Should a clean and healthy environment be a constitutional right?

“The natural resources of the nation are the heritage of present and future generations. The right of each person to clean and healthful air and water, and to the protection of the other natural resources of the nation, shall not be infringed upon by any person.”

—Proposed Amendment to the U.S. Constitution (1996)

With climate change and dependence on foreign oil high on the national agenda, environmental issues are being debated in Washington and across the country. Environmental concerns—and legislation to address them—are nothing new. From President Theodore Roosevelt’s conservation efforts to President Barack Obama’s policies for addressing global climate change, environmental issues have been at the forefront of presidential policy. Public concern for the environment established Earth Day in 1970, led to the passage of the Clean Air Act of 1970 and creation of the Environmental Protection Agency, an executive agency charged with safeguarding the natural environment.

The debate over the environment has grown evermore complex, involving issues of climate-change, economic trade-offs and policies such as “cap and trade,” a market-based plan to steadily reduce carbon dioxide and other greenhouse gas emissions. The debate over global climate change has called into question the effectiveness and necessity of existing environmental legislation.

One of the legacies of the environmental movement was to enshrine protection of the environment in the constitutions of several states, including Hawaii, Illinois, Pennsylvania, Massachusetts and Montana. But proposals to enact a federal constitutional amendment have never succeeded. Proponents of an amendment say it would have great symbolic value and lead to stronger environmental protection laws. Opponents say the Constitution already gives Congress the power it needs and that an amendment could divert resources from other social goods like a strong economy, quality healthcare and a good education.

Now it’s your turn to answer the question:

Should a clean and healthy environment be a constitutional right?

**YES**

- A constitutional amendment would increase the role of the federal government and help to control pollution that knows no state boundaries.
- A constitutional amendment would give Congress and the courts the clear authority to take strong action to protect the environment.
- Recognizing a clean and healthy environment as a constitutional right will help the economy by creating more business opportunities, which will increase the number of jobs.

**NO**

- A constitutional amendment would overturn the presumption in federal environmental statutes that the primary responsibility for environmental protection lies with the states.
- The Constitution’s Commerce Clause gives the federal and state governments all the authority needed to protect the environment.
- Recognizing a clean and healthy environment as a constitutional right will hurt the economy by increasing the cost of doing business and will result in the loss of jobs and a rise in consumer prices.
Congress itself has advanced the idea of "cooperative federalism," a principle that forms the basis of numerous environmental protection of economic freedom, achieved at the expense of legislative freedom. The commerce clause cases are part of a broader trend in which the Court's dormant commerce holdings have thus treading perilously close to the Court's expanding view of economic protectionism forbidden under the commerce clause.}

In retrospective studies, it is difficult to know what improvements may have occurred elsewhere in the absence of environmentally focused regulatory activities. What we do not know, and have only begun to conceptualize, is the effect of this altered resource mix on public health. Specifically the new law:

- Reduces enough energy waste and creates enough of a market for clean fuels derived from grain and natural gas
- Provides a framework from which alternative clean fuels will be used by setting standards in the fleet
- Encourages the use of market-based principles and other innovative approaches, like performance-based incentives
- Provides a more aggressive cap and allows flexibility for companies to meet the cap through innovative means, such as installing better pollution-control equipment
- Encourages regional pollution-reduction programs that can be met by the most cost-effective combination of fuels and technology;

Whether or not these improvements are actually achieved, it is worth noting that the market-based approach to controlling pollution has been widely recognized as an effective means of reducing emissions. The success of cap and trade programs is due in part to the market's flexibility and innovation. For example, if a company finds that it is cheaper to reduce pollution in one part of the country, it can sell its pollution credits to another company that is facing higher costs. This is why cap and trade programs have been successful in achieving the goals of environmental protection and economic efficiency.

The Exchange was created by Scholastic in partnership with the National Constitution Center to engage students in the conversation about the Constitution. Through the Exchange, students are encouraged to develop their arguments, listen to others, and challenge each other's ideas in order to create a thoughtful and respectful environment for learning and discussion. The Exchange is designed to provide students with a platform for exploring the issues around the Constitution, and to encourage them to think critically about the role of the Constitution in our society. The Exchange is available online at: www.exchange.scholastic.com/constitution