

WEBOR and LEBOR – Similarities

WEBOR	LEBOR
Establishes the right of all Waters in Orange County to “ exist, Flow, and be protected against Pollution and to maintain a healthy ecosystem. ” Sec. A(1)	Establishes the right of the “Lake Erie Ecosystem” to “ exist, flourish and naturally evolve, a right to a healthy environment for the residents. . . ., and which elevates the rights of the community and its natural environment over powers claimed by certain corporations.” (Introduction to LEBOR)
Only applies against governments and corporations. Sec. C (act applies to unlawful acts by “governmental agenc[ies], non-natural person[s] or corporate entit[ies].”).	Only applies against governments and corporations. (“It shall be unlawful for any corporation or government to violate the rights recognized and secured by this law.”). Sec. 255(a).
Establishes the right to clean water. Sec. A(2).	Establishes the right to a clean and healthy environment. Sec. 254(b).
Provides for no further enabling legislation by the Board of County Commissioners. Sec. H.	Provides for no further enabling legislation by City of Toledo. Sec. 254(d).
Provides for the remedy of restoration of the Waters “to the greatest extent reasonably possible, to . . . the condition as it existed prior to being polluted by the violator.” Restore or Restoration are not defined. The difference between the two is that WEBOR enforces its provisions through the Court’s equitable and special writ powers, while LEBOR calls for the payment of damages to pay for the “full and complete restoration.”	Provides for the remedy of “full and complete restoration of the Lake Erie Ecosystem and its constituent parts” to the status as existed immediately prior to the violation. Sec. 256(d). Restore or Restoration are not defined.
Provides that an enforcement action may be brought by Orange County, its municipalities, other public agencies in Orange county and any citizen of Orange County. Sec. B.	Provides that an enforcement action may be brought by the City of Toledo or any resident of the City.

What the Court said about similar provisions in LEBOR/WEBOR:

1. A private corporation outside of the City, whose activities are threatened or are regulated by LEBOR, and the State of Ohio, have standing to immediately bring suit to invalidate LEBOR. (Doc. 63 at 3-4). *You can expect that any corporation,*

municipality, the state, or any other governmental agency that may be sued under WEBOR has standing to immediately file suit to invalidate WEBOR;

2. Vague laws are unconstitutional because they fail to provide fair warning to alleged violators and because they invite arbitrary enforcement. Laws must tell a person of common intelligence what they can and cannot do without having to speculate as to its meaning. (Doc. 63 at 4-5). *By providing undefined rights to exist and to maintain a healthy ecosystem, and an undefined remedy of restoration, it is unclear how WEBOR will survive a vagueness challenge. WEBOR provides no uniform standards for how a court or jury will determine whether the rights to exist, flow, and to maintain a healthy environment have been violated or how to measure pollution such that it rises to the level of pollution as defined in WEBOR.*

Other Notable Concerns raised by the LEBOR Court

“What conduct infringes the right of Lake Erie and its watershed to ‘exist, flourish, and naturally evolve?’”

“Similar uncertainty shrouds the right of Toledoans to a ‘clean and healthy environment. **The line between clean and unclean, and between healthy and unhealthy, depends on who you ask.**” Doc. 63 at 6.

“LEBOR’s authors . . . 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 unconstitutionally vague provisions of LEBOR cannot be severed despite a severability clause.

Because Lake Erie extends well-beyond the boundaries of the City of Toledo, its health and protection “falls well outside the City’s constitutional right of self-government.”

“LEBOR’s authors ignored basic legal principles and constitutional limitations, and its invalidation should come as no surprise.”