



ELI CONSTITUTIONAL ENVIRONMENTAL LAW WRITING COMPETITION

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, while other parties have brought constitutional and common-law claims in support of preserving or expanding environmental protections. ELI invites 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 nation's premier environmental law firms.

ELI CONSTITUTIONAL ENVIRONMENTAL LAW PRIZE: The author of the article deemed best by a panel of judges will receive \$2000 cash, publication in ELI's flagship publication, 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 2019. 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 8, 2019**. Please email entries (and any questions) to Lovinia Reynolds at reynolds@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 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*. To learn more, including the results of past writing competitions, please visit www.eli.org and <http://www.eli.org/constitution-courts-and-legislation/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) Claims that actions of the Executive Branch or of Congress violate the principle of **separation of powers**. *E.g.*, *Patchak v. Zinke*, 138 S. Ct. 897 (2018) (constitutionality of a jurisdiction-stripping statute); *Public Citizen v. Trump*, 297 F. Supp. 3d 6 (D.D.C. 2018) (“two-for-one” executive order); *Ctr. for Biological Diversity v. Zinke*, 313 F. Supp. 3d 976 (D. Alaska 2018) (invalidation of rule under the Congressional Review Act); *League of Conservation Voters v. Trump*, 303 F. Supp. 3d 985 (D. Alaska 2017) (reversal of presidential withdrawals of areas from oil and gas leasing); *In re Border Infrastructure Environmental Litigation*, 284 F. Supp. 3d 1092 (S.D. Cal. 2018) (waiver of environmental protections for border facilities); *Hopi Tribe, et al. v. Trump, et al.*, 2018 WL 473561 (D.D.C. 2018) (shrinking of Bears Ears National Monument).

2) Role of the states under **cooperative federalism**, concerning issues like the status of the Clean Air Act waivers that allow California to set vehicle emissions standards, *e.g.*, 83 Fed. Reg. 42986 (proposed Aug. 24, 2018), or EPA’s disapproval of state plans for controlling atmospheric haze, *e.g.*, *Texas v. EPA*, 829 F.3d 405 (5th Cir. 2016), voluntarily remanded to agency, No. 16-60118, ECF No. 513923006 (Mar. 22, 2017).

3) Claims that state efforts to pursue environmental goals violate the **Dormant Commerce Clause**, *e.g.*, *American Fuel & Petrochemical Manufacturers v. O’Keefe*, 2018 WL 4263250 (Sep. 7, 2018) (challenging Oregon’s Clean Fuels Program); *North Dakota v. Heydinger*, 825 F.3d 912 (8th Cir. 2016) (Minnesota renewable energy standard); or that state laws are **preempted** by federal law, *e.g.*, *Elec. Power Supply Ass’n v. Star*, 2018 WL 4356683 (Sep. 13, 2018) (upholding Illinois’ implementation of “zero emission credits”).

4) Claims that laws governing agricultural or environmental monitoring violate the **First Amendment**, *e.g.*, *W. Watersheds Project v. Michael*, 869 F.3d 1189 (10th Cir. 2017) (data collection); *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184 (9th Cir. 2018) (ag-gag law); or that product-labeling requirements compel speech in violation of the First Amendment, *e.g.*, *Am. Beverage Ass’n v. City & Cty. of San Francisco*, No. 16-16072, 871 F.3d 884 (9th Cir. 2017) (soda labeling).

5) The implications for environmental or natural resource protection of Supreme Court cases applying the **Takings Clause**. *E.g.*, *Murr v. Wisconsin*, 137 S. Ct. 1933 (2017).

6) **Novel common-law or constitutional theories** advanced to promote environmental protection, *e.g.*, *Juliana v. United States*, 2017 WL 2483705 (D. Or. 2017) (denying federal government’s motion to dismiss in case presenting climate-related constitutional and public trust claims); *Foster v. Washington Dept. of Ecology*, 200 Wash. App. 1035 (Wash. App. Div. 1, 2017) (reversing trial court order pertaining to greenhouse gas rulemaking).

7) **Other cross-cutting issues**, *e.g.*, statutory claims that agencies are required to consider climate change impacts, *compare WildEarth Guardians v. United States Bureau of Land Mgmt.*, 870 F.3d 1222 (10th Cir. 2017) (holding analysis was inadequate), *with Sierra Club v. U.S. Dep’t of Energy*, No. 15-1489, 867 F.3d 189 (D.C. Cir. 2017) (upholding analysis); or claims that application of endangered species protection exceeds statutory or constitutional authority, see *Markle Interests, L.L.C. v. U.S.F.W.S.*, 827 F.3d 452 (5th Cir. 2016), *cert. granted sub nom. Weyerhaeuser Co. v. U.S.F.W.S.*, 138 S. Ct. 924 (2018) (No. 17-71).