



EIGHTH ANNUAL CONSTITUTIONAL ENVIRONMENTAL LAW STUDENT WRITING COMPETITION (2012-13)

Competition Organizers:
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. The article deemed best by a panel of judges will receive the award.

AWARD: \$2000 cash, 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 2013. 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 12, 2013**. 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 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 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 award 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 develop their own constitutional environmental law topic or submit a piece exploring one of the topics below:

- 1) Claims that EPA administrative orders, absent an opportunity for pre-enforcement judicial review, violate **due process**. *E.g.*, *Sackett v. EPA*, 132 S. Ct. 1367 (2012) (CWA, constitutional issue not reached); *Gen. Elec. Co. v. Jackson*, 610 F.3d 110 (D.C. Cir. 2010), *cert. denied*, 79 U.S.L.W. 3685 (U.S. June 6, 2011) (CERLCA, no due process violation).
- 2) Claims that federal environmental laws are beyond Congress' **Commerce Clause** authority. *E.g.*, *U.S. v. King*, 660 F.3d 1071 (9th Cir. 2011) (SDWA), *cert. denied*, 132 S. Ct. 2740 (June 11, 2012); *Stewart & Jasper Orchards v. Salazar*, 638 F.3d 1163 (9th Cir. 2011) (ESA), *cert. denied*, 132 S. Ct. 498 (2011); *cf. Nat'l Fed'n Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012) (declining to uphold individual mandate of health care law under the Commerce Clause).
- 3) The potential effect on environmental law of the recent Supreme Court decision upholding the health care law's individual mandate under the **Spending Clause**—*e.g.*, implications for state implementation of the CAA. *See Nat'l Fed'n Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012).
- 4) 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**. *See, 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).
- 5) Constitutional doctrines on access to courts, like **Article III standing**, that affect environmental disputes. *E.g.*, *Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169 (D.C. Cir. 2012), *pets. for rehearing en banc denied*, D.C. Cir. Jan. 15, 2013 (Kavanaugh, J., dissenting) (court's "decision to throw out the suit on standing grounds is mistaken in multiple independent ways"); *Coal. for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), *pets. for rehearing en banc denied*, D.C. Cir. Dec. 20, 2012 (Brown, J., dissenting) (criticizing court's approach to standing); *Nat'l Ass'n of Home Builders v. EPA*, 667 F.3d 6 (D.C. Cir. 2011); *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Eng'rs*, 663 F.3d 470 (D.C. Cir. 2011); *Cf. Natural Res. Def. Council v. U.S. Food & Drug Admin.*, No. 10-cv-5690 (S.D.N.Y. Jan. 20, 2011), *appeal docketed*, No. 11-422 (2d Cir. argued May 14, 2012).
- 6) The proper role of the states under the **cooperative federalism** model of environmental protection, in areas such as water quality protection (*e.g.*, Florida and the Chesapeake Bay states), reducing greenhouse gas emissions (*e.g.*, Texas), protection and use of public lands (*e.g.*, Utah and other Western states), and cross-state air pollution. *See EME Homer City Generation v. EPA*, 696 F.3d 7 (D.C. Cir. 2012).