



CELDf

**COMMUNITY
ENVIRONMENTAL
LEGAL DEFENSE FUND**

**COMMUNITY RIGHTS
DO-IT-YOURSELF
GUIDE TO LAWMAKING**

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COMMUNITY RIGHTS DO-IT-YOURSELF GUIDE TO LAWMAKING

INTRODUCTION

This DIY guide is intended to provide you with practical background and strategic information on how to implement health, safety, and welfare solutions to the unique problems facing your community. Over the last 20 years CELDF has worked with hundreds of local community groups and elected officials who have decided the need to engage in local lawmaking to defend and enforce the rights of the community. This strategy is the hallmark of the Community Rights Movement that's reaffirming the rights of people and ecosystems, and communities' right to local self-government, and elevating them above corporations. Community Rights lawmaking respects the base level protections for civil rights and liberties for human beings ("natural persons") established by state and federal governments while embracing local governments' inherent right to democratically raise the level of those protections. Such powers of local governments, by way of wrongly conceived legal doctrines, are currently being prohibited by state and federal regulations.

We recognize that significant legal doctrines currently validated by the legal system have elevated “corporate personhood” whereby corporations have illegitimately received greater constitutional protections and influence over our system of government than the American people. Communities are overwhelmingly prevented from protecting themselves from harmful corporate activities that threaten their livelihoods, health, safety, and democratic powers, and from passing policies to heighten worker, tenant and discrimination protections, or civil liberties for citizens and non-citizens alike. After more than 20 years of experience defending the rights of communities across the United States, we created this guide to educate people about the common legal roadblocks that prevent communities from protecting their resident’s and nature’s health and safety; and provide a framework of strategies to help overcome them.

The Community Rights Movement empowers activists to confront issues head-on through local lawmaking. This work mirrors the direct engagement strategies employed by people’s movements throughout American history – such as the Abolitionist, the Suffragist, the Civil Rights and LGBTQ movements – to challenge the legitimacy of unjust laws and to drive rights into constitutional law. This requires communities to independently, but simultaneously, begin challenging and deconstructing the illegitimate roadblocks that prevent them from practicing the legitimate right of local self-government.

This guide will discuss how the corporate state denies communities their right to local self-government; what people need to know to help their community or state reaffirm the right of self-governance; strategies to write effective and meaningful Community Rights laws; and how to enforce those laws. Organizations and communities across the country have engaged with this material to help solve the unique social and ecological problems facing their region. We hope that through this Community Rights Movement we can collectively advance the progress of a spectrum of issues; including those intimately affecting the environment, public health, labor, and social justice.

This guide is for educational purposes only and is not intended as legal advice



CONSTRUCTIVE ACTIVISM TO REDEVELOP DESTRUCTIVE SYSTEMS

Our governmental system – and the corporate elite who greatly influence it – wants us to negotiate for our inalienable rights within a confined box of “allowable remedies.”¹ Under this system of law, your community is confined to enforcing the state and federal regulations that were likely influenced and written by corporations; challenging the permits that are issued to corporations by the state; lobbying regulatory agencies to actually enforce state and federal regulations that are sometimes ignored; and/or working with corporations to get voluntary agreements. This system shields corporations from democracy.

We use the analogy of a steam engine to talk about this model of activism. Residents are the train, building up steam power as they write letters to elected officials, make public comments, and attend rallies. The fire gets stoked and the pressure builds, but instead of that energy being used to stop the harmful activity, the box of “allowable remedies” acts like someone pulling the pressure release valve. The steam rushes out of the stack, pressure is relieved, and the train goes nowhere.

¹ See box of “allowable remedies” on page 17.

Grassroots Community Rights Movements

Here begins the process of America's decolonization from the corporate state. The goal of the Community Rights movement is to deconstruct the illegitimate legal doctrines that have become oppressive and detrimental to the rights of the people, their communities, and the environments on which they live. The Community Rights movement promotes an analysis that has emerged from a deep understanding of the legal system, and the application of organizing strategies that embrace local law-making.

Before CELDF began engaging the Community Rights strategy, they spent years winning cases within the rigged regulatory system by appealing state permits issued to legalize harmful corporate projects. Their "successes" were rewarded by Vice President Al Gore, who invited CELDF to the White House. As years went on, CELDF looked backed and realized the permits they had defeated in court were later corrected and reissued, leaving no other "allowable" course of action. CELDF grew frustrated seeing time and again that winning permit appeals did not stop harmful corporate agendas!

Terminology to Note: Regulatory Capture

An economic theory which states that regulatory agencies may come to be dominated by the industries or interests they are charged with regulating. The result is that the agency, which is charged with acting in the public's interest, instead acts in ways that benefit the industry it is supposed to be regulating.

This is when CELDF, and its partner communities, decided to forge a new path, one that doesn't beg for constitutional rights; but asserts them.² CELDF rejects the idea that regulations stop harm. The regulatory system was set up to legalize the harm done by corporations as well as to remove their exposure to being sued and held accountable.

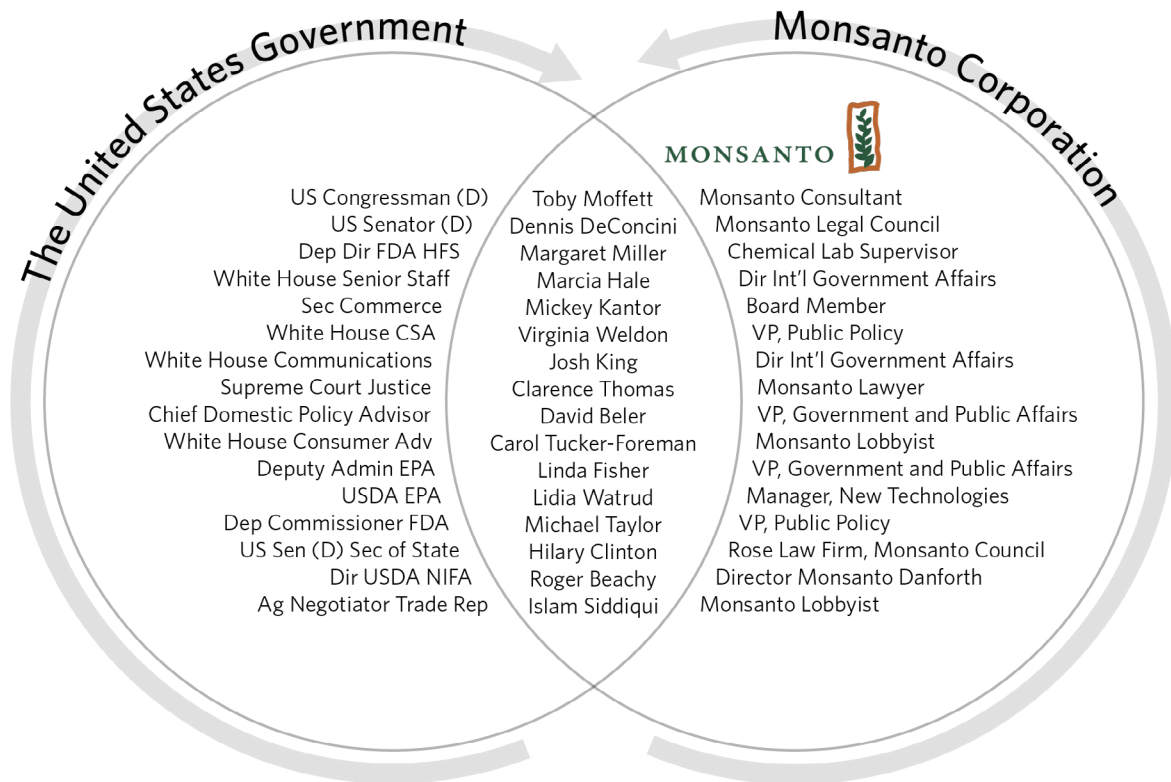
Within our democratic republic, and under a federalist form of government, when we exercise the rights we know we have, it creates a space for them to be realized. Obedience to just law is important, and most of us would agree it's one of our civic duties to obey the laws – the social contract – of society. However, when governments that have been created to secure and protect our rights instead begin to establish laws that protect the rights of multi-national corporations and the wealthy over the civil and political rights of We the People, we have to question the legitimacy of some of those laws and the governmental structures that create them.

This type of activism is about changing and expanding the frameworks of our community's civil, political, and environmental rights. It requires communities to independently, but simultaneously, begin challenging and deconstructing the illegitimate and unjust roadblocks

² Thomas Linzey, Keynote Address, Public Interest Environmental Law Conference (2013), available at <https://vimeo.com/61778883> [<https://perma.cc/5W3F-TVKK>]

that prevent democratic governance that upholds civil, political, and environmental rights (including rights of ecosystems) as its top priority.

THE GOVERNMENTAL/CORPORATE “REVOLVING DOOR”



“One has not only a legal but a moral responsibility to obey just laws.

Conversely one has a moral responsibility to disobey unjust laws”

– Dr. Martin Luther King, Jr.

Starting a Community Rights Movement in Your Community

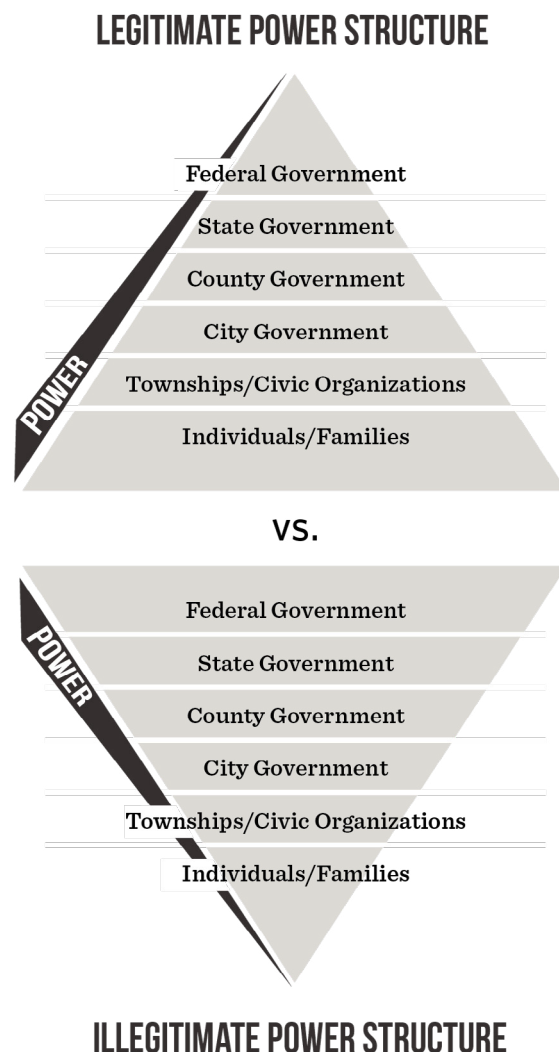
The Community Rights Movement is taking shape in many different forms across the country.

- Lincoln County, OR recognized Rights of Nature while banning corporate aerial pesticide spraying;
- Spokane, WA, voters proposed—and almost enacted—a law increasing worker civil rights;
- Denver, CO, residents voted on an ordinance to elevate new civil rights of people experiencing homelessness;
- Toledo, OH, residents passed a law to protect Lake Erie and their drinking water;
- Youngstown, OH, submitted a ballot initiative to ban corporate campaign contributions;
- the White Earth Band of Ojibwe in Minnesota recognized enforceable water rights of a sacred wild rice species;
- Grant Township, PA, enacted an ordinance and subsequently a local home rule charter to prohibit the disposal of toxic fracking waste water.

[See Appendices for the language of some of these laws.]

Strategically, the Community Rights movement means creating a new system of government from the ground up:

- First, our communities and our states, must recognize that the people, communities, and nature – in each municipality – have rights to health, and well-being, and the authority to prohibit activities that violate those rights.
- Second, our communities and our states must secure those rights in local jurisdictions across the country using their local lawmaking power; and modifying the rights and duties of corporations and other business entities that interfere with the fundamental rights of people, communities, and nature.
- The third part is to make it clear that people can **ONLY** use their lawmaking power to enact local laws that create **GREATER** protections for people, communities, and nature, (raise the “ceiling” of protections) **NOT** to restrict or weaken fundamental rights (lower the state and federal “floor” of protections).



Steps for Beginning a Community Rights Movement in Your Community

1. Identify a problem that is or is about to threaten the health, safety, and welfare of your community.
2. Find and meet with others in your community who are also concerned about the threat. Define the broad problem statement. Many people begin with the immediate threat: “there is a toxic waste dump coming into our town and we don’t want it.” Help people get to the deeper, structural problem: “why can’t we just say no to a corporate harm?”
 - Creating a local Community Rights group is an essential aspect to achieving the following steps.
 - It’s important to build and start with a group of people who understand and believe in their power, and their right, to local self-governance.
 - It’s also important to build and start with a group that understands the roadblocks and legal hurdles the Community Rights Movement is directly challenging.
 - ◆ This DIY Guide, CELDF’s “Common Sense”³ organizing guide, and “Democracy School”⁴ are great resources to build and create informed and empowered community action groups.
3. Using this guide’s *Knowing Your Rights is Knowing Your Jurisdiction* chapter, decide what level of government you want to utilize to assert your community’s rights. There are a number of factors to consider for this step; this chapter lists a number of pros and cons of initiating a Community Rights law for each level of government.
4. Using this guide’s chapter on *Techniques for Writing Community Rights Laws*, have your group draft a law that will get to the root of solving your community’s problem. Try to have various people in your group design their own law, and then compare, debate, edit, and merge the best drafts together. The actual writing of the law is extremely important because your local government’s attorney and legal counsel will likely not fix any problems in your law but will often, along with other corporate interests, use the problems as excuses to prevent the passage of the law. Unfortunately, the legal counsels for most local governments – trained to be comfortable in the box of the “allowable remedies” – often become roadblocks to your local Community Rights law; not supporters. Their job is to

Community Rights Topics

- *Bans on pipelines*
- *Bans on toxic trespass*
- *Bans on factory farms*
- *Bans on GMO’s*
- *Right to fair elections*
- *Police accountability*
- *Water protection*
- *Self-government*
- *Rights of Nature*
- *Worker bill of rights*
- *Home rule charters*
- *Etc.*

Endless Possibilities!

³ CELDF’s “Common Sense” Guide:

<https://celdf.org/wp-content/uploads/2015/08/CommonSense-3rd-edition-July-2018.pdf>

⁴See page 10 of this DIY Guide for details

keep the local government from getting sued in the short term, not to build a legal system that can sustain long term social and environmental justice.

- Although not necessary, due to the extreme importance in the wording of the law it may be beneficial to seek out legal support to fine-tune your law before continuing to the next step. Contact CELDF, or another public interest law firm that is not afraid to operate outside the box of “allowable remedies.” Start by inquiring with attorneys who are part of the National Lawyers Guild.
 - By drafting the Community Rights law early in the process (written in a way that actually would solve the problem facing your community) it will help your group attract the support of others by exemplifying what your group is hoping to achieve.
5. Get the word out about the threat facing your community and your Community Rights solution! No matter which law enacting strategy your group chooses you will need the community’s awareness and support to make it happen:
- Have people in your group give presentations to other groups and organizations in and around your community to help build a coalition of support:
 - ◆ Watch/show CELDF’s Community Rights “Primer” video.
 - ◆ Have those groups sign official resolutions of support and have them email the resolution to you and their elected officials.
 - ◆ Compile a number of groups’ resolutions and use them as leverage to get your elected officials to support your Community Rights law.
 - ◆ Often neighboring community members who lack the support to start a Community Rights campaign on their own, will support your efforts, knowing your groups actions will help normalize the movement. This normalization creates political momentum that makes it easier for other Community Rights campaigns to emerge and succeed.
 - ◆ Contact CELDF to host a Community Rights Workshop or Democracy School in your community (see page 9 for details).
 - Have your group draft a concise and informative email about what your group is trying to do, and then have everyone in your group send it to others in and around your community, including your elected representatives.
 - Tell and inform others to tell and inform their local elected officials about the need for the Community Rights law.
 - Host a community forum on the issue and advertise the event in your community’s newspapers, online forums, or leaflet neighborhoods.

Expanding Community Rights

*Since 1999, 200+ communities
in twelve states have passed
Community Rights Laws.*

Join the Movement!

*Click to watch CELDF’s
Community Rights Primer:*



6. Depending on your jurisdiction, and the law-making approach your community group decides to pursue, the organizational and political steps will vary, but successful results will resemble one of the following:
 - The law is introduced and the legislative body votes to approve the law.
 - The law is introduced, and the legislative body moves to make the law – or constitutional/charter amendment – a ballot measure to be voted on and passed by a majority of voters in their jurisdiction.
 - Citizens gather enough valid signatures through your jurisdiction’s authorized ballot initiative process to get the law – or constitutional/charter amendment – on the ballot to be voted on and passed by a majority of voters.
 - The community designs its own process for legitimately creating a new system of government. [Don’t laugh, it’s what the U.S. constitution framers did in Philadelphia in 1787.]
7. No matter which route your community group chooses, maintain open communication and democratic decision-making at every turn, and never back down or give up your rights! Freedom is not free! Challenging the status quo is hard work and takes dedicated community members to make it happen.
8. If your Community Rights campaign was unsuccessful, learn from the experience and try again. The illegitimate and oppressive legal doctrines we are living under took hundreds of years to develop, and it will naturally take time to change the minds, attitude, and governmental structures to fix them.
 - Elect new officials who explicitly support Community Rights efforts and question the legitimacy of “corporate personhood” and the other problematic legal doctrines.
 - Work to change any unforeseen laws, procedures, or governmental policies that stood as roadblocks for your group’s Community Rights efforts.
9. If your Community Rights efforts were successful, hold your elected officials accountable for enforcing the law. Encourage and rally political support for elected officials willing to support the Community Rights Movement. This will encourage others to run on Community Rights platforms. Help neighboring communities pass Community Rights laws, or work to pass Community Rights laws at a higher level of government.
10. Build a Community Rights Network. Educate neighboring communities about the Community Rights Movement and work with those residents to adopt sustainable solutions that make practical sense for the people who live there. The Abolitionist, Suffragist, and Civil Rights movements were not successful the first time, nor was success achieved by one community understanding the problem. These successful grassroots movements – that made national systemic changes – came from the relentless, and widespread activism, from individuals who knew they were challenging an illegitimate and immoral governmental system. Just as we are.

Conclusion

While each community's rights issues may be different, the DNA of these Community Rights laws is the same: the recognition of a right to local community self-government and the right to strengthen the floor of rights protected by state and federal government. Communities are stepping forward to determine a future of their own making: A future that is not determined by an out-of-town corporation or elected officials far away – but instead by the people who live there.

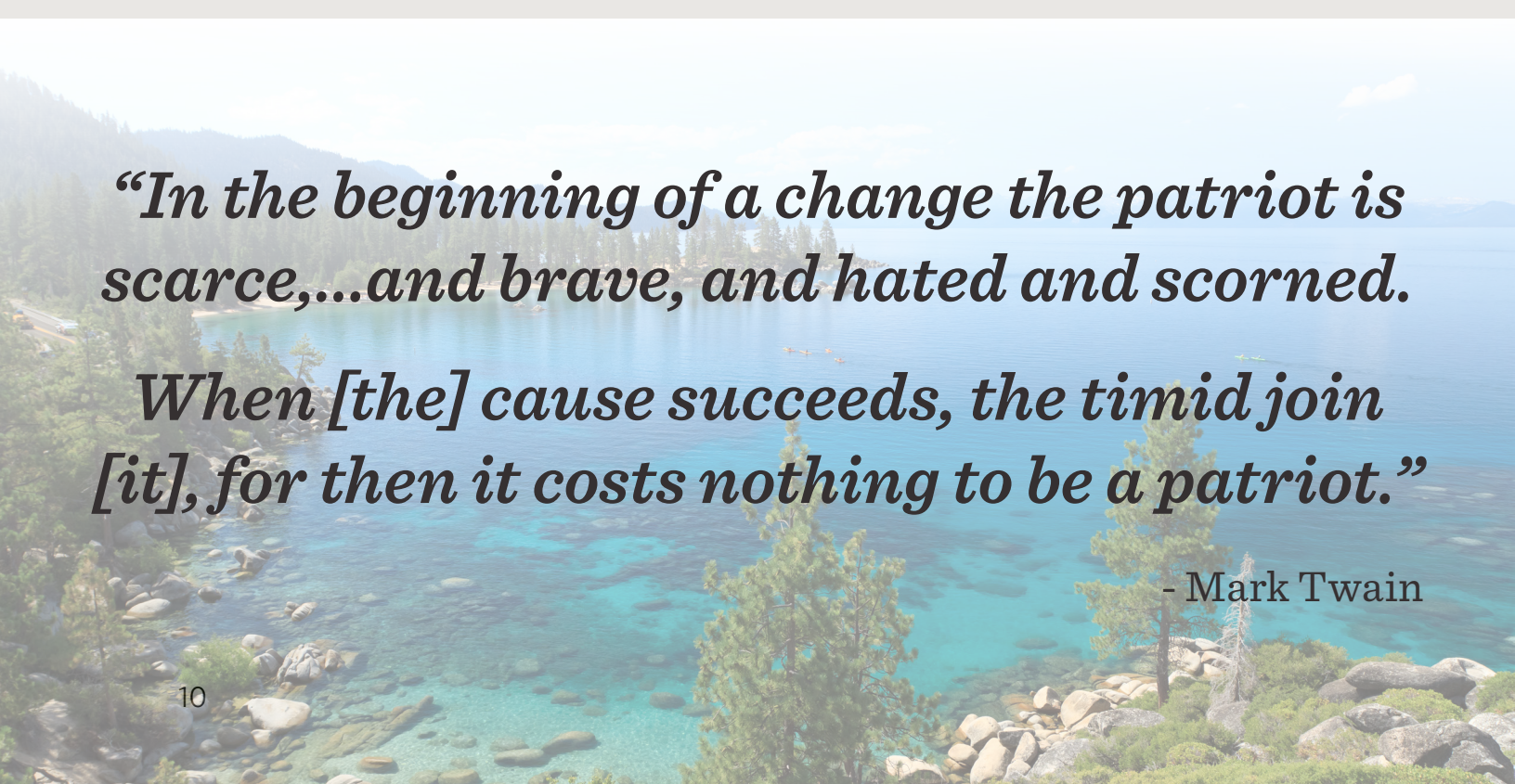
Communities are realizing that the current system and structure is not going to save them or protect their children's future. They are remembering that all power is inherent in the people. These realizations are necessary for us to begin the real work of creating a government that works for people, and nature that sustains all life. We hope the following chapters of this DIY guide will help you and your neighbors create the community you envision by using the Community Rights strategy. As more and more communities make the change locally, the change will be forced up to the state and federal levels.

Host a Democracy School for the members of your community group!

CELDF has taught over 200 Schools in 24 states, graduating nearly 3,000 participants. Participants include many first-time activists, concerned citizens, lawyers, funders, and local elected officials. Democracy School has opened the way for a peoples' movement that reactivates cities, villages, and townships to drive Community Rights into local law, codifying our right to local democratic self-governance and the Rights of Nature.

To learn more and sign up go to:

celdf.org/how-we-work/education/democracy-school/



“In the beginning of a change the patriot is scarce,...and brave, and hated and scorned. When [the] cause succeeds, the timid join [it], for then it costs nothing to be a patriot.”

- Mark Twain

Consent of the Governed

Many state constitutions¹ still echo the principles this country was founded upon:

"That all Government of right originates from the People, is founded in compact only, and instituted solely for the good of the whole; and they have, at all times, the inalienable right to alter, reform or abolish their Form of Government in such manner as they may deem expedient."

- Maryland Constitution: Art 1 Sec 1

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

- Idaho Constitution: Art 1 Sec 2

"Government is instituted for the security, benefit and protection of the people in whom all Political Power is inherent, together with the right to alter, modify or reform such Government whenever the public good may require it."

- Minnesota Constitution: Art 1 Sec 1

"All political power is inherent in the people[.] Government is instituted for the protection, security and benefit of the people; and they have the right to alter or reform the same whenever the public good may require it."

- Nevada Constitution: Art 1 Sec 1

"All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require."

- Utah Constitution Art 1 Sec 2

"All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed."

- Wisconsin Constitution Art 1 Sec 1

"Natural rights inherent in people. We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper."

- Oregon Constitution: Art 1 sec 1

"All political power is vested in and derived from the people: all government of right originates with the people, is founded upon their will and is instituted solely for their good. . . The people of the state have the sole and exclusive right to govern themselves. . . All persons are born equally free, and have certain natural, inherent and inalienable rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of seeking and obtaining safety and happiness."

- New Mexico Constitution Art 2 sec 2-4

CHALLENGING FOUR MAJOR LEGAL DOCTRINES

CELDF has identified that there are four major legal doctrines that courts have developed over the last two hundred years – heavily influenced by corporate lawyers – that have been used to prevent people from democratically raising standards for civil, worker, environmental, and human rights within their own communities. These doctrines have been created by the courts and can be deconstructed through cultural change and the will of the people. The future will demand democratic and diverse solutions in responding to ecological damage, new commitments to civil and human rights, democratic intervention into the economy, and a basic re-balancing of worker and constitutional rights against the rights of corporations. It is essential that people fighting for their community link their efforts to strategies that drive systemic changes in constitutional law.

The Four Anti-Democratic Legal Doctrines

Our political, justice, and environmental systems are in a state of emergency. In order to protect people and nature, community and environmental activists must stand together to redevelop – from the ground up – these four legal doctrines that are primarily responsible for our current system’s dysfunction.

1. “Ceiling Preemption”

The Current Problem: Preemption can be divided into two categories: “floor preemption” and “ceiling preemption.” Floor preemption is where the federal or state government sets a minimum level of protection for civil rights, health, and safety. For example, the federal minimum wage sets a minimum wage floor that state and local governments cannot lower – but it doesn’t preempt them from setting higher minimum wages. Floor preemption is NOT the problem.

Ceiling preemption, on the other hand, is where the federal or a state government sets a cap – a ceiling – on how much state or local governments can protect people’s civil rights, health, and safety. About half the states have minimum wage laws that prevent local governments from enacting higher minimum wages, for example. Many state environmental regulations expressly prohibit local governments from enacting more protective environmental laws. Today, ceiling preemption prevents the governments that are closest and most influential in the lives of the people from deciding how to best protect their residents’ civil rights, health, and safety.

The Community Rights Solution: The legal doctrine of “ceiling preemption” needs to be challenged and abolished. All governments should constitutionally recognize and secure the right of a community to choose how to best protect the civil rights, health, and safety of its citizens. Federal and state governments should continue to establish the minimum level of those protections, but they should not dictate the maximum level for those protections if a community wants greater rights, health, or safety protections for people and ecosystems. This doctrine’s redevelopment would require the courts or the people to reinterpret the “supremacy clause” in cases involving state or local laws that increase the protection of their citizens civil rights, health, and safety from the federal minimum standard. (The

Supremacy Clause

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.”

– U.S. Constitution, Article 6, Clause 2

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

– 9th Amendment

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

– 10th Amendment

“supremacy clause” means federal laws “made in pursuance” of the constitution reign supreme over all other state and local laws.) The 9th and 10th Amendments of the U.S. constitution offer additional constitutional justification for softening the “supremacy clause.” Already, the courts recognize that state constitutional rights protections can be more expansive than the protections in the U.S. constitution. Our rights in the U.S. constitution are the floor, and state constitutions can expand above that floor. Thus, the courts already have a framework for local governments to provide for more expansive protections for people and nature’s rights at the local level.

2. *“Dillon’s Rule”*

The Current Problem: This judge-created rule from 1868 determined that local governments should be legally treated as “children” of the State. This means communities only have the power to do what the State specifically authorizes them to do. In cases that question whether or not local governments have a certain power under state law, Dillon’s Rule’s established the default answer of “no,” thus denying local government power to take actions needed to protect the community.

The Community Rights Solution: The right of local community self- government is a foundational concept in our legal system. Dillon’s Rule undermined this right. In response, late Nineteenth Century reformers pushed for adoption of “home rule,” but modern “home rule” powers for local governments have proven insufficient in preventing even the most egregious examples of ceiling preemption in the nation, for example.¹ Since the home rule movement, courts have interpreted it as narrowly as possible, which means that courts still allow the state legislature to interfere with local lawmaking, like through enacting ceiling preemption laws. We need to reassert the lost right of local community self-government and require the courts to recognize local governments’ role within a system of government that distributes power between federal, state, and local lawmakers.

3. *“Dormant Commerce Clause” and “Contracts Clause”*

The Current Problem: The Commerce Clause was originally intended to federally prohibit states from taxing goods coming from other states. It was a leading factor in the development of the United States constitution. Basically, the U.S. constitution created the first free-trade area. But out of Congress’ power to regulate commerce, the courts have developed a legal doctrine called the “dormant commerce clause” that says that sometimes Congress has exclusive power to regulate commerce, and state and local governments may not “discriminate” against commerce from other states. Thus, for example, New Jersey cannot prohibit importation of garbage from New York and Philadelphia, because garbage is “commerce.” The dormant commerce clause prohibits prioritizing local products or importing harmful goods from other locations. Another key constitutional clause is the “contracts clause.” Early in the Nineteenth Century, the United States Supreme Court interpreted the contracts clause to apply to corporate charters. Essentially this treated corporations and states as equal

¹ Hugh Spitzer, “Home Rule” vs. “Dillon’s Rule” for Washington Cities, 38 SEATTLE U. L. REV. 809 (2015), available at <https://digitalcommons.law.seattleu.edu/sulr/vol38/iss3/2/>

parties in a contract to create the corporations, thus turning state-created corporations into co-equals with the states. This interpretation continues to be a barrier to state control over corporate activities by preventing states from annulling corporations when they no longer serve the public good.

The Community Rights Solution: The power and meaning of the Commerce Clause has illegitimately expanded through decades of court decisions without amending the constitution. This means its power and meaning can also be restricted without amending the constitution, if We the People demand it. While a community may still be constitutionally prohibited from taxing the importation of eggs or steel from a neighboring state, by no means should Congress be allowed to use the Commerce Clause to prohibit a community from protecting things like their limited water supply from being extracted, or polluted by a multi-national corporation. It's only when communities and states pass and enforce laws that explicitly challenge absurd and illegitimate interpretations of simply-written constitutional clauses, that We the People will regain their true authority within their government structure.

4. *"Corporate Personhood"*

The Current Problem: Corporate lawyers over the last hundred years have manipulated the 14th Amendment's "equal protections clause" and "due process clause"– designed to protect newly freed American slaves – to create civil rights for corporations. This has empowered corporations to not only sue local governments for violating the Commerce Clause when they attempt to regulate business activity for the health and safety of their residents, but now corporations can sue local governments for violating their civil rights. Corporations now regularly claim that local laws violate their Bill of Rights protections and sue – or threaten to sue – local governments for damages caused by local laws that limit their corporate freedoms.

The Community Rights Solution:

Here again, the power and meaning of "corporate personhood" has expanded through decades of court decisions without amending the constitution. This means its power and meaning can also be restricted without amending the constitution; if We the People demand it. Nowhere in the 14th Amendment does it mention the rights of corporations. Corporations are created by the state, and should be required to respect people's rights, not the other way around. This is why communities and states are passing laws that rightfully ignore the concept of "corporate personhood" by declaring that large corporations do not have equal protection under the law as "natural persons" (see example on following page).

"Due Process" & "Equal Protection" Clauses

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

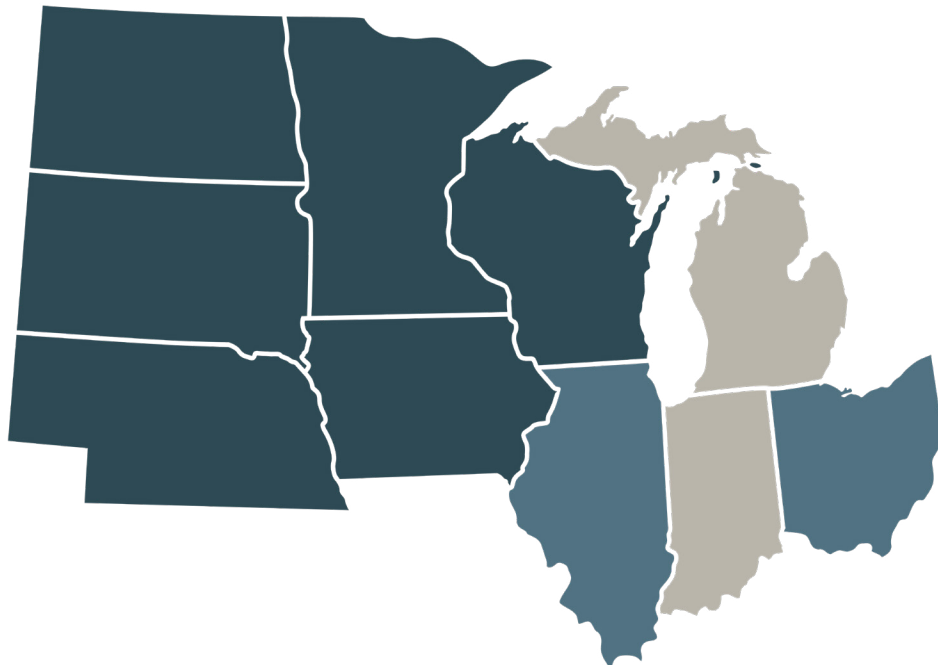
**- U.S. Constitution,
14th Amendment, Section 1**

North Dakota Farm Bureau v. Stenehjem (2018)

In 2018, a group of corporations challenged North Dakota's 1932 anti-corporate farming law. The law was passed to keep farming activity in the hands of local family landowners instead of large and multi-national corporations.

After a judge's recent ruling, Attorney General Wayne Stenehjem, who was defending the law in court, said that North Dakota's law had been upheld with no fundamental changes in how his office would enforce it. Stenehjem continued by saying, "[We] will continue to permit qualifying family corporations to take advantage of the family farm exception." This exception to the general ban on corporate farm ownership dates back to 1981. To qualify, family members in the corporation must be within a "certain degree of kinship," and at least one of the shareholders must be "residing on or operating the farm or ranch."

STATE-LEVEL RESTRICTIONS ON CORPORATE FARMING AND/OR FOREIGN OWNERSHIP OF LAND



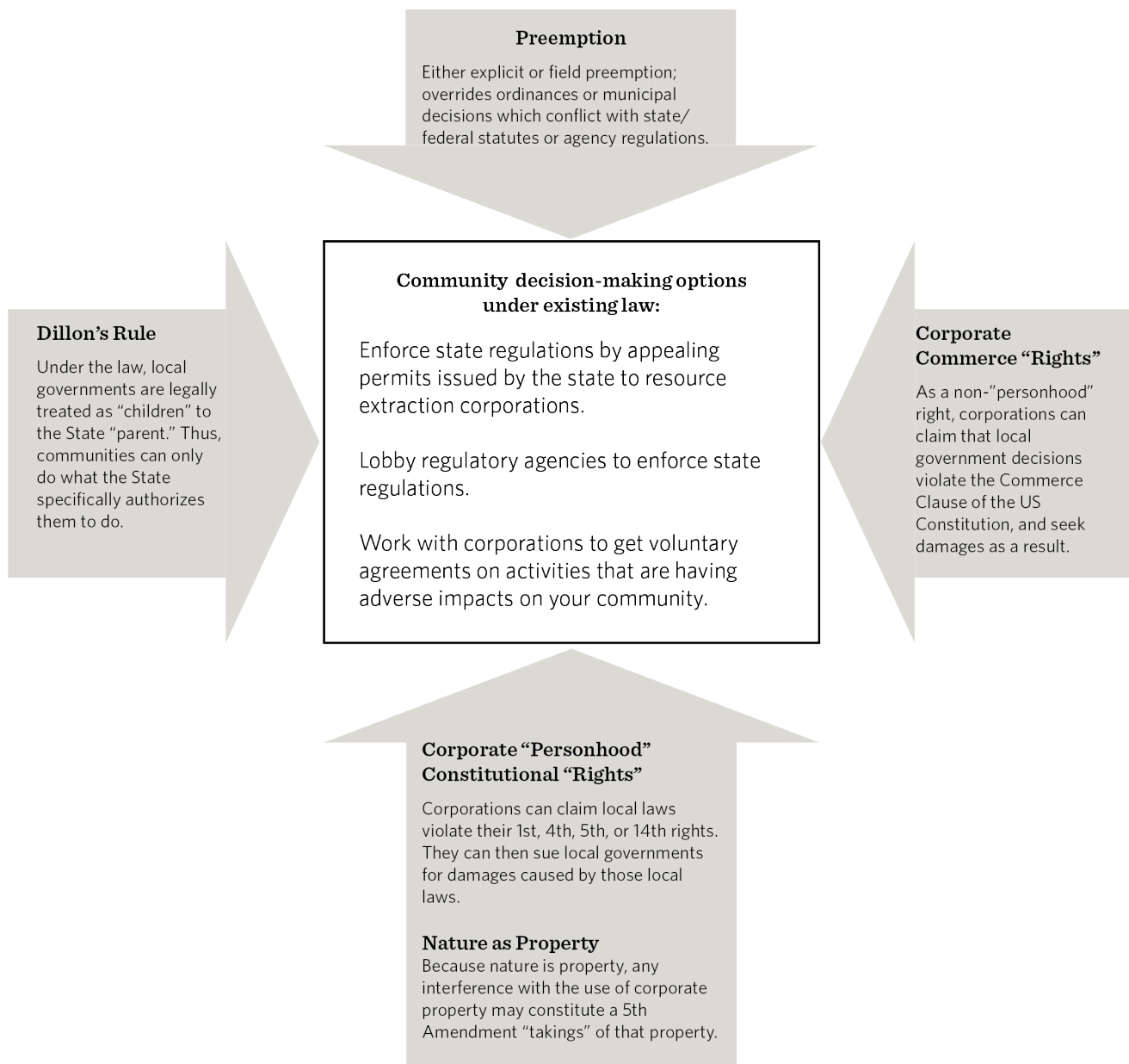
- Restrictions in place on corporate farming and foreign ownership
- No restrictions in place on corporate farming; foreign ownership allowed but reporting required
- No restrictions in place on corporate farming or foreign ownership

Four Sides of a Box to Confine Our Activism

Currently, the big four legal doctrines mentioned above trap you and your community in a box of what you are allowed to demand as a community activist. The Community Rights strategy of activism developed out of recognizing how and why many conventional forms of community activism that appeal to government agencies and regulatory processes, have failed. Here is how the big four legal doctrines are applied to restrict the rights of you and your community:

THE BOX OF “ALLOWABLE REMEDIES”

The major legal doctrines which dictate the scope of allowable community-level decision making.



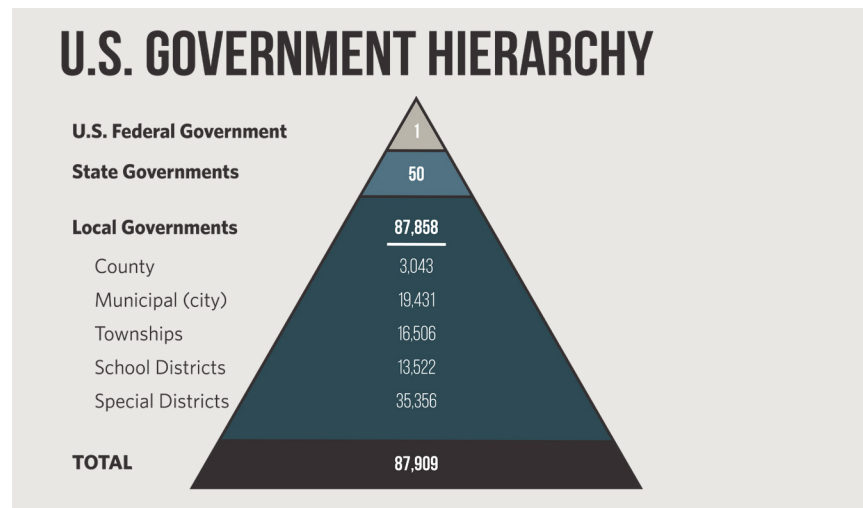


KNOWING YOUR RIGHTS IS KNOWING YOUR JURISDICTION

This chapter will walk you through all the pros, cons, and strategies you should know before choosing to enact a Community Rights law in your community.

What Level of Government Should Enact a Community Rights Law?

Deciding what level of government to enact a Community Rights law is an important first step, and one that's dependent on a number of factors. Generally speaking, the degree of public support needed, and the intensity of organizing both increase the larger the level of government you choose. Moreover, the larger the level of government that enacts a Community Rights law the more effect and influence it has.



Here are the different levels of governments, the types of law associated with their authority, and the pros and cons of approaching a Community Rights law at each level.

1. Municipal Level (village, town, township, borough, city)

This is the smallest level of general-purpose government and is likely the most accessible and accountable to the wants and needs of you and your community. Laws at this level are called ordinances. Some municipalities have their own constitutions, called charters. Here are the pros and cons of passing a Community Rights ordinance, charter, or charter amendment at this level:

Pros:

- The legislative body (the people that make the laws) live close, they likely see or experience the same harms you do, they have less constituents (the people they serve) than law-makers at other levels of government; thus they should be much easier to meet with, understand, and act on the issues your group is concerned about.
- The voters – your neighbors, friends, family, colleagues, peers, and fellow community members, likely see or experience the same harms you do, likely trust the opinion of a local resident over someone from out of town, and have a vested interest to protect the community from threats; thus there is a greater likelihood enough of them would join or support your groups efforts to pass a Community Rights law.
- The Community Rights Movement is based on democratic principles, which means your group needs to convince either the majority of the members of the legislative body (e.g., the town supervisors, trustees, or the city council), or the majority of the active voters to support your Community Rights law. This level of government has the fewest residents your group will have to persuade compared to the larger levels of government; thus, the outreach strategies needed to gain the majorities support is likely easier, and less expensive than other levels of government.

- Municipalities are likely the easiest areas to enact Community Rights law, or at the very least build the momentum for one. Even if unsuccessful at this level, your community's residents, and the residents of neighboring communities are often shocked and emboldened after seeing government officials denying rights they believed they had. This builds the momentum that supports the passage of Community Rights laws at this level or higher levels of government.
- The majority of residents in municipalities often have similar core values and beliefs systems that the city as a whole embodies. Creating Community Rights laws that are entrenched in your community's belief systems helps gather the support needed to move them through the enactment process.

Cons:

- Passing a Community Rights law at the municipal level will protect the least amount of people, territory, and ecosystems compared to other levels of government.
- Municipal governments are at the bottom of the perceived hierarchy of governments and thus elected officials often are convinced Community Rights laws are outside their authority. They believe their "hands are tied" by the state and often use this as an excuse to not support a Community Rights law.
- Municipalities often have very few extra resources to spend on administrative policies and enforcement. Any law that requires the extra expenditure of money will likely be viewed negatively.

2. County Level

Counties (called "boroughs" in Alaska and "parishes" in Louisiana) are the intermediate level of government between the state government at the top, and the municipalities at the bottom. Counties often have a number of different municipalities within their jurisdiction and govern over a larger number of people. Many counties often operate like miniature state governments in the sense that both the legislative branch (the law-makers) and the executive branch (the chief law enforcement officer, the sheriff) are both elected and accountable to the people. County laws are also called ordinances, and many counties have charters as well. Here are the pros and cons of passing a Community Rights ordinance, charter, or charter amendment at this level:

Pros:

- Enacting a Community Rights law at the county level would have the potential of protecting a lot of people, territory, and ecosystems.
- Members of the legislative body at the county level still live relatively close (especially your particular representative) and they likely see or experience the same harms you do; they usually have few enough constituents that they can remain relatively accessible to meet and speak with residents; thus they should be easier to meet/speak, understand, and act on the issues your group is concerned about. This is especially true

– like elected officials at all levels of government – if they hear about that same issue from many of their constituents.

- As an intermediate level of government, you may find elected officials more emboldened to reaffirm their jurisdictions right to local self-government.
- Counties create excellent staging grounds for moving Community Rights laws up to the state level of government. Creating Community Rights chapters in multiple counties in a single state provides the legitimacy and political capital that encourages those with political ambitions to run on Community Rights platforms.
- The county sheriff – in most jurisdictions – is the highest-ranking executive officer in a county’s jurisdiction and has a number of unique powers and responsibilities that can be beneficial to supporting a Community Rights ordinance. Most sheriffs are elected and thus (supposedly) directly accountable to the people they serve. They swear an oath to support not only the federal constitution but also the state constitution. They are prohibited from being forced to comply or enforce federal regulatory or administrative programs (known as the anti-commandeering doctrine). Thus, the independence, and direct accountability to the people allows a county sheriff to play a pivotal role in protecting, promoting and enforcing Community Rights laws.

The following states already have statewide Community Rights Networks:

- *Oregon (ORCRN)*
- *Colorado (COCRN)*
- *New Hampshire (NHCRN)*
- *Pennsylvania (PACRN)*
- *Ohio (OHCRN)*

Cons:

- Unlike municipal governments, a county’s jurisdiction can expand across a lot of land, includes a lot of natural resources, which often leads to very interested and powerful special interest groups that compete for access to those resources. This means the voice and perspective of your community group will be weighed against promises of (short-term and unsustainable) economic development, job creation, and surpluses for the county budget. This is where the members of a county’s legislative body often divide on the best route to choose. Moreover, this is where Community Rights groups have difficulties activating enough residents to persuade their representatives to prioritize a Community Rights law over shortsighted economic promises.
- Many counties have sharp political divides which – depending on your community group’s issue and messaging – can create difficulties in getting the majority of residents or members of the legislative body that are needed to pass a Community Rights ordinance.
- As an intermediate level of government, counties attract people to work as public officials, such as Commissioner, District Attorney or Prosecutor, Sheriff, and others, who serve for many different reasons. Even with the purest motives, humans often avoid risk if they can. The thought of risking a good salary, stable job, or tarnishing

an opportunity to climb the political ladder may make some people hesitant to move outside the box of “allowable remedies” and challenge established legal doctrines. Replacing these people may be a tough but necessary task.

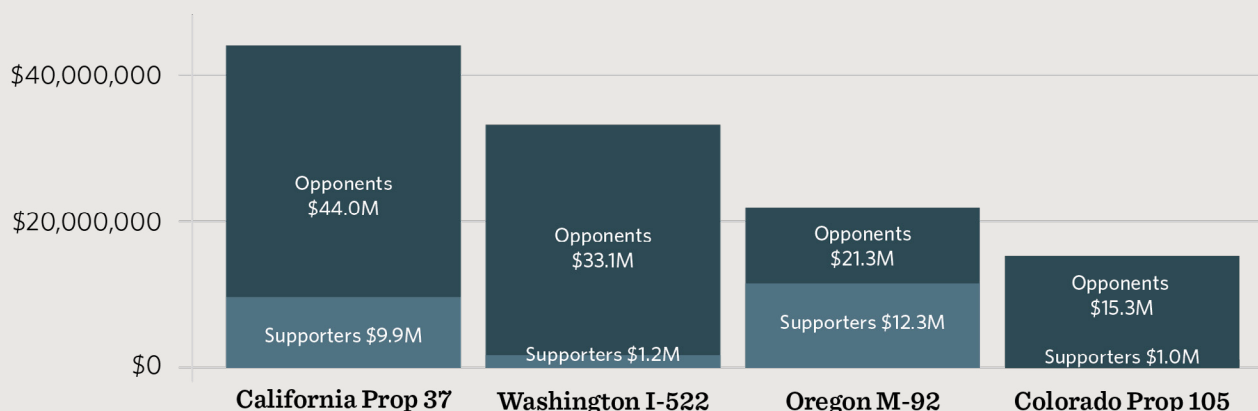
3. *State Level*

The state legislature is the legislative body at the top level of your state’s government. The state legislature is made up of a number of Representatives and Senators who represent different districts of the state. While the state legislature enacts the laws, it’s the Governor and the executive branch that is tasked with enforcing them. Laws at this level are called statutes. All statutes must comply with the highest authority of the state which is the state constitution. At this level, Community Rights organizers can choose to enact Community Rights statutes and/or add a Community Rights amendment to the state constitution (see page 21 for more info). Here are the pros and cons of passing a Community Rights statute or constitutional amendment at the state level:

Pros:

- Enacting a Community Rights statute protects the most people, territory, and ecosystems possible in your state.
- By passing a Community Rights statute it sends a clear message to Congress, the courts, and to corporations that the people are reclaiming their rights and taking back control from an illegitimate system.
- States that pass Community Rights statutes empower other states to do the same while creating a template for others to follow.
- Community Rights statutes empower the state’s residents to pass other Community Rights laws designed to protect their health and safety.

\$138M CONTRIBUTIONS TO GMO LABELING BALLOT MEASURE CAMPAIGNS, 2012-2014



- The ideals behind the concept of “laboratories of democracy” is realized and tested when states pass Community Rights statutes that allow their residents to create constitutional governments that best suit their specific needs.

Cons:

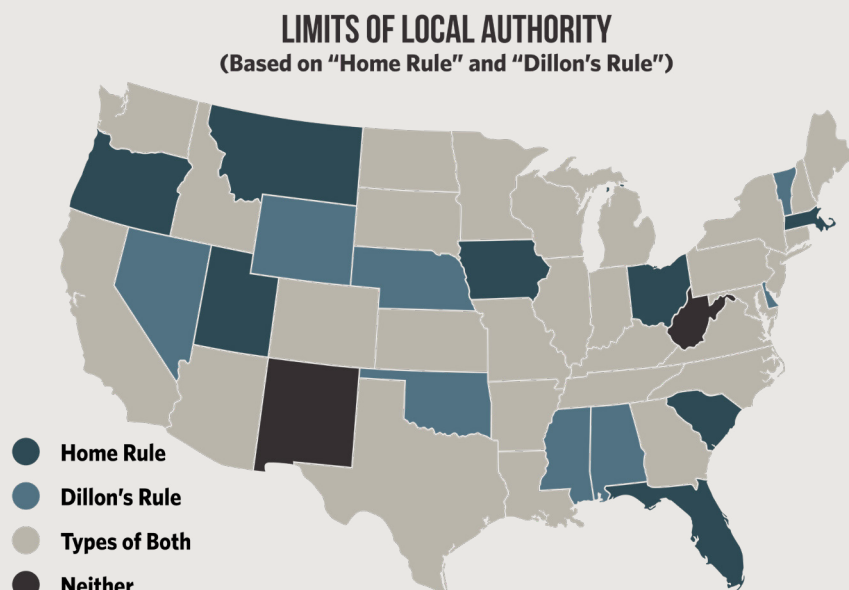
- With state populations ranging from nearly 600,000 in Wyoming to nearly 40 million in California, establishing an organizing and messaging campaign to get the majority of people and their elected officials to support a Community Rights law is a monumental task.
- It’s difficult for citizens and groups of community activists to significantly influence state officials. Often professional corporate lobbyists control the legislative agenda. This is part of the reason people in many states created initiative and referendum processes over a century ago. However, the system has manipulated the process so that today it takes millions of dollars in most states to get a statewide initiative on the ballot.
- Similar to the county level, but significantly amplified, special interest groups fiercely compete for access and use of the state’s natural resources. This means any laws proposed that prevent their access will be aggressively attacked, and these attacks will be well-funded. Countering this propaganda requires a lot of community organizing, outreach, and money.
- Attempting to directly speak or meet with state legislators is often hard to arrange due to proximity and time availability.
- Elected members of state legislatures can be easily persuaded by corporate campaign contributions, promises of (short-term and unsustainable) economic developments, job creation, and increased tax dollars for state budgets.
- State political divides are often sharp which leads to mistrust and difficulties in reaching the majority needed to pass a Community Rights law. Both in-state and out-of-state special interests utilize this mistrust in their messaging campaigns to defeat Community Rights laws. We’ve seen that the out-of-power political party is more likely to support Community Rights, but then when that party takes power, it no longer wants to divest itself of concentrated state power.
- Even more than the county level, those holding state government positions like to avoid risky political decisions that may jeopardize their position. Making well-funded special interest groups angry can have very negative effects during an official’s re-election campaign without strong support from a unified and educated constituency.

Should Your Group Attempt to Pass a Community Rights Law, Constitutional Amendment, Charter, or Charter Amendment?

Community Rights laws come in the form of municipal or county ordinances, charters, charter amendments, state statutes, or constitutional amendments. Community Rights ordinances can be passed in any general-purpose jurisdiction, but some jurisdictions may have an easier time passing, enforcing, and defending them if they are legally challenged.

Community groups can also amend their jurisdiction's home rule charter or enact a new charter if one is not already in place, to specifically acknowledge their community's right to recognize and protect the inalienable rights of humans and their natural communities over corporate entities. Amending a jurisdiction's charter – although often technically and logistically harder to do than passing an ordinance – creates a solid foundation for Community Rights ordinances to be passed. It also sends a clear message to the state and future generations as to where the real power resides. Charters can only be changed by the people, not by elected officials, so putting Community Rights in a charter shields those rights from a quick repeal by elected officials (usually at the advice of their legal counsel under threat from corporate perpetrators).

Community Rights statutes can be passed at the state level without amending the constitution, as long as the statute doesn't do something that the state constitution specifically prohibits. While the passage of a Community Rights statute would be a huge achievement, it could be repealed by the legislature if the state's political winds change course. On the other hand, the passage of a Community Rights amendment to a state's constitution – although technically and logistically much more difficult – makes the Community Rights protections the most permanent, authoritative, and meaningful possible. Community Rights amendments within state constitutions severely challenge the constitutionality of the four problematic legal doctrines. When multiple states begin inserting Community Rights amendments within their own constitutions, systemic, national changes are on the horizon.



What's the Best Way to Enact a Community Rights Law?

States, counties, and municipalities around the country have different procedures, methods, and guidelines for enacting laws. You will need to do some research on the particularities of your jurisdiction, but this section should help you identify the key search terms to investigate. This section will also provide strategies that may work best for your jurisdiction. There are three major ways laws could be enacted in your state:

1. A Law Is Passed by a Legislative Body

A proposed law is passed by the majority of the members of a legislative body.

Pros

- This is the fastest way to pass a law.
- The community learns how individual members of the legislative body feel about Community Rights laws, and then they can adjust their tactics accordingly.

Cons

- The legislative body has the ultimate authority on how the law is written, which can lead to weaker and less impactful versions of the law.
- The legislative body will be pressured by the municipal attorney who is more concerned about avoiding a corporate lawsuit than living under an authoritarian system of law.

Strategy

- Learn how many votes of approval are required by the legislative body to get a law passed.
- Help educate the legislative members about the purpose and importance of the law. You can do this by:
 - ◆ Having an ideal law already drafted.
 - ◆ Schedule a meeting to explain the law.
 - ◆ Having your Community Rights supporters contact their elected officials advocating the passage of the law.
 - ◆ Have different community/political action groups send members of the legislative body official resolutions of support for the Community Rights law.
 - ◆ Have groups of people request the passage of the Community Rights law during the public comment segment of the legislative body's public meeting.
- Learn which legislative members are most willing to support the law and double your education and outreach methods for those members. Have Community Rights supporters from those members' districts contact them to encourage their support.

- Once you think you have enough “yes” votes to pass the Community Rights law have a legislative member propose the law for a vote. Have other members available and ready to “second that motion” and vote to allow the law to be voted upon. Try to create as much public pressure as possible for this initial vote. Much of the Community Rights strategy is about creating political pressure by the people.
- On the day of the actual vote for passage of the law, make sure you again create as much publicity and public pressure as possible.
- Elected officials will attempt to deflect the passage of a law by offering to pass a “resolution.” Resolutions are only symbolic and carry no legal significance. Although you should avoid settling for a resolution, they can be used later as political capital to advance the Community Rights movement. If the elected officials pass a resolution to attempt to recuperate their image by not voting for the ordinance as their constituents demanded, keep their feet to the fire by using their rhetorical resolution as an argument for them to now enact real, enforceable law.
 - ◆ Once enough officials or jurisdictions pass resolutions acknowledging a problem, the resolutions can be used as leverage at the state level to pass a Community Rights statute or constitutional amendment.
 - ◆ Elected officials who pass resolutions are publicly recognizing a serious problem in the community. Elected officials who recognized a serious problem but then refuse to solve it by making a law or policy change, create opportunities for different candidates to replace them during their re-election attempt.

2. Legislative Ballot Measure

When the majority of the legislative body refers a proposed law to be voted on and approved by the majority of the voters. (Most states allow legislative bodies to choose to refer measures to the people. Sometimes this is called a referendum, but that word also can mean a popular vote on a law already passed by the legislative body.)

Pros

- This is faster and easier than the ballot initiative process because it does not involve signature gathering.
- Referendums are a good compromise for timid members of the legislative body. It allows them to refer seemingly controversial laws to be passed by the voters, allowing members to be shielded from any perceived political repercussions.

Cons

- Requires a lot of public outreach and education for it to pass on the ballot.
- The law must wait for the upcoming election to be passed, which allows opposition groups to gather resources to help defeat the law through propaganda campaigns.

- Even though voters get the power to pass the law, it's the legislative body who writes the law, and most likely, it will be the municipal attorney who writes it. This can lead to weaker and less impactful versions of the law. Make them refer the peoples' version to the ballot with political pressure, if possible.

Strategy

- Much of the legislative ballot measure strategy is the same as having the law passed by the legislative body. One major difference is the promotion of the idea that there is no harm for allowing the voters to decide, democracy by the people.
- Spending more time educating your community about the issues is essential before the vote.

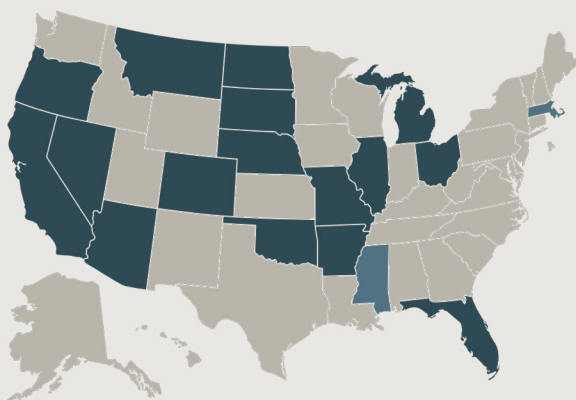
3. *Ballot Initiative*

This process allows citizens – after collecting enough signatures from registered voters – to get a proposed law or constitutional amendment on the ballot for public vote and enactment. Twenty-four states allow the ballot initiative process which is a form of direct democracy.

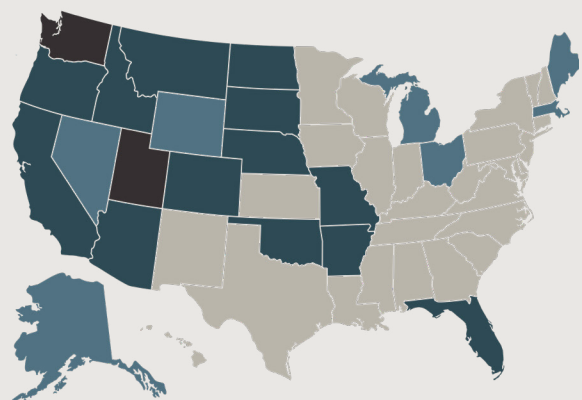
Pros

- Citizens are allowed to write the law which often allows the law to be stronger and more meaningful.
- Challenges to citizen passed ballot initiatives help expose the core issues that stem from the four problematic legal doctrines.

INITIATIVE PROCESS TO PROPOSE CONSTITUTIONAL AMENDMENTS



INITIATIVE PROCESS TO PROPOSE STATUTES



● No Initiative Process ● Direct and Indirect Initiative ● Direct Initiative ● Indirect Initiative

Cons

- A lot of volunteer time, and sometimes paid signature gatherer time, is needed to collect signatures to get an initiative petition on the ballot, and campaign for the measure to pass.
- There are a lot of legal requirements and procedures created by the state that make the ballot initiative process confusing and challenging.
 - ◆ Single subject rules
 - ◆ Valid signature quotas and petition forms
 - ◆ Validation and signature time limits
- Some state courts allow election officials to not put duly-qualified initiatives onto the ballot even after collecting sufficient valid signatures.
- Both of the above issues mean that without an attorney familiar with initiative election law in your state, the elected officials and election officials will likely stop your initiative from getting on the ballot.
- Opposition groups will campaign against passage of the law leading up to the election. If funded by corporate interests, they can usually dump several direct mailers to your neighbors before the election.

Strategy

- The strategies behind the ballot initiative process will be slightly different depending on your jurisdiction, and the level of government at which you're attempting to pass the law. Here are a few organizations to work with to help with your strategy:
 - ◆ Ballot Initiative Strategy Center
 - ◆ Local Solutions Support Center
 - ◆ A Community Rights Network, if one exists in your state.

TECHNIQUES FOR WRITING COMMUNITY RIGHTS LAWS

There are many benefits to knowing how to draft your own effective and meaningful law. First, relying on politicians or their legal counsels to draft your Community Rights law often leads to laws that are very weak and ineffective at doing what your community group had hoped to achieve. Second, by having your community group draft their own effective and meaningful law, you can use the draft law as the catalyst to help others understand both the problem and the solution because it's right in front of them. This helps elected officials, and community members alike, feel more comfortable supporting an effort when they can immediately see the end result. Lastly, by having your group write their own effective and meaningful law, based on strategies and techniques provided below, your law will not only be stronger, but your group will be able to understand and defend the reasoning for the language of its provisions.

Words matter. The words and structure of your law can make or break your chances of its passage and enforcement. The 14th Amendment is an excellent example of a seemingly straightforward Amendment, the words and meaning of which have been twisted by the courts to create civil rights for corporations by including them in the definition of the word “persons.” Because Community Rights laws are challenging the legitimacy of legal doctrines that have been slowly developed over a hundred years, they will be criticized by opponents. When the opponents say “Don’t pass it, it’s unconstitutional,” make them say why. What they really mean is “I think it is unconstitutional because it challenges well-settled law that corporations have constitutional rights and local governments are subject to any form of state interference.” That exposes the system. Politicians, even local ones, who seem to be in favor of passing Community Rights laws, will drop their support and hide behind the excuses of their legal counsels when they have the opportunity. This section is designed to help limit the manipulation of your draft law’s meaning and limiting the excuses politicians and their legal counsel have to not pass your law.

Suggestion: Reading one of the ordinances in the Appendix before reading this section of the guide may help you better understand the concepts discussed below.

Disclaimer

The following section outlines the structure of a Community Rights law and also provides basic legal drafting information. This document is providing general legal information, and not legal advice, and it should not be taken as legal advice. Consult a lawyer. However, be aware that most lawyers hesitate to advise going outside the “box of allowable remedies.”

Sections of a Community Rights Law

Below is an explanation and some model language for the sections of a Community Rights law. While this can serve as a template, do also examine other Community Rights Laws, and reflect on what makes the most sense for your community.

1. Preamble

These are the opening policy statements about the purpose and intent of the law. In legislative drafting theory, this section of the law isn't really the enforceable part of the law, so be sure not to include the actual rights and prohibitions in this section (or if you do, then include them again later in the law). Instead, this section should focus on the "why" of the law. Because this section isn't the enforceable part of the law, it doesn't have to be drafted with legal-technical precision.

For a Community Bill of Rights law, key preamble statements that should be considered are:

- Asserting that this law is enacted under the people of [the Municipality]'s inherent and inalienable right of local community self-government.
- That the right of local community self-government is necessary to ensure that government derives its just power from the consent of the governed and fulfills its purpose of ensuring peoples' inherent rights. [Don't hesitate to quote the part of your state constitution that says this. That section is most likely near the beginning of Article I of your state constitution (see page 10 for examples)]
- That the specific corporate activity or activities addressed by the law are not compatible with the people's rights, peace, safety, health, and happiness. [Include evidence as to why this is the case.]
- That the current system of government has failed its foundational duty to protect the people from this corporate harm, and that the current system of government actually authorizes this harm, against the will of the community that will suffer from this harm.
- That these parts of the current system of government are therefore illegitimate, as they no longer derive their powers from the consent of the governed and fail in their foundational purpose of protecting the people.
- That to remedy this failure, the people of [Municipality] enact the following law, to put in place a new system of government that is necessary to prevent this corporate harm and secure and protect the peoples' rights (and nature's rights if the law is environmentally focused).

2. Definitions

A definitions section is not required. It should only define key phrases in the law that are interpreted different from their typical definition or require extra explicit clarifying language about what the terms mean. This is key: if the word is used in its normal dictionary sense, it doesn't need a definition. If the word is a legal term of art and intended to be used in that

way, then it doesn't need a definition (see explanation of "person" under the "Special Words" section below). However, if the word or phrase is intended to mean something other than what it normally means, then it needs a definition.

For example, if the law uses the word "corporation" to mean any business entity (not just corporations), then include a definition like:

"Corporations" means all business entities.

If a word or phrase with a special meaning is only used once, then put the definition next to that unique use, rather than in a separate Definitions section. Don't make the reader learn a bunch of definitions and then have to flip back and forth between the Definitions section and the rest of the law while reading. The goal is to have the definition section be as short as possible (preferably no Definitions section), while still providing the clarity to make sure that the words in the law can only be interpreted the way you intend.

3. Community Bill of Rights

This is the section to spell out the actual rights the proposed law recognizes. Include rights statements to address and remedy the specific corporate harm or harms at issue in the community.

Also include rights statements asserting the people's right of local community self-government. These may include:

- All legitimate governments owe their existence to the community governed, and exist for the purpose of securing and protecting the rights of the people and ecosystems in that community. A government that is incapable of protecting the people is not legitimate, lawful, or constitutional.
- The People of [Municipality] have an innate and inalienable right and duty to abolish illegitimate governments and institute new legitimate governments based on the consent of the governed community, capable of securing and protecting the rights of the people and ecosystems in that community.
- The People of [Municipality] have the right of local community self-government, which includes the power to make laws to protect their rights, peace, health, safety, and happiness, and to enforce those laws.
- The People of [Municipality] have the right to create greater protections for human rights and ecological rights than provided by state, federal, or international law.
- The People of [Municipality] are the principals, and their government their agent. Actions by the municipality do not limit or reduce the People's right of local community self-government.
- The People of [Municipality] have the right to clean air, water, and soil. They have the right to a livable climate. [These are rights that are not spelled out in most state and federal constitutions. When these constitutions were drafted, healthy air, water, and soil were not foremost in the authors' minds.]

In addition to statements of rights specific to the corporate harms and the statements of rights asserting the right of local community self-government, when Community Rights laws address environmental issues, they usually also include recognition for rights of ecosystems. This usually looks like a statement that “Ecosystems within [Municipality] have the inherent right to exist, flourish, evolve, and regenerate, and to restoration, recovery, and preservation.”

Finally, and very importantly, include in the Community Bill of Rights section that the rights are self-executing (which means that the legislative body doesn’t need to pass any more laws to make these rights enforceable). This could look like “All rights secured by this law are self-executing and enforceable against any person by any inhabitant of [Municipality] without further implementing legislation.”

4. Prohibition and Enforcement Necessary to Protect Community Rights

Here is where the law specifies key actions that are not allowed in order to protect the Community Rights described in the previous section. The key is to specifically prevent the corporate harms that violate the provisions of the Community Bill of Rights. This includes complete bans on certain activities by certain persons or entities. Such a provision could be “It is unlawful for any corporation to {name harmful activity} within [Municipality].” You want to think about who the law is prohibiting. Is it just corporations (and did you include a definition to cover other business entities when you say “corporation”)? Or do you want to also prohibit the government from that activity? What about individuals? If you want to prohibit everyone from doing it, use the word “person.” “It is unlawful for any person to....”

Include punishment for an offense of these prohibitions. This could be civil, criminal, or both.

Also, while less precise than the above prohibitions, be sure to include a prohibition on violating the Community Bill of Rights generally: “It is unlawful for any corporation or government to violate the Community Bill of Rights. Any corporation or government violating the Community Bill of Rights must lose all rights, power, privileges, and immunities that the corporation or government asserts in opposition to the Community Bill of Rights or the prohibitions necessary to protect those rights. A complaint filed by a corporation or government seeking to invalidate any part of this law must be dismissed sua sponte for failure to state a claim.”

Terminology to Note: “Sua Sponte”

Actions taken by a judge without a prior motion or request from either of the legal parties involved

5. Boilerplate

“Boilerplate” refers to standard legal terms thrown into legal documents. Here, are a few boilerplate terms you might consider including:

“Repealer”

- “Inconsistent provisions of prior laws of [Municipality] are revoked only to the extent necessary to remedy the inconsistency.”

“Existing Permit Holders”

- “This law is effective against all existing permit holders regardless of the date a permit was issued.”

“Severability”

- “Each clause of this law is severable. An invalidation of any clause should not affect the rest of the law. This law would have been enacted without the invalid sections.”

“Effective Date”

- Most municipalities already have a law that sets a default effective date for new laws. So, don’t worry about including this section unless the situation is very timely.

Crash Course in Legal Drafting

Below are some concepts to keep in mind while drafting a law. This is obviously a very brief outline and again, you may want to consult with a lawyer.

1. Elements

Laws have requirements – called “elements.” When drafting, you need to think about elements to phrase the law properly. A law is violated ONLY when ALL the elements are met, thus, you don’t want to accidentally slip in an element when you didn’t mean to. For example, “no corporation may extract oil or gas in the city” has one less element than “no corporation may intentionally extract oil or gas in the city.” In the second example above, the prosecutor would not only have to prove the violator had extracted “oil or gas in the city”, but they would also have to prove it was done intentionally “in the city”. Similarly, if the law were “no corporation may extract oil or gas in the city when such extraction harms the environment” then anyone seeking to prove a violation of that law would have to show that the extraction harmed the environment. This might be a very complex element to prove compared to the other more straightforward elements in that law (simply that a corporation extracted oil or gas in the city). Generally speaking, the more elements a law has, the harder it is to convict violators under the law.

2. Statutory Construction Rules

“Statutory interpretation” or “statutory construction” is the term for how courts decide the meaning of legislation. Even though “statute” refers to laws passed by the state or federal legislature, the same framework applies for ordinances (laws passed by local elected officials (the local legislature) and laws passed by the people as initiatives). There is a three-volume treatise on statutory interpretation called *Sutherland Statutes and Statutory Construction*, which is available in most major law libraries. Also, *Legal Drafting: Process, Techniques, and Exercises*, by Thomas R. Haggard and George W. Kuney, provides useful practical drafting advice. Below is a primer on some statutory interpretation tips, but this is in no way all inclusive.

Courts can – and do – use various statutory construction rules to arrive at the judges’ desired result. Often, the statutory construction rules can arrive at different results, so it is just a matter of the judge deciding which rule is most “reasonable” for reaching the judge’s desired result. The goal in drafting is to be aware of the different construction rules so that you can cut off the possibility of the law being interpreted in a way other than the way you want it to be. However, we’re dealing with English, not a programming code, so this goal is very difficult to achieve.

There is a presumption in legislative interpretation that different words mean different things (if the drafter intended the same thing, the drafter would have used the same words). Thus, you don’t want to write “the People of [Municipality]” in one place and “our community” in another place if you mean the same thing by those terms. When planning how to draft the law,

think carefully about who the legal persons involved are, and use the same term to refer to each throughout the law.

3. *Special Words*

- “Shall” creates a duty: “Shall” is a word of legal significance – a “term of art” – that connotes a duty. In a contract, shall is used in connection with the contracting parties: the “seller shall deliver the goods before . . .” or “the buyer shall pay within [x] days.” In legislative drafting, “shall” should still be limited to the actions of the persons (another term of legal significance, see below) involved. Know who those persons are, and what term you will use to refer to them, and stick to that. In those cases, use “shall” to create duties.
 - ◆ Don’t use “shall” in drafting definitions or in relation to anything that doesn’t have a duty. For the definition section, it’s “‘Corporation’ means . . .” not “‘Corporation’ shall mean...”
 - ◆ You know “shall” is used correctly when it can be replaced with “has a duty to” and the sentence still makes sense.
 - ◆ Don’t use “shall” as “smart” sounding passive voice: just write “it is” rather than “it shall be.”
 - ◆ If possible, avoid “shall” all together by using “must” instead.
- “Person” doesn’t mean people: “Person” usually refers to all legal beings, which includes people (aka “human beings,” “natural persons,” or “individuals”) and entities (including business entities like corporations, companies, partnerships, and trusts, and government entities like the federal government, states, agencies, and municipalities).
 - ◆ Use “person” when you really mean it to include people and entities. E.g., “Any person may bring suit to enforce this law.”
 - ◆ Don’t use “person” when you mean to refer just to entities. E.g., “No business entity may violate these rights.”
- “And/or” is forbidden. “And/or” should not appear in your drafting. Instead of “A and/or B” use “A, B, or both.” Be careful that there is an inherent ambiguity in the terms “and” and “or,” however, solving this ambiguity is usually too difficult to fix (as in it would take lots of words in the legislation, like definitions for “and” and “or”) so it is frequently a forgiven ambiguity. Just do your best to make it clear, and be consistent in your use of “and” and “or” in the draft.

4. *Grammar*

Yes, the basic rules of grammar apply to legal drafting too. *Legal Drafting*, mentioned above, discusses important grammar rules in addition to statutory construction. Or get a copy of *Elements of Style* for some basics.

- “That” versus “which”: “That” should be used for dependent clauses: “Corporations that violate the community bill of rights must . . .” means that the duty that follows only applies to certain corporations – those that violate the community bill of rights. “Which” is used for independent clauses, and so it creates ambiguity. Some people say “which” should be preceded by a comma. “Corporations, which violate the community bill of rights, must . . .” could mean “Corporations must” (all corporations) or it could mean the same as the example that uses “that” above. It’s ambiguous, so it creates a hole that the court can exploit to reach a meaning other than the meaning you want.

ENFORCEMENT AND CHALLENGES TO YOUR COMMUNITY RIGHTS LAW

We focus on post adoption enforcement in this chapter. Keep in mind that by proposing and passing a Community Rights law in your community, you are directly challenging the existing system of governance and structure of law, which has been in place for centuries. Those who control the decision-making in your community, including the corporate power holders, will not easily turn over this decision-making authority back to the people. This means that once your Community Rights law is on the ballot and adopted via a direct vote by the people or through your local elected officials, you are very likely to see the Community Rights law challenged with a lawsuit.

Who Might Challenge Community Rights Laws?

Challenges to your newly passed law might come from a variety of sources:

1. From industry or a corporation claiming their “rights” have been violated.
2. From a resident or group of residents who did not support the passage of the Community Rights law (often these “ordinary citizens” lawsuits are really funded by corporate lobby groups).
3. From the state government, through the Attorney General.
4. From your own local elected officials.

Remember the saying, “anyone can sue anybody at any time over anything.” Just because the people have passed a law, it doesn’t mean anything unless people are willing to defend and enforce it.

Otherwise, laws are simply words on paper.

How Might Community Rights Laws Be Challenged?

1. Recount

Someone who is unhappy with the passage of the law could ask for a recount after the vote, especially if it was a close outcome. Community group members should monitor the recount carefully and be ready to report any foul play to the media. Most recounts produce more votes in favor of the measure, than those opposed to it, so a recount is not necessarily a "bad thing." If the Community Rights law lost by a close margin, the community group may be the ones who want to initiate the recount.

Recount delays the implementation of any law, so it is important to pay attention carefully to the process. Once the final total is approved and in favor of the Community Rights law, the community group should follow up to make sure the law is codified into the city/county charter or the municipal code. Whatever the "effective date" is for your Community Rights law, the community group needs to follow up with city/county officials and make sure all the proper codification procedures have been followed. Don't assume that the officials will just do what they are supposed to.

2. Industry/Corporate Challenges

In most cases the reason that the community group formed and worked so hard to pass a local Community Rights law was to protect the community from some industry or corporate harm proposed in the community. By passing the Community Rights law, the particular activity is now illegal in your community. A corporation that holds permits from the state to go ahead with their harmful project will not be happy or willing to concede cancellation of their state sanctioned project so easily. If the corporation has already received a permit from the state to proceed, then the first enforcement action that should be taken is that the chief executive officer (mayor, city manager, county administrator, etc.) and municipal attorney, representing your community, issues a cease and desist letter in the name of the city, as the enforcers of the police powers of the city.

Should the offending party ignore the Community Rights law, and the letter has been sent by certified mail, the next step is for the government to request a formal summons to be delivered by the police/sheriff department to the offending party. Your Community Rights law may have language similar to this:

Any corporation or government that violates any provision of this Community Rights law is subject to a \$10,000 fine for each day or portion thereof of violation. Violation of each section and subsection of this Community Rights law, is a separate violation.

The city or county may also seek other remedies through the courts, while pursuing the collection of fees for violating a local ordinance.

Often residents of the community are authorized through the adoption of a Community Rights law to bring citizen enforcement through the same means; if the government elected officials refuse to enforce the law. It is of course much stronger if the government and the residents work together to enforce the Community Rights law passed by a majority of the voters or legislative body in their jurisdiction. Sometimes the community members need to remind the government officials that the Community Rights law is the will of the people in the community, that it is binding law, and that they were elected and have a duty to protect the health, safety, and welfare of the community. Sometimes the officials need to know that the residents are continuing to back them up on enforcing the local law, especially when there are threats of lawsuits and monetary damages against the government.

When a lawsuit is filed by a corporation to overturn the Community Rights law, the best possible scenario is for the city and the residents to both be listed as defendants of the Community Rights law. If the government officials attempt to shut the residents out of the lawsuit defense, then the residents may attempt to intervene in the lawsuit, to ensure their safety and rights are protected and not just the interests of the government. Residents could also get into court by bringing a new lawsuit against both the corporation (for violating the Community Rights law) and the government (for failing to uphold the law, assuming the Community Rights law authorizes this cause of action).

Terminology to Note: Direct Action

Some communities choose to include the legalization of peaceful direct action by residents as an enforcement technique, reserved for the people if the municipal government fails to enforce or defend their Community Rights law.

3. Federal/State/Local Challenge

It seems unbelievable to consider, but a challenge to your Community Rights law sometimes comes from the people's own government. The local, state or federal government may claim that the people's local law is in violation of a state law or federal statute that explicitly claims absolute power of governance and regulation over the industry to which your prohibition(s) apply. We have seen examples of mayors, governors and other elected officials filing lawsuits against their own residents to prevent them from enforcing a local law passed by the people of the community. What is even more unthinkable is that our tax dollars are used to bring lawsuits against us. We need to be prepared and aware that challenges can come from all sides. We have to keep reminding ourselves that this is all about power and authority to be the decision makers and keeping the status quo in place. By passing your Community Rights law, your community is challenging that structure head on.

What to Do if Your Community Rights Law is Being Challenged or Ignored?

It is important to continue to educate all residents of the community about what is happening if there is a challenge to your Community Rights law. Since the reason the Community Rights law was most likely passed was to protect both the people and the environment from some threat or harm and was done so on the basis of the rights of the people and nature over corporate claimed “rights” and profits, it is important that when the Community Rights law is challenged, the people in the community understand what is going on and why this current system is NOT protecting them. Your message to the community and the media needs to focus on the need to alter and reform a government that is more concerned with protecting corporate profits and projects than with honoring the will of the people and the consent of the governed.

Ways to keep the community informed include writing letters-to-the-editor and submitting press releases to local media outlets every step of the way. For too long, We the People have relied on our elected representatives, government agencies and the media to be looking out for our best interests. We need to get back to being participants in the governing of our communities and our democracy. Being informed is a critical part of this process.

While it can be cathartic to defend the law in court, we need to remember that the legal doctrines that we’re fighting against were created by government and are enforced by judges, who are part of the government. Judges most likely support the existing system of governance and their job is to back up the illegitimate and unjust laws passed by corporate beholden legislators. The master’s tools will not dismantle the master’s house. Judges are not easily persuaded to uproot corporate power and state dominance in favor of local democracy that protects human rights and ecosystem rights.

By defending the law in court, we also legitimize the court as the arbiter of our rights. Whether corporations have “rights” is no longer a decision by your community, because judges decided that a long time ago for you. This deference to the sanctity of the courts removes our agency. Consider carefully whether your participation in the lawsuit will legitimize the current system of government, or whether other strategies or tactics will lead to greater community understanding of why the system needs to change.

Non-Violent Direct Action

So, the people have passed a law to protect their community from a harmful project or industry. They have attempted to the best of their ability to enforce and defend their law to protect the community. They have exhausted all legal remedies and the structure and system of law as currently constituted has failed them. The courts have ruled in favor of “corporate rights and personhood”, preemption, Dillon’s Rule, the commerce and supremacy clauses, instead of protecting consent of the governed and the inalienable rights of the people to self-govern. Now what do you do?

The community can accept the decisions of the court(s) and decide that they just have to live with the corporate harm they just voted to prevent OR they can decide that this is their community and how they leave it for future generations is too important to them. They can decide they MUST disobey unjust and illegitimate law as a moral obligation. As we have learned from past movements for change, things don’t change for the better until people stop obeying unjust law.

Your community may come to this realization and decide that they want to stand up to protect the health and safety of the current residents and also to protect future generations. Threats of lawsuits that could bankrupt the community monetarily are often used to discourage enforcement of enacted Community Rights law. But the community will be bankrupt without clean air, water, and soil. Businesses won’t want to locate in polluted communities. Property values will plummet if ecosystems become so tainted that it makes people sick no one will want to live there anyway. And without residents, the tax base withers too.

So some communities are deciding to educate themselves about non-violent direct action as a means to protect what they love. Some communities pass laws that legalize non-violent direct action by residents when such actions are used to defend the community against the corporate industrial harms that motivated them to adopt their Community Rights law in the first place. Because their actions were authorized by the law the community created and passed, which was subsequently made illegal by a court order or preemption, carrying out those actions would likely fall under a “direct action of civil disobedience.” In the case *United States v. Schoon*, the court held that for activists to “properly invoke the necessity defense” – to have charges dropped – they must show the following: “(1) they were faced with a choice of evils and chose the lesser evil; (2) they acted to prevent imminent harm; (3) they reasonably anticipated a direct causal relationship between their conduct and the harm to be averted; (4) they had no legal alternatives to violating the law.”

While CELDF does not advocate for or against communities participating in civil disobedience through direct actions, we do feel it is important for people to understand what it is and to know that there are consequences as well as defenses. Organizations like Civil Liberties Defense Center, or other National Lawyers Guild associated attorneys, can advise on these tactics.



APPENDIX

A. LAKE ERIE BILL OF RIGHTS CHARTER AMENDMENT – TOLEDO, OH

Lake Erie Bill of Rights Charter Amendment Department of Law

ORD. 497-18

Providing for the submission to the electors of the City of Toledo at a special election on February 26, 2019, an amendment to the Charter of the City of Toledo for the purpose of adding a new Section to the Charter entitled “Lake Erie Bill of Rights”; and declaring an emergency.

Be it ordained by the Council of the City of Toledo:

SECTION 1. Whereas, the Clerk of Council has received the adequate number of petition signatures as required by law for the following proposed Charter amendment to be submitted to the electors of the City of Toledo and pursuant to the Charter and the Constitution of the State of Ohio, the Toledo City Council hereby presents the proposed amendment for consideration and for certification to the Board of Elections of Lucas County, Ohio.

SECTION 2. That the amendment to the Charter of the City of Toledo, as hereinafter set forth, be submitted to the electors of said City at a special election to be held on February 26, 2019, pursuant to Ohio law and the Charter of the City of Toledo.

SECTION 3. That the amendment reads as follows:

“LAKE ERIE BILL OF RIGHTS

ESTABLISHING A BILL OF RIGHTS FOR LAKE ERIE, WHICH PROHIBITS ACTIVITIES AND PROJECTS THAT WOULD VIOLATE THE BILL OF RIGHTS

We the people of the City of Toledo declare that Lake Erie and the Lake Erie watershed comprise an ecosystem upon which millions of people and countless species depend for health, drinking water and survival. We further declare that this ecosystem, which has suffered for more than a century under continuous assault and ruin due to industrialization, is in imminent danger of irreversible devastation due to continued abuse by people and corporations enabled by reckless government policies, permitting and licensing of activities that unremittingly create cumulative harm, and lack of protective intervention. Continued abuse consisting of direct dumping of industrial wastes, runoff of noxious substances from large scale agricultural practices, including factory hog and chicken farms, combined with the effects of global climate change, constitute an immediate emergency.

We the people of the City of Toledo find that this emergency requires shifting public governance from policies that urge voluntary action, or that merely regulate the amount of harm allowed by law over a given period of time, to adopting laws which prohibit activities that violate

fundamental rights which, to date, have gone unprotected by government and suffered the indifference of state-chartered for-profit corporations.

We the people of the City of Toledo find that laws ostensibly enacted to protect us, and to foster our health, prosperity, and fundamental rights do neither; and that the very air, land, and water – on which our lives and happiness depend – are threatened. Thus it has become necessary that we reclaim, reaffirm, and assert our inherent and inalienable rights, and to extend legal rights to our natural environment in order to ensure that the natural world, along with our values, our interests, and our rights, are no longer subordinated to the accumulation of surplus wealth and unaccountable political power.

We the people of the City of Toledo affirm Article 1, Section 1, of the Ohio State Constitution, which states: “All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.”

We the people of the City of Toledo affirm Article 1, Section 2, of the Ohio State Constitution, which states: “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.”

And since all power of governance is inherent in the people, we, the people of the City of Toledo, declare and enact this Lake Erie Bill of Rights, which establishes irrevocable rights for the Lake Erie Ecosystem to exist, flourish and naturally evolve, a right to a healthy environment for the residents of Toledo, and which elevates the rights of the community and its natural environment over powers claimed by certain corporations.

Section 1 – Statements of Law – A Community Bill of Rights

- (a) Rights of Lake Erie Ecosystem. Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve. The Lake Erie Ecosystem shall include all natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems that are part of Lake Erie and its watershed.
- (b) Right to a Clean and Healthy Environment. The people of the City 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.
- (c) Right of Local Community Self-Government. The people of the City of Toledo possess both a collective and individual right to self-government in their local community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.
- (d) Rights as Self -Executing. All rights secured by this law are inherent, fundamental, and inalienable, and shall be self-executing and enforceable against both private and public actors. Further implementing legislation shall not be required for the City of Toledo, the

residents of the City, or the ecosystems and natural communities protected by this law, to enforce all of the provisions of this law.

Section 2 – Statements of Law – Prohibitions Necessary to Secure the Bill of Rights

- (a) It shall be unlawful for any corporation or government to violate the rights recognized and secured by this law. “Corporation” shall include any business entity.
- (b) No permit, license, privilege, charter, or other authorization issued to a corporation, by any state or federal entity, that would violate the prohibitions of this law or any rights secured by this law, shall be deemed valid within the City of Toledo.

Section 3 – Enforcement

- (a) Any corporation or government that violates any provision of this law shall be guilty of an offense and, upon conviction thereof, shall be sentenced to pay the maximum fine allowable under State law for that violation. Each day or portion thereof, and violation of each section of this law, shall count as a separate violation.
- (b) The City of Toledo, or any resident of the City, may enforce the rights and prohibitions of this law through an action brought in the Lucas County Court of Common Pleas, General Division. In such an action, the City of Toledo or the resident shall be entitled to recover all costs of litigation, including, without limitation, witness and attorney fees.
- (c) Governments and corporations engaged in activities that violate the rights of the Lake Erie Ecosystem, in or from any jurisdiction, shall be strictly liable for all harms and rights violations resulting from those activities.
- (d) The Lake Erie Ecosystem may enforce its rights, and this law’s prohibitions, through an action prosecuted either by the City of Toledo or a resident or residents of the City in the Lucas County Court of Common Pleas, General Division. Such court action shall be brought in the name of the Lake Erie Ecosystem as the real party in interest. Damages shall be measured by the cost of restoring the Lake Erie Ecosystem and its constituent parts at least to their status immediately before the commencement of the acts resulting in injury, and shall be paid to the City of Toledo to be used exclusively for the full and complete restoration of the Lake Erie Ecosystem and its constituent parts to that status.

Section 4 – Enforcement – Corporate Powers

- (a) Corporations that violate this law, or that seek to violate this law, shall not be deemed to be “persons” to the extent that such treatment would interfere with the rights or prohibitions enumerated by this law, nor shall they possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or prohibitions enumerated by this law, including the power to assert state or federal preemptive laws in an attempt to overturn this law, or the power to assert that the people of the City of Toledo lack the authority to adopt this law.

- (b) All laws adopted by the legislature of the State of Ohio, and rules adopted by any State agency, shall be the law of the City of Toledo only to the extent that they do not violate the rights or prohibitions of this law.

Section 5 – Effective Date and Existing Permit Holders

This law shall be effective immediately on the date of its enactment, at which point the law shall apply to any and all actions that would violate this law regardless of the date of any applicable local, state, or federal permit.

Section 6 – Severability

The provisions of this law are severable. If any court decides that any section, clause, sentence, part, or provision of this law is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the law. This law would have been enacted without the invalid sections.

Section 7 – Repealer

All inconsistent provisions of prior laws adopted by the City of Toledo are hereby repealed, but only to the extent necessary to remedy the inconsistency.”

SECTION 4. That the foregoing amendment shall take effect immediately upon approval by the electors of the foregoing amendment and in accordance with provisions in the said amendment. The Clerk of Council is hereby ordered and directed to provide a copy hereof to the Ohio Secretary of State, within thirty (30) days after such vote of approval by the electors.

SECTION 5. The Clerk of Council is hereby ordered and directed to certify to the Board of Elections of Lucas County, Ohio, the enactment of this Ordinance for the submission of the aforesaid amendment at an election to be held at the time hereinabove mentioned, and the Clerk is directed to request the said Board of Elections to provide for the submission of the question of adopting the said amendment at the said election. The Clerk of Council is further ordered and directed to cause the publication of the full text of the proposed charter amendment once a week for not less than two (2) consecutive weeks in a newspaper published in the City of Toledo, with the first publication thereof being at least fifteen (15) days prior to the election at which the amendment is to be submitted to the electors.

SECTION 6. It is hereby found and determined that all formal actions of this Council concerning and relating to the Adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the Public, in compliance with all legal requirements for open meetings, including section 121.22, Ohio Revised Code.

SECTION 7. That this Ordinance hereby is declared to be an emergency measure and shall be in force and effect from and after its adoption. The reason for the emergency lies in the

fact that same is necessary for the immediate preservation of the public peace, health, safety and property, and for the further reason that the Ordinance must be immediately effective in order to permit the question of the aforesaid Charter amendment to be submitted at the next available election pursuant to Ohio law; wherefore this Ordinance shall be in force and effect immediately upon its adoption.

B. WORKERS RIGHTS ORDINANCE – SPOKANE, WA

A Charter Amendment Establishing a Worker Bill of Rights

Whereas, the people of the City of Spokane wish to build a healthy, sustainable, economically just, and democratic community; and

Whereas, the people of the City of Spokane believe in the rights of workers to receive (1) a decent and fair family wage, (2) equitable pay regardless of personal traits, qualities, or characteristics, and (3) just cause for termination from employment; and

Whereas, the people of the city of Spokane believe these rights are superior to competing rights claimed by corporations; and

Whereas, the people of the City of Spokane have adopted a Comprehensive Plan for the City of Spokane, which envisions, among other items, income equity, living wages, and sustainable economic strategies, but the people recognize that the Comprehensive Plan is not legally enforceable in many important respects; and

Whereas, the people of the City of Spokane wish to create a Worker Bill of Rights, which would, among other goals, establish legally enforceable rights for workers to protect the local economy and build the people’s vision of a healthy, sustainable, economically just, and democratic community; and

NOW, THEREFORE, THE PEOPLE OF THE CITY OF SPOKANE HEREBY ORDAIN:

A new article be added to the Charter of the City of Spokane, which shall be known as the “Worker Bill of Rights,” and which provides as follows:

Section 1. Worker Bill of Rights

First. Right to a Family Wage. Workers in the City of Spokane have a right to a family wage. Workers employed by an employer with 150 or more full-time equivalent workers shall be paid, at minimum, a family wage for work performed. The employer requirement to pay a family wage shall not apply to workers in a 90 day or less probationary period, in an internship if enrolled in school, or when enrolled in a Washington state certified apprenticeship program.

Second. Right to Equal Pay. All workers in the City of Spokane have a right to equal pay for equal work. No employer may provide different wage rates or other compensation to workers who are performing jobs that require equal skill, effort, and responsibility because of the worker’s gender, sexual orientation, gender identity, gender expression, familial status, race, ethnicity, national origin, citizenship, economic class, religion, age, or development, mental, or physical ability.

Third. Right Not to be Wrongfully Terminated. Workers in the City of Spokane have a right to be free from wrongful termination. Employers with 10 or more full-time equivalent workers shall not terminate a worker except for just cause, unless the worker is in 90 day or less probationary period, is enrolled in a Washington state certified apprenticeship program, or is expressly hired for a particular project and the project has ended. The term “just cause” shall be interpreted in accordance with established, common law principles of collective bargaining and labor relations, as developed by labor arbitration decisions, and an employer seeking to terminate a worker for just cause must demonstrate:

- (a) Timely and adequate work performance warnings and opportunities to correct work performance, unless the misconduct of the worker is serious enough to warrant immediate termination, such as criminal activity at work;
- (b) A fair, objective, and non-discriminatory termination process, where the worker has an opportunity to be heard in opposition to the termination; and
- (c) The termination is for work performance reasons, unless the employer can demonstrate that a layoff of a worker is necessary for economic hardship.

If a court finds a worker has been wrongfully terminated, the affected worker shall receive compensation in the form of back pay, reinstatement, attorney fees, costs, and damages.

Fourth. Corporate Powers Subordinate To People's Rights. Corporations that violate, or seek to violate, this Article possess any other legal rights that would interfere with the rights enumerated by this Article, nor shall corporation possess any other legal rights that would interfere with the rights enumerated by this Article, including standing to challenge this Article in court, the power to assert state or federal preemptive laws in an attempt to overturn this Article, and the power to assert that the people of this municipality lack the authority to adopt this Article.

Section 2. Definitions

- (a) “Corporation” means any corporation, limited partnership, limited liability partnership, business trust, limited liability company, or other business entity, organized under the laws of any State of the United States or under the laws of any country.
- (b) “Employer” means government and any business having, or required to have, a business license from the City of Spokane. For the purposes of determining the number of employees of a particular employer, a corporation, as defined in Section 2(a), that is doing business at more than one location shall be treated as a single employer, all franchisees and subsidiary corporations shall be treated as a single employer with the franchisor and parent corporation, and employees employed outside of the City of Spokane shall be counted for the purposes of determining the total number of full-time equivalent workers.
- (c) “Family wage” means a wage that provides for basic needs and a limited ability to deal with future emergencies without the need of public assistance. The City of Spokane shall calculate the family wage to include, but not be limited to, basic necessities such as food, housing, utilities, transportation, healthcare, childcare, clothing and other personal items, emergency savings, and taxes. The City shall calculate the family wage rate based on a

household size of two with one person employed and the family wage rate shall not be less than the Self-Sufficiency Standard for Washington State 2014, as adjusted for inflation. The City shall calculate the initial family wage within six months after the effective date of this Article, and shall adjust the family wage each January 1st thereafter to reflect the change in the Consumer Price Index for the Spokane Metropolitan Statistical Area. The City may allow deductions from the total family wage by employers who demonstrate one or more basic needs are covered elsewhere in a worker's compensation package. If the City of Spokane does not calculate a family wage, then eligible employers must provide, at minimum, a wage equal to the higher of either (1) three times the federal poverty guidelines for a family of two, or (2) any family wage rate previously calculated by the City of Spokane.

- (d) The number of "full-time equivalent workers" equals the total number of hours an employer has paid its workers in a year divided by 2,080.
- (e) "Worker" means an individual employed on a full-time, part-time, temporary, or seasonal basis, including independent contractors, contracted workers, contingent workers, and persons made available to work for the employer through the services of a temporary service, staffing, employment agency, or similar entity. The rights in this Article extend to all workers who are physically-present in Spokane for any portion of the worker's employment.

Section 3. Enforcement

- (a) Any worker, government entity, or nonprofit entity, may bring an action against the worker's employer for violation of these rights, and is entitled to attorney fees and costs in addition to legal remedies, including back pay, and equitable remedies, including reinstatement. Employers are not entitled to attorney fees and costs under this Article.
- (b) Any person may bring an action against the City of Spokane for failure to promulgate rules and policies necessary for enabling and effectuating the Right to a Family Wage, and that person shall be entitled to attorney fees and costs, in addition to equitable remedies. No action shall lie against the City for failure to enforce the rights contained within this Article.

Section 4. Effective Date and Implementation of Rights

If approved by the electors, this Article shall take effect and be in full force one year from the issuance of the certificate of election by the Spokane County Auditor's Office, except:

- (a) Employers shall be required to fully comply with the requirements of the Family Wage Right two years from the effective date, but shall only be required to pay at least 60% of the required wage on the effective date, and 80% of the required wage one year from the effective date.

Section 5. Repealer, Interpretation, and Severability

All ordinances, resolutions, motions, or orders in conflict with this Article are hereby repealed to the extent of such conflict. The people of Spokane intend for this Article to be liberally

interpreted to effectuate the broad policy goals articulated in the recitals, and to be self-executing. If any part or provision of these Article provisions is held invalid, the remainder of these provisions shall not be affected by such a holding and shall continue in full force and effect.

C. HOMELESS RIGHTS ORDINANCE – DENVER, CO

Be it enacted and ordained by people of the City and County of Denver:

Section 1.

The Revised Municipal Code of Denver, Colorado, Title I, Chapter 28, is hereby amended to include a new Article IX:

CHAPTER 28 – HUMAN RIGHTS

ARTICLE IX. – RIGHT TO SURVIVE IN PUBLIC SPACES

Sec. 28-254. Protected Rights of People.

(a) Purpose.

The purpose of this section is to secure and enforce basic rights for all people within the jurisdiction of the City and County of Denver, including the right to rest and shelter oneself from the elements in a non- obstructive manner in public spaces, to eat, share, accept or give food in any public space where food is not prohibited, to occupy one's own legally parked motor vehicle or occupy a legally parked motor vehicle belonging to another, with the owner's permission, and to have a right and expectation of privacy and safety of or in one's person and property.

(b) Definitions.

- 1) "Public space" means any outdoor property that is owned or leased, in whole or in part, by the City and County of Denver and is accessible to the public, or any city property upon which there is an easement for public use.
- 2) "Rest" means the state of not moving, and holding certain postures including but not limited to sitting, standing, leaning, kneeling, squatting, sleeping or lying down.
- 3) "Non-Obstructive Manner" means a manner that does not render passageways impassable or hazardous.
- 4) "Motor Vehicle" includes vehicles defined in Colorado Revised Statutes Sections 42- 1-102 (58), Camper coach 42-1-102 (13), trailer coach 42-1-102 (106) (a), or noncommercial or recreational vehicle 42-1-102 (61).
- 5) "Ceiling preemption" means any limitation on local law-making that limits the amount of protection local law may extend to municipal residents that exceeds state or federal protections.
- 6) "Municipal Subordination" means any exercise of "Dillon's Rule," preemption, or other mechanism used to usurp the right of the people of Denver to use their City and County government for the protection of residents' rights.

(c) Rights.

- 1) The right to rest in a non-obstructive manner in public spaces.

- 2) The right to shelter oneself from the elements in a non-obstructive manner in outdoor public spaces.
- 3) The right to eat, share, accept, or give free food in any public space where food is not prohibited.
- 4) The right to occupy one's own legally parked motor vehicle or occupy a legally parked motor vehicle belonging to another, with the owner's permission.
- 5) The right and expectation of safety and privacy of or in one's person and belongings while occupying public spaces.
- 6) The right to have the City and County government of Denver enforce and defend this law on the basis that a constitutional right of initiative, which is an expression of local community self- government, exists. This law is an assertion of that right as it seeks to expand and secure the rights of the people of Denver. The exercise of the legal doctrines of Dillon's Rule, ceiling preemption or municipal subordination to state government would unconstitutionally and illegitimately violate the right of the residents of the City and County of Denver to local community self-government.

(d) Prohibitions and Obligations.

- 1) It shall be unlawful for the City and County of Denver to enforce any ordinance, resolution, regulation, rule or policy that limits, prohibits or penalizes the rights secured by this ordinance.
- 2) It shall be unlawful for any public law enforcement officer, private security employee or agent, corporation, business or other entities to violate the rights recognized and secured by this law.
- 3) It shall be unlawful for an employee or agent of any government agency, corporation, business, or other entity to harass, terrorize, threaten, or intimidate any natural person exercising the rights secured by this ordinance.

(e) Enforcement.

- 1) Any law enforcement officer or other agent of the City and County of Denver who detains, causes to move, or violates the protected rights in Section (c) of this ordinance has committed a civil rights violation(s) under color of law. This prohibition includes, but is not limited to, requesting identification by any person unless supported by reasonable suspicion of a crime.
- 2) The City and County of Denver, or any resident of the City and County of Denver, may enforce the rights and prohibitions of this law through an action brought in any court possessing jurisdiction over activities occurring within the City and County. In such an action, the City and County of Denver or the resident shall be entitled to recover as a prevailing party all costs of litigation, including, without limitation, expert and attorney's fees.
- 3) All laws adopted by the legislature of Colorado shall be the law of the City and County of Denver only to the extent that they do not violate the rights or prohibitions of this

law. Where state or federal law is more protective of human rights and civil rights than this local law, the state or federal law controls.

(f) Severability.

The provisions of this law are severable. If any court decides that any section, clause, sentence, part, or provision of this law is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences parts, or provisions, of the law. This law would have been enacted without the invalid sections.

(g) Repealer.

All inconsistent provisions of prior laws adopted by the City and County of Denver are hereby repealed, but only to the extent necessary to remedy the inconsistency.

(h) Effective Date.

All provisions of this act shall take effect immediately.

ENACTED AND ORDAINED this _____ day of _____, 2019, by the City and County of Denver, Colorado.

D. FAIR ELECTION AND OPEN GOVERNMENT — YOUNGSTOWN, OH

[CHARTER AMENDMENT]

Whereas, we the people of Youngstown declare that we possess the right of community self-government and that our right of local self-governance is a fundamental and inalienable right; and

Whereas, we the people of Youngstown find that corporate involvement in elections and local government interferes with the right of community self-government, and find corporations use their disproportionate wealth to frame important issues and influence elections. We also recognize that the ability of corporations to participate in our political processes is a court-bestowed, federally-guaranteed constitutional “right” granted to state-created businesses. We further recognize that court-bestowed corporate “rights” include free speech rights that the people never agreed to contractually at issuance of each corporate charter. Because inalienable rights are a birthright belonging in equal measure to each person, they rightfully belong only to natural persons who are, in fact born into those rights, for they can neither be bestowed or revoked by any government; and

Whereas, we the people of Youngstown, find that the filing of pre-election challenges by government and its agents and by private actors in efforts to stop initiative and referenda proposals from appearing on the ballot and made subject to the approval or rejection by the electors is a violation of the right of speech, petitioning and self-government, which are protected under the U.S. Constitution, the Ohio State Constitution, the Declaration of Independence, and this local bill of rights. In order to protect the people’s right of local self-government and democratic participation, such actions must be prohibited. Through this amendment, we seek to alter our form of government to restore a system of local governance that derives its just powers from the consent of the governed and which is capable of securing our fundamental rights.

Therefore, we, the people of Youngstown, adopt this charter amendment recognizing and protecting the peoples’ right to fair elections and open access to local government:

SECTION 69.1: PEOPLE’S BILL OF RIGHTS FOR FAIR ELECTIONS AND ACCESS TO LOCAL GOVERNMENT

(a) Right to Fair Elections. The people of the City of Youngstown have a right to fair elections, which shall include but not be limited to the right to an electoral process free from corporate influence. That right shall also include, without limitation, that the authority to make campaign contributions to any local candidate or issue campaign shall be exercised only by registered voters of the City of Youngstown and those contributions shall be capped at \$100 per elector per ballot measure and candidate. Corporations, labor unions, political action committees, political parties, and all other campaign funding entities shall be prohibited from donating to local candidate and issue campaigns or spending money to

influence the outcome of any ballot measure or candidate, as those contributions unfairly influence electoral outcomes and undermine the peoples' right to fair elections.

The ballots used in elections for elective offices of the Municipality shall be without party mark or designation. The names of all candidates for mayor shall be placed upon the same ballot and shall be rotated in the manner provided by the general laws of the State of Ohio. The names of all candidates for ward representative shall be placed upon the same ballot, by ward, and shall be rotated in the manner provided by the general laws of the State of Ohio. Any person may vote in any Municipal election if such person is registered as a voter with election authorities as prescribed by the laws of the State of Ohio. There shall be a primary municipal election as set by general law. The two (2) candidates for mayor receiving the highest votes in the primary will be placed on the November election ballot. The two (2) candidates for ward representative receiving the highest votes in the primary will be placed on the November election ballot. The name of each person who is elected in compliance herewith shall be printed on the official ballot for the regular Municipal election, in November following, and names of no other candidates shall be printed thereon. Write-in candidacies shall follow rules prescribed by general law.

- (b) Right of Access to Local Government.** The people of Youngstown have a right of access to local government, and this includes the right to speak openly at all public government meetings without having to register or seek permission at any time prior to the public meeting. This right also includes the right to see all meeting agendas at least 24 hours before any public meeting of the local elected government officials, including all committee meetings and work sessions. The posting of agendas shall be in a public place easily accessible to the community, including the municipal web site, and on the premises of the municipality visible during office hours and during off hours. Agenda items shall not be added after the agenda has been publicly posted.
- (c) Right to Transparent Election Process.** The people of Youngstown recognize that the state and county may stipulate electronic voting machines to be used by the county board of elections, but in all local elections, there shall also be some form of paper ballot tracking that can be used to verify electronic election results.
- (d) Right to Enforcement.** The people of the City of Youngstown possess the right to enforce their rights expressed in this Amendment. If the City of Youngstown fails to enforce or defend this Amendment, or, a court fails to uphold this Amendment, any natural person may enforce this Amendment through nonviolent direct action or via a suit at law or in equity as a private attorney general plaintiff, for damages and costs of litigation, including, without limitation, expert and attorney fees. If any appointed or elected official infringes upon the people of Youngstown's adoption of this Amendment through their right of democratic initiative power, any natural person may enforce these rights through nonviolent direct action. City of Youngstown law enforcement, and cooperating agencies acting within the jurisdiction of the City of Youngstown, shall have no lawful authority to surveil, detain, arrest, or otherwise impede natural persons enforcing these rights. "Direct action" as used by this provision shall mean any non-violent activities carried out to directly enforce the rights expressed in this Amendment.
- (e) Right to Enforcement Against Corporate Rights.** Any corporation, or other business entity, that violates the rights secured by this Amendment shall not be deemed a "person"

to the extent that such treatment would interfere with the rights enumerated by this Amendment, nor shall it possess any other legal rights, powers, privileges, immunities, or duties that would interfere with these rights, including the power to assert state or federal preemptive laws in an attempt to overturn this Amendment, or the power to assert that the people of the City of Youngstown lack the authority to adopt this Amendment.

(f) Right of Local Community Self-Government. The people of the City of Youngstown possess the right of local community self-government, as expressed in the Declaration of Independence, the United States Constitution's preamble and Ninth Amendment, and the Ohio Constitution's Bill of Rights, sections 1, 2, and 20. The people's right of local community self-government includes but is not limited to their power to compel their government to protect their rights, health, and safety.

(g) Right of Initiative Lawmaking. The people of Youngstown possess the right to make law through local initiative processes. That right shall include but not be limited to the right to be free from interference with the exercise of the initiative power, that there shall be no attempt to stop the placement of an initiative proposal on the ballot based on substantive challenges, claimed illegality or unconstitutionality, or review of the content, intent, or surmised effect of the measure prior to being presented to the voters and before it is enacted into law. This right shall require that all issues duly petitioned in accordance with law shall appear on the ballot in the same manner as is customary for other issues, that they be presented with unbiased summary language on the ballot and that the complete legislative proposal be posted at each polling location.

(h) Severability. The provisions of this law are severable. If any court decides that any section, clause, sentence, part, or provision of this law is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the law. This law would have been enacted without the invalid sections.