## ABSTRACTS

John J. Perona, *Beyond the Plant Pest Trigger: Law, Science and Rational Oversight Of Transgenic Crops*, 32 J. LAND USE & ENVTL. L. 75 (2016).

Regulation of transgenic crops in the United States is presently accomplished through the Plant Protection Act, which provides oversight based upon whether the new genetically engineered organism is classified as a plant pest. However, recent advances in agricultural biotechnology and the underlying science of molecular genetics severely challenge the rationale for this scheme, bringing about a new paradigm under which manufacturers of genetically modified commodities are able to bypass regulation almost entirely. The failure to properly regulate engineered crops threatens international commerce in these goods, and places the economic viability of the burgeoning organic agriculture industry at risk. An effective remedy should be possible by revising the coordinated framework for biotechnology regulation that is administered by the Office of Science and Technology Policy in the Executive Branch. This would correct deficiencies in oversight at the Department of Agriculture by requiring greater coordination with offices in the Environmental Protection Agency with expertise in genetic engineering.

Edward L. Rubin, *Rejecting Climate Change: Not Science Denial, but Regulation Phobia*, 32 J. LAND USE & ENVTL. L. 103 (2016).

At this juncture, it seems clear that the most significant impediment to a worldwide effort to combat the disastrous consequences of climate change is the United States. It seems equally clear that the reason why the United States has assumed such a counterproductive role is the existence of a set of attitudes within its political discourse that is generally described as climate change denial. To some extent, these attitudes come from elite groups, such as the Republican Party leadership and the energy industry, but these groups can only dominate public policy because their attitudes resonate with a large portion of the American public. This article explores the reasons why so many people in the U.S deny climate change.

The article rejects the familiar theory that climate change denial is part of a broader rejection of scientific principles by the American public. There is no such general attitude; Americans, including

political conservatives, generally accept scientific findings. Evolution is an exception because of specific conflict with religious doctrine not present in the climate change case. Some of the opposition to climate change relies on conspiracy theories, which Richard Hofstadter called the "paranoid style" of American politics. But this does not provide an explanation; like conspiracy theorists in general, climate change deniers do not condemn their opponents for using science, but rather endorse or even glorify science and condemn their opponents for using it incorrectly.

The more convincingly explanation is that climate change denial is allied to more general anti-regulatory attitudes that prevail among large segments of the public. But the opposition is not typical of mainstream conservatism. Rather than acknowledging the existence of a problem, while arguing that regulatory responses should be used with caution, the current conservative position is the complete refusal to acknowledge that a problem exists in the first place. This is what some survey researchers have described as a "boomerang" effect: in response to factual information linked to a normative recommendation, recipients of the information act in direct opposition to the recommendation. The reason they do so in this case is that a rational policy to combat climate change seems to demand a major alteration of society. Combatting climate change not only expands the scope of regulation, but involves regulations that effect a major transformation of our basic economic system and our personal lifestyles. Almost uniquely (toleration would be another case), it demands a transformation of internalized attitudes. This has produced what can be fairly described as a phobic reaction among many people, that is, an irrational and persistent fear of a given situation.

The article concludes by considering some policies that might circumvent this phobic reaction: mass transit for commuting, intelligent homes, and the encouragement of local food production. In each case, these policies create appealing options for people without demanding major changes in their lifestyle.

David Strifling, T*he Microbead-Free Waters Act of 2015: Model for Future Environmental Legislation, or Black Swan?*, 32 J. LAND USE & ENVTL. L. 151 (2016).

Environmental law scholars have long lamented that it has become unthinkable—or at least exceedingly unlikely—for Congress to pass significant new environmental legislation. This is not uniformly the case, as shown by the recent enactment of

Public Law 114-114, the Microbead-Free Waters Act of 2015 ("the Act"). Yet, more nuanced questions must be answered before the Act can be hailed as an important break in the legislative logjam. Was the Act insignificant, simply not worth the time and political currency necessary for opponents of environmental regulation to stop? Was it the fortuitous product of a unique confluence of circumstances, a "black swan"? Or could the circumstances surrounding its passage be instructive for future proponents of environmental legislation? This article asserts that the Act addressed a significant environmental issue, and that the strategic building blocks underlying the Act — including an emphasis on public health issues and broad stakeholder support driven by industry concerns about unfair competition and opposition to local legislation—may provide innovative and useful foundations for future efforts to pass environmental legislation.

Hampden Macbeth, Note, *Saving Obamacare Did Not Bake the Earth: Applying the Supreme Court's* King v. Burwell *Framework to the Conflicting Amendments at the Heart of the EPA's Clean Power Plan*, 32 J. LAND USE & ENVTL. L. 231 (2016).

In the wake of the Supreme Court's decision in *King v. Burwell* in 2015, there was widespread commentary and scholarship about what it meant for resolving statutory interpretation questions and speculation that it might pose a threat to the lawfulness of the Environmental Protection Agency's ("EPA") Clean Power Plan ("CPP"). The extensive commentary and scholarship has not provided an easy to use structure for understanding how the Court reached its decision in *King* that can be applied to *King*-like statutory interpretation questions in the future. This Note addresses this absence in the literature by developing a three-step process for understanding the Court's approach to the statutory interpretation question in King and applies it to one of the statutory interpretation questions—how to handle the conflicting Clean Air Act ("CAA") §111(d) amendments—at the heart of the ongoing CPP litigation. This analysis establishes that the CPP likely can survive review on this statutory interpretation question under the three-step process the Court used in *King*.

*King* involved a question of whether the Internal Revenue Service ("IRS") properly extended the use of tax credits to purchase health insurance under the Patient Protection and Affordable Care Act ("PPACA") to federally-run exchanges. To resolve this question, the Court first eschewed the traditionally deferential *Chevron v.*

*Nat. Res. Def. Council* framework for answering questions of statutory interpretation because it was a question of "economic and political significance" and it was not a question for the IRS. Second, the Court determined that the relevant language in the PPACA was ambiguous. Third, the Court found that the broad structure of the PPACA necessitated finding in favor of the government and allowing the use of the tax credits on federal exchanges in order to ensure that the PPACA functioned as Congress intended.

The CPP, which is currently being reviewed in the D.C. Circuit of Appeals and is likely to be reviewed by the Supreme Court, is being challenged as unlawful for many reasons. One of the challenges involves the conflicting §111(d) amendments to the Clean Air Act Amendments of 1990—one of which would prohibit EPA's CPP regulations and one of which would require EPA to take such action. Applying the above three-step process to this statutory interpretation question reveals that the second Supreme Court decision to find President Obama's signature domestic legislative achievement—the PPACA—lawful likely did not spell the end of the president's signature domestic regulatory achievement—the CPP—to reduce the carbon emissions that cause climate change. At Step One of *King*, the question is likely deserving of *Chevron* deference because it is a question that requires EPA's expertise in developing carbon regulations and interpreting the CAA and it is at most a question of economic, but not political, significance. In the unlikely event that the courts decide that EPA is undeserving of *Chevron* deference and proceed to *King* Step Two, the courts are likely to find that §111(d) is facially ambiguous. At *King* Step Three, the broad structure of the CAA likely requires finding in favor of EPA because allowing EPA to regulate carbon emissions under §111(d) is necessary for ensuring that EPA can regulate non-criteria, non-hazardous air pollutants in order to protect public health and the environment as is the purpose of the CAA.

Katherine Sloan, Note, *Death Without Dignity: The Misnomer of Euthanasia in the State Animal Shelter System and a Call for a No-Kill Florida*, 32 J. LAND USE & ENVTL. L. 261 (2016).

In 2011, a video surfaced that would shock and horrify animal lovers across the nation. The clip depicts thirty-two year old Beau Anderson (a state certified animal euthanasia specialist) wrapping a leash around the neck of a conscious dog to hold the same in an upright position standing on two legs, and systematically

jamming a hypodermic needle filled with poison into the chest of the animal as it cries. Anderson missed his target (the heart of the struggling animal) three times before finally landing the killing blow. He was then shown dragging the dead dog by the neck to a pile of other victims and discarding the body as one would a dirty rag.Unfortunately, this scene is all too common in the animal shelter arena in which millions of homeless animals are put to death in some of the most inhumane ways imaginable. This article addresses the process of shelter animal "euthanasia", the impropriety of the same, and serves as a call to action for Florida legislators to implement the processes necessary to make Florida a No-Kill state.