COMMENTS

WHEN THE GRASS ISN'T GREENER: LEGISLATING THE AMERICAN LAWN AGAINST THE BACKDROP OF HOMEOWNERS' ASSOCIATIONS*

I. INTRODUCTION

In 2004, Janet and Jeff Crouch removed their traditional grass lawn and replaced it with species native to their Maryland home, like swamp milkweed, sunflowers, and scarlet bee balm.[1] Their lawn did not require pesticides or fertilizers to flourish since their plants were well-suited to the conditions of their native environment.[2] Over the years, as they continued to cultivate their garden, they relished the new visitors to their lawn: monarch butterflies, bumblebees, goldfinches, and "hummingbirds in darting, whirring droves."[3]

Their neighbors visited the lawn on walks too, and seemed to appreciate the abundance of flowers, shrubs, and birds. People stopped by and "comment[ed] on the pleasure the garden provide[d]."[4] But one neighbor complained about the atypical yard to the Crouches' Homeowners' Association (HOA), asking them to have it turned back to turfgrass.[5] The HOA then sent the Crouches a cease and desist letter.[6] The letter stated that the native yet nontraditional plants "not only violated the bylaws, but were eyesores that hurt property values."[7] "Your yard is not the place for such a habitat," the letter continued.[8] The HOA said the Crouches had a mere ten days to rid their front yard of its wildflowers and turn it back into a grass lawn.[9]

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1. Cara Buckley, *They Fought the Lawn. And the Lawn's Done.*, N.Y. TIMES (Dec. 20, 2022), https://www.nytimes.com/2022/12/14/climate/native-plants-lawns-homeowners.html; *Real Property – Restrictions on Use – Low Impact Landscaping: Hearing on H.B. 322 Before the Env't & Transp. Comm.*, 2021 Leg., 442d Sess. (Md. 2021) [hereinafter *Testimony*] (testimony of Janet Crouch), https://mgaleg.maryland.gov/cmte_testimony/2021/jpr/1jEYXFNL59y57Qsw6uXnNk1KYpQtIcMkU.pdf [https://perma.cc/4YXM-D9TT].
2. Buckley, *supra* note 1; *Testimony*, *supra* note 1.
3. Buckley, *supra* note 1.
4. *Testimony*, *supra* note 1.
5. *Id.*; Buckley, *supra* note 1.
6. *Testimony*, *supra* note 1.
7. Buckley, *supra* note 1.
8. *Id.*
9. *Id.*

Rather than remove the plants along with the birds and insects that now called them home, the couple employed a lawyer to push back against their HOA.[10] After a year and a half of failed negotiations to save the pollinator-friendly lawn, their lawyer filed a case against the HOA in their county's court.[11] Several years of legal fights and over $60,000 in legal fees later, plus the estimated $75,000 that their HOA spent employing a lawyer, the Crouches reached a settlement with their HOA allowing them to keep their biodiverse yard.[12]

Their legal fight attracted the attention of Democratic Maryland State Delegate Terri L. Hill, who reached out to the Crouches and asked them whether they would allow their case to be used as "the basis of a new environmental law."[13] The Crouches agreed and even testified before the Maryland House in support of the bill.[14] Soon after, the legislation was signed into law, and Maryland became the first state to limit HOA control over biodiverse, eco-friendly yards.[15]

The Crouches are not the only Americans rightfully concerned about the ecological crisis of biodiversity loss, and they are not the only Americans who have come up against strict HOA rule enforcement when they have tried to do something about it.[16] But not many Americans have $60,000 to battle their HOAs over lawn bylaws.[17] Maryland's new law provides a model for other states that want to protect biodiversity from "lawn culture."[18]

So far, a few other states have attempted to improve biodiversity and water conservation via residential lawns, but no legislation has gone quite far enough to loosen the manicured lawn's hold on American yards.[19] Many of these laws de-emphasize the importance of biodiversity and are not clear enough to protect homeowners from protracted legal battles with HOAs.[20]

This Comment discusses how lawns are counterproductive to fighting environmental crises, how HOAs keep them in place, and how states have dealt with HOAs through legislation amidst environmental crises. It also evaluates the different state-level approaches and makes recommendations about what model state legislation should include.

Part II.A of this Comment lays out the connection between ecological crisis, biodiversity loss, and American turfgrass lawns. Part II.B describes HOAs and their

10. *Id.*

11. *Id.*

12. *Id.*; *Testimony*, *supra* note 1.

13. Buckley, *supra* note 1.

14. *Testimony*, *supra* note 1; *see also* Buckley, *supra* note 1.

15. Buckley, *supra* note 1; MD. CODE ANN., REAL PROP. § 2-125 (West 2024).

16. *See infra* Part II.E.2.a.

17. *See Survey of Consumer Finances, 1989–2022*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/econres/scf/dataviz/scf/table/#series:Transaction_Accounts;demographic:all;population:all;units:median [https://perma.cc/N884-V2LY] (Nov. 2, 2023).

18. REAL PROP. § 2-125.

19. See *infra* Section II for a discussion of the approaches used by California, Colorado, Florida, and Maryland.

20. See *infra* Section II for a discussion of the approaches used by California, Colorado, Florida, and Maryland.

connection to lawns, showing how HOAs can make it impossible for homeowners to remove their grass or plant native species. Part II.C describes non-statutory approaches to moving away from turfgrass lawns, including grassroots movements and lawsuits, concluding that though many people have the will to make their yards more biodiverse, HOAs create a roadblock for people under their jurisdiction. Part II.D compares four states' statutes that limit HOA power to require turfgrass lawns. Finally, Section III discusses the merits and drawbacks to the different approaches and describes attributes model legislation should have.

II. OVERVIEW

When people think of ecological crisis, they may think first of climate change.[21] However, human-caused ecological crisis goes beyond warming temperatures.[22] Mass extinction and unprecedented biodiversity loss are also facets of the crisis.[23] Human-generated ecological crisis is occurring in many ways: drought, extreme weather events, pollution, and mass extinction.[24] Many people feel powerless in the face of ecological destruction.[25] Changing corporate behavior and enacting international policies are crucial in the fight against climate change, but local, individual action also matters.[26] It matters in the incremental positive effect it has on the environment, and it matters because it makes a political statement.[27]

Reducing the prevalence of the turfgrass lawn in America would address ecological crisis in three primary ways: reducing water use, reducing pesticide and herbicide use, and increasing biodiversity.[28]

A. The Environmental Crisis of Biodiversity Loss

One million or more of Earth's eight million plant and animal species are threatened with extinction, according to a 2019 United Nations report.[29] Further,

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21. *See* DAVID PASSARELLI, FATIMA DENTON & ADAM DAY, BEYOND OPPORTUNISM: THE UN DEVELOPMENT SYSTEM'S RESPONSE TO THE TRIPLE PLANETARY CRISIS 2 (2021), https://i.unu.edu/media/cpr.unu.edu/attachment/4977/UNUTriplePlanetaryCrisis2021.pdf [https://perma.cc/E7ZK-PEQB].

22. *Id.*

23. *Id.*

24. *Id.*

25. ROBIN WALL KIMMERER, BRAIDING SWEETGRASS: INDIGENOUS WISDOM, SCIENTIFIC KNOWLEDGE AND THE TEACHINGS OF PLANTS 6 (Milkweed eds., 2013) ("Nearly every one of the two hundred [surveyed] students said confidently that humans and nature are a bad mix. . . . Later in the survey, they were asked to rate their knowledge of positive interactions between people and land. The median response was 'none.'").

26. Jason Mark, *Yes, Actually, Individual Responsibility Is Essential to Solving the Climate Crisis*, SIERRA CLUB (Nov. 26, 2019), https://www.sierraclub.org/sierra/yes-actually-individual-responsibility-essential-solving-climate-crisis [https://perma.cc/H9A2-C4ZM] ("When you choose to eat less meat or take the bus instead of driving or have fewer children, you are making a statement that your actions matter, that it's not too late to avert climate catastrophe, that you have power. To take a measure of personal responsibility for climate change doesn't have to distract from your political activism—if anything, it amplifies it.").

27. *Id.*

28. *See generally* PAUL ROBBINS, LAWN PEOPLE: HOW GRASSES, WEEDS, AND CHEMICALS MAKE US WHO WE ARE (2007).

"[t]hree-quarters of the land-based environment . . . ha[s] been significantly altered by man."[30] The land that humanity has already altered is getting worse because of our unsustainable, soil-depleting use—"[l]and degradation has reduced the productivity of [twenty-three] percent of the global land surface."[31] Climate change is one cause of habitat disruption, but other human activities—like unsustainable agricultural practices, logging, overfertilization, pesticide use, and herbicide use—are driving species loss as well.[32] This species loss is occurring at a rate "more than ever before in human history" and is predicted to accelerate without drastic conservation efforts.[33] A lead author of the United Nations' *Global Assessment Report on Biodiversity and Ecosystem Services* stated that "[w]e need to build biodiversity considerations into trade and infrastructure decisions, the way that health or human rights are built into every aspect of social and economic decision-making."[34]

Loss of species is not just a loss of beauty and intricacy of an ecosystem's web; it is also an provide immense but hard-to-quantify loss of economic value.[35] Economic valuation of nature's resources could provide a persuasive justification for lawn policy change because the value of biodiversity is vast.[36] Ecologists attempt to quantify the benefits of a productive ecosystem as "ecosystem services."[37] Some scientists and economists use the term "ecosystem services" to describe "any positive benefit that wildlife or ecosystems provide to people. . . . direct or indirect—small or large."[38] The idea of ecosystem services has been criticized as overly simplistic, anthropocentric, and promoting commodification of nature, but monetary valuations, however imperfect, can provide a foundation for cost-benefit analyses and justification for policies seeking to protect the environment and root out lawn culture.[39] Ecosystem services could provide

29. John Bongaarts et al., *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, 45 POPULATION & DEV. REV. 680, 680 (2019).

30. *Id.*

31. *Id.* at 681.

32. *Id.* at 680–81.

33. *Id.*

34. Brad Plumer, *Humans Are Speeding Extinction and Altering the Natural World at an 'Unprecedented' Pace*, N.Y. TIMES (May 6, 2019), https://www.nytimes.com/2019/05/06/climate/humans-are-speeding-extinction-and-altering-the-natural-world-at-an-unprecedented-pace.html; *see also* Bongaarts et al., *supra* note 29, at 680–81.

35. *See* INTERGOVERNMENTAL SCI.-POL'Y PLATFORM ON BIODIVERSITY & ECOSYSTEM SERVS., THE REGIONAL ASSESSMENT REPORT ON BIODIVERSITY AND ECOSYSTEM SERVICES FOR THE AMERICAS 130 (2018) [hereinafter BIODIVERSITY AND ECOSYSTEM SERVICES], https://files.ipbes.net/ipbes-web-prod-public-files/2018_americas_full_report_book_v5_pages_0.pdf [https://perma.cc/B7QZ-VYF2].

36. Matthias Schröter et al., *Ecosystem Services as a Contested Concept: A Synthesis of Critique and Counter-Arguments*, 7 CONSERVATION LETTERS 514, 514 (2014).

37. *Ecosystem Services*, NAT'L WILDLIFE FED'N, https://www.nwf.org/Home/Educational-Resources/Wildlife-Guide/Understanding-Conservation/Ecosystem-Services [https://perma.cc/PYA5-BKNE] (last visited May 5, 2025).

38. *Id.*

39. Schröter et al., *supra* note 36, at 518.

a framework for comparing the cost of lawn care, which has already been quantified,[40] with the large economic benefit of cultivating biodiversity.

In the Americas, the ecosystem's web provides some $24.3 trillion in non-monetized services to humans each year by one estimate.[41] Of that, $5.3 trillion comes from the United States' ecosystem.[42] Timber, crops, pollination, food, biomedical resources, and chemical resources are assets that ecosystems provide without asking for money in return.[43] But ecosystems provide far more than this. Many things humans take for granted, like the oxygen we breathe, are "produced exclusively by plants."[44] Trees purify air and water; by absorbing carbon dioxide and releasing oxygen, they become carbon sinks.[45] Without a rich, diverse ecosystem, humans could not survive.[46]

Ecosystems are limited resources, of course, and will stop handing over this sort of economic value without humanity's proper care.[47] Although it is not entirely clear to the average person exactly how individual species like houseflies, certain soil fungi, or wasps benefit humans or even the ecological web, what is clear is that all species are interrelated, interconnected, and interdependent.[48] While an ecosystem may survive the loss of a few of its species, the ecosystem is like a tower of Jenga blocks—eventually, the loss of enough or certain key species will cause the ecological tower to collapse.[49] "We have to start thinking about what our role is in this urban ecosystem," according to Dr. Israel Del Toro of Lawrence University.[50] "This idea that humans and nature cannot coexist is destroying the entire planet, which in turn is destroying humans," ecologist Dr. Douglas W. Tallamy says.[51] "The only way forward is to coexist."[52]

Local extinction of species is a crisis, but it is one that can be treated locally, at least to some extent.[53] As of 2002, forty percent of Delaware's native plant species either no longer existed in the state or were threatened.[54] Because insects, birds, amphibians, and reptiles native to the area have lost the native plants they depend upon, Delaware has also "lost [seventy-eight] percent of its freshwater mussel species,

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40. *See* Raphael Bohne, *Landscaping Services in the U.S.*, STATISTA, https://www.statista.com/topics/4798/landscaping-services-in-the-us/ [https://perma.cc/SJD6-688V] (last visited May 5, 2025) (stating that Americans spend $154 billion on landscaping services each year).

41. BIODIVERSITY AND ECOSYSTEM SERVICES, *supra* note 35, at XII.

42. *Id.* at XXVI.

43. *Id.* at 130–33; *see also* KIMMERER, *supra* note 25, at 170.

44. DOUGLAS W. TALLAMY, BRINGING NATURE HOME: HOW YOU CAN SUSTAIN WILDLIFE WITH NATIVE PLANTS 18–20 (updated and expanded ed., 2009) [hereinafter TALLAMY, BRINGING NATURE HOME].

45. *See* KIMMERER, *supra* note 25, at 169; *see also* TALLAMY, BRINGING NATURE HOME, *supra* note 44, at 136; BIODIVERSITY AND ECOSYSTEM SERVICES, *supra* note 35, at 94.

46. *See* BIODIVERSITY AND ECOSYSTEM SERVICES, *supra* note 35, at 301.

47. *See* KIMMERER, *supra* note 25, at 32.

48. TALLAMY, BRINGING NATURE HOME, *supra* note 44, at 38–39.

49. *Id.* at 42–43.

50. Anne Readel, *In Wisconsin: Stowing Mowers, Pleasing Bees*, N.Y. TIMES (Feb. 7, 2023), https://www.nytimes.com/2022/03/28/travel/no-mow-may-wisconsin.html.

51. Buckley, *supra* note 1.

52. *Id.*

53. *See* TALLAMY, BRINGING NATURE HOME, *supra* note 44, at 30–31.

54. *Id.* at 34.

[thirty-four] percent of its dragonflies, [twenty] percent of its fish species, and [thirty-one] percent of its reptiles and amphibians."[55] However, evidence suggests that "most species could live quite nicely with humans if their most basic ecological needs were met."[56] Of the many actions humans could take to meet different species' ecological needs,[57] increasing biodiversity is one simple yet effective step, and planting an environmentally friendly yard increases biodiversity.[58]

B. The Ecologically Dead American Lawn

Lawns are ubiquitous in American life, and few people question the vast green expanses that they and their neighbors spend seventy hours on average[59] and $154 billion in aggregate tending each year.[60] But lawns as we know them are "ecological dead zones" and harmful for the environment in many ways.[61] Turfgrass lawns are made of non-native grasses that provide no sustenance for native species of insects, soil microbes, and other fauna.[62] Lawns require an often unsustainable level of irrigation, and they require biodiversity-threatening fertilizers, pesticides, and herbicides, which run off into our native landscapes and waterways.[63]

1. Turfgrass Species Are Not Native to the United States

According to Dr. Tallamy, lawns made up of one or two species of non-native grasses are "ecological dead zones."[64] The idea of a neatly manicured lawn was imported from Europe, as were the turfgrass species that cover lawns.[65] Despite this, the grass lawn has taken on a life of its own in the United States.[66] Colonists brought grasses with them initially to feed their livestock and later to emulate the lush green expanses fashionable at British aristocrats' estates.[67] Even Kentucky bluegrass, named after the U.S. state and one of the most common turfgrass species in the United States, is not from Kentucky but from Europe.[68] Other common lawn grasses are Middle

55. *Id.*

56. *Id.* at 37.

57. *8 Ways You Can Take Climate Action Right Now*, UNITED NATIONS CLIMATE CHANGE: BLOG (Apr. 22, 2021), https://unfccc.int/news/8-ways-you-can-take-climate-action-right-now [https://perma.cc/NY3X-T66G].

58. *See* Alison Pearce Stevens, *Making Yards More Diverse Can Reap Big Environmental Benefits*, SCI. NEWS EXPLORES (June 1, 2023, 6:30 AM), https://www.snexplores.org/article/diverse-plantlife-lawns-yards-environmental-benefits [https://perma.cc/U8K8-QYA7].

59. Christopher Ingraham, Opinion, *Lawns Are a Soul-Crushing Timesuck and Most of Us Would Be Better Off Without Them*, CHI. TRIB. (May 11, 2019, 7:29 AM), https://www.chicagotribune.com/opinion/commentary/ct-stop-mowing-your-lawn-20150805-story.html [https://perma.cc/63P8-DH6Z].

60. Bohne, *supra* note 40.

61. Buckley, *supra* note 1.

62. *See* ROBBINS, *supra* note 28, at 37–40.

63. *Id.* at 64–66.

64. Buckley, *supra* note 1.

65. ROBBINS, *supra* note 28, at 22–24.

66. *Id.* at 19, 22.

67. *Id.* at 20–21.

68. *Id.* at 22 (explaining that the species we know as Kentucky Bluegrass likely originated in Greece).

Eastern, African, and even Asian, but none of the commercially available turf species hail from this continent.[69]

Lawn-caused biodiversity loss is not limited to the many native plant species that would otherwise be growing where European turfgrasses now crowd them out.[70] When non-native grasses are the dominant feature, the ecological web is smaller, and there are fewer niches for different species of soil microbiota, fungi, and insect populations.[71] Those species that do find a place in the sterile American lawn often cannot survive the incessant application of herbicides, pesticides, and fertilizers necessary to keep the lawn alive.[72] The lack of biodiversity affects animals all the way up the food chain to mammals, fish, and birds, since the organisms lower on the food chain no longer have food or safe habitats.[73] Lawn culture, among other human activities, is causing the fastest mass extinction in Earth's history.[74]

Reinstalling native plants in their proper place is an important way to enliven the ecologically dead landscape.[75] Natural landscapes have a "significant effect mitigating . . . anthropogenic forces of climate change" and biodiversity loss,[76] but "[t]o date, some 50,000 alien species of [non-native] plants and animals have colonized North America."[77] Not all of the non-native plants are invasive, meaning that not all of them outcompete native species and destroy native ecosystems.[78] However, even noninvasive foreign plants cause ecological disruption.[79] Many ornamental lawn plants are noninvasive but are still ecologically dead in the American landscape because native insects and birds cannot use them.[80] This is true for three main reasons. First, many of the imported plants in the United States were imported specifically because they would be unpalatable to native insects and would therefore be "pest-free."[81] Second, it takes a long time for insects to evolve or adapt to the "specific chemical mix that characterizes different plants."[82] Third, most insects are specialists, adapted to consuming just a handful of plant species, and they cannot adapt to eat the new plant

69. *Id.* at 23. There are a few varieties of Red Fescue that are native to North America but are not widely used in home lawns. *See* AARON PATTON ET AL., FINE FESCUES IN MINIMAL-TO-NO MOW AREAS 2 (2022), https://www.extension.purdue.edu/extmedia/TURF-67-W.pdf [https://perma.cc/K2U6-T7Z6].

70. *See* ROBBINS, *supra* note 28, at 23.

71. *See id.* at 42, 65; Lionel S. Smith, Moth E. J. Broyles, Helen K. Larzleer & Mark D. E. Fellows, *Adding Ecological Value to the Urban Lawnscape. Insect Abundance and Diversity in Grass-Free Lawns*, 24 BIODIVERSITY & CONSERVATION 47 (2014).

72. *See* ROBBINS, *supra* note 28, at 59, 69.

73. *See* TALLAMY, BRINGING NATURE HOME, *supra* note 44, at 39–40.

74. *See* Anthony D. Barnosky et al., *Has the Earth's Sixth Mass Extinction Already Arrived?*, 471 NATURE 51, 55–56 (2011).

75. TALLAMY, BRINGING NATURE HOME, *supra* note 44, at 45–46.

76. Riley Pfeiffer, Assessing the Benefit of Permaculture in Urban and Suburban Landscapes 4 (May 11, 2021) (B.A. thesis, University of Miami) (on file with author) (citing PERVAZE SHEIKH, CONG. RSCH. SERV., R41144, DEFORESTATION AND CLIMATE CHANGE (2010)).

77. TALLAMY, BRINGING NATURE HOME, *supra* note 44, at 44.

78. *Id.*

79. *Id.*

80. *Id.* at 44–45.

81. *Id.* at 50.

82. *Id.*

species that are replacing native ones.[83] Thus, it is important to grow plants that are useful to the native ecosystem, especially in the vast yards of American suburbia.[84]

2. The Scale of the Lawn Problem

One lawn on its own may not seem like it would make much of an ecological difference, but years of pro-lawn policy and pro-lawn thinking have turned a handful of residential grass lawns in the 1800s into forty million acres of turfgrass across the United States in total.[85] This area represents about a third of all residential landscaping[86] and rivals the size of Washington state.[87] According to a 2005 National Aeronautics and Space Administration survey, some states, including Delaware and New Jersey, are more than twenty percent lawn.[88] Turfgrasses occupy about two percent of the continental United States, three times the space that irrigated corn occupies.[89] This makes lawn grasses the largest irrigated crop in the country.[90]

So ingrained is the lush green lawn in America's suburban landscape that homeowners have begun paying companies like Xtreme Green Grass to spray-paint their lawns green.[91] One wonders why a homeowner would invest in painted dead grass rather than planting native, drought-tolerant plants.

3. The Lawn and Biodiversity Loss

Lawns cause biodiversity loss in myriad ways—pesticides, herbicides, and fertilizers required to maintain a lush green surface kill soil microbiota, seep into waterways, cause algal blooms in rivers and lakes, and kill fish.[92] Lawn pesticides are applied on a scale to rival agricultural toxins; they represent twenty-three percent of the total pesticides applied in the United States, and billions of metric tons of each

83. *Id.* at 52.

84. *See generally* DOUGLAS W. TALLAMY, NATURE'S BEST HOPE: A NEW APPROACH TO CONSERVATION THAT STARTS IN YOUR YARD 43–52 (2020).

85. TALLAMY, BRINGING NATURE HOME, *supra* note 44, at 77; *see* Francie Diep, *Lawns vs. Crops in the Continental U.S.*, SCIENCELINE (July 3, 2011), https://scienceline.org/2011/07/lawns-vs-crops-in-the-continental-u-s/ [https://perma.cc/SXB5-G33U]; *see also* Cristina Milesi et al., A Strategy for Mapping and Modeling the Ecological Effects of U.S. Lawns (May 2012) [hereinafter Milesi et al., Strategy] (unpublished manuscript) (available at https://www.isprs.org/proceedings/XXXVI/8-W27/milesi.pdf [https://perma.cc/GDD5-J9JX]).

86. Buckley, *supra* note 1.

87. *See* 1 FOREST SERV., U.S. DEP'T OF AGRIC., ROADLESS AREA CONSERVATION: FINAL ENVIRONMENTAL IMPACT STATEMENT app. A, at A-4 (2000), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5057895.pdf [https://perma.cc/3VF5-QUEE] .

88. *See* Cristina Milesi et al., *Mapping and Modeling the Biogeochemical Cycling of Turf Grasses in the United States*, 36 ENV'T MGMT. 426, 433 (2005).

89. Milesi et al., Strategy, *supra* note 85.

90. Ingraham, *supra* note 59.

91. 99% Invisible, *Is Letting Your Lawn Turn Brown a Crime Against the American Dream?*, SLATE: THE EYE (Aug. 20, 2015, 9:04 AM), http://www.slate.com/blogs/the_eye/2015/08/20/the_plight_of_the_green_lawn_in_the_age_of_drought_by_99_percent_invisible.html [https://perma.cc/5W52-Y9VG]; *see also* Abishek Easter Raj, *How Lawn Spray Paint Keeps Your Grass Green*, THESUPERBOO! (Sept. 19, 2018), https://www.thesuperboo.com/lawn-spray-paint/amp/ [https://perma.cc/22CW-C8WW].

92. ROBBINS, *supra* note 28, at 64.

pesticide are applied every year.[93] The eight most commonly applied lawn chemicals in the late twentieth century include glyphosate, dicamba, MCPP, diazinon, 2,4-D, chlorpyrifos, DCPA, and carbaryl, all of which represent some level of toxicity to humans and wildlife according to the Environmental Protection Agency (EPA).[94] Especially worrisome is 2,4-D; in agricultural workers, it can cause liver, kidney, muscle, and brain tissue injury.[95] In animals, its effects are less clear-cut, but "it is clearly toxic to many species, including stream trout, earthworms, and beneficial insects."[96]

In 1997, people doused their lawns in double the amount of herbicides used in industrial agriculture the same year.[97] Insecticide use on lawns was triple the insecticide use on agriculture, and fungicide use on lawns was more than double the fungicide use on agriculture.[98] Unlike commercial and agricultural uses for pesticides, herbicides, fertilizer, and fungicides, lawn care toxins, deposited by private citizens, "have also proven far more difficult to measure and far more resistant to traditional techniques of pollution control."[99]

On American lawns, turfgrasses have an entirely unnatural lifestyle.[100] Constant mowing prevents them from ever going to seed, and regularly watering and fertilizing them prevents them from going through periods of natural dormancy when they would usually, naturally, be brown.[101] In fact, the permanently green lawns required by many HOA covenants simply cannot exist without regular, frequent human intervention in the form of fertilizing, watering, weeding, reseeding, and mowing, unlike plants better suited to their environments.[102]

All this lawn maintenance comes with other costs—fossil fuel-powered leaf blowers and lawn mowers.[103] Mowers and leaf blowers are less efficient than cars.[104] Their exhaust is relatively unfiltered, and the California Air Resources Board estimates that using a gas-powered lawn mower for one hour produces as much smog-forming pollution as driving 300 miles in a car, while one hour of leaf blower use produces as much as driving 1,100 miles.[105] While the air pollution from lawn care is not the

93. *Id.* at xiii.

94. *Id.* at 57; Paul Robbins & Julie T. Sharp, *Producing and Consuming Chemicals: The Moral Economy of the American Lawn*, 79 ECON. GEOGRAPHY 425, 429 (2003).

95. ROBBINS, *supra* note 28, at 58; Robbins & Sharp, *supra* note 94, at 429.

96. ROBBINS, *supra* note 28, at 58.

97. *Id.* at 56; Robbins & Sharp, *supra* note 94, at 432.

98. ROBBINS, *supra* note 28, at 56; Robbins & Sharp, *supra* note 94, at 432.

99. ROBBINS, *supra* note 28, at 70.

100. *Id.* at 37–38.

101. *Id.*

102. *Id.*

103. *Id.* at 69 n.82; Anders Christensen, Roger Westerholm & Jacob Almén, *Measurement of Regulated and Unregulated Exhaust Emissions from a Lawn Mower with and Without an Oxidizing Catalyst: A Comparison of Two Different Fuels*, 35 ENV'T SCI. & TECH. 2166, 2166 (2001).

104. Christensen et al., *supra* note 103, at 2170.

105. *SORE - Small Engine Fact Sheet*, CAL. AIR RES. BD. (Dec. 15, 2021), https://ww2.arb.ca.gov/resources/fact-sheets/sore-small-engine-fact-sheet [https://perma.cc/S8Z9-66AV].

subject of this Comment, it is nonetheless another important reason to uproot turfgrass lawns.[106] However, HOAs often stand in the way.[107]

C. HOA Constraints

Though there is promising movement away from lawns, local ordinances and HOA regulations are troublingly "moving in the opposite direction" and preventing homeowners from using their private property to grow hospitable landscapes for local flora and fauna.[108] Despite the turfgrass lawn's huge ecological and financial cost, it is remarkably entrenched in America:

> The practice of lawn care is instead part of a normative communitarian practice. The unbroken, unfenced, openness of the front yard parkland—connecting household to household with no borders—is ultimately a form of common property, the maintenance of which is part of normative institution of community care. Participation in maintenance is a practice of civic good. Disregard for lawn care is, by implication, a form of free-riding, civic neglect, and moral weakness.[109]

1. What is an HOA?

HOAs are one structure that keeps turfgrass in place.[110] An HOA is a corporation that creates and enforces rules for a designated community.[111] Around thirty percent of the United States' homes are part of HOAs.[112] One measure found that nearly seventy-four million Americans live in a place governed by HOAs,[113] and residents are increasingly buying houses in neighborhoods covered by HOAs.[114] Roughly seventy-nine percent of newly built, single-family homes sold in 2022 belonged to HOAs, according to the U.S. Census Bureau.[115] HOAs have broad power to impose land use restrictions on their members.[116] These restrictions are usually laid out in an

106. ROBBINS, *supra* note 28, at 69 (citing Christensen et al., *supra* note 103, at 2166–70).

107. *See supra* Part II.C.

108. ROBBINS, *supra* note 28, at 122.

109. *Id.* at 98–99.

110. Monika Maeckle, *HOAs Slow To Accept Native Plant Landscaping*, SAN ANTONIO REP. (Mar. 13, 2020), http://sanantonioreport.org/hoas-slow-to-accept-native-plant-landscaping/ [https://perma.cc/BW7M-FE3B].

111. Audrey Denvir, Michael Meehan, Mike Pellegrino & Lauren Pratt, *Toward Sustainable Landscapes: Restoring the Right Not To Mow*, ENV'T PROT. CLINIC AT YALE 5 (May 6, 2016), https://www.nrdc.org/sites/default/files/sustainable-landscapes-20160506.pdf [https://perma.cc/4R6F-UGLC].

112. *2021–2022 U.S. National and State: Statistical Review*, FOUND. FOR CMTY. ASS'N RSCH. (2021) [hereinafter *Statistical Review*], https://foundation.caionline.org/wp-content/uploads/2022/09/2021-2CAIStatsReviewWeb.pdf [https://perma.cc/GS6F-RMXV] (summarizing key association data and information).

113. *Id.*

114. *See* Caitlin S. Dyckman, *The Covenant Conundrum in Urban Water Conservation*, 40 URB. LAW. 17, 22 (2008).

115. *Current Data*, U.S. CENSUS BUREAU, https://www.census.gov/construction/chars/current.html [https://perma.cc/3LBZ-QQ6M] (scroll down the "item" row to "Homeowners' Association," click the link in "Single-Family Sold" column) (last visited May 5, 2025).

116. *See* Denvir et al., *supra* note 111, at 6.

HOA's covenants, conditions, and restrictions (CC&Rs). CC&Rs contain "elements of both property and contract law."[117]

Housing developers typically initiate HOAs in order to make the community they are building more attractive to potential buyers.[118] Some buyers prefer neighborhoods with HOAs because CC&Rs provide some uniformity and predictability for residents and because HOA-governed houses tend to have and maintain higher property values, about four percent higher than similar houses in non-HOA neighborhoods.[119]

Municipalities often favor HOAs.[120] They encourage HOAs in new developments because the municipalities "benefit by shifting some costs for infrastructure and maintenance to HOAs while still fully taxing HOA residents."[121] Many municipal governments go so far as to mandate that developers create HOAs in the new residential developments.[122] In many cases, the HOA CC&Rs are more restrictive than municipal codes.[123] The rules range from prohibitions on where trash cans can be stored, to paint colors for houses, to requirements that residents water their lawns, even during droughts.[124] HOAs have "become de facto land planning institutions of an unknown scope because the rules are hidden in private contracts."[125]

HOAs have the potential to "require or encourage sustainab[ility]" through their CC&Rs, but one study found that few do so.[126] Another study found that forty-two percent of HOA CC&Rs sampled required lawns and lawn mowing.[127] A study of about 1,200 different HOA regulations in Maricopa County, Arizona, a desert landscape not at all suited to turfgrass, showed that twenty-eight HOAs required lawns and twenty-four required watering.[128] HOAs often have "weed laws" that limit what kind of vegetation people can grow on their private property, sometimes listing approved species of grass, trees, and shrubs.[129] These regulations usually have their genesis in health codes aimed at discouraging yards whose overgrowth might foster mosquitoes, rats, or other pests.[130] However, they are often drafted broadly and nonspecifically, and HOA administrations often interpret these rules to prohibit yards

117. Dyckman, *supra* note 114, at 21.

118. Madeline F. Carr & Daniel Boyd Kramer, *Homeowners' Associations: Barriers or Bridges to More Sustainable Residential Development?*, LANDSCAPE & URB. PLAN., Aug. 2022, at 1, 8.

119. Wyatt Clarke & Matthew Freedman, *The Rise and Effects of Homeowners Associations*, J. URB. ECON., July 2019, at 1, 1.

120. Carr & Kramer, *supra* note 118, at 3.

121. *Id.*

122. *Id.* at 8.

123. *Id.* at 3.

124. *See* Denvir et al., *supra* note 111, at 5–6; Susannah B. Lerman, Victoria Kelly Turner & Christofer Bang, *Homeowner Associations as a Vehicle for Promoting Native Urban Biodiversity*, ECOLOGY & SOC'Y, Dec. 2012.

125. V. Kelly Turner & Matthew Stiller, *How Do Homeowners Associations Regulate Residential Landscapes?*, 86 J. AM. PLAN. ASS'N 25, 36 (2020).

126. Carr & Kramer, *supra* note 118, at 9.

127. *Id.* at 7.

128. Turner & Stiller, *supra* note 125, at 32.

129. ROBBINS, *supra* note 28, at 122.

130. *Id.*

with "aesthetic violations" rather than yards that actually endanger health and safety.[131] In residential, nonagricultural neighborhoods, "aesthetics [is] the only real reason for weed control laws, and reliance on health [is] arguably mere pretext."[132] In practice, CC&Rs often serve to provide homeowners with one realistic option for their lawns: turfgrass.[133]

The average American home uses 17,520 gallons of water on lawn and garden care alone, and "[n]ationwide, landscape irrigation is estimated to account for nearly one-third of all residential water use, totaling nearly [nine] billion gallons per day."[134] CC&Rs can prevent residents from implementing simple ways to save water.[135]

2. CC&R Enforcement

HOAs can enforce rules by assessing fines on homeowners who fail to water, mow, or weed their lawns.[136] Additionally, homeowners who opt to plant anything but grass or plants on their HOA's preapproved list of landscaping species can face severe penalties.[137]

One Florida man, sixty-six-year-old retiree Joseph Prudente, was imprisoned without bail in his county jail after he failed to pay HOA fines.[138] His lawn turned brown after a series of financial setbacks, which kept reseeding, fertilizing, and irrigating the lawn from being a priority for him.[139] He ignored the association's letters requesting that he irrigate his dead grass or replace it with sod, and he ignored the court summons that followed.[140] A judge held him in contempt of court and ordered him to stay in the county jail until the sod was installed.[141] After his story received publicity, concerned neighbors banded together to install the sod and free him from jail.[142]

Though he allowed his lawn to turn brown for financial rather than environmental reasons—he merely wanted to lower his water bill—his brown lawn was not a danger

131. *Id.*

132. James Charles Smith, *The Law of Yards*, 33 ECOLOGY L. Q. 203, 218 (2006).

133. ROBBINS, *supra* note 28, at 122–23.

134. U.S. ENV'T PROT. AGENCY, EPA-832-F-06-005, REDUCE YOUR OUTDOOR WATER USE (2013), https://www.epa.gov/sites/default/files/2017-03/documents/ws-factsheet-outdoor-water-use-in-the-us.pdf [https://perma.cc/4GMF-X7CZ].

135. Maeckle, *supra* note 110.

136. Denvir et al., *supra* note 111, at 5–6.

137. *See* Buckley, *supra* note 1.

138. Jodie Tillman, *Brown Lawn Means Jail Time*, ST. PETERSBURG TIMES (Oct. 11, 2008), http://www.ccfj.net/HOAFLJailbrownlawn.html [https://perma.cc/WF8K-QXG5].

139. St. Petersburg Times, *Neighbors Help Florida Man Jailed for Brown Lawn*, LAWN & LANDSCAPE (Oct. 13, 2008), https://www.lawnandlandscape.com/news/neighbors-help-florida-man-jailed-for-brown-lawn-/ [https://perma.cc/SXW2-T3NN].

140. Tillman, *supra* note 138.

141. *Id.*

142. St. Petersburg Times, *supra* note 139.

to health or safety.[143] His case shows the lengths that HOAs and local governments will go to enforce turfgrass maintenance.[144]

Since they are corporations, HOAs and their board members are protected by the business judgment rule, which gives them broad discretion to make decisions as long as those decisions are made in good faith and with the best interests of the community in mind.[145] This means that courts "will not second-guess the choices made by a corporate board unless the board acted in bad faith—for a reckless, disloyal, or other non-firm-regarding reason."[146] Further, any homeowner who wants to sue their HOA bears the burden of showing the board acted in bad faith.[147] This makes litigating against HOA rules difficult.

D. Non-Statutory Ways To Address the Lawn Problem

1. Certified Wildlife Gardens

The year 2020 saw a fifty percent increase in the number of people growing wildlife gardens certified by the National Wildlife Federation.[148] People are voluntarily planting and certifying wildlife gardens to protect insects, birds, and amphibians in their localities.[149] Wildlife gardens must provide four things: food, water, cover, and places for wildlife "to raise young."[150] The wildlife gardens must also practice "sustainable gardening techniques such as eliminating pesticides, conserving water[,] and planting native species."[151] Food sources for wildlife include plants that provide nuts, seeds, berries, nectar, pollen, sap, fruits, and leaves.[152] Cover includes a "wooded area," "ground cover," "brush/log pile," or a "bramble patch."[153] Places to raise young include host plants for caterpillars, "dense shrubs/thicket[s]," and meadows and

143. *See* Michael Kruse, *Lawn Green but Problems Sprout for Helper*, TAMPA BAY TIMES (Jan. 5, 2009), https://www.tampabay.com/archive/2009/01/05/lawn-green-but-problems-sprout-for-helper/ [https://perma.cc/D5EZ-DRUK].

144. See *supra* Part II.D.3 for more examples of court battles between HOAs and homeowners over their lawns.

145. Janet Bollinger, Comment, *Homeowners' Associations and the Use of Property Planning Tools: When Does the Right To Exclude Go Too Far?*, 81 TEMP. L. REV. 269, 284 (2008); *see also* Denvir et al., *supra* note 111, at 7; Jeffrey A. Goldberg, Note, *Community Association Use Restrictions: Applying the Business Judgement Doctrine*, 64 CHICAGO-KENT L. REV. 653, 665 (1988).

146. Michael C. Pollack, *Judicial Deference and Institutional Character: Homeowners Associations and the Puzzle of Private Governance*, 81 U. CIN. L. REV. 839, 848 (2013).

147. *Id.*

148. Readel, *supra* note 50; Jessica Ordóñez-Lancet, *50% Increase in People Planting for Wildlife in 2020*, NAT'L WILDLIFE FED'N (May 6, 2021), https://www.nwf.org/Home/Latest-News/Press-Releases/2021/05-06-21-Garden-for-Wildlife-Month-2021 [https://perma.cc/2H6J-78GU].

149. *See Certified Wildlife Habitat Application*, NAT'L WILDLIFE FED'N, https://www.nwf.org/-/media/Documents/PDFs/Garden-for-Wildlife/Garden-for-Wildlife-brochure [https://perma.cc/SQ6P-V8BT] (last visited May 5, 2025).

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

prairies.[154] Most of these features do not comport well with the HOA-mandated traditional trimmed grass lawn.[155]

2. No Mow May

In 2020, Appleton, Wisconsin, became the first United States city to formally adopt "No Mow May."[156] No Mow May is a month in which residents are encouraged to let their lawns grow.[157] No Mow May's purpose is to save bees and pollinators of all kinds by giving lawn "weeds," like dandelions, clover, violets, buttercups, and wildflowers, the chance to grow tall enough to flower.[158] These flowers provide pollen, a food source for the many species of bees emerging from hibernation in spring. [159] At the end of its trial in May 2020, Appleton Common Council voted to make No Mow May a permanent policy that would repeat each year.[160] Many other cities and municipalities in Wisconsin are considering adopting No Mow May, and communities in Iowa, Minnesota, Illinois, and Montana are also participating.[161] While the success of America's No Mow May policies have not been measured, in Britain, No Mow May increased "the number of bees in yards tenfold."[162] Unfortunately, No Mow May also violates HOA rules regarding lawncare; namely, the common HOA regulation on grass height.[163]

3. The Court System

Many homeowners come to blows with their HOAs in court.[164] But court-made law is not a viable way to address the lawn problem for a few reasons: These cases are expensive to bring,[165] courts tend to side with HOAs,[166] and these cases are usually not precedent setting because they tend to stay at the county court level and often settle out of court.[167]

Cases challenging HOA bylaws over eliminating turfgrass lawns specifically are infrequent and usually not precedent setting.[168] When challenging a nuisance law,

154. *Id.*

155. Allen Best, *How Bluegrass Lawns Became the Default for Homeowners Associations*, COLO. NEWSLINE (Nov. 27, 2023, 4:00 AM), https://coloradonewsline.com/2023/11/27/bluegrass-lawns-homeowners-association/ [https://perma.cc/L473-7G6P].

156. Readel, *supra* note 50.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. Denvir et al., *supra* note 111, at 4.

164. *See infra* Part II.E.2.a.

165. *See supra* Section I.

166. Lerman et al., *supra* note 124 ("[C]ourt decisions usually side with the HOA."); *see also supra* Part II.C.2.

167. *See* Lerman et al., *supra* note 124.

168. *See* Denvir et al., *supra* note 111, at 5.

landowners have sometimes been successful where they have been able to show that their unmown lawns are neither a health nor a safety concern.[169]

Modern cases suggest that cultural values towards lawns and biodiversity may be shifting from favoring lawns at any cost to respecting landowners' preferences for maintaining more natural habitats.[170] Where a Louisiana parish attempted to expand its weed ordinance to land owned by the Audubon Society, which had planted trees, seedlings, and cultivated the undergrowth for wildlife, the appeals court ruled that:

> It was overwhelmingly established that the undergrowth of vegetation is valued by the owner of the property, the Audubon Society. The weeds cannot be considered obnoxious, nor can the grass and weeds be deemed "deleterious or unhealthful growths," considering the testimony. Expert testimony at trial evidenced that the vegetation in the sanctuary is not only desirable for the Audubon Society's purposes and goals but even necessary for their accomplishment.[171]

However, this sort of probiodiversity decision-making can hardly be called a trend. In general, courts apply the business judgment rule to HOA decisions and overrule them only if the HOA has acted unreasonably, arbitrarily, or in bad faith.[172] Since HOAs claim they have aesthetic reasons to keep lawns in place and prohibit native plants, courts rarely strike these rules down.[173] Hence, courts tend to leave HOA decisions and CC&Rs in place, making legal battles a particularly bad way to enact lasting or widespread policy change.[174]

E. Statutory Solutions

Several states have made efforts to allow their residents to use more ecologically friendly landscaping, despite what their HOA CC&Rs allow. What follows is a comparison of these laws that finds that much of the language the statutes use is too vague to avoid legal fights at particularly litigious HOAs and that most states do not go far enough to actively encourage their residents to replace turfgrass.

1. State Laws Focusing on Water Use: California and Colorado

About ninety-five percent of the American West was in drought in the summer of 2021, and in many places, the drought was the most severe it had been in recorded history.[175] Later that year, Lake Mead's water storage reached its lowest level since the

169. *Id.*

170. Smith, *supra* note 132, at 218.

171. Baton Rouge Audubon Soc'y v. Sandifer, 702 So. 2d 997, 1001 (La. Ct. App. 1997).

172. Bollinger, *supra* note 145, at 271, 284; Goldberg, *supra* note 145, at 665.

173. *See* Bollinger, *supra* note 145, at 297; Goldberg, *supra* note 145.

174. *See* Bollinger, *supra* note 145, at 297; Goldberg, *supra* note 145.

175. *See* Lindsay Huth & Taylor Umlauf, *Severe Drought Could Threaten Power Supply in West for Years To Come*, WALL ST. J. (Aug. 14, 2021, 5:30 AM), https://www.wsj.com/articles/severe-drought-could-threaten-power-supply-in-west-for-years-to-come-11628933401; A. Park Williams, Benjamin I. Cook & Jason E. Smerdon, *Rapid Intensification of the Emerging Southwestern North American Megadrought in 2020-2021*, 12 NATURE CLIMATE CHANGE 232, 232 (2022) (reporting that the twenty-two-year period from 2000 to 2021 "was the driest . . . since at least [the year] 800").

construction of the Hoover Dam.[176] California is no stranger to drought; in 2015, Governor Jerry Brown mandated a statewide twenty-five percent reduction in water use in response to the state of emergency caused by the fourth year of statewide drought.[177] Climate change is only making droughts more serious and more frequent in the West and in other areas of the United States.[178] Drought elevates the risk of wildfires and kills crops, fish, and other fauna.[179] Though droughts were not new to California, Colorado, or the other western states, population growth and climate change have made the region more water insecure than ever.[180]

a. California AB 1572

When the reservoirs in California ran low and ecological crisis loomed, California acted.[181] The state government and its citizens looked at the lush, green, non-native lawns surrounding them and prohibited HOAs from requiring green turf lawns and preventing any homeowner from substituting a lawn for a less water-intensive landscape.[182]

California also offers rebates for homeowners who replace existing grass with "organic, drought tolerant landscaping."[183] In 2023, Governor Gavin Newsom signed into law Assembly Bill 1572, which bans using drinkable water to irrigate "ornamental" turf.[184] The law bans irrigation of ornamental grass in several stages from

176. Matthew Cappucci, *Lake Mead Reaches Lowest Level on Record Amid Exceptional Drought*, WASH. POST (June 11, 2021, 3:01 PM), https://www.washingtonpost.com/weather/2021/06/11/lake-mead-hoover-record-drought/; Daniel Rothberg, *Water Managers Grapple with a Smaller Colorado River as the Climate Changes*, NEV. INDEP. (Dec. 19, 2021, 2:00 AM), https://thenevadaindependent.com/article/water-managers-grapple-with-a-smaller-colorado-river-as-the-climate-changes [https://perma.cc/HU8D-QFEY].

177. *Gov. Jerry Brown Issues Calls for Mandatory 25 Percent Water Reduction with No End in Sight for Drought*, CBS S.F. (Apr. 1, 2015, 5:36 PM), https://www.cbsnews.com/sanfrancisco/news/governor-jerry-brown-issues-executive-order-calls-for-mandatory-25-percent-water-reduction/ [https://perma.cc/9UCT-2GAN].

178. *See* Kenneth Strzepek, Gary Yohe, James Neumann & Brent Boehlert, *Characterizing Changes in Drought Risk for the United States from Climate Change*, ENV'T RSCH. LETTERS, Dec. 7, 2010, at 1, 1, 5; *see also* Richard M. Frank, *America's West Is Drying Out. Here's What We Can Do About It*, CNN (July 16, 2021, 10:17 AM), https://www.cnn.com/2021/07/16/opinions/droughts-western-us-update-policies-frank/index.html [https://perma.cc/5AA9-2A5Y] ("Climate scientists warn that longer and more intense droughts are not an aberration—they're the 'new normal.'").

179. Benjamin Longbottom & Alexandria Gordon, *Beyond All Drought: Improving Urban Water Conservation in the West Through Integrative Water and Land Use Policy*, 63 NAT. RES. J. 88, 92, 97 (2023).

180. *Id.* at 93–94.

181. *Id.* at 89–90; *Gov. Jerry Brown Issues Calls for Mandatory 25 Percent Water Reduction with No End in Sight for Drought*, *supra* note 177.

182. CAL. CIV. CODE § 4735(a) (West 2024).

183. *Turf Replacement Program*, SOCAL WATER$MART, https://socalwatersmart.com/en/residential/rebates/available-rebates/turf-replacement-program/ [https://perma.cc/ZDZ6-47S3] (last visited May 5, 2025).

184. CAL. WATER CODE § 10608.14 (West 2024); Ed Osann & Linda Escalante, *New Law Marks Climate Transition for California Landscapes*, NAT'L RES. DEF. COUNCIL (Oct. 23, 2023), https://www.nrdc.org/bio/ed-osann/new-law-marks-climate-transition-california-landscapes [https://perma.cc/67UH-Y9RM] ("AB 1572 accommodates the continued irrigation of *functional* turf—grassy areas used for public gatherings, social events, ceremonies, sports fields, and informal recreation—while its limitations on irrigation apply to *nonfunctional* turf—areas where turf grass is primarily ornamental.").

2027 to 2031, finally reaching "properties of homeowners' associations" in 2029.[185] In much of California's climate, not watering turf means that the turf will die, and homeowners will have to replace it with something better suited to the environment unless they want permanently brown lawns.[186]

b. Colorado's Multi-Angle Approach

Colorado has passed a few pieces of legislation that work in tandem to strip HOAs of their power to require turfgrass, force HOAs to proactively think about what water-saving landscapes could be approved in their communities, and provide some financial incentives to landowners who wish to replace their turfgrass.[187] It is too soon to say if the new laws have successfully sounded the death knell for lawns in the state, but this multifaceted approach, while imperfect, has some promise.[188]

In 2022, Colorado had 10,510 HOAs covering some 2.4 million residents.[189] Like California, Colorado's water resources are dwindling as its population is growing rapidly.[190] The state's water comes from the ever-shrinking Colorado River and limited groundwater sources.[191] According to the Assistant Secretary for Water and Science of the U.S. Department of the Interior, in 2021, the Colorado River was at its lowest point in recorded history.[192] In Colorado, local governments were powerless to force HOAs to adopt more water-conserving plant life.[193] However, the state government could do so.[194] In 2019, it passed House Bill 19-1050, which states that any common interest community, including HOAs, that "prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist wholly or partially of turf grass" are acting contrary to public policy.[195]

Problematically, it did nothing to incentivize installation of water-conserving plant life, and it left HOAs with the rather open-ended ability to establish "design or

185. WATER § 10608.14(a).

186. Rachel Becker, *California Lawmakers Move To Ban Irrigation of Some Decorative Lawns*, CALMATTERS (Oct. 17, 2023), http://calmatters.org/environment/water/2023/09/california-irrigation-ban-businesses-lawns/ [https://perma.cc/A4US-PHNK].

187. Best, *supra* note 155.

188. *Id.*

189. *Statistical Review*, *supra* note 112.

190. *Colorado River Drought Conditions: Hearing on Colorado River Drought Conditions and Response Measures Before the H. Nat. Res. Subcomm. on Water, Oceans, & Wildlife*, 117th Cong. 8–9 (2021) [hereinafter *Hearing on Colorado River Drought Conditions*] (statement of Tanya Trujilli, Assistant Secretary for Water and Science, United States Department of the Interior); *see also 2020 Population Results from the U.S. Census 1/18/2022*, COLO. ST. DEMOGRAPHY OFF., https://demography.dola.colorado.gov/assets/crosstabs/population2020_20220118.html [https://perma.cc/DR9K-WY9J] (explaining that between 2010 and 2020, Colorado's population growth "was the sixth-highest among U.S. states").

191. *Colorado River Basin*, COLO. WATER CONSERVATION BD., https://cwcb.colorado.gov/colorado-river-basin [https://perma.cc/NP22-A266] (last visited Apr. 20, 2025).

192. *Hearing on Colorado River Drought Conditions*, *supra* note 190, at 8 ("In the Colorado River Basin, the period from 2000 through 2021 has been the driest 22-year period recorded in more than 100 years of record-keeping. The reservoir system was 95 percent full in 2000, but as of September 28th, Colorado River system reservoirs sit at just 39 percent, the lowest levels since they began to fill.").

193. Best, *supra* note 155.

194. COLO. REV. STAT. ANN. § 38-33.3-106.5(1)(i.5)(I)–(II) (West 2025).

195. H.B. 19-1050, 72d Gen. Assemb., Reg. Sess. (Colo. 2019).

aesthetic guidelines or rules that apply to drought-tolerant vegetative landscapes . . . or that regulate the type, number, and placement of drought-tolerant plantings and hardscapes."[196] This led to residents installing concrete, rocks, or other nonvegetative, ecologically dead structures like artificial turf.[197]

Another water-reducing piece of legislation in 2021 did not fix this problem.[198] Colorado's legislature passed a second law that requires HOAs to allow artificial turf in backyards.[199] This law, like the 2019 law, allows HOAs to impose reasonable "aesthetic guidelines" on any turf replacement project.[200] While artificial turf does not need to be watered, it is more ecologically dead than turfgrass is, and it contributes to a heat island effect.[201] Allowing artificial turf and providing deference to aesthetic guidelines was a step in the wrong direction.[202]

Following the passage of these two laws, homeowners who wanted to save water still struggled to replace their turfgrass lawns.[203] The city of Greeley, Colorado, ran a survey to find out why.[204] It found that nearly sixty percent of surveyed residents said they were either "'very willing' or 'may consider' removing grass from their front yard."[205] The survey did not ask about HOAs, but 41 of 720 respondents brought up their HOAs in an open-ended question on the survey about the challenges they faced with replacing their lawns.[206] Some of the HOAs had used the law's phrasing of "reasonable aesthetic guidelines" in order to stall or block turf replacements with lengthy approval processes or by rejecting the homeowners' proposals.[207]

In 2022 and 2023, Colorado passed two more laws to incentivize turf replacement and fill the gaps from the first law.[208] First, it passed House Bill 22-1151, which allocated $2 million to require "the Colorado [W]ater [C]onservation [B]oard . . . to develop a statewide program to provide financial incentives for the voluntary replacement of irrigated turf with water-wise landscaping."[209] Some Colorado cities already had programs which paid their residents between one and three dollars per

196. § 38-33.3-106.5(1)(i.5)(I).

197. *See* COLO. REV. STAT. ANN. § 37-60-126(11)(a)(I) (West 2025).

198. *See id.*

199. *Id.*

200. *Id.*

201. Marjolein van Huijgevoort & Gijsbert Cirkel, *Cooling Artificial Turf Through Evaporation from a Subsurface Water Storage Unit*, EGU GEN. ASSEMBLY (Apr. 2021), https://meetingorganizer.copernicus.org/EGU21/EGU21-668.html [https://perma.cc/9JWC-LE9N].

202. *See id.*

203. Best, *supra* note 155.

204. *See generally* W. RES. ADVOCS. & WATERNOW ALL., ENHANCING GREELEY'S WATER EFFICIENCY PORTFOLIO THROUGH PERFORMANCE ANALYSIS (Sept. 2022), https://westernresourceadvocates.org/wp-content/uploads/2023/02/2022_0928_GreeleysWaterEfficiency_Final.pdf [https://perma.cc/6YTF-WRXB].

205. *Id.* at 23.

206. Best, *supra* note 155; *see also* W. RES. ADVOCS. & WATERNOW ALL., *supra* note 204.

207. Best, *supra* note 155 (quoting H.B. 21-1229, 2021 Leg., Reg. Sess. (Colo. 2021)).

208. *Id.*

209. *Turf Replacement Program*, COLO. GEN. ASSEMBLY (2022), https://leg.colorado.gov/bills/hb22-1151 [https://perma.cc/25TB-9E3B]; H.B. 22-1151, 73d Gen. Assemb., Reg. Sess. (Colo. 2022), 2022 Colo. Sess. Laws 3061 (West) (quoting the Bill Summary, which applies to the bill as enacted); *see also* Best, *supra* note 155.

square foot of turfgrass they replaced with less water-intense options.[210] The Colorado Water Conservation Board expanded this program and made it statewide.[211] It began disbursing funds in 2023.[212]

The second bill, Senate Bill 23-178, attempts to prevent HOAs from unduly delaying approval of residents' proposed low water-use landscapes through lengthy or indefinite approval processes.[213] To accomplish this goal, it requires HOAs to develop three preapproved water-wise designs that residents can use.[214] It also dictates that an HOA cannot prevent a homeowner from choosing a landscaping option that consists of at least eighty percent drought-tolerant plants.[215] Lastly, in a win for pollinators, HOAs cannot prevent homeowners from growing vegetable gardens in their front yards, backyards, or side yards.[216] The law had bipartisan support[217] and took effect in August 2023.[218]

These Colorado laws are too new to have had much measurable effect yet, but the combined loosening of HOA restrictions on lawns; the requirement that HOAs give residents defined, preapproved options for nonturf lawns; and the financial incentives to replace grass provide support for more environmentally friendly lawns from multiple angles.[219] However, Colorado's laws are targeted more at water-use reduction than biodiversity enhancement.[220] To improve its suite of laws to address not just drought but also biodiversity, Colorado should include additional language about native plants and pollinator-friendly landscapes.

2. State Laws Encouraging Biodiversity

Ecological crisis still looms.[221] Biodiversity loss is at an all-time high.[222] Though this crisis may not be measurable in terms of water feet per acre, concrete harms are still occurring.[223] Recognizing biodiversity as an ecological resource akin to water is an enormous task. State and local governments can use their police power to "establish and enforce laws protecting the public's health, safety, and general welfare, or to

210. Hannah Metzger & Marianne Goodland, *Colorado Legislative Bill Signing Roundup: More Lawn Replacement Incentives, Another Polis Veto*, COLO. SPRINGS GAZETTE (June 8, 2022), https://gazette.com/politics/colorado-legislative-bill-signing-roundup-more-lawn-replacement-incentives-another-polis-veto/article_40fad1de-e77f-11ec-890f-d7592c263a16.html [https://perma.cc/RME9-LLX3].

211. *Id.*

212. *See* Caitlin Coleman, *Digging Deeper on Turf Removal*, BIG PIVOTS (Dec. 2, 2022), https://bigpivots.com/digging-deeper-on-turf-removal/ [https://perma.cc/LM72-EHMQ].

213. S.B. 23-178, 2023 Leg., Reg. Sess. (Colo. 2023); COLO. REV. STAT. ANN. § 38-33.3-106.5(1)(i.5)(I)–(II) (West 2023).

214. § 38-33.3-106.5(1)(i.5)(II).

215. *Id.* § 38-33.3-106.5(1)(i.5)(I).

216. *Id.*

217. Best, *supra* note 155.

218. § 38-33.3-106.5(1)(i.5)(I).

219. *See id.* § 38-33.3-106.5(1)(i.5)(I)–(II).

220. *See id.*

221. Plumer, *supra* note 34.

222. *See* Bongaarts et al., *supra* note 29.

223. *See supra* Part II.A.

delegate this right to local governments."[224] In *Berman v. Parker*,[225] the Supreme Court established that if the actions of a state government are reasonably related to a legitimate government goal and satisfy due process requirements, those actions are constitutional.[226] What follows is a discussion of two states that specifically encourage biodiversity through attempted regulation of HOAs.

a. Florida Law: Florida-Friendly Landscaping

The western United States is not the only region suffering from climate change-induced drought.[227] Florida's legislation was enacted in response to a drought but also contains provisions encouraging native plants.[228] In 2006 and 2007, Florida experienced its "driest back-to-back calendar years" in recorded history.[229] When the drought spanning 2006 to 2008 was at its peak, Lake Okeechobee, the regional water basin for South Florida, reached its lowest recorded level.[230] Extreme drought conditions have continued to occur regularly, and when those conditions arise, water management districts have generally enacted temporary restrictions on water use.[231]

However, even when Florida's state or local governments enforced watering restrictions, HOAs sometimes "fined property owners if the unwatered lawn did not meet the aesthetic expectations of the association."[232] In 2021, Florida had the second-most HOAs of any U.S. state: 49,420.[233] These HOAs cover an estimated 9.7 million residents,[234] about forty-four percent of Florida's population.[235] Property owners found themselves choosing between a fine from the water management district for using too much water and a fine from their HOA for a brown lawn.[236]

In 2009, Florida passed section 373.185 to address the HOA and water-use issues by encouraging "Florida-friendly landscaping."[237] Florida's law contains a robust definition of the landscaping the law is meant to encourage:

> "Florida-friendly landscaping" means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are

224. *Police Power*, BLACK'S LAW DICTIONARY (12th ed. 2024).

225. 348 U.S. 26, 32 (1954).

226. Denvir et al., *supra* note 111, at 3.

227. For a general overview of Florida's history of real estate development without consideration of water use and how the Florida-Friendly Landscaping law was enacted in response, see Karen Greene, *Tapping the Last Oasis: Florida-Friendly Landscaping and Homeowners' Associations*, FLA. BAR J., May 2010, at 39.

228. *Id.* at 41.

229. *Id.* at 42.

230. *Id.* at 41; Andrew C. Revkin, *Lake Okeechobee Drops to a Record Low*, N.Y. TIMES (May 31, 2007), https://www.nytimes.com/2007/05/31/us/31lake.html.

231. Greene, *supra* note 227, at 41.

232. *Id.*

233. *Statistical Review*, *supra* note 112.

234. *Id.*

235. *See QuickFacts: Florida*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/FL/PST045222 [https://perma.cc/C5ND-QFPK] (last visited May 5, 2025) (estimating Florida's 2023 population at 22.6 million).

236. CYNTHIA BARNETT, MIRAGE: FLORIDA AND THE VANISHING WATER OF THE EASTERN U.S. 39 (2007).

237. FLA. STAT. ANN. § 373.185 (West 2024).

> drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost, minimizing the use of irrigation, and proper maintenance.[238]

The law specifically preempts HOA CC&Rs but does not outright prohibit HOAs from requiring turfgrass or other water-intense vegetation: "Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not prohibit . . . any property owner from implementing Florida-friendly landscaping . . . ."[239] Florida-friendly landscaping is defined as "quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant."[240] Further, "[a] deed restriction or covenant may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land or create any requirement or limitation in conflict with any provision . . . of this chapter."[241]

HOAs still pose a large barrier to residents who want to install Florida-friendly landscaping because HOAs generally require homeowners to submit their lawn designs to an architectural review committee for approval before the homeowners can install the designs.[242] Since the statute has been in place for fifteen years, Florida homeowners have been able to test the bounds of the Florida-Friendly Landscaping law in court. Many residents have run into conflict with their HOAs over the architectural review process, and some of those conflicts have become lengthy legal battles.[243] After Florida passed its Florida-Friendly Landscaping law, a few residents attempted to employ it with varying levels of ease, suggesting the language of the statute is too vague and gives architectural review committees too much power.[244]

Harvey DeFord and Susan Saraceno were sued by their HOA over their environmentally friendly lawn.[245] Seven years and $60,000 later, the parties settled, and the HOA had to reimburse DeFord and Saraceno for their legal costs.[246]

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238. *Id.* § 373.185(1)(b).

239. *Id.* § 720.3075(4)(b).

240. *Id.* § 373.185(1)(b).

241. *Id.* § 373.185(3)(b).

242. Esen Momol et al., *Questions and Answers: 2009 Florida-Friendly Landscaping Legislation*, UNIV. OF FLA.: ASK IFAS (Feb. 22, 2021), https://edis.ifas.ufl.edu/publication/EP440 [https://perma.cc/SL6U-7KTR] ("The amendments to Florida Statutes section 373.185, et seq., have not changed the review approval process for HOAs. . . . If deed restrictions or covenants require HOA approval for landscape modifications, then homeowners still need approval from HOAs. Additionally, please note that a Florida-Friendly landscape includes both non-native and native plants and turfgrass as long as the plants and turfgrass match site conditions.").

243. Kevin Spear, *Legal Fights Drag On over Environmentally Friendly Landscaping*, ORLANDO SENTINEL (June 18, 2018, 11:35 AM), https://www.orlandosentinel.com/2014/11/15/legal-fights-drag-on-over-environmentally-friendly-landscaping/ [https://perma.cc/LF34-BVR2].

244. *Id.*

245. Suzy Saraceno, FACEBOOK (Nov. 2, 2017), https://www.facebook.com/groups/FloridiansForFFL/permalink/1729142820463058/ (on file with author) (providing an update on the author's litigation saga in a post to the private Facebook group "Floridians for Florida Friendly Yards").

In 2009, another couple, Dominic and Ilona Bruno, wanted to get rid of their St. Augustine grass and replace it with Florida-friendly landscaping.[247] They submitted four applications for a Florida-friendly landscape, but the architectural review board refused to accept each one.[248] Dominic Bruno emailed the HOA five times to see how he could meet the CC&Rs, but the HOA did not respond.[249] Dominic then proceeded to install mulch in his yard, and the HOA sued.[250] After more than five years and $15,000, the judge ruled in favor of the Brunos, but only because the HOA was not entitled to their requested declaratory or injunctive relief because, in part, the HOA's own covenants already provided an adequate legal remedy.[251] By deciding the case on a procedural issue, the Florida court did not offer any insight into the bounds of the Florida-Friendly Landscaping law's provisions.[252]

In 2012, Renee Parker, a program supervisor for Orange County's Environmental Protection Division, decided to replace her thirsty St. Augustine grass with "flowers, shrubs and Argentine bahia grass that allowed her to eliminate most water and fertilizer costs" in her yard in Summerport, a town west of Orlando.[253] She submitted plans to the architectural review board but did not hear back within thirty days, the timeframe in which she thought her HOA had to make a decision.[254] She began to plant and had her yard recognized as a Certified Wildlife Habitat,[255] but her HOA sued her.[256] The lawsuit dragged on for four years after which, emotionally drained, the Parkers reached a confidential settlement with their HOA.[257] This lawsuit again showed the toothlessness of Florida's statute. The Summerport HOA's CC&Rs only allowed non-native, water-intense St. Augustine grass, and the judge did not find that this requirement was contrary to the Florida-Friendly Landscaping law even though the Parkers replaced some of that grass with another species that needed less watering.[258] After the lawsuit, the Parkers replanted conforming, nonnative grass.[259] The pair were

246. *Id.*; Defendants' Motion To Enforce Settlement at 1–2, Sanctuary of Oak Creek Homeowners Ass'n, v. DeFord, No. 10-CC-12215 (Fla. Hillsborough Cnty. Ct. 2017).

247. Alex Harris, *Standing Up for Florida-Friendly Lawns Not Easy When HOA Says No*, TAMPA BAY TIMES (Aug. 2, 2015), https://www.tampabay.com/news/humaninterest/standing-up-for-florida-friendly-lawns-not-easy-when-hoa-says-no/2239740/ [https://perma.cc/766F-EKVK].

248. *Id.*

249. *Id.*

250. *Id.*

251. *See* Sable Ridge Homeowners Association, Inc. v. Bruno, No. 51-2010-CC-126-ES (Fla. Pasco Cnty. Ct. Apr. 29, 2013).

252. *See id.*

253. Kevin Spear, *Secret Settlement of Lawsuit over Grass Leaves Few Answers*, ORLANDO SENTINEL (June 15, 2018, 6:44 AM), https://www.orlandosentinel.com/2016/09/02/secret-settlement-of-lawsuit-over-grass-leaves-few-answers/ [https://perma.cc/S2PC-8BGQ].

254. *See* Kevin Spear, *Neighborhood Association Sues Homeowner Who Has Water-Conserving Yard*, ORLANDO SENTINEL (Aug. 6, 2021, 3:14 PM), https://www.orlandosentinel.com/2012/10/05/neighborhood-association-sues-homeowner-who-has-water-conserving-yard/ [https://perma.cc/963L-FCRL].

255. Exhibit N, Summerport Residential Prop. Owners Ass'n v. Parker, No. 2012-CC-013346-O (Fla. Orange Cnty. Ct. May 9, 2013).

256. Spear, *supra* note 253.

257. *Id.*

258. *See id.*

259. *Id.*

so disenchanted with their HOA that they sold their home and moved to a non-HOA neighborhood.[260]

None of these lawsuits were decided on the grounds of the Florida-Friendly Landscaping statute.[261] A more strongly worded statute would make the law clearer to HOAs and judges and would accelerate court processes for future homeowners who want to tear out their turfgrass.

b. Maryland's New Law, House Bill 0322

Maryland contains 6,910 HOAs covering more than one million residents.[262] Maryland has not suffered from the extreme drought that California, Colorado, and Florida have experienced, but it has had the opposite problem: flooding.[263] However, the true purpose of Maryland's Low-Impact Landscaping law, unlike the other three states' laws, is to protect biodiversity.[264] The Low-Impact Landscaping law, passed in response to the Crouches' legal battle,[265] is a good but imperfect option for decreasing the prevalence of ecologically dead American lawns.[266]

The law describes four kinds of low-impact landscaping that it seeks to protect: rain gardens, pollinator gardens, "[b]io-habitat gardens," and xeriscaping or other landscaping that reduces the need for irrigation.[267] According to the statute, "'[l]ow-impact landscaping' means landscaping techniques that conserve water, lower maintenance costs, provide pollution prevention, and create habitat for wildlife."[268] Bio-habitat gardens are those "designed to attract wildlife"; pollinator gardens are "designed to attract pollinator species."[269] Rain gardens "use natural biological principles to return rainwater to the soil and . . . filter rainwater of excess nutrients."[270] Last, xeriscaping is a form "of landscaping or gardening that reduce[s] or eliminate[s] the need for supplemental water from irrigation."[271]

The law also prohibits CC&Rs from imposing "unreasonable" restrictions on low-impact landscaping, defining an "unreasonable" limitation as one that either "[s]ignificantly increases the cost of low-impact landscaping," "[s]ignificantly decreases the efficiency of low-impact landscaping," or "[r]equires cultivated vegetation to consist in whole or in part of turf grass."[272]

260. *Id.*

261. Saraceno, *supra* note 245; *see, e.g.*, Order Approving Joint Stipulation of Dismissal with Prejudice, *Parker*, No. 2012-CC-013346-O.

262. *Statistical Review*, *supra* note 112.

263. Buckley, *supra* note 1.

264. *See id.*

265. *Id.*

266. *See* MD. CODE ANN., REAL PROP. § 2-125 (West 2024).

267. *Id.* § 2-125(a)(2)(ii).

268. *Id.* § 2-125(a)(2)(i).

269. *Id.* § 2-125(a)(2)(ii)(1)–(2).

270. *Id.* § 2-125(a)(2)(ii)(3).

271. *Id.* § 2-125(a)(2)(ii)(4).

272. *Id.* § 2-125(b)(2).

The law is too new to have had much litigation and court interpretation, but it should do more to limit HOA architectural review power, and it should do more to encourage homeowners to plant native plants.

III. DISCUSSION

Any state government planning to address water issues and the biodiversity loss crisis by encouraging residents to get rid of their lawns should look to the successes and failures of Colorado, Maryland, California, and Florida when drafting new policy. Those states' laws show that a multifaceted approach is best. Such an approach should not only remove barriers for homeowners who want to replace their lawns but encourage them to do so, while promoting the most ecologically friendly landscaping practices by reducing irrigation needs and increasing native plants.

A. Removing Barriers

As discussed above, some homeowners are dissuaded from replacing their lawns by lengthy and arduous HOA approval processes and the threat of expensive litigation.[273] Statutes should require HOAs to develop preapproved landscaping plans that comport with the best ecological practices in their areas, including using little to no irrigation and a high percentage of native plants.

B. Encouraging the Transition

The facets that lawmakers should include in their new policies include providing incentives for replacing turfgrass with native plants; making more ecologically friendly yards easier for HOAs and homeowners to imagine; focusing on biodiversity and not just water conservation; using clear, specific language; and providing educational resources for people who want to change their turfgrass lawns.

C. Providing Incentives for Native Plants

Not every homeowner, and indeed, probably not many homeowners at all, are actively thinking about how their traditional lawns have damaged local ecosystems.[274] However, they may respond readily to rebates for grass replacement. California, Colorado, and some counties in Maryland all provide residents with some sort of rebate for each square foot of grass they replace, and lawmakers should incorporate these rebates into their legislation.[275] In Maryland, the residents of many localities receive rebates when they plant plants with deep root systems that create a rain garden

273. *See supra* Part II.D.3.

274. *See generally* ROBBINS, *supra* note 28.

275. H.B. 22-1151, 73d Gen. Assemb., Reg. Sess. (Colo. 2022); *Turf Replacement Program*, *supra* note 183.

effect.[276] Putting stormwater into the ground rather than into sewer systems can prevent flooding, and the rebate can save the state money on flood cleanup in the long run.[277]

In Colorado and California, the rebates given to homeowners are targeted at reducing water use.[278] Since purifying and dispensing potable water is often heavily subsidized by governments, these rebates can pay for themselves as well.[279]

D. Make Better Yards Easier To Imagine

The legal battles in Florida, Colorado, and Maryland show that many HOAs are deeply attached to the idea of expansive, perpetually green, resource-intensive, and ecologically dead turfgrass lawns. The apprehension that Colorado homeowners have felt when deciding whether to do away with their turfgrass lawns mainly concerned how their HOAs would react.

Paul Robbins, author of *Lawn People: How Grasses, Weeds, and Chemicals Make Us Who We Are*, states that a major reason the turfgrass lawn is so entrenched in the American lawnscape is that the lawn is nearly "impossible to unimagine."[280] It is hard to envision an American neighborhood without a lush green carpet connecting the houses, sprinklers whirring, and the humming of lawn mowers in the summer. To make lawn alternatives easier to imagine, states should consider laws like Colorado's section 38-33.3-106.5(1)(i.5) that require HOAs to preapprove several designs using native and environmentally appropriate plants.[281] This way, less of the burden is on individual homeowners to come up with an ecologically friendly yard plan. In addition, HOAs would be aware of the need for native and water-conserving plants before homeowners approached their HOA boards with redesign requests. Furthermore, by using a preapproved plan, homeowners can avoid a lengthy approval and appeal process with their HOA boards as well as expensive litigation against their HOAs.

Because many pro-environmental programs, such as the turf replacement rebates in Colorado and the biodiverse gardens in Maryland and Florida, are voluntary, "HOA rules may reduce program participation by prohibiting outright or inhibiting adoption via burdensome approval processes."[282] Such burdensome approval processes, like an architectural review process, are roadblocks to program adoption in states without additional laws like Colorado's that attempt to streamline the architectural approval

276. *See* Dep't of Env't Prot., *Stormwater Garden: Rain Garden*, MONTGOMERY CNTY. MD., https://www.montgomerycountymd.gov/DEP/property-care/rainscapes/rain-garden.html [https://perma.cc/72KF-TNAX] (last visited May 5, 2025).

277. KELSEY JESSUP & J.R. DESHAZO, UCLA LUSKIN CENTER FOR INNOVATION, TURF REPLACEMENT PROGRAM IMPACTS ON HOUSEHOLDS AND RATEPAYERS: AN ANALYSIS FOR THE CITY OF LOS ANGELES 30–33, 37 (2016), https://innovation.luskin.ucla.edu/wp-content/uploads/2019/03/Turf_Replacement_Program_Impacts_on_Households_and_Ratepayers.pdf [https://perma.cc/YY6H-M6Q6].

278. *Turf Replacement Program*, *supra* note 183; Colo. H.B. 22-1151.

279. *See* JESSUP & DESHAZO, *supra* note 277, at 30–33, 37.

280. ROBBINS, *supra* note 28, at 8.

281. COLO. REV. STAT. ANN. § 38-33.3-106.5(1)(i.5)(I)–(II) (West 2023).

282. Turner & Stiller, *supra* note 125, at 36.

process.[283] Rebate-only turf replacement programs risk ineffectiveness when their conflicts with HOA regimes are unknown.[284]

E. Incentivize Biodiversity, Not Just Water Conservation

Some states like Colorado have left the door open for homeowners to install astroturf or rocks instead of potentially water-intensive vegetation.[285] If rocks are ecologically dead, astroturf is ecologically murderous.[286] Not only does it provide no habitat for flora or fauna, but it creates a heat island effect[287] and degrades slowly over time.[288] The petrochemicals in astroturf break down and leach away, running into waterways and soils.[289] Even worse, the sun bleaches it, so homeowners need to replace it every few years and send the old astroturf to a landfill.[290]

Xeriscaping with rocks and no vegetation is not ideal, either. Such a landscape does not encourage water to go into the ground; instead, it contributes to runoff and flooding during storms.[291] In addition, it contributes to a heat island effect.[292] Hence, states should not incentivize or allow astroturf or all-rock xeriscaping in their legislation.

F. Use Specific Language

There are two areas in which these laws need to be specific: first, in stating what kinds of landscaping HOAs cannot prohibit; and second, in qualifying what is meant by "aesthetic" restrictions on land use.

Good model legislation would be specific by including prohibitions on HOAs requiring turfgrass and would clearly define types of landscaping—such as xeriscaping, rain gardens, bio-habitat gardens, and pollinator-friendly gardens—using lengthy descriptions, as seen in Maryland's legislation.[293] These clear definitions make it easier for homeowners to defend themselves from HOAs that challenge the more ecologically friendly lawns. Colorado's statute does not allow HOAs to require turfgrass of any kind.[294] As turfgrass cannot survive in a perpetually green state without significant human intervention, other states should follow Colorado's lead and prevent HOAs from requiring turfgrass.

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283. *Id.*

284. *Id.*

285. § 38-33.3-106.5(1)(i.5)(I).

286. *See* Barbara Laker & David Gambacorta, *'Forever Fields': How Pennsylvania Became a Dumping Ground for Discarded Artificial Turf*, PHILA. INQUIRER (Dec. 13, 2023, 6:00 AM), https://www.inquirer.com/news/pennsylvania/artificial-turf-pfas-rematch-pennsylvania-dumping-ground-20231213.html [https://perma.cc/94XK-GQUH].

287. van Huijgevoort & Cirkel, *supra* note 201.

288. Laker & Gambacorta, *supra* note 286; van Huijgevoort & Cirkel, *supra* note 201.

289. *See* Laker & Gambacorta, *supra* note 286.

290. *Id.*

291. *See* Courtney Ruby, *Let It Grow: Freeing the Lawn from Aesthetically Rigid and Environmentally Damaging Real Covenants*, 87 UMKC L. REV. 435, 443 (2019).

292. van Huijgevoort & Cirkel, *supra* note 201.

293. MD. CODE ANN., REAL PROP. § 2-125 (West 2024).

294. COLO. REV. STAT. ANN. § 37-60-126(11)(a)(I) (West 2025).

Qualifying whether HOAs are allowed to object to homeowners' lawns for purely aesthetic reasons is important as well. Many of the states discussed above allow HOAs to prevent ecologically friendly lawns if they are not up to the HOAs' aesthetic standards.[295] What qualifies as aesthetic is inherently subjective, and leaving room for HOAs to object on aesthetic grounds has become a linchpin of HOA litigation in Florida.[296] Colorado's laws importantly do not allow HOAs to ban native plants from backyards or side yards, where the aesthetics do not matter for property values. This should be a minimum requirement for all laws encouraging environmentally friendly gardens.

G. Mobilize Local Governments

One state can contain many different biomes, and local governments can be an invaluable resource in making sure that yard ordinances align with their local biome's requirements. Local governments should be involved in enacting landscaping legislation either by enhancing state legislation schemes or by enacting legislation themselves.

Florida, for instance, contains forty-five distinct terrestrial ecosystems, including coastal land, forests, wetlands, and rivers, each with different soils, temperature ranges, water sources, and salinity.[297] Most other states also encompass a variety of ecosystems. This means that there is no one-size-fits-all approach to defining what species of plants are native and suitable to different counties within a state and coming up with a prescriptive approach to installing native yards at the state level can be difficult. States can require local governments to develop and adopt comprehensive plans within their jurisdiction.[298] Local governments and county extension offices can help homeowners learn what is suitable for their yards as they did in Florida.[299]

Statewide legislation would be best, since state-level policy has a wider reach and since states have deeper pockets for incentive programs.[300] However, some states may be slow to shift away from turfgrass. In those states, local governments can and should take matters into their own hands. Counties and local governments can adopt their own

295. *See, e.g.*, Greene, *supra* note 227; REAL PROP. § 2-125(c).

296. *See* Jeffery W. Van Treese II & Michael T. Olexa, *Application of the Florida-Friendly Landscaping Statute to Homeowner Disputes Regarding Violation of Restrictive Covenants*, FLA. BAR J., Nov./Dec. 2020, at 34, 35, 41.

297. *Habitats*, FLA. FISH & WILDLIFE CONSERVATION COMM'N, https://myfwc.com/conservation/value/fwcg/habitats/ [https://perma.cc/ZPW8-R3NH] (last visited May 5, 2025).

298. *E.g.*, ERICA ZIMMERMAN, THOMAS ANKERSEN & ERICK SMITH, MODEL NATIVE PLANT LANDSCAPE ORDINANCE HANDBOOK 8 (2007), https://www.fnps.org/assets/pdf/pubs/model_landscape_ord_final_022407.pdf [https://perma.cc/UW4P-Q8V4] ("Each local government in Florida is required to adopt a comprehensive plan for the lands within its jurisdiction . . . .").

299. For a homeowner-friendly guide to the Florida-Friendly Landscaping program and creating a Florida-Friendly lawn, see *Florida-Friendly Landscaping Program*, UNIV. OF FLA.: IFAS EXTENSION, https://ffl.ifas.ufl.edu/ [https://perma.cc/QN2Z-VPNT] (last visited May 5, 2025).

300. *See What Are the Sources of Revenue for State and Local Governments?*, TAX POL'Y CTR., https://taxpolicycenter.org/briefing-book/what-are-sources-revenue-state-and-local-governments [https://perma.cc/7J4R-2VGW] (Jan. 2024).

legislation to require a certain percentage of native plants, create landscaping manuals listing plants native to the area, and launch educational campaigns.[301]

IV. CONCLUSION

Despite its fertilizer-induced hue, turfgrass is not greener than what it has displaced in American ecosystems: various species of native ground cover, shrubs, and trees that provided habitats for disappearing native fauna.[302] If the United States ever wants to uproot the lawn, it needs to prevent HOAs from requiring lawns in the vast tracts of suburbs that HOAs control. Thankfully, states are beginning to realize this and have been experimenting with legislation to allow homeowners to craft more environmentally friendly lawns.[303] Model legislation should use a multifaceted approach.[304] That approach should use clear language so that homeowners need not fear expensive legal battles with their HOAs. Further, the law should do away with turfgrass requirements in CC&Rs and provide incentives and opportunities for HOAs and homeowners alike to think more creatively about what they can put in their yards to combat biodiversity loss and conserve water.

301. *See, e.g.*, ZIMMERMAN ET AL., *supra* note 298.

302. *See generally* ROBBINS, *supra* note 28.

303. *See supra* Part II.E.

304. *See supra* Section III.