

# 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.

## 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:

**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>

### WE THE PEOPLE

Our country faces enormous challenges both foreign and domestic. We need citizens who believe that democracy demands more than voting in November. A sustainable democracy needs citizens who believe in taking part in our nation's political, social and economic discourse. The responsibility for maintaining a democracy that protects the freedoms enshrined in our Constitution is in the hands of the people.

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by the people, for the people...”

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## 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

THE EXCHANGE  
A MARKETPLACE OF STUDENT IDEAS

Grades:  
High School

Classroom Time:  
one 45 minute class period

Constitution Connections:  
Article I section 8 clause 3  
Article V

#### Articles Included:

- The Environmental Commerce Clause
- Cap and Trade
- Transcript of President Obama Video Message to the Governors' Global Climate Summit
- Clean Air Act
- Calculating the Cost of Environmental Regulation

Author:  
Jason E. Allen, National Student Programs Manager, National Constitution Center

Scholarly Advisors:  
J. Michael Hogan, Ph.D.; David N. Cassuto, Professor of Law;  
James R. May, Professor of Law;  
Jeffrey G. Miller, Vice Dean for Academic Affairs and Professor of Law

#### About this lesson

This research and deliberation activity is designed to encourage students to look at the issue of climate change and environmental regulation from a constitutional perspective and then to find political and economic measures to address environmental regulation. In any deliberation activity, compromise and listening will play a key role in finding common ground.

#### Objectives

Students will be able to evaluate multiple perspectives on the issues and determine what can be done to find common ground between those who believe that a clean and healthy environment should be a constitutional right and those who believe it to be unnecessary to amend the Constitution to ensure a clean and healthy environment.

#### Resources

Links to the articles used in this lesson and extension readings for this lesson are available at the National Constitution Center's website at: [www.constitutioncenter.org/exchange](http://www.constitutioncenter.org/exchange).

## INTRODUCTION

### ADVICE TO STUDENTS FOR CONSTITUTIONAL DELIBERATION

The National Constitution Center is located in Philadelphia, just a few steps from Independence Hall, where the Constitution of the United States was written and signed during the summer of 1787. The men who came to Philadelphia that summer did so because they knew the direction of the country they loved needed to change. They deliberated for nearly four months and created a document that none thought was perfect. But they put forward a challenge to future generations: keep working towards the creation of a "more perfect Union." The Center was created to support this challenge and encourages visitors to walk in the steps of the founders and deliberate the future of our country.

The guidelines presented below have been created to provide you with advice and ideas on how to both present your arguments and hear those of others. The advice below was inspired by the rules adopted by the Constitutional Convention, as presented by George Wyeth of Virginia on May 28, 1787.

- Think through your idea before presenting it to the group; you may wish to make a few notes on paper to ensure your idea is clear.
- Listen carefully to other ideas and consider how to incorporate them into your own.
- When you are not speaking, do not have other side conversations, read a book or document, or distract the speaker in another way.
- When challenging an idea, focus on the idea, not the person you are challenging.
- Use the Constitution as support for your ideas; refer to the text and use it as a tool to support your argument.
- Do not dominate the conversation, and do not speak more than twice before allowing everyone else the opportunity to be heard.
- Present your ideas directly to the facilitator or group leader.
- When developing your argument, consider the position of the other side, and use these ideas to support or build compromise into your position.
- Wait to be acknowledged by the facilitator before speaking.

## LESSON

### OPENING

1. Ask your students to work individually to answer the following two questions. Then, ask them to share their answers with the class.

**Q: How do you feel about the debate over climate change?**  
Students should base their opinion on their interpretation of the issue.

**Q: Why do you feel this way about the debate over climate change?**  
Students should infer values connected to the issue.

2. Display the **Town Hall Wall** so that all of your students can see the poster. Next, ask them to first read the short description of the issue and then answer the question with a simple *Yes* or *No* on Post-it notes placed on the Town Hall Wall.

**Q: Should a clean and healthy environment be a constitutional right?**  
Students are to answer *Yes* or *No*.

3. Ask your students to share their answers to the following three questions with the class and display their answers for the class to see. Your students should write the answers in their notebooks for use in Step 6 and 7.

**Q: What values are associated with those who answered Yes?**  
Students should list political principles or standards which they believe influence this choice.

**Q: What values are associated with those who answered No?**  
Students should list political principles or standards which they believe influence this choice.

**Q: What values do you think both perspectives have in common?**  
Students should list political principles or standards which influence both choices.

### INVESTIGATION

4. Divide your students into groups of three or six students and provide each group with the following articles. Assign each student one of the topics highlighted below and the readings for that topic. Using the provided documents, ask each student to answer their assigned questions in their notebooks. Then, have each group share their answers with the class. Record their answers on the board. Your students should write the answers on the board in their notebooks for use in Steps 5, 6 and 7.

**Amend the Constitution: Article I section 8 clause 3, the Commerce Clause, and Article V and The Environmental Commerce Clause**

**Q: Why should there be an environmental amendment to the Constitution?**  
**Q: Why should there not be an environmental amendment?**  
**Q: What evidence do you have to support your answers?**

**Retain the existing policy: Clean Air Act and Calculating the Cost of Environmental Regulation**

**Q: Why is the Clean Air Act all that is necessary to protect the environment?**  
**Q: Why is the Clean Air Act not all that is necessary??**  
**Q: What evidence do you have to support your answer?**

**Implement a new policy: Cap and Trade and the transcript of Barack Obama's Video Message to the Governors' Global Climate Summit**  
**Q: Why should a Cap and Trade policy be put in place?**  
**Q: Why should Cap and Trade not be put in place?**  
**Q: What evidence do you have to support your answer?**

## 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 60% 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/>

### INVENTORY

5. Staying in their group, ask each student to find two or three pieces of evidence collected in Step 4 that supports their answer to the **Town Hall Wall** question. Ask your students to record the evidence in their notebooks and share them with the group. This evidence will be used in Step 6.

**Q: What values do you and those who support your perspective on climate change have in common?**  
**Q: What evidence do you have to support your perspective?**  
**Q: What might be the political, economic and environmental consequences of doing what you are suggesting?**

6. Staying in their group, ask each student to answer the following three questions in their notebooks using values from Step 3 and evidence from Step 5. Once your students have completed the three questions, have them compare their findings with other group members.

**Q: What values do people who support a perspective different from your own on climate change have in common?**  
**Q: What evidence would support their perspective?**  
**Q: For those who have a different perspective, what could be the political, economic and environmental consequences of doing what they have suggested?**

7. Have the groups brainstorm answers to the following three questions using values from Step 3 and evidence from Step 5. Have one member of each group record their group's answers to the questions below and then present the group's answers to the class.

### DELIBERATION

8. Have all of the groups present their final ideas on the following questions to the class. Record their answers for the class to see. If the same answer is given more than once, then mark it with a star to determine which answer the majority of the class agrees with and use these answers for Step 9.

**Q: Why should a clean and healthy environment be a constitutional right?**  
Ask your students to use values that have previously been listed to support their answer.

**Q: Why should a Cap and Trade policy to protect the environment be put in place?**  
Ask your students to use values that have previously been listed to support their answer.

**Q: Why should existing legislation under the Clean Air Act be the only laws in place to protect the environment?**  
Ask your students to use values that have previously been listed to support their answer.

**Q: What values do all of these perspectives have in common?**  
Ask your students to use values that have previously been listed to support their answer.

9. As a class, ask your students to craft a **Class Compromise Statement**, which is a statement that is negotiated among supporters of each perspective. The statement includes the values all the perspectives have in common, and evidence that supports each perspective. Encourage the class to work towards an answer to the question posed at the start of the lesson: **Should a clean and healthy environment be a constitutional right?** in their **Compromise Statement**.

10. Class Compromise Statements can be uploaded to: [www.exchangeideas.org](http://www.exchangeideas.org) for students around the country to view as part of our on going conversation at **The Exchange**.

“Should a clean  
and healthy environment  
be a constitutional right?”  
Poster

SCHOLASTIC

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