
COMMENT

LOCAL GREENS IN LITIGATION

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INTRODUCTION

Climate change and environmental harms stand among the largest, most significant problems facing humanity today. Unsurprisingly, then, scholars and policy makers often advocate for equally expansive solutions, seeking international or national mechanisms that might avert the impending climate disaster. In *Local Greens: Cities and Twenty-First Century Environmental Problems*, however, legal scholars Katrina M. Wyman and Danielle Spiegel-Feld illuminate the value of thinking smaller. While not discounting the clear role of international and national players in combatting climate change, Wyman and Spiegel-Feld suggest that cities, particularly large ones, like New York City, also have an important role to play in the environmental protection story. Journeying through the past, present, and future of city environmental policy, the authors usefully explore what cities have done, are doing, and realistically might do in the future to achieve meaningful environmental action.

This Comment begins by briefly outlining the major contributions of this compelling new book, highlighting its value to local government law scholars. Then, building on the book's proposed future environmental agenda items for cities, this Comment offers up affirmative litigation by cities as a meaningful, complementary form of intervention for local environmental protection.

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I. MAPPING THE PAST, PRESENT, AND FUTURE OF MUNICIPAL ENVIRONMENTAL POLICY

Environmental harms and climate change pose an existential threat to human existence.¹ Microplastics, forever chemicals, and other toxins continue to accumulate in the bodies of most humans on the planet, raising increasing concerns about detrimental health impacts.² Unprecedented levels of climate change are contributing to more frequent and more destructive natural disasters, with “heat-waves, wildfires, floods, tropical storms and hurricanes” now regularly wreaking havoc around the world.³ The World Health Organization estimates that in the coming decades, “climate change is expected to cause approximately 250[,]000 additional deaths per year, from undernutrition, malaria, diarrhea and heat stress alone.”⁴ Other biological species are faring no better: plant and animal species are disappearing at a rate high enough for scientists to deem this the beginning of the first ever human-caused “mass extinction” event.⁵ Melting glaciers are releasing ancient viruses,⁶ global carbon dioxide emissions are about to hit a record high, and the global sea level continues to rise.⁷

¹ See Alex McLaughlin, *Existential Risk, Climate Change, and Nonideal Justice*, 107 *MONIST* 190, 190 (2024).

² See Katia Savchuk, *Microplastics and Our Health: What the Science Says*, *STAN. MED.: NEWS CTR.* (Jan. 29, 2025), <https://med.stanford.edu/news/insights/2025/01/microplastics-in-body-polluted-tiny-plastic-fragments.html> [<https://perma.cc/4HMA-F59V>]; Hannah Gardener et al., *The Role of Per- and Polyfluoralkyl Substances in Cognitive Impairment and Dementia*, 21 *ALZHEIMER'S & DEMENTIA*, May 2025, at 1, 2.

³ *Climate Change*, *WORLD HEALTH ORG.* (Oct. 12, 2023), <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> [<https://perma.cc/9K7W-H8JY>].

⁴ *Id.*

⁵ *What is the Sixth Mass Extinction and What Can We Do About It?*, *WORLD WILDLIFE FUND*, <https://www.worldwildlife.org/resources/explainers/what-is-the-sixth-mass-extinction-and-what-can-we-do-about-it/> [<https://perma.cc/8T97-KPTX>] (last visited Mar. 23, 2026).

⁶ See *Hundreds of Ancient Viruses Discovered Deep Inside Tibetan Glacier*, *YALE ENV'T* 360 (Aug. 27, 2024), <https://e360.yale.edu/digest/ancient-viruses-glacier-climate-change> [<https://perma.cc/3QDF-U3Z9>].

⁷ See Richard J. Lazarus, *Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*, 94 *CORNELL L. REV.* 1153, 1162, 1170 (2009).

This dire state of affairs constitutes a “super wicked problem.”⁸ A wicked problem is so-named because it “defies resolution [due to] the enormous interdependencies, uncertainties, circularities, and conflicting stakeholders implicated by any effort to develop a solution.”⁹ Environmental harms are an even more extreme version of this, as they involve further confounding factors: the problem becomes harder to address the longer it persists; the parties most responsible for the problem are least inclined to address it in part because they do not proportionately bear its burdens; and there is no “existing institutional framework of government with the ability to develop, implement, and maintain the laws necessary to address a problem of climate change’s tremendous spatial and temporal scope.”¹⁰ Although clearly a global problem, there is no corresponding “global law-making institution with a jurisdictional reach and legal authority that match the scope of the problem.”¹¹

Advocates and scholars have naturally then trained their sights on building institutional capacity at the global and international level, and on the next largest possibility: federal governments. In the United States, scholarship and advocacy directed at federal law and policy have achieved some remarkable successes: the Clean Air Act, Clean Water Act, and National Environmental Policy Act among them. But unlike the conservative Nixon administration in the 1970s, which enacted much of this landmark legislation, and the most recent progressive administrations which initiated further protections, the current Trump administration has not only shown little appetite for advancing further protections, but in fact appears deeply committed to rolling back whatever protections it can.¹²

As the authors of *Local Greens* suggest, though, all is not lost. They argue that even in an era of hostile federal (and some state) policy, meaningful gains in environmental protection can nevertheless be made at the local level. Indeed, as described in Chapter 1 of the book, cities have historically had an important role in

⁸ *Id.* at 1160.

⁹ *Id.* at 1159.

¹⁰ *Id.* at 1160.

¹¹ *Id.* at 1161.

¹² See Stephanie Sy, Jackson Hudgins & Accalia Rositani, *Trump’s EPA Announces Aggressive Rollback of Environmental Protections*, PBS NEWS (Mar. 13, 2025), <https://www.pbs.org/newshour/show/trumps-epa-announces-aggressive-rollback-of-environmental-protections> [<https://perma.cc/M7VT-7KKB>].

environmental management, particularly “in the nineteenth and early twentieth centuries, [when] cities were often the first level of government to seek to provide many Americans with environmental protection.”¹³ Although their relationship to environmental protection was complex—cities competed for heavily-polluting but economically-generative manufacturing plants, displaced minority neighborhoods, and pushed their own waste through air and water to burden other jurisdictions—cities more laudably worked to offer residents clean water, clear the smoke of the industrial city, build green spaces, and, connecting the conceptual dots between environmental toxins and their public health impacts, introduced sewage and sanitation systems.¹⁴

Today, as Wyman and Spiegel-Feld describe, many cities continue to make significant efforts to combat pollution. Often most concerned with the local physical environment, cities engage in activities like “building new parks, improving local air quality by reducing in-city pollution, protecting the city against flooding, and reducing waste.”¹⁵ Wyman and Spiegel-Feld offer New York City as a valuable example of these efforts, presenting comprehensive and detailed accounts of its many efforts on this front. For example, they describe how, in 2007, then-Mayor Bloomberg “created a pioneering Office of Long-Term Planning and Sustainability, and published a groundbreaking sustainability plan called PlaNYC,” complete with a whopping “127 action items, including a commitment to reducing the city’s GHG emissions by 30 percent below 2005 levels by 2030.”¹⁶ That administration also created “the first municipal brownfield remediation program” in the nation, to supplement the state’s brownfield program.¹⁷ Later, Local Law 97 in 2019 set standards to lower greenhouse gas emissions from New York City’s large buildings, and almost half of the largest cities in the nation currently have similar limits.¹⁸ After significant challenges and controversy, New York City also successfully implemented congestion pricing in

¹³ KATRINA M. WYMAN & DANIELLE SPIEGEL-FELD, LOCAL GREENS: CITIES AND TWENTY-FIRST CENTURY ENVIRONMENTAL PROBLEMS 17 (2025).

¹⁴ *See id.* at 17–19.

¹⁵ *Id.* at 32.

¹⁶ *Id.* at 38.

¹⁷ *Id.* at 43.

¹⁸ *Id.* at 57, 61.

the lower part of Manhattan in January 2025,¹⁹ leading to a 22% decrease in air pollution in that area.²⁰

In addition to this comprehensive account of past actions, Wyman and Spiegel-Feld propose a curated series of future steps cities can take in service of environmental protection. On the climate adaptation front, cities can perform risk assessments, plus map and score neighborhoods to determine the highest priority areas for intervention.²¹ Once identified, cities can implement infrastructure improvements that increase resilience, like “tree planting, cool roofs and cool pavements to reduce heat, and drainage or green infrastructure to lower flood risks.”²² As cities adapt to environmental changes, these physical infrastructure changes can join social infrastructure initiatives to further fortify cities.²³ Cities can examine the “‘underlying’ social, economic, and political factors that contribute to the higher vulnerability of certain communities to the effects of climate change,” and take measures to increase the equities and strength of environmental adaptation.²⁴

To fund these efforts, Wyman and Spiegel-Feld encourage federal and state level governments to offer fiscal assistance to cities in these endeavors. Some state governments will: New York state recently passed the Climate Change Superfund Act, which will require fossil fuel companies to pay an estimated \$75 billion over a twenty-five year period to fund climate change mitigation efforts in the state, much of which will go to cities.²⁵ But even when states will not provide funding, Wyman and Spiegel-Feld encourage cities to

¹⁹ See *id.* at 44.

²⁰ See David Nutt, *Congestion Pricing Improved Air Quality in NYC and Suburbs*, CORNELL CHRON. (Dec. 8, 2025), [https://news.cornell.edu/stories/2025/12/congestion-pricing-improved-air-quality-nyc-and-suburbs#:~:text=The%20study%20found%20that%2C%20from,congestion%20pricing%20not%20been%20implemented.\[https://perma.cc/2DQK-ZEGM\]](https://news.cornell.edu/stories/2025/12/congestion-pricing-improved-air-quality-nyc-and-suburbs#:~:text=The%20study%20found%20that%2C%20from,congestion%20pricing%20not%20been%20implemented.[https://perma.cc/2DQK-ZEGM]).

²¹ See WYMAN & SPIEGEL-FELD, *supra* note 13, at 90.

²² *Id.*

²³ See *id.* at 92.

²⁴ *Id.* (quoting Linda Shi & Susanne Moser, *Transformative Climate Adaption in the United States: Trends and Prospects*, 372 SCIENCE, 2021, at 1, 1–2).

²⁵ See Aynsley O’Neill, *How New York’s \$75 Billion Climate Superfund Will Work*, INSIDE CLIMATE NEWS (Mar. 8, 2025), [https://insideclimate-news.org/news/08032025/how-new-york-climate-superfund-will-work/\[https://perma.cc/C4Y5-C59R\]](https://insideclimate-news.org/news/08032025/how-new-york-climate-superfund-will-work/[https://perma.cc/C4Y5-C59R]).

“develop[] their own revenue streams to help finance the construction and maintenance of local adaptation efforts,” suggesting that special assessments, climate resilience fees like stormwater fees levied on building owners in relation to their area of impervious surface are, and certain forms of back bonds could also provide revenues.²⁶

While Wyman and Spiegel-Feld identify a significant role for cities in *adapting* to climate change, they see less of a role for cities in actually *reducing* climate change. They note that “[l]ocal efforts to adapt to climate change should encompass regulatory measures in addition to infrastructure investments,” but that “stabilizing world temperatures is not an obvious policy goal for local governments to seriously take on board on their own.”²⁷ In addition to an obvious mismatch in capacity, most efforts to decrease fossil fuel combustion would involve imposing upfront costs on city drivers and building owners, a difficult move politically.²⁸ Also, this small-benefit, high-cost action could be quickly inconsequential, as the likely end result would be redistribution rather than reduction, if neighboring cities did not join in the effort and carbon-intensive activities move and “relocate from regulating to nonregulating jurisdictions.”²⁹ Finally, cities operate within a delegated sphere of power and are “vulnerable to the whims of state lawmakers, who may curtail local power,” such that a city that may be inclined to pass environmental regulation can quickly find itself quite unable to do so because of state preemption.³⁰ Ultimately, Wyman and Spiegel-Feld conclude, local governments simply lack important levers to realistically reduce greenhouse gas emissions.

II. PLAINTIFF CITY ENVIRONMENTAL LITIGATION

However, localities may have at least one additional lever to extend the city’s reach and impact on environmental protection. While the traditional regulatory path may be mostly foreclosed to local governments, some cities have the option of *litigation*. Commencing litigation against the actors who tortiously cause environmental harms can potentially provide a funding source for

²⁶ WYMAN & SPIEGEL-FELD, *supra* note 13, at 95.

²⁷ *Id.* at 96, 99.

²⁸ *See id.* at 10, 34, 99.

²⁹ *Id.*

³⁰ *Id.* at 27.

environmental protection, create direct and indirect deterrence, reduce extra-jurisdictional emissions, and sometimes avoid the state ire that local regulatory efforts can attract. Litigation may thus warrant consideration as part of cities' future environmental agendas, where feasible.

Indeed, in the last few decades, cities have emerged as a formidable litigation force, bringing suits against the corporate parties who create the harms that injure cities and their residents.³¹ Across numerous areas, plaintiff cities have sued parties like gun manufacturers, pharmaceutical companies, and financial institutions for the harms of their activities.³² Although these plaintiff city claims are not always successful, plaintiff city litigation has played a key role in helping cities recoup the expenses they incur when large-scale harms are inflicted on cities and their residents. For example, by bringing legal claims against distributors of opioids, cities and counties will receive nearly \$10 billion of a \$26 billion total settlement.³³

Suing for environmental harms has been an important part of this matrix, but litigative outcomes have likewise been mixed. In 2018, New York City filed suit against five major fossil fuel companies, alleging that because these companies produce more than "11% of all the carbon and methane pollution from industrial sources that has accumulated in the atmosphere since the dawn of the Industrial Revolution," and have specifically created harm to the city through "damage from climate change, including inundation, erosion, and regular tidal flooding of its property," those fossil fuel companies "should shoulder the cost of abating" the harm they cause.³⁴ The claim was dismissed—largely on the grounds that federal common law and federal statutes like the Clean Air Act

³¹ See Sarah L. Swan, *Plaintiff Cities*, 71 VAND. L. REV. 1227, 1227 (2018).

³² See *id.* Large cities tend to have internal affirmative litigation departments that can pursue such claims, and small cities often partner with private counsel. See *id.* at 1230, 1279–80.

³³ See Sarah Minster, *Launching NLC's National Opioid Settlement Dashboard: Focusing on Solutions*, JOHNS HOPKINS BLOOMBERG SCH. OF PUB. HEALTH, <https://opioidprinciples.jhsph.edu/launching-nlcs-national-opioid-settlement-dashboard-focusing-on-solutions/> [<https://perma.cc/2T8N-PSJ2>] (last visited Mar. 23, 2026).

³⁴ Amended Complaint at 1–2, *City of New York v. B.P. P.L.C.*, 325 F.Supp.3d 466 (S.D.N.Y. 2018) (No. 18-cv-182-JFK).

preempted the claims³⁵—but the litigation itself was recognized as “one of the . . . most important moments” in the decades-long fight against climate change, and stood as a rallying cry for other cities.³⁶

Other environmental-based plaintiff city litigation has fared better. In 2014, a consortium of California local governments received a \$1.15 billion jury award against defendant lead paint manufacturers.³⁷ In the area of water pollution, a number of cities, including Los Angeles, Oakland, San Diego, Portland, Tacoma, and Baltimore, sued Monsanto for contaminating waterways with polychlorinated biphenyls, leading to a settlement agreement of close to \$550 million.³⁸ A new wave of litigation, which focuses on claims like deceptive marketing rather than the public nuisance lens of previous litigation, also appears promising.³⁹

When successful, settlements and damage awards can help cities replenish coffers depleted by adapting to environmental

³⁵ Opinion & Order at 10–20, *City of New York v. B.P. P.L.C.*, 325 F.Supp.3d 466 (S.D.N.Y. 2018) (No. 18-cv-182-JFK).

³⁶ See Chris Mooney & Dino Grandoni, *New York City Sues Shell, ExxonMobil and Other Oil Companies over Climate Change*, WASH. POST (Jan. 10, 2018), <https://www.washingtonpost.com/news/energy-environment/wp/2018/01/10/new-york-city-sues-shell-exxonmobil-and-other-oil-majors-over-climate-change/> [<https://perma.cc/4JL5-NYG8>] (quoting environmental activist Bill McKibben); Karen Savage, *New York City Files Climate Lawsuit Against Five Biggest Oil Companies*, CLIMATE LIAB. NEWS (Jan. 10, 2018), <https://www.business-humanrights.org/en/latest-news/new-york-city-files-climate-lawsuit-against-five-biggest-oil-companies/> [<https://perma.cc/Z9JF-SE52>].

³⁷ A lower amount was later agreed to after a series of appeals and settlement negotiations. See *California Counties and Cities Announce Groundbreaking \$305 Million Settlement of Landmark Lead Paint Litigation*, CNTY. OF SANTA CLARA (Aug. 9, 2019), <https://news.santaclaracounty.gov/news-release/california-counties-and-cities-announce-groundbreaking-305-million-settlement-0> [<https://perma.cc/845N-WBS3>].

³⁸ See Mara W. Elliott, *Chemical Manufacturing Behemoth Monsanto Forced to Pay \$550 Million* (June 24, 2020) <https://www.sandiego.gov/sites/default/files/nr200624a.pdf> [<https://perma.cc/A7XH-593Q>]. See also *Oakland to Receive Millions in Settlement over Monsanto PCB Chemicals in Waterways*, CBS NEWS (Dec. 23, 2022), <https://www.cbsnews.com/sanfrancisco/news/oakland-to-receive-millions-in-settlement-over-monsanto-pcb-chemicals-in-waterways/> [<https://perma.cc/6WRH-DC2U>].

³⁹ See Hannah Wiseman, *Are Lawsuits Effective ways to Protect the Climate and Environment?* PENNSTATE INST. OF ENERGY AND THE ENV'T (Sep. 10, 2024), <https://iee.psu.edu/news/blog/are-lawsuits-effective-ways-protect-climate-and-environment> [<https://perma.cc/L2MK-K3GF>].

problems that they did not cause. The environmental adaptation efforts necessitated by fossil fuel activities are incredibly expensive (the cost for constructing sea walls along the Lower East side of New York City, for example, comes to an estimated \$52 billion).⁴⁰ Litigation has the equitable benefit of assigning these costs to the party that financially benefited from engaging in the tortious activity, rather than the public purse.

Litigation can also directly and indirectly deter environmentally harmful corporate behaviors. Deterrence is widely acknowledged as an important benefit of tort liability: at the same time civil liability remedies a harm that has already occurred, it is also forward-looking and concerned with “reducing the undesirable consequences of risky activity” in the future.⁴¹ Climate change lawsuits have catalyzed behavioral changes in corporate actors in documented ways, and corporate counsel with concerns about risk exposure will consider “tak[ing] ‘reasonable’ steps to pare back emissions to reduce their legal exposure.”⁴² This deterrent impact can ultimately result in emissions reduction in cities and beyond.

Plaintiff city litigation may also attract less state blowback than direct regulatory action, though the ground here is shifting as of late. Whereas states once appeared fairly reluctant to block city litigation,⁴³ the “political environment around these cases is becoming increasingly hostile,” and the intense environment of punitive preemption is carrying over into the litigation context.⁴⁴ For instance, in environmental litigation in particular, some states have recently been aggressively lobbying the federal government to

⁴⁰ See O’Neill, *supra* note 25.

⁴¹ KENNETH S. ABRAMS, *THE FORMS AND FUNCTIONS OF TORT LAW* 19 (6th ed. 2022).

⁴² See John Carey & Lorraine Woellert, *Global Warming: Here Come the Lawyers*, BUS. WK. (Oct. 30, 2006) (noting some companies proactively limiting emissions on this basis). See also David Hunter & James Salzman, *Negligence in the Air: The Duty of Care in Climate Change Litigation*, 155 U. PENN. L. REV. 101, 135, n.131 (2007).

⁴³ See Sarah L. Swan, *Preempting Plaintiff Cities*, 45 FORDHAM URB. L. J. 1241, 1241 (2018); Kyle J. Blasinsky, *Cities on Offense: Why Cities Bring Suit and What States Should Do About It*, 129 PENN. ST. L. REV. 181 (2025).

⁴⁴ L. Delta Merner, *Climate Lawsuits Are Rising as Political Pushback Intensifies*, UNION OF CONCERNED SCIENTISTS: THE EQUATION (July 8, 2025), <https://blog.ucsusa.org/l-delta-merner/climate-lawsuits-are-rising-as-political-pushback-intensifies/> [<https://perma.cc/5EHW-6YS3>].

preempt city climate litigation.⁴⁵ The Attorney General of Kansas recently “urged Congress to amend federal environmental law to block state and local climate lawsuits against fossil fuel companies,” and sixteen Republican Attorney Generals banded with him to urge the Trump administration to pass federal legislation immunizing fossil fuel companies from such lawsuits.⁴⁶ These Attorney Generals are also “call[ing] for the federal government to restrict funding to jurisdictions that bring such cases.”⁴⁷ While much climate litigation continues unimpeded, such measures, if adopted, would decimate this litigation landscape.

CONCLUSION

This returns us to one of the many important themes and insights of *Local Greens*: cities can do a lot, but they can only do so much. As Wyman and Spiegel-Feld explain, municipalities operate within significant legal and economic constraints set by state and federal governments, which they can do little to alter.⁴⁸ But even with these constraints, cities represent “disruptive places uniquely capable of generating and adopting new ideas,”⁴⁹ and, as Wyman and Spiegel-Feld so ably argue, cities can and do take actions within these spheres that are nevertheless meaningful. Cities are not ideally matched to address the massive harms of climate change and other environmental pollution, yet, as Wyman and Spiegel-Feld persuasively demonstrate, even their smaller-scale infrastructure, regulatory, and litigative local efforts matter deeply.

⁴⁵ See *id.*; see also Blasinsky, *supra* note 43, at 187–88, n.33 (2025).

⁴⁶ Merner, *supra* note 44.

⁴⁷ *Id.*

⁴⁸ WYMAN & SPIEGEL-FELD, *supra* note 13, at 106.

⁴⁹ Richardson Dilworth & Timothy P.R. Weaver, *What Is the Relationship Between COVID-19 and the Movement to ‘Defund the Police’?*, in GLOBAL REFLECTIONS ON COVID-19 AND URBAN INEQUALITIES, VOLUME 1: COMMUNITY AND SOCIETY 197, 200 (Brian Doucet, Rianne van Melik & Pierre Filion eds., 2021).