

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION**

DREWES FARM PARTNERSHIP, :
 :
 Plaintiff, :
 :
 and :
 :
 STATE OF OHIO, EX REL. YOST, :
 :
 Intervenor-Plaintiff, :
 :
 : CASE NO. 3:19-cv-00434-JZ
 :
 v. :
 :
 : JUDGE JACK ZOUHARY
 :
 CITY OF TOLEDO, :
 :
 Defendant, :
 :
 and :
 :
 LAKE ERIE ECOSYSTEM, :
 :
 Intervenor-Defendants. :

**STATE OF OHIO’S COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. The State of Ohio, on relation of Ohio Attorney General Dave Yost, hereby brings a civil action for declaratory judgment and injunctive relief in regard to the City of Toledo’s enforcement of the provisions of its charter designated the “Lake Erie Bill of Rights.”

2. In a February 26, 2019 special election, the City of Toledo approved the Lake Erie Bill of Rights Charter Amendment, codified at Toledo Ord. 497-18 (“LEBOR” or “Charter Amendment”). Attached as Exhibit A.

3. The Charter Amendment purports to grant “rights” to Toledo citizens and to the Lake itself. The Charter Amendment is a general attempt to confer standing in all cases where those “rights” are asserted. By granting these “rights,” the Charter Amendment is unconstitutional under the U.S. and Ohio constitutions, and it is preempted by state and federal law.

4. The Charter Amendment also seeks to create a legal status for Lake Erie that is distinct and independent of the State’s title in trust. This conflicts with the Ohio Enabling Act, years of legal precedent, and the Ohio Revised Code, which have long recognized that the State holds the waters of Lake Erie within the boundaries of Ohio as trustee for the people of the State and for the protection of public rights.

5. The Charter Amendment deprives anyone lawfully operating under Ohio’s environmental, agricultural, and natural resources laws the privilege of engaging in lawful operations regulated under those laws.

6. The Ohio Constitution art. XVIII, § 3 does not allow a municipality to enact an ordinance that prohibits regulated activity authorized under state permits issued pursuant to state laws of general applicability. *State ex rel. Morrison v. Beck Energy Corp.*, 143 Ohio St. 3d 271, 280, 2015-Ohio-485, 37 N.E.3d 128 (State laws with state-wide application preempt local ordinances that “discriminate, unfairly impede, or obstruct” general laws regulating oil and gas activities.).

7. Pursuant to § 2201 of the Judicial Code (28 U.S.C. § 2201) and Fed. R. Civ. P.

57, the State of Ohio seeks a declaration that the City of Toledo Lake Erie Bill of Rights Charter Amendment is null and void.

8. Pursuant to § 2201 of the Judicial Code (28 U.S.C. § § 2202), the State of Ohio requests this Court issue a permanent injunction against the City of Toledo, any citizen, any person (defined by Ohio Rev. Code 1.59), and any legal or fictitious entity that enjoins them from enforcing any provisions of the Charter Amendment against any person, corporation, federal, state, or local governmental entity, and any other legal entity.

9. A justiciable case or controversy exists as the Charter Amendment conflicts with the federal and state constitutions and laws, and a declaration is necessary to determine the parties' rights and responsibilities.

II. JURISDICTION AND VENUE

10. This Court has jurisdiction as the State's claims are brought under § 2201 of the Judicial Code (28 U.S.C. § § 2201) seeking a declaration of the rights and other legal relations of the parties and such further relief as necessary or proper under § 2202 of the Judicial Code (28 U.S.C. § § 2202).

11. This Court has jurisdiction pursuant to § 1331 of the Judicial Code (28 U.S.C. § § 1331) as this is a civil action arising under the Constitution of the United States.

12. This Court has supplemental jurisdiction pursuant to § 1367 of the Judicial Code (28 U.S.C. § § 1367) as claims being asserted here are so related to existing claims within this Court's jurisdiction that they form part of the same case or controversy.

13. Venue is appropriate in this Court pursuant to § 1391 of the Judicial Code (28 U.S.C. § § 1391(b)(1)) and N.D. Ohio LR 3.8(b). The City of Toledo is located in the Northern District of Ohio, and the acts giving rise to the State's claims occurred in this District.

III. THE PARTIES AND THEIR LEGAL INTERESTS

14. The State of Ohio holds title as proprietor in trust to the waters of Lake Erie, the lands beneath, and their contents within the territorial boundaries of the state for the people of Ohio.

15. The State of Ohio, through Ohio EPA, regulates discharges to waters of the state under Ohio's water pollution control laws and regulates public drinking water systems under Ohio's safe drinking water laws. Ohio Rev. Code Chapters 6111 and 6109.

16. The State of Ohio, through the Ohio Department of Agriculture, regulates water pollution from farm waste and runoff to waters of the state. Ohio Rev. Code Chapters 903 and 939.

17. The State of Ohio, through the Ohio Department of Natural Resources, is the state agency responsible "in all matters pertaining to the care, protection, and enforcement of the state's rights" as they pertain to the state's role as trustee of Lake Erie. Ohio Rev. Code 1506.10.

18. The Ohio Department of Natural Resources also regulates water withdrawal, diversions, consumptive and experimental use of water from the Lake Erie Watershed under Ohio Rev. Code Chapter 1522, and it is responsible for Ohio's participation in the multi-state and provincial Great Lakes-St. Lawrence River Basin Water Resources Compact.

19. The State of Ohio, through the Ohio Department of Natural Resources, has federally authorized regulatory and planning powers over Lake Erie coastal areas pursuant to the Coastal Zone Management Act, 16 U.S.C. §§ 1451 *et seq.* ("CZMA").

20. The State of Ohio has a unique and substantial interest in defending its laws.

21. The Attorney General of Ohio is a constitutional officer of the state of Ohio. Ohio Const. art. III, § 1. In this capacity, he represents Ohio's interests as the chief law officer

for the State and all its departments. Ohio Rev. Code 109.02. The Attorney General of Ohio has common law and statutory authority to institute this suit on behalf of the public to represent statewide interests. *State ex rel. Cordray v. Marshall*, 123 Ohio St. 3d 229, 2009-Ohio-4986, 915 N.E.2d 633, ¶¶ 19, 23.

22. In his constitutional and statutory capacity, the Attorney General of Ohio has standing to bring this suit.

23. The City of Toledo is a municipal corporation organized under Title 7 of the Ohio Revised Code and is charter city under Ohio Rev. Code 705.02 and subject to Ohio Rev. Code 705.04.

24. The Drewes Farm Partnership is an Ohio general partnership organized under the laws of Ohio. Its principal place of business is in Wood County, Ohio.

IV. FACTS COMMON TO ALL CLAIMS

General State Dominion over Lake Erie

25. Lake Erie is bounded to the west, south, and east by four states—Ohio, Michigan, Pennsylvania, and New York—and on the north by the province of Ontario, Canada.

26. Lake Erie's total surface area is approximately 9,910 square miles. Lake Erie's total drainage basin in Ohio, Michigan, Pennsylvania, New York, Indiana, and Ontario, Canada is 30,140 square miles.

27. The United States Supreme Court has recognized that the doctrine of dominion and sovereignty over and ownership of lands underlying the navigable waters of the Great Lakes is the same as that recognized in the common law as applied to ownership of lands underlying the tide waters that border the sea. *Illinois Central Railroad v. Illinois*, 146 U.S. 387, 436-437 (1892).

28. Only the states, like Ohio, possess the constitutional power to exercise the states' sovereignty over their navigable waters and their submerged lands. *Pollard v. Hagan*, 44 U.S. 212, 230 (1845) (these rights “belong[] exclusively to the states within their respective territorial jurisdictions, and they, and they only, have the constitutional power to exercise it.”).

29. These rights over their navigable waters and their submerged lands were reserved to the states under U.S. Const. art. I, § 8, cl. 16. *Id.* at 230. Each state “holds the absolute right to all their navigable waters, and the soils under them, for their own common use, subject only to the rights since surrendered by the Constitution to the general government.” *Shively v. Bowlby*, 152 U.S. 1, 16, 14 (1894).

30. In the Federal Submerged Lands Act, 43 U.S.C. § 1311(a), the U.S. Congress further confirmed that States hold title to the lands beneath navigable waters within their boundaries and that the United States retained a navigational servitude and powers of regulation and control of the lands and navigable waters for the purposes of navigation and commerce.

Ohio's Interest in Lake Erie

31. The State of Ohio holds title in trust to Lake Erie. The waters of Lake Erie “have always, since the organization of the state of Ohio, belonged to the state as proprietor in trust for the people of the state.” Ohio Rev. Code 1506.10. “The trust with which they are held is governmental * * *. [N]othing can be done [] that will destroy or weaken the rights of the beneficiaries of the trust estate.” *State v. Cleveland & P. R. Co.*, 94 Ohio St. 61, syllabus at para. 6, 79 (1916).

32. All right, title, and claim to Lake Erie was reserved to the State of Ohio under the federal constitution and received upon its admission to the Union on equal footing with its sister states. *Pollard, supra* at 221-22.

33. Ohio's title in trust to its territory including Lake Erie, like the other states in the Northwest Territory, is based upon the original deed of cessation granting all territory in the Northwest Territory to the states admitted to the federal union. *Id.*; see also *Martin v. Lessee of Waddell*, 41 U.S. 367, 410 (1842).

34. Under the Ohio Enabling Act of April 30th, 1802, 2 Stat. 175, sec. 1, Ohio was "admitted into the Union upon the same footing with the original States in all respects whatever." In it, Ohio's territory extended "through Lake Erie to the Pennsylvania line." *Id.* at sec. 2.

35. The State of Ohio holds Lake Erie in trust for the people of the state, and such ownership was codified by Ohio's Fleming Act of 1917, G.C. 3699-a, and recodified under Ohio Rev. Code 1506.10.

36. Ohio can neither abandon its title in trust to Lake Erie nor can it abdicate its role as the public's trustee. *State v. Cleveland & P. R. Co.*, *supra* at 80.

37. Lake Erie's drainage basin within Ohio is approximately 11,649 square miles, covering all or part of 35 counties.

38. The principal tributary rivers in Ohio feeding Lake Erie are the Maumee, Sandusky, Huron, Black, Cuyahoga, Grand, and Ashtabula Rivers, as well as Conneaut Creek. Beyond Ohio, the Detroit River, which carries discharge from Lake Huron and Lake St. Clair, is a major tributary. There are numerous other rivers, streams, and creeks within the watershed that feed Lake Erie.

39. Lake Erie, its tributaries, and watershed within Ohio's boundaries are waters of the state of Ohio. Ohio Rev. Code 6111.01(H).

State Delegation under the Federal Clean Water Act and the Safe Drinking Water Act

40. Under the Clean Water Act, Congress expressly designed federal water pollution control policy to “recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources.” 33 U.S.C. § 1251(b).

41. As found in the Clean Water Act at 33 U.S.C. § 1342(b), Congress delegated the National Pollution Discharge Elimination System (“NPDES”) to the states desiring to administer their own wastewater pollution discharge permit programs.

42. As found in the Clean Water Act at 33 U.S.C. § 1345(c), Congress delegated permitting authority for the disposal of sewage sludge to the states desiring to administer their own sewage sludge disposal programs.

43. As found in the Clean Water Act at 33 U.S.C. § 1341, Congress delegated the maintenance of water quality integrity to the States.

44. Similarly, Congress delegated primary enforcement responsibility to the states for public water systems under the Safe Drinking Water Act. 42 U.S.C. § 300g-2.

Ohio’s Laws and Regulations Applicable to Lake Erie

45. Due to both federal delegation and state law, Ohio regulates, administers, and enforces environmental, agricultural, and natural resources laws and rules affecting Lake Erie and the waters feeding it.

Water Pollution Law Administration by Ohio EPA

46. Ohio EPA’s environmental laws and rules are general laws applicable state-wide that are part of a comprehensive regulatory scheme prescribing general rules of conduct for all Ohio citizens.

47. Ohio EPA regulates discharges to waters of the state under Ohio's water pollution control laws found in Ohio Rev. Code Chapter 6111.

48. Ohio EPA has been delegated authority by the federal government to administer and enforce its programs for sludge management permits and permits for the discharge of sewage, industrial waste, or other wastes pursuant to section 405 of the Federal Water Pollution Control Act, 33 U.S.C. § 1345. Ohio Rev. Code 6111.03(J).

49. Ohio EPA has been delegated authority by the federal government to administer and enforce the publicly owned treatment works pretreatment program in accordance with the Federal Water Pollution Control Act, 33 U.S.C. § 1342. Ohio Rev. Code 6111.03(P).

50. Ohio issues permits for wastewater discharges to Lake Erie and its tributaries and enforces wastewater violations. Ohio Admin. Code Chapters 3745-33, 3745-36, and 3745-38.

51. Ohio EPA regulates the discharge of stormwater and other sources of water pollution. Ohio Rev. Code 6111.03(J) and 6111.035.

52. Ohio EPA has been delegated authority by the federal government to administer and enforce the 401 water quality certification program pursuant to section 401 of the Federal Water Pollution Control Act, 33 U.S.C. § 1341. Ohio Rev. Code 6111.03(O).

53. To enhance, improve, and maintain water quality, Ohio EPA has adopted water quality standards. Ohio Admin. Code Chapters 3745-1, 3745-2, and 3745-32.

54. Ohio's water pollution control laws, civil and criminal, are enforced by the Attorney General pursuant to Ohio Rev. Code 6111.07 and 6111.09.

Drinking Water Administration by Ohio EPA

55. Ohio EPA has the authority to regulate public drinking water systems under Ohio's safe drinking water laws found in Ohio Rev. Code Chapter 6109.

56. As found in Ohio Rev. Code 6109.04, Ohio EPA has been delegated authority by the federal government to administer and enforce public drinking water laws governing, collection, treatment, storage, and distribution of water for human consumption in accordance with the federal Safe Drinking Water Act, 42 U.S.C. § 300g-2.

57. Ohio has adopted primary drinking water rules, secondary maximum contaminant levels, operational requirements for public water systems, and harmful algal bloom rules. Ohio Admin. Code Chapters 3745-81, 3745-82, 3745-83, and 3745-90.

58. Drinking water facilities that have been issued permits by Ohio EPA utilize Lake Erie and/or its tributaries as sources of water.

59. Ohio's drinking water laws, civil and criminal, are enforced by the Attorney General pursuant to Ohio Rev. Code 6109.32 and 6109.33.

The Ohio Department of Agriculture

60. The Ohio Department of Agriculture's laws and rules are general laws applicable state-wide that are part of a comprehensive regulatory scheme prescribing general rules of conduct for all Ohio citizens.

61. The Ohio Department of Agriculture has the authority to regulate water pollution from farm waste and runoff to waters of the state under Ohio's concentrated animal feeding facilities laws. Ohio Rev. Code Chapter 903.

62. The Ohio Department of Agriculture issues livestock environmental permits. Ohio Admin. Code 901:10-1, *et seq.*

63. Ohio's concentrated animal feeding and related laws, civil and criminal, are enforced by the Attorney General pursuant to Ohio Rev. Code 903.16 and 903.30.

64. The Ohio Department of Agriculture's Division of Soil and Water Conservation has the authority to establish standards for management and conservation practices in farming and animal feeding operations to reduce pollution of waters of the state by soil sediment, animal manure, and residual farm products. Ohio Admin. Code Chapter 901:13-1.

65. The Ohio Department of Agriculture, subject to the consent of the Ohio Soil and Water Commission, has the sole and exclusive authority to designate a watershed to be in distress pursuant to Ohio Admin. Code 901:13-1-20.

66. Agriculture operations subject to permits issued by and the regulations of the Ohio Department of Agriculture discharge to Lake Erie and/or its tributaries.

67. Ohio's soil and water laws are enforced civilly by the Attorney General pursuant to Ohio Rev. Code 939.07.

The Ohio Department of Natural Resources

68. The Ohio Department of Natural Resources ("ODNR") laws and rules are general laws applicable state-wide that are part of a comprehensive regulatory scheme prescribing general rules of conduct for all Ohio citizens.

69. ODNR is authorized to regulate withdrawal and consumptive use of water from the Lake Erie Watershed. Ohio Rev. Code 1522.12.

70. Under Ohio Rev. Code 1522.11, the Chief of ODNR's Division of Water Resources has authority to issue permits for water diversion from the Lake Erie Watershed.

71. Under Ohio Rev. Code 1522.13 the Chief of ODNR's Division of Water Resources has authority to issue permits for water withdrawals from and consumptive use in the Lake Erie Watershed.

72. Under Ohio Rev. Code 1522.131, the Chief of ODNR's Division of Water Resources has authority to issue permits for experimental use of water in the Lake Erie Watershed.

73. The Attorney General has civil enforcement authority for violations of the Chief's rules, permits, and orders pursuant to Ohio Rev. Code 1522.20(C) and (D).

Coastal Zone Management

74. The Coastal Zone Management Act, 16 U.S.C. §§ 1451 *et seq.*, establishes that states, including Ohio, shall exercise control over their coastal zones and to develop a coastal management plan.

75. Pursuant to 16 U.S.C. § 1453(1), "the [coastal] zone extends, in Great Lakes waters, to the international boundary between the United States and Canada" Therefore, Ohio's Coastal Zone extends north within Lake Erie's Central Basin to the international boundary between the United States and Canada.

76. Pursuant to Ohio Rev. Code 1506.02(A) the Ohio Department of Natural Resources has been designated by the General Assembly to develop and implement a coastal program.

77. Ohio has developed a Coastal Management Program Document that enacts enforceable policies pertaining to regulation of Ohio's coastal zone.

78. The Attorney General has civil enforcement authority for violations of rules, permits, and orders pursuant to Ohio Rev. Code Chapter 1506.

Intergovernmental Agreements

79. As found in Public Law 90-419, 82 Stat. 414 (July 24, 1968), Congress authorized Ohio and other States to enter the Great Lakes Basin Compact.

80. Ohio is a member of the Great Lakes Commission created under the Great Lakes Basin Compact. Ohio Rev. Code 6161.01.

81. The Commission is an intergovernmental agency that provides for the usage and welfare of all water resources—industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses—of the Great Lakes Basin, including Lake Erie and its tributaries comprising any portion of its watershed. *Id.* at Art. I, III(B).

82. The Commission’s members are the states adjoining the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin) and the provincial governments of Ontario and Quebec, Canada. *Id.* at Art. II(A).

83. The Commission has the right to sue and be sued. *Id.* at Art. IV(A). Its purpose, among other things, is to undertake measures for combatting pollution in the Great Lakes. *Id.* at Art. VII(B).

84. State of Ohio departmental officers are required carry out the Compact. Ohio Rev. Code 6161.03.

85. As found in Public Law 110-342, 122 Stat. 3739 (Oct 3, 2008), Congress authorized Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Wisconsin, and Pennsylvania to enter the Great Lakes—St. Lawrence River Basin Water Resources Compact.

86. Ohio is member of the Great Lakes-St. Lawrence River Basin Water Resources Council and Regional Body created under the Great Lakes-St. Lawrence River Basin Water Resources Compact. Ohio Rev. Code 1522.01, art. 1, sec. 1.2.

87. The Council was organized to provide for water resource management—withdrawals, diversions, and consumptive uses—of the Great Lakes-St. Lawrence River Basin. *Id.* at Art. 1, sec. 1.3.2. Its members are the eight states that hold the Great Lakes in trust within

their respective territorial boundaries and two Canadian provinces: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin; Ontario and Quebec. Ohio Rev. Code 1522.01.

88. Under Ohio Rev. Code 1522.03, the Chief of ODNR's Division of Water Resources has rulemaking authority for the implementation, administration, and enforcement of the Compact and the permit program for diversion, withdrawals, and consumptive use of the Lake Erie watershed in Ohio.

City of Toledo's Authority

89. As a municipal corporation, the City of Toledo's authority is restricted to that authorized under Oh. Const. art. XVIII.

90. The City of Toledo operates in accordance with the provisions of the Charter of the City of Toledo, first adopted by the voters in 1914 and effective January 1, 1915, as amended by the voters from time to time.

91. Legislative authority in the City is vested in a twelve-member Council.

92. The Council is authorized to enact ordinances and resolutions relating to City services, tax levies, appropriating and borrowing money, licensing and regulating businesses and trades and other municipal activities.

93. The City's legislative authority is constitutionally derived and subject to limitations under Ohio's Constitution.

City of Toledo Charter Amendment

94. The City of Toledo Lake Erie Bill of Rights Charter Amendment, codified at Ord. 497-18, attempts to assert enforcement authority, both civil and criminal, over entities

within and well-beyond Toledo that are already subject to state and/or federal regulation and civil, criminal, and administrative sanctions.

95. The Charter Amendment purports to confer legal status such that any “court action shall be brought in the name of the Lake Erie Ecosystem as the real party in interest.” LEBOR Sec. 3(d).

96. The rights purportedly created by the Charter Amendment would have an extraterritorial effect—four states, two nations, and countless local governments with either corporate or government-owned units that discharge into Lake Erie, its tributaries, and its watershed.

97. The Charter Amendment proclaims the right to regulate all sources of water pollution in Lake Erie and its watershed to the exclusion of all other state and federal regulation. LEBOR Sec. 1.

98. Under the Charter Amendment, all rights secured under it are “self-executing and enforceable against both private and public entities.” LEBOR Sec. 1(d).

99. Under the Charter Amendment, it would be unlawful for any corporation or government to violate the rights allegedly recognized and secured by LEBOR. LEBOR Sec. 2(a).

100. Under the Charter Amendment, any corporate or governmental violation of the “rights” would be unlawful, even if pursuant to a lawfully issued permit, based upon the blanket prohibition. LEBOR Sec. 2(a).

101. Under the Charter Amendment, “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.” LEBOR Sec. 2(b).

102. Under the Charter Amendment, any state or federally authorized permit, license, or charter would not be recognized within the City of Toledo if it interferes with the rights the Charter Amendment purportedly grants. LEBOR Sec. 2(b).

103. Under the Charter Amendment, the City of Toledo would assert civil and criminal jurisdiction over any business or governmental entity that violates the Lake Erie Ecosystem’s rights. LEBOR Sec. 3(a) and (b).

104. Under the Charter Amendment, “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.” LEBOR Sec. 3(a).

105. Under the Charter Amendment, liability would be strict for “governments and corporations engaged in activities that violate the rights of the Lake Erie Ecosystem.” LEBOR Sec. 3(c).

106. Under the Charter Amendment, the City of Toledo and the City’s residents would unlawfully confer upon themselves legal standing to sue on behalf the “Lake Erie Ecosystem as the real party in interest.” LEBOR Sec. 3(b), (d).

107. Under the Charter Amendment, the reach of damages, while unspecified, would include the “cost of restoring the Lake Erie Ecosystem and its constituent parts,” which would include the Lake Erie watershed. LEBOR Sec. 3(d).

108. Under the Charter Amendment, corporate permit holders would be stripped of anything else they could assert in their defense: 1) other legal rights, privileges, immunities, etc.;

2) the power to assert state or federal preemption; or 3) that there is no authority to adopt LEBOR. LEBOR Sec. 4(a).

109. Under the Charter Amendment, state laws and rules would be the law of the City of Toledo but “only to the extent that they do not violate the rights or prohibitions” written into the Amendment. LEBOR Sec. 4(b).

110. Under the Charter Amendment, local, state, and federal permits would be null and void. LEBOR Sec. 5.

111. Paragraphs 1 – 110 are incorporated by reference into each count as if fully rewritten therein.

COUNT I

THE CHARTER AMENDMENT CONFLICTS WITH THE EQUAL FOOTING DOCTRINE UNDER THE U.S. CONSTITUTION

112. Authority over navigable waters and their submerged lands was reserved to the states under U.S. Const. art. I, § 8, cl. 16. These rights are not defeasible.

113. Under the Ohio Enabling Act of April 30, 1802, Ohio was “admitted into the Union upon the same footing with the original States in all respects whatever.” 2 Stat. 175, sec. 1. In it, Ohio’s territory extended “through Lake Erie to the Pennsylvania line.” *Id.*

114. Once title in Lake Erie vested in the state of Ohio under the Equal Footing Doctrine and the Ohio Enabling Act, Ohio law permanently applied to discharges to and the use of Lake Erie and its watershed.

115. The Charter Amendment purports to override Ohio's right to manage and administer Lake Erie and its resources by creating rights in the Lake Erie Ecosystem itself, in the City of Toledo, and for Toledo citizens. See LEBOR Sec. 3.

116. The Charter Amendment seeks to recognize the "Lake Erie Ecosystem" as a legal entity by utilizing a natural rights theory that unlawfully undermines Lake Erie's status as public trust waters and lands reserved to the State of Ohio and by attempting to confer legal standing to the Lake Erie Ecosystem separate and distinct from the State of Ohio's trust estate.

117. The Charter Amendment conflicts with Ohio's authority to regulate discharges to Lake Erie and its watershed within Ohio's geographic boundaries. See LEBOR Sec. 4.

118. The Charter Amendment conflicts with the State of Ohio's rights as proprietor in trust of Lake Erie and the right to regulate Lake Erie and other waters of the state within the Lake Erie watershed.

119. Michigan, Pennsylvania, and New York retain rights of trust ownership in and the right to regulate Lake Erie and other waters of their states within the Lake Erie watershed.

120. Because the Charter Amendment and its natural rights legal basis would place Ohio on an unequal and inferior footing to the other states bordering Lake Erie that enjoy full rights and control of their navigable waters upon entry as a state, the Charter Amendment conflicts with and/or is inconsistent with the Equal Footing Doctrine under the U.S. Const. art. I, § 8, cl. 16.

121. Pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, the state of Ohio seeks declaratory relief by this Court that the Charter Amendment violates is preempted by, inconsistent with, and/or conflicts with the Equal Footing Doctrine under the U.S. Const. art. I, § 8, cl. 16, and is therefore void and unenforceable.

COUNT II

**THE CHARTER AMENDMENT CONFLICTS WITH
THE SUBMERGED LANDS ACT**

122. The Supremacy Clause of the U.S. Constitution provides that the laws of the United States “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

123. The United States Congress enacted the Submerged Lands Act on May 22, 1953 (amended April 7, 1986). 43 U.S.C. § 1301, et seq.

124. The Act established and confirmed the titles of the states to lands beneath navigable waters within state boundaries and to the natural resources within such lands and waters.

125. As used in the Submerged Lands Act, the term “natural resources” includes without limiting the applicability thereof “oil, gas, and all other minerals, and fish...and other marine animal and plant life...” 43 U.S.C. § 1301(2)(e).

126. The Submerged Lands Act declares it is in the public interest that title to the lands beneath navigable waters, the natural resources within the lands and waters, and the right and power to manage, administer, lease, develop, and use the said lands, and that resources be vested and assigned to the respective states who were entitled thereto. 43 U.S.C. § 1301, Title II, Sec.3(a).

127. The Charter Amendment interferes with and is inconsistent with Ohio’s ability to manage and use the lands, waters, and resources of Lake Erie that are within Ohio’s boundaries.

128. Because the Charter Amendment attempts to provide the “Lake Erie Ecosystem” with a distinct legal identity and to confer legal standing, including the right to bring an action to enforce its own legal rights not through the State of Ohio as trustee for the whole people of the state but through the City of Toledo or its citizens, it is preempted by the Submerged Lands Act’s confirmation of Ohio’s title in trust to Lake Erie.

129. Pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, the state of Ohio seeks declaratory relief by this Court that the Charter Amendment Charter Amendment violates the Supremacy Clause under Article VI, Cl. 2 of the United States Constitution, is preempted by, inconsistent with, and/or conflicts with the United States Submerged Lands Act, 43 U.S.C. § 1310, et seq., and is therefore void and unenforceable.

COUNT III

VOID FOR VAGUENESS VIOLATION OF FIFTH AND FOURTEENTH AMENDMENTS

130. The Charter Amendment asserts that it is unlawful “to violate the rights recognized and secured by this law” without stating any specific prohibitions and without clearly stating what rights are granted. LEBOR Sec. 2 (a) and (b).

131. The Charter Amendment imposes criminal penalties for any “corporation or government that violates any provision of this law” without putting any would-be violator on notice of what constitutes criminal conduct or how criminal sanctions would be enforced. LEBOR Sec. 3(a) and (b).

132. The Charter Amendment only uses generalized and broad references to the Lake Erie Ecosystem, stating that it “...possesses the right to exist, flourish, and naturally evolve.” LEBOR Sec. 1. Further, Section 1 states, “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.” Beyond these aspirational statements, the Charter Amendment does not specify what acts or omissions constitute rights, prohibitions, or violations.

133. The Charter Amendment imposes “strict liability” for “all harms and rights violations resulting from” violating unspecified “rights of the Lake Erie Ecosystem” without specifying the “harms and rights violations.” LEBOR Sec. 3(c).

134. The Charter Amendment provides for unspecified damages that include the “cost of restoring the Lake Erie Ecosystem and its constituent parts.” LEBOR Sec. 3(d).

135. The Charter Amendment’s generalized declaration of rights and prohibitions and violations of them are so unspecific that no one is put on notice of what conduct would subject them to civil or criminal liability and punishment for that conduct.

136. Since the offending conduct is left undefined and/or left to a plaintiff’s discretion, a reasonable person would be unlikely to discern what acts and standards trigger enforcement under any provision of the Charter Amendment, what standards will be used to enforce it, and what damages could arise for it.

137. Because of the overly broad and undefined prohibitions and restrictions generally referenced in the Charter Amendment, and its express language applying liability for violations to “corporations” and “governments,” a reasonable government or corporate actor cannot determine whether in carrying out of its regulatory functions or exercise of its federal or state responsibilities it may be subject to potential liability under the terms of the Charter Amendment.

138. Pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, the state of Ohio seeks declaratory relief by this Court that the Charter Amendment is

void for vagueness, and therefore denies due process under the Fifth and Fourteenth Amendments to the U.S. Constitution and is unenforceable.

COUNT IV

FEDERAL PREEMPTION UNDER THE SUPREMACY CLAUSE

139. The Supremacy Clause of the U.S. Constitution provides that the laws of the United States “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2.

140. The Charter Amendment’s preamble to the bill of rights declares generalized harm regarding water pollution permitting, drinking water, and agricultural runoff to Lake Erie and its watershed. Toledo Ord. 497-18, Section 3.

141. The Charter Amendment purports to regulate these activities. LEBOR Sections 1 – 7.

Federal Law Delegates Water Pollution Control to the State of Ohio

142. Ohio EPA has accepted the State’s responsibility for water pollution control and permitting under Ohio Rev. Code Chapter 6111.

143. As found in the Clean Water Act at 33 U.S.C. § 1342(b), Congress delegated the National Pollution Discharge Elimination System (“NPDES”) to the states desiring to administer their own wastewater pollution discharge permit programs.

144. Ohio EPA has accepted the State’s responsibility for the NPDES program under Ohio Rev. Code 6111.03(J).

145. Ohio EPA has accepted the State’s responsibility for The State’s regulating the discharge of stormwater and other sources of water pollution under Ohio Rev. Code 6111.035.

Federal Law Delegates Sewage Sludge Disposal to the State of Ohio

146. As found in the Clean Water Act at 33 U.S.C. § 1345(c), Congress delegated permitting for the disposal of sewage sludge to the states desiring to administer their own sewage sludge disposal programs.

147. Ohio EPA has accepted the State's responsibility for the sewage sludge program under Ohio Rev. Code 6111.03(J) and (R).

148. Ohio EPA has accepted the State's responsibility for the publicly owned treatment works pretreatment program sewage sludge program under in Ohio Rev. Code 6111.03(P).

Federal Law Delegates Water Quality Standards to the State of Ohio

149. As found in the Clean Water Act at 33 U.S.C. § 1341, Congress delegated maintaining water quality integrity to the States.

150. Ohio EPA has accepted the State's responsibility for the 401 water quality certification program under Ohio Rev. Code 6111.03(O).

Federal Law Delegates Drinking Water Enforcement to the State of Ohio

151. As found in the Safe Drinking Water Act at 42 U.S.C. § 300g-2, Congress has delegated primary enforcement responsibility to the states for public water systems.

152. Ohio EPA has accepted the State's responsibility for the collection, treatment, storage, and distribution of water for human consumption under Ohio Rev. Code 6109.04.

Federal Law Delegates Great Lakes Protection to the State of Ohio

153. As found in Public Law 110-342, 122 Stat. 3739 (Oct 3, 2008), Congress authorized Ohio and other States to enter the Great Lakes-St. Lawrence River Basin Water Resources Compact.

154. The Ohio Department of Natural Resources has accepted the State's responsibilities in the Great Lakes—St. Lawrence River Basin Water Resources Compact. Ohio Rev. Code 1522.01.

155. As found in Public Law 90-419, 82 Stat. 414 (July 24, 1968) as amended, Congress authorized Ohio and other States to enter the Great Lakes Basin Compact.

156. The State of Ohio has accepted responsibility to work jointly and co-operatively in carrying out the Great Lakes Basin Compact. Ohio Rev. Code 6161.01.

Federal Law Delegates Coastal Zone Management to the State of Ohio

157. The Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq. ("CZMA"), was enacted to ensure coordination and consistency between Federal, state, and local actions in coastal zones. The CZMA authorizes and encourages states to develop coastal management programs, which allow states to protect their coastal zones by providing a Federally-authorized vehicle for the states to regulate the activities that occur within their coastal zones.

158. Pursuant to Ohio Rev. Code 1506.02(A), the Ohio Department of Natural Resources has been designated by the Ohio General Assembly to develop and implement Ohio's Coastal management program.

159. The legislative history of the CZMA indicates that Congress intended for the CZMA to give states federally-authorized control over their coastal zones. Specifically, the Senate Commerce Committee reported that "the intent of this legislation is to enhance state authority by encouraging and assisting the states to assume planning and regulatory powers over their coastal zones...." S. Rep. 92-753.

160. Pursuant to Ohio's coastal management plan, Ohio Developed a Coastal Management Program Document pertaining to but not limited to: coastal erosion and flooding,

water quality, ecologically sensitive resources, recreation and cultural resources, fish and wildlife management, environmental quality, and water quantity.

161. The Coastal Management Program Document “describes the objectives, policies, standards, and criteria of the coastal management program for guiding public and private uses of lands and waters in the coastal area.” Ohio Rev. Code 1506.01(C),

162. The Toledo Charter Amendment seeks to create and maintain authority to manage and regulate the public and private uses of lands and waters in the coastal area of Lake Erie, and is thus inconsistent with and conflicts with Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq., which gave federally authorized control over coastal zone management, including the authority to adopt and implement a Coastal Zone Program Document, to the State of Ohio and other states.

163. Because the federal government has delegated certain powers and authority to the State of Ohio and the State has accepted that delegated responsibility via the Ohio EPA, the Department of Agriculture, and the Department of Natural Resources, any provision of the Charter Amendment that would allow for enforcement of the LEBOR based on actions undertaken by the State pursuant to its federally-derived authority or permits issued pursuant to that authority is preempted by federal law.

164. Pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, the state of Ohio seeks declaratory relief by this Court that the Charter Amendment violates the Supremacy Clause under Article VI, Cl. 2 of the United States Constitution, is preempted by federal law, and therefore is void and unenforceable.

COUNT V

**EXCEEDANCE OF MUNICIPAL AUTHORITY AND/OR STATE PREEMPTION
UNDER THE OHIO CONSTITUTION**

The Charter Amendment is Subject to State Preemption

165. A municipal corporation, like the City of Toledo, may only exercise the rights granted under Art. XVIII of the Ohio Constitution or otherwise delegated by the State.

166. The Ohio Constitution limits municipalities to amending their charters for the purpose of exercising “all powers of local self-government” subject to the limitations under Oh. Const. art. XVIII, § 3. Oh. Const. art. XVIII, § 7.

167. The Ohio Constitution limits municipalities like Toledo in their exercise of their police powers to enact and enforce local regulations so long as they do not conflict with Ohio’s general laws. Oh. Const. art. XVIII, § 3.

168. Ohio’s environmental, agricultural, natural resources, and corporate laws, including those codified under Ohio Rev. Code Chapters 903, 939, 1506, 1522, 6109, 6111, 6161, and Ohio Rev. Code Title 17, are part of statewide and comprehensive legislative enactments. They apply to all parts of the state alike and operate uniformly throughout the state. They set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and prescribe rules of conduct upon citizens generally.

169. The Charter Amendment purports to grant rights that exceed the City’s authority and that conflict with Ohio environmental, agricultural, natural resources, and corporate laws. Thus, the Charter Amendment is preempted by the general laws of Ohio.

170. The Charter Amendment purports to preempt state law under LEBOR Sec. 5 by proclaiming the Charter Amendment “shall apply to any and all actions that would violate this law regardless of the date of any applicable local, state, or federal permit.”

171. The Charter Amendment purports to preempt state law by proclaiming that the “rights” and “prohibitions” under it are the only law regulating Lake Erie and its watershed that is recognized in the City of Toledo to the exclusion of all state and federal laws. See, e.g., LEBOR Sec. 2(a) (“It shall be unlawful for any corporation or government to violate the rights recognized and secured by this law.”); LEBOR Sec. 2(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.”); LEBOR Sec. 4(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.”).

Ohio Rev. Code Chapters 6109 and 6111 Preempt the Charter Amendment

172. Ohio EPA’s regulatory programs under Ohio Rev. Code Chapters 6109 (drinking water) and 6111 (water pollution control) and the rules promulgated thereunder are general laws of Ohio, have a statewide jurisdiction, and impact all regulated matters equally.

173. The Charter Amendment conflicts with Ohio Rev. Code Chapters 6109 and 6111 and the rules promulgated thereunder.

174. Ohio Rev. Code Chapters 6109 and 6111 and the rules promulgated thereunder preempt the Charter Amendment.

175. The civil, criminal, and administrative enforcement mechanisms under Ohio Rev. Code Chapters 6109 and 6111 preempt the Charter Amendment's "enforcement" provisions under LEBOR Sec. 3.

Ohio Rev. Code Chapters 903 and 939 Preempt the Charter Amendment

176. The Ohio Department of Agriculture's regulatory programs under Ohio Rev. Code Chapters 903 and 939 and the rules promulgated thereunder are general laws of Ohio, have statewide jurisdiction, and impact all regulated matters equally.

177. The Charter Amendment conflicts with Ohio Rev. Code Chapters 903 and 939 and the rules promulgated thereunder.

178. Ohio Rev. Code Chapters 903 and 939 the rules promulgated thereunder preempt the Charter Amendment.

179. The civil, criminal, and administrative enforcement mechanisms under Ohio Rev. Code Chapters 903 and 939 preempt the Charter Amendment's "enforcement" provisions under LEBOR Sec. 3.

Ohio Rev. Code Chapters 1506, 1522, and 6161 Preempt the Charter Amendment

180. The Ohio Department of Natural resources regulatory programs under Ohio Rev. Code Chapters 1506 and 1522 and the rules promulgated thereunder are general laws of Ohio, have statewide jurisdiction, and impact all regulated matters equally.

181. The Charter Amendment conflicts with Ohio Rev. Code Chapters 1506 and 1522 and the rules promulgated thereunder.

182. Ohio Rev. Code Chapters 1506 and 1522 and the rules promulgated thereunder preempt the Charter Amendment.

183. The Charter Amendment conflicts with Ohio Rev. Code Chapter 6161 and any rules promulgated to carry out its purposes.

184. Ohio Rev. Code Chapter 6161 and any rules promulgated to carry out its purposes preempt the Charter Amendment.

185. The civil, criminal, and administrative enforcement mechanisms under Ohio Rev. Code Chapters 1506, 1522, and 6161 preempt the Charter Amendment's "enforcement" provisions under LEBOR Sec. 3.

Ohio Rev. Code Title 17 Preempts the Charter Amendment

186. The Charter Amendment attempts to rewrite Ohio's corporate laws by stripping corporations of their rights to raise legal defenses.

187. The Charter Amendment purports to preempt state law under LEBOR Sec. 4(a) ("Corporations that violate this law * * * shall not possess * * * the power to assert state * * * preemptive laws in an attempt to overturn this law . . .").

188. The Ohio Constitution provides that corporations may be formed under Ohio's general laws, which may be altered from time to time. Oh. Const. art. XIII, § 2.

189. Ohio's general corporate law allows that, "In carrying out the purposes stated in its articles and subject to limitations prescribed by law or in its articles, a corporation may: * * * [d]o all things permitted by law." Ohio Rev. Code 1701.13(F)(8).

190. Ohio's corporate code under Title 17 of the Ohio Revised Code are general laws of Ohio, have statewide jurisdiction, and impact all regulated matters equally.

191. The Charter Amendment conflicts with Title 17 of the Ohio Revised Code.

192. Ohio's corporate code under Title 17 of the Ohio Revised Code preempts the Charter Amendment.

193. Because the state of Ohio has created certain powers and authority to Ohio EPA, the Department of Agriculture, the Department of Natural Resources, and to Ohio corporations, the Charter Amendment has been preempted by state law.

194. Pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, the state of Ohio seeks declaratory relief by this Court that the Charter Amendment exceeds the City's authority under Oh. Const. art. XVIII, § 3 and 7 and/or is preempted by, inconsistent with, and/or conflicts with state law, and therefore is void and unenforceable.

COUNT VI

THE CHARTER AMENDMENT CONFLICTS WITH AND IS PREEMPTED BY THE CONSTITUTION AND THE OHIO REVISED CODE'S JURISDICTION AND STANDING PROVISIONS

195. The Ohio Constitution creates "original jurisdiction over all justiciable matters * * * as may be provided by law." Oh. Const. art. IV, § 4 (B).

196. The Ohio Constitution vests judicial power of the state in the "supreme court, courts of appeals, courts of common pleas and divisions thereof." Oh. Const. art. IV, § 1.

197. The Ohio Constitution vests "original jurisdiction over all justiciable matters" in the courts of common pleas. Oh. Const. art. IV, § 4(B).

198. The Ohio Constitution vests legislative power of the state in the General Assembly. "The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws." Oh. Const. art. II, § 1.

199. Under Oh. Const. art. IV, § 4 (B), only the General Assembly has the right to confer jurisdiction over "justiciable matters."

Jurisdiction

200. The statutory jurisdictional provisions under Ohio’s environmental, agriculture, and natural resources laws confer jurisdiction in various courts of common pleas throughout the state, including the counties that border Lake Erie and that lie within the Lake Erie watershed.

201. The General Assembly has declared that civil jurisdiction to enforce Ohio’s environmental laws is limited to the provisions under Ohio Rev. Code 6109.32, 6109.33, 6111.07, and 6111.09 that provide for enforcement actions to be brought by the Attorney General in courts of competent jurisdiction.

202. The General Assembly has declared that civil jurisdiction to enforce Ohio’s agricultural laws is limited to the provisions under Ohio Rev. Code 903.16, 903.30, and 939.07 that provide for enforcement actions to be brought by the Attorney General in courts of competent jurisdiction.

203. The General Assembly has declared that civil jurisdiction to enforce Ohio Department of Natural Resources’ Division of Water Resources laws is limited to the “the court of common pleas of Franklin county or the county where the applicable facility is located” pursuant to Ohio Rev. Code 1522.20(C).

204. The City of Toledo does not have the authority under the Ohio Constitution to determine the jurisdiction for courts of common pleas.

205. The Charter Amendment purports to establish both civil and criminal jurisdiction in the Lucas County Court of Common Pleas for the “City of Toledo, or any resident of the City, may enforce the rights and prohibitions” under the Charter Amendment. LEBOR Sec. 3(b) and (d).

206. Because the Ohio Constitution allows only the General Assembly to confer to confer jurisdiction over justiciable matters, the Charter Amendment’s act of vesting jurisdiction in the Lucas County Court of Common Pleas is preempted by, inconsistent with, and/or conflicts by state law and Ohio’s Constitution.

Standing

207. All the courts of common pleas referenced in Ohio Rev. Code 903.16, 903.30, 939.07, 1522.20(C), 6109.32, 6109.33, 6111.07, and 6111.09—and not exclusively the Lucas County Court of Common Pleas—have jurisdiction to determine legal standing in any given case.

208. The Charter Amendment unlawfully attempts to create legal standing under LEBOR Sec. 3(d) (“Such court action shall be brought in the name of the Lake Erie Ecosystem as the real party in interest.”).

209. The City of Toledo cannot dictate the law of standing for any cause of action alleging that “rights” under the Charter Amendment have been violated.

210. The natural rights declaration made in the Charter Amendment is contrary to Ohio’s statutes and the Ohio Rules of Civil Procedure pertaining to venue and jurisdiction of Ohio courts.

211. The Charter Amendment seeks to create an unlawful legal status different from that recognized by the United States and Ohio—and contrary to title in the state of Ohio—by purporting to give Lake Erie its own right to bring a legal action vicariously through Toledo or its citizens.

212. Because the Ohio Constitution allows only the General Assembly to confer and Ohio courts to determine standing in justiciable matters, the Charter Amendment’s act of

creating legal standing on “the Lake Erie Ecosystem as the real party in interest” is preempted by, inconsistent with, and/or conflicts with state law and Ohio’s Constitution.

213. Pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure, the state of Ohio seeks declaratory relief by this Court that the Charter Amendment has been preempted by state law under Oh. Const. art. II, § 1 and Oh. Const. art. IV, § 4 (B), and therefore is void and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Intervenor-Plaintiff respectfully requests the following relief pursuant to 28 U.S.C. §§ 2201, 2202 and Rule 57 of the Federal Rules of Civil Procedure:

1. Entry of a judgment declaring that the Charter Amendment is void and unenforceable in its entirety and specific declarations that:
 - a. The Charter Amendment is void because it violates the Equal Footing Doctrine;
 - b. The Charter Amendment is void because it conflicts with and is preempted by the Submerged Lands Act;
 - c. The Charter Amendment is void because it is unconstitutionally vague in violation of the Fifth and Fourteenth Amendments;
 - d. The Charter Amendment is preempted under the Supremacy Clause of the U.S. Constitution because it conflicts with federally-delegated authority;
 - e. The Charter Amendment is void because it exceeds municipal authority under Oh. Const. art. XVIII, 3 and 7 and/or is preempted by state law; and

- f. The Charter Amendment is void because it confers jurisdiction and standing in conflict with the Ohio Constitution and state law.
2. Issuance of a permanent injunction against the City of Toledo, any citizen, any person, and any legal or fictitious entity, enjoining them from enforcing any provisions of Charter Amendment against any person, corporation, federal, state, or local governmental entity, and any other legal entity.
3. Granting such other relief as the Court may deem just and proper.

Respectfully submitted,

DAVE YOST
Attorney General of Ohio

/S/ Daniel J. Martin

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Attorneys for Intervenor-Plaintiff, the State of Ohio

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2019, the foregoing was filed electronically through the Court's CM/ECF system, causing a copy of the same to be served by electronic mail upon all counsel of record.

/S/ Daniel J. Martin

Daniel J. Martin (0065249)

Attorney for Intervenor-Plaintiff

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 unalienable, 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.

Vote on emergency clause: yeas 11, nays 0.

Passed: December 4, 2018, as an emergency measure: yeas 11, nays 0.

Attest:

Gerald E. Dendinger
Clerk of Council

Matt Cherry
President of Council

Approved:

December 7, 2018
Wade Kapszukiewicz
Mayor