

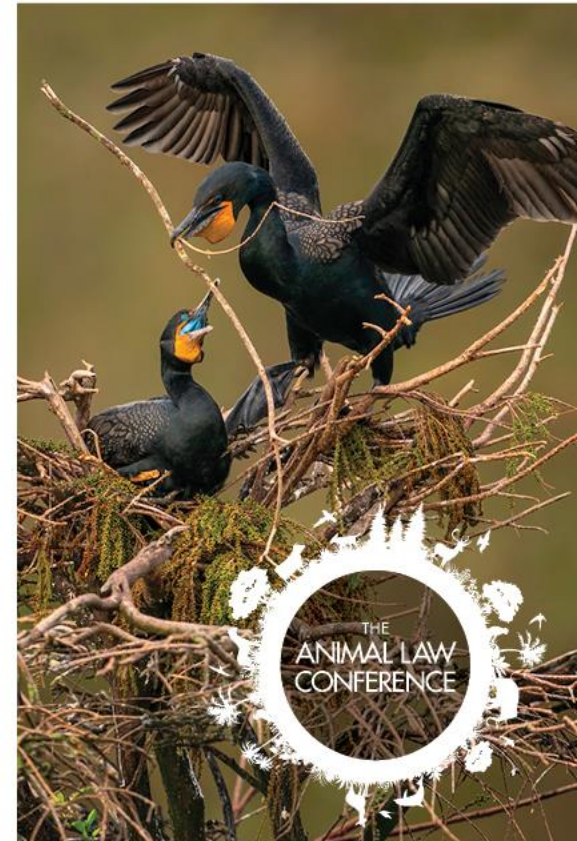


Global Developments in Animal Personhood Jurisprudence

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31ST ANNUAL ANIMAL LAW CONFERENCE

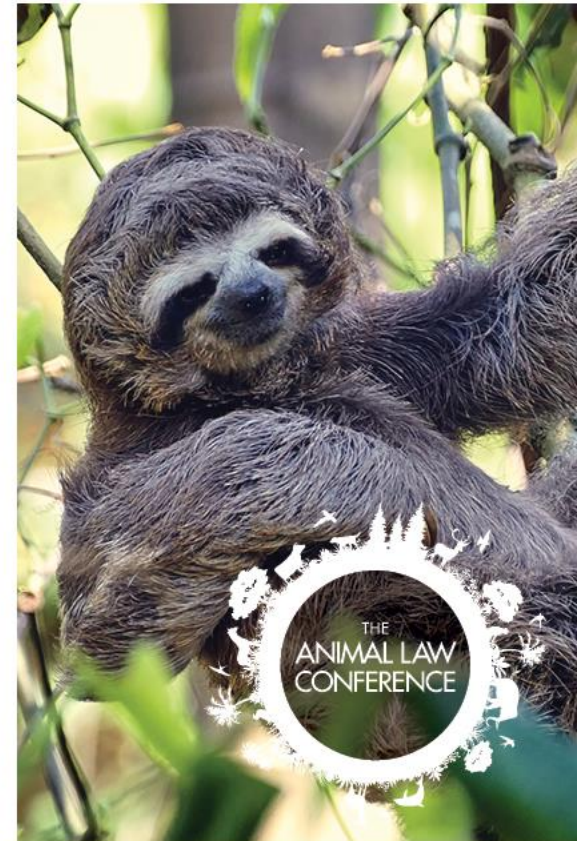




Personal Views and Opinions

Standard Disclaimer:

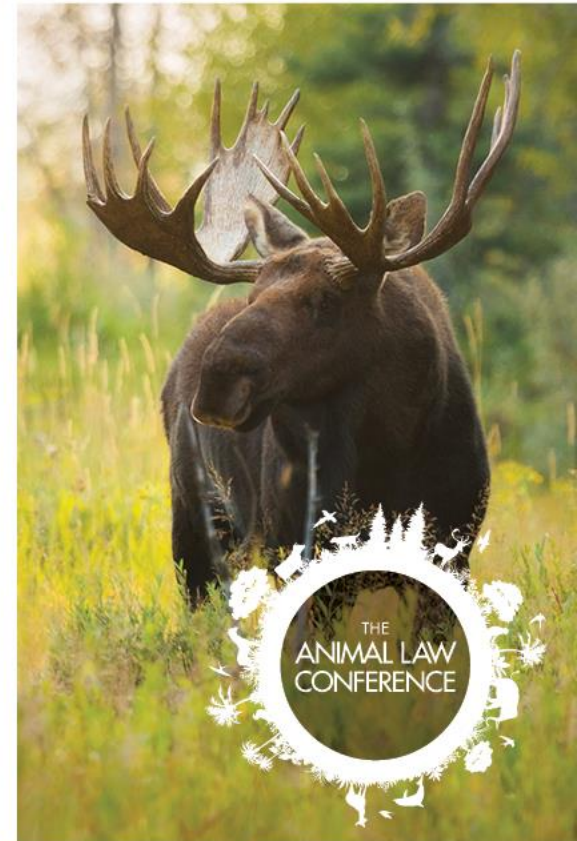
Opinions are personal and not necessarily representative of those of the Animal Legal Defense Fund or any clients.



What is Personhood?

Substantive Personhood: *create new rights*, like the right to not be exploited for entertainment

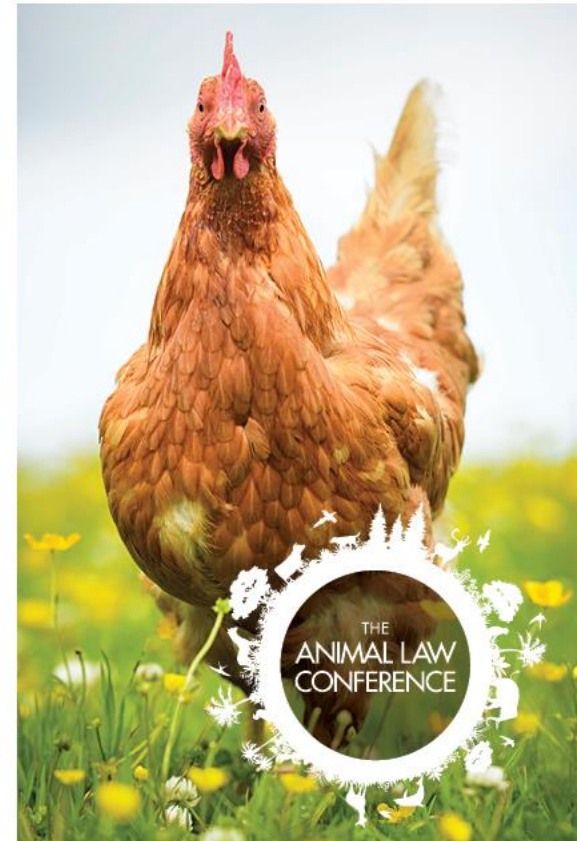
Procedural Personhood: *enforce existing rights*, like the right to be free from cruelty



Why Procedural Personhood is Important

Criminal laws → *enforced by prosecutors*

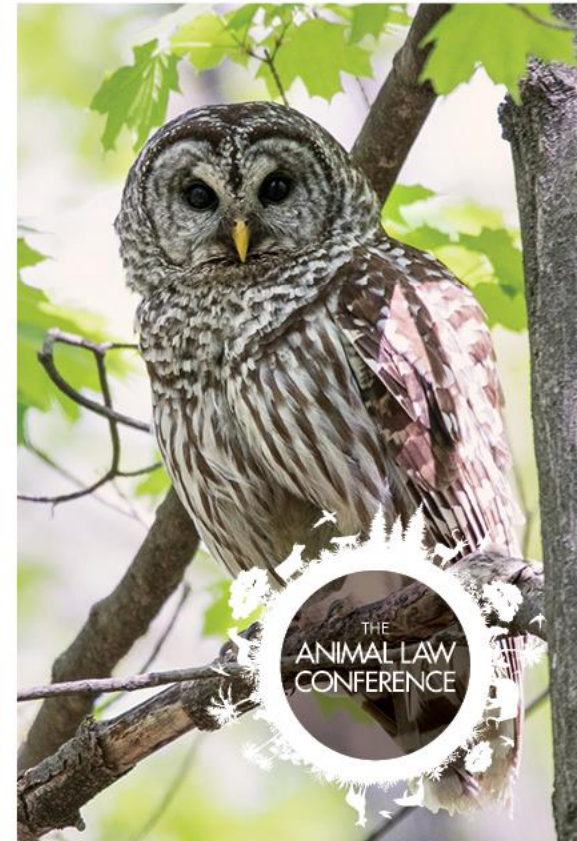
Civil tort laws → *enforced by “persons” who have “standing”*



Why Procedural Personhood is Important

Standing requires an “injury in fact . . . a causal connection between the injury and the conduct complained of . . . [and] it must be ‘likely’ . . . that the injury will be ‘redressed by a favorable decision.’”

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)



CONTENT WARNING

Disturbing images in next 5 slides



Animals Left to Freeze and Die at Zoo – *Not Prosecuted*



Zookeeper admits: *did not check on animals for “a few months” during Wisconsin winter*

Aesthetic injury

Supreme Court:

“The desire to . . . observe an animal species . . . is undeniably a cognizable interest for purpose of standing.”

— *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992)

Complaint:

“At least one ALDF member visited the Zoo, where she observed and developed aesthetic and emotional connections to the animals . . . and became ***distressed and upset due to the animal mistreatment and suffering that they witnessed.***”





In 2020, we filed a ***lawsuit*** against Special Memories Zoo for keeping tigers, lemurs, and other animals in squalid conditions that ***violate*** the Endangered Species Act



**ANIMAL LEGAL
DEFENSE FUND**

Textbook Cruelty at Dairy Farm – *Not Prosecuted*



Animal should never be moved horizontally with hip lifts or lifted vertically where their feet cannot touch the ground.



No prosecution + no standing = illegal cruelty continues



This downed cow struggled to stand many times before dying from starvation, dehydration and injury.



Different Approaches to Personhood Litigation

Substantive Personhood: *create new rights*, like the right to not be exploited for entertainment

The New York Times

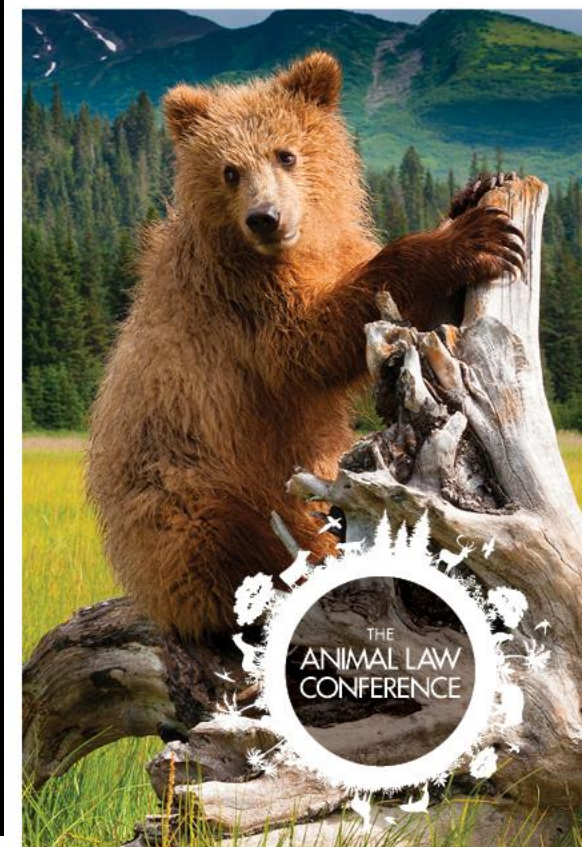
Happy the Elephant Isn't Legally a Person, Top New York Court Rules

An animal advocacy group had argued that the elephant was being illegally detained at the Bronx Zoo, in a case involving deep ethical questions about the basic rights of highly intelligent animals.



"We should recognize Happy's right to petition for her liberty not just because she is a wild animal who is not meant to be caged and displayed, but because the rights we confer on others define who we are as a society."

– Judge Rowan Wilson,
dissenting



Different Approaches to Personhood Litigation

Procedural Personhood: *enforce existing rights*, like the right to be free from cruelty



Press Release

Oregon Supreme Court Denies Petition to Review Case Involving Lawsuit on Behalf of Abused Horse

Lawsuit sheds light on the need to recognize legal rights for animal cruelty victims

Notorious drug lord Pablo Escobar's hippos recognised as 'legal persons' by US court

Posted Fri 22 Oct 2021 at 5:47am



Past, Present, and Future of Personhood Litigation

Traditional cases

Animal



Person

Hippo case

Animal



Foreign Source of Law



Supreme Court Precedent



Person

Future cases

Animal



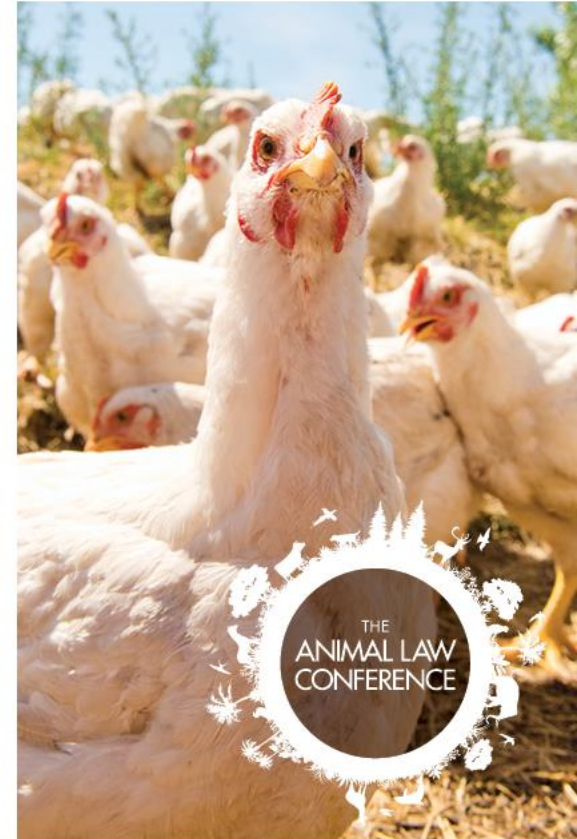
Domestic Source of Law



Supreme Court Precedent



Person



Domestic Sources of Law: Rights of Nature

- 36+ local laws already give some form of personhood to nature
- 14 of these laws specifically include animals

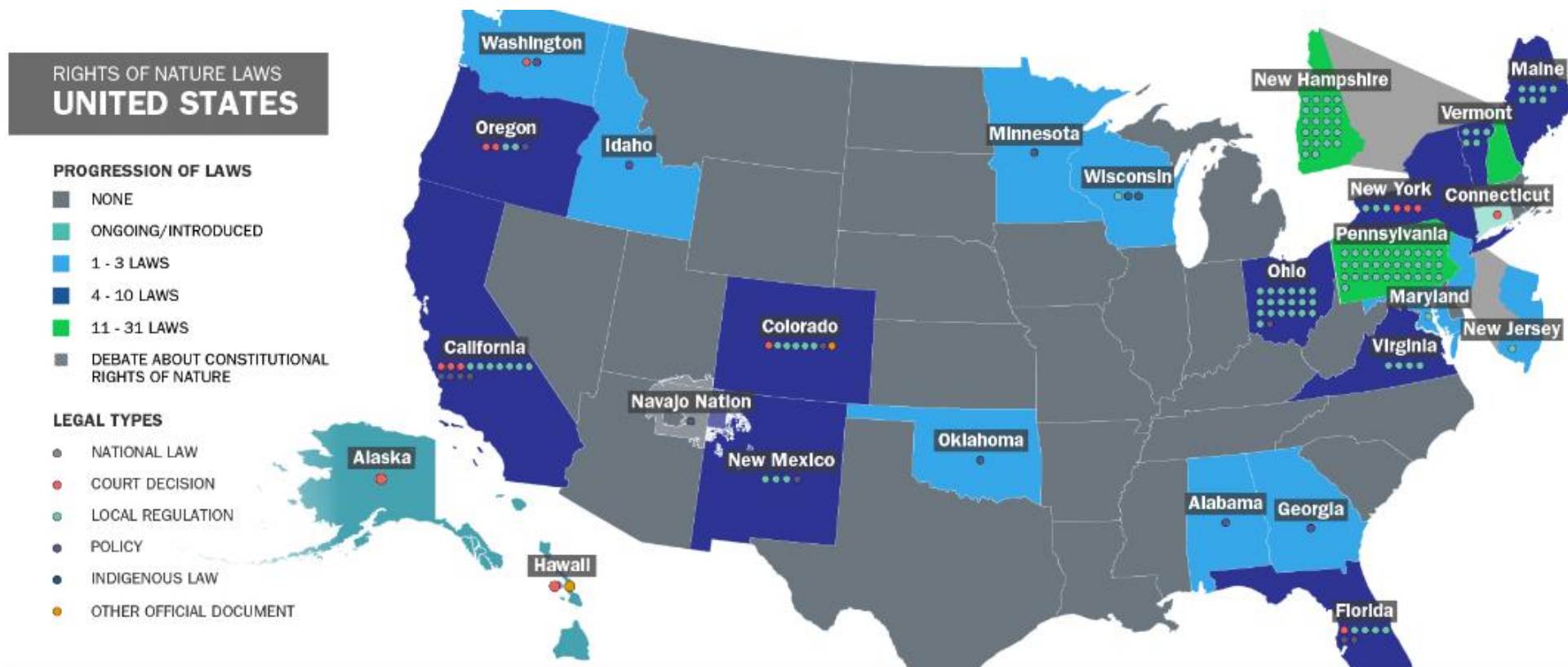


CHART: Michael Joiner, 360info

SOURCE: Putzer et al. 2022 <doi.org/10.1080/17445647.2022.2079432>



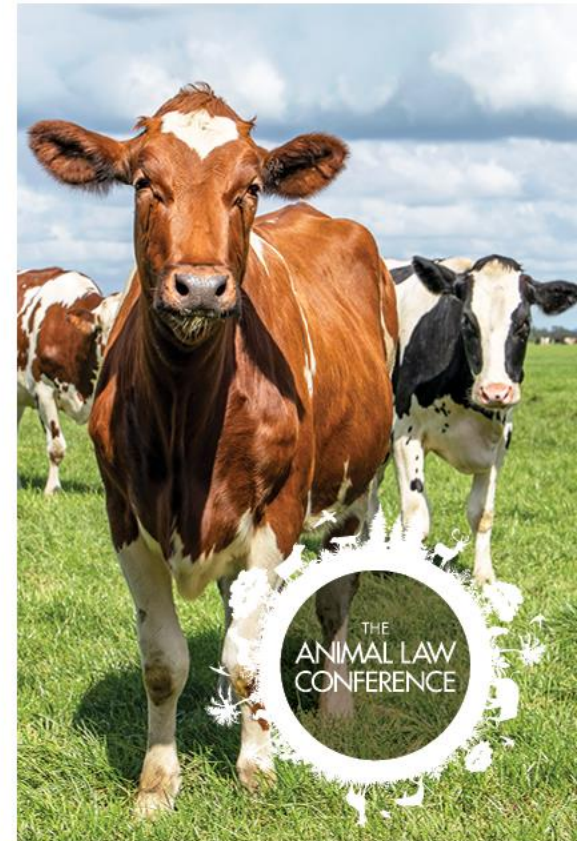
Two Examples: Strong Procedural Personhood

Mendocino County, California

- Protects “***Natural Communities,***” which are ***defined to include “wildlife”***
- County residents can enforce law, and “***shall bring that action in the name of the natural community***”

Licking Township, Pennsylvania

- Protects “***ecosystems . . . and the fauna communities*** which compose them”
- Township residents have “***legal standing to protect the rights of . . . ecosystems***”



Problem Number 1: Vague Substantive Protections

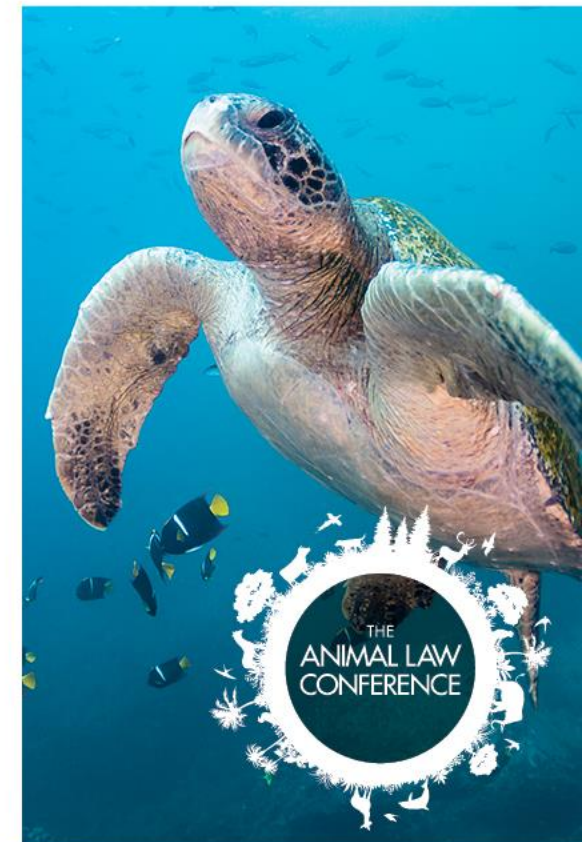
Rights of the Lake Erie Ecosystem

“Lake Erie, and the Lake Erie watershed, ***possess the right to exist, flourish, and naturally evolve.***”

Federal court decision: law is unconstitutionally vague

“What conduct infringes the right of Lake Erie and its watershed to ‘exist, flourish, and naturally evolve’? How would a prosecutor, judge, or jury decide? [Lake Erie Bill of Rights] offers no guidance. . . . **[The law] 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.

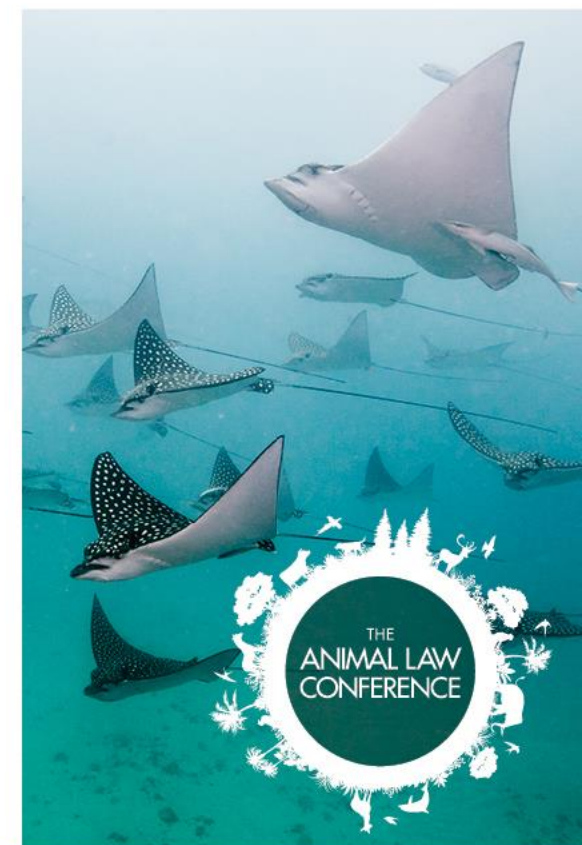
— *Drewes Farms P'ship v. City of Toledo*, 441 F. Supp. 3d 551 (N.D. Ohio 2020)



Problem Number 1: Vague Substantive Protections

Ojai, California

- **Substantive Personhood:**
 - Protects elephants' "bodily liberty," meaning freedom from:
 - "Forced confinement, extraneous control, or restricted choice imposed by any person, and entails the ability to act autonomously without restraint, coercion, or control by any person."
- **Procedural Personhood:**
 - None. Only the city can enforce the law



Problem Number 2: Home Rule Authority

“Municipalities . . . may exert only such powers as are expressly granted to them” by the state

— *Atkin v. State of Kansas*, 191 U.S. 207 (1903)

“No local governmental subdivision shall . . . except as provided by law, enact an ordinance governing private or civil relationships.

— Louisiana Constitution Art. VI, § 9



Problem Number 2: Home Rule Authority

Grant Township Community Bill of Rights Ordinance:

- Protects water by prohibiting fracking
- Allows town residents to enforce violations of the ordinance

Federal Court decision: exceeds home rule authority

*“Because local governments only possess the power “expressly granted” to them by state government . . . and because **there is no authority for Grant Township to create a cause of action for its residents to enforce an ordinance written on their behalf**, Section 4(b) and (c) were enacted beyond the scope of Grant Township's legislative authority.”*

— *Pennsylvania Gen. Energy Co., LLC v. Grant Twp.*, 139 F. Supp. 3d 706 (W.D. Pa. 2015)

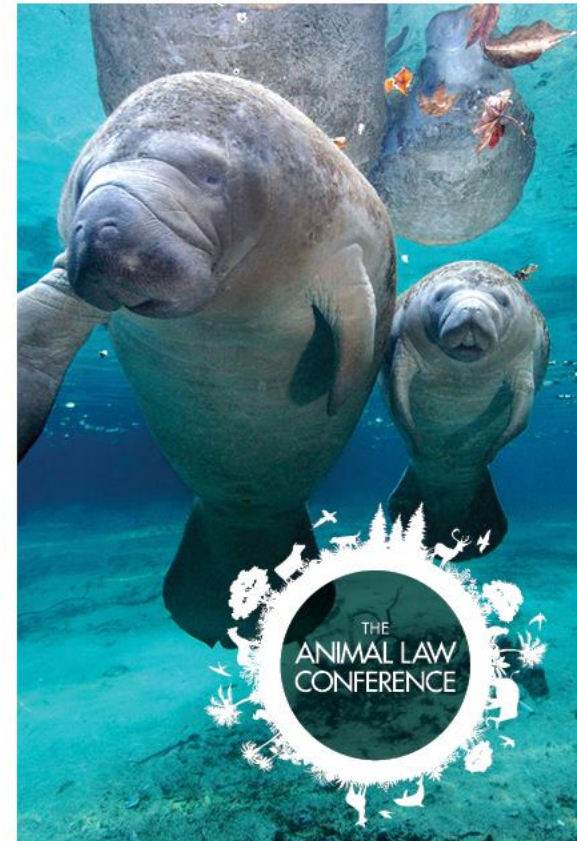


Problem Number 2: Home Rule Authority

Where can localities create private rights of action

- 8 strict states: Alabama, Arkansas, Nevada, New Hampshire, Vermont, Virginia, West Virginia, and Wyoming
- 9 skeptical states: Connecticut, Delaware, Illinois, Indiana, Louisiana, Maryland, Missouri, New Jersey, and North Carolina.
- 24 ambiguous states: Alaska, Arizona, Georgia, Idaho, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wisconsin.
- 9 permissive states: California, Colorado, Florida, Hawaii, Maine, New Mexico, New York, Oregon, and Washington.

Credit: Diller, Paul A., The City and the Private Right of Action, 64 STAN. L. REV. 1109 (2012)



Problem Number 3: Preemption

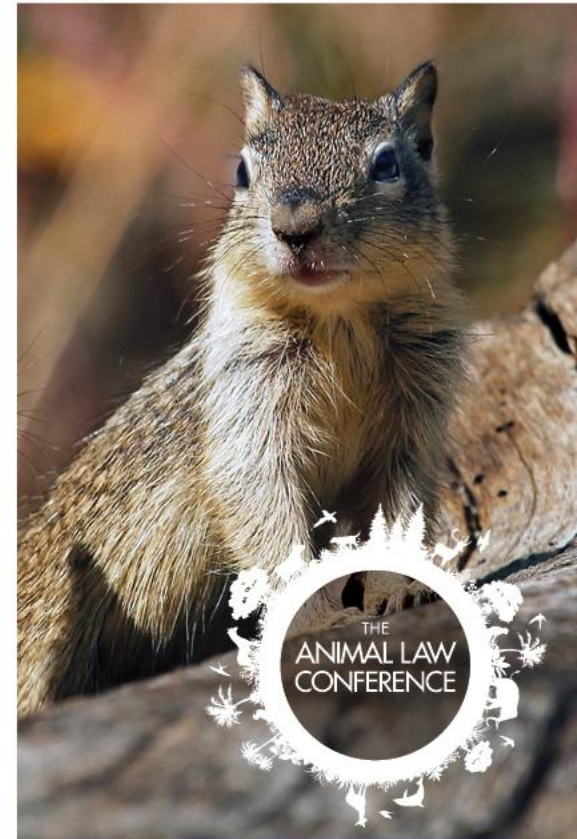
Mora County, New Mexico: protect nature by banning fracking

- ***Protects “natural communities and ecosystems . . . possess inalienable and fundamental rights to exist and flourish within Mora County **against oil and gas extraction.**”***
- Prohibits extraction of oil, natural gas, and other hydrocarbons

Federal district court decision: law is preempted

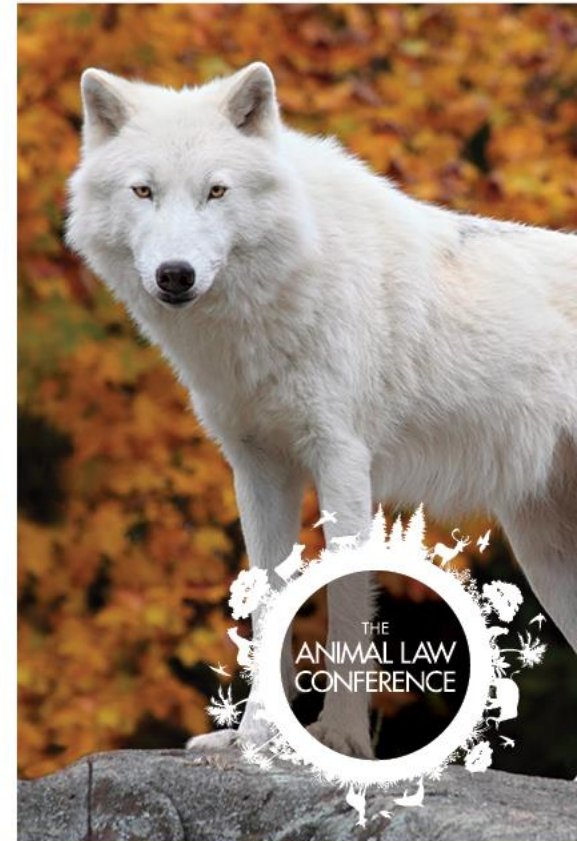
*By banning hydrocarbon exploration-and-extraction activities, **the Ordinance is antagonistic to state law, because it prohibits activities that New Mexico state law permits.***

— *Swepi, LP v. Mora Cnty., N.M.*, 81 F. Supp. 3d 1075 (D.N.M. 2015)



Strategic Impact

- Protect animals in those specific cases.
- Create precedent that animals are persons, with standing.
- Spread that precedent throughout the country.





Thank you!

