

# MOMENTS OF TRANSITION



*A special edition of the Susquehanna • Community Environmental Legal Defense Fund*

The Community Environmental Legal Defense Fund was founded as a conventional environmental law firm (phase one). As it discovered how regulatory law is fixed to disempower people, communities and ecosystems, it pivoted—towards “rights based” law making. Instead of assisting communities in appealing pollution permits, CELDF went on offense, and began helping communities make proactive declarations of law to prevent corporate harm while targeting some of the most regressive and reactionary legal doctrines practiced in the world’s most powerful nation (phase two).

These “rights based” laws began to evolve. Eventually, CELDF began to advise its client communities in drafting and defending the first “Rights of Nature” laws on non-indigenous reservation land (phase three). At the time, it was a revolutionary concept; as was the defense of basic self-determination to override the power and privileges of corporate interests.

CELDF was years ahead of the curve on these two complementary principle issues: Rights of Nature and a structural demand for local community self-determination to counteract corporate power. For decades, our staff spearheaded these issues, when few others would.

Now, these core demands have become visible demands within mass movements across the globe. Led by indigenous organizers and communities, the glob-

al Rights of Nature movement has taken off—we have played an important role by pushing decolonial concepts in the communities we work. Meanwhile, when it comes to local self-determination, we have raised awareness of the doctrines that control local communities against the interests of people and nature for decades—doctrines like “state preemption,” “Dillon’s Rule,” corporate “rights/personhood” and the regulatory fallacy. That awareness has skyrocketed in the past few years.

Across the United States, social, environmental and economic justice movements have now identified these doctrines as structural impediments to a more just and sustainable society.

Similar movement developments have taken place in other countries in recent years. Law schools and political science departments are studying the implications. It’s clear we are not alone.

As we observe a dramatic rise in interest and support for overturning these oppressive legal systems, we also observe how different organizers and movements come at these issues from different perspectives, and utilize unique language.

There are a multitude of different ways to decolonize the law (including, but not limited to, recognizing the rights of ecosystems) and increase local self-determination. Indigenous legal scholars and organizers are advancing and practicing pre-colonial legal paradigms; indigenous peacemakers are preserving healing and justice practices that possess enforcement power; youth climate strik-



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ers are demanding indigenous self-determination and Rights of Nature; Black-led demands for multiracial local self-determination compliment the Movement for Black Lives' demand for more community control; grassroots climate organizers articulate translocal organizing strategies; municipal officials fight centralized takeovers of their governments and school districts; coalition building counters state interference in protective municipal policy-making; rural-urban solidarity is cultivated to defend local democracy.

The validity of the root demands of our work—that a dramatic transformation of tyrannical legal doctrines is needed to empower people and planet over profit, and a re-localization of protective political power is necessary to establish justice—is proven by how they are resonating with a multitude of emancipatory movements. All are coming to similar conclusions.

As we continue to advance constitutional change and local organizing, including community law making, we look forward to playing another role: that of truth-teller and convenor of people who embody the true radical visions that Rights of Nature and life-affirming local self-governance portends. However, as these topics gain broader acceptance, there is risk that their radical potential will be watered down. We can't let that happen. For this reason we need a visioning process that weaves different understandings of these core demands together to guard against them being co-opted or hijacked as they gain in popularity.

That's why we helped compile statements in response to the Democratic National Committee's Council on Environment and Climate Crisis when it released an "Environmental and Climate Policy Agenda for the Democratic Party" in August 2020. It recommended the formation of a presidential Rights of Nature mission that would:

*"Establish a commission, similar to the President's Council on Sustainable Development, to explore incorporating Rights of Nature principles into U.S. law."*

This recommendation did not make it into the final party platform, but nonetheless is proof of Rights of Nature's growing popularity. Read the statements on our website ("Democratic Party Must Not Water Down Rights of Nature"). We also issued a statement on a problematic "Rights of Nature" passed in Orange County, Florida (page 3).

We must accelerate our work to keep up with the climate crisis. CELDF is in a moment of transition, the beginning of a FOURTH phase, where we find our work coalescing with other, broader movements, as we innovate new tools and strategies (including Rights of Nature laws) for reaching the movement goals and continue to help organize the unorganized. We are excited about the new relationships and collaborations, a new collective internal structure, new movement building, increased media presence, and the rest of what is to come.

## CELDF REPORT: WHAT WASN'T VOTED ON (2020)

**A NEW CELDF REPORT DETAILS THE REPRESSION OF 19 BALLOT INITIATIVES IN 2020.**

*The ballot initiative process, fought for by anti-corporate movements a century ago, has become a key mechanism-of-last-resort for social movement campaigns hoping to tax the rich, rein in corporate power, end gerrymandering, protect the right to vote, ban fracking, raise the minimum wage, protect workers and otherwise participate in their democracy.*

Ballot initiatives advanced by communities partnering with CELDF have faced similar obstruction in Ohio, Washington and Oregon, including Columbus, Ohio's 2020 Columbus Community Bill of Rights city charter amendment. These initiatives all challenge some of the most reactionary and regressive legal doctrines practiced in the United States.

Not surprisingly, as these movements turn to direct democracy, the political establishment has taken an increased interest in the process itself. The Ballot Initiative Strategy Center recently documented a nationwide attack by

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state legislators on the ballot initiative process in 2019. Beyond the legislative attack on the process, we observe the political application of administrative law and pre-election court rulings to keep anti-establishment ballot initiatives off the ballot—stopping votes from taking place. These tactics have all obstructed a wave of direct democracy initiatives from appearing on ballots across the nation.

For example, In August 2020, the Maine Supreme Judicial Court took the historic step of removing a peoples' referendum on the \$1 billion Central Maine Power corridor project from the November ballot. The project is part of the New England Clean Energy Connect, which would transport electricity from Hydro-Quebec's highly controversial dam, into New England. The removal of the referendum signals a structural change for Maine's referendum and initiative process. Previously, pre-election constitutional challenges had not removed measures from the ballot.

A new CELDF report provides a survey for 2020, of ballot initiatives that were removed from the November 2020 ballot. To read the full report, visit [celdf.org](http://celdf.org).

## COMMUNITY UPDATES:

*More updates to come in our next newsletter.*

### FLORIDA

#### **CELDF STATEMENT ON ORANGE COUNTY, FL, 'RIGHTS OF NATURE' LAW (ABRIDGED)**

"Rights of Nature is about recognizing and defending the rights of ecosystems as a whole. That means transformative change including for humans, who are part of the ecosystems we depend upon. This means fighting for basic complimentary rights for all humans, like the right to water for life," said CELDF's Markie Miller, an organizer behind the Lake Erie Bill of Rights, the first law on United States settler colonial land to recognize the rights of a specific ecosystem.

A "Wekiva River and Econlockhatchee River Bill of Rights" (WEBOR) was passed by Orange County, Florida voters on Nov. 3, 2020.

CELDF applauds Orange County efforts to protect water and vital ecosystems. However, the ordinance that passed on November 3, 2020 is a misuse of the term "Rights of Nature," which means something very different from what has been passed. An analysis of the WEBOR measure has multiple issues not consistent with transformative Rights of Nature lawmaking.

The measure attempts to work around, rather than challenge, existing legal and political hurdles facing

transformative enforcement of the rights of ecosystems and people.

The measure seeks to restrict the "right to clean water" for only citizens who have "legal residence in the United States." This undermines the rights of undocumented people, and is contrary to the radically-inclusive human rights paradigm that recognition of the rights of ecosystems requires. Human rights transcend citizenship status.

WEBOR bans any "governmental agency, non-natural person or corporate entity" from "intentionally or negligently" polluting. It then says that pollution in this context "shall have the same meanings" as in state law. This effectively means the measure is seeking to define the enjoyment of the Rights of Nature as merely the enforcement of existing environmental law. This falls short, because, in reality, the fulfillment of ecosystem rights requires the wholesale transformation of existing law—not its reiteration.

These are among our critiques of WEBOR. Contact us or visit [CELDF.org](http://CELDF.org) to read the full statement.

Rights of Nature is not a silver bullet reform, but rather part of a mosaic of decolonial legal concepts that must be advanced in tandem to take on the political and legal forces upholding the current destructive status quo.

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# NEW HAMPSHIRE

Our freedoms and the health of our communities and ecosystems are under attack. Corporations, public officials, and the policies and practices set in place from their interdependent relationship are causing real physical and psychological harm to us and the places we live. To advance political education in the Granite State, the New Hampshire Community Rights Network (NHCRN) has compiled an in-depth pamphlet to explore a transformation of New Hampshire's form of government.

Many residents of the state have the impression that New Hampshire, with its town meeting form of local governance, possesses an empowered form of "local democracy." However, as the inhabitants of the state have discovered, when they do endeavor to locally curtail corporate projects, local democratic control has been stripped away by the combined efforts of the legislative body who adopt corporate-lobbied laws, and the courts that uphold them.

"Enough is enough! We cannot protect ourselves, the environment we are a part of, nor future generations if we do not understand how our forms of government work, why they were designed as they are, where they fall short, and what we can do differently to create and legalize the protections we envision in the places we live, work, and play," says CELDF's New Hampshire organizer Michelle Sanborn.

The forthcoming 50+ page pamphlet features historical and contemporary analysis, theory, and case studies. It will be distributed in New Hampshire and available for broader audiences. Contact NHCRN for more information: [nhcommunityrights.org](http://nhcommunityrights.org).

# OHIO

## DEFENDING THE BALLOT

As demonstrated in a new CELDF report (page 3), across the nation, judges and unelected officials, including boards of elections, have undercut ballot access for initiatives.

CELDf's ongoing litigation in *Lyons v. City of Columbus* and *Beiersdorfer v. LaRose* (now in appeal), seeks to vindicate direct democracy powers for communities in Ohio. The lawsuit has now received support through three amicus curiae ("friend of the court") briefs, representing over 525,000 supporters. Briefs were filed by Earth Law Center, Move to Amend, and a coalition of 20 Ohio groups, representing 18,750 members. The Ohio coalition's brief reads:

"The organizations represent rural, suburban and urban Ohio and surrounding states. They are experts in grassroots democracy. The protection of the fundamental right to bring peaceful change to their government through legislation created by the people brings them all together. The positive, peaceful change is through direct legislation, that includes initiatives, referendums, charter proposals and charter amendments."

The lawsuit challenges the constitutionality of Ohio's ballot access scheme and claims civil rights violations against the people asserting these ballot initiatives. CELDF is supporting plaintiffs from seven Ohio counties, where Rights of Nature and anti-corporate rights measures have been proposed.

The American Petroleum Institute is now getting involved, to oppose the civil rights lawsuit.

## THE FIGHT FOR LAKE ERIE

In October 2020, the Court of Appeals, Ohio Sixth District Lucas County reversed a previous trial court order in *Mike Ferner, et al., vs the State of Ohio* and remanded it back to the lower court. The appellate court recognized that the residents were asking for the same review in this case that *Drewes Farm* was asking for in Federal Court and that there was indeed a real controversy between the parties. The residents sued to enforce the Lake Erie Bill of Rights (LEBOR) and hold the State of Ohio accountable for its failure to protect Lake Erie.

Markie Miller, a petitioner for LEBOR and organizer with Toledoans for Safe Water said, "Laws should reflect our ethics, not guide them. We can't just throw these debates to the courts and allow them to determine

our morals and values. The people of Toledo learned first hand how important Lake Erie is to all life in this community.”

The month prior, international corporate law firm Vorys, Sater, Seymour and Pease LLP, who represented the polluter who brought forth the lawsuit to overturn LEBOR, sought \$207,500 from the people of Toledo for their enactment of LEBOR. The city quietly obliged. The “big Ag” polluter used corporate personhood and civil rights violations to extort attorney fees from the city and the people.

“Get this straight. Lake Erie is being pumped with pollutants. The people of Toledo suffer the physical effects of the pollution. They have to upgrade their water treatment plant. They pass LEBOR. And now they are required to pay the polluters’ legal fees to have their democratic law overturned. This would be like making a victim of physical abuse pay the legal fees of the abuser, even though they had pleaded for help many times to no avail,” says CELDF Ohio Organizer Tish O’Dell.

## OREGON

### CONSTITUTIONAL LANGUAGE UNVEILED IN OREGON - LEGALIZING LOCAL DEMOCRACY

In the build up to Oregon’s 2021 legislative session the Oregon Community Rights Network and its partner chapters are actively reaching out to legislators, local officials, and issue groups to build support for the introduction and ultimately ballot placement for a constitutional amendment that would protect local democracy from state interference.

New constitutional language being unveiled in Oregon will ensure that local communities have the legal power to protect their rights, health, safety, and welfare, even when the state legislature is unwilling to act state-wide. Local self-government is protected by the proposed amendment so long as local law does not:

*“Restrict fundamental rights of natural persons, local communities, or ecosystems secured by this*

*Constitution, the Constitution of the United States, or international law; or*

*“Cause a material impediment to enforcement or adherence to expressly-stated and equitable state, federal, or international law that protects natural persons, local communities, or ecosystems, when that law protects workers, the environment, public health, privacy, antidiscrimination, civil rights, or access to housing, food, water, medicine, medical care, and education.”*

This proposed amendment, drafted by CELDF, represents a vision for a more decentralized and democratic structure of government whose purpose is to protect human dignity and the ecosystems we depend upon and whose structure allows it to more authentically fulfill these missions.

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A new community rights group has come together in Portland, Oregon. Community Rights Now! PDX is made up of Portlanders who have been following or connected to community rights organizing over a number of years. Moved by the pandemic and Black Lives Matter protests, the group has been actively organizing to generate support for the state constitutional amendment that would secure local democracy to address issues in Portland. More about the group can be found here: <https://www.facebook.com/communityrightsnowpdx>

## PENNSYLVANIA

### UPDATES FROM ACROSS THE STATE

There are updates to report on the ongoing battle between local elected officials in Grant Township, Indiana County, Pennsylvania, supported by CELDF, and the fossil fuel industry, assisted by the Pennsylvania Department of Environmental Protection (DEP). The DEP caved to community resistance, and announced in March 2020 that it would take the historic action of recognizing Grant’s Home Rule Charter to deny a permit for a controversial frack waste injection well. However, and in a move that shows the DEP’s

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continued incompetence, the DEP did not rescind its lawsuit against the township.

In September 2020, CELDF contract attorney Karen Hoffmann worked with Grant Township to file a motion to dismiss the DEP's ongoing lawsuit, brought against the township for its adoption of the very same 2015 municipal Charter that the DEP upheld in March. The DEP is currently under investigation by the Pennsylvania Attorney General and FBI.

"Of course we're filing to dismiss," says Grant Township Supervisor Vice-Chair Stacy Long. "The DEP brought this on and now it's running away? How can there be a lawsuit against the Charter if the DEP now recognizes it as valid law? They should be embarrassed at the runaround they are giving us. We did the hard work and voted in a law to protect ourselves when no one else would, and here we are. That law is still good, and a state agency recognizes it as such."

Amidst these developments, Pennsylvania General Energy (PGE), which owns the proposed injection well, has indicated it might be looking to sell its interest in the township. Meanwhile, as we write this, news has broken that an old PGE gas well, a quarter mile from the proposed injection well, has failed and is being plugged. The saga of defiance in Grant, featured in the new documentary film INVISIBLE HAND, remains ongoing.

All the while, constitutional change at the state level (HB 1813), aimed at securing community rights and rights of nature for all communities in the state, continues to pick up endorsements from local elected officials, state representatives, and grassroots community groups across the state.

"It's all a representation of how confrontational and creative local work is still the lifeblood of rights-based organizing. We must continue to stay on offense, and scale up the local work to the state level so that our communities and ecosystems are protected by default," says CELDF Pennsylvania Organizer Chad Nicholson. "We've got some major wins in PA this year that we didn't expect, thanks to the tireless work of the communities we partner with. And we've still got a long way to go."

## OBSERVING REVOLUTION: PENNSYLVANIA

*This dispatch from Pennsylvania is a continuation from last newsletter's Observing Revolution theme*

Communities have been galvanized by existential threats to sacred and critical freshwater systems. Today, with help from CELDF, a community in Pennsylvania has engaged local lawmaking to successfully resist corporate contamination of water. Despite years of legal attacks by the private Pennsylvania General Energy corporation, the Pennsylvania Department of Environmental Protection (DEP), and a smear campaign by an oil industry attack group, local residents of Grant Township, Indiana County have reasserted and continued to defend their local lawmaking. In March 2020, their resistance successfully compelled the first-ever enforcement of a local Rights of Nature law, when the PA DEP revoked a frack waste permit citing Grant Township's local law. That development came one week before the U.S. Environmental Protection Agency was effectively suspended by the federal government.

Their efforts are not over, nor isolated. Grant Township sits on the shoulders of dozens of Pennsylvania communities who have advanced the movement for over 20 years.

In 2006, Tamaqua Borough, Pennsylvania, became the very first place on non-indigenous reservation land to recognize the Rights of Nature. It banned the dumping of toxic sewage sludge as a violation of the Rights of Nature and the peoples' right to a clean environment.

In 2010, Pittsburgh banned fracking while declaring that corporations that violate the ban or that seek to drill in the city would not be afforded "personhood" rights under the U.S. or Pennsylvania Constitution, nor will they be afforded protections under the Commerce Clause or Contracts Clause under the federal or state constitution. This showed the important role large cities can play in this movement.

In 2013, Highland Township, Pennsylvania, banned fracking waste injection wells. It was then sued by Seneca Resources in 2015. Residents doubled down, and pushed for and passed a local charter in 2016. Then, in 2017, the DEP sued the community for banning

the fracking waste injection well, arguing that the community had no such authority to protect its water. Eventually, local officials who were sympathetic to the industry and not to the people of Highland agreed to not enforce most of the provisions of the popularly-adopted local charter. Every level of government came crashing down on the people: the federal courts, the state DEP, and even the community's own supervisors. The township people provoked multi-pronged repression from the state and corporate interests.

Meanwhile, another community, Todd Township, was busy working with CELDF to craft a radical vision for sustainable local agriculture. That law banned threats from the corporate agriculture industry while legalizing sustainable practices. At the urging of community members, township supervisors passed the local law in 2018. In 2019, the Pennsylvania Attorney General threatened to sue the township, ultimately intimidating local officials into repealing it.

All the while, a home rule charter amendment banning fracking, injection wells, and pipelines still stands in West Chester Borough, Pennsylvania. A key leader in this effort, Dianne Herrin, went on to become Mayor of the borough, and in November 2020 was elected State Representative.

## SEND US YOUR IDEAS

The challenges we face demand solidarity, creativity, deep knowledge sharing, systemic thinking, historical understanding, and a fusion of expertise and perspective. We welcome your grassroots organizing perspective, academic scholarship, essays, guest blog contributions, and other collaborations to add to this collective endeavor. We understand that to expand the Community Rights/Rights of Nature movement as a whole, we need to center the leadership most affected by the problems we're trying to solve. We want to collect and share all perspectives, especially those from BIPOC, LGBTQ+ and other communities. For more information contact [simon@celdf.org](mailto:simon@celdf.org).

## YOUR PARTICIPATION IS REQUESTED

Grassroots movements need help getting the word out. We can't rely on platforms like Facebook. Their algorithms get in the way. As these platforms continue to obstruct social and environmental activists and organizations we are reminded of the need to strengthen our own independent means of communication. We cannot rely on gatekeepers. So, when you've read this newsletter, don't recycle it. Give it away. Give it to a friend or neighbor. Encourage them to donate to receive a newsletter. Donate \$100 to receive five copies for you to distribute. Donate to send the newsletter to a friend or neighbor. Send an email with the subject "Newsletters" to [info@celdf.org](mailto:info@celdf.org) to learn more.,

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## **TEXT CELDF TO 44321 TO DONATE TODAY!**

### **ONLINE DEMOCRACY SCHOOL**

CELDF now offers a virtual version of its Democracy School. The four modules educate the public about rights-based organizing, inform participants about how the system under which we currently live undermines traditional activism, and introduce strategies for how empowering local decision-making can create the communities we envision. Recent schools have been held in Maine, Oregon, Washington, Colorado, Ohio, Virginia and Florida. These schools are designed to educate and build a local community group willing to challenge the current system and work together to come up with rights-based solutions. If you are interested in organizing one for your community, contact [info@celdf.org](mailto:info@celdf.org).

### **JOIN THE CAUSE — ONLINE**

Check out [CELDF.org](http://CELDF.org) and the CELDF YouTube channel for online CELDF-sponsored events, webinar recordings, presentations, and our Fast Fact Friday (FFF) series. Tune in for conversations on state interference with local democracy, corporate power, and organizing strategies. These are great ways to educate your friends and neighbors about the challenges we face, and the potential for structural change.

### **ONLINE SCREENINGS OF 'INVISIBLE HAND'**

Critics call the new documentary *INVISIBLE HAND* a “paradigm shifting” story. A Public Herald Studios production, it is narrated by executive producer, actor, and advocate Mark Ruffalo. “People are adapting to these perils in daring and creative ways—and winning,” says Ruffalo. “*INVISIBLE HAND* shows how to fight the forces that put profit above all else while addressing the root cause of our flawed system.” The film explores the global Rights of Nature and community rights movements, including CELDF’s work in Grant Township, PA and Toledo, OH. CELDF’s Markie Miller, Tish O’Dell, Chad Nicholson and Ben Price are featured. We can help you organize a screening and Q&A for your community. Contact [info@celdf.org](mailto:info@celdf.org).