

## Law Casebook Description and Table of Contents

Title: CONSTITUTIONAL ENVIRONMENTAL AND NATURAL RESOURCES LAW

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Description: Constitutional Law influences Environmental Law, Land Use and Natural Resources Law more than ever. These days, nearly three in four reported federal environmental and natural resources law cases involve constitutional issues. Constitutional issues are also more frequently in play at state local, transnational, and international levels.

Constitutional issues include the extent to which Congress can regulate activities that are historically or arguably intrastate in nature (Commerce Clause), delegate congressional prerogatives (Non-delegation doctrine), impel states and state officials to follow federal environmental policies (Preemption, Property and Spending Clauses, and the 10th and 11<sup>th</sup> Amendments), compensate for conversion of private property for public use (5<sup>th</sup> Amendment), and conduct warrantless searches (4<sup>th</sup> Amendment).

This casebook would address trends and recent developments in the field of constitutional environmental law. The casebook is timely because the U.S. Supreme Court has taken an interest in addressing the confluence of the two fields more frequently than ever before. Nearly ten percent of its 2006-07 docket involved environmental cases with constitutional issues.

Possible table of contents, with principal cases and some sources:

### **1) Chapter One: Introduction:**

- a) Constitutionalism
- b) Constitutionalism and Environmental and Natural Resources Law
  - i) Excerpt from Lazarus, Restoring What's Environmental About Environmental Law in the Supreme Court
  - ii) Excerpt from Craig (I'd pick an excerpt from your ELR piece on the 9<sup>th</sup> Amendment)
  - iii) Excerpt from Rosen, Toward an Unregulated America
  - iv) Excerpt from May on Constituting Environmental Rights Worldwide

### **2) Chapter Two Sources of Authority**

- a) Commerce Clause: "The Congress shall have the power ... [t]o regulate Commerce ... among the several States ..." Art. I sec. 8.
  - i) **Gibbons v. Ogden**
  - ii) **Blackbird Creek**
  - iii) Wickard v. Filburn
  - iv) Iowa Hydro-Electric Corp. v. FPC (1946)
  - v) U.S. v. Alfonso Lopez, Jr.
  - vi) U.S. v. Morrison

- vii) NAHB v. Babbit (D.C. Cir. 1997)
  - viii) Gibbs v. Babbitt (4<sup>th</sup> Cir. 2000)
  - ix) Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers
  - x) Rapanos v. U.S. & Carabell v. U.S. Army Corps of Engineers
  - xi) U.S. v. Hubenka (10<sup>th</sup> Cir. 2006)
- b) Treaty Clause
    - i) Missouri v. Holland (1920)
  - c) General Welfare Clause: : “Congress shall have Power To ... provide for the ... general Welfare of the United States.” Art. I, sec. 8.
    - i) U.S. v. Gerlach Live Stock (1950)
  - d) Spending Clause
    - i) U.S. v. Dole
  - e) War Powers
  - f) Property Clause
    - i) Johnson v. MCintosh (1823)
    - ii) Camfield (1897)
    - iii) Ashwander v. TVA (1936)
    - iv) Kleppe v. United States (1976)
    - v) Minnesota v. Block (8th Cir. 1982)
    - vi) Idaho v. United States
    - vii) Wyoming v. U.S. (2002)
  - g) Statehood and Equal Footing (“New States may be admitted by the Congress into this Union.” U.S. Const. Art. 4, Sec. 3))
    - i) Pollard v. Hagan (1845)
    - ii) Illinois Central Railroad v. Illinois (1892)
    - iii) Camfield v. U.S. (1897)
    - iv) Leo Sheep (1979)
    - v) Minnesota v. Mille Lacs Band of Chippewa
  - h) Enclave Clause
    - i) U.S. v. Bevans (11818)
    - ii) Fort Leavenworth R.R. v. Lowe (1885)
  - i) Ninth Amendment
  - j) Enforcement Issues (4th, 5th, 1st Amendments)
  - k) Equal Protection Clause
  - l) Executive Power
    - i) Land Withdrawal
      - (1) U.S. v. Midwest Oil (1915)
  - m) Due Process Clause
    - i) Procedural
    - ii) Substantive
  - n) Executive Authority
    - i) Withdrawals and Reservations
      - (1) U.S. v. Jones & Laughlin Steel Corp (“Steel Seizure”)

- ii) Signing Statements
- 3) **Chapter Three: Separation of Powers**
  - a) Citizen suits and qui tam
    - i) Vermont Agency of Natural Resources v. U.S., v. Stevens
    - ii) United States v. American Electric Power Service Corp. I
    - iii) Waterkeeper Alliance, Inc. v. Smithfield Foods.
  - b) Appointments and Removals
  - c) Legislative/presidential veto/signing statements
  - d) Non Delegation Doctrine: “All legislative Powers herein granted shall be vested in a Congress of the United States.”. Art. I.
    - i) U.S. v. Grimaud (1911)
    - ii) J.W. Hampton v. U.S. (1928)
    - iii) Carter Coal v. U.S. (1935)
    - iv) EPA v. American Trucking Association
- 4) **Chapter Four: State’s Rights and Federalism**
  - a) The Dormant Commerce Clause
    - i) Geer v. Connecticut (1896)
    - ii) City of Philadelphia et al. v. New Jersey
    - iii) Hughes v. Oklahoma
    - iv) Commonwealth Edison Co. v. Montana (1981)
    - v) Sporhase v. Nebraska (1982)
    - vi) Maine v. Taylor
    - vii) South Central Timber
    - viii) Chemical Waste Management, Inc. v. Hunt
    - ix) Fort Gratiot Sanitary Landfill v. Michigan Dept. of Natural Resources
    - x) C & A Carbone v. Town of Clarkstown
    - xi) Granholm v. Heald
    - xii) American Trucking v. Michigan Public Service Commission
    - xiii) U.S. v. Manning (E.D. Wash 2006)
    - xiv) Harper v. Public Service Commission of West Virginia (S.D. W. Vg. 2006)
  - b) Reservation of State’s Rights
- 5) Reservation of Rights and the 10<sup>th</sup> Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Amend. X.
  - i)
    - (1) County of Cortland, New York v. U.S.
    - (2) Printz v. U.S. (1997)
    - (3) W. Virginia Highlands Conservancy v. Norton
    - (4) Connecticut v. U.S. (D. Conn. 2005)
  - ii) Sovereign Immunity and the 11<sup>th</sup> Amendment: “The judicial power of the United States shall not be construed to extend to any suit in law or equity,

commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.” Amend. XI

- (1) Seminole Tribe of Florida v. Florida
- (2) John H. Alden v. Maine
- (3) Federal Maritime Commission v. South Carolina State Port Authority
- (4) Kansas v. Colorado
- (5) Bragg v. West Virginia Coal Assn.
- (6) W. Va Highlands Conservancy
- (7) Pennsylvania Federation of Sportsmen’s Clubs v. Norton
- (8) Community College v. Katz
- (9) U.S. v. Georgia
- (10) Frazier v. Pioneer Americas (5<sup>th</sup>. Cir. 2006)

b) Supremacy Clause

i) Intergovernmental Immunities

- (1) McCulloch v. Maryland (1819)
- (2) Utah Power & Light (1917)
- (3) U.S. v. County of Fresno (1977)

ii) **Supremacy and Preemption:** “The Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the Supreme Law of the Land.” Art IV

- (1) Kleppe v. New Mexico
- (2) Minnesota v. Block (8<sup>th</sup> Cir. 1981)
- (3) U.S. v. Condon, Attorney General of South Carolina
- (4) U.S. v. Locke
- (5) Ventura County v. Gulf Oil (1980)
- (6) California Coastal Commission v. Granite Rock
- (7) Bates v. Dow Agrosiences
- (8) U.S. v. Massachusetts
- (9) North Carolina ex rel. Cooper v. TVA (W.D. N.C. 2006)
- (10) U.S. v. Manning (E.D. Wash 2006)

c) Takings: “[N]or shall private property be taken for public use without just compensation.” U.S. Const. Amd. IV.

(1) Regulatory Takings

- (a) Pennsylvania Coal Co. v. Mahon
- (b) Keystone Bituminous Coal Co. v. DeBenedictis
- (c) Nollan v. California Coastal Commission
- (d) Lucas v. South Carolina Coastal Council
- (e) City of Monterey v. Del Monte Dunes at Monterey
- (f) Palozzolo v. Rhode Island
- (g) Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency
- (h) Florida Rock Industries v. U.S.
- (i) Brace v. U.S. (Fed. Cir. 2006)

- (2) Public Use
  - (a) U.S. v. Gettysburg Elec Ry. Co. (1986)
  - (b) Light v. U.S. (1911)
  - (c) Midkiff
  - (d) Kelo v. New London
  - (e) Lingle v. Chevron
  - (f) City of Norwood v. Horney (Ohio 2006)
- (3) Just Compensation
- (4) Relation to Public Trust Doctrine
  - (a) Shively v. Bowlby
  - (b) Illinois Central RR v. Illinois, 146 US 387
  - (c) Phillips Petroleum Company v. Mississippi

6) **Chapter Five: Individual Rights**

a) To a Clean Environment

The Ninth Amendment and Federal Law: “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” Amend. IX.

- i)
- ii) State Constitutional Law
  - (a) Wyoming
  - (b) Pennsylvania
  - (c) Hawaii
- iii) Transnational and International Law
  - (1) Nation States:
    - (a) Oposa (Phillipines)
    - (b) Mehta (India)
    - (c) Wangari (Kenya)
  - (2) Regional and Multilateral Concepts
- b) To Equal Protection Under the Law
  - i) Slaughterhouse Cases
  - ii) Omeachevarria v. Idaho
  - iii) Waimea Bay Ass’n v. Young (D. Hawaii 2006)
- c) To Privileges and Immunities Under Law
- d) To Due Process: “No person shall ... be deprived of life, liberty or property, without due process of law.” Amends. V and XIV, sec. 1 (“[N]or shall any state deprive any person of life, liberty or property, without due process of law.”)
  - i) Substantive Due Process
    - (1) Retroactivity
      - (a) U.S. v. Vertac (8<sup>th</sup> Cir. 2006)
  - ii) Procedural Due Process
    - (1) Notice and Hearing
      - (a) Reichley v. Penn. DEP (3<sup>rd</sup> Cir. 2006)
- e) To Speech

- i) In Public Parkland
    - ii) To press
      - (1) In re Special Grand Jury 89-2
    - iii) Commercial:
      - (1) PG&E
    - iv) Regarding Referendum
      - (1) Initiative and Referendum Institute v. Walker (10<sup>th</sup> Cir. 2006)
  
  - f) To Free Exercise of Religion
    - i) Smith
  - g) Against Unreasonable Search and Seizure
    - i) U.S. v. Faulkner
  - h) Against Retroactivity and Preclusion of Pre-Enforcement Review
- 7) Chapter Six: Judicial Authority:
- a) Standing and Mootness: Individuals
    - i) Sierra Club v. Morton, Secretary of Interior
    - ii) U.S. v. Students Challenging Regulatory Agency Procedures
    - iii) Lujan v. National Wildlife Federation
    - iv) Lujan v. Defenders of Wildlife
    - v) Brad Bennett, et al v. Michael Spear Friends of the Earth, Inc. et al. v. Laidlaw Environmental Services, Inc
    - vi) Nat'l Parks Conservat'n Assn. v. Manson (D.C. Cir 2005)
    - vii) Interfaith v. Honeywell
    - viii) Friends of the Earth v. Watson
    - ix) Texas Independent Producers v. EPA
    - x) Ranchers Cattlemen Action Legal Fund v. U.S. Dept. of Agriculture
    - xi) Earth Island Institute v. Ruthenbeck
    - xii) Nuclear Information and Resource Service v. NRC ((9<sup>th</sup> Cir. 2006)
  - b) States and state instrumentalities
    - i) Massachusetts v. EPA
    - ii) Nevada v. NRC (D.C. Cir. 2006)
    - iii) Utah Ass'n of Counties v. Bush
  - c) Political Question Doctrine
    - i) Baker v. Carr
    - ii) Dames & Moore v. Reagan