



2014-2015 BEVERIDGE & DIAMOND CONSTITUTIONAL ENVIRONMENTAL LAW WRITING COMPETITION

Organized by the Environmental Law Institute and
the National Association of Environmental Law Societies

The U.S. Constitution has long been interpreted by judges and understood by most Americans to support comprehensive environmental protection. However, arguments questioning the constitutional legitimacy or application of environmental law continue to be made. ELI and NAELS invite law students to submit papers exploring current issues of constitutional environmental law. This annual writing competition is made possible through the generous support of Beveridge & Diamond, P.C., one of the premier environmental law firms in the nation.

THE BEVERIDGE & DIAMOND CONSTITUTIONAL ENVIRONMENTAL LAW PRIZE: The author of the article deemed best by a panel of judges will receive \$2000 cash, an offer of publication in the *Environmental Law Reporter*, and a one-year individual membership to ELI.

TOPIC: Any topic addressing 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 2015. 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 **Monday, April 6, 2015**. Please email entries (and any questions) to Talia Fox at fox@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 entry, 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 that is 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 publishers or 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 & PUBLICATION: The prize will be awarded to the student work that, in the judgment of our reviewers, 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, including the results of past writing competitions, please visit www.eli.org and http://www.eli.org/program_areas/writing_competition_index.cfm.

SAMPLE TOPICS: Students may develop their own constitutional environmental law topic or submit a piece exploring one of the topics below:

- 1) Implications under the **Takings Clause** for the authority of government agencies to condition permits on the payment of land-use fees. See *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013) (extending the scope of the *Nollan* and *Dolan* standards for government-imposed conditions on the issuance of development permits).
- 2) Claims that state efforts to regulate greenhouse-gas emissions or pursue other policy goals violate the **Dormant Commerce Clause**. E.g., *Rocky Mtn. Farmers Union v. Corey*, 730 F.3d 1070 (9th Cir. 2013) (holding that California's low-carbon fuel standard does not unconstitutionally discriminate against fuels produced outside the state), *cert. denied*, 134 S. Ct. 2884 (June 30, 2014); First Amended Complaint at 23, *Missouri v. Harris*, No. 2:14-cv-00341 (E.D. Cal. Mar. 5, 2014) (suit brought by five states alleging that AB 1437, which requires out-of-state producers to meet animal welfare requirements for eggs sold in California, violates the Dormant Commerce Clause).
- 3) Renewed claims that implementation of longstanding environmental laws exceeds the scope of the **Commerce Clause**. E.g., *People for the Ethical Treatment of Property Owners v. U.S. Fish & Wildlife Serv.*, No. 2:13-cv-278 (D. Utah Nov. 4, 2014) (holding Congress not authorized under Commerce Clause or **Necessary and Proper Clause** to regulate takes of Utah prairie dog, a "purely intrastate species that has no substantial effect on interstate commerce").
- 4) Claims that EPA administrative compliance orders, absent an opportunity for pre-enforcement judicial review, violate **due process**. Cf. *Sackett v. EPA*, 132 S. Ct. 1367 (2012) (constitutional issue not reached).
- 5) Doctrines, such as **Article III standing**, that affect access to courts in environmental disputes. E.g., *Wash. Env'tl. Council v. Bellon*, 732 F.3d 1131 (9th Cir. 2013) (causal relationship between agency's failure to regulate oil refinery emissions and climate change harms too attenuated to support standing).
- 6) Claims that state or local environmental programs are **preempted** by federal law. See, e.g., Complaint at 20-21, *Grocery Mfrs. Ass'n v. Sorrell*, No. 05:14-cv-117 (D.Vt. Jun. 12, 2014) (alleging that H. 112, which requires labels for GMO foods sold in Vermont, is preempted by federal law).
- 7) Claims that product labeling requirements compel speech in violation of the **First Amendment**. See *Am. Meat Inst. v. USDA*, 760 F.3d 18 (D.C. Cir. 2014) (en banc) ("country of origin" labeling).
- 8) Role of states under **cooperative federalism**, concerning issues like water-quality protection, e.g., *Am. Farm Bureau Fed. v. EPA*, 984 F. Supp. 2d 289 (M.D. Pa. 2013) (upholding Chesapeake Bay TMDL), *appeal pending*, No. 13-4079 (3d Cir. 2014), and cross-state air pollution. E.g., *EPA v. EME Homer City Generation*, 134 S. Ct. 1584 (2014).
- 9) **Novel common-law or constitutional theories** advanced to promote environmental protection. See, e.g., *Alec L. v. Jackson*, 863 F. Supp. 2d 11 (D.D.C. 2012) (dismissing climate change case brought under public trust doctrine), *aff'd Alec L. ex rel. Loorz v. McCarthy*, 561 Fed. Appx. 7 (D.C. Cir. 2014), *cert. denied* 135 S.Ct. 774 (2014).