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# A Mistake for the Lake: Why Ohio Should Rethink Its Ban on Rights of Nature for Lake Erie

Shelby Strohl

*Cleveland State University College of Law*, [s.hoge@vikes.csuohio.edu](mailto:s.hoge@vikes.csuohio.edu)

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# A Mistake for the Lake: Why Ohio Should Rethink Its Ban on Rights of Nature for Lake Erie

SHELBY STROHL \*

## ABSTRACT

“Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable.” - Professor Christopher Stone. The purpose of the rights of nature movement is to recognize that ecosystems and natural entities have the right to exist and thrive. Rights of nature give the natural entities legal protections against pollution and other harms. This Note recommends that the Ohio legislature reconsider its stance on prohibiting rights of nature under Ohio Revised Code Section 2305.011. This recommendation stems from the groundbreaking Lake Erie Bill of Rights, which granted rights of nature to Lake Erie in 2019, and its subsequent invalidation in federal court. This Note argues that rights of nature should be recognized at the state level in the state’s constitution. This Note further argues that recognition of rights of nature is a logical progression of granting legal standing and personhood rights to non-human entities. By recommending this change, this Note aims to ensure that a natural entity, like Lake Erie, can protect itself from harmful pollution.

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\* Juris Doctor Candidate 2025, Cleveland State University College of Law. I sincerely thank *Cleveland State Law Review* for selecting this Note for publication, and to each member of *Law Review* for their edits and improvements of this Note. I thank Professors Margaret Sweeney and Heidi Gorovitz Robertson for their advice and expertise in scholarly writing and environmental law throughout the writing process. Finally, I am grateful for my supportive husband, Zachary Strohl, who loves fishing on Lake Erie, but may be tired of hearing me talk about the Lake’s legal rights.

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## I. INTRODUCTION

The average adult drinks forty-four ounces of water per day.<sup>1</sup> Have you ever considered where the water comes from when you turn on the tap to fill a glass of water? If you are an Ohio resident, look north to the Great Lakes. The Great Lakes provide a source of drinking water for more than forty million people in the U.S. and Canada.<sup>2</sup> The Great Lakes contain about one-fifth of the world's fresh water supply and nine-tenths of the U.S.'s fresh water supply.<sup>3</sup> Specifically, Lake Erie provides drinking water to twelve million people in the U.S. and Canada.<sup>4</sup>

Clearly the Great Lakes, in particular Lake Erie, provide an invaluable natural resource to Ohioans. However, Lake Erie is under attack. In August 2014, residents of Toledo, Ohio were warned not to drink or even touch their tap water due to unsafe

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<sup>1</sup> *Fast Facts: Data on Water Consumption*, U.S. CTR. FOR DISEASE CONTROL AND PREVENTION (Jan. 24, 2024), [https://www.cdc.gov/nutrition/php/data-research/fast-facts-water-consumption.html?CDC\\_AAref\\_Val=https://www.cdc.gov/nutrition/data-statistics/plain-water-the-healthier-choice.html](https://www.cdc.gov/nutrition/php/data-research/fast-facts-water-consumption.html?CDC_AAref_Val=https://www.cdc.gov/nutrition/data-statistics/plain-water-the-healthier-choice.html).

<sup>2</sup> *About the Lakes*, GREAT LAKES COMM'N, <https://www.glc.org/lakes> (last visited Feb. 3, 2025).

<sup>3</sup> *Id.*

<sup>4</sup> Tom Henry, *Lake Erie Bill of Rights Gets Approval from Toledo Voters*, THE BLADE (Feb. 26, 2019, 10:48 PM), <https://www.toledoblade.com/local/politics/2019/02/26/Lake-Erie-Bill-of-Rights-gets-approval-from-Toledo-voters/stories/20190226159>.

water conditions caused by a toxic algal bloom in Lake Erie.<sup>5</sup> Today, each summer, agricultural pollution causes massive algal blooms across Lake Erie.<sup>6</sup> According to the Environmental Working Group, algal blooms are on the rise across other Midwestern lakes and water sources too.<sup>7</sup> Pollution in drinking water sources is increasing at an alarming rate and it directly affects every American as he or she takes a sip of water.<sup>8</sup>

Tired of waiting for the state and federal government to protect their water source, frustrated Toledoans took matters into their own hands in a monumental way. In February 2019, Toledoans passed a citizens' amendment to the city's charter called the Lake Erie Bill of Rights (hereinafter "LEBOR") to protect Lake Erie.<sup>9</sup> LEBOR stated that Lake Erie and the Lake Erie Watershed have "the right to exist, flourish, and naturally evolve."<sup>10</sup> Practically, this meant that Lake Erie, or a resident on its behalf, may sue wrongdoers whose actions interfere with the lake's "right to exist, flourish, and naturally evolve" or in other words, pollute the lake.<sup>11</sup> Despite the will of Toledo residents, LEBOR was challenged in federal court and struck down as unconstitutionally vague and exceeding the power of municipal government in Ohio.<sup>12</sup> Further, Ohio enacted Ohio Revised Code Section 2305.011 which expressly prohibits nature, any ecosystem, or any person acting on nature's behalf from having legal standing to sue in the court of common pleas.<sup>13</sup> In May 2020, the city of Toledo declined to appeal the decision due to budgetary constraints.<sup>14</sup> Despite Judge Zouhary's decision to strike down LEBOR, he notes: "With careful drafting, Toledo probably could enact valid legislation to reduce water pollution."<sup>15</sup>

Today, the invalidation of LEBOR in federal court and Ohio Revised Code Section 2305.011 make it impossible to protect Lake Erie by granting it rights of nature. LEBOR's invalidation shows that the city of Toledo is not the proper entity to grant

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<sup>5</sup> *Five Years Later: Lessons from the Toledo Water Crisis*, ALL. FOR THE GREAT LAKES (Aug. 1, 2019), <https://greatlakes.org/2019/08/five-years-later-lessons-from-the-toledo-water-crisis/>.

<sup>6</sup> *Id.*

<sup>7</sup> *4 Years Since Toledo Water Crisis, Toxic Algal Blooms on Rise Across U.S.*, ENV'T WORKING GRP. (May 15, 2018), <https://www.ewg.org/news-insights/news-release/4-years-toledo-water-crisis-toxic-algal-blooms-rise-across-us>.

<sup>8</sup> *Id.*

<sup>9</sup> Henry, *supra* note 4.

<sup>10</sup> TOLEDO, OHIO, MUN. CODE ch. XVII, § 254(a) (2019), *invalidated by* *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551, 557–58 (N.D. Ohio 2020).

<sup>11</sup> *Id.* § 254(a); *Id.* § 256(d).

<sup>12</sup> *Drewes Farms P'ship*, 441 F. Supp. 3d at 558.

<sup>13</sup> OHIO REV. CODE ANN. § 2305.011 (LexisNexis 2019).

<sup>14</sup> Tom Henry, *City Quietly Drops Appeal of Lake Erie Bill of Rights Ruling*, THE BLADE (May 11, 2020, 3:43 PM), <https://www.toledoblade.com/local/environment/2020/05/11/toledo-quietly-drops-appeal-of-lebor-ruling-lake-erie/stories/20200511082>.

<sup>15</sup> *Drewes Farms P'ship*, 441 F. Supp. 3d at 557.

Lake Erie rights of nature.<sup>16</sup> Ohio is better positioned at the state level to grant Lake Erie rights of nature, which is why it should repeal Ohio Revised Code Section 2305.011. Toledo tried to solve the problem of Lake Erie's pollution by granting the lake legal rights to defend itself.<sup>17</sup> However, the city is not the most effective entity to grant Lake Erie rights of nature. This Note argues that Toledo can reduce water pollution by re-drafting a legally valid LEBOR, but Ohio should offer greater protections for Lake Erie by repealing the ban and allowing the recognition of rights of nature in Ohio.

Part II of this Note details the history of LEBOR from its passage to its subsequent invalidation. Part II also describes the rights of nature movement and why it is important for protecting natural resources. Part III Section A of this Note details revisions that may be made to LEBOR to make it valid in the city of Toledo. This includes deleting the provision that grants Lake Erie the right to exist, flourish, and thrive because the current Ohio legislature prohibits recognition of rights of nature under Ohio Revised Code Section 2305.011. This also entails drafting the bill in a clearer way and identifying an area that the municipality does have power to regulate. The purpose of Part III Section A is to demonstrate that although it is possible to amend LEBOR to make it valid, the new version will not accomplish its intention of protecting Lake Erie because the Ohio legislature has declined to recognize rights of nature. Further, Part III Section B of this Note analyzes three arguments for why Ohio should repeal its prohibition on the recognition of rights of nature. First, Section B examines the history of U.S. Supreme Court decisions which have recognized rights for non-humans like corporations and have granted legal standing for animals. Next, Section B illustrates the history of rights of nature in foreign countries and provides examples where rights of nature have withstood legal challenge. Further, Section B examines how Native American tribes have recognized rights of nature within their tribal constitutions and how these amendments could serve as a model for Ohio law. Finally, this Note concludes by detailing the process for repealing Ohio Revised Code Section 2305.011 and identifying ways for Ohio to enshrine rights of nature.

## II. BACKGROUND

### A. *The Toledo Water Crisis*

What led Toledo to pass an amendment to its city's charter that grants legal rights to Lake Erie? On August 2, 2014, Toledo warned its residents not to touch or drink their tap water due contamination.<sup>18</sup> The contamination resulted from a toxic algal bloom in Lake Erie which formed nearby the city's water intake system.<sup>19</sup> The tap water ban lasted for three days.<sup>20</sup> As a result of this crisis which gained national

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<sup>16</sup> *Id.*

<sup>17</sup> TOLEDO, OHIO, MUN. CODE ch. XVII, § 254(a) (2019), *invalidated by* *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551, 557–58 (N.D. Ohio 2020).

<sup>18</sup> ALL. FOR THE GREAT LAKES, *supra* note 5.

<sup>19</sup> Michael Wines, *Behind Toledo's Water Crisis, a Long-Troubled Lake Erie*, N.Y. TIMES (Aug. 4, 2014), <https://www.nytimes.com/2014/08/05/us/lifting-ban-toledo-says-its-water-is-safe-to-drink-again.html>.

<sup>20</sup> ALL. FOR THE GREAT LAKES, *supra* note 5.

attention, Toledoans petitioned for an amendment to the city's charter to protect their community's water source, Lake Erie.<sup>21</sup> Despite initial attempts to block the amendment going all the way to the Ohio Supreme Court, Toledoans were able to add the amendment to the ballot.<sup>22</sup> In a special election in February 2019, Toledoans passed, by a whopping 61%, an amendment to the city's charter called the Lake Erie Bill of Rights.<sup>23</sup> The passage of LEBOR was monumental because it was the first time that a U.S. body of water was granted legal personhood.<sup>24</sup>

Toledo residents were frustrated with the state and federal governments' lack of effective protections for Lake Erie.<sup>25</sup> Drafters expressed these frustrations through powerful language in the text of LEBOR. LEBOR granted Lake Erie rights of nature by stating that "Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve."<sup>26</sup> Additionally, LEBOR stated that the residents of Toledo "possess the right to a clean and healthy environment, which shall include the right to a clean and healthy Lake Erie and Lake Erie ecosystem."<sup>27</sup> LEBOR also granted the city of Toledo and its residents rights to sue on behalf of Lake Erie.<sup>28</sup> Lastly, in one of its most controversial provisions, LEBOR stripped corporations of their legal personhood if they violated LEBOR.<sup>29</sup>

### B. *The Drewes Farms Lawsuit*

Soon after the bill's passage, the legality of LEBOR was challenged in federal court.<sup>30</sup> Drewes Farms Partnership, which operates in four counties surrounding Toledo, sued challenging the constitutionality of LEBOR.<sup>31</sup> Like Drewes Farms, other farmers in the area felt that LEBOR would subject them to countless lawsuits and

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<sup>21</sup> *Drewes Farms P'ship*, 441 F. Supp. 3d at 554.

<sup>22</sup> See Bryan Twitchell, *LEBOR of Love*, TOLEDO CITY PAPER (Sept. 12, 2018), <https://toledocitypaper.com/environment/lebor-of-love/>.

<sup>23</sup> Jason Daley, *Toledo, Ohio, Just Granted Lake Erie the Same Legal Rights as People*, SMITHSONIAN MAG. (Mar. 1, 2019), <https://www.smithsonianmag.com/smart-news/toledo-ohio-just-granted-lake-erie-same-legal-rights-people-180971603/>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> TOLEDO, OHIO, MUN. CODE ch. XVII, § 254(a) (2019), *invalidated by Drewes Farms P'ship*, 441 F. Supp. 3d at 557–58.

<sup>27</sup> *Id.* § 254(b).

<sup>28</sup> *Id.* § 256(b).

<sup>29</sup> *Id.* § 257(a).

<sup>30</sup> See *Drewes Farms P'ship*, 441 F. Supp. 3d 551.

<sup>31</sup> *Id.* at 554.

eventually drive them out of business.<sup>32</sup> The State of Ohio joined the lawsuit on Drewes Farms' side as intervenor.<sup>33</sup> Among its complaints, the State alleged that Toledo overstepped its municipal power, that LEBOR was preempted both at the federal and state level, and that LEBOR was unconstitutionally vague.<sup>34</sup>

Drewes Farms made several accusations against the City of Toledo in its complaint.<sup>35</sup> First, it argued that LEBOR violated its right to Equal Protection under the Fourteenth Amendment of the U.S. Constitution because it restricted activities of corporations and stripped them of their legal personhood, but did not make similar restrictions on other entities or persons.<sup>36</sup> Next, Drewes Farms argued that LEBOR was unconstitutionally vague under the Due Process clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution because it did not explicitly describe what conduct would interfere with Lake Erie's right to exist, flourish, and naturally evolve.<sup>37</sup> Further, it argued that LEBOR violated Procedural Due Process under the Fifth and Fourteenth Amendments of the U.S. Constitution because it restricted persons or entities like Drewes Farms from challenging the amendment.<sup>38</sup> Finally, Drewes Farms claimed that LEBOR denied corporations their constitutional personhood rights under the Fifth and Fourteenth Amendments of the U.S. Constitution.<sup>39</sup>

The State of Ohio also challenged the constitutionality of LEBOR and Toledo's authority to pass such a bill.<sup>40</sup> First, it argued that LEBOR is preempted by federal law because it violates the Equal Footing Doctrine under the U.S. Constitution.<sup>41</sup> Ohio has the constitutional authority to regulate Lake Erie and its watershed, and LEBOR attempted to take that authority away from the state.<sup>42</sup> This would put Ohio on unequal, lesser ground than other bordering states that share Lake Erie, which is not allowed.<sup>43</sup> Next, Ohio argued that LEBOR is unconstitutionally vague in several

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<sup>32</sup> See *Farmers Sue to Stop Measure Giving Lake Erie Legal Rights*, ASSOC. PRESS (Mar. 2, 2019, 7:28 PM), <https://fox8.com/news/farmers-sue-to-stop-measure-giving-lake-erie-legal-rights/>.

<sup>33</sup> *Drewes Farms P'ship*, 441 F. Supp. 3d at 554.

<sup>34</sup> State of Ohio's Complaint for Declaratory Judgement and Injunctive Relief, *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020) (No. 3:19-cv-00434-JZ).

<sup>35</sup> Complaint, *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020) (No. 3:19-cv-00434).

<sup>36</sup> *Id.* at ¶ 64.

<sup>37</sup> *Id.* at ¶ 71.

<sup>38</sup> *Id.* at ¶ 84.

<sup>39</sup> *Id.* at ¶ 85.

<sup>40</sup> State of Ohio's Complaint, *supra* note 34.

<sup>41</sup> *Id.* at ¶ 120.

<sup>42</sup> *Id.* at ¶ 117.

<sup>43</sup> *Id.* at ¶ 120.

areas: it does not specify the criminal conduct from which governments and corporations may face criminal sanctions, it uses aspirational language, it does not define a right to a clean and healthy environment, and it does not specify harm.<sup>44</sup> Additionally, the State argued that LEBOR is federally preempted because the U.S. Supremacy Clause allowed U.S. to delegate the authority of: water pollution control, sewage sludge disposal, water quality standards, drinking water enforcement, Great Lakes protection, and coastal zone management to the state but, under LEBOR, Toledo is trying to control it.<sup>45</sup> Finally, it argued that LEBOR exceeds municipal authority and is preempted by state law because LEBOR attempts to grant rights beyond the city's authority and that conflict with Ohio's environmental, agricultural, natural resource, and corporate laws.<sup>46</sup>

After hearing the arguments of Drewes Farms, the State of Ohio, and the City of Toledo, the court concluded that LEBOR was unconstitutional.<sup>47</sup> The court found that LEBOR was unconstitutional under the Due Process Clause because it was vague and that LEBOR exceeded the municipal government's power.<sup>48</sup> The court emphasized that under the Fourteenth Amendment, an essential element is clarity of the law.<sup>49</sup> If a law is so vague that persons of common intelligence do not understand its meaning, it is unconstitutional.<sup>50</sup> The court cited several cases in which laws did not describe conduct clearly enough, thus were unconstitutionally vague.<sup>51</sup> For example, a law prohibiting "annoying conduct" is vague because conduct may annoy some people and not others.<sup>52</sup> LEBOR was unconstitutionally vague because it did not identify what types of conduct infringe on the Lake's right to exist, flourish, and naturally evolve.<sup>53</sup> Additionally, it is unclear what the line is between a clean and unclean or healthy and unhealthy environment.<sup>54</sup> Also, the right to "self-government in their local community" was vague.<sup>55</sup> Finally, despite LEBOR's severability clause, the court determined that LEBOR could not survive once the unconstitutional clauses were removed because there was no substance left to the bill.<sup>56</sup>

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<sup>44</sup> *Id.* at ¶¶ 131–33.

<sup>45</sup> *Id.* at ¶¶ 139–64.

<sup>46</sup> *Id.* at ¶ 168.

<sup>47</sup> *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551, 558 (N.D. Ohio 2020).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 555 (citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 629 (1984)).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 556.

<sup>52</sup> *Id.* (citing *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971)).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 557.



### C. *The Rights of Nature Movement*

Toledo attempted to grant Lake Erie rights of nature so that it could legally defend itself against parties that polluted it.<sup>57</sup> The rights of nature movement results from frustrations with the Western view of nature as a commodity, able to be used and destroyed.<sup>58</sup> The movement is traced back to Professor Christopher Stone's groundbreaking law review article: *Should Trees Have Standing?—Toward Legal Rights for Natural Objects*.<sup>59</sup> Rights of nature are important because they allow nature to be considered as its own entity rather than in the context of competing persons' interests.<sup>60</sup> Additionally, rights of nature are broader in scope and thus provide greater protections for natural entities than traditional environmental laws.<sup>61</sup> Lastly, for legal standing purposes, it may be easier for a natural entity that has rights of nature to show that it was harmed by pollution than to show that an individual person was harmed.<sup>62</sup> The idea of a lake having the same legal rights as a person may sound crazy. However, consider that non-human entities like corporations have had legal rights dating back to the 1800s.<sup>63</sup> One of the most notable successes in the rights of nature movement is New Zealand's Whanganui River.<sup>64</sup> In 2017, the Whanganui Iwi tribe finally won legal rights for its ancestor the Whanganui River.<sup>65</sup> The practical effect of the River's legal rights is that if someone harmed the River, the act would legally be treated the same as if someone harmed another person.<sup>66</sup> Today, that means that before a bridge

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<sup>57</sup> Henry, *supra* note 4.

<sup>58</sup> Jens Benöhr & Patrick J. Lynch, *Should Rivers Have Rights? A Growing Movement Says It's about Time*, YALE ENV'T 360 (Aug. 14, 2018), <https://e360.yale.edu/features/should-rivers-have-rights-a-growing-movement-says-its-about-time>.

<sup>59</sup> See generally Christopher Stone, *Should Trees Have Standing? – Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

<sup>60</sup> Elizabeth Kronk Warner & Jensen Lillquist, *Laboratories of the Future: Tribes and Rights of Nature*, 111 CAL. L. REV. 325, 332 (2023).

<sup>61</sup> See *id.* at 334.

<sup>62</sup> See Kenneth Kilbert, *Lake Erie Bill of Rights: Stifled by All Three Branches Yet Still Significant*, 81 OHIO ST. L. J. ONLINE 227, 236–37 (2020).

<sup>63</sup> *Corporate Personhood: What It Means and How It Has Evolved*, PURDUE GLOB. L. SCH.: THE CONNECTOR (Jan. 6, 2023) <https://www.purduegloballawschool.edu/blog/news/corporate-personhood>; See generally *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 343 (2010).

<sup>64</sup> Eleanor Ainge Roy, *New Zealand River Granted Same Legal Rights as Human Being*, THE GUARDIAN (Mar. 16, 2017, 12:50 AM), <https://www.theguardian.com/world/2017/mar/16/new-zealand-river-granted-same-legal-rights-as-human-being>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

over the River could be built, the Whanganui Iwi tribe must be consulted to ensure the River is protected.<sup>67</sup>

A domestic example comes from Tamaqua, Pennsylvania, which recognized rights of nature in its city ordinance in 2006.<sup>68</sup> Tamaqua residents used a rights of nature strategy to prevent businesses from dumping toxic sewage sludge into their community.<sup>69</sup> The ordinance states: “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 ecosystem.”<sup>70</sup> The practical purpose of the ordinance was to hold businesses accountable for dumping toxic sewage sludge into the small Pennsylvania community and polluting its ecosystems.<sup>71</sup> The ordinance still stands today.<sup>72</sup>

A more recent example is the Ho-Chunk Nation’s constitutional amendment to add rights of nature to its tribal laws.<sup>73</sup> The amendment states that “Ecosystems, natural communities, and species within the Ho-Chunk Nation territory possess inherent, fundamental, and inalienable rights to naturally exist, flourish, regenerate, and evolve.”<sup>74</sup> The purpose of the tribe’s constitutional amendment is to restrict fossil fuel extraction and fracking on their tribal lands.<sup>75</sup>

In each rights of nature example, the purpose of granting the rights was to protect the ecosystem or natural element from harm.<sup>76</sup> Similarly, Toledo residents’ intention was to protect their vital water source, Lake Erie, from pollution.<sup>77</sup> As the international and domestic examples have shown, granting rights of nature to an ecosystem or natural body can provide a critical tool for ensuring the natural element’s protection.

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<sup>67</sup> Nick Perry, *New Zealand River’s Personhood Status Offers Hope to Māori*, AP NEWS (Aug. 15, 2022, 12:01 AM), <https://apnews.com/article/religion-sacred-rivers-new-zealand-86d34a78f5fc662ccd554dd7f578d217>.

<sup>68</sup> TAMAQUA BOROUGH, PA., CODE § 260-61(F) (2006).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Press Release: Ho-Chunk Nation General Council Approves Rights of Nature Constitutional Amendment*, CMTY. ENV’T LEGAL DEF. FUND (Sept. 17, 2018), <https://celdf.org/2018/09/press-release-ho-chunk-nation-general-council-approves-rights-of-nature-constitutional-amendment/>.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *See, e.g., id.*

<sup>77</sup> *See, e.g., Henry, supra note 4.*

## III. PROOF

A. *Tactics Toledo Could Use to Revise LEBOR*

LEBOR made a bold statement in 2019 because it was the first time that a U.S. body of water was granted legal rights.<sup>78</sup> However, the bill was soon struck down in the federal court<sup>79</sup> and was preempted by Ohio state law.<sup>80</sup> Despite shortcomings in the first bill,<sup>81</sup> careful drafting may make it possible to enact a revised version of LEBOR which accomplishes Toledoans' goal of protecting Lake Erie from pollution.

In *Drewes Farms*, the court identified three reasons for striking down LEBOR.<sup>82</sup> First, the court identified three rights in the bill that were unconstitutionally vague.<sup>83</sup> The court found that LEBOR did not offer any guidance on how a person could know what actions violate Lake Erie's "right to exist, flourish, and naturally evolve."<sup>84</sup> Next, the court stated that a "right to a clean and healthy environment" is vague because cleanliness and healthiness is subjective.<sup>85</sup> The court identified several activities where it is unclear if they violate LEBOR: fishing, dredging a riverbed, spreading fertilizer, among others.<sup>86</sup> Additionally, the court concluded that "the rights of Toledoans to self-government in their local community" is vague.<sup>87</sup> One provision of LEBOR imposed a fine for violating the rights of Toledoans to self-government in an amount that is the maximum allowable under state law for violating those rights.<sup>88</sup> The court concluded that this provision was vague because Ohio does not have a state law that imposes a fine for violating rights to self-government, so it is impossible to determine a maximum fine.<sup>89</sup> Second, the court held that once the unconstitutionally vague clauses were removed from LEBOR, there was nothing left in the bill to preserve.<sup>90</sup> Thus, the severability clause had no effect on saving LEBOR.<sup>91</sup> Third,

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<sup>78</sup> Daley, *supra* note 23.

<sup>79</sup> *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551, 558 (N.D. Ohio 2020).

<sup>80</sup> OHIO REV. CODE ANN. § 2305.011 (LexisNexis 2019).

<sup>81</sup> *Drewes Farms P'ship*, 441 F. Supp. 3d at 558.

<sup>82</sup> *See id.* at 555–58.

<sup>83</sup> *Id.* at 556.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 558.

<sup>90</sup> *Id.* at 557.

<sup>91</sup> *Id.*

LEBOR was outside of the scope of the municipality's power.<sup>92</sup> Specifically, the court stated that Lake Erie borders several states and Canada, and therefore is not a small lake contained just in Toledo.<sup>93</sup> The lake's health is beyond the scope of the municipality's power and attempting to invalidate state law for environmental purpose "is a textbook example of what municipal government cannot do."<sup>94</sup>

### 1. State and Federal Law Preemption

The first step in re-drafting LEBOR is to strike all clauses that are preempted by state or federal law. Preemption was an issue that the *Drewes Farms* court did not fully address, although the judge did allude to it.<sup>95</sup> In 2019, Ohio enacted Ohio Revised Code Section 2305.011 which proactively preempted any entity from granting rights of nature to nature in Ohio.<sup>96</sup> It is particularly interesting to note how Ohio enacted Ohio Revised Code Section 2305.011. Shortly after *Drewes Farms*' lawsuit began, the Ohio Chamber of Commerce requested to add specific language to refute LEBOR into the state's 2020-2021 budget.<sup>97</sup> Buried in a 2,602-page state budget was the amendment stating: "Nature or any ecosystem does not have standing to participate in or bring an action in any court of common pleas."<sup>98</sup> It is clear to see how worried the Ohio government was about environmental action like granting Lake Erie rights of nature. So much so that it acted quickly (and in a shady manner) to pass a state law banning rights of nature.

As a result, Toledo must strike the clause that grants Lake Erie and its watershed the right to exist, flourish, and thrive because this will be immediately struck down by a court as violating Ohio Revised Code Section 2305.011. Although this eliminates the famous portion of LEBOR, Toledoans' goal of reducing water pollution in Lake Erie can still be achieved with a "less sexy" version of LEBOR. Next, Toledo must strike the clause which denies the rights of corporations to exist as "persons."<sup>99</sup> A state or municipality does not have the power to strip corporations of personhood rights.<sup>100</sup> For example, in *American Tradition Partnership, Inc. v. Bullock*, the U.S. Supreme Court struck down Montana's state statute which regulated corporations' expenditures

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *See id.* at 557 (stating that because Lake Erie's health is beyond the city's right to local self-government, local laws that attempt to protect Lake Erie will generally be void if they conflict with Ohio state law).

<sup>96</sup> OHIO REV. CODE ANN. § 2305.011 (LexisNexis 2019).

<sup>97</sup> *See* H. Claire Brown, *How Ohio's Chamber of Commerce Killed an Anti-Pollution Bill of Rights*, THE INTERCEPT (Aug. 29, 2019, 8:00 AM), <https://theintercept.com/2019/08/29/lake-erie-bill-of-rights-ohio/>.

<sup>98</sup> *See id.*

<sup>99</sup> TOLEDO, OHIO, MUN. CODE ch. XVII, § 257(a) (2019), *invalidated by* *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020).

<sup>100</sup> *See generally* *Am. Traditions P'ship, Inc. v. Bullock*, 567 U.S. 516 (2012).

on political candidates because it violated the corporations' First Amendment rights.<sup>101</sup> Next, LEBOR should strike the clause which grants rights for Toledoans to self-government in their local community. Under Article XVIII Section 3 of the Ohio Constitution, Ohio municipalities already have the power of self-government.<sup>102</sup> Specifically, "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws."<sup>103</sup> It is duplicative to state this within LEBOR because it is already a power existing within the Ohio Constitution. By removing this clause, the city avoids one of the *Drewes Farms* court's contentions of vagueness within the bill.<sup>104</sup> Thus, Toledo's first step should be to revise all parts of the bill which have now been preempted by state law.

## 2. Lessons from *Croplife*

The second step in revising LEBOR is to address the vagueness issue. In *Drewes Farms*, LEBOR was held to be unconstitutionally vague under the Fourteenth Amendment Due Process Clause.<sup>105</sup> In the *Drewes Farms* opinion, Judge Zouhary identified a Seventh Circuit case which upheld a municipal ordinance that was challenged on vagueness grounds: *Croplife America, Inc. v. City of Madison*.<sup>106</sup> In *Croplife*, several businesses challenged Madison, Wisconsin's city and county ordinances which barred the sale of fertilizers containing phosphorous.<sup>107</sup> The arguments used by the Wisconsin businesses resemble the arguments made by *Drewes Farms*: state law preempted the ordinances, federal law preempted the ordinances, and the ordinances violated the Fourteenth Amendment Equal Protection and Due Process clauses.<sup>108</sup> This Note only discusses the Fourteenth Amendment Due Process clause argument.

The plaintiff businesses argued that the local ordinances' prohibitions violate the Fourteenth Amendment Due Process clause due to vagueness.<sup>109</sup> The court countered the allegations with several points.<sup>110</sup> First, the ordinance was not ambiguous because

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<sup>101</sup> *Id.* at 516–17.

<sup>102</sup> OHIO CONST. art. XVIII, § 3.

<sup>103</sup> *Id.*

<sup>104</sup> *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551, 557 (N.D. Ohio 2020) (calling the self-government right "an aspirational statement, not a rule of law").

<sup>105</sup> *Id.* at 558.

<sup>106</sup> *Id.* at 557.

<sup>107</sup> *Croplife Am., Inc. v. City of Madison*, 373 F. Supp. 2d 905, 908 (W.D. Wis. 2005).

<sup>108</sup> *Id.* at 910–11, 916–18. The plaintiffs in *Croplife* made additional arguments against the City of Madison that the ordinances violated the Commerce Clause of the U.S. Constitution and Freedom of Speech under the First Amendment of the U.S. Constitution. *Id.* at 913–16, 918. Those are not relevant to the arguments against LEBOR and are not discussed in this Note.

<sup>109</sup> *Id.* at 917–18.

<sup>110</sup> *Id.*

it stated its purpose: “protection of the area’s waters ‘without detracting from the natural beauty of homeowners’ lawns and gardens.”<sup>111</sup> The ordinance described exactly where and when fertilizers containing phosphorous can and cannot be used by prohibiting fertilizers on lawns but allowing them on gardens and prohibiting fertilizers on any impervious surface.<sup>112</sup> Additionally, the ordinance clearly stated when an exemption from the prohibition can be applied for lawns needing phosphorous.<sup>113</sup> Residents are able to show with a recent soil test done by a certified lab that their lawn requires phosphorous.<sup>114</sup> Finally, the businesses alleged that the phrase: “when conditions exist which promote or create runoff” was vague.<sup>115</sup> The court countered that people understand when conditions threatening runoff exist.<sup>116</sup> The court also stated that if a person is unsure, a simple test of applying water to the lawn and observing if it soaks in or runs off into the street will indicate if conditions exist which create runoff and trigger application of the ordinance.<sup>117</sup>

Toledo can use *Croplife* as a resource for re-drafting LEBOR to provide clarity and avoid vagueness. First, Toledo should clearly define its purpose in the revised LEBOR. This purpose can be summarized from the first clauses of LEBOR: Lake Erie and the Lake Erie watershed comprise an ecosystem which Toledo residents depend on for drinking water. The purpose of this bill is to prevent irreversible damage to the ecosystem from the dumping of industrial wastes and runoff of noxious substances from large scale agricultural practices.<sup>118</sup> Next, Toledo should preserve and clarify the clause in Section 254(b) which grants Toledoans the right to a clean and healthy environment.<sup>119</sup> The *Drewes Farms* court found this clause unconstitutionally vague,<sup>120</sup> but, Toledo can save this clause by clarifying what constitutes a “clean and healthy environment” versus an unclean and unhealthy one. As a comparison, the Tamaqua Borough Sewage Sludge Ordinance contains clear language on what is a clean and healthy environment: “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.”<sup>121</sup> Following this example, Toledo could include language such as: “Toledoans have the right to a clean and healthy

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<sup>111</sup> *Id.* at 917.

<sup>112</sup> *Id.* at 908.

<sup>113</sup> *Id.* at 917–18.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 918.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> TOLEDO, OHIO, MUN. CODE ch. XVII, § 253 (2019), *invalidated by* *Drewes Farms P’ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020).

<sup>119</sup> *Id.* § 254(b).

<sup>120</sup> *Drewes Farms P’ship*, 441 F. Supp. 3d at 556.

<sup>121</sup> TAMAQUA BOROUGH, PA., CODE § 260–61(G) (2006).

environment including unpolluted water sources.” Further, Toledo can specifically define an unpolluted water source by referencing Ohio EPA rules. One example is: “An unpolluted water source is one that is evaluated, monitored, and maintained under the guidance of the Ohio EPA Division of Drinking and Ground Waters Rules.” By deferring to the Ohio EPA’s rules, Toledo would also avoid a preemption problem because Ohio EPA implements the federal Safe Drinking Water Act and oversees most public water systems.<sup>122</sup> Lastly, Toledo can follow the *Croplife* example by providing exemptions. For example, if there is a farm that is in the process of updating its farming practices to reduce agricultural runoff, its current practices can be evaluated by the Ohio EPA and granted an exemption until it completes the update. Therefore, by clarifying the vague language and applying the examples from *Croplife*, Toledo may produce an effective bill.

### 3. Toledo’s Power of Local Self-Government

In the third step for revising LEBOR, Toledo must identify a specific area to regulate, within its jurisdiction, that prevents phosphorous contamination into Lake Erie. Ohio adopted the Home Rule Amendment in 1912 which allows municipalities the ability to manage local affairs without control from the General Assembly and state officials.<sup>123</sup> Under this rule, Toledo has the power to manage some affairs which do not conflict with Ohio or federal laws. Toledo may have the ability to regulate phosphorus contamination of Lake Erie within its city limits. In its Harmful Algal Blooms Fact Sheet, authors identified several ways to prevent phosphorous contribution to Lake Erie: stop fertilization on frozen or snow-covered ground, implement best practices for wastewater management, encourage use of fertilizer with little or no phosphorus, implement infrastructure to reduce stormwater runoff.<sup>124</sup> Unfortunately, Toledo cannot follow the lead of Madison, Wisconsin, by restricting phosphorus use in fertilizers, because Ohio Revised Code Section 905.503 preempts municipalities from regulating the use or application of fertilizer.<sup>125</sup> However, Toledo may pursue regulation of wastewater management because this would arguably fall under the municipality’s powers of local self-government under Article XVIII, Section 3 of the Ohio Constitution.<sup>126</sup> Thus, with Home Rule, Toledo has a unique opportunity to govern the local affairs of its city without interference by the state.

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<sup>122</sup> *District Offices*, OHIO ENV’T PROT. AGENCY, <https://epa.ohio.gov/about/districts> (last visited Feb. 3, 2025).

<sup>123</sup> See John E. Gotherman, *Municipal Home Rule and Charters*, THE CTR. FOR LOC. GOV’T, <https://www.c4lg.org/wp-content/uploads/2022/12/Ohio-Municipal-Home-Rule-Charters-John-E.-Gotherman-Deer-Park.pdf> (last visited Feb. 3, 2025).

<sup>124</sup> *Fact Sheet: Harmful Algal Blooms and the Toledo Event*, GREAT LAKES AND ST. LAWRENCE CITIES INITIATIVE, <https://glslcities.org/wp-content/uploads/2015/05/Fact-Sheet-HAB-and-Toledo.pdf> (last visited Feb. 3, 2025).

<sup>125</sup> OHIO REV. CODE ANN. § 905.503 (LexisNexis 2014).

<sup>126</sup> OHIO CONST. art. XVIII, § 3.

Currently, Ohio legislature does not give municipalities much flexibility to implement their own environmental protections.<sup>127</sup> By enacting Ohio Revised Code Section 2305.011, Ohio prevented municipalities like Toledo from recognizing rights of nature for Lake Erie and further protecting it from pollution.<sup>128</sup> A potential counter-argument is that the federal government should grant the lake rights of nature because Lake Erie borders four states and Canada. However, the federal government delegates some environmental authority to the states.<sup>129</sup> The Submerged Lands Act granted Ohio the ability to manage and use the lands, waters, and resources of Lake Erie that are within Ohio's boundaries.<sup>130</sup> Also, the Ohio EPA implements the federal Safe Drinking Water Act,<sup>131</sup> demonstrating that Ohio has authority to oversee its water sources. This Note argues that Ohio is the appropriate entity to recognize Lake Erie's rights of nature because it is beyond the authority of municipalities but is within the scope of power of the state.

*B. Ohio Must Repeal Its Statute Banning the Recognition of Rights of Nature*

1. U.S. Supreme Court decisions have recognized personhood rights for corporations and have granted legal standing for animals.

Ohio municipalities are not the appropriate decisionmakers for assigning rights of nature to Lake Erie through a bill like LEBOR. Ohio legislature should revise its stance on prohibiting rights of nature in Ohio Revised Code Section 2305.011. Granting Lake Erie personhood rights is a logical progression because the U.S. has a long history of granting personhood rights to non-human entities. In Justice Douglas's famous dissent in *Sierra Club v. Morton*, he identified that inanimate objects were parties in litigation such as ships in maritime law and corporations.<sup>132</sup> Justice Douglas then analogized those cases to the idea that natural bodies such as rivers, lakes, or beaches should have standing to act as a plaintiff or be represented by people with a relation to the natural body.<sup>133</sup> Additionally, Justice Douglas critiqued the argument that most natural bodies are protected by state and federal agencies, stating that the better representatives of natural bodies are "those people who have so frequented the place as to know its values and wonders will be able to speak for the entire ecological

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<sup>127</sup> See, e.g., Emily Bacha, *The Ohio Environmental Council, Surfrider Foundation, and Sierra Club Support Local Authority to Regulate Single Use Plastic Bags in Ohio*, OHIO ENV'T COUNCIL, <https://theoc.org/0524-single-use-plastic-bags/> (last visited Feb. 3, 2024) (explaining that the city was unable to pass the ban on plastic bags).

<sup>128</sup> See *Media Release: Ohio Legislature Bans Rights of Nature Enforcement*, CMTY. ENV'T LEGAL DEF. FUND, <https://celdf.org/2019/07/rights-of-nature-ban/> (last visited Feb. 3, 2024).

<sup>129</sup> *Other Regulators: Response to Environmental Compliance Violations at Federal Facilities*, ENV'T PROT. AGENCY (Jan. 4, 2023), <https://www.epa.gov/enforcement/other-regulators-response-environmental-compliance-violations-federal-facilities>.

<sup>130</sup> 43 U.S.C.A. § 1311 (West).

<sup>131</sup> *District Offices*, *supra* note 122.

<sup>132</sup> *Sierra Club v. Morton*, 405 U.S. 727, 742 (1972) (Douglas, J., dissenting).

<sup>133</sup> *Id.* at 743.



community.”<sup>134</sup> As Professor Christopher Stone stated: “Throughout legal history, each successive extension of rights to some new entity has been, theretofore, a bit unthinkable.”<sup>135</sup> Corporations were granted personhood rights dating back to 1886 in *Santa Clara County v. Southern Pacific Rail Road*.<sup>136</sup> One theory behind granting personhood rights to a corporation is that it is essentially an organization of persons who are “united in one body for a purpose.”<sup>137</sup> Additionally, U.S. courts have allowed animals to act as plaintiffs in lawsuits involving environmental law issues.<sup>138</sup>

In *Santa Clara*, the railroad company asserted that California’s extra tax on railroad property was discriminatory against the company on the basis that it is a corporation, thus violating the Fourteenth Amendment’s Equal Protection guarantees to all “persons.”<sup>139</sup> The court determined that corporations DO have the same rights as an individual person under the Fourteenth Amendment’s Equal Protection clause.<sup>140</sup> This decision launched an evolution of rights being granted to corporations through court decisions and statutory law. To be clear, corporations do not have the same range of legal rights that citizens do.<sup>141</sup> Corporations’ rights include: freedom

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<sup>134</sup> *Id.* at 752.

<sup>135</sup> Stone, *supra* note 59, at 453.

<sup>136</sup> *Santa Clara Cnty. v. S. Pac. R.R. Co.*, 118 U.S. 394, 409 (1886); *see also* Sarah Pruitt, *How the 14th Amendment Made Corporations into ‘People’*, HIST. (Oct. 2, 2023), <https://www.history.com/news/14th-amendment-corporate-personhood-made-corporations-into-people>.

<sup>137</sup> *See* Nina Totenberg, *When Did Companies Become People? Excavating the Legal Revolution*, NPR (July 28, 2014, 4:57 AM), <https://www.npr.org/2014/07/28/335288388/when-did-companies-become-people-excavating-the-legal-evolution>.

<sup>138</sup> *See* *Palila v. Haw. Dep’t of Land and Nat. Res.*, 852 F. 2d 1106, 1107 (9th Cir. 1988) (allowing the palila bird to be a plaintiff in federal court); *see also* *Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla.*, 148 F.3d 1231, 1258 (11th Cir. 1998) (granting turtles standing to sue Volusia County, Florida for violating the Endangered Species Act).

<sup>139</sup> Pruitt, *supra* note 136.

<sup>140</sup> *Id.* It is important to note that the court did not expressly address the issue: whether corporations are persons under the Fourteenth Amendment in its holding. Rather, Chief Justice Morrison Waite was quoted as saying: “The Court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution which forbids a state to deny to any person within its jurisdiction the equal protection of the laws applies to these corporations. We are all of opinion that it does.” This quote was recorded by the court reporter in a headnote and has subsequently been misconstrued as the holding of the case. Ciara Torres-Spelliscy, *The History of Corporate Personhood*, BRENNAN CTR. FOR JUST. (Apr. 8, 2014), <https://www.brennancenter.org/our-work/analysis-opinion/history-corporate-personhood>.

<sup>141</sup> *See* Ciara Torres-Spelliscy, *Does “We the People” Include Corporations?*, 43 HUM. RTS. MAG., no.2 (Jan. 1, 2018), [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/we-the-people/we-the-people-corporations/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/we-the-people/we-the-people-corporations/).

of speech under the First Amendment, the ability to contract, to sue and be sued, own property, and to exist in perpetuity.<sup>142</sup>

Also, U.S. courts have recognized animals as plaintiffs in litigation.<sup>143</sup> In *Loggerhead Turtle v. County Council of Volusia County, Florida*, the Eleventh Circuit Court of Appeals allowed an amended complaint which added leatherback sea turtles as plaintiffs.<sup>144</sup> The court expressly identified the parties of the lawsuit as: “the loggerhead sea turtle . . . and . . . green sea turtle with appellants Shirley Reynolds and Rita Alexander (collectively the Turtles).”<sup>145</sup> The trial court denied the plaintiffs leave to amend the complaint to add the loggerhead sea turtles as a party.<sup>146</sup> The appellate court stated that it is aware that deciding not to allow a leave to amend a complaint is within the trial court’s discretion and it is rare for a higher court to reverse that decision.<sup>147</sup> However, the appellate court determined that the decision to deny leave was outside of the trial court’s discretion, and that “‘justice so requires’ that the leatherback sea turtle be included in further proceedings.”<sup>148</sup>

As Christopher Stone stated: “We have become so accustomed to the idea of a corporation having ‘its’ own rights, and being a ‘person’ and ‘citizen’ for so many statutory and constitutional purposes, that we forget how jarring the notion was to early jurists.”<sup>149</sup> Over time, corporations have developed rights through judicial and legislative actions.<sup>150</sup> The rights of nature movement may seem radical now, but it has the capability of evolving through legal action just like the rights of corporations did.<sup>151</sup> The following is a hypothetical situation comparing corporations having Fourteenth Amendment rights to Lake Erie having rights of nature. In *Santa Clara*, the railroad successfully argued that the additional tax imposed on railroad property was discriminatory because it was applied to a corporation and not others.<sup>152</sup> After

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<sup>142</sup> *Corporate Personhood: What It Means and How It Has Evolved*, PURDUE GLOB. LAW SCH. NEWS AND COMMENT. (Jan. 6, 2023), <https://www.concordlawschool.edu/blog/news/corporate-personhood/>; see Torres-Spelliscy, *supra* note 140.

<sup>143</sup> See, e.g., *American Bald Eagle v. Bhatti*, 9 F.3d 163 (1st Cir. 1993) (including the bald eagle as a plaintiff); *Palila*, 852 F. 2d at 1107 (including the palila bird as a plaintiff).

<sup>144</sup> *Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla.*, 148 F.3d 1231, 1257 (11th Cir. 1998).

<sup>145</sup> *Id.* at 1234.

<sup>146</sup> *Id.* at 1255–57.

<sup>147</sup> *Id.* at 1257.

<sup>148</sup> *Id.*

<sup>149</sup> Stone, *supra* note 59, at 452.

<sup>150</sup> See *Corporate Personhood: What It Means and How It Has Evolved*, *supra* note 142.

<sup>151</sup> See Katie Surma, *Does Nature Have Rights? A Burgeoning Legal Movement Says Rivers, Forests and Wildlife Have Standing, Too*, INSIDE CLIMATE NEWS (Sept. 19, 2021), <https://insideclimatenews.org/news/19092021/rights-of-nature-legal-movement/>.

<sup>152</sup> *Santa Clara Cnty. v. S. Pac. R.R. Co.*, 118 U.S. 394, 416 (1886).

*Santa Clara*, the U.S. has recognized Fourteenth Amendment Equal Protection rights for corporations which allows a corporation to sue if it is differently than another entity or person.<sup>153</sup> Because the corporation itself has the right to bring the lawsuit, it is not prohibited from making a claim because there was no harm to an individual person. Like the corporation, Lake Erie needs the legal right to defend itself when it is treated unfairly. Imagine Lake Erie was granted the right to exist, flourish, and thrive. With rights of nature, Lake Erie may sue a company if it violates the Lake's right to exist, flourish, and thrive by polluting it. Without rights of nature, a person must show he or she was injured by the pollution to sue the company. Like the corporation itself has the Fourteenth Amendment Equal Protection right, and may exercise that right, Lake Erie should have the right to exist, flourish, and thrive and be able to exercise that right itself. Lake Erie is similar to a corporation because Lake Erie is an entity that provides "goods" and "services" to people in the form of drinking water, water and beach area for recreation, and navigable waters to transport goods.<sup>154</sup> A corporation's legal rights allow it to perform certain actions which benefit consumers and shareholders such as: owning property which allows a corporation to expand its retail stores and entering contracts which allows a corporation to negotiate with suppliers to provide the best prices to customers.<sup>155</sup> Legal rights for Lake Erie would allow the lake to sue wrongdoers if it is being polluted and therefore protect its shareholders: residents who use its water.

Further, courts have allowed animals the ability to join a lawsuit with humans. In *Loggerhead Turtle*, two species of turtle were plaintiffs in a lawsuit against a city which endangered their beach habitat. The appellate court was so certain that the animals were able to be parties in the lawsuit that, in a rare action by an appellate court, it reversed the trial court's denial to add the animals as plaintiffs.<sup>156</sup> This decision by the appellate court shows how serious it was about allowing animals the ability to act as plaintiffs in the lawsuit. The court in *Loggerhead Turtle* granted standing to an entire species, not just the individual turtles that suffered harm. It follows that Lake Erie should have rights to sue a wrongdoer that unlawfully pollutes the lake from any location. Courts have allowed animals to join lawsuits when they have been harmed, thus, it makes legal and practical sense to allow Lake Erie to legally defend itself when it is polluted. These two examples of non-humans' personhood rights and the ability to join lawsuits show that it is a logical progression to grant rights of nature to Lake Erie.

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<sup>153</sup> See Torres-Spelliscy, *supra* note 141.

<sup>154</sup> *Ontario's Great Lakes Strategy*, ONTARIO.CA, <https://www.ontario.ca/page/ontarios-great-lakes-strategy> (last visited Feb. 3, 2025).

<sup>155</sup> See Adam Winkler, *The Long History of Corporate Rights*, 98 B.U. L. REV. ONLINE 64, 64 (2018).

<sup>156</sup> *Loggerhead Turtle v. Cnty. Council of Volusia Cnty., Fla.*, 148 F.3d 1231, 1257 (11th Cir. 1998).

2. International laws have recognized rights of nature further evidencing the fact that the U.S., and particularly Ohio, are falling behind.

Since 2008, many countries abroad have recognized rights of nature in their constitutions and laws.<sup>157</sup> This Note examines two examples where countries granted rights of nature to a body of water or to nature generally.

In March 2017, the Whanganui Iwi tribe of the North Island of New Zealand succeeded in a 140-year legal battle to grant legal personhood rights to the Whanganui River.<sup>158</sup> The tribe recognizes the Whanganui River as its ancestor and pursued granting legal personhood to the River in order to protect it from exploitation.<sup>159</sup> Granting legal personhood rights to the River means that the law recognizes abuse or harm to the River with the same legal significance as abuse or harm to a member of the Whanganui Iwi tribe.<sup>160</sup> The Te Awa Tupua (Whanganui River) Claims Settlement Bill expressly states: “Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person.”<sup>161</sup> The bill also establishes two guardians called the Te Pou Tupua, consisting of one person appointed from the Whanganui Iwi and one person appointed from the British Crown.<sup>162</sup> The duties of these guardians include: to speak and act on behalf of the River, to promote and protect the health and wellbeing of the River, to maintain a trust fund for the River.<sup>163</sup> The guardians must act in the best interests of the River and in a way that demonstrates the Iwi’s connection and responsibility for protecting the River’s health and wellbeing.<sup>164</sup> An important aspect of the Te Awa Tupua Bill is that it works in tandem with New Zealand’s current environmental laws in the Resource Management Act of 1991.<sup>165</sup> Section 16 of the Te Awa Tupua Act addresses limits: the Act does not affect any existing property rights in the River, any rights or interests in the River or wildlife or plants.<sup>166</sup> Section 17 of the Act states how the Whanganui River is to be defined based

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<sup>157</sup> *Rights of Nature FAQ*, INT’L JOINT COMM’N, <https://www.ijc.org/system/files/commentfiles/2019-10-Nicolette%20Slagle/FAQ.pdf> (last visited Feb. 3, 2025).

<sup>158</sup> Roy, *supra* note 64.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> Kelly Buchanan, *New Zealand: Bill Establishing River as Having Own Legal Personality Passed*, LIBR. OF CONG. (Mar. 22, 2017), <https://www.loc.gov/item/global-legal-monitor/2017-03-22/new-zealand-bill-establishing-river-as-having-own-legal-personality-passed/>.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Dana Zartner, *Watching Whanganui & the Lessons of Lake Erie: Effective Realization of Rights of Nature Laws*, 22 VT. J. ENV’T L. 1, 21 (2021).

<sup>166</sup> Te Awa Tupua Act 2017, s 16 (N.Z.).

on other New Zealand laws.<sup>167</sup> When a conflict arises, the Act is meant to be read alongside other legislation, which gives it equal weight to other New Zealand laws.<sup>168</sup>

In 2008, Ecuador became the first country to recognize rights of nature within its national constitution.<sup>169</sup> Rights of nature have since been challenged in Ecuadorean courts and stood the test.<sup>170</sup> In 2021, the Constitutional Court of Ecuador, similar to the U.S. Supreme Court, did not allow an exploratory mining operation within the protected Los Cedros forest because the operation violated constitutional rights of nature.<sup>171</sup> In the case, the court determined that the state government did not meet its constitutional obligation to take precautionary measures to assess activities that may lead to extinction of species under Article 73 of the Constitution of Ecuador.<sup>172</sup> Having rights of nature in Ecuador's constitution is critical because it changed the requirement from mining companies simply securing an online permit, to now the state government must first assess the potential project to ensure it does not lead to the extinction of species.<sup>173</sup>

Ohioans may not have the same spiritual beliefs about Lake Erie as the Whanganui Iwi tribe has for the Whanganui River. However, Ohioans rely on Lake Erie as their water source, and therefore have a vested interest in a clean, healthy lake. The purpose for granting legal rights to the Whanganui River was to recognize the sacred relationship between the Whanganui Iwi and the Whanganui River, and to ensure its long-term protection and restoration.<sup>174</sup> The same long-term protection and restoration is necessary for Lake Erie because businesses and commercial farms currently face little recourse for polluting the waters.<sup>175</sup> Ohio's current method of

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<sup>167</sup> Te Awa Tupua Act 2017, s 16 (N.Z.).

<sup>168</sup> Zartner, *supra* note 165, at 21.

<sup>169</sup> Katie Surma, *Can Rights of Nature Laws Make a Difference? In Ecuador, They Already Are*, INSIDE CLIMATE NEWS (Feb. 21, 2022), <https://insideclimatenews.org/news/21022022/rights-of-nature-laws-ecuador/>.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Te Awa Tupua - Whanganui River Settlement*, WHANGANUI DIST. COUNCIL, <https://www.whanganui.govt.nz/About-Whanganui/Our-District/Te-Awa-Tupua-Whanganui-River-Settlement> (last visited Feb. 3, 2025).

<sup>175</sup> See *Explosion of Unregulated Factory Farms in Maumee Watershed Fuels Lake Erie's Toxic Blooms*, EWG ENV'T L. & POL'Y CTR. (Apr. 2019), [https://www.ewg.org/interactive-maps/2019\\_maumee/](https://www.ewg.org/interactive-maps/2019_maumee/). The EWG conducted a study from 2005 to 2018 which revealed that the amount of phosphorus added to Lake Erie's watershed from farm animal manure increased by 67%. Additionally, more than half of all manure that entered the watershed came from unregulated farms. *Id.* Ohio's H2Ohio program offers a voluntary, financial incentive for livestock farmers to manage livestock manure. To earn the incentive, farmers must have a phosphorus management plan, conduct a soil test, and ensure manure is not applied when there is a greater than 50% chance of precipitation. This program is voluntary for factory farms. James

voluntary compliance under the H2Ohio plan, does not do enough to ensure Lake Erie is protected. Additionally, the Environmental Working Group's research shows that many pollution-causing farms fall below the threshold for regulation.<sup>176</sup> Ecuador's example shows the effectiveness of granting rights of nature compared to permitting when protecting the environment. In the Ecuadorian case, rights of nature created an obligation on the state to ensure that a mining project would not harm endangered species, whereas, a permitting alone would allow the project to continue. In Ohio, rights of nature could create an obligation to ensure that farming practices do not pollute Lake Erie. When Ohio recognizes rights of nature it will make protection of Lake Erie concrete by requiring proactive action to ensure that farming practices do not pollute the lake rather than voluntary compliance. Residents could actively sue wrongdoers to protect Lake Erie, rather than the government incentivizing potential polluters and hoping they do the right thing. Both examples from New Zealand and Ecuador demonstrate that while it was not easy to earn rights of nature, it is achievable. Ohioans should make note of these successes abroad as they show the potential for the movement in the U.S. Therefore, Ohio should revise its stance on denying grants of rights of nature because international examples show how rights of nature can protect important water sources.

3. In the U.S., rights of nature are being legally recognized by the Native American tribes that have long valued and respected the earth.

Rights of nature have long been recognized by Native American tribes who feel that humans have a responsibility to protect and care for the earth.<sup>177</sup> This contrasts with the Western view of nature as property owned by persons or entities.<sup>178</sup> Two legal scholars recognized that tribal governments and legislation can act as laboratories of innovation for rights of nature laws.<sup>179</sup> Next, this Note discusses two examples of Native American tribal laws recognizing rights of nature and how those laws could provide a framework for an Ohio law recognizing rights of nature.

In 2016, the Ho-Chunk Nation in Wisconsin became the first Native American tribe to recognize rights of nature in its tribal constitution.<sup>180</sup> According to an attorney for the Ho-Chunk Nation, the rights of nature laws "make lawmakers, corporations and developers consider nature" and "to get in front of the [environmental] problem

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Hoorman, *Manure Incorporation with the H2O Ohio Program*, OHIO'S COUNTRY J. (Aug. 6, 2021), <https://ocj.com/2021/08/manure-incorporation-with-the-h2o-ohio-program/>.

<sup>176</sup> *Explosion of Unregulated Factory Farms in Maumee Watershed Fuels Lake Erie's Toxic Blooms*, EWG ENV'T L. & POL'Y CTR. (Apr. 2019), [https://www.ewg.org/interactive-maps/2019\\_maumee/](https://www.ewg.org/interactive-maps/2019_maumee/).

<sup>177</sup> Alexis Celeste Buntun, *Defending the Indigenous Rights of Nature*, AM. INDIAN MAG., Spring 2022, <https://www.americanindianmagazine.org/story/indigenous-rights-of-nature>.

<sup>178</sup> See Adam Wernick, *Environmental Lawyers Seek Legal Rights for the Natural World*, THE WORLD (Dec. 2, 2017, 10:30 AM), <https://theworld.org/stories/2017-12-02/environmental-lawyers-seek-legal-rights-natural-world>.

<sup>179</sup> Warner & Lillquist, *supra* note 60, at 363–69.

<sup>180</sup> *Press Release: Ho-Chunk Nation General Council Approves Rights of Nature Constitutional Amendment*, *supra* note 73.

as opposed to just constant triage.”<sup>181</sup> The purpose behind the Ho-Chunk Nation’s constitutional amendment is to help the tribe resist development of frac sand mines, pipelines, and high voltage transmission lines.<sup>182</sup> The constitutional amendment includes the following rights of nature language:

Ecosystems, natural communities, and species within the Ho-Chunk Nation territory possess inherent, fundamental, and inalienable rights to naturally exist, flourish, regenerate, and evolve. This includes, but is not limited to, rights to maintain, recover, and preserve their life cycles, structures, and functions; rights to a healthy climate system free from human-caused global warming emissions; and rights to the defense, protection, and enforcement of their rights.<sup>183</sup>

The next clause describes what activities violate the rights of nature: “including but not limited to, damage or destruction of flora or fauna possessing traditional medicinal significance to the Ho-Chunk Nation or its members, fossil fuel extraction, frac sand mining, and the introduction or use of genetically engineered organisms.”<sup>184</sup> Finally, the amendment addresses how the Ho-Chunk Nation or any tribal member may enforce the clauses on behalf of the ecosystem or natural body.<sup>185</sup>

More recently, the Menominee Indian Tribe of Wisconsin recognized the rights of the Menominee River in January 2020.<sup>186</sup> In its resolution, the tribe declares:

The Menominee River possesses inherent and legal rights including the right to naturally exist, flourish, regenerate, and evolve; the right to restoration, recovery, and preservation; the right to abundant, pure, clean, unpolluted water; the right to natural groundwater recharge and surface water recharge; the right to a healthy natural environment and natural biodiversity; the right to natural water flow; the right to carry out its natural ecosystem functions;

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<sup>181</sup> Buntin, *supra* note 177.

<sup>182</sup> Ken Luchterhand, ‘Rights of Nature’ Examined to Water, Air, and Plants the Claim to Exist, HOC AK WORAK, <https://www.hocakworak.com/article.aspx?headline=%E2%80%98Rights%20of%20Nature%E2%80%99%20examined%20to%20water,%20air,%20and%20plants%20the%20claim%20to%20exist%20> (last visited Feb. 3, 2025).

<sup>183</sup> Proposed Resolution to Amend the Constitution of the Ho-Chunk Nation, Resolution No. 9-15-2018-C (Sep. 15, 2018), [https://ecojurisprudence.org/wp-content/uploads/2022/02/US\\_Ho-Chunk\\_Ho-Chunk-Nation-Resolution-Rights-of-Nature\\_157.pdf](https://ecojurisprudence.org/wp-content/uploads/2022/02/US_Ho-Chunk_Ho-Chunk-Nation-Resolution-Rights-of-Nature_157.pdf).

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Warner & Lillquist, *supra* note 60, at 382.

and the right to be free of activities or practices, as well as obstructions, that interfere with or infringe upon these rights.<sup>187</sup>

The resolution is clearer than LEBOR because it identifies characteristics of a clean, healthy environment such as: “abundant, pure, clean, unpolluted water”.<sup>188</sup> The resolution also identifies specific activities that threaten the Menominee River: “the Menominee River faces significant threats from climate change; pollution; [and] the proposed open-pit mine known as the ‘Back Forty Project’ . . . .”<sup>189</sup> These textual examples from the Ho-Chunk Nation constitutional amendment and the Menominee tribe resolution can provide a basis for rights of nature laws in Ohio.

Tribes successfully recognize rights of nature because they have sovereignty, meaning they can enact laws that apply within tribal boundaries and are not subject to the U.S. federal and state law preemption.<sup>190</sup> In contrast, a municipality derives its power from the state and cannot preempt state laws.<sup>191</sup> This supports the argument that Ohio is better positioned than a municipality to recognize rights of nature. Both the Ho-Chunk Nation and the Menominee Indian Tribe recognized rights of nature to protect the health of tribe members and the environment. Similarly, the purpose for recognizing rights of nature for Lake Erie is to protect Ohioans from the harmful effects of polluted water. Further, tribal laws tend to focus on protecting nature because of its cultural significance to the tribe.<sup>192</sup> When it repeals and re-drafts Ohio Revised Code Section 2305.011, Ohio should focus on the significance of Lake Erie for public health because Lake Erie provides drinking water for millions of people.<sup>193</sup> Drawing from the Ho-Chunk Nation and Menominee Indian Tribe examples, Ohio has ample resources for repealing and re-drafting Ohio Revised Code Section 2305.011. The Ho-Chunk Nation partnered with the Community Environmental Legal Defense Fund to draft its amendment.<sup>194</sup> The amendment’s clauses are specific and clear. In proposed Article X Section 2(a), the amendment specifically identifies what rights of nature entail: “This includes, but is not limited to, rights to maintain, recover, and preserve their life cycles, structures, and functions; rights to a healthy climate system free from human-caused global warming emissions; and rights to the defense,

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<sup>187</sup> Menominee Indian Tribe of Wisconsin, Resolution No. 19-51, *Recognition of the Rights of the Menominee River* (Jan. 16, 2020),

<https://static1.squarespace.com/static/5e3f36df772e5208fa96513c/t/5fbd0f9829c5e26690282329/1606225816984/MENOMINEE+RESOLUTON+ADOPTED+JAN+16+2020+Resolutio n+19-52+Recognition+of+the+rights+of+the+Menominee+River+%281%29.pdf>.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Warner & Lillquist, *supra* note 60, at 385.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 384.

<sup>193</sup> Henry, *supra* note 4.

<sup>194</sup> *Press Release: Ho-Chunk Nation General Council Approves Rights of Nature Constitutional Amendment*, *supra* note 73.



protection, and enforcement of their rights.”<sup>195</sup> Proposed Article X Section 2(b) specifically identifies what constitutes a violation of rights of nature: “[I]ncluding but not limited to, damage or destruction of flora or fauna possessing traditional medicinal significance to the Ho-Chunk Nation or its members, fossil fuel extraction, frac sand mining, and the introduction or use of genetically engineered organisms.”<sup>196</sup> Proposed Article X Section 2(c) describes how the tribe or a tribal member can enforce the constitution in the proper administrative body or court.<sup>197</sup> Language like the above described in proposed Article X Section 2 could likely withstand a vagueness challenge because an average person could recognize what rights of nature are and if the person’s actions violate those rights.

Further, because this Note argues to recognize rights of nature to one specific natural body, Lake Erie, it is helpful to review how the Menominee Indian Tribe Resolution defines the rights of its specific water source: the Menominee River. The resolution specifically defines the rights that the Menominee River possesses and describes how other parties might interfere with those rights:

The Menominee River possesses inherent and legal rights including the right to naturally exist, flourish, regenerate, and evolve; the right to restoration, recovery, and preservation; the right to abundant, pure, clean, unpolluted water; the right to natural groundwater recharge and surface water recharge; the right to a healthy natural environment and natural biodiversity; the right to natural water flow; the right to carry out its natural ecosystem functions; and the right to be free of activities or practices, as well as obstructions, that interfere with or infringe upon these rights.<sup>198</sup>

In order to have a valid rights of nature law, Ohio legislation must have this level of detail to stand up to the constitutional challenges like the ones that LEBOR faced. The Ohio legislature should reverse its stance on banning rights of nature and should address rights of nature at a state level in detail like the Ho-Chunk Nation and Menominee tribe did.

### C. Recommendations

This Note recommends repealing Ohio Revised Code Section 2305.011. Ohio’s legislative record does not support environmental issues, so it will likely be an uphill

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<sup>195</sup> Proposed Resolution to Amend the Constitution of the Ho-Chunk Nation, Resolution No. 9-15-2018-C (Sept. 15, 2018), [https://ecojurisprudence.org/wp-content/uploads/2022/02/US\\_Ho-Chunk\\_Ho-Chunk-Nation-Resolution-Rights-of-Nature\\_157.pdf](https://ecojurisprudence.org/wp-content/uploads/2022/02/US_Ho-Chunk_Ho-Chunk-Nation-Resolution-Rights-of-Nature_157.pdf).

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Menominee Indian Tribe of Wisconsin, Resolution No. 19-51, *Recognition of the Rights of the Menominee River* (Jan. 16, 2020), <https://static1.squarespace.com/static/5e3f36df772e5208fa96513c/t/5fbd0f9829c5e26690282329/1606225816984/MENOMINEE+RESOLUTON+ADOPTED+JAN+16+2020+Resolution+19-52+Recognition+of+the+rights+of+the+Menominee+River+%281%29.pdf>.

battle.<sup>199</sup> However, as the events in Toledo have shown, Ohio citizens are committed to change.

A petitioner may file a referendum petition under Ohio Revised Code Section 3519.01(B).<sup>200</sup> There are essentially three requirements for a referendum. The first requirement is a written petition signed by 1,000 qualified electors.<sup>201</sup> This means 1,000 valid signatures of registered voters.<sup>202</sup> There is no county requirement for these signatures, they can all come from one county or from all eighty-eight Ohio counties.<sup>203</sup> Second, the measure must be submitted along with a summary of the measure to the Ohio Secretary of State.<sup>204</sup> The Ohio Secretary of State's website provides guidance on a summary: "A 'summary' as it relates to the initiated petition process has been defined by the Supreme Court as 'a short, concise summing up,' which properly advises potential signers of a proposed measure's character and purport. *State ex rel. Hubbell v. Bettman*, 124 Ohio St. 24 (1931)."<sup>205</sup> Third, on the same day or within one business day of submission to the Secretary of State, the petitioner must submit a copy of the petition, measure, and summary to the Attorney General.<sup>206</sup> The Attorney General determines if the summary is a fair and truthful statement of the proposed changes to the law. According to the Ohio Attorney General's website, "The general test for determining whether a summary is fair and truthful has been whether a reasonable individual of ordinary intelligence would feel misled after signing a petition based on the wording of the summary itself, or based on a particular item being omitted from the summary."<sup>207</sup> Following submission of the materials, the Secretary of State has ten business days to verify the validity of signatures on the petition and determine if the text of the measure to be referred is correct by comparing it with a copy of the enrolled act on file.<sup>208</sup> Additionally, the Attorney General has ten business days to review the summary and certify it to the

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<sup>199</sup> See OHIO REV. CODE ANN. § 905.503 (LexisNexis 2014) (prohibiting municipalities from regulating the use or application of fertilizer); OHIO REV. CODE ANN. § 2305.011 (LexisNexis 2019) (prohibiting nature or any ecosystem from having legal standing).

<sup>200</sup> OHIO REV. CODE ANN. § 3519.01(B) (LexisNexis 2006).

<sup>201</sup> OHIO REV. CODE ANN. § 3519.01(B)(1) (LexisNexis 2006).

<sup>202</sup> *Initiative and Referendum FAQs*, OHIO ATT'Y GEN., <https://www.ohioattorneygeneral.gov/FAQ/Initiative-and-Referendum-FAQs> (last visited Feb. 3, 2025).

<sup>203</sup> *Id.*

<sup>204</sup> OHIO REV. CODE ANN. § 3519.01(B)(1) (LexisNexis 2006).

<sup>205</sup> *Initiative and Referendum FAQs supra* note 202.

<sup>206</sup> OHIO REV. CODE ANN. § 3519.01(B)(1) (LexisNexis 2006).

<sup>207</sup> *Initiative and Referendum FAQs supra* note 202.

<sup>208</sup> OHIO REV. CODE ANN. § 3519.01(B)(2) (LexisNexis 2006).

Ballot Board.<sup>209</sup> Under Ohio Revised Code Section 3519.01(C), any person aggrieved by the certification may challenge it in the Ohio Supreme Court.<sup>210</sup>

After repealing Ohio Revised Code Section 2305.011, Ohio citizens should pursue an amendment to the state's constitution to enshrine rights of nature. Ohio is one of eighteen states that allow a citizen-initiated constitutional amendment.<sup>211</sup> This is a powerful tool Ohioans have to address an issue in the Ohio Constitution.<sup>212</sup> A state's constitution trumps state legislation, meaning that if rights of nature became protected by the constitution, a state law could not violate those rights.<sup>213</sup> The amendment should be self-executing, meaning that it has force on its own and does not require a statute to enact it.<sup>214</sup> In 2017, petitioners attempted to amend Ohio's constitution with the Ohio Community Rights Amendment.<sup>215</sup> The Ohio Ballot Board certified the Ohio Community Rights Amendment in December 2017, but it did not appear on the 2018 ballot.<sup>216</sup> This amendment sought to add the right of local community self-government "to enact and enforce local laws that protect health, safety, and welfare by recognizing or establishing rights of natural persons, their local communities, and nature . . ." <sup>217</sup> Other states have succeeded in recognizing their *citizens'* rights to a healthy

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<sup>209</sup> OHIO REV. CODE ANN. § 3519.01(B)(3) (LexisNexis 2006).

<sup>210</sup> OHIO REV. CODE ANN. § 3519.01(C) (LexisNexis 2006).

<sup>211</sup> *Initiated Constitutional Amendment*, BALLOTEDIA, [https://ballotpedia.org/Initiated\\_constitutional\\_amendment](https://ballotpedia.org/Initiated_constitutional_amendment) (last visited Feb. 3, 2025).

<sup>212</sup> *Citizen-Initiated Constitutional Amendment*, OHIO SEC'Y OF STATE, <https://www.ohiosos.gov/legislation-and-ballot-issues/putting-an-issue-on-the-ballot/citizen-initiated-constitutional-amendment/> (last visited Feb. 3, 2025). The Ohio SOS website includes a procedural outline for Ohioans who wish to amend the Ohio Constitution. Further, petitioners are encouraged to seek legal counsel.

<sup>213</sup> Corinne Bell, *Every State Should Have a Right to a Healthy Environment*, NRDC (Mar. 29, 2021), <https://www.nrdc.org/bio/corinne-bell/every-state-should-have-right-healthy-environment>.

<sup>214</sup> *Id.*

<sup>215</sup> *List of Petitions Submitted to the Attorney General's Office*, DAVE YOST OHIO ATT'Y GEN., <https://www.ohioattorneygeneral.gov/Legal/Ballot-Initiatives/Petitions-Submitted-to-the-Attorney-General-s-Offi> (last visited Feb. 3, 2025).

<sup>216</sup> *Ballot Board Certifies Proposed Amendments as Single Ballot Issues*, TARGETED NEWS SERV. (Dec. 29, 2017, 8:19 AM). It is possible that the petition did not receive the requisite number of signatures to place it on the ballot. Under Ohio Constitution Article 2, Section 1g, "it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of electors of such county." Further, the petitioner must provide an argument for the proposed amendment and an argument against the proposed amendment. Finally, the Ohio Ballot Board certifies the ballot language. These steps must all occur before an issue is placed on the ballot. OH CONST. art II, § 1g.

<sup>217</sup> *Initiative Petition for Amendment for Ohio Community Rights Amendment*, OHIO ATT'Y GEN. (Nov. 17, 2017), <https://www.ohioattorneygeneral.gov/getattachment/ca5814e2-faf4-416e-862f-ec5f4fe4c38c/The-Ohio-Community-Rights-Amendment>.

environment rather than rights of nature. For example, Pennsylvania successfully amended its constitution in 1971 to add: “the people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment.”<sup>218</sup> This demonstrates that there is a desire for environmentally-friendly amendments and that it is possible to successfully amend a state’s constitution.

#### IV. CONCLUSION

Toledo’s 2014 water crisis demonstrated the danger of pollution in Lake Erie. Lake Erie requires legal rights to defend itself because current voluntary regulations do not provide enough protection for the lake. The state of Ohio is best positioned to recognize rights of nature by repealing Ohio Revised Code Section 2305.011 and recognizing rights of nature in the Ohio Constitution. LEBOR was not legally sound when it was passed, and it was justifiably struck down. In the short-term LEBOR can be re-drafted to be constitutional, but this will not achieve Toledoans’ goal of granting Lake Erie its own protection against pollution. The appropriate place to grant Lake Erie legal rights is at the state level. The rights of nature movement is a logical progression of granting legal standing and personhood rights to non-human entities as seen in cases for animals and corporations. Ohio should follow examples set by New Zealand and Ecuador and by the Native American tribes when drafting legislation to grant rights of nature. Ohio should repeal Ohio Revised Code Section 2305.011 because it was passed hastily and hidden within a 2,602-page state budget. Finally, Ohio Revised Code Section 2305.011 contradicts the will of the people, like the Toledoans who passed LEBOR, who rely on Lake Erie to provide them clean, safe water. It is time to right this mistake and grant the lake rights of nature.

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<sup>218</sup> PA CONST. § 27.

