



2013-2014 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. The 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 2014. 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 7, 2014**. Email entries (and any questions) to Judy Amsalem at amsalem@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 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 the 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. Information about NAELS is available at www.naels.org.

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 federal, state, and local resource managers to condition permits on the payment of land-use fees. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013) (holding that the *Nollan* and *Dolan* standards apply to government demands for money in land-use permitting context).
- 2) Claims that state efforts to regulate greenhouse-gas emissions violate the **Dormant Commerce Clause** or interfere with the federal government's authority to conduct **foreign affairs**. *E.g.*, *Rocky Mtn. Farmers Union v. Goldstene*, 843 F. Supp. 2d 1071 (E.D. Cal. 2011), *appeal pending*, No. 12-15131 (9th Cir.) (holding that California's low-carbon fuel standard unconstitutionally discriminates against fuels produced outside the state).
- 3) The implications for environmental protection of the Supreme Court's decision upholding the health care law, *Nat'l Fed'n Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012). *E.g.*, will the new limitation on Congress' **Spending Clause** authority affect state implementation of the Clean Air Act? Could the Court's discussion of the **Commerce Clause** fuel new challenges to the scope of environmental laws?
- 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) (CWA, constitutional issue not reached), and progeny.
- 5) Doctrines, like **Article III standing**, that affect access to courts in environmental disputes. *E.g.*, possible ramifications of *Clapper v. Amnesty Int'l*, 133 S. Ct. 1138 (2013) (discussing requirement that potential injury be "certainly impending"), for standing in environmental cases. *See also, e.g.*, *Coal. for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), *petition for cert. filed*, 81 U.S.L.W. 3560 (Mar. 20, 2013); *Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169 (D.C. Cir. 2012), *cert. denied*, 133 S. Ct. 2880 (2013); *Nat'l Ass'n of Home Builders v. EPA*, No. 13-cv-0078, 2013 WL 3863895 (D.D.C. July 26, 2013) (home builders' trade associations lack standing to challenge agencies' "traditional navigable waters" determination).
- 6) Claims that state or local environmental programs are **preempted** by federal law. *See, e.g.*, *Am. Trucking Ass'ns v. City of L.A.*, 133 S. Ct. 2096 (2013) (holding that portion of Port of Los Angeles' Clean Trucks Program was expressly preempted by federal statute).
- 7) The role of states under the **cooperative federalism** model of environmental protection, with respect to issues such as water-quality protection (*e.g.*, Florida and the Chesapeake Bay states), the protection and use of public lands (*e.g.*, Utah and other Western states), and cross-state air pollution. *See, e.g.*, *EME Homer City Generation v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted*, 133 S. Ct. 2857 (2013).
- 8) **Novel common-law or constitutional theories** advanced to promote environmental protection or non-human rights. *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); *Tilikum ex rel. People for the Ethical Treatment of Animals v. Sea World Parks & Entertainment*, 842 F. Supp. 2d 1259 (S.D. Cal. 2012) (dismissing lawsuit claiming that orcas were held in violation of Thirteenth Amendment).