction into the land, air, or waters within Highland Township. This prohibition specifically applies to disposal injection wells, which have been a concern for the community. Key Provisions: 1. Removing Corporate Power and Privileges - The charter seeks to remove the powers and privileges granted to corporations in the context of local governance and resource management.

	2. Eliminating the Possibility of State Preemption Laws - One of the charter's key objectives is to eliminate the possibility of state preemptive laws that may limit the township's self-governance. 3. Rights of Natural Communities and Ecosystems - The charter emphasizes the rights of natural communities and ecosystems, indicating that the protection of the environment is a fundamental component of the community's rights. 4. Right to Self-Government - The charter underscores the right to self-government, allowing Highland Township to determine its own local rules and policies. 5. Call for Changes to the Pennsylvania Constitution - The charter calls for changes to the Constitution of the Commonwealth of Pennsylvania, indicating a broader effort to amend the state's governing principles and possibly grant more local autonomy in line with Highland Township's objectives.
West Chester Borough, Community Bill of Rights Home Rule Charter Amendment, West Chester Borough, Chester County, PA - 11/4/2015	West Chester Borough Community Bill of Rights Home Rule Charter Amendment. The charter includes a Community Bill of Rights aimed at restricting the activities of corporations within West Chester Borough. Key Provisions: 1. Bans on Corporate Activities - The charter bans corporations from engaging in several activities, including gravel extraction, water withdrawals, and toxic waste disposal. - It also prohibits corporations from depositing, storing, or transporting various substances and by-products related to the unconventional development of natural gas from shale formations, such as wastewater, produced water, frack water, brine, chemicals, or other materials. - Corporations are banned from creating fossil fuel, nuclear, or other non-sustainable energy production and delivery infrastructures, including pipelines, processing facilities, compressors, storage, and transportation facilities.

	2. Stripping Corporate Personhood - The charter seeks to strip non-compliant corporations of their personhood, emphasizing that corporations that do not adhere to the community's standards lose certain legal privileges. 3. Legitimacy of Government - The charter highlights that any system of government that becomes destructive is considered illegitimate, unlawful, and unconstitutional, underlining the importance of government's role in preserving the well-being of the community. 4. Self-Executing Community Rights - Community rights, as outlined in the charter, are considered self-executing. 5. List of Rights - The charter includes a list of rights that the community members and the ecosystem are entitled to, such as the right to local self-government, the right of ecosystems and natural communities, the right to water, clean air, peaceful enjoyment of home, and a sustainable energy future.
Grant Township, Community Bill of Rights Ordinance, Grant Township, Indiana County, PA - 6/1/2014	Grant Township Community Bill of Rights. The charter, known as the Community Bill of Rights, is implemented to uphold the right to local self-government in Grant Township. It secures this right by prohibiting activities that could infringe on the rights of the community. Key Provisions: 1. Ban on Depositing of Oil and Gas Extraction Waste - The charter prohibits the depositing of waste from oil and gas extraction activities within the township. This prohibition encompasses various actions, including but not limited to depositing, disposal, storage, treatment, recycling, injection, or introduction of materials such as brine, produced water, frack water, tailings, flowback, or any other waste or by-products resulting from oil and gas extraction. - It also includes any permits that might be issued or applied for to allow these activities.

	2. List of Rights - The charter enforces several rights in the community, such as the right to local self-government, the right to clean air, water, and soil, the right to scenic preservation, the rights of natural communities and ecosystems, and the right to a sustainable energy future. 3. Self-Executing Rights - These rights, as outlined in the charter, are self-executing. 4. Corporation Restrictions - Corporations that violate this ordinance or seek to violate it will not be recognized as “persons” and will not have any other legal rights, privileges, powers, or protections that could interfere with the rights or prohibitions specified in the ordinance.
Highland Township, Community Rights & Protection from Injection Wells Ordinance, Highland Township, Elk County, PA - 1/2013	Bill of Rights for Highland Township Residents. The Bill of Rights recognizes and secures the civil and political rights of Highland Township residents. Key Provisions: 1. Banning Waste Depositing - The Bill bans the depositing of waste generated from shale gas extraction activities within Highland Township. This is because such extraction not only violates the civil rights of residents but also poses a threat to the health, safety, and welfare of the residents and their neighbourhoods. - The Bill also bans fracking wastewater injection wells, as they are considered a violation of the rights mentioned below. 2. List of Rights - The Bill enforces several rights in Highland Township, including the right to water, the right to clean air, the rights of natural communities and ecosystems, and the right to self-government, right to a sustainable infrastructure. - Additionally, it recognizes the right to a sustainable energy future.

	3. Self-Government and Sovereignty - The Bill emphasizes the importance of the people's sovereignty and their right to self-government. 4. Self-Executing Rights - All the rights secured by this Bill are self-executing, meaning they are considered inherent and fundamental rights that do not require additional legislation to be enforced.
Ferguson Township Petition to Amend Home Rule Charter with Community Bill of Rights Protection from Shale Gas Drilling & Fracking Ferguson Township, Centre County, PA - 11/2012	Ferguson Community Bill of Rights. The Community Bill of Rights outlines specific prohibitions and rights for Ferguson Township. Key Provisions: 1. Prohibitions - Bans any person or corporation from engaging in the extraction of natural gas within Ferguson Township. An exception is made for gas wells already installed and operating at the time of this Charter provision, provided that their gas extraction practices remain consistent. - Bans any person, corporation, or corporate officers from using corporations to deposit, store, or transport wastewater, produced water, frack water, flow-back, brine, or other materials from unconventional gas development. This ban extends to any activities within the land, air, or waters of Ferguson Township. - Bans any person, corporation, or corporate officers from using corporations to create fossil fuel, nuclear, or other non-sustainable energy production and delivery infrastructures that would jeopardize the right to a sustainable energy future for the township's residents. - Corporations violating the prohibition against natural gas extraction will not have the rights of “persons” under the United States and Pennsylvania Constitutions. They will also not be protected by the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution. 2. Rights - The Charter recognizes several fundamental rights for the residents of Ferguson Township, including the right to pure water, clean air, and the peaceful enjoyment of their homes. - The rights of natural communities are acknowledged, as is the right to a sustainable energy future. - The right to self-government is granted to the people, who are recognized as sovereign.

	- These rights align with the Pennsylvania Declaration of Rights. 3. Self-Executing Rights and Severability - All rights secured by this Charter are self-executing, meaning they do not require further legislation to be enforced. - The Charter provisions are severable, ensuring that any inconsistent provisions from prior ordinances are repealed to the extent necessary to remedy any inconsistencies.
City of Pittsburgh, Community Protection from Toxic Trespass due to Natural Gas Extraction Ordinance, Pittsburgh, Allegheny County, PA - 12/19/2011	City of Pittsburgh Community Bill of Rights. Key Provisions: 1. Prohibition - Bans corporations from engaging in the extraction of natural gas within the City of Pittsburgh, except for gas wells that were installed and operating at the time of this Chapter's enactment. - Corporations that violate this prohibition or seek to engage in natural gas extraction will not be recognized as “persons” under the United States and Pennsylvania Constitutions. Additionally, they will not be granted the protections provided by the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution. 2. Rights - The Charter guarantees certain fundamental rights to the residents of the City of Pittsburgh, including the right to water, the rights of natural communities, and the right to self-government. - The people of the city are recognized as sovereign individuals. 3. Severability and Repeal - The provisions of this Charter are severable, meaning that any inconsistencies with prior ordinances adopted by the City of Pittsburgh will be repealed only to the extent necessary to address those inconsistencies.
State College Borough, Community Bill of Rights Home Rule Charter	Community Bill of Rights for State College Borough. Key Provisions:

Amendment, State College Borough, Centre County, PA - 11/8/2011	1. Prohibitions - Bans any person or corporation from engaging in the extraction of natural gas within State College Borough. However, gas wells that were installed and operating at the time of this Charter provision's enactment are exempt, provided that the extraction from these wells does not involve any new practice or process not previously used for extraction. - Bans any person or corporation, or any director, officer, owner, or manager of a corporation, from using a corporation to deposit, store, or transport wastewater, produced water, frack water, brine, or any other materials, chemicals, or by-products from the unconventional development of natural gas from shale formations, within, upon, or through the land, air, or waters of State College Borough. - Bans any person or corporation, or any director, officer, owner, or manager of a corporation, from using a corporation to engage in the creation of fossil fuel, nuclear, or other non-sustainable energy production and delivery infrastructures, such as pipelines, processing facilities, compressors, or storage and transportation facilities, if these would violate the right to a sustainable energy future for State College Borough. - Corporations in violation of the prohibition against natural gas extraction, or seeking to engage in natural gas extraction, will not be recognized as “persons” under the United States and Pennsylvania Constitutions. Additionally, they will not be granted the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution. 2. Rights - The Charter guarantees certain fundamental rights to the residents of State College Borough, including the right to water, the right to clean air, the right to peaceful enjoyment of home, the rights of natural communities, and the right to a sustainable energy future. - The people of the borough are recognized as sovereign individuals. 3. Severability and Repeal - The provisions of this Charter are severable, meaning that any inconsistencies with prior ordinances adopted by State College Borough will be repealed only to the extent necessary to address those inconsistencies.
Baldwin Community Protection from Natural Gas Extraction Ordinance,	The Baldwin Borough A Community Bill of Rights.

Baldwin Borough, Allegheny County, PA - 6/1/2011	Key Provisions: 1. Prohibition - Bans any corporation from engaging in the extraction of natural gas within Baldwin Borough. An exception is made for gas wells that were installed and operating at the time of this chapter's enactment, provided that the extraction from these existing wells does not involve any new practice or process not previously used for gas extraction. - Corporations that violate the prohibition against natural gas extraction or seek to engage in such activities will not be recognized as “persons” under the United States and Pennsylvania Constitutions. These corporations will also not be granted rights under the First or Fifth Amendments to the United States Constitution or corresponding sections of the Pennsylvania Constitution. Furthermore, these corporations will not enjoy the protections of the commerce or contracts clauses within the United States Constitution or corresponding sections of the Pennsylvania Constitution. The definition of “corporations” for this chapter encompasses any corporation, limited partnership, limited-liability partnership, business trust, or limited-liability company organized under the laws of any state in the United States or under the laws of any country. This also includes any other business entity that possesses state-conferred limited liability attributes for its owners, directors, officers, and/or managers. 2. Rights - The Charter guarantees specific rights to the residents of Baldwin Borough, including the right to water, the rights of natural communities, the right to a sustainable energy future, the right to self-government, and the recognition of people as sovereign individuals. 3. Self-Executing Provisions - The rights secured by this chapter are self-executing.
West Homestead Borough, Community Protection from Natural Gas Extraction Ordinance, West Homestead Borough, Allegheny County, PA - 5/10/2011	The West Homestead Borough Community Bill of Rights. 1. Prohibition - Bans any corporation from engaging in the extraction of natural gas within West Homestead Borough, with the exception of gas wells installed and operating at the time of this Ordinance's enactment. This exception

	applies as long as the extraction from these existing wells does not involve any new practice or process not previously used for gas extraction. - The term corporation includes any corporation, limited partnership, limited liability partnership, business trust, or limited liability company organized under the laws of any state in the United States or under the laws of any country. It also encompasses any other business entity that possesses State-conferred limited liability attributes for its owners, directors, officers, and/or managers. 2. Rights - The Ordinance secures specific rights for the residents of West Homestead Borough. These rights include right to water, the rights of natural communities, the right to a sustainable energy future, the right to self-government, the recognition of people as sovereign individuals, and the self-execution of these rights. 3. Severable Provisions - The provisions of this Ordinance are severable. This means that if any part of the Ordinance is found to be unenforceable or inconsistent with existing law, only those specific provisions will be affected.
Forest Hills Borough, Community Rights & Protection from Natural Gas Exploitation Ordinance, Forest Hills Borough, Allegheny County, PA – 2011	Community Bill of Rights in Forest Hills Borough. Key Provisions: 1. Prohibitions - Bans any corporation from engaging in the extraction of natural gas within Forest Hills Borough, except for gas wells and pipelines already installed and operating at the time of this Ordinance, provided that the extraction from these wells doesn't involve any new methods not previously used. - Prohibits corporations from extracting water, importing water, or depositing waste materials from natural gas extraction activities into the land, air, or waters within Forest Hills Borough or its jurisdiction. 2. Corporations and Their Rights - Corporations violating the prohibition against gas extraction or seeking to engage in it will not have the rights of “persons” as outlined in the US and Pennsylvania Constitutions. This includes rights under the 1st or 5th amendments of the US Constitution or corresponding sections of the Pennsylvania Constitution.

	- The definition of corporations in this ordinance encompasses various business entities, including limited partnerships, limited liability partnerships, business trusts, or limited liability companies under US or foreign laws. 3. Authority of Corporations - Corporations engaged in gas extraction will not have the authority to enforce State or federal preemptive laws against the residents of Forest Hills Borough or challenge municipal ordinances that interfere with the rights established by this ordinance or affect the municipality's responsibility to protect its residents' well-being. 4. Rights Ensured - Right to Water. - Rights of Natural Communities. - Right to a Sustainable Energy Future. - Right to Self-Government. 5. Severable Provisions - The ordinance includes severable provisions to address inconsistencies in prior ordinances without entirely invalidating them.
Wilkinsburg's Community Protection from Natural Gas Extraction Ordinance, Wilkinsburg Borough, Allegheny County, PA – 2011	Community Bill of Rights in the Borough of Wilkinsburg. Key Provisions: 1. Prohibitions - Bans any corporation from engaging in the extraction of natural gas within the Borough of Wilkinsburg, with the exception of gas wells installed and operating at the time of this Ordinance. 2. Corporations and Their Rights - Corporations in violation of the prohibition against natural gas extraction or seeking to engage in it shall not have the rights of "persons" as granted by the United States and Pennsylvania Constitutions. This

	includes rights under the 1st or 5th amendments of the US Constitution or corresponding sections of the Pennsylvania Constitution. - The definition of corporations in this ordinance encompasses various business entities, including limited partnerships, limited liability partnerships, business trusts, or limited liability companies organized under the laws of any state in the United States or laws of any country. 3. Ensured Rights - Right to Water, Rights of Natural Communities, Right to a Sustainable Energy Future, Right to Self-Government, and recognition of People as Sovereign are fundamental rights ensured by this ordinance. 4. Severable Provisions - The ordinance contains severable provisions to address inconsistencies in prior ordinances without fully invalidating them.
Pittsburgh, Community Protection from Natural Gas Drilling Ordinance, Pittsburgh, Allegheny County, PA - 11/16/2010	Ordinance Title: Supplementing the Pittsburgh Code, Title Six, Conduct, Article 1 “Regulated Rights and Actions,” by adding Chapter 619 entitled “Toxic Trespass Resulting from Unconventional Natural Gas Drilling.” Key Provisions: 1. Prohibitions - Bans Corporations and persons using corporations to engage in natural gas extraction or to support the activity of natural gas extraction, in a neighbouring municipality, county, or state. 2. Strict Liability - Those engaged in natural gas extraction, including corporations and individuals using corporations, are strictly liable for the violation of rights recognized by this ordinance. They are also responsible for all harms caused to natural water sources, ecosystems, human and natural communities within the City of Pittsburgh and its jurisdiction. 3. Liability of Government Agencies and Municipalities

	- Government agencies and municipalities issuing permits for unconventional gas extraction are liable if a toxic trespass results, impacting the rights of Pittsburgh residents, ecosystems, and natural communities. 4. Corporate Rights and Protections - Corporations in violation of the rights of human and natural communities and ecosystems within Pittsburgh are not entitled to the legal rights of “persons” as granted by the United States and Pennsylvania Constitutions. This includes protections under the First or Fifth amendments to the United States Constitution and the commerce or contracts clauses within the United States Constitution and corresponding sections of the Pennsylvania Constitution. 5. Severability - The ordinance includes severable provisions to address inconsistencies in prior ordinances adopted by the City of Pittsburgh without fully invalidating them. 6. Recognized Rights - Right to a Healthy Environment. - Right to Self: This fundamental and inalienable right includes the integrity of individuals' bodies, freedom from unwanted invasions, and privacy protections against surveillance, searches, inspections, and medical treatments. - Right to be Free from Toxic Trespass.
Licking Township, Community Water Rights & Self-Government Ordinance, Licking Township, Clarion County, PA - 10/12/2010	Community Bill of Rights for Licking Township. Key Provisions: 1. Strict Liability for Corporations - All corporations involved in natural gas extraction within Licking Township in violation of this ordinance will be held strictly liable. Evidence of waste deposition within Licking Township constitutes prima facie causation of damages, shifting the burden of proof to the culpable parties to demonstrate they are not responsible for the violations and damages. 2. Supremacy of Township Rights

	- Rights of Licking Township residents, as secured by this ordinance and other applicable laws, cannot be subordinated to the asserted but legally considered as privileges of state-chartered corporations. Corporations violating this ordinance will not enjoy legal privileges or powers that would subordinate community interests or nullify this ordinance. Corporations also lack the authority to enforce state or federal preemptive laws that would negate this ordinance. Within Licking Township, corporations are not recognized as “persons” under the United States or Pennsylvania Constitutions or any other applicable law. 3. Bans on Corporations - Prohibits corporations, as well as directors, officers, owners, or managers of corporations, from using corporations to deposit waste materials of natural gas extraction into the land, air, or waters within Licking Township. The definition of extraction includes various activities related to natural gas drilling and removal, including fracking, when the natural gas is intended for sale. Natural gas is defined as any gaseous substance produced naturally from the earth. 4. Recognized Rights - Right to Local Self-Government. - Right to a Healthy Environment. - Right to Water. - Rights of Natural Communities. 5. Severability - The provisions of this ordinance are severable, meaning they can be independently enforced. Inconsistent provisions of previous ordinances adopted by Licking Township are repealed only to the extent necessary to resolve inconsistencies.
Lehman Township, Community Water Rights & Self-Government Ordinance, Lehman Township, Luzerne County, PA - 2010	Community Bill of Rights for Licking Township. Key Provisions: 1. Strict Liability for Corporations - All corporations involved in natural gas extraction within Licking Township in violation of this ordinance will be held strictly liable. Evidence of waste deposition within Licking Township constitutes prima facie

	causation of damages, shifting the burden of proof to the culpable parties to demonstrate they are not responsible for the violations and damages. 2. Supremacy of Township Rights - Rights of Licking Township residents, as secured by this ordinance and other applicable laws, cannot be subordinated to the asserted but legally considered as privileges of state-chartered corporations. Corporations violating this ordinance will not enjoy legal privileges or powers that would subordinate community interests or nullify this ordinance. Corporations also lack the authority to enforce state or federal preemptive laws that would negate this ordinance. Within Licking Township, corporations are not recognized as “persons” under the United States or Pennsylvania Constitutions or any other applicable law. 3. Bans on Corporations - Prohibits corporations, as well as directors, officers, owners, or managers of corporations, from using corporations to deposit waste materials of natural gas extraction into the land, air, or waters within Licking Township. The definition of extraction includes various activities related to natural gas drilling and removal, including fracking, when the natural gas is intended for sale. Natural gas is defined as any gaseous substance produced naturally from the earth. 4. Recognized Rights - Right to Local Self-Government. - Right to a Healthy Environment. - Right to Water. - Rights of Natural Communities. 5. Severability - The provisions of this ordinance are severable. Inconsistent provisions of previous ordinances adopted by Licking Township are repealed only to the extent necessary to resolve inconsistencies.
Town of Monroe, Local Self-Government Ordinance, Warrant Article Monroe Township, Cumberland County, PA – 2010	Town of Monroe Local Self-government Ordinance. Objective: Secure Citizens' Health, Safety, Welfare, and Rights Key Provisions:

	1. Corporations - Corporations in Monroe are not recognized as “natural persons” under US or Maine Constitutions. - Corporations cannot claim “natural person” status. - No protection under Contracts or Commerce Clauses in the US or Maine Constitutions. 2. Inherent Rights and Responsibilities - Citizens have unalienable rights to life, liberty, property, safety, health, and happiness. - Right to clean air, viable soil, clean water. - Responsibility for self-governance and natural asset protection. 3. Empowering People's Right to Self-Governance and Right of Separation - Emphasizes community's right to self-governance and separation. 4. Provisions and Severability - Provisions are severable. 5. Repealer - Inconsistent prior ordinances can be repealed as necessary.
Blaine Township, Study Commission Final Report and Home Rule Charter and Blaine Township, Corporate Mining & Democratic Self-Government Ordinance, Blaine Township, Washington County, PA - 8/29/2009 Same ordinance.	Amendment to Rule Charter and Corporate Mining & Democratic Self-Government Ordinance (same ordinance). Declare that all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, and happiness. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform, or abolish their government in such manner as they may think proper. Key Provisions: 1. Corporate Mining Policy - Right to Establish a Sustainable Mining Policy - Residents of Blaine Township have the right to establish policies that promote and support sustainable mining practices within the Township.

	- This includes the authority to create laws prohibiting environmentally unsustainable mining activities, ensuring residents' ability to enjoy a healthy and pleasant quality of life indefinitely, all while respecting the rights protected by this Charter.
	2. Corporate Mining Prohibited - It's unlawful for any director, officer, owner, or manager of a corporation to utilize the corporation for mining activities within Blaine Township.
	3. Rights of Nature - Corporations and their representatives are prohibited from interfering with the rights of natural communities and ecosystems to exist and thrive. - They are also prohibited from causing harm to these natural communities and ecosystems.
	4. Water Regulations - Mining corporations are prohibited from using water for mining. - Mining activities should not damage local water sources.
	5. Compensation for Mining Impact - The Township is entitled to compensation for any adverse impact caused by mining activities.
	6. Surface Estate Compensation for Mining Damage - Compensation should be provided for damage caused by surface mining.
	7. Corporate Influence on Local Decision-Making - Corporate influence on local decision-making is to be minimized.
	8. Land Purchase - Regulations governing land purchases are established.
	9. Title Divestment - Mining corporations holding land titles for mining purposes must divest these titles within 60 days of submitting a permit application for mineral extraction within Blaine Township.

	10. Liability of Corporations in Neighbouring Municipalities - The liability of corporations extends to neighbouring municipalities. 11. Illegitimacy of Permits and Public Servant Liability - The legitimacy of permits is questioned, and public servants may be held liable.
Atkinson Water Withdrawal Control Ordinance, Atkinson, Rockingham County, NH - 10/20/2008	Town of Atkinson Water Rights Declaration. Key Provisions: 1. Declaration of Water's Importance - The People of Atkinson, declare water's essential role in life, liberty, and happiness for all, including ecological systems. - Assert duty to protect both surface and underground water, safeguarding the rights of Atkinson's people and its ecosystems. 2. Water as a Public Trust - Place all water within Atkinson under a public trust, to benefit residents and natural ecosystems. - Corporatization of water control is opposed as it is a tyranny and usurpation operated under the New Hampshire Constitution (the Atkinson residents must with this ordinance rectify the usurpation of governing power due to centuries of corporate constitutional powers). 3. Restrictions on Corporate Water Withdrawal - No corporation, syndicate, or business entity may withdraw water within Atkinson's boundaries. - The term “corporation” covers all entities organized under U.S. or international laws. - “Engage” includes water extraction, buying, and selling within Atkinson. 4. Corporate Personhood Denied - Corporations operating in Atkinson are not recognized as “persons” under U.S. or N.H. Constitution. - They do not enjoy the protections of the Contracts or Commerce Clauses in the U.S. Constitution.

	5. Residents' Right to Water - Atkinson residents have an inalienable right to access, use, consume, and preserve water from sustainable natural cycles necessary for life. 6. Rights of Natural Communities and Ecosystems - Natural communities and ecosystems, including wetlands, streams, rivers, and aquifers, possess inalienable rights to exist and flourish in Atkinson. 7. Corporate Restrictions and Liability - Corporations (with limited exceptions) are prohibited from withdrawing water. - Corporations and their representatives cannot interfere with natural communities and ecosystems. 8. Non-Recognition of “Future Lost Profits” as Property - Corporate claims of “future lost profits” are not considered property interests under the law and are unrecoverable. 9. Denial of Corporate Personhood - Corporations are not recognized as legal persons, thereby denying them constitutional protections. 10. Liability and Standing - Liability, including punitive damages, is imposed on any entity harming natural communities or ecosystems. - Town residents have legal standing to enforce the ordinance. 11. Prohibition of Licenses for Extraction - Federal and state agencies cannot issue extraction licenses to corporations. 12. Criminal Offense for Violations - Violations of the ordinance are criminal offenses. 13. Provisions and Severability - The ordinance provisions are severable

Mahanoy Township, Sewage Sludge Ordinance, Mahanoy Township, Schuylkill County, PA - 2/21/2008	Ordinance To Protect Mahanoy Township's Health, Safety, And Environment. Key Provisions: - Ban corporations from engaging in the land application of sewage sludge. - Prohibit individuals from using corporations for sewage sludge land application. - Mandate sewage sludge testing before land application. - Prohibit chemical bodily trespass within the Township. - Establish strict liability and burden of proof for corporate chemical trespass. - Remove corporate legal rights and protections. - Recognize and enforce residents' rights to protect natural communities and ecosystems. - Subordinate sludge hauling and disposal corporations to the people of Mahanoy Township. - Adopt Pennsylvania regulations for sewage sludge land application. 1. Principles Upheld - Local self-government is an inherent, inalienable, and fundamental right. - Government is instituted for the common benefit. - Corporations are not recognized as legal persons, denying them constitutional protections. - “Natural communities” and “ecosystems” are granted fundamental rights, legal personhood, and legal standing. - Town residents, natural communities, and ecosystems are considered “persons” for enforcing civil rights. 2. Town Action Against Preemption - The town retains its authority against preemption. 3. Liability and Standing - Impose liability, including punitive damages, on entities harming natural communities or ecosystems. - Confer legal standing on any town resident wishing to enforce the ordinance. - Violations of the ordinance are criminal offenses. 4. Provisions and Severability - The provisions of this ordinance are severable.

Place Local Control Sewage Sludge & Chemical Trespass Ordinance, Shrewsbury Township, York County, PA - 9/3/2008	Ordinance to Protect Shrewsbury Township's Environment. Objective of the ordinance: Safeguarding Environmental Health. Key Provisions: - Bans corporations from engaging in the land application of sewage sludge. - Prohibits individuals from using corporations to engage in the land application of sewage sludge. - Mandates sewage sludge testing before land application by individuals, with testing costs borne by applicants. - Prohibits chemical bodily trespass upon Township residents. - Establishes strict liability and burden of proof standards for chemical trespass. - Removes corporate claims to legal rights and protections within the Township. - Recognizes and enforces the rights of residents, natural communities, and ecosystems. - Subordinates' sludge hauling and disposal corporations to the People of Shrewsbury Township. - Adopts and enforces Pennsylvania regulations concerning sewage sludge land application by individuals.
Blaine Township, Community Self-Governance & Corporate Takings Prohibition Ordinance, Blaine Township, Washington County, PA - 2008	Blaine Township Protection Ordinance. Objective: Protecting Health, Safety, and the Environment. Key Provisions: - Local self-government is recognized as an inherent, inalienable, and fundamental right. - Government is established for the common benefit. 1. Corporation Regulations - Corporations are not recognized as legal persons, denying them constitutional protections. - “Natural communities” and “ecosystems” are granted fundamental rights, legal personhood, and legal standing. - Town residents, natural communities, and ecosystems are considered “persons” for the enforcement of their civil rights.

	2. Town Action Against Preemption - The town retains its authority against preemption. 3. Liability and Standing - Impose liability, including punitive damages, on entities harming natural communities or ecosystems. - Confer legal standing on any town resident wishing to enforce the ordinance. - Violations of the ordinance are criminal offenses. 4. Severability and Repeal of Inconsistent Provisions - The provisions of this ordinance are severable. - Inconsistent provisions of prior ordinances adopted by the Blaine Township Board of Supervisors are repealed to remedy inconsistencies. 5. Rights Affirmed in the Ordinance - Right to Self-Government. - Right to a Healthy Environment. - Right to Self. - Right to Livelihood and Home. - Right to Cultural Heritage. - Right to Water. - Rights of Natural Communities. - People as Sovereign.
Nockamixon Township, Corporate Mining, Bodily Trespass & Democratic Self-Government Ordinance, Nockamixon Township, Bucks County, PA – 2008	Nockamixon Township Environmental Protection Ordinance. Objective: The ordinance is designed to safeguard the welfare of citizens and the environment while challenging corporate mining practices and protecting the rights of residents, natural communities, and ecosystems within Nockamixon Township. Key Provisions: - Local self-government is recognized as an inherent, inalienable, and fundamental right. - Government is instituted for the common benefit.

	1. Corporation Regulations - Corporations are not recognized as legal persons, thereby denying them constitutional protections. - “Natural communities” and “ecosystems” are granted fundamental rights, legal personhood, and legal standing. - Town residents, natural communities, and ecosystems are considered “persons” for civil rights enforcement. 2. Town Action Against Preemption - The town retains its authority against preemption. 3. Liability and Standing - Impose liability, including punitive damages, on entities causing harm to natural communities or ecosystems. - Confer legal standing on any town resident wishing to enforce the ordinance. - Violations of the ordinance are criminal offenses. 4. Severability and Repeal of Inconsistent Provisions - The provisions of this ordinance are severable. - Inconsistent provisions of prior ordinances adopted by the Township of Nockamixon are repealed to remedy inconsistencies. 5. Rights Affirmed in the Ordinance - Right to Self-Government. - Right to a Healthy Environment. - Right to Self. - Right to Livelihood and Home. - Right to Cultural Heritage. - Right to Water. - Rights of Natural Communities. - People as Sovereign. - Township Government's Duty to Protect.

Newtown Township, Comprehensive Plan Ordinance, Newtown Township, Delaware County, PA – 2008	Newtown Township Land Development Ordinance Objective: This ordinance seeks to ensure that major land development projects adhere to the Township's Comprehensive Plan while safeguarding the rights of residents, natural communities, and ecosystems in Newtown Township. Key Provisions: - Local self-government is upheld as an inherent, inalienable, and fundamental right. - Government is established for the common benefit. 1. Development Regulations - All major land development projects must align with the Township's Comprehensive Plan. - Corporations (with limited exceptions) are banned from withdrawing water within the municipality. - Corporations are not recognized as legal persons, thereby forfeiting constitutional protections. - “Natural communities” and “ecosystems” are granted fundamental rights, legal personhood, and legal standing. - Town residents, natural communities, and ecosystems are considered “persons” for civil rights enforcement. 2. Town Action Against Preemption - The town retains its authority against preemption. 3. Liability and Standing - Liability, including punitive damages, is imposed on any entity causing harm to natural communities or ecosystems. - Legal standing is conferred upon any town resident wishing to enforce the ordinance. - Violations of the ordinance are criminal offenses. 4. Severability and Repeal of Inconsistent Provisions - The provisions of this ordinance are severable.

	- Inconsistent provisions of prior ordinances adopted by the Newtown Township Board of Supervisors are repealed as necessary to rectify inconsistencies.
Donegal Township, Democratic Self-Government & Local Control Ordinance and Local ordinance banning coal mining, Donegal Township, Washington County, PA - 12/18/2007	Democratic Self-Government & Local Control Ordinance - Donegal Township. Background - On December 18, 2007, the Donegal Township Board of Supervisors voted 2-1 to adopt an Ordinance prohibiting corporations from mining within the Township. - The ordinance aimed to address concerns about corporate longwall coal mining. - Donegal Township stood in solidarity with neighbouring Blaine Township, which had passed a similar Ordinance on October 16, 2006. Objective: Asserting People's Right to Democratic Self-Governance. Key Provisions: - Local self-government is acknowledged as an inherent, inalienable, and fundamental right. - Government is established for the common benefit. 1. Corporations - Corporations are not recognized as legal persons, thus denying them constitutional protections. 2. Town Action against Preemption - Town retains the authority to act against preemption. 3. Liability and legal standing - Liability, including punitive damages, is imposed on any entity causing harm to a natural community or ecosystem. - Legal standing is granted to any town resident wishing to enforce the ordinance. - Violations of the ordinance are deemed criminal offenses. 4. Severability - The ordinance includes severable provisions for legal clarity.

	- Inconsistent provisions of prior ordinances adopted by the Township of Donegal are repealed to remedy inconsistencies. 5. Additional Provisions - The Donegal Supervisors also adopted a second Ordinance that strips corporations of constitutional protections within the Township. - The Township joins a select group of municipalities in the nation that refuse to recognize corporate constitutional “rights.” These Ordinance further: - Recognize the rights of natural communities and ecosystems to exist and flourish within the Township, with enforcement and defence mechanisms. - Prohibit corporate contributions to candidates for elected office within the Township. - Prohibit mining corporations from purchasing mineral rights or land for mining. - Prohibit mining corporations from interfering with the civil rights of residents, including their right to self-government.
Tamaqua Borough, Corporate Waste & Local Control Ordinance, Tamaqua Burrough, Schuylkill County, PA - 5/1/2007	The Tamaqua Borough Corporate Waste and Local Control Ordinance 1. Prohibition on Corporate Involvement - The ordinance prohibits individuals from utilizing corporations to engage in various activities, including the storage, “beneficial use,” or disposal of hazardous waste, coal ash, residual waste, dredged material, PCB-containing waste, radioactive material, construction, and demolition (C&D) waste, chemotherapeutic waste, and infectious waste. 2. Recognition of Ecosystem Rights 3. Corporate Accountability - The ordinance classifies corporations operating in Tamaqua as “state actors” under the law. - Corporations do not have personhood. 4. Expanded Legal Standing

	- The ordinance broadens the conditions under which Tamaqua residents can initiate legal action. They can now sue not only to enforce their own rights but also to safeguard the rights of nature, reinforcing the community's commitment to environmental protection and sustainability.
Blaine Township, Disclosure & Protection Ordinance, Blaine Township, Washington County, PA - 2007	An Ordinance to protect the health, safety, and general welfare of the citizens and natural environment of Blaine Township. Key Provisions: 1. Disclosure Requirement for Corporations - The ordinance mandates that corporations doing business in Blaine Township must disclose their business activities. 2. Prohibition on Repeat Violators - Corporations with a consistent history of violating the law are prohibited from conducting business within Blaine Township. 3. Emphasis on Local Self-Government - The ordinance upholds the principle that local self-government is an inherent and fundamental right of the community. 4. Denial of Corporate Legal Personhood - Corporations are not recognized as legal persons under this ordinance. 5. Protection Against Preemption - Blaine Township reserves the right to take action against pre-emption. 6. Imposition of Liability - The ordinance imposes liability, including punitive damages, on any entity or individual, including corporations, municipalities, or persons, responsible for harming a natural community or ecosystem. 7. Legal Standing for Residents - Residents of the township are granted legal standing to enforce the ordinance.

	8. Criminal Offenses for Violations - Violations of the ordinance are considered criminal offenses. 9. Severable Provisions - The provisions in the ordinances are severable.
Bethel Corporate Toxics & Local Self-Governance Ordinance, Bethel Township, Berks County, PA – 2007	An Ordinance to protect the health, safety, and general welfare of the citizens and natural environment of the City of Bethel and Its Watershed. It is designed to safeguard the well-being of the community and its natural surroundings through a series of comprehensive measures: 1. Local Self-Government Emphasis - The ordinance underscores that local self-government is an inherent and fundamental right, emphasizing the importance of community-based decision-making. 2. Government for Common Benefit - It recognizes that government is instituted to serve the common benefit of the community, promoting the welfare of all residents. 3. Banning Toxic Substances - Corporations are prohibited from transporting, using, discharging, or generating certain toxic substances within the city and its watershed. 4. Denial of Corporate Legal Personhood - Corporations are not recognized as legal persons under this ordinance. 5. Protection Against Preemption - The ordinance ensures that the City of Bethel can take action against preemption, safeguarding local decision-making from interference. 6. Imposition of Liability - Liability, including punitive damages, is imposed on any entity or individual, including corporations and municipalities, responsible for harming a natural community or ecosystem.

	7. Legal Standing for Residents - Residents of Bethel are granted legal standing to enforce the ordinance. 8. Criminal Offenses for Violations - Violations of the ordinance are considered criminal offenses. 9. Severable Provisions - The provisions in the ordinance are severable.
Peach Bottom, Township Sustainable Agriculture & Community Self-Government Ordinance, Peach Bottom Township, York County, PA – 2007	An ordinance to protect the health, safety, and general welfare of the citizens and environment of Peach Bottom Township. Key Provisions: 1. Emphasis on Local Self-Government - The ordinance underscores that local self-government is an inherent and fundamental right, prioritizing the community's authority over its affairs. 2. Government for Common Benefit - It recognizes that government exists to serve the common benefit, emphasizing the welfare of all residents. 3. Banning Corporate Agriculture and Sewage Sludge Activities - Corporations are prohibited from engaging in agriculture and the land application of sewage sludge in the Township, safeguarding the health and environment of the community. 4. Prohibition of Corporate Use in Agriculture - Persons are banned from using corporations to engage in agriculture and sewage sludge application. 5. Limited Exceptions for Corporate Agriculture - Certain limited exceptions allow corporations to participate in agriculture while adhering to community standards.

	6. Testing of Sewage Sludge - Prior to land application, sewage sludge must undergo testing in compliance with the ordinance to ensure safety. 7. Denial of Corporate Legal Personhood - Corporations are not recognized as legal persons under the ordinance. 8. Protection Against Preemption - The ordinance safeguards the Township from preemption, preserving the community's ability to make decisions regarding agriculture and sewage sludge. 9. Imposition of Liability - Liability, including punitive damages, is imposed on any entity or individual, including corporations and municipalities, responsible for harming a natural community or ecosystem. 10. Legal Standing for Residents - Residents of Peach Bottom Township are granted legal standing to enforce the ordinance. 11. Criminal Offenses for Violations - Violations of the ordinance are considered criminal offenses. 12. Severable Provisions - The provisions of the ordinance are severable. 13. Repeal of Inconsistent Provisions - Inconsistent provisions of prior ordinances adopted by Peach Bottom Township are repealed only to the extent necessary to remedy any inconsistencies.
Tamaqua Borough, Sewage Sludge Ordinance No. 612 of 2006, Schuylkill County, PA- 19/09/2006	The Tamaqua Ordinance Community Bill of Right. Key provisions: 1. Ban on Sludge Application

	- Corporations are prohibited from engaging in the land application of sewage sludge. - Individuals are barred from using corporations for sludge land application. 2. Testing Requirements - Before sludge land application, testing of sewage sludge in Tamaqua Borough is mandated. 3. Corporate Legal Restrictions - Corporations within the Borough do not possess “person” status, denying them constitutional protections. - Corporations are not entitled to the protections of the Contracts Clause or Commerce Clause under the United States or Pennsylvania Constitutions. 4. Protection of Natural Communities - Corporations and their officials are forbidden from interfering with natural communities and ecosystems. - Legal standing is granted to the Borough and residents to seek relief for harm to natural communities and ecosystems. 5. Fundamental Rights for Residents - All residents have an inherent right to a healthy environment. - This includes the right to clean air, water, soil, flora, fauna, and protection from bodily invasions by pollutants.
East Brunswick, Township Sewage Sludge Ordinance, East Brunswick Township, Schuylkill County, PA - 12/6/2006	The ordinance safeguards the well-being of East Brunswick Township residents and the environment by: - Prohibiting corporations from using or applying sewage sludge in the area. - Preventing individuals from using corporations for sewage sludge applications. - Mandating sewage sludge testing before application. - Stripping corporations of certain constitutional powers in the township. - Upholding residents' rights to protect natural communities and ecosystems. - Implementing Pennsylvania's regulations on sewage sludge land application. Key Provisions: - Government's purpose is the common benefit of residents.

	- Corporations are banned from withdrawing water within the municipality. - Corporations are not recognized as legal persons, thus losing constitutional protections. - Township has the authority to act against preemption. - Imposing liability and punitive damages for harm to natural communities or ecosystems. - Granting legal standing to town residents for ordinance enforcement. - Violations of the ordinance are criminal offenses. - Severable provisions in the ordinance. - Inconsistent provisions in previous ordinances are repealed to address inconsistencies.
Montgomery County, Anti-Corporate Takings & Securing Local Self-Governance Ordinance, Montgomery County, PA - 11/7/2006	The Montgomery ordinance Protects the health, safety, and general welfare of the citizens and natural environment of Montgomery County, Virginia by: - Banning Corporations from Taking Private Property within the County. - Banning The Exercise of Certain Powers by Corporations. - Recognizing The Rights of People, Ecosystems and Natural Communities, and by Providing for Enforcement of Those Rights. Key Provisions: - Institutes government for common benefit. - Prohibits corporations (with limited exceptions) from water withdrawal in the municipality. - Does not recognize corporations as legal persons, thus denying them constitutional protections. - Enables town action against preemption. - Imposes liability, including punitive damages, for harming a natural community or ecosystem. - Grants legal standing to town residents willing to enforce the ordinance. - Considers ordinance violations as a criminal offense. - Allows severability of provisions in the ordinance. - Repeals inconsistent prior ordinances from the Montgomery County Board of Supervisors to the necessary extent.
Blaine Township, Corporate Land Development Ordinance, Blaine Township, Washington County, PA - 10/16/2006	The Blaine Community Bill of Rights - Prohibits individuals from using specific corporations or syndicates for land development. - Includes limited exceptions to this prohibition. - Specifies enforcement measures and penalties for ordinance violations.

	Key Provisions: - Institutes government for common benefit. - Prohibits corporations (with limited exceptions) from water withdrawal in the municipality. - Does not recognize corporations as legal persons, thereby denying them constitutional protections. - Enables town action against preemption. - Imposes liability, including punitive damages, for harming a natural community or ecosystem. - Grants legal standing to town residents willing to enforce the ordinance. - Considers ordinance violations as a criminal offense. - Allows severability of provisions in the ordinance.
Saint Clair Borough, Corporate Waste & Local Control Ordinance, Saint Clair Borough, Schuylkill County, PA - 9/1/2006	An ordinance of St. Clair borough, Schuylkill county, Pennsylvania. - Prohibits persons from using corporations or syndicates to engage in certain waste hauling and disposal activities. Key Provisions: - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Windsor Township, Corporate Land Development Ordinance, Windsor Township, York County, PA – 2006	An ordinance of Windsor Township, York County, Pennsylvania. - Prohibits individuals from utilizing specific corporations or syndicates for land development. - Allows for specific limited exceptions to the prohibition on using certain corporations or syndicates for land development. - Applies to Windsor Township in York County, Pennsylvania. Key Provisions:

	- Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Windsor Township, Product Retailing Ordinance, Windsor Township, York County, PA – 2006	An ordinance of Windsor Township, York County, Pennsylvania. - Prohibits individuals from using specific corporations or syndicates for retail selling of products. - Provides for specific limited exceptions to the prohibition on using certain corporations or syndicates for product retailing. - Applies to Windsor Township in York County, Pennsylvania. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Mahanoy Township, Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA – 2006	An ordinance Of Mahanoy Township, Schuylkill County, Pennsylvania. - Prohibits unsustainable energy production within Mahanoy Township, Schuylkill County, Pennsylvania.

	- Mandates a transition to sustainable energy systems within the township. - Provides mechanisms for enforcing the ordinance and protecting the rights of residents and nature. - Includes provisions for financial assistance to support the conversion to sustainable energy systems. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Liberty Township, Farm Privacy & Profitability Ordinance, Liberty Township, Westmoreland County, PA – 2006	An ordinance of Liberty Township, Westmoreland County, Pennsylvania - Vindicates people's Bill of Rights and Pennsylvania Constitutional protections. - Aims to protect farm privacy and profitability. - Nullifies all mandated federal and state livestock tracking and premises identification laws and regulations within Liberty Township, Westmoreland County, Pennsylvania. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing.

	- Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Codorus Township, Best Fly Management Practices for Concentrated Agricultural Operations, Codorus Township, York County, PA - 2006	Codorus ordinance to impose best Fly Management Practices. - States that Codorus Township's focus is on promoting small-scale, sustainable farm operations. - The intent of the ordinance is to promote the health, safety, and welfare of the municipality. - Minimizes the impact of fly swarms on public health and the tourist industry. - Establishes a permitting process for concentrated agricultural operations. - Provides guidance for landowners involved in such operations. - Informs operators and owners of their responsibilities. - Focus on common benefit and not recognizing corporations as legal persons. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Liberty Township, Chemical Trespass Ordinance, Liberty Township, Westmoreland County, PA – 2006	An ordinance of Liberty Township, Westmoreland County, Pennsylvania. - Prohibits chemical bodily trespass within Liberty Township. - Establishes strict liability and burden of proof standards for corporate chemical trespass. - Chemical corporations are subordinates of the people of Liberty Township. Key Provisions:

	- Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Mahanoy Township, Sustainable Energy Ordinance, Mahanoy Township, Schuylkill County, PA - 2006	An ordinance of Mahanoy Township, Schuylkill County, Pennsylvania. - Prohibits unsustainable energy production within Mahanoy Township. - Mandates a transition to sustainable energy systems within the township. - Includes provisions for the enforcement of the ordinance and the protection of the rights of residents and nature. - Provides financial assistance for the conversion to sustainable energy systems. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.

Windsor Township, Product Retailing Ordinance, Windsor Township, York County, PA – 2006 Windsor Township, Corporate Land Development Ordinance, Windsor Township, York County, PA -2006 Same Ordinance	An ordinance Of Windsor Township, York County, Pennsylvania. - Prohibits the use of certain corporations or syndicates for product retailing by individuals in Windsor Township, York County, Pennsylvania. - Includes limited exceptions to this prohibition. - Outlines provisions for enforcement and penalties for violations of the ordinance. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
East Mahoning, Sewage Sludge Ordinance, East Mahoning, Indiana County, PA - 20/04/2004 Rayne Township, Sewage Sludge Ordinance, Rayne Township, Indiana County, PA - 6/20/2004 Same Ordinance	An ordinance of East Mahoning, Indiana County, Pennsylvania. An ordinance of Raye Townships, Indiana County, Pennsylvania. - Bans corporations from dumping sewage sludge. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing.

	- Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Rockland Township, Water Supply Protection Act, Rockland Township, Venango County, PA – 2004	An ordinance against water withdrawal from corporations - Acknowledges limited water supplies in the township. - Emphasizes the importance of protecting water resources for the well-being of Township residents and existing businesses. - Prioritizes ensuring clean, sufficient water supplies for residents. - Requires proponents of new construction or new use involving large-scale water withdrawals to demonstrate no adverse impact on current water users. - Proposes disallowing or discontinuing new construction or new use that would negatively affect township water supplies. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste. hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance.

	- Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Corporate Rights Elimination & Self-Government Ordinance, Licking Township, Clarion County, PA - 3/2003	An ordinance to eliminate the purported constitutional rights of corporations in order to remedy the harms that corporations may cause to the people of Licking Township by exercise of such rights. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Corporate Personhood Elimination & Democracy Protection Ordinance, Haines Centre County, PA – 2003	An Ordinance of Saint Thomas Township, Franklin County, Pennsylvania. - Prohibits corporate or syndicate ownership of real estate used for surface mining. - Prohibits corporate engagement in surface mining. - Provides certain limited exceptions to corporate or syndicate ownership. - Establishes enforcement and penalties for violations of the ordinance. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste. hauling and disposal activities.

	- Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions. -
Saint Thomas Township, Surface Mining Ownership & Control Ordinance, Saint Thomas Township, Franklin County, PA - 2003	N/A.
Porter Township, Corporate Rights Ordinance, Porter Township, Clarion County, PA - 12/9/2002 Windham Township Bans Agribusiness Corporations, Windham Township, Bradford County, PA - 4/2002 East Wheatfield Township Bans Agribusiness Corporations, East Wheatfield Township, Indiana County, PA - 2/1/2001 Bedford County Bans Agribusiness Corporations, Bedford County, PA - 1/2001	SAME ORDINANCES - First local government in the United States to eliminate corporate claims to civil and constitutional privileges. - The Township adopted a binding law declaring that corporations operating in the township may not wield legal privileges - historically used by corporations to override democratic decision making to stop the Township from passing laws which protect residents from toxic sewage sludge. - The actions thus repudiate the history of state and federal public officials restricting the rights of citizens while expanding the rights of corporations and their owners.

Cumberland County Bans Agribusiness Corporations, Cumberland County, PA - 1/2001 Fulton County Bans Agribusiness Corporations, Fulton County, PA - 1/2001 Monroe Township, Noxious Agricultural Odors Ordinance, Monroe Township, Cumberland County, PA – 2001 Same Ordinance	
Buffington Township, Bans Corporations from Dumping Sewage Sludge, Buffington Township, Indiana County, PA – 2000	Bans corporations from dumping sewage sludge.
Southampton Township, Farm Ownership Ordinance, Southampton Township, Franklin County, PA - 3/1999 Model Ordinance Serves as a model for other communities to follow.	The general purpose of the ordinance is to recognize that farm ownership by families and non-corporate entities offers stability and encourages a rural quality of life in Franklin County. - Recognizes the value of family and non-corporate farm ownership for stability and rural quality of life. - Acknowledges the difficulty in obtaining compensation for harms caused by corporate farming. - Highlights that corporations may have fewer reasons to respect the natural environment and township community. - Identifies non-family-owned industrial agriculture as a threat to the health, safety, and welfare of residents. - Recognizes that such facilities have caused environmental degradation and citizen endangerment in other states, supported by existing literature. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance.

	- Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Wayne Township, Environmental Protection Ordinance, Wayne Township, Mifflin County, PA – 1998	The Wayne Township Ordinance Grants Township Supervisors power to exclude corporations with criminal histories from operating in the Township. - Aims to protect Wayne Township residents' health, safety, and welfare. - Seeks to ensure that corporations doing business within Wayne Township and their Principal Owners have no history of consistent law violations. - Aims to prevent Directors or Officers of such corporations from serving in roles for other corporations with law violation histories. - Aims to protect the liberty of Township residents from corporate entities causing or threatening harm. - Grounded in the principle that government is instituted for the common benefit. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Creating an Environmental Advisory Council to the Township Exeter Township, Berks County, PA – 1998	An Ordinance of the Township of Exeter, Berks County, Pennsylvania, Creating an Environmental Advisory Council Providing Operating Procedures and Stating the Powers of the Council.

Wells Township, Anti-Corporate Farming Ordinance, Wells Township, Fulton County, PA – 1998	N/A.

Virginia	
MUNICIPAL ORDINANCE OR CBRs	KEY PROVISIONS FOUND IN THE MUNICIPAL ORDINANCES OR CBRs
Town of Halifax Corporate Mining, Bodily Trespass & Community Self-Government, Ordinance Halifax, Halifax County, VA - 2/7/2008	Town of Halifax Self-Government Ordinance. - The Town of Halifax aims to protect the health, safety, and welfare of residents, the environment, cultural heritage, and rural quality of life. - The Town seeks to ban corporate engagement in mining activities within its jurisdiction. - Strict liability will be imposed on corporations, individuals, and governmental agencies responsible for depositing toxic substances in residents' bodies. - Corporate ownership of land and mineral estates for mining within the Town will be prohibited. - The Town aims to assert the people's right of self-government over corporate claims to “rights” in the context of mining. - Restoration of land and mineral ownership to non-corporate mining interests is a goal of this ordinance. Key Provisions: - Local self-government is recognized as an inherent and fundamental right. - Government is established for the common benefit of the community. - Corporations are generally prohibited from withdrawing water in the municipality. - Corporations are not acknowledged as legal persons, thereby forfeiting certain constitutional protections. - “Natural communities” and “ecosystems” are granted fundamental rights, legal personhood, and legal standing. - Town residents, natural communities, and ecosystems are considered “persons” for the enforcement of their civil rights. - The ordinance establishes “Town Action Against Preemption.”

	- Liability, including punitive damages, is imposed on individuals, corporations, or municipalities causing harm to natural communities or ecosystems. - Any town resident who wishes to enforce the ordinance is granted legal standing. - Violations of the ordinance constitute criminal offenses. - The ordinance includes a severability clause. - Inconsistent provisions in prior ordinances adopted by the Town of Halifax are repealed to the extent necessary to address inconsistencies. Rights recognized in the ordinance: - Right to self-government. - Right to a healthy environment. - Right to self. - Right to livelihood and home. - Right to cultural heritage. - Right to water. - Rights of natural communities. - People as sovereign.
Campbell County, Sewage Sludge Ordinance, Campbell County, VA - 2007	Campbell County Sludge Ordinance. In 2007, Campbell County, Virginia, passed a Sewage Sludge Ordinance that barred corporations from engaging in sewage sludge land application and recognized residents' rights to defend natural communities and ecosystems. - The ordinance aims to protect the health, safety, and welfare of Campbell County citizens and the environment. - Corporations are prohibited from engaging in the land application of sewage sludge. - The use of corporations for sewage sludge application is also banned. - The ordinance mandates testing sewage sludge before land application by individuals. - Constitutional powers are revoked from corporations within the county. - The ordinance recognizes and enforces the rights of residents to protect natural communities and ecosystems. - The Virginia regulations concerning the land application of sewage sludge are adopted. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities.

	- Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions but only to the extent necessary to remedy the inconsistency.
Town of Barnstead, Water Rights & Local Self-Government Ordinance, Barnstead, Belknap County, NH - 3/2006	A Local Self-Government Ordinance to: - Affirm that all water resources are held in a public trust to benefit the community and its ecosystems. - Condemn the corporatization of water control as oppressive and a violation of community rights. - Acknowledge the duty under the New Hampshire Constitution to oppose such tyranny. - Recognize that the conferral of constitutional powers to corporations has eroded people's governing authority. - Emphasize the need for proactive measures to rectify the usurpation of governing power. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions.
Montgomery County,, Anti-Corporate Takings & Securing Local Self-Governance Ordinance, Montgomery County, VA – 2006	An Ordinance to: - Prohibits corporations from exercising eminent domain to take private property. - Aims to protect residents, the environment, and rural life in Montgomery County.

	- Addresses the need to prevent corporations from taking private property in the County. - Asserts the County's inherent right to self-governance and counters corporate claims of rights. Key Provisions: - Prohibits individuals from using corporations or syndicates for specific waste hauling and disposal activities. - Restricts certain corporations from asserting legal rights and protections. - Specifies enforcement procedures and penalties for non-compliance with the ordinance. - Upholds the principle that government serves the common good. - Rejects the recognition of corporations as legal entities, thus negating their constitutional protections. - Empowers residents to enforce the ordinance and grants them legal standing. - Impose liability, including punitive damages, on any person, corporation, or municipality that harms a natural community or ecosystem. - Defines violations of the ordinance as criminal offenses. - Includes provisions for the severability of the ordinance's provisions but only to the extent necessary to remedy the inconsistency.

TABLE 6

STATE	CONSTITUTIONAL AMENDMENTS	SUMMARY OF THE AMENDMENT	INTRODUCED BY	OUTCOME
COLORADO	Colorado Environmental Rights Amendment –2014	The state amendments would have established the right of communities to secure greater environmental protections at the local level than in place at the state and federal level—including securing the Rights of Nature— and prohibit corporate or government interference in that process	Colorado Community Rights Network.	Did not receive enough ballot signatures.
	Colorado Environmental Rights Amendment –Proposed Initiative 2015-2016 #40. ¹³⁶³		Coloradans for Safe and Clean Energy and U.S. Rep. Jared Polis.	Did not receive enough ballot signatures.
OREGON	Oregon Environmental Rights Amendment –2017. Initiative Petition 2016-055 (IP 55).	The proposed state amendment aims to empower local communities by granting them the authority to establish stricter environmental protections at the local level, which can surpass the standards set by state and federal regulations. This includes the recognition of the Rights of Nature. These amendments also seek to prevent interference by corporations or government entities in this local self-governance process.	Oregon Community Rights Network.	The State Attorney blocked ballot access. ¹³⁶⁴

¹³⁶³ The same Amendment so art. II adding § 32 was repropsoed in 2016 under the title of Colorado Environmental Rights Amendment –Proposed Initiative 2015-2016 #40. <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2015-2016/40Final.pdf>

¹³⁶⁴ *Geddry v. Richardson*, 437 P.3d 1163, 296 Or. App. 134 (2019). Leagle.com (Feb. 13, 2019), <https://www.leagle.com/decision/inorco20190213559>.

		Specifically, in the state of Oregon, a proposed ballot measure known as Initiative Petition 2016-055 (IP 55) sought to amend the Oregon Constitution by adding Section 47 to Article I. This constitutional amendment had far-reaching implications. It aimed to grant local communities the ability to enact laws that would be immune from being overridden or invalidated by state law, federal law, or even international agreements. However, it's important to note that this initiative, despite its intent, faced legal challenges and was ultimately struck down. The state government prevented it from appearing on the ballot, denying local communities the opportunity to exercise these proposed self-governance rights.		
	(2) LC 2526 2019		Oregon Community Rights Network	Introduced
OHIO	Ohio Environmental Rights Amendment –2017/2019	The proposed state amendment aims to grant communities the authority to enact more robust environmental safeguards at the local level, surpassing the standards set by state and federal regulations. This also encompasses the formal recognition of the rights of nature. Equally important, these amendments seek to prohibit any interference by corporations or government entities in this local self-governance process. Specifically, in Ohio, these efforts led to the inclusion of Section 22 in Article I of the state's constitution. This new constitutional provision, known as Section 22, establishes the “Right of Local Community Self-Government.” At the time of researching this thesis the group has achieved sufficient ballot signatures.	Ohio Community Rights Network and Gwen Fischer from Portage County Community Rights Group.	Introduced to the legislature. Did not receive enough ballot signatures.

NEW HAMPSHIRE	Constitutional amendment concurrent resolution 8, N.H. 8, (2019). ¹³⁶⁵	The state amendments are designed to empower communities with the authority to establish more rigorous environmental safeguards at the local level, surpassing the existing state and federal standards. This also encompasses the formal recognition of the rights of nature. Furthermore, these amendments seek to prevent any interference from corporate or governmental entities in this essential local self-governance process. In the state of New Hampshire, representatives introduced a significant piece of legislation, CACR 8 (2019), which aimed to enact a constitutional amendment. This amendment sought to enshrine the right to local, community self-government. The language of the amendment, although similar to a previous 2019 constitutional amendment, CACR 4, had distinctive phrasing. It included the right “To enact local laws that acknowledge, secure, and safeguard the economic, social, and environmental well-being of people, their communities, and natural environments.” The bill was sponsored by Ellen Read, though it was not successfully passed.	Introduced and sponsored with bi-partisan support (Democrat 9-1). Representatives: Suzanne Smith, Janice Schmidt, Raymond Howard, Stephen Darrow, Wayne Burton, Charlotte DiLorenzo, Steven Rand, and Vincent Paul Migliore.	Introduced to the legislature. Did not receive enough ballot signatures Inexpedient to legislate.
PENNSYLVANIA	Constitutional amendment – securing the right to local self-government, H.B. 1813, (2019).	The proposed state amendment is designed to confer communities with the authority to establish more stringent environmental safeguards at the local level, exceeding those mandated by state and federal regulations. This also encompasses the formal recognition of the rights of nature. Equally significant is the unequivocal prohibition of interference by corporate entities or government agencies in the implementation of these local policies.	Sponsored by the democratic party. Representatives: Danielle Friel Otten, Michael H. Schlossberg, Malcolm Kenyatta, Movita Johnson-Harrell, Christopher M. Rabb.	Referred to local government.

¹³⁶⁵ Very similar to another amendment introduced in 2019 (not with the help of CELDF) relating to the right to govern and recognising that the people of the state may enact local laws that protect health, safety, and welfare. This constitutional amendment concurrent resolution provides that the people of the state have the right of local, community self-government. Constitutional amendment concurrent resolution 4, N.H. 4, (2019).

	In Pennsylvania, the introduction of PA HB1813 in the 2019-2020 legislative session seeks to amend the Constitution of the Commonwealth of Pennsylvania. This proposed amendment falls under the declaration of rights and is concerned with affirming the right to local self-government. The bill was introduced on September 17, 2019, and has since been referred to the Local Government committee for further consideration.

TABLE 7

COURT PREEMPTION –THE LAWSUITS					
California					
CBRs (local ordinances)	Case	Claimants	Defendants	Case description	Main arguments
Mendocino County, Community Bill of Rights, Fracking & Water Use Initiative, Mendocino County, CA - 11/4/2014	Brooktrails Twp. Cmty. Servs. Dist. v. Bd. of Supervisors of Mendocino Cnty., 218 Cal.App.4th 195, 159 Cal. Rptr. 3d 424 (Cal. Ct. App. 2013).	Intervenor State of Ohio Brooktrails Township Community Services District.	Board of Supervisors of Mendocino County. <i>et al.</i>	The water district initiated legal proceedings against the county board of supervisors and county clerk. Their objective was to obtain a declaratory relief, asserting that the local voter initiative, which restricted the district's authority to impose service fees, should be deemed invalid.	Local voter initiative limiting the district's power to charge service fees was invalid. The ordinance was pre-empted by the Right to Vote on Taxes Act The Ordinance violated the Right to Vote on Taxes Act.
Colorado					
CBRs (local ordinances)	Case	Claimants	Defendants	Case description	Main arguments
City of Lafayette, Climate Bill of Rights, Lafayette, Boulder	<i>Colorado Oil & Gas Assoc. v. City of</i>	Colorado Oil and Gas Association.	City of Lafayette.	The City of Lafayette had enacted a Community Bill of Rights ordinance that aimed to restrict or	Preempted by state and federal laws governing these activities.

County, CO - 3/21/2017	<i>Lafayette</i> (Dist. Ct., Boulder Cnty. 2014)			ban hydraulic fracturing and drilling for oil and gas within its jurisdiction. The city argued that it had the authority to regulate such activities to protect its environment and public health. In contrast, the Colorado Oil & Gas Association contended that state law preempted the city's regulations. They asserted that the Colorado Oil and Gas Conservation Act and the regulations established by the state's oil and gas regulatory agency (COGCC) took precedence over local regulations. COGA argued that the city's regulations were invalid due to state preemption. The central issue in the case was whether the City of Lafayette had	

				the legal authority to regulate oil and gas activities within its boundaries or if such authority was preempted by state law. Ultimately, the court ruled in favor of COGA, emphasizing that state law preempts local regulations in this context. This decision reaffirmed the state's primary role in regulating oil and gas activities within Colorado, limiting the authority of local municipalities to impose their own restrictions.	
New Mexico					
CBRs (local ordinances)	Case	Claimants	Defendants	Case description	Main arguments
Mora County, Community Water Rights and Local Self-Government Ordinance, Mora	<i>SWEPI, LP v. Mora County</i> , 81 F. Supp. 3d 1075 (D.N.M. 2015).	Swepi, LP.	Mora County Board of County Commissioners et al.	This case involved a dispute between SWEPI, LP, a subsidiary of Royal Dutch Shell, and Mora County, a county in New Mexico, over the county's attempt to	Preempted by state and federal laws governing these activities.

County NM - 4/29/2013.				regulate hydraulic fracturing (fracking) and oil and gas development within its jurisdiction. The case revolved around Mora County's Ordinance No. 21, which sought to ban hydraulic fracturing, the extraction of oil and gas, and the disposal of waste associated with such activities within the county. SWEPI, LP challenged the ordinance in court, arguing that it was preempted by state and federal law and that it violated the company's constitutional rights. The central legal issues in this case included whether Mora County had the authority to regulate oil and gas activities within its boundaries and whether	The county's attempt exceeded its legal authority and contradicted existing legal frameworks. The ordinance violated the Supremacy Clause, asserting federal and state laws' authority over municipal ordinances. The ordinance was deemed overbroad, particularly infringing upon First Amendment property rights. The ordinance's provisions and the New Mexico Oil and Gas Act, which granted regulatory authority to the state's Oil Conservation Commission and Oil Conservation Division are in conflict.

				the county's ordinance was in violation of higher-level legal frameworks. It also involved a discussion of constitutional questions related to property rights and due process..	Mora County does not have “A community right to local self-government” The unconstitutional elements of the ordinance cannot be separated from the rest of its provisions.
Ohio					
CBRs (local ordinances)	Case	Claimants	Defendants	Case description	Main arguments
Lake Erie, Bill of Rights, Toledo Lucas County, OH- 2017	<i>Drewes Farms P'ship v. City of Toledo</i> , 441 F. Supp. 3d 551 (N.D. Ohio 2020). &	Drewes Farms Partnership, and State of Ohio.	City of Toledo.	The case revolved around a dispute between Drewes Farms Partnership and the City of Toledo, Ohio, regarding the "Lake Erie Bill of Rights" ordinance. This municipal ordinances, passed by the city, aimed to bestow legal rights upon Lake Erie and its ecosystem, enabling citizens to bring lawsuits on behalf of the	The ordinance was void for vagueness under the Due Process Clause The ordinance violated the Fourteenth Amendment's Due Process Clause The ordinance’s unconstitutional phrases were

	Order Invalidating Lake Erie Bill of Rights. <i>Drewes Farms P'ship v. City of Toledo</i> , 441 F. Supp. 3d 551 (N.D. Ohio 2020).			lake if they believed its rights were infringed. The central issue in this case was the constitutionality and enforceability of a municipal ordinance that sought to grant legal rights to natural entities like a body of water. Drewes Farms Partnership contended that the ordinance was unconstitutional and unenforceable, alleging that it violated the Due Process Clause of the Fourteenth Amendment.	not severable from the rest of the provision. Lack of legal standing nature or ecosystems, making it unsuitable for asserting legal claims, as standing traditionally requires human or corporate entities. Preempted by State and Federal Law. The ordinance is vague and overly broad, potentially leading to legal conflicts due to its lack of clarity in defining prohibited actions.
Youngstown, Community Bill of Rights Charter Amendment Youngstown,	<i>State ex rel. Khumprakob v. Mahoning Cty. Bd. of Elections</i> , 153	The State ex rel. Khumprakob <i>et al.</i>	Mahoning County Board of Elections <i>et al.</i>	Four electors submitted a petition for a writ of mandamus, seeking to compel the County Board of Elections to include a proposed city charter amendment aimed at	The proposed amendment fell within the bounds of the city's legislative authority, a prerequisite for ballot inclusion. Since electors had

Mahoning County, OH - 11/8/.2016	Ohio St. 3d 581 109 1184 (2018).			safeguarding drinking water on the upcoming ballot	no satisfactory legal remedy, the writ was duly granted.
Athens, Community Bill of Rights & Water Supply Protection Ordinance Athens, Athens County, OH - 11/4/.2014	<i>State ex rel. Jones v. Husted</i> , 147 Ohio St.3d 341 5681 (2016).	The State ex rel. Jo nes <i>et al.</i>	Husted <i>et al.</i>	Petitioners filed for a writ of mandamus, seeking to compel the Secretary of State and the county board of elections to include the proposed county charter on the ballot for the upcoming general election.	Petitioners had access to an adequate legal remedy through standard legal channels and, therefore, did not qualify for mandamus relief.
Oregon					
CBRs (local ordinances)	Case	Claimants	Defendants	Case description	Main arguments
Lincoln County Freedom from Aerially Sprayed Pesticides Ordinance, Lincoln County, OR - Measure 21-177 5/16/.2017.	Rex Capri and Wakefield Farms, LLC vs. Dana W. Jenkins, and Lincoln County. Case # I 7CV.23360	Rex Capri, Wakefield Farms, LLC.	Dana W. Jenkins, Lincoln County.	Rex Capri of Newport and Wakefield Farms LLC of Eddyville argue that the county's ban on aerial pesticide spraying is preempted by state laws.	State- pre-emptive laws regulate pesticide use. State pre-emption overrides local control. State law denies the right of local communities to protect

					their health and safety at a higher standard than the state.
City of Niles, Community Protection from Shale Gas & Oil Extraction & Waste Disposal Bill of Rights Ordinance, Niles, Trumbull County, OH - 11/4/.2014	<i>State v. Beck Energy Corp.</i> , 989 N.E.2d 85 (Ohio Ct. App. 2013).	Energy Corporation <i>et al.</i>	The City of Niles.	The city filed a complaint seeking injunctive relief against an energy company, which had obtained a permit from Department of Natural Resources (DNR) to drill oil and gas well within city, alleging that company violated multiple city ordinances.	The ordinance violated the Home Rule Amendment The ordinance was an exercise of police power. State pre-emption overrides local control -State-wide oil and gas drilling statute was a general law. State legislation pre-empting legal rights of nature.
Pennsylvania					
CBRs (local ordinances)	Case	Claimants	Defendants	Case description	Main arguments
Highland Township, Rights-Based Home Rule Charter,	<i>Seneca Res. Corp. v. Twp. of</i>	Seneca Resources Corporation.	Township Of Highland, Elk County,	Seneca Resources Corporation, an oil and natural gas exploration and production company, filed a	The ordinance was unenforceable.

Highland Township, Elk County, PA - 11/8/2016	<i>Highland</i> , 863 F.3d 245 (3d Cir. 2017)		Pennsylvania; Highland Township Board Of Supervisors, Elk County, Pennsylvania.	legal action against a township and its board of supervisors. The company challenged an ordinance that prohibited the use of a well for the storage of fracking waste.	The ordinance was repealed. The ordinance exceeded township's legislative authority. Preempted by the Pennsylvania Oil and Gas Act.
Blaine Township, Study Commission Final Report and Home Rule Charter, Blaine Township, Corporate Mining & Democratic Self- Government Ordinance Washington County, PA - 8/29/2009.	<i>Range Resources Appalachia, LLC v. Township</i> , Civil Action No. 09-355 (W.D. Pa. Oct. 29, 2009). ¹³⁶⁶	Range Resources— Appalachia, LLC.	Blaine Township.	The township's disclosure ordinance, when applied to a company with oil and natural gas leasehold interests, conflicted with the Pennsylvania Oil and Gas Act. This conflict rendered the township's ordinance inapplicable to the company's activities in the Township. The disclosure ordinance imposed strict reporting requirements on	Preempted by the Pennsylvania Oil and Gas Act Violation of Pennsylvania State Legislature (58 P.S. § 601.101 et seq.)

¹³⁶⁶ On this see also, *Pennsylvania v. Allegheny Energy, Inc.*, Civil Action No. 05-885 (W.D. Pa. Feb. 6, 2014). The case revolved around environmental violations and was part of a larger legal action involving the Clean Air Act and alleged violations by Allegheny Energy, Inc. The outcome of the case reaffirmed that the Bituminous Act explicitly preempts any other jurisdiction, clearly affirming that the Commonwealth retains primary authority, while granting the Department of Environmental Resources (DER) exclusive regulatory control over all matters pertaining to bituminous coal mines and mining operations.

				businesses operating in the Township and prohibited those with a history of legal violations from operating there. However, the ordinance exceeded the scope of the Oil and Gas Act, which was intended to be the exclusive regulatory framework for oil and gas well development. Thus, the township's ordinance obstructed the objectives of the Pennsylvania State Legislature as outlined in 58 P.S. § 601.101 et seq.	
	<i>Office of Atty General v. East Brunswick</i> , 980 A.2d 720 (Pa. Cmmw. Ct. 2009).	Commonwealth Of Pennsylvania, Office Of Attorney General, By Thomas W. Corbett, Jr., Attorney General.	East Brunswick Township, And East Brunswick Township Board Of Supervisors.	The Attorney General initiated legal proceedings seeking both declaratory and injunctive relief. Their objective was to invalidate a township ordinance regulating the land application of sewage sludge. The Attorney General argued that this ordinance was in conflict with state statutes addressing the same subject matter and that it also	Preempted by the Solid Waste Management Act (SWMA). The Ordinance violated the Agricultural Area Security Law.

				violated the Agricultural, Communities and Rural Environment (ACRE) Act by interfering with normal agricultural operations. In response, the Commonwealth Court, as documented in the case of Commonwealth Court, 956 A.2d 1100, rejected the township's initial objections and denied the Attorney General's request for summary relief. However, in the interim, the township acted by repealing its original ordinance and replacing it with a new one. Subsequently, the Attorney General filed an amended petition, challenging the validity of this new ordinance. In response to this challenge, the township filed preliminary	

				objections in the form of a demurrer.	
Grant Township, Community Bill of Rights Ordinance, Grant Township, Indiana County, PA - 6/1/2014	<i>Pa. Gen. Energy Co. v. Grant Twp., C.A.No. 1:14-cv-209 (W.D. Pa. Mar. 31, 2019).</i> <i>Pa. Gen. Energy Co. v. Grant Twp., C.A. No. 14-208, (W.D.Pa.). (Memorandum Opinion, filed March 3, 2017).</i> &	Pennsylvania General Energy Company, LLC.	Grant Township.	Pennsylvania General Energy Company, LLC, an oil and gas company, initiated legal proceedings to challenge the constitutionality, validity, and enforceability of a township ordinance that aimed to establish a Community Bill of Rights. The company sought declaratory and injunctive relief. In response, the township filed a counterclaim, contending that the company's challenge to the ordinance constituted a violation of the inalienable rights of the township's residents.	The ordinance was pre-empted in part. Statements that the ordinance - would trump Pennsylvania law when there was a conflict between state and local law was pre-empted. - Would divest corporations of their rights as persons was pre-empted. - Asserted that violators of the ordinance would not possess any other legal rights, including

	<i>Pa. Gen. Energy Co. v. Grant Twp. E. Run Hellbenders Soc'y Inc.</i>, 658 F. App'x 37 (3d Cir. 2016).				power to assert state or federal pre-emption in an attempt to overturn ordinance, was pre-empted. The natural ecosystem of the local municipality cannot be a party in the lawsuit