



Fall 2019/Vol. 2

## director's corner

**CLAUDIA POLSKY**

*Director & Assistant Clinical Professor of Law*



### Dear friends and alumni,

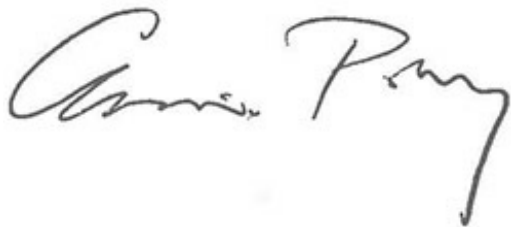
Along with pumpkin pie and the end of the academic semester, late November brings the release of the semi-annual “Unified Agenda” for federal agencies—an agenda confirming the Trump Administration’s disastrous, divisive, deregulatory program for the environment. Unapologetically, the Office of Management and Budget explains as its key priority reducing “the burden of regulation on the American people,” rather than protecting us from the consequences of unconstrained private action. How lucky we in ELC feel, then, to have a space in which to set our own counter-agenda.

Working at the state and local scale, ELC’s students and clients have been advancing policies for clean, affordable energy for disadvantaged communities in California’s San Joaquin Valley, and for equitable policies to promote climate change preparedness statewide. At the national level, ELC has been able to shine a light on federal agencies’ recklessness in the face of numerous environmental health threats. These range from the toxic chemicals central to the nation’s plan for responding to offshore oil spills to those hidden in everyday consumer products like shampoo and makeup. We have also worked with the media to magnify the impact of past ELC victories, such as forcing public disclosure of radiation risks from cell phones.

This fall, ELC capacity has been boosted by the addition of [Clinical Teaching Fellow Heather Lewis](#). Heather joined us after several years at Earthjustice’s California office, where her matters included litigation to protect communities from fossil fuel infrastructure development. One of these cases, challenging the development of a coal export terminal in Oakland, is pending decision in the Ninth Circuit.

ELC heads into 2020 with its largest student cohort yet, including J.D., LL.M., and M.P.P. students, and an undergraduate auditor-mentee exploring an environmental law career. We are excited to meet their sense of urgency with a sense of agency.

We thank you for your support, and hope you enjoy reading about our recent activities.



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## New Clinical Teaching Fellow

Clinical Teaching Fellow [Heather Lewis joined the clinic this fall](#) from Earthjustice's California office, where she litigated cases to protect communities from fossil fuel infrastructure development and to preserve California's endangered species and wild places. At ELC, Heather is supervising student teams on climate justice advocacy matters as California seeks to implement its renewable energy goals and address recurrent wildfire and power outage threats.



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## Environmental Justice

### Advocating for implementing affordable energy projects equitably

Following a historic ELC-assisted victory, where the California Public Utilities Commission committed [\\$56 million to invest in affordable energy](#) pilot projects in the San Joaquin Valley, the clinic continues to advocate to ensure these projects are implemented efficiently and equitably. In at least 170 communities throughout the Valley, low-income residents and residents of color have been denied access to safe and affordable energy. They instead rely on propane or wood burning to stay warm, cook, or heat water, both expensive and hazardous options. In partnership with three San Joaquin Valley community-based organizations—Self-Help Enterprises, Leadership Counsel for Justice and Accountability, and the Center for Race, Poverty and the Environment—the clinic has closely monitored the utilities' plans for implementing the pilot projects to make sure they reach all eligible residents, so participants can start paying far less for energy, and heat their homes in the winter without worrying about whether they can afford the bill.

Clinic students just filed [comments responding to the commission's latest affordability proposal](#), which adopted some of the changes the clinic proposed earlier this year. The clinic's comments push for a longer time period for the discount and wider access. The commission is expected to vote on the final rule by the end of the year.

### Representing low-income communities facing climate change

ELC is working to ensure that the voices and needs of disadvantaged and low-income communities are represented as the California Public Utilities Commission establishes first-of-their-kind guidelines for utilities on how to plan for climate adaptation. These communities have historically borne disproportionate health impacts of our energy infrastructure, and are hit first and worst by climate impacts, all while having the fewest resources to adapt. The clinic is representing the California Environmental Justice Alliance, a community-led alliance that represents residents across the state, as the California PUC considers how the state's major electric and gas utilities should prepare for and adapt to climate change. The ELC team and other Berkeley Law faculty, researchers, and students are influencing one of the most visible climate adaptation strategies—California's response to fire-related blackouts. [Read more.](#)

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## Environmental Health

## ELC announces intent to sue EPA over toxic plans for oil spill response

The Trump Administration is advancing plans to open 90% of the U.S. coastline to offshore oil drilling—the largest area in U.S. history. But there is a critical plan being neglected: the EPA's National Contingency Plan, which governs response to oil spills. This plan, which has not been updated in 25 years, relies heavily on the use of toxic chemicals to disperse spilled oil—chemicals that caused widespread illness and even death in oil-affected communities and among first responders in the BP Deepwater Horizon disaster. ELC's recent announcement of its intent to sue EPA to force a Contingency Plan update was [covered extensively in The Washington Post, on NPR, in a Guardian op-ed](#), and elsewhere; stay tuned for more developments in the New Year.

## Clinic director promotes cosmetics safety bill in San Francisco Chronicle

ELC students worked with client Breast Cancer Prevention Partners on California legislation to force public disclosure of known-toxic ingredients in cosmetics and personal care products in 2018. In 2019, this collaboration became [Senate Bill 574, the "Fragrance and Flavor Ingredient Right to Know Act of 2019."](#) The bill cleared its policy committees in both houses, but was held in its final Appropriations Committee. The bill had broad-based support and we expect it to be reintroduced in the new year. Director Claudia Polsky explains its importance in this [San Francisco Chronicle op-ed](#).

## ELC case triggers Chicago Tribune cell phone safety expose

In the wake of our victory in a case regarding the need for public disclosure of cell phone radiation risks, [ELC worked with a Pulitzer Prize-winning environmental reporter at the Chicago Tribune](#) willing to investigate the wireless industry's cell phone safety claims. The resulting expose describes how iPhone 7s and other popular phone models considerably exceed even the under-protective radiation standard that the Federal Communications Commission promulgated in the 1990s, when the phones are tested in conditions simulating how people actually use their phones. The article has already induced the FCC to say it will investigate, and has prompted a class action against cell phone manufacturers.

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## Inside the Clinic



**In the field:** Students toured Richmond, California with lifelong resident and organizer Andrés Soto of Communities for a Better Environment to explore how oil refinery pollution, racism, and city council politics define a community's challenges and its sources of resilience.



**In the classroom:** Students map the root causes of environmental problems in our clinic's work before discussing legal and policy leverage points to advance our clients' causes, and broader theories of social change.

**Reflections:** In [Student Voices](#), clinic students offer personal perspectives on many of our more than two dozen projects to date.

**More news:** [Read more about the Environmental Law Clinic's work](#)

[Donate to the Environmental Law Clinic](#)