



ENVIRONMENTAL LAW INSTITUTE®

AN INDEPENDENT, NON-PARTISAN ENVIRONMENTAL EDUCATION AND POLICY RESEARCH CENTER

FIFTH ANNUAL "ENDANGERED ENVIRONMENTAL LAWS" STUDENT WRITING COMPETITION (2009-10)

Co-sponsored by

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, and NAELS invite law students to submit papers exploring current issues of constitutional environmental law.

AWARD: \$2000 cash prize and an offer of publication in the *Environmental Law Reporter*.

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 2010. 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 **April 12, 2010**. Email essays (and questions) to Louise Yeung at yeung@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 the cover page);
- Law school name and address;
- Author's permanent and school mailing address, email address, and phone number (IMPORTANT: indicate effective dates for any contact information 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.

SAMPLE TOPICS FOR THE 2009-10 ELI-ABA-NAELS WRITING COMPETITION

Students may choose a topic below or develop their own constitutional environmental law topic.

- 1) Challenges to environmental plaintiffs' **standing** to be heard in the federal courts. *E.g.*, *Summers v. Earth Island Inst.*, 129 S. Ct. 1142 (2009); *Ctr. for Biological Diversity v. Dep't of the Interior*, 563 F.3d 466 (D.C. Cir. 2009); and *Mass. v. EPA*, 549 U.S. 497 (2007).
- 2) Claims that environmental regulations cause a **taking** of private property. This issue is before the courts in several cases involving water and riparian rights, including a current Supreme Court case, *Stop the Beach Renourishment, Inc. v. Fla. Dep't Env'tl. Prot.*, 998 So.2d 1102 (Fla. 2008), *cert. granted*, 129 S. Ct. 2792 (June 16, 2009). *See also* *Casitas Mun. Water Dist. v. United States*, 543 F.3d 1276 (Fed. Cir. 2008), *reh'g denied*, 556 F.3d 1329 (2009); *Rose Acre Farms, Inc. v. United States*, 559 F.3d 1260 (Fed. Cir. 2009).
- 3) Climate-change litigation that tests the constitutional limits of governmental powers, *e.g.*:
 - a) Challenges to state and regional climate regulation, based on constitutional doctrines such as **foreign affairs preemption**, the "**dormant**" **Commerce Clause**, and the **Compact Clause**. *See, e.g.*, *Indeck Corinth v. Paterson*, Index No. 369/2009, RJI No. 2009/0369 (N.Y. Sup. Ct., Saratoga Co. filed Jan. 29, 2009).
 - b) Constitutional defenses to common-law tort actions seeking redress for climate injury, such as the **political question doctrine**. *E.g.*, *Conn. v. Am. Elec. Power Co.*, 406 F. Supp. 2d 265 (S.D.N.Y. 2005), *appeal filed*, No. 05-5104 (2d Cir. Sept. 22, 2005); *see also* *Kivalina v. Exxonmobil Corp.*, No. 08-01138 (N.D. Cal. filed Feb. 26, 2008).
 - c) Possible constitutional challenges to proposed or actual federal climate frameworks. Potentially relevant doctrines include the **Commerce Clause**, the **Treaty Power**, the **Tenth Amendment**, and the **Power to Tax**.
- 4) Claims that state or regional authorities have discriminated against out-of-state commerce in violation of the "**dormant**" **Commerce Clause**. *E.g.*, *Energy Solutions LLC v. Nw. Interstate Compact on Low-Level Radioactive Waste Mgmt.*, 2009 WL 1392836 (D. Utah May 15, 2009), *appeal docketed*, No. 09-4123 (10th Cir. June 30, 2009).
- 5) Legislative developments and potential court challenges to Congress's authority under the **Commerce Clause**, **Treaty Power**, **Property Clause**, and **Spending Power** to afford full protection to the "waters of the United States." *E.g.*, Clean Water Restoration Act (S. 787), the proposed legislative "fix" for Supreme Court rulings in *SWANCC v. U.S. Army Corps of Eng'rs*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006).
- 6) Claims that EPA administrative orders cause a deprivation of **due process**. *See* *Gen. Elec. Co. v. Jackson*, 595 F. Supp. 2d 8 (D.D.C. 2009), *appeal docketed*, No. 09-5092 (D.C. Cir. Mar. 24, 2009).
- 7) Arguments that federal law preempts state and local environmental programs pursuant to the **Supremacy Clause**. *E.g.*, *Metro. Taxicab Bd. of Trade v. City of New York*, ___ F. Supp. 2d ___, 2009 WL 1748871 (S.D.N.Y. June 22, 2009); *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046 (9th Cir. 2009), *remanded*, 2009 WL 1160212 (C.D. Cal. Apr. 28, 2009), *appeal docketed*, No. 09-55479 (9th Cir. May 14, 2009).