



2015-16 BEVERIDGE & DIAMOND CONSTITUTIONAL ENVIRONMENTAL LAW WRITING COMPETITION

Organized by the Environmental Law Institute (ELI) and
The National Association of Environmental Law Societies (NAELS)

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 PC, 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 with a significant constitutional, “federalism,” or other cross-cutting 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 2016. 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 11:59 pm ET on **Monday, April 4, 2016**. Please email entries (and any questions) to Talia Fox at fox@eli.org. You will receive a confirmation of receipt 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 else 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; and
- 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).

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, single-spaced). Citation style should 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/constitution-courts-and-legislation/beveridge-diamond-constitutional-environmental-law-writing-competition>.

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

- 1) Renewed claims that implementation of federal environmental laws exceeds the scope of the **Commerce Clause**. *E.g.*, *People for the Ethical Treatment of Prop. Owners v. USFWS*, 57 F. Supp. 3d 1337 (D. Utah 2014) (holding that neither Commerce Clause nor **Necessary and Proper Clause** authorizes Congress to regulate takings of Utah prairie dog, a “purely intrastate species that has no substantial effect on interstate commerce”), *appeal filed*, Nos. 14-4151 & 14-4165 (10th Cir. Dec. 30, 2014).
- 2) Claims that state efforts to regulate greenhouse gas emissions or pursue other environmental goals violate the **Dormant Commerce Clause**. *E.g.*, *Energy & Env't. Legal Inst. v. Epel*, 793 F.3d 1169 (10th Cir. 2015) (Colorado renewable energy mandate), *cert. denied*, No. 15-471 (Dec. 7, 2015); *Rocky Mountain Farmers Union v. Corey*, 730 F.3d 1070 (9th Cir. 2013) (California Low-Carbon Fuel Standard), *cert. denied*, 134 S. Ct. 2875 (2014).
- 3) Evolving theories of **Article III standing** governing access to courts in climate-change or other environmental cases. *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 harms too attenuated to support standing); *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013) (standing in NEPA climate challenge may be based on underlying, non-climate-based injury); *Mont. Env'tl. Info. Ctr. v. U.S. BLM*, No. 13-35688 (9th Cir. Aug. 31, 2015) (unpublished) (for standing purposes, while claims of procedural error may relate to an alleged failure to consider climate-change effects, the injuries that resulted from that error need not).
- 4) Claims that state or local environmental or animal protections are **preempted** by federal law. *E.g.*, *Grocery Mfrs. Ass’n v. Sorrell*, ___ F. Supp. 3d ___, 2015 WL 1931142 (D. Vt. Apr. 27, 2015) (Vermont labeling law for genetically engineered foods), *appeal filed*, No. 15-1504 (2d Cir. May 6, 2015); *Ass’n Des Éleveurs De Canards Et D’oies Du Québec v. Harris*, 79 F. Supp. 3d 1136 (C.D. Cal. 2015) (California sales ban on liver from force-fed birds), *appeal filed*, No. 15-55192 (9th Cir. Feb. 4, 2015).
- 5) Claims that product-labeling requirements compel speech in violation of the **First Amendment**. *Compare Am. Meat Inst. v. USDA*, 760 F.3d 18 (D.C. Cir. 2014) (en banc) (“country of origin” labeling), *with Nat’l Ass’n of Mfrs. v. SEC*, No. 13-5252, 2015 WL 5089667 (D.C. Cir. Aug. 18, 2015) (conflict-free labeling). *Cf. Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218 (2015) (expanding concept of “content-based” regulation, and thus the range of laws presumptively unconstitutional and subject to strict scrutiny).
- 6) Role of the states under **cooperative federalism**, concerning issues like water quality protection, *e.g.*, *Am. Farm Bureau Fed’n v. EPA*, 792 F.3d 281 (3d Cir. 2015) (upholding Chesapeake Bay TMDL), *petition for cert. filed*, No. 15-599 (Dec. 7, 2015), or cross-state air pollution, *e.g.*, *EPA v. EME Homer City Generation*, 134 S. Ct. 1584 (2014).
- 7) Whether Supreme Court rulings under the **Takings Clause** have implications for environmental protection, *e.g.*, with respect to ESA safeguards. *See Horne v. USDA*, 135 S. Ct. 2419 (2015) (distinguishing treatment of private property, such as raisins, from state-owned resources, such as oysters).
- 8) **Novel common-law or constitutional theories** advanced to promote environmental protection. *E.g.*, *Juliana v. United States*, No. 6:15-cv-01517 (D. Or. Aug. 12, 2015) (complaint filed) (climate plaintiffs alleging violations of federal public trust doctrine).