

Lake Erie Bill of Rights Update

April 4, 2019

Ty Higgins: After passing in a special election just over a month ago, the Lake Erie Bill of Rights is now law. Welcome to another edition of LEGAL with Leah . I'm Ty Higgins along with Leah Curtis across the table. She is policy counsel with Ohio Farm Bureau. I feel like it needs to be like a jingle or theme song or something with this.

Leah Curtis: There may be people in the public policy department with a jingle available. I'm just saying.

Ty Higgins: Whenever you walk into a room it's like you know there needs to be some kind of entrance.

Ty Higgins: Let's start with the results of the ballot measure put Toledo voters as I mentioned the end of last month. Only about 9 % of residents showed up to vote and LEBOR passed by a 61 to 39 % margin. At the moment it passed, what did it mean for Toledoans and for those in the Lake Erie watershed.

Leah Curtis: So the language of the Lake Erie Bill of Rights, or LEBOR, as we we often refer to it stated that the lake and the watershed in its entirety hold the right to flourish, exist and naturally evolve and that citizens of Toledo have a right to a clean and healthy environment. It doesn't further define what those things mean or how you might violate those rights. But when it gets down to it what it means is that citizens or the city could sue governments or businesses if they violated those rights. It doesn't define how those rights will be violated again. So it's not clear what actions would be the subject of those lawsuits, but basically citizens could stand in place and file lawsuits for Lake Erie and Lake Erie would essentially be treated as another human who would bring a case in Toledo in Lucas County Common Pleas Court.

Ty Higgins: Because of all those uncertainties, one farmer in Wood County took some pretty quick action.

Ty Higgins: It was shortly after the results of the election. I think it was the day after that an Ohio farmer stepped up and took those legal actions to not only protect himself and his family but also his neighbors and fellow farmers throughout northern Ohio.

Leah Curtis: Yes so the Drewes Farm Partnership filed a lawsuit in federal district court there in Toledo. And what that lawsuit alleges is that LEBOR by its very language violates various constitutional rights, various Ohio laws and federal laws and because of that should be deemed invalid. So he has put forth that lawsuit. It is specific to his farm and it is talking about particularly how those things are violating his rights. But all of those things are very similar to what any other farmer would experience. One of the things LEBOR does is it says it invalidates all permits that you might use. So if you're a farmer that's things like your fertilizer certification, your pesticide license. If you're a CAFO, your CAFO permit. LEBOR says that none of those things matter anymore and you don't have a right to do anything just because you have those permits. So all of those things are important really for the entirety of the watershed, which is 40 northern counties in Ohio, Indiana Michigan and parts of Canada and New York.

Ty Higgins: So the goal there was to just put a screeching halt to what could have happened with LEBOR like getting into the court system and really questioning its use and constitutionality. So after a couple of weeks Drewes filed this lawsuit, we heard from the proponents of LEBOR, we heard from the judge we hear from the state of Ohio. What's going on. What we've seen over the last month as far as LEBOR is concerned.

Leah Curtis: Yes we've had a few things happening earlier this month. The judge did issue a what's called a preliminary injunction and that basically means that LEBOR cannot be enforced going forward kind of puts a pause on LEBOR until such time that the judge can hear all these claims and make a decision and that should prevent further lawsuits under LEBOR or from going forward. And after that we saw the Toledoans for Safe Water which is the group that collected signatures for LEBOR along with the lake itself the lake's ecosystem itself file what's called a motion to intervene. They asked. That means that they're asking to participate in the case as a party. Then last week we saw the Attorney General David Yost file his own motion to intervene on the plaintiff's side. So he while the Toledoans for Safe Water would be joining on the defendant's side which is the city, the A.G. has asked to join the suit as a party on the plaintiff's side and will likely bring their own claims or their own complaint into the case as well.

Ty Higgins: I know you're getting a lot of calls from farmers saying you know what does this mean for me and we're getting into you know April here. Farmers are starting to think about getting into the fields when they can, when things dry out and work the fields getting ready for planting and this is just one thing on their mind. So you know looking short term, long term what's next for LEBOR?

Leah Curtis: So as far as the litigation goes, you know litigation can move kind of slowly but certainly

I think you know they're trying to move as fast as they can and how long it will take we can't really say but certainly having the injunction in place is a very good thing that should, you know, give people a lot of peace of mind as they do get to that you know into planting this year and into prepping their fields and getting ready. What can happen next is you know hard to say but hopefully we will see things move quickly and come to a final result. And that way we'll hopefully have LEBOR put to bed. But the fact is that things like LEBOR could happen anywhere, anywhere in this state. And so it's always a good idea to 1) pay attention to the things that are being collected... signatures are being collected for in your area because you want to make sure you know what you're signing if something gets presented to you. And then we've talked a lot about ag districts as one possibility. The ag district program does provide a nuisance offence. It may be useful if one of these lawsuits would go forward. And so we'd always encourage our farmers to look into that as a possibility for their as another layer of protection for their farm.

Ty Higgins: You mentioned it could happen anywhere else. They're talking about doing something in Cleveland about this and even talk about a statewide initiative going on the ballot at some point down the road. So you know if you're a farmer in the Lake Erie watershed you know about this you've been told what to do to protect yourself. If you're a farmer in central or south central Ohio... 'All of this doesn't pertain to me; I don't have to worry about it,' but they kind of do.

Leah Curtis: Definitely we have seen the same group that has put forth LEBOR that wrote LEBOR we have seen them in counties in southern Ohio in years past pushing very similar types of ordinances. We've seen them in Youngstown doing lots of ballot initiatives there and as you said there was an approval by the ballot board for them to collect signatures for a statewide constitutional amendment which would allow local jurisdictions to create these rights of nature ordinances. So it really could happen anywhere and water quality really should be something that everyone cares about. We're all a part of it. We all contribute. We all need to you know make sure we're being the best stewards of the land that we can be and we know our farmers are doing that. We know that they're doing everything they can. And so all across the state we really should be talking about it.

Ty Higgins: You know I've been talking about it for a while but there are some farmers that are just so busy this might be the first time they're hearing about it. You can get updates on our Web site ofbf.org. Just search L E B O R for the Lake Erie Bill of Rights information you need.

Ty Higgins: Leah Curtis is policy counsel with Ohio Farm Bureau and I'm Ty Higgins. This is Legal with Leah. We'll see you down the road.