

# STUDENT HANDOUT

## *United States Constitution*

Article I Section 8 Clause 3    The Congress shall have power...To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

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### Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

To learn more, visit the National Constitution Center's Interactive Constitution at:  
<http://constitutioncenter.org/Constitution>

## **The Environmental Commerce Clause (Excerpts)** **Christine A. Klein**

[F]ederal environmental law may be particularly vulnerable to the Court's shrinking view of commerce clause authority because environmental protection frequently requires the regulation of intrastate, noneconomic activities.

In some instances, states may seek to protect the health and safety of their residents by excluding harmful items such as solid waste or nonnative fish parasites, and retaining within their borders important resources such as water and indigenous fish species. Such state efforts may have economic consequences for the free market and economic benefits for the regulating state, thus treading perilously close to the Court's expanding view of economic protectionism forbidden under the commerce clause.

The Court effectively treats the environment as neither commodity nor natural resource, thus frustrating both federal and state efforts to protect the natural environment.

With only one exception, the Court has invalidated every natural resource protection regulation that it has considered between 1978 and 2001 in the context of a commerce clause challenge.

[D]espite its rhetoric that land and water regulation are areas reserved to the states, the Court's dormant commerce holdings have limited the states' ability to enact such legislation in every case that has come before the Court.

The modern Court's shrinkage of federal and state legislative power under the commerce clause is ironic for its purported protection of economic freedom, achieved at the expense of legislative freedom. The commerce clause cases are part of a broader pattern under which the Court has become increasingly distrustful of legislative enactments at both the state and federal levels of government.

[I]n appropriate cases, environmental regulation by one—or even both—sovereigns (i.e., federal and state) should be left undisturbed by the courts. This is not a radical proposition.

Furthermore, there is considerable historical evidence that the Framers did not intend for the affirmative commerce clause to be exclusive, nor for the Court, rather than the political process, to be the final arbiter of the balance between federal and state power. Congress itself has advanced the idea of "cooperative federalism," a principle that forms the basis of numerous environmental statutes including the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act.

Klein, Christine A., *The Environmental Commerce Clause*(2003). *Harvard Environmental Law Review*, Vol. 21, No. 1, 2003.  
Available at SSRN: <http://ssrn.com/abstract=1273418>

# STUDENT HANDOUT

## Clean Air Act (Excerpts)

The Clean Air Act is the law that defines EPA's responsibilities for protecting and improving the nation's air quality and the stratospheric ozone layer. The last major change in the law, the Clean Air Act Amendments of 1990, was enacted by Congress in 1990. Legislation passed since then has made several minor changes.

The Clean Air Act (CAA) is the comprehensive federal law that regulates air emissions from stationary sources (like chemical plants, gas stations, and power plants) and mobile sources (like cars, trucks, and planes). Among other things, this law authorizes EPA to establish National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants.

[T]here was no comprehensive federal response to address air pollution until Congress passed [the] Clean Air Act in 1970. That same year Congress created the EPA and gave it the primary role in carrying out the law. Since 1970, EPA has been responsible for a variety of Clean Air Act programs to reduce air pollution nationwide.

In 1990, Congress dramatically revised and expanded the Clean Air Act, providing EPA even broader authority to implement and enforce regulations reducing air pollutant emissions. The 1990 Amendments also placed an increased emphasis on more cost-effective approaches to reduce air pollution.

### Specifically the new law:

- Encourages the use of market-based principles and other innovative approaches, like performance-based standards and emission banking and trading;
- Provides a framework from which alternative clean fuels will be used by setting standards in the fleet and California pilot program that can be met by the most cost-effective combination of fuels and technology;
- Promotes the use of clean low sulfur coal and natural gas, as well as innovative technologies to clean high sulfur coal through the acid rain program;
- Reduces enough energy waste and creates enough of a market for clean fuels derived from grain and natural gas to cut dependency on oil imports by one million barrels [per] day;

Available online at: <http://www.epa.gov/air/caa/>

## Calculating the Cost of Environmental Regulation (Excerpts)

As pollution control moves away from end-of-pipe abatement and toward pollution prevention and process changes, it becomes increasingly difficult to identify the operating costs associated with environmental protection. Even worse, as we turn to research and new technology to provide cleaner alternatives to polluting activities, the cost of these research and development activities is virtually unknown.

In retrospective studies, it is difficult to know what improvements may have occurred elsewhere in the absence of environmentally focused R&D [research and development] activities. In prospective studies, it is difficult to know how much improved technologies will cost.

Consider the example of global climate policy and, particularly, efforts to reduce carbon dioxide emissions. Economists would agree that in general, effective policies to limit carbon dioxide emissions should raise the private cost of carbon emitted into the atmosphere in the short run (through the use of tax or "cap and trade" systems). The price rise will stimulate conservation of carbon-containing fuels and provide incentives for the development of non-carbon energy technologies in the future. The price increases will also have a dynamic effect on the distribution of resources devoted to research and development, innovation, and commercialization, with relatively more resources going to carbon-saving research and less elsewhere. What we do not know, and have only begun to conceptualize, is the effect of this altered resource distribution on social welfare. Will resources be diverted from medical research, nanotechnology, and telecommunications? And if they are, what social gains have we lost so that we can have carbon-free energy?

"Calculating the Costs of Environmental Regulation," (with William A. Pizer) in *Handbook of Environmental Economics, Volume III*, (K.G. Maler and J.R. Vincent, editors) Elsevier 2005. Available online at: <http://www.rff.org/Documents/RFF-DP-03-06.pdf>

# STUDENT HANDOUT

## Transcript: Obama Video Message to the Governors' Global Climate Summit (Excerpts)

Climate change and our dependence on foreign oil, if left unaddressed, will continue to weaken our economy and threaten our national security.

My presidency will mark a new chapter in America's leadership on climate change that will strengthen our security and create millions of new jobs in the process.

That will start with a federal *cap and trade* system. We will establish strong annual targets that set us on a course to reduce emissions to their 1990 levels by 2020 and reduce them an additional 80% by 2050. Further, we will invest \$15 billion each year to catalyze private sector efforts to build a clean energy future. We will invest in solar power, wind power, and next generation bio-fuels. We will tap nuclear power, while making sure it's safe. And we will develop clean coal technologies.

This investment will not only help us reduce our dependence on foreign oil, making the United States more secure. And it will not only help us bring about a clean energy future, saving our planet. It will also help us transform our industries and steer our country out of this economic crisis by generating five million new green jobs that pay well and can't be outsourced.

But the truth is the United States cannot meet this challenge alone. Solving this problem will require all of us working together. And I look forward to working with all nations to meet this challenge in the coming years.

Stopping climate change won't be easy. It won't happen overnight. But I promise you this: Any company that's willing to invest in clean energy will have an ally in Washington. And any nation that's willing to join the cause of combating climate change will have an ally in the United States of America. Thank You.

Available online at:

[http://change.gov/newsroom/entry/president\\_elect\\_barack\\_obama\\_to\\_deliver\\_taped\\_greeting\\_to\\_bi\\_partisan\\_gover/](http://change.gov/newsroom/entry/president_elect_barack_obama_to_deliver_taped_greeting_to_bi_partisan_gover/)

## Cap and Trade

Cap and Trade is a market-based policy tool for protecting human health and the environment. A cap and trade program first sets an aggressive cap, or maximum limit, on emissions. Sources [polluters] covered by the program then receive authorizations to emit in the form of emissions allowances, with the total amount of allowances limited by the cap. Each source can design its own compliance strategy to meet the overall reduction requirement, including sale or purchase of allowances, installation of pollution controls, implementation of efficiency measures, among other options. Individual control requirements are not specified under a cap and trade program, but each emissions source must surrender allowances equal to its actual emissions in order to comply. Sources must also completely and accurately measure and report all emissions in a timely manner to guarantee that the overall cap is achieved.

### A Well Designed Program Provides:

- Strict limits on emissions yielding dramatic pollution reductions;
- High levels of compliance, transparency, and complete accountability;
- Regulatory certainty and flexibility for sources;
- Incentives for early pollution reduction and innovations in control technologies;
- Compatibility with state and local programs;
- Significant, widespread, and guaranteed human health and environmental benefits;
- Efficient use of government resources, and
- More benefits at less cost.

Available online at: <http://www.epa.gov/airmarkets/cap-trade/>