



# CELDF REPORT

## **Corporations Are Suing Cities Across the USA**

*A new Community Environmental Legal Defense Fund report details a standard operating procedure of how corporate interests, and the politicians who serve them, retain power.*

Just like the 2008 financial crisis, the federal government is once again bailing out corporate interests while leaving local communities (and their budgets) left out to dry. State and municipal public finances have been thrown into chaos. Compounding this crisis, cities are getting sued for attempting to limit the fossil fuel industry, expand worker benefits, heighten discrimination protections, and for taking action on a slew of other issues. Examples abound - Mora County, New Mexico has been sued by a subsidiary of Royal Dutch Shell; New York City by Uber; Minneapolis by the Minnesota Chamber of Commerce; and Austin, Texas by the National Federation of Independent Business, and the Texas Attorney General. This report outlines how such corporate (and state) backlash to local activism is far from an anomaly. Rather, it is standard operating procedure.

Each community studied here faced a problem, and then took action to address that problem. Mora County banned hydrocarbon extraction. New York City regulated ride-sharing companies. Minneapolis raised the minimum wage. Austin passed a paid sick leave ordinance.

Then, corporate attorneys took their own action, against the local laws. Though some cities have the resources to defend their laws from high-powered corporate lawsuits, many do not. Just witnessing corporate backlash against city action can be enough to successfully chill local lawmaking from spreading to other municipalities.

This chilling effect is felt regardless of the merits of the corporate lawsuit. The costs of a lawsuit itself can be enough to intimidate cash-strapped local governments.

This paradigm favors the corporation. When the U.S. Constitution began to be interpreted by the courts, corporations were among the first to win its protection. In the early 1800s, the Contracts and Commerce clauses were interpreted to shield corporations from public lawmaking. By the end of that century, they had won recognition under the Fourteenth Amendment as “persons” protected *from* government actions.

Today, these constitutional “rights” effectively insulate corporations from powerful local lawmaking. This means the First Amendment’s free speech protections can be used by corporations to challenge campaign finance laws that limit or abolish their spending in local elections, for example.

If corporate interests are not satisfied with their constitutional protections, their lobbyists often find it easy to add additional protections through state legislatures—to remove the power of local communities to act on particular issues. This state interference legislation is now gaining significant attention nationwide for its regressive and anti-democratic effects. With these laws, state legislatures can unilaterally outlaw local worker benefit expansions, local limits on fossil fuel extraction, and other local governing decisions.

Individuals might sue a city for police brutality or other civil rights violations. These lawsuits are necessary to protect *individuals* from abusive actions by their governments. This report shows how corporate legal privileges abuse this system. Their sophisticated legal strategies and constitutional

protections, combined with regressive state interference laws, give corporate interests an incredibly powerful tool to repress bottom-up forms of governance. Lawsuits to enforce this system are used by corporate interests, and state actors, to intimidate, delay, and overturn municipal lawmaking in the public interest.

This report gives a list of real-life examples where these dynamics are made visible. The list is anecdotal and should not be treated as a comprehensive survey. More have popped up since this report was initiated. However, the report does show a pattern that reveals how the corporate form enjoys protection from local governance.

Furthermore, corporations often gain the assistance of state attorney generals who join corporate interests in arguing *against* local residents' authority to govern corporate activity. The State of Texas, for example, banned local paid sick leave laws. When Austin and other cities passed paid sick leave, corporate interests sued, as did the Texas Attorney General.

The Community Environmental Legal Defense Fund (CELDF) is an expert in this sphere of law and partners with communities across the country in directly challenging this system.

The following examples exemplify this modus operandi of corporate repression.

## Case Studies

<b>Grounds for lawsuit: State preemption</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Broadview Heights, Ohio* (2012)	Ban on fossil fuel activities, subordination of corporate interests to local democracy, Rights of Nature	Bass Energy Company (corporate), Ohio Valley Energy (corporate)	Overtured, effort effectively dissuaded fossil fuel industry
	Link(s): <a href="https://www.cleveland.com/broadview-heights/2014/07/two_drilling_companies_sue_bro.html">https://www.cleveland.com/broadview-heights/2014/07/two_drilling_companies_sue_bro.html</a>		
Cleveland, Ohio (2015)	Firearm ownership regulations	Ohioans for Concealed Carry (corporate)	Mostly overtured
	Link(s): <a href="https://www.cleveland.com/metro/2018/01/ohio_supreme_court_rules_again_1.html">https://www.cleveland.com/metro/2018/01/ohio_supreme_court_rules_again_1.html</a>		
Denton, Texas (2014)	Fracking ban	Texas Oil and Gas Association (corporate), Texas State General Land Office (state)	Overtured

	Link(s): <a href="https://s3.amazonaws.com/static.texastribune.org/media/documents/File-stamped_Amended_Original_Petition.pdf?preview">https://s3.amazonaws.com/static.texastribune.org/media/documents/File-stamped_Amended_Original_Petition.pdf?preview</a> <a href="https://s3.amazonaws.com/static.texastribune.org/media/documents/20150616100501.pdf?preview">https://s3.amazonaws.com/static.texastribune.org/media/documents/20150616100501.pdf?preview</a>		
Fort Collins, Colorado (2013)	Fracking moratorium	Colorado Oil and Gas Association (corporate)	Overtured
	Link(s): <a href="https://law.justia.com/cases/colorado/supreme-court/2016/15sc668.html">https://law.justia.com/cases/colorado/supreme-court/2016/15sc668.html</a>		
Longmont, Colorado (2012)	Fracking moratorium	Colorado Oil and Gas Association (corporate), TOP Operating Company (corporate), Colorado Oil and Gas Conservation Commission (state)	Overtured
	Link(s): <a href="https://www.thedenverchannel.com/news/local-news/activists-ask-court-to-lift-injunction-on-longmonts-fracking-ban-after-passage-of-new-oil-gas-law">https://www.thedenverchannel.com/news/local-news/activists-ask-court-to-lift-injunction-on-longmonts-fracking-ban-after-passage-of-new-oil-gas-law</a>		
Lincoln County, Oregon* (2017)	Aerial pesticide ban, subordination of corporate interests to local democracy, Rights of Nature	Wakefield Farms (corporate)	Stood for two years, overturned, now on appeal
	Link(s): <a href="https://celdf.org/2019/10/media-statement-court-issues-decision-on-two-year-aerial-pesticides-ban-in-lincoln-county-oregon/">https://celdf.org/2019/10/media-statement-court-issues-decision-on-two-year-aerial-pesticides-ban-in-lincoln-county-oregon/</a>		
Minneapolis, Minnesota (2017)	Minimum wage increase	Minnesota Chamber of Commerce (corporate), Graco Company (corporate)	Intimidation, failed lawsuit
	Link(s): <a href="http://www.startribune.com/minnesota-chamber-of-commerce-sues-minneapolis-over-15-minimum-wage/456662053/">http://www.startribune.com/minnesota-chamber-of-commerce-sues-minneapolis-over-15-minimum-wage/456662053/</a> <a href="https://blogs.mprnews.org/newscut/2019/03/divided-court-of-appeals-upholds-minneapolis-minimum-wage-law/">https://blogs.mprnews.org/newscut/2019/03/divided-court-of-appeals-upholds-minneapolis-minimum-wage-law/</a>		
St. Louis, Missouri (2015)	Minimum wage increase	Missouri Chamber of Commerce (corporate), Cooperative Home Care (corporate), Missouri Restaurant Association (corporate), Missouri Retailers Association (corporate), National Federation of Independent Business (corporate), Naufel Inc.	Overtured

		(corporate), Associated Industries of Missouri (corporate)	
Tallahassee, Florida (2014)	Refused to repeal ordinance prohibiting the discharge of firearms in public parks	Florida Carry (corporate), Second Amendment Foundation (corporate)	Repealed
Link(s): <a href="https://www.floridacarry.org/images/stories/Tallahassee/Florida_Carry_v._Tally_Complaint.pdf">https://www.floridacarry.org/images/stories/Tallahassee/Florida_Carry_v._Tally_Complaint.pdf</a>			

<b>Grounds for lawsuit: State preemption, corporate rights (privacy, due process)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Austin, Texas (2018)	Paid sick leave	Texas Association of Business (corporate), National Federation of Independent Business (corporate), American Staffing Association (corporate), Leadingedge Personnel (corporate), Staff Force (corporate), HT Staffing (corporate), The Burnett Companies Consolidated (corporate), Texas Attorney General (state)	Stonewalled
Link(s): <a href="https://pslatwork.files.wordpress.com/2018/04/austin-tpf-psl-lawsuit-filed.pdf">https://pslatwork.files.wordpress.com/2018/04/austin-tpf-psl-lawsuit-filed.pdf</a> <a href="https://texasmonitor.org/paid-sick-leave-for-some-but-not-in-austin-until-state-high-court-rules/">https://texasmonitor.org/paid-sick-leave-for-some-but-not-in-austin-until-state-high-court-rules/</a> <a href="https://texasmonitor.org/paxtons-office-supports-lawsuit-against-sick-leave-plan/">https://texasmonitor.org/paxtons-office-supports-lawsuit-against-sick-leave-plan/</a>			

<b>Grounds for lawsuit: State preemption, corporate rights (due process)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
New York, New York (2018)	Cap on ride-sharing licenses	Uber (corporate)	Intimidation, law in effect
Link(s): <a href="https://www.politico.com/states/ff/?id=00000168-f2fc-dfdf-abe8-faffbbe0001">https://www.politico.com/states/ff/?id=00000168-f2fc-dfdf-abe8-faffbbe0001</a>			
Dallas, Texas (2019)	Paid sick leave	ESI/Employee Solutions LP (corporate), Hagan Law Group	Stonewalled

		LLC (corporate), Texas Attorney General (state)	
Link(s): <a href="https://files.texaspolicy.com/uploads/2019/07/30115125/003-Motion-for-Preliminary-Injunction.pdf">https://files.texaspolicy.com/uploads/2019/07/30115125/003-Motion-for-Preliminary-Injunction.pdf</a>			

<b>Grounds for lawsuit: State preemption, corporate rights (First, Fifth, Fourteenth amendments)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Grant Township, Indiana County, Pennsylvania * (2014, 2015)	Frack wastewater injection well ban, subordination of corporate interests to local democracy, Rights of Nature	Pennsylvania General Energy LLC (corporate, 2014), Pennsylvania Independent Oil and Gas Association (corporate, 2014), Pennsylvania Attorney General (state, 2015), Pennsylvania Department of Environmental Protection (state, 2017)	2014 ordinance overturned; 2015 charter successfully enforced

<b>Grounds for lawsuit: Corporate rights (due process, equal protection)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Minneapolis, Minnesota (2017)	Anti-discrimination housing ordinance	Landlord interests (corporate)	Delayed, pending
Link(s): <a href="http://stmedia.startribune.com/documents/Ruling+on+Section+8+ordinance.pdf">http://stmedia.startribune.com/documents/Ruling+on+Section+8+ordinance.pdf</a> <a href="https://www.mprnews.org/story/2018/06/08/minneapolis-landlords-win-suit-to-block-section-8-anti-discrimination-law">https://www.mprnews.org/story/2018/06/08/minneapolis-landlords-win-suit-to-block-section-8-anti-discrimination-law</a> <a href="https://www.mprnews.org/story/2019/06/10/mn-court-rules-in-favor-of-minneapolis-in-section-8-housing-ordinance">https://www.mprnews.org/story/2019/06/10/mn-court-rules-in-favor-of-minneapolis-in-section-8-housing-ordinance</a>			

<b>Grounds for lawsuit: State preemption, corporate rights (Fourteenth, First amendments)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Mora County, New	Freshwater protections, fracking ban, subordination of corporate interests to local	SWEPI LP, a subsidiary of Royal Dutch Shell (corporate)	Eventually overturned

Mexico* (2013)	democracy, Rights of la Querencia de La Tierra		
Link(s): <a href="https://www.americanbar.org/groups/litigation/committees/environmental-energy/practice/2015/020615-energy-federal-court-rules-local-fracking-ban-unconstitutional/">https://www.americanbar.org/groups/litigation/committees/environmental-energy/practice/2015/020615-energy-federal-court-rules-local-fracking-ban-unconstitutional/</a>			

<b>Grounds for lawsuit: Corporate rights (Fifth, Fourteenth amendments)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Nottingham, New Hampshire* (2019)	Ban on toxic waste dumping, subordination of corporate interests to local democracy, Rights of Nature	G&F Goods LLC (corporate)	Pending

<b>Grounds for lawsuit: Lack of authority</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Boulder, Colorado (2014)	Public ownership of corporate electric utility	Xcel Energy (corporate)	Overtured, stonewalled
Link(s): <a href="https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2016/16SC894.pdf">https://www.courts.state.co.us/userfiles/file/Court_Probation/Supreme_Court/Opinions/2016/16SC894.pdf</a>			

<b>Grounds for lawsuit: Corporate rights (Equal Protection)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Reno, Nevada (2019)	Denial of luxury private housing development	Investment Company LLC (corporate)	Lawsuit successfully intimidated city to overturn its decision
Link(s): <a href="https://www.slideshare.net/ThisisReno/daybreak-developers-sue-city-of-reno-over-denied-development">https://www.slideshare.net/ThisisReno/daybreak-developers-sue-city-of-reno-over-denied-development</a> <a href="https://www.rgj.com/story/news/2019/09/23/housing-reno-city-council-approves-daybreak-avoids-court-battle/2424720001/">https://www.rgj.com/story/news/2019/09/23/housing-reno-city-council-approves-daybreak-avoids-court-battle/2424720001/</a>			

<b>Grounds for lawsuit: State preemption, corporate rights (Due Course of Law, Equal Protection, privacy, right of association)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
San Antonio, Texas (2018)	Paid sick leave	Association of Builders & Contractors of South Texas (corporate), American Staffing Association (corporate), The Burnett Companies Consolidated (corporate), Choice Staffing (corporate), Employers Solutions (corporate), Hawkins Associates (corporate), Staff Force (corporate), San Antonio Manufacturers Association (corporate), San Antonio Restaurant Association (corporate), Texas Attorney General (state)	Delayed, pending
Link(s): <a href="https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/20190719_Plea%20in%20intervention%20Final.pdf">https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2019/Press/20190719_Plea%20in%20intervention%20Final.pdf</a> <a href="https://3snpd2ba9m5uwuk62n8cs84-wpengine.netdna-ssl.com/wp-content/uploads/2019/07/PSL-Original-Petition.pdf">https://3snpd2ba9m5uwuk62n8cs84-wpengine.netdna-ssl.com/wp-content/uploads/2019/07/PSL-Original-Petition.pdf</a>			

<b>Grounds for lawsuit: State preemption, corporate rights (First, Fifth, Fourteenth amendments, Due Process)</b>			
<b>Location</b>	<b>Subject</b>	<b>Sued by</b>	<b>Result</b>
Toledo, Ohio* (2019)	Rights of Lake Erie, residents' right to clean water, subordination of corporate interests to local democracy	Drewes Farms (corporate)	Overturned, appeal rescinded
Link(s): <a href="https://www.courtlistener.com/docket/14573310/drewes-farm-partnership-v-city-of-toledo-ohio/">https://www.courtlistener.com/docket/14573310/drewes-farm-partnership-v-city-of-toledo-ohio/</a>			

\* CELDF-assisted community



CELDF has been partnering with grassroots groups and local governments for decades, to stand up for their communities and fight back—building a movement to secure the authority of people and their communities to establish strong protections for civil, human, and ecosystem rights. The Covid-19 pandemic makes such bottom-up governance even more essential.

For more information please reach out to us at [info@celdf.org](mailto:info@celdf.org).

This report was prepared by Simon Davis-Cohen with help from his colleagues.