



2017-18 HENRY L. DIAMOND 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.

THE HENRY L. DIAMOND 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 2018. 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 9, 2018**. 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, 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*. To learn more about ELI, 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.*, *Public Citizen v. Trump*, No. 1:17-cv-00253 (D.D.C. Feb. 8, 2017) (challenging “two-for-one” executive order); *Ctr. for Biological Diversity v. Zinke*, No. 3:17-cv-00091 (D. Alaska Apr. 20, 2017) (challenging invalidation of existing regulation under the Congressional Review Act); *League of Conservation Voters v. Trump*, No. 3:17-cv-101 (D. Alaska May 3, 2017) (challenging reversal of presidential withdrawals of coastal areas from oil and gas leasing); *Defenders of Wildlife v. Duke*, No. 3:17-cv-01873 (S.D. Cal. Sept. 14, 2017) (challenging waiver of environmental protections for border security facilities); *NRDC v. Trump*, No. 1:17-cv-02606 (D.D.C. Dec. 7, 2017) (challenging the shrinking of Bears Ears National Monument).

2) Role of the states under **cooperative federalism**, concerning issues like the 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), or the status of the Clean Air Act waivers that allow California to set vehicle emissions standards, *e.g.*, 81 Fed. Reg. 78,149 (Nov. 7, 2016).

3) Claims that state efforts to pursue environmental goals violate the **Dormant Commerce Clause**, *e.g.*, *North Dakota v. Heydinger*, 825 F.3d 912 (8th Cir. 2016) (Minnesota renewable energy standard); or are **preempted** by federal law, *e.g.*, *Ass’n Des Éleveurs De Canards Et D’oies Du Québec v. Harris*, 729 F.3d 937 (9th Cir. 2017) (holding that California sales ban on liver from force-fed birds is not preempted by federal law).

4) Claims that laws governing agricultural or environmental monitoring violate the **First Amendment**, *e.g.*, *W. Watersheds Project v. Michael*, No. 16-8083, 2017 WL 3908875 (10th Cir. Sept. 7, 2017) (data collection); *Animal Legal Def. Fund v. Wasden*, No. 15-35960 (9th Cir. Jan. 4, 2017) (ag-gag law); or that product-labeling requirements compel speech in violation of the First Amendment, *compare CTIA-The Wireless Ass’n v. City of Berkeley, Cal.*, 854 F.3d 1105 (9th Cir. 2017) (cell phone health warning), *with Am. Beverage Ass’n v. City & Cty. of San Francisco*, No. 16-16072, 2017 WL 4126944 (9th Cir. Sept. 19, 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*, 217 F. Supp. 3d 1224 (D. Or. 2016) (denying federal government’s motion to dismiss in case presenting climate-related constitutional and public trust claims), petition for mandamus filed, No. 17-71692 (9th Cir. June 9, 2017); *Foster v. Washington Dept. of Ecology*, No. 75374-6-1, 2017 WL 3868481 (Wash. App. Div. 1 Sept. 5, 2017) (reversing trial court order pertaining to greenhouse gas rulemaking).

7) **Other cross-cutting issues**, including, *e.g.*, statutory claims that agencies are required to consider climate change impacts, *compare WildEarth Guardians v. United States Bureau of Land Mgmt.*, No. 15-8109, 2017 WL 4079137 (10th Cir. Sept. 15, 2017) (holding analysis was inadequate), *with Sierra Club v. U.S. Dep’t of Energy*, No. 15-1489, 2017 WL 3480702 (D.C. Cir. Aug. 15, 2017) (upholding analysis); or claims that an agency improperly delayed the effective date of a regulation, *e.g.*, *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017) (rule governing methane and other greenhouse gas emissions); *American Lung Ass’n v. EPA*, No. 17-1172 (D.C. Cir. Aug. 1, 2017) (ozone designations under Clean Air Act).