



SEVENTH ANNUAL CONSTITUTIONAL ENVIRONMENTAL LAW STUDENT WRITING COMPETITION (2011-12)

Co-sponsored by:

The Environmental Law Institute

The American Bar Association Section of Environment, Energy, and Resources

The National Association of Environmental Law Societies

The U.S. Constitution has long been interpreted by the courts and understood by most Americans to support comprehensive environmental protections. However, arguments questioning the constitutional legitimacy of environmental law have continued to gain traction in the federal courts. In response to this trend, ELI, ABA SEER's Constitutional Law Committee, and NAELS invite law students to submit papers exploring current issues of constitutional environmental law.

AWARD: \$2000 cash prize, an offer of publication in the *Environmental Law Reporter*, and a one-year individual membership to ELI.

TOPIC: Any topic addressing recent developments or trends in U.S. environmental law that have a significant constitutional or "federalism" component. (See sample topics below.)

ELIGIBILITY: Students currently enrolled in law school (in the U.S. or abroad) are eligible, including students who will graduate in the spring or summer of 2012. Any relevant article, case comment, note, or essay may be submitted, including writing submitted for academic credit. Jointly authored pieces are eligible only if all authors are students and consent to submit. Previously published pieces, or pieces that are already slated for publication, are ineligible.

DEADLINE: Entries must be received no later than 5:00 PM ET on **Friday, April 13, 2012**. Email entries (and any questions) to Cory Connolly at connolly@eli.org. You will receive a confirmation by email.

SUBMISSION REQUIREMENTS:

Cover page. This separate page must include the following information:

- Title;
- Author's name, year in law school, and expected graduation date (to facilitate impartial judging, the author's name and law school must NOT appear anywhere in the essay, other than on this cover page);
- Law school name and address;
- Author's permanent and school mailing addresses, email address, and phone number (IMPORTANT: indicate effective dates for any contact information subject to change);
- Abstract (limited to 100 words) describing the piece;
- Certification that the article has not been published and is not slated for future publication (while authors may submit their articles to other competitions, acceptance for publication elsewhere will disqualify an entry from further consideration); and
- Statement as to where the author(s) learned about this competition.

Format. Submissions may be of any length up to a *maximum* of 50 pages (including footnotes), in a double-spaced, 8.5 x 11-inch page format with 12-point font (10-point for footnotes). Citation style must conform to the Bluebook. Submissions must be made by email attachment in Microsoft Word format, with the cover page as a separate attachment.

CRITERIA AND PUBLICATION: The prize will be awarded to the student work that, in the judgment of ELI, ABA SEER, and NAELS, best advances the state of scholarship and informs the debate on a current topic of constitutional environmental law. ELI reserves the right to determine that no submission will receive the prize. While only one cash prize is available, ELI may decide to extend multiple offers of publication in the *Environmental Law Reporter*.

For more about ELI and its Endangered Environmental Laws Program, including past writing competitions, see www.eli.org and www.endangeredlaws.org. Information about ABA SEER may be found at www.abanet.org/environ/. Information about NAELS may be found at www.naels.org.

SAMPLE TOPICS: Students may choose a topic below or develop their own constitutional environmental law topic:

- 1) Claims that EPA's issuance of administrative orders, without the opportunity for pre-enforcement review, deprives the recipients of property without **due process** of law. *E.g.*, *Sackett v. U.S. Env't Prot. Agency*, 622 F.3d 1139 (9th Cir. 2010) (Clean Water Act), *cert. granted*, 80 U.S.L.W. 3003 (U.S. June 28, 2011) (No. 10-1062); *Gen. Elec. Co. v. Jackson*, 610 F.3d 110 (D.C. Cir. 2010) (CERCLA), *cert. denied*, 79 U.S.L.W. 3685 (U.S. June 6, 2011).
- 2) Claims that federal environmental laws are beyond Congress' authority under the **Commerce Clause**. *See San Luis & Delta-Mendota Water Auth. v. Salazar*, 638 F.3d 1163 (9th Cir. 2011) (Endangered Species Act), *petition for cert. filed*, 80 U.S.L.W. 3004 (June 22, 2011) (No. 10-1551); *U.S. v. King*, 2009 WL 940600 (D. Idaho April 6, 2009), *appeal docketed*, No. 09-30442 (9th Cir. Dec. 22, 2009). *Cf. Thomas More Law Ctr. v. Obama*, 2011 WL 2556039 (6th Cir. June 29, 2011) (upholding new health-care law's individual mandate), *petition for cert. filed*, 80 U.S.L.W. 3065 (U.S. July 26, 2011) (No. 11-117); *Florida ex rel. Atty. Gen. v. U.S. Dept. of Health & Human Servs.*, 2011 WL 3519178 (11th Cir. Aug. 12, 2011) (striking down individual mandate).
- 3) Arguments that state nuisance law claims in the climate change context are **preempted** by federal law. *See Am. Elec. Power Co. v. Connecticut*, 131 S.Ct. 2527 (2011), *reversing and remanding Connecticut v. Am. Elec. Power Co.*, 582 F.3d 309 (2d Cir. 2009), *pending on remand*, Nos. 05-5105-cv, 05-5119-cv (2d Cir.); *Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863 (N.D. Cal. 2009), *appeal pending*, No. 09-17490 (9th Cir.).
- 4) Constitutional doctrines on access to courts, such as **standing**, that affect environmental disputes. *See Amigos Bravos v. U.S. Bureau of Land Mgmt.*, No. 6:09-cv-00037-RB (D.N.M. Aug. 3, 2011); *Sierra Club v. U.S. Def. Energy Support Ctr.*, 2011 WL 3321296 (E.D. Va. July 29, 2011). *Cf. Natural Res. Def. Council v. U.S. Food & Drug Admin.*, No. 10-cv-5690 (S.D.N.Y. Jan. 20, 2011), *appeal pending*, No. 11-422-cv (2d Cir.).
- 5) The proper role of the states under the **cooperative federalism** model of environmental protection, as political and legal disputes have emerged between state and federal regulators in various contexts: water quality protection (*e.g.*, Florida and the Chesapeake Bay states), reducing greenhouse gas emissions (*e.g.*, Texas), and protection and use of public lands (*e.g.*, Utah and other Western states).