ECOLOGICAL LINGUISTICS FOR AMERICAN RIGHTS OF NATURE DISCOURSE ANALYSIS: A CASE STUDY OF THE LAKE ERIE BILL OF RIGHTS

A THESIS

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1. Introduction

"We spill over into the world and the world spills over into us."

– Robin Wall-Kimmerer[1]

On December 4th, 1967, the United States Public Health Committee implored residents living in the vicinity of Lake Erie avoid using their water — claiming some pollutants present required further examination.[2] By the next year, the entire nation had its teary eyes on Lake Erie, mourning the death of their inland sea that had been overtaken by pollutants.[3] Locals wrote of widespread species die-off and devastating algal blooms throughout the late 1960s; the language describing the condition of Lake Erie was terminal.[4] Evidently, this mourning period was short-lived, and residents began to see the effect of their cleanup efforts before Nixon even resigned.[5] This feat of resurrection was neither the first nor the last for Lake Erie, which fluctuated between heavily polluted and perfectly clean countless times over the course of the 20th century like an ecological phoenix.[6] For now, Lake Erie remains among the living, and its metaphorical personification has placed the body of water firmly within developing discourses regarding the extent to which humans can understand nature as truly being alive.

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[1] Wall Kimmerer, Robin, *Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge, and the Teachings of Plants* (Minneapolis: Milkweed Editions, 2013), 103.
[2] "Lake Erie Water Warning," *New York Times*, December 5, 1967, https://timesmachine.nytimes.com/timesmachine/1967/12/05/82164453.html?pageNumber=94.
[3] "Lake Erie Aging at Speedy Rate," *New York Times*, February 11, 1968, https://timesmachine.nytimes.com/timesmachine/1968/02/11/91221639.html?pageNumber=136.
[4] Michael Wines, "Behind Toledo's Water Crisis, a Long-Troubled Lake Erie," *New York Times* (New York), August 4, 2014, https://www.nytimes.com/2014/08/05/us/lifting-ban-toledo-says-its-water-is-safe-to-drink-again.html.
[5] "Great Lakes Pollution Fight is Gaining," *New York Times*, May 23, 1974, https://timesmachine.nytimes.com/timesmachine/1974/05/23/119460882.html?pageNumber=1.
[6] Wines, "Behind Toledo's Water Crisis, a Long-Troubled Lake Erie," *New York Times*.

In 2019, after decades of death and rebirth, Lake Erie sat at the precipice of an ostensible salvation from this vicious cycle of destruction and restoration, driven by a group of concerned citizens in Toledo, Ohio. Hoping to put an end to pollution in Lake Erie entirely, the Toledoans believed legal reform was the path to a clean future for their lake.[7] Armed with legal direction and community support, they hoped to provide Lake Erie legal protection from environmental degradation, indefinitely. Their solution was a new bill of rights, one which included Lake Erie and the surrounding ecosystem. This Lake Erie Bill of Rights (LEBOR) aimed to bestow human rights upon the environment, specifically to ensure that Lake Erie had the "right to exist, flourish, and naturally evolve."[8] The group garnered ten thousand signatures over the course of a multi-year campaign, resulting in a special election where the city of Toledo voted to include the LEBOR in the city's municipal code.[9] It was a noble effort to extend their hands and drag their ecological phoenix out of the ashes once and for all. The people of Toledo were most definitely shocked when they got dragged right down into those ashes themselves.

The Lake Erie Bill of Rights was invalidated in February 2020, only one year after being added to the Toledo city charter as the result of a special election that occurred in February of the previous year.[10] An agricultural conglomerate, Drewes Farms, immediately brought forth a lawsuit against Toledo, and the state of Ohio joined the suit as a co-plaintiff. The plaintiffs believed they were being injured by the lack of clarity in the LEBOR, thus demanding the bill of rights be removed from the city charter to protect their business. More specifically, the lawsuit questioned the LEBOR's claim to extend rights to Lake Erie and its ecosystem in its entirety. No

[7] A striking quote from Wines' article, reflecting pervasive and persistent nature of Erie's pollution problem: "Lake Erie's travails — and now, Toledo's — are but the most visible manifestation of a pollution problem that has grown as easily as it has defied solution" (Ibid.).
[8] Toledo Municipal Code, *The Lake Erie Bill of Rights* (Ch. XVII, § 254(a)), 2019.
[9] *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19 CV 434, 2020.
[10] Ibid.

other ordinances in the United States have attempted to grant rights to beyond a single natural feature.[11] And this, according to the lawsuit, is an over-extension of the municipality's rights.[12] The Order Invalidating the Lake Erie Bill of Rights (OILEBOR) reflects the decision of U.S. District Judge Jack Zouhary and his support for Drewes Farms and the State of Ohio. These two seemingly simple procedural documents bookend a monumental moment in the American Rights of Nature (RoN) movement, one which demands to be explored. This thesis aims to answer the following: how does language reveal the ways in which ecological ideology influences the American Rights of Nature movement? Examining this question enables an exploration of the underlying historic and cultural factors at play in the Lake Erie Bill of Rights' failure, as well as the failure of similar legislation across the United States.

2. *Background*

"Here, in sequence, we see a wilderness giving way to a pastoral society and then to a glorious civilization." – Roderick Nash[13]

There is a tension between culture and history, between law and society, that is continually central in the narratives surrounding the resurrection of Lake Erie and the death of the Lake Erie Bill of Rights. The origins of this tension are deeply rooted in the dominant, American environmental history of the recent centuries.[14] In exploring how American cultural

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[11] Nicole Pallotta, "Federal Judge Strikes Down 'Lake Erie Bill of Rights,'" *Animal Legal Defense Fund*, May 4, 2020, https://aldf.org/article/federal-judge-strikes-down-lake-erie-bill-of-rights/#:~:text=On%20February%2027%2C%202020%2C%20a,election%20on%20February%2026%2C%202019.
[12] *Drewes Farm Partnership v. City of Toledo*.
[13] Roderick Nash, *Wilderness and the American Mind* (New Haven: Yale University Press, 1967), 81.
[14] Jedediah Purdy, "American Natures: The Shape of Conflict in Environmental Law," *Harvard Environmental Law Review* 36 (2012), 170.

understandings of the environment have developed, the catalysts of the LEBOR's failure become clearer. Historical context provides not only a better understanding of how these catalysts are entrenched within conquest and exploitative worldviews, but also how the LEBOR fits within the Rights of Nature movement broadly.[15] The RoN movement emerged as a response to unsuccessful environmental protection under American environmental law, and it champions extending legal standing to the environment as a solution to natural destruction.[16] Lake Erie's Bill of Rights falls within this conversation, one which is predicated upon the idea that American environmental law is inseparable from the prominence of anthropocentric worldviews in America's culture throughout the previous centuries.

2.1 The Origins of Ecological Ideology

Measuring an impressive one hundred square feet, *Among the Sierra Nevada Mountains, California* by Albert Bierstadt is a formidable 1868 oil on canvas.[17] A size necessitated by its purpose, providing east coast residing Americans with a visual representation of the parts of their country they had never seen – both intimidating and beautiful.[18] This new conception of nature, stemming from the aesthetics of Bierstadt and the entire Hudson River Valley School, was pervasive and Romanticized notions of nature defined the environmental history of the 19th century.[19] Nature was suddenly captivating; a vast departure from past fears of uncivilized nature.[20] The shift towards understanding nature as 'sublime' occupied a space of ideological

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[15] Roderick Nash, *The Rights of Nature: A History of Environmental Ethics* (Madison: University of Wisconsin Press, 1989), 27.
[16] Christopher D. Stone, *Should Trees Have Standing? Law, Morality, and the Environment* (Oxford: Oxford University Press, 2010), xiii.
[17] "Among the Sierra Nevada Mountains, California," *Smithsonian*, https://www.si.edu/object/among-sierra-nevada-california%3Asaam_1977.107.1.
[18] Ibid.
[19] Nash, *Wilderness and the American Mind*, 45.
[20] William Cronon, "The Trouble with Wilderness," in *Uncommon Ground: Rethinking the Human Place in Nature* (New York: W. W. Norton & Co., 1995), 82.

colonialism, "sublimity is not contained in nature, but only in our mind, insofar as we can become conscious of being superior to nature within us and thus also to nature outside of us."[21] Following the spatial colonialism and westward expansion of the early 19th century, indoctrinating the Western environment into American culture was a conquest all the same.

America's natural environment became its distinguisher during the 19th century – something that set the young country apart from its European counterpart.[22] Little about these landscapes had changed, yet the American cultural conception of them was entirely transformed.[23] But, a sudden appreciation for nature only served to the extent that it aided the pursuit of American success and did little to decelerate environmental exploitation.[24] This fact was ostensibly confirmed in 1893, when Frederick Jackson Turner published his 'Frontier Thesis,' which espoused that American financial success was inextricably tied to the continuation of westward expansion and the domination of that landscape. This piece solidly situated the frontier within the overarching progress narratives of the post-industrial revolution era and set considerable cognitive distance between American society and the natural environment.[25] The separation between nature and humanity was well intact, and in this way the earliest foundations of not just American culture, but American environmentalism are firmly situated in frameworks of systemic colonialism. From the adventures of Lewis and Clark to the Gold Rushes of the mid-century, the artificial fantasy surrounding the frontier graduated to the level of mythic throughout the 19th century. This myth of nature has continued to obscure a path to environmental stewardship, and the development of this domineering conception of nature is

[21] Immanuel Kant, *Critique of Judgment*, (New York: Simon & Schuster, 1790), 147.
[22] Even though similar discourse was occurring among intellectuals and elites in European cities (Nash, *Wilderness and the American Mind*, 51).
[23] Ibid., 46.
[24] Cronon, 78.
[25] Frederick Jackson Turner, "The Frontier in American History," 1920.

one of many catalysts at play in the failure of the Lake Erie Bill of Rights, centuries later. Uninterrupted, pristine wilderness was America, and the young country paid no mind to the fact that this image was far from reality. This initial ideological chasm between Americans and nature was established through this discourse and set into motion considerable barriers to the Rights of Nature movement that would come to be a century later.

2.2 Contextualizing Ecological Ideology

The preceding is that of dominant history, which has informed the development of dominant historical narratives. The ideological dissonance of white Americans allowed for the joint exploitation of nature and marginalized groups.[26] Today, the dissonance remains, setting the stage for a modern America in which Rights of Nature struggles to gain traction. The connection between RoN and American ideology cannot be understood without an understanding of historical narratives. More explicitly, the aesthetic glory of a pristine, uninhabited wilderness exists at the cost of indigenous lives, cultural erasure, and environmental destruction.[27] Environmentalists, such as John Muir, pushed for the preservation of wild spaces, despite those spaces never truly being 'empty.' In his 'Our National Parks,' Muir wrote that when "we take stock of our wildness, we are glad to see how much of even the most destructible kind is still unspoiled."[28] This romantic narrative explicitly excludes indigenous people who were living in these 'unspoiled' spaces for thousands of years.[29] For wilderness to be preserved it first had to be emptied, a reality all too absent from praise for preservationist environmentalism.

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[26] Purdy, 203.
[27] Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks* (Oxford: Oxford University Press, 2000), 115.
[28] John Muir, *Our National Parks*, (New York: Houghton Mifflin, 1901), 4.
[29] John P. Bowes, "Indian Removal beyond the Removal Act," *Native American and Indigenous Studies* 1, Vol. 1 (Spring 2014), 67.

The growing appreciation for nature continued through the turn of the century, an appreciation that was on American terms and situated within American worldviews exclusively. At the federal level, their commitment to this new environmental culture manifested first in the establishment of the National Parks Service in 1916. The Organic Act accomplished this by officially protecting America's treasured wild landscapes by law.[30] Establishing that National Parks were to be 'preserved' set into motion the violent removal of indigenous communities that occupied those spaces.[31] The native communities of Yosemite, Yellowstone, and more were forced out of their homes, and this conflict was deemed necessary to maintain the federal vision of wilderness as pristine. Despite park management's attempts to conceal this fact, across the country, the legal preservation of national parks is undeniably synonymous with violence.[32]

Fifty years later, this violent legality was extended further with the passage of the Wilderness Act in 1964, providing protection to Wilderness spaces. The capital 'W' designating the national network of over more 800 preservation sites -- geographically doubling the amount of land protected by the federal government. Despite occupying over 100 million acres, the provided definition for 'Wilderness' does little to demystify the space:[33]

> "A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."[34]

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[30] Spence, 115.
[31] Ibid., 129.
[32] For further information, see Yosemite's 'Indian Field Days' (Ibid., 120).
[33] "*Wilderness Law* & Policy," *The National Parks Service*, Accessed April 18, 2022, https://www.nps.gov/subjects/wilderness/law-and-policy.htm#:~:text=The%20Wilderness%20Act%20of%201964,Service%2C%20and%20US%20Forest%20Service.
[34] Ibid.

This definition draws upon preservationist ideals, stating that man is a 'visitor who does not remain' in nature. Language such as this insinuates that the separation between the environment and society is absolute. In this way, the Wilderness Act serves to permanently incorporate the romanticized rhetoric of the 19th century America into law, where nature is a place opposed to society.

The implications of laws such as the Organic and Wilderness Acts are frightening for American culture, and contradictory to the goals of the RoN movement. These laws are based upon ideals of power and success rather than of justice and fairness.[35] It is evident that in America's management of the environment, "law is often a means of expressing and enforcing the prejudices of the majority."[36] Further, beliefs about the positionality of indigenous people and the natural environment in comparison to Americans are imbued into law -- the right to conquer takes precedence.[37] It was not until the second half of the 20th century that dominant American culture drew connections between themselves and the environment and questioned the divisive worldviews of the 19th century. When this did happen though, the rhetoric parallels indigenous wisdom without accrediting it.[38] Despite Americans reevaluating their cultural conception of their relationship with the environment throughout the latter half of the 20th century, underlying colonialist worldviews remained well intact and continued to jade environmental rhetoric.

It was 1962 when Rachel Carson asked, "what has already silenced spring in countless towns in America?"[39] This question is at the center of *Silent Spring*, her seminal book, which details the environmental destruction of the 20th century due to the proliferation of agricultural

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[35] Vine Deloria Jr.. "Conquest Masquerading as Law," In *Unlearning the Language of Conquest: Scholars Expose Anti-Indianism in America*, (Austin: UT Austin Press, 2006), 95.
[36] Deloria Jr., 106.
[37] Ibid.
[38] Wall-Kimmerer, 40.
[39] Rachel Carson, *Silent Spring*, (Boston: Houghton Mifflin, 1962), 3.

pesticides. Thus, the answer to Carson's question, of who the culprit behind America's pollution problem, was humanity.[40] The collective realization that the ways in which Americans were treating the environment had an impact on human health was a new perspective entirely.[41] Frontier logic stressed the deep chasms between society and the natural environment, and visits to nature were a temporary escape that ended upon return to cities.[42] Carson closed the chasm between society and nature, and inspired action towards environmental protection. This new environmentalism, conservationism, grew out of a desperation to regain control over the environment and by the end of the 1960s the threats of industrialization to both natural and human health were well known.[43]

In 1970, the Environmental Protection Agency (EPA) was established. Piggybacking on the support for conservationist environmentalism, the agency brought forth the foundations of modern environmental law: the Clean Air Act, the Clean Water Act, and the Endangered Species Act.[44] Carson's story is a successful one but taking a critical look at her influence is necessary and reveals some issues with this brand of environmentalism. To think that it took a white American voice such as Carson's to finally reconnect humanity and nature is discouraging. Especially after more than a full century of Americans explicitly devaluing the indigenous cultures who created that exact idea. It was only when Carson repackaged indigenous knowledge in a way Americans could not deny that they turned their attention to environment, all the while ignoring that their 'new' environmentalism may not be their own – that it could be anything but entirely American was not considered.[45]

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[40] Ibid.
[41] Purdy, 174.
[42] Ibid.
[43] Ibid., 208.
[44] Amongst other laws, but those are the three most notable (Ibid.).
[45] Stone, *Should Trees*, 10.

2.3 The Rights of Nature Movement

Even though there was a well-established cultural understanding of the connections between nature and human health, the American ideological conception of the environment was far from perfect. In 1972, less than 10 years after *Silent Spring* was published, the Sierra Club sued Disney and sparked one of the pivotal cases in American environmental law's history.[46] The Sierra Club claimed that Disney, who was represented by Secretary of the Interior Roger Morton, could not build a ski resort in the Sequoia National Forest. Not far, in fact, from the mountains painted by Bierstadt some one hundred years before.[47] The case made it all the way to the Supreme Court, and *Sierra Club v. Morton* became a debate over whether the Sierra Club could prove injury at the expense of Disney's construction.[48] Morton prevailed, 4 to 3, and Potter Stewart wrote the majority opinion. Stewart explained that the Sierra Club's claim that the general injury of environmental destruction was not strong enough to give the club standing. This term 'standing' is important here, it is a legal term that describes the capacity of a party to bring forward a suit.[49] In this case, the injured claimed by the Sierra Club was damage to humanity as a result of environmental destruction. So, Stewart, by invalidating their claim, is communicating that in the American legal system, the environment is not valuable in its own right. This decision is damning, but unsurprising. Despite the sentiments of Carson's environmentalism and the trend towards environmental appreciation, the ultimate focus was still on that of environmental control and the protection of human health. The supposed objectivity of the law becomes complicated, and in this case skewed, when faced with ethical questions surrounding the environment.

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[46] Ibid.
[47] *Sierra Club v. Morton*, 405 U.S. 727 (1972).
[48] Ibid.
[49] Stone, *Should Trees*, 8.

The environmental culture of America is reflected in environmental law, and *Sierra Club v. Morton* is an apt example of this phenomenon. The Rights of Nature movement's aim is to extend legal standing to the natural environment in order to ensure the law is protecting nature.[50] This would distance nature from being a perceived as only a resource, and there would be more severe legal consequences for environmental degradation.[51] The goal of which is to improve environmental law while still working within current systems. Internationally, the rights of nature movement has had great success. Fundamental rights have been granted to a river in New Zealand and Ecuador has amended its constitution to extend rights to nature.[52] The United States has attempted to repeat this success, with many local, small-scale rights of nature ordinances being instated in places like Crestone, Colorado.[53] Yet, none of these instances have led to a great deal of change in how the environment is treated, as these choice locations mostly already practiced environmental stewardship. If RoN is such an ideal path, one must ask why it has yet to gain traction in the United States. The answer to this question is unclear, and I believe, relates to Americans' complicated relationship with the environment.

2.4 The Relationship Between Ecological Ideology and Rights of Nature

Jedidiah Purdy wrote that "the natural world is a plain and obdurate fact of American life and also an object of rich imagination."[54] This 'rich imagination' demands attention, as transcends the superficiality of American environmental history's narratives. The American imagination of the environment relates to the individual, and the ways in which these narratives have shaped how individuals relate to the natural environment. Culture and history are two

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[50] David R. Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World,* Toronto: ECW Press, 2017, 5.
[51] Ibid.
[52] Cristy Clark, Nia Emmanouil, John Page, and Alessandro Pelizzon, "Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance," *Ecology Law Quarterly* 45 (2018), 795 & 800.
[53] Ibid.
[54] Purdy, 228.

lenses through which Americans see the environment, and thus individual imaginings of the environment cannot be separated from them. In exploring American environmental history, this connection is clear. Further, the connection between these elements and the results of *Sierra Club v. Morton* are clear – a culture that prides itself upon environmental domination cannot possibly value nature intrinsically. In this way, and as previously discussed, the American environmental imagination is marked by conflict. Further, these conflicts are motivated by the many, incongruous environmental narratives clashing throughout history.

With all of this in mind, I return to the Lake Erie Bill of Rights, and specifically, to this question: why it is an apt lens through which to understand the relationship between the rights of nature movement, the American legal system, and the ways in which Americans conceptualize the environment? By contrasting the LEBOR with the Order Invalidating the LEBOR (OILEBOR), there is an opportunity for productive parallel analysis between citizen and federal ideological perspectives. The LEBOR was created by a group of citizens who worked to build community support for their initiative – in this way the document reflects citizen interests.[55] In contrast, the OILEBOR was written by a state judge who ruled in favor of an agricultural conglomerate. This case study is valuable for many reasons, but one of the most potent is that it provides these differing perspectives – that of the people and that of the law. This allows for better analysis of broader issues, as the dynamic between Americans and the law is critical at nationwide scales, not just regionally in Ohio. Additionally, the core question of this case pertains to the definitional integrity of RoN in the LEBOR. Specifically, the state judge is invalidating the bill based upon the lack of clarity in definitions surrounding Lake Erie's rights.[56] There are few Rights of Nature cases where the questions of the case are so philosophically and

[55] Pallotta, "Federal Judge Strikes Down 'Lake Erie Bill of Rights."
[56] *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19 CV 434, 2020.

ethically ambiguous. The entirety of the OILEBOR is exploring the lack of clarity and practical applicability of RoN as presented in the LEBOR. This lack of clarity is fundamentally mismatched with American law according to the state judge. Ambiguities in the LEBOR emerge from, and are informed by, the unique environmental history of the United States. In particular, the ways in which environmental control have become a part of the American legal system are central to this case. The Lake Erie case also raises explicit questions about environmental language and communication. How Americans speak about the environment is important, not only as seen in our history, but language is a critical element of legal decision-making.[57] As stated in my research question, I aim to analyze the many, interconnecting facets of the Lake Erie case in order to better understand how broader historical and cultural discourses have influenced the American ecological ideology and the progress of the Rights of Nature movement in the United States.

3. Literature Review

3.1 Rights of Nature

The scholarly predecessors of Rights of Nature fall within the realm of the environmental appreciation of the mid-20th century. Writers and scholars alike espoused that humanity rethink their relationship with the environment as a human community.[58] It was not until the late 20th century, around the same time as the Supreme Court ruling on *Sierra Club v. Morton*, that specific questions about what rights should or should not be allocated to the environment became a focus of academics. Christopher Stone brought Rights of Nature to the forefront in his 1972

[57] Deloria Jr., 106.
[58] Aldo Leopold, *A Sand County Almanac,* (Oxford: Oxford University Press, 1949), 80.

law review article 'Should Trees have Standing?' directly addressing the results of *Sierra Club v. Morton,* as well as RoN broadly.[59] The following will detail current literature that directly focuses on Rights of Nature, examining approaches, questions, as well as areas for improvement and specific gaps in the scholarship.

3.1.a Approaches

The literature surrounding the RoN movement is interdisciplinary, finding attention in law,[60] philosophy,[61] history,[62] politics,[63] indigenous studies,[64] and environmental studies,[65] yet the methodological diversity is low.[66] Disregarding some outliers, most RoN scholars utilize qualitative case studies or comparative analysis to frame their discussion of the movement.[67] Rights of Nature is still a fledging movement, and analyzing successes is the most prevalent methodological approach: Ecuador,[68] Colombia,[69] New Zealand,[70] and India's[71] efforts specifically are well documented. Scholars writing about RoN have focused in upon these successes and have utilized various critical lenses to do so.

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[59] Stone, 10-35.
[60] Ibid.
[61] Gwendolyn Gordon, "Environmental Personhood," *Columbia Journal of Environmental Law* 43, (2018), https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5RKB-0HT0-00CT-T184-00000-00&context=1516831, 49.
[62] Nash, *The Rights of Nature*, 33.
[63] Dana Zartner, "Watching Whanganui & the Lessons of Lake Erie: Effective Realization of Rights of Nature Laws*," Vermont Journal of Environmental Law* 22 (2021), 10.
[64] Mihnea Tănăsescu, "Rights of Nature, Legal Personality, and Indigenous Philosophies," *Transnational Environmental Law* 9, 3 (2020), 430.
[65] All academic explorations of RoN intersect with Environmental Studies in some capacity.
[66] Clark et. al, 787.
[67] I have not found research that is completely quantitative.
[68] Ivàn Vargas-Chaves, Gloria Amparo Rodríguez, Alexandra Cumbe-Figueroa, and Sandra Estefanía Mora-Garzón, "Recognizing the Rights of Nature in Columbia: The Atrato River Case," *Revista Jurídicas* 17 (2020), 15.; N: Philipp Wesche, "Rights of Nature in Practice: A Case Study on the Impacts of the Colombian Atrato River Decision," *Journal of Environmental Law* 33 (2021), 531.
[69] Clark et. al, 805.
[70] Clark et. al, 800.
[71] Clark et. al, 811.

Within the case study methodology, jurisprudence is the focus of many scholars. Exploring how RoN functions without precedents in certain cases, the Atrato River for example, the constitutionality of RoN in other locations without precedents can be explored.[72] Others have written of the impact of RoN legislation, whether on the constitutional or regional level, and studied implementation across the globe.[73] In the United States, scholars have used the concept of corporate personhood to analyze the feasibility of domestic RoN efforts.[74] Scholars utilizing the case study approach, while certainly occupying similar spaces, are asking unique, location specific questions.[75]

Of the scholars who choose to utilize case studies, most choose to analyze multiple successful instances of RoN. David Boyd's introductory text plays upon the same themes as many other legal journal articles which attempt to synthesize the entire scope of the RoN movement as the basis of their argument.[76] In doing so, these authors can make conclusions about RoN broadly, as compared to those who focus on a single case study. These conclusions are primarily legalistic and attempt to give lawmakers where RoN is not as prevalent suggestions on how to best incorporate RoN into their law.[77] Although these are incredibly useful as introductory texts, providing arguments that are backed up by multiple examples, they tend to do a great deal of case summarization and miss out on the detail that single case studies have to offer.[78]

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[72] Vargas-Chaves et. al, 15.
[73] Zartner, 8; Wesche, 547.
[74] Matthew Miller, "Environmental Personhood and Standing for Nature: Examining the Colorado River Case," *The University of New Hampshire Law Review* 2, Vol. 17 (2019), 360.
[75] One example: Vargas-Chaves, et. al, 16.
[76] Clark et. al, 789; Zartner, 4; Nicholas Bilof, "The Right to Flourish, Regenerate, and Evolve: Towards Juridical Personhood for an Ecosystem," *Golden Gate University Environmental Law Journal* 10 (Spring 2018), https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5SB7-T5T0-01DP-324D-00000-00&context=1516831, 117.
[77] Ibid.
[78] Especially Clark et. al, 795-823.

Building upon the work of case studies, scholars who use comparative analysis are mostly attempting to understand how Rights of Nature measures up to other methods of environmental law reforms. For example, some researchers have compared RoN to conventional conservation methods, including in Australia, where researchers espoused a wide variety of implementation possibilities.[79] This work is important, and helps to build consensus around the utility, or lacktherof, of RoN as an approach. Scholars often use these comparisons to speak on the international appeal of RoN because it can be specifically tailored to each country' specific needs, whether that be scalar, cultural, or otherwise.[80] Other instances of comparative scholarship utilize similar approaches, Clark et. al.'s research on instances of RoN for rivers is one such example.[81] In many ways, this methodological approach does not give enough space for criticism of RoN, as it is being compared to conservation approaches that already have been proven to be unsuccessful, such as complete preservation.[82] Even though this comparative research is important, I believe that in order to best understand RoN, the analysis must be neutral resulting in both critique and praise.

3.1.b Disciplines

The two preceding qualitative methodologies alone are not sufficient for understanding the scope of the RoN discourse. By investigating the caliber of questions primarily being asked by scholars, how my research addresses gaps in the current literature can be established. Specifically, the disciplines of ethics and indigenous studies complement both my research question, and the work of scholars doing comparative and case study analyses. Extending rights

[79] Benjamin J. Richardson and Nina Hamaski, "Rights of Nature Versus Conventional Nature Conservation: International Lessons from Australia's Tarkine Wilderness," *Environmental Policy and Law* 51 (2021), 168.
[80] Richardson and Hamaski, 170.
[81] Clark et. al., 830.
[82] Richardson and Hamaski, 168.

to nature and recognizing the intrinsic value of other species and ecosystems is difficult to conceptualize. Rights of Nature scholarship extrapolates this by asking humanity not only to rationalize this, but to distill the concept down to the point that is legally enforceable. Scholars who have philosophically studied RoN have taken on this task, attempting to simplify the pathways to success for RoN that may have otherwise been blocked by ethical impasses. The first to do so was Roderick Nash, who in 1989 published *The Rights of Nature: A History of Environmental Ethic*s exploring the intersection of RoN and ethics. He connects the successes of the civil rights and women's rights movements to the Rights of Nature movement, artfully illustrating the logical connections between oppressed Americans and environmental degradation.[83] The ethical underpinnings of ecofeminism and environmental justice are found in many philosophical texts on RoN.[84] Many scholars have explored environmental personhood as a general concept,[85] and others have specifically addressed the ethical implications of RoN and law.[86] Specific case studies, such as Colombia and Bolivia, are still at play in this scholarship as frameworks for understanding the connections between RoN and rights as a general legal construct.[87] Although some scholars ground their work in specific cases, others investigate RoN from a purely theoretical standpoint.[88] Regardless of their scope, the field of philosophy has produced some of the most critical work in bringing RoN from theory to reality.[89]

As discussed in the previous section, rights of nature could not exist without the influence of indigenous worldviews. Due to continued violence and discrimination, this fact has been

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[83] Nash, *The Rights of Nature*, 7.
[84] Gordon, "Environmental Personhood," 49.
[85] Gordon, 70.
[86] Bilof, 137; Susana Borràs, "New Transitions from Human Rights to the Environment to the Rights of Nature," *Transnational Environmental Law* 5, Vol. 1 (2016), 113.
[87] Gordon, 52.
[88] Borràs, 113-120.
[89] Michael J. Angstadt and Marion Hourdequin, "Taking Stock of the Rights of Nature," in *Rights of Nature: A Re-Examination* (London: Routledge, 2021), 14.

absent from RoN literature until this century, making it even more important. Indigenous studies scholars often use their work to bring further consensus to these connections, and to demand for a change in approach. Specifically, scholars are calling out RoN for its inequities.[90] Whether this be through the lens of the Whanganui River Claims Settlement or that of American history, the narrative is clear.[91] The greatest success of these scholars is their insistence that the current approach to RoN improve through the incorporation of more voices.[92] Rights of Nature will not be able to succeed without the respect and consultation of Indigenous leadership, and this idea holds a critical role in RoN discourse.

3.2 Ecolinguistics and Sociolinguistics

The field of ecological linguistics, or ecolinguistics, is relatively new.[93] Advanced by linguist Michael Halliday in the late 20th century, when he famously posited that there is an inextricable connection between human language, society, and the physical environment.[94] Ecolinguistics is concerned with "how language is involved in forming, maintaining, influencing or destroying relationships between humans, other life forms and the environment."[95] Consequently, a critical element of ecolinguistics is that it attempts to reveal 'ecological ideology' -- the way individuals or groups understands the relationship between themselves and the environment.[96] Although linguistic analysis is a critical element of ecolinguistics, the study

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[90] Hannah White, "Indigenous Peoples, the International Trend Towards Legal Personhood for Nature, and the United States," *American Indian Law Review* 43, 1 (2018), 164; Erin O'Donnell, Anne Poelina, Alessandro Pelizzon, and Cristy Clark, "Stop Burying the Lede: The Essential Role of Indigenous Law(s) in Creating Rights of Nature," *Transnational Environmental Law* 9, 3 (2020), 404.
[91] Toni Collins and Shea Esterling, "Fluid Personality: Indigenous Rights and the *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* in Aotearoa New Zealand," *Melbourne Journal of International Law* 20 (2019), 201; Tănăsescu, 439.
[92] Ibid.
[93] Alexander, Richard, and Arran Stibbe. "From the analysis of ecological discourse to the ecological analysis of discourse." *Language* Sciences 41, Part A, (January 2014): 104.
[94] Michael A. K., *Language as a Social Semiotic: The Social Interpretation of Language and Meaning*, (London: Edward Arnold, 1978), 2.
[95] Alexander and Stibbe, 105.
[96] Ibid.

can just as equally be characterized as a metaphorical mode of thinking rather than just an analytical framework. The subdiscipline is brought together by shared investigations of ecological ideology, rather than a single methodological approach. There is no *specific* linguistic method attached to ecolinguistics, providing a huge opportunity for innovation and discovery.[97]

In the decades since Halliday first brought ecolinguistics into the academic conversation, the approach has gained considerable traction and definition, solidifying ecolinguistics as a mode of study in both the fields of environmental studies[98] and linguistics.[99] The current body of ecolinguistics studies is diverse, which is both a benefit and a drawback of the approach. There are a few different categories into which ecolinguistic studies may fall. First, studies can be linguistics-heavy, relying on complicated language analysis that is often quite quantitative.[100] These studies can provide very useful results, but their procedure is quite inaccessible to those without a linguistics background.[101] Second, there are studies in which ecolinguistics is used primarily as a lens for discussion.[102] Third, there are studies that employ a combination of qualitative and quantitative research.[103]

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[97] Ibid.
[98] Sibo Chen, "Language and ecology: A content analysis of ecolinguistics as an emerging research field," *Ampersand* 3 (2016), 109.
[99] Arran Stibbe*, Ecolinguistics: Language, Ecology, and the Stories We Live By*, (Oxfordshire: Routledge, 2020).
[100] Hecong Wang, Rui Zhai, and Xinyu Zhao, "Analysis of the UN Secretary-general's Remarks on Climate Change: From the View of Ecolinguistics," *Journal of Language Teaching and Research* 10, No. 4, (July 2019): 851.
[101] Ibid.
[102] Prisca Augustyn, "Solar energy discourse in the Sunshine State," *Sign System Studies* 49 (2021), 73.
[103] Lucia Abbamonte, "The 'Sustainable' Video Narratives of Greenpeace – An Ecolinguistic Investigation," *Forum for Modern Language Studies* 57, 2 (2021), 147-153.

Several linguistic methods can be used to seek out ecological ideology, but the approach that encompasses my research question is sociolinguistics. Sociolinguistics is a subset of linguistics that focuses on how language relates to society, which often is manifested in the simplest of relationships between class categories. This relationship extends to all elements of society, and in turn between all academic disciplines.[104] Halliday artfully visualized these critical interconnections of language and most fields of study, providing further justification as to why one may be able to glean ecological ideology from language (Figure 1).[105] This figure shows that centering linguistics, in a study provides an avenue to incorporate insight from other disciplines. For example, linguistic change directly informs to the history of language, which then seamlessly connects to the studies of archaeology, prehistory, and geography. Further, these connections are not just linear, but holistic. Halliday's scheme is to say that language "actively symbolizes" the *entire* social system.[106]

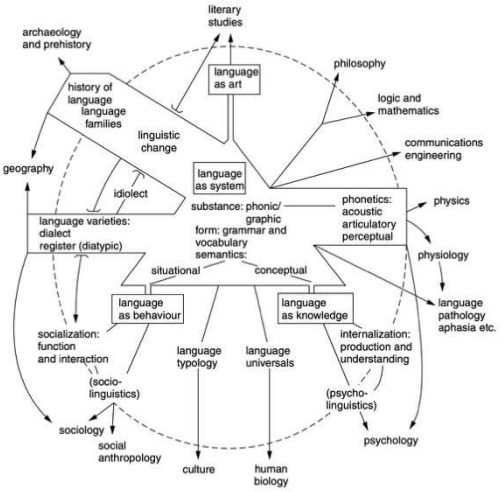

Figure 1

3.3 Gap Analysis

My research attempts to elucidate the connections between language, ecological ideology, American history, and Rights of Nature as both as a movement and a philosophical framework. The gap I aim to fill is between ecolinguistics and Rights of Nature to demonstrate the value of using language as a tool for understanding the complicated relationship between humans and the environment. Additionally, I will be applying these ideas to a unique case study,

[104] Barbara Johnstone, *Qualitative Methods in Sociolinguistics* (New York: Oxford University Press, 2000), 125.
[105] Halliday, *Language as a Social Semiotic,* 9.
[106] Ibid.

seen in very few scholars' works: the Lake Erie Bill of Rights. The few who have looked at the LEBOR have either done so in passing or utilizing a method that is very distant from my research question.[107] Some scholars have demonstrated how through failure, barriers to implementation can be realized, and I hope to build upon these ideas – using the LEBOR as a lens for understanding nation-wide trends.[108] I have not found any indication ecolinguistics has been applied to the American Rights of Nature movement, which increases the utility of my analysis. Overall, I believe that in using this ecolinguistic lens, applied to the LEBOR's failure, my research will bring to light the barriers to the American Rights of Nature movement that have been previously unaddressed.

*4. **Methodology***

4.1 Ecolinguistics and the LEBOR

Any attempt to understand language is an attempt to understand the context in which that language exists.[109] Linguistics' value as a mode of study is thus derived from its ability to discern the cultural significance of a text, rather than just its structure – providing a breadth of applications.[110] This ecolinguistic analysis examines the motivations behind the creation of the Lake Erie Bill of Rights and its rejection. Further, it provides a bridge between ecolinguistics and the ongoing battle for incorporating Rights of Nature in the American legal system. This analysis will draw upon the methods and theories of sociolinguistics and ecolinguistics. Sociolinguistics

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[107] Zartner, 24-30; Brooke Zentmeyer, "Towards a Loraxian Praxis: Lessons from Legal History, Lake Erie, and *The Lorax*," *Ohio State Law Journal* 83 (2022), 1-16.
[108] Hope M. Babcock, "A Brook with Legal Rights: The Rights of Nature in Court," *Georgetown Law Faculty Publications and Other Works*, 2016, https://scholarship.law.georgetown.edu/facpub/1906, 3.
[109] Noam Chomsky, *Language and Mind*, (San Diego: Harcourt, Brace, & World, 1968), 22.
[110]Guy Deutscher, *Through the Language Glass: Why Language the World Looks Different in Other Languages*, (New York: Metropolitan Books, 2010), 7.

theory originally utilized by Halliday to explore the ecological applications of language, where "the 'environment' is social as well as physical, and a state of wellbeing, which depends on harmony with the environment, demands harmony of both kinds."[111] Through the merging of both disciplines; thus I am to gain a better understanding of how linguistic variability between the LEBOR and the OILEBOR correlates with a difference in ecological ideology between the two parties.

4.2 Procedure

The Lake Erie Bill of Rights and the Invalidating Order total less than 4000 words, or about eight typed pages. Accordingly, their combined length was ideal for a project of my limited scope. The first step in preforming this ecolinguistic study was familiarizing myself with these documents. To do so, I broke up the text by word frequency, reverse outlined to understand the progression of each document's argument and researched each text's bibliography. Using a sociolinguistic lens; thus, I was able to decide what linguistic features to discuss. As my priority was the sections of each document that spoke of the environment, I looked to select linguistic elements that related to not only just ideology, but framing, metaphors, identity, conviction, and salience.[112] Personification immediately stood out to me, as granting human rights to the environment is an inherently personifying process, and I found interesting examples of the literary device in both documents. Tone is critical to ideology as well as conviction and salience.[113] I chose repetition as a comparative lens through which to understand tone as well as the broader framework of each document.[114] Finally, I noted the use of quotes and precedents between the two parties to ensure my focus remained on viewing these documents within their

[111] Halliday, *Language as a Social Semiotic*, 8.
[112] Abbamonte, 150-151.
[113] Johnstone, 123.
[114] Abbamonte, 150.

systemic context.[115] These elements also match methodology utilized in other ecolinguistic studies.[116]

Once I chose these three linguistic elements, I wanted to understand how each could provide *eco*linguistic information through my analysis. My qualitative analysis empirically analyzed instances of personification and quoted statements, as well as tone. My quantitative analysis supplemented my qualitative analysis by providing frequency counts of the most repeated words in the LEBOR. I compared these frequencies between the two documents, aiding my exploration of tone. These elements each connect with ecological ideology, allowing me to analyze the difference (or similarity) between the two documents' ideologies. By investigating each text's broader central argument as well as its specific linguistic makeup, I will provide a dataset that is both qualitative and quantitative. Although, compared to other linguistic methods, my results will be much more qualitative than they are quantitative. This is because I am most concerned with gleaning ideology from these texts, albeit an inherently fraught task. Thus, the tone, narrative, and other qualitative elements of each document will be centered in my analysis. The little quantitative analysis I do preform, repetition counts, is only to bolster my qualitative understanding of each party's ecological ideology. This multi-functional assessment provided me with the information needed to discern the truth of my hypothesis and find answers to my research questions. As with all analysis, linguistic or otherwise, the focuses of my analysis are certainly not the only factors at play. No ecolinguistic analysis can truly be comprehensive, as the field is constantly developing.[117] This will rather serve as an exercise in the method of

[115] Ibid.
[116] Wang et. al, 852.
[117] Ibid.

linguistic analysis, conducted in hopes of understanding its value in making sense of the ever-complicated, ever-changing American ecological ideology.

5. Analysis

"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."

– The Lake Erie Bill of Rights[118]

"This is not a close call."

– The Order Invalidating the Lake Erie Bill of Rights[119]

The following analysis will attempt to imbue the importance of this moment and these documents despite the rigidity and mundanity of their legal forms and understand the utility of ecolinguistics as a method for better understanding the contextual groundings of American environmental law. In linguistics, "the reasons you are examining are not the only ones at play" – so, to claim this analysis is anywhere near 'complete' would be wholly inaccurate, considering there are infinite ways to break down the same text.[120] Rather, in comparing some of the most striking linguistic elements of each text, the ecological discourse underlying the American rights of nature movement can be demystified, and the ecological ideology of these actors better understood. The goals of my ecolinguistic analysis are broader than the analysis itself, and it is just one piece of the ever-complicated puzzle of human-environment relations.

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[118] Toledo Municipal Code, *The Lake Erie Bill of Rights*.
[119] *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19 CV 434, 2020.
[120] Johnstone, 125.

5.1 Personification

	Text	Personification of…	Ideology
Lake Erie Bill of Rights	"this ecosystem, which has suffered" "The Lake Erie Ecosystem may enforce its rights"	Lake Erie	Draw connection between the environment and humanity
Order Invalidating the Lake Erie Bill of Rights	"Lake Erie was the culprit"	Lake Erie	Vilifying and othering environment

Table 5.1: Personification, as it Relates to Ideology

In a case where the efficacy of extending human rights to the natural environment is in question, the way the natural environment is characterized is critical. Linguistically, this manifested in instances of personification in each document –language that attributes human qualities to non-human entities.[121] This literary device is utilized in both texts and ties directly to each party's ideology, albeit in different ways (Table 5.1).

In the very beginning of the Lake Erie Bill of Rights, when the city is stating their justifications for drafting such a document, they claim one of their central motivations to be that "this ecosystem […] has suffered."[122] Suffering is defined as "the state of undergoing pain, distress, or hardship" – three words that all describe physical conditions.[123] By equating the severity of environmental degradation to 'suffering' of the physical body, the authors are drawing close connections between humans and nature. The impetus to extend rights to the environment in this case is drawn from the Toledoans' acknowledgements of the common struggles of their city and the environment under American capitalism. This idea is even explicitly articulated in the text: "it has become necessary […] to extend legal rights to our

[121] Ibid, 121.
[122] Toledo Municipal Code, *The Lake Erie Bill of Rights*.
[123] "Suffering," *Merriam-Webster Online Dictionary*, Accessed April 19, 2022, https://www.merriam-webster.com/dictionary/suffering.

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."[124] The use of personification serves to further this agenda, bringing nuance to reader's understanding of the depths of Lake Erie's degradation and the importance of ending that 'suffering.'

The Order Invalidating the Lake Erie Bill of Rights provides context to the case, explaining that the LEBOR was motivated by contamination in Lake Erie that impacted Toledo's drinking water. When describing how the water became undrinkable for three days, Judge Zouhary writes that "Lake Erie was the culprit."[125] Lake Erie is being held responsible as a person who is guilty of a crime, according to the definition of the word 'culprit.' In implicating Lake Erie as the actor, humanity is separated from the pollution, drawing attention away from the obvious reality that the lake could not have polluted itself. Contrary to the LEBOR, the invalidating order seems to imply that if Lake Erie is to be considered a person, it must take human level responsibility for its condition. This vilification of the environment stands out, as both a break in logic and tone. Considering this is one of the few moments in which Zouhary chooses to drop linguistic formalities, even more emphasis is drawn to the personification.

When comparing the instances of personification in both documents, their diverging treatment of Lake Erie is apparent, but there is also a striking similarity which demands exploration. The two documents' personification is seen in the very first paragraph, embedding the literary device into the 'first impression' of each text. From an ecolinguistic perspective, this is unsurprising, as the method operates under the assumption that the ecological ideology of a party is one of, if not the most, prevalent emotional motivators. Thus, how the environment is

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[124] Toledo Municipal Code, *The Lake Erie Bill of Rights*.
[125] *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19 CV 434, 2020.

described is the most apparent pathway to understanding a party's ideological perspective.[126] That is to say that the placement of these literary devices, especially where they fall within the body of text says a great deal about the stories being told by each document. Both are immediately *personifying* the environment, regardless of the purpose or tone of that action within their respective arguments. This is pivotal, as viewing the environment as a human entity to make it more digestible to an audience is an inherently anthropocentric action. Moving through this analysis, the idea that these texts are **both** imbedded within an American, anthropocentric understanding of nature will become increasingly critical.

5.2 Repetition and Tone

	Text			# of Appearances			Tone	Ideology
Lake Erie Bill of Rights	"Right(s)"	"Law(s)"	"Shall"	36	33	22	Urgent, Cautionary, Assertive	Environmental laws must change now, and we have the right to make those changes
Order Invalidating the Lake Erie Bill of Rights	"Right(s)"	"Law(s)"	"Shall"	33	17	4	Critical, Objective	Current environmental law frameworks (precedent) will determine the future of environmental law

Table 5.2: Repetition and Tone as They Relate to Ideology

I analyzed repetition in this analysis on the document level rather than the sentence level - this is done to contribute to the investigation of tone and emphasis. What is being repeated

[126] Alexander and Stibbe, 108.

determines what is being stressed.[127] Tone is critical to ecolinguistics as it conveys the social dimension of a text by putting into words the emotions that come through in the language. In this way, tone has a similar sociological value to personification. A sociological angle to ecolinguistics is beneficial in this way, as the environment is being seen as a critical element of the social system.[128] The way in which each party views the environment, and more importantly environmental degradation, becomes central to each text through the way in which the language portrays each party's societal perspective. Repetition is being analyzed to better understand this idea at the document level, while personification brought clarity to a few critical sentences.

The three most frequently used words in the Lake Erie Bill of Rights are Rights, Law, and Shall, respectively (Table 5.2). These words in themselves describe the bulk of the LEBOR, with one critical omission: the environment. In fact, no nature-related terminology appears in the top ten most used words. The bulk to the LEBOR is quite technical and concerned with why these rights *can* be extended to Lake Erie. The continuous repetition of 'Right(s)' is misleading, as the rights in the question are, for the most part, the rights of the City of Toledo to establish this bill. This emphasis on the people's own, inherent political rights contributes heavily to the assertive tone of the document – albeit not the excepted emphasis. Additionally, the word 'Law(s)' serves a similar purpose in the lengthy justification for the LEBOR to exist and become legally binding. 'Shall' provides the most linguistically interesting contribution of all three. Shall, a verb, relates to the agency to the LEBOR as a means of preventing human destruction to the environment, and brings a sense of urgency to the document. All three repeated terms interact together when the City of Toledo is emphasizing that, "all *rights* secured by this *law* are inherent, fundamental, and unalienable, and *shall* be self-executing and enforceable against both private

[127] Ibid, 122.
[128] Halliday, *Language as a Social Semiotic*, 8.

and public actors."[129] In this instance, it is clear how 'shall' brings urgency to the technical tone and interfaces with 'rights' and 'law.'

When looking at the Order Invalidating the Lake Erie Bill of Rights, I chose to analyze the same three words, even though they were much less prevalent it is important to understand the tone shift by keeping the selected words consistent.[130] 'Right(s),' 'Law(s),' and 'Shall' all appear in the OILEBOR, but they appear most frequently within quotations from the LEBOR. The most repeated word in OILEBOR is actually 'v.'[131] The legal term coinciding with the tone of objectivity seen in the OILEBOR. 'V.' being an abbreviation of versus, indicates just how heavily Judge Zouhary is entrenched in legal terminology and frameworks, even more so than the people of Toledo. There is very little emotionality in his writing, the tone comes across as purely objective. Zouhary's constant case references is a critical linguistic element of the text in and of itself, and it will be explored in depth in the next section -- as it unveils the social dimension of Zouhary's ideology better than repetition can.

5.3 Quoted Statements

	Text	Source	Ideology
Lake Erie Bill of Rights	"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"	the Ohio State Constitution	Right to establish rights for nature

[129] Toledo Municipal Code, *The Lake Erie Bill of Rights*.
[130] Johnstone, 59.
[131] *Drewes Farm Partnership v. City of Toledo*, Case No. 3:19 CV 434, 2020.

Order Invalidating the Lake Erie Bill of Rights	"If a law is so vague that "persons of common intelligence must necessarily guess at its meaning," it is unconstitutional."	*Roberts v. United States Jaycees*	Right to invalidate rights for nature

Table 5.3: Quoted Statements and their Ideological Influence

Argumentative texts like these are constantly attempting to build their own credibility and counteract all potential criticisms.[132] The support of respected texts is a common method of achieving that goal, and the Lake Erie Bill of Rights and its invalidating order both bring in multiple sources to support their claims. Ecolinguistically, it is important to understand who these sources are and where in the text the authors have chosen to include outside expertise (Table 5.3).[133]

The Lake Erie Bill of Rights does not rely upon quotes often to support its argument. In the end of the first section the document cites the Ohio State Constitution, most notably. The section of the constitution 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."[134] As stated in my discussion of repetition, although the stated goal of the LEBOR is to establish rights for nature, the majority of the text is made up of the city attempting to assert their right to create law. This is certainly a valid endeavor and one which is critical to the legal process. Yet, it also causes an ideological shift, especially when this is the only instance where expert support is utilized. The LEBOR seems in this way to be more concerned with their right to *have* rights for nature, rather than the

[132] Johnstone, 22.
[133] Ibid., 25.
[134] Toledo Municipal Code, *The Lake Erie Bill of Rights*.

importance of rights for nature – or even how rights for nature will work in the state of Ohio. Linguistically, the addition of quotes further emphasizes this technical argument.

Outside expertise, and quotes included from these 'experts' take up a much more space in the body of the Order Invalidating the Lake Erie Bill of Rights. The two prevailing sources of these quoted statements are the LEBOR and preceding cases of various kinds. Citing the LEBOR is used to highlight the vague nature of the bill of rights, and this makes sense, as the LEBOR's clarity is the primary issue at hand in the lawsuit. Beyond the function for the reader's understanding, the reliance on quotes has a deeper meaning. Judge Zouhary's name is the only name attached to the OILEBOR; it is his writing. Yet, he is constantly supplementing himself. He utilizes quotes to convey that he is not sharing is own opinion – rather the opinion of the twenty-two preceding cases and their opinions. Thus, thoroughly placing himself within the conglomerate of judges compromising the faceless voice of the American legal system. This is critical, because while both documents represent the interests of a group, Zouhary is representing a non-physical group, and one which explicitly dictates the ideology which he can convey. It is very notable that both documents are only quoting legal documents, placing the texts squarely within the legal discipline with little care for other ideological perspectives.

6. Results and Discussion

"The coming together of linguistics and ecological science has the potential […] to address some of the key issues that humanity is facing as industrial civilization transitions into ecocivilization."

– Arran Stibbe[135]

The argument for Rights of Nature only goes so far as the current American legal system will allow it – and the invalidating order is evidence that this reach is not very far. The failure of the LEBOR is no mistake, and Zouhary's assessment that the document lacks a pathway to success is well supported.[136] Unfortunately, this failure seems difficult to avoid, when the City of Toledo must fight so hard for their right to create law that they are unable to establish said law. This reality, in conjunction with the other linguistic elements of the texts, suggests that the current approach of the rights of nature is failing to revolutionize the legal system. Rather, it is getting lost in it.

6.1 Ecological Ideology in the LEBOR and the OILEBOR

The previous section utilized sociolinguistic methodologies to discern what language can reveal about the connections between the American ecological ideology and the Rights of Nature movement. Through my exploration of four distinct linguistic elements, I was able to glean results that fit into two categories: the basic perception of the environment that these legal texts are conveying intentionally, and the broader ideological perspectives about the relationship between humans and the environment.

Each instance of personification in the Lake Erie Bill of Rights and the Order Invalidating the Lake Erie Bill of Rights directly connects to each party's discussion of Rights of Nature. In the LEBOR, they describe how the environment has "suffered" and how it must be able to "enforce its rights."[137] These statements relate directly to the purpose of the Bill of

[135] Stibbe*, Ecolinguistics,*19.
[136] See Appendix B
[137] Toledo Municipal Code, *The Lake Erie Bill of Rights*.

Rights, to extend legal rights to the environment, and the support for this change. Alternatively, in the OILEBOR, Judge Zouhary explicitly vilifies the environment when he implicates Lake Erie in the body of water's pollution problem. This linguistic choice places blame on the environment, and by extension blame off of humanity – placing the Judge opposed to extending rights to nature. Even without discussing personification in these texts, each party's attitude towards extending rights to Lake Erie is clear. The people of Toledo are in favor, while Judge Zouhary, a representative of the American legal system, is not. Exploring the ecological ideologies of both the people of Toledo and the American legal system regarding the Rights of Nature movement is the most superficial interpretation of the language in these documents.

There is a clear, superficial division between the two documents' perspectives on Rights of Nature. But upon further linguistic exploration, the LEBOR and the OILEBOR displayed similar attitudes about the relationship between humans and the environment. Although not at the core of each text's argument, this issue is present in the tone, repetition, and quotes utilized by each party. Ultimately, the underlying environmental ideology of both texts is that of humanity being superior to the environment, fundamentally anthropocentric. This is quite clear in the OILEBOR, bringing in precedents (*Roberts v. United States Jaycees*)[138] to convey the unconstitutionally vague elements of the Toledoans' proposal. Specifically, Zouhary is referencing the statement in the LEBOR that Lake Erie has the right to "exist, flourish and naturally evolve." By expressing this concept is abstract, and thus unprotectable by American law, Zouhary is drawing a line between human and environmental rights. Humanity is being placed above nature in the sense that extending rights to nature, rights that are givens for humans, is too abstract.

[138] "Roberts v. United States Jaycees," Oyez, Accessed April 19, 2022, http://www.oyez.org/cases/1983/83-724.

In the Lake Erie Bill of Rights, although the desire to extend rights to nature is explicitly articulated in the document, the Toledoan's argument as to why reveals the deeper complexities of their ideological perspective. The most repeated words in the LEBOR are 'rights,' 'laws,' and 'shall.' These terms would appear to refer to these rights of Lake Erie, but the LEBOR is discussing the rights of the people of Toledo. The entire document is an exploration of the rights of the people of Toledo and extending basic rights to nature is subordinate to the people of Toledo establishing their right to create law. This prioritization of humanity over nature is the essence of the LEBOR. There is a shared subconscious understanding amongst the parties involved in the Lake Erie case, that fundamentally, humanity is superior to nature. The aligned environmental ideologies of these two, seeming opposed groups are critically important in understanding the barriers to Rights of Nature implementation in the United States.

This brings support for an incrementalistic approach into question, where RoN is built from the ground up by grassroots efforts until there is enough precedent is built for national implementation. When RoN is so ideologically mismatched with American culture and government, small scale efforts are not likely to succeed. The alterative to an incrementalist approach would be a national RoN bill. My findings suggest if there were to be an unprecedented opportunity for national legal reform, Rights of Nature would not be likely to bring the greatest benefit to both the environment and society.

6.2 Ecological Ideology and the American Rights of Nature Movement

The ideologies of the LEBOR and the OILEBOR are certainly reflective of broader attitudes towards the environment in the American imagination. Historically, the development and changes in ecological ideology directly correlate with my results – history is not to be ignored in the study of current environmental discourse:

> "The environmentalist too must become aware that current ecological problems are a direct result of our past and that attempts to deal with the ecological crisis in the vacuum of contemporary reference are probably doomed to failure."[139]

The ecological ideologies surrounding not only Rights of Nature, but the human-environment relationship broadly, are historically informed. Stemming from colonialist rhetoric and frontier logic, America has built a collective relationship with the environment through dominant environmental narratives.[140] The way Americans discuss the environment has thus developed accordingly, and this language informs the human relationship with the environment. A relationship which, at its core, views nature subordinately to humanity. Dominant, American environmental narratives have held this idea for centuries, deeply entrenching anthropocentrism into the collective consciousness.[141] Understanding these historical narratives connects the significance of the Lake Erie case to nation-wide trends. My findings about the ecological ideologies of the people of Toledo and the American legal system are in no way a departure from history, which is what makes them important. In drawing a critical, under-discussed connection between the Rights of Nature movement and the relationship between Americans and the environment, the broader systemic barriers at the core of RoN's domestic failure are elucidated.

Rights of Nature, as a conceptual paradigm, cannot function without a sense of fundamental equality between humanity and nature. The central idea of Rights of Nature is predicated on the conception that fostering a harmonious relationship between the environment and society will be mutually beneficial for the planet a whole.[142] Thus, the systemic

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[139] Donald W. Whisenhunt, *The Environment and the American Experience: A Historian Looks at the Ecological Crisis*, (Port Washington: Kennikat Press, 1974), 11.
[140] Cronon, 78.
[141] Ibid.
[142] Nash, *The Rights of Nature*, 80.

anthropocentrism of the American people and government is fundamentally incompatible with Rights of Nature. Although many factors contributed to the failure of the LEBOR and other domestic RoN attempts, the ideological mismatch is a huge contributor. Many scholars have discussed barriers to implement Rights of Nature in the United States, but not in a way that acknowledges the conflicts within ideology at a linguistic-systemic level.[143] My findings suggest that the American legal system and population must abandon an anthropocentric relationship with nature for Rights of Nature to find success in the United States.

6.3 Next Steps and Conclusions

There are a variety of opportunities for further research in this field depending on what elements of this project may interest a future researcher. My analysis has evaluated ecological linguistics as a method for understanding legal discourse. I have aimed to demonstrate the strength of the connections between ecolinguistics and ideology, and how this connection provides a unique opportunity for imbuing inequity from language. This work is only just scratching the surface by demonstrating that ecolinguistics adapts quite well to legal discourse analysis. This opportunity for growth is open to scholars of all disciplines; and in fact, the incorporation of many disciplines will only strengthen this fledging field. My analysis is limited, and further investigation of American environmental legal language could be beneficial in understandings barriers to implementation of all environmental laws. Additionally, an investigation of the rhetoric surrounding the LEBOR's grassroots beginnings would be a valuable endeavor. I did not incorporate the voices of those behind the bill of rights, but I believe understanding how they approached writing the LEBOR is important. Overall, my study shows promise, and opens many avenues of study for future researchers.

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[143] See Stone, *Should Trees Have Standing?*, 55.

Back in 1968, when Lake Erie's pollution problem seemed insurmountable and captivated the press, the New York Times published an article titled 'Lake Erie Aging at Speedy Rate.'[144] This six-word statement, tucked away on page thirty-two, encapsulates the fundamental issue with Rights of Nature as a concept. In extending rights to the environment, what is best for humanity is being equated with what is best for nature. By characterizing Lake Erie as 'aging,' a connection is being drawn between humanity and nature, but this connection is on human terms and human timescales. The issues of anthropocentricism in Rights of Nature are not specific to the LEBOR and OILEBOR, rather, they are fundamental to the concept. My findings indicate that further research is necessary into the underlying rhetoric of the Rights of Nature movement. Additionally, my results raise concern for the future of environmental law in the United States. If the ideological perspectives of Americans remain, at their core, anthropocentric, the barriers to reforming environmental laws will not be dismantled, rather, they will strengthen.

[144] "Lake Erie Aging at Speedy Rate," *New York Times*, February 11, 1968, https://timesmachine.nytimes.com/timesmachine/1968/02/11/91221639.html?pageNumber=136.

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8. Appendices

8.1. APPENDIX A: THE LAKE ERIE BILL OF RIGHTS

2019

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.

8.2. APPENDIX B: THE ORDER INVALIDATING THE LAKE ERIE BILL OF RIGHTS

February 27, 2020

INTRODUCTION

On a Saturday morning in August 2014, City of Toledo officials issued a warning to residents: Don't drink the water. The City water supply contained unsafe levels of a toxic substance, and pollution in Lake Erie was the culprit. The water remained undrinkable for nearly three days.

In response, Toledo residents began a multi-year campaign to add a Lake Erie Bill of Rights ("LEBOR") to the City Charter (Doc. 10-3 at ¶ 6). They collected over ten thousand petition signatures, triggering a February 2019 special election under Article XVIII, Section 9 of the Ohio Constitution (Doc. 41 at 37–38). LEBOR won about sixty percent of the 16,215 votes cast, so it became part of the Charter the next month (*id.* at 38).

Plaintiff Drewes Farms Partnership, which grows crops in four counties near Toledo, initiated this lawsuit the day after the election (Doc. 1 at ¶¶ 18, 21). Intervenor State of Ohio joined a few months later (Doc. 21). Both ask this Court to declare LEBOR invalid under Federal Civil Rule 12(c) and 28 U.S.C. § 2201 (Docs. 34, 35, 52, 53, 59). Defendant City of Toledo opposes (Docs. 47, 48, 56, 60). The City contends neither Drewes Farms nor the State has a right to challenge LEBOR, and it further contends LEBOR is valid. With agreement from both sides, this Court issued a Preliminary Injunction last year (Doc. 9). The Injunction prevents enforcement of LEBOR until this lawsuit ends. This Court heard oral argument at a recent Hearing (Doc. 61) and received an amicus brief from Toledoans for Safe Water, Inc. (Doc. 51).

Lake Erie Bill of Rights

LEBOR declares that "Lake Erie, and the Lake Erie watershed, possess the right to exist, flourish, and naturally evolve." TOLEDO MUN. CODE ch. XVII, § 254(a). Additionally, the Charter amendment grants Toledo residents "the right to a clean and healthy environment." *Id.* § 254(b). Under LEBOR, Toledoans also "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." *Id.* § 254(c). LEBOR contains no definitions or other provisions that would clarify the meaning of these rights, although it does indicate that the protected Lake Erie watershed includes "natural water features, communities of organisms, soil [sic] as well as terrestrial and aquatic sub ecosystems." *Id.* § 254(a).

"The City of Toledo, or any resident of the City," may sue to enforce the three rights enumerated in LEBOR. *Id.* § 256(b). Businesses and governments that infringe the rights "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." *Id.* § 256(a). LEBOR applies to businesses and governments "in or from any jurisdiction," *id.* § 256(c), and "implementing legislation shall not be required," *id.* § 254(d). State laws, regulations, permits, and licenses are declared invalid in Toledo to the

extent they conflict with LEBOR. *Id.* §§ 255(b), 257(b). LEBOR also purports to supersede federal permits and licenses. *Id.* § 255(b). The full Charter amendment is attached to this Order.

Standing

Before analyzing LEBOR, this Court must determine whether Drewes Farms or the State has a right to bring this lawsuit. The relevant doctrine is called standing. Litigants have standing to sue only if they "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Standing ensures that federal courts do not issue advisory opinions, which the United States Constitution forbids. *See Sierra Club v. Morton*, 405 U.S. 727, 732 n.3 (1972). Federal courts adjudicate live disputes only. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 237 (1990). This lawsuit may proceed if either Drewes Farms or the State has standing, even if one or the other does not. *See Janus v. AFSCME, Council 31*, 851 F.3d 746, 748 (7th Cir. 2017) (citing *Vill. of Oakwood v. State Bank & Trust Co.*, 481 F.3d 364, 367 (6th Cir. 2007)), *rev'd on other grounds by* 138 S. Ct. 2448, 2486 (2018).

The central dispute here concerns the injury-in-fact requirement. An injury in fact is an injury that is "concrete and particularized[,] and actual or imminent, not conjectural or hypothetical." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (citation and internal quotation marks omitted). "An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Id.* (citation and internal quotation marks omitted). Likely targets of a law need not wait for prosecution to challenge its validity. *See id*.

Drewes Farms and the State satisfy the injury-in-fact requirement. LEBOR has already injured the State: at least on paper, State laws, regulations, licenses, and permits are invalid in Toledo to the extent they conflict with LEBOR. *See Maine v. Taylor*, 477 U.S. 131, 136–37 (1986). The State could also be sued under LEBOR for failing to sufficiently protect Lake Erie or for violating LEBOR's guarantee of local self-government. Drewes Farms falls within LEBOR's crosshairs, too. The business spreads fertilizer on fields in the Lake Erie watershed (Doc. 1 at ¶¶ 18, 24, 51), arguably infringing the watershed's right to "exist, flourish, and naturally evolve" and the right of Toledoans to a "clean and healthy environment." TOLEDO MUN. CODE ch. XVII, §§ 254(a), (b). The risk of suit under LEBOR is particularly high because enforcement does not depend on government prosecutors -- Toledo residents may file suit themselves. *See Driehaus*, 573 U.S. at 164.

Drewes Farms and the State also satisfy the other two standing requirements: traceability and redressability. Their LEBOR-related injuries are traceable to the City -- LEBOR is part of the City Charter. True, LEBOR was enacted by voters rather than legislators, but the City is a proper defendant in this lawsuit nevertheless. *See, e.g.*, *Romer v. Evans*, 517 U.S. 620, 623 (1996); *Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 462–64 (1982); *Equal. Found. of Greater Cincinnati v. City of Cincinnati*, 128 F.3d 289, 291 (6th Cir. 1997). Additionally, a court order invalidating LEBOR would redress the alleged injuries, meaning Drewes Farms and the State satisfy the third standing requirement. Having demonstrated their right to bring this lawsuit, both

litigants are entitled to an adjudication of their claims. This Court therefore analyzes LEBOR next.

Due Process

The Fourteenth Amendment to the United States Constitution protects the right to due process. An "essential" element of due process is clarity of the laws. *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1984) (citation omitted). If a law is so vague that "persons of common intelligence must necessarily guess at its meaning," it is unconstitutional. *Id.* (brackets and citation omitted). Heightened scrutiny applies to laws that impose criminal penalties, burden the exercise of constitutional rights, or apply a strict-liability standard. *Vill. of Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 498–99 (1982). Vague laws are unconstitutional for at least two reasons: they "may trap the innocent by not providing fair warning," and they invite arbitrary enforcement by prosecutors, judges, and juries. *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). The clarity requirement also "ensures that [governmental] power will be exercised only on behalf of policies reflecting an authoritative choice among competing social values." *Roberts*, 468 U.S. at 629.

Federal courts have invalidated municipal legislation on vagueness grounds. For example, a Cincinnati ordinance criminalized gathering on sidewalks "in a manner annoying to persons passing by." *Coates v. City of Cincinnati*, 402 U.S. 611, 611 (1971). The Supreme Court struck it down because "[c]onduct that annoys some people does not annoy others." *Id.* at 614. A Detroit-area township regulated the use of machines that keep water near boats and docks free from winter ice. *Belle Maer Harbor v. Charter Twp. of Harrison*, 170 F.3d 553, 555 (6th Cir. 1999). These ice-free areas could not exceed a "reasonable radius." *Id.* The Sixth Circuit found the ordinance void for vagueness, in part due to the "failure to include a definition of 'reasonable.'" *Id.* at 558–59. A Columbus gun-safety ordinance met the same fate. The ordinance banned forty-six specific guns, as well as "other models by the same manufacturer . . . that have *slight* modifications or enhancements." *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 251 (6th Cir. 1994) (emphasis added) (brackets omitted). The Sixth Circuit saw "no reasoned basis" for determining what changes qualify as "slight," so it invalidated the ordinance. *Id.* at 253–54.

LEBOR's environmental rights are even less clear than the provisions struck down in those cases. What conduct infringes the right of Lake Erie and its watershed to "exist, flourish, and naturally evolve"? TOLEDO MUN. CODE ch. XVII, § 254(a). How would a prosecutor, judge, or jury decide? LEBOR offers no guidance. Similar uncertainty shrouds the right of Toledoans to a "clean and healthy environment." *Id.* § 254(b). The line between clean and unclean, and between healthy and unhealthy, depends on who you ask. Because of this vagueness, Drewes Farms reasonably fears that spreading even small amounts of fertilizer violates LEBOR. Countless other activities might run afoul of LEBOR's amorphous environmental rights: catching fish, dredging a riverbed, removing invasive species, driving a gas-fueled vehicle, pulling up weeds, planting corn, irrigating a field -- and the list goes on. LEBOR's authors failed to make hard choices regarding the appropriate balance between environmental protection and economic activity. Instead, they employed language that sounds powerful but has no practical meaning. Under even the most forgiving standard, the environmental rights identified in LEBOR are void for vagueness.

The right of Toledoans to "self-government in their local community" is impermissibly vague as well. *Id.* § 254(c). At first blush, this provision seems to reiterate Article XVIII, Section 3 of the Ohio Constitution, which grants municipalities "authority to exercise all powers of local self-government." Unlike the Ohio Constitution, however, LEBOR imposes a fine on any business or government that violates the right. The amount of the fine is "the maximum . . . allowable under State law for that violation." *Id.* § 256(a). But Ohio law does not identify any fine for violating a right to self-government. Additionally, this right includes "the right to a system of government that protects and secures . . . human, civil, and collective rights," but the nature of those human, civil, and collective rights is anybody's guess. *Id.* § 254(c). Like LEBOR's environmental rights, this self- government right is an aspirational statement, not a rule of law.

Severability

LEBOR contains a severability clause: "If any court decides that any . . . provision of this law is illegal . . . such decision shall not . . . invalidate any of the remaining . . . provisions of the law." *Id.* § 259. Notwithstanding the clause, however, the unconstitutional parts of LEBOR are severable from the rest only if "the severability will not fundamentally disrupt the statutory scheme of which the unconstitutional provision is a part." *State v. Hochhausler*, 76 Ohio St. 3d 455, 464 (1996); *accord Midwest Media Prop. v. Symmes Twp.*, 503 F.3d 456, 464 (6th Cir. 2007); *State v. Dean*, 170 Ohio App. 3d 292, ¶¶ 50, 52 (2007). "Are the constitutional and the unconstitutional parts capable of separation so that each may be read and may stand by itself?" *Hochhausler*, 76 Ohio St. 3d at 464 (citations omitted). If not, the entire law must fall. *Id.*

No part of LEBOR can be saved under this standard. Once the three vague rights are stripped away, the remainder is meaningless. The City urges this Court to at least leave in place LEBOR's preamble, but the preamble contains nothing to invalidate. TOLEDO MUN. CODE ch. XVII, § 253. It merely declares certain values and findings; it does not purport to create legal rights or obligations.

To be clear, several of LEBOR's other provisions fail on their own merits (*see, e.g.*, Doc. 61 at 19–21). For example, LEBOR's attempt to invalidate Ohio law in the name of environmental protection is a textbook example of what municipal government cannot do. Lake Erie is not a pond in Toledo. It is one of the five Great Lakes and one of the largest lakes on Earth, bordering dozens of cities, four states, and two countries. That means the Lake's health falls well outside the City's constitutional right to local self-government, which encompasses only "the government and administration of the internal affairs of the municipality." *In re Complaint of Reynoldsburg*, 134 Ohio St. 3d 29, ¶ 25 (2012) (citation omitted). Consequently, municipal laws enacted to protect Lake Erie are generally void if they conflict with Ohio law. *See Mendenhall v. City of Akron*, 117 Ohio St. 3d 33, ¶¶ 17–18 (2008). *See also Pa. Gen. Energy Co. v. Grant Twp.*, 139 F. Supp. 3d 706, 720 (W.D. Pa. 2015) (invalidating part of local ordinance similar to LEBOR due to conflict with Pennsylvania state law). LEBOR flagrantly violates this rule.

With careful drafting, Toledo probably could enact valid legislation to reduce water pollution. For instance, a Madison, Wisconsin ordinance restricted the use of phosphorus-containing fertilizers within city limits in 2004. *CropLife America, Inc. v. City of Madison*, 432 F.3d 732, 733 (7th Cir. 2005). "[P]hosphorus . . . contributes to excessive growth of algae and other

undesirable aquatic vegetation in water bodies." *Id.* (brackets, citations, and internal quotation marks omitted). The ordinance survived a lawsuit like this one. *Id.* at 735. In contrast, LEBOR was not so carefully drafted. Its authors ignored basic legal principles and constitutional limitations, and its invalidation should come as no surprise.

Conclusion

Frustrated by the status quo, LEBOR supporters knocked on doors, engaged their fellow citizens, and used the democratic process to pursue a well-intentioned goal: the protection of Lake Erie. As written, however, LEBOR fails to achieve that goal. This is not a close call. LEBOR is unconstitutionally vague and exceeds the power of municipal government in Ohio. It is therefore invalid in its entirety. The Motions of Drewes Farms Partnership and the State of Ohio (Docs. 34, 35) are granted, and the City of Toledo's Cross Motions (Docs. 47, 48) are denied. The Preliminary Injunction (Doc. 9), now unnecessary, is lifted.

IT IS SO ORDERED.

s/ *Jack Zouhary*

JACK ZOUHARY
U.S. DISTRICT JUDGE