

SAVING THE PLANET
ONE POND AT A TIME
SAVING THE PLANET
ONE FROG AT A TIME



GEORGETOWN LAW

St. O. U.S. Amicus Brief/ESA
Georgetown Law
Michael G. Kaplan



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In an aggressive deregulatory era for environmental protection, and with an unprecedented sense of urgency, environmental law scholars at Georgetown Law prepare the next generation of attorneys.

**LAUREN PHILLIPS (L'19)
WAS DREAMING
ABOUT THE
DUSKY
GOPHER
FROG.**



Which wasn't surprising, because nearly every waking moment during the spring semester of her second year at Georgetown University Law Center, Phillips was researching, contemplating, discussing or writing about the warty, dark-colored, lime-sized amphibian. The frog has been listed as a federally endangered species since 2001 and is on the cusp of becoming extinct. Once prevalent in Louisiana, Mississippi and Alabama, the frogs — fewer than 100 of them — can now be found in only a few small ponds in southern Mississippi, with just one pond showing consistent frog reproduction.

As a student at Georgetown Law's Institute for Public Representation (IPR), a clinic that operates like a law firm, Phillips was tasked with taking a first stab at writing a portion of an amicus brief for a case centered around the frog's habitat that was heard by the U.S. Supreme Court in Fall 2018. With each new detail that emerged, minutiae that likely wouldn't even make it into the final draft — for instance, that the frog makes a noise that sounds like snoring, or when threatened, it plays dead, covers its eyes with its forefeet and peeks out to see if the predator is still lurking — Phillips felt more driven to protect it, and to do everything in her power to help win the case.



“There were points when I had a crisis of confidence,” Phillips said after the brief was filed this summer. “It’s a Supreme Court amicus brief. If you think about that as a second year law student, it’s intimidating.” She imagined the justices reading the paragraphs she’d helped write and thought about resources at the clinic, a bare-bones public interest law firm, versus those of the legal team representing the petitioner, an international, multi-billion-dollar timber company. “There’s a feeling of being outgunned,” she said. “I worried about having missed something. And if we lose, what will happen to the frog? It feels really high stakes.”

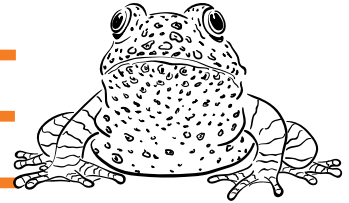
Frog experts aren’t the only ones concerned. Since the election of President Donald Trump, environmentalists have anticipated an aggressive deregulatory era for environmental protection. **It doesn’t take a law scholar or enterprising student to understand that removing regulations is much easier than reinstating them during a future administration: Once trees are cut, habitats are destroyed, species are extinct, there’s no turning back.** The era that environmentalists once feared is here, and the response for a growing number of young people is to learn how to fight back.

AN AMAZING RESPONSE

“We’ve seen an incredible uptick in students interested in environmental law,” said Sara Colangelo (L’07), director of Georgetown Law’s Environmental Law and Policy Program, who worked in the IPR’s environmental clinic when she was a student at the Law Center. Colangelo has been inundated with requests for information about Georgetown’s environmental law program by prospective J.D. and graduate students. In fact, the school is expecting its largest incoming class of graduate Environmental & Energy LL.M. students in Fall 2018. “The sense of urgency you hear on the news and in social discussion — we’re seeing that urgency reflected in our students. The best thing we can do in environmental academics is really prepare this next generation of attorneys.”

Ariel Nelson, a staff attorney and clinical teaching fellow at IPR, said the administration’s actions and threats have prompted what she called “an amazing response” from organizations, experts and students “to push back and fight on as many fronts as possible, from emission standards and endangered species to off-shore drilling and national monuments.” That’s the silver lining, said Nelson, who co-authored a forthcoming book chapter about the federal climate change lawsuit brought by Our Children’s Trust, a youth-centered activist initiative. “It’s heartening to see the environmental community doing that. Everyone is going all out, everywhere. And we want to be part of that.”

AN UNLIKELY SUPREME COURT CASE



In 1991, Professor Hope Babcock came to Georgetown Law to set up the environmental section within IPR. Today, in addition to teaching a course on natural resources, she serves as a senior supervising lawyer in the clinic, overseeing the work of two fellows (“junior partners”) and a handful of students (“associates”) in what she calls a “big learning factory.”

In her four-decade career in environment law, Babcock said she’s never been as concerned about the damage to our natural resources as she is now. In 2016, the day after the election, three students sat in her office, worried about what the new administration would mean for the environment as well as how it would play out for government jobs. She gave them her pep talk (“This is what we do. Look at all the work we’ll have!”) Then, she went out seeking the right projects for her clinic. She found the dusky gopher frog.

CRITICAL HABITAT

In January, the Supreme Court granted a petition for certiorari, filed by the timber company Weyerhaeuser, to reconsider a decision from a three-judge panel of the U.S. Circuit Court of Appeals for the Fifth Circuit that upheld a rule establishing the frog’s protections — 6,477 acres of critical habitat, including 1,600 privately owned acres in St. Tammany Parish, Louisiana. The Fifth Circuit held that the U.S. Fish and Wildlife Service (FWS) reasonably concluded that the St. Tammany Parish land is essential for recovery of the frogs — even though the frogs don’t currently live there. Weyerhaeuser is challenging the decision owing to the costly economic impact of calling this a critical habitat area. (Separate-



ly, in July, the Interior Department proposed a set of changes to the Endangered Species Act that would potentially make the regulatory process more developer and business-friendly.)

Environmental experts were initially surprised that the Supreme Court agreed to take on the case — and that FWS, representing the government, maintained its position despite the change of administration. Babcock had been following the case, and she volunteered the work of her clinic when the Center for Biological Diversity and the Gulf Restoration Network reached out to request amicus briefs from dozens of groups asking the Court to affirm the Fifth Circuit’s decision and support the frog’s habitat protections.

Putting together an amicus brief on behalf of environmental law professors, in support of both the government and the environmental nonprofits, was ideal for a number of reasons. Babcock had a personal history of working with the Endangered Species Act (she previously was general counsel of the National Audubon Society). The high-profile case was nationally significant and could have far-reaching implications. Finally, **it was a rare opportunity for the clinic — which Babcock calls a “capstone” for students interested in environmental law — to work with other law clinics: IPR would share the work with Vermont Law School’s Environmental Law and Natural Resources Clinic and Lewis and Clark Law School’s Earthrise Law Center. The dusky gopher frog — which was about to play a starring role at Georgetown — had landed in the right place.**

“THE WINDOW IS SHRINKING” FOR THE ENVIRONMENT

Phillips, 28, was an ideal candidate to write the brief. Born in the Bronx, the daughter of two city police officers, Phillips often boarded the Metro-North Railroad with her father and brother to escape the city. With lunch in their backpacks, they'd hike in the Hudson Valley and picnic in green spots overlooking the Hudson River. “We could never spend enough time outside,” Phillips said. “I appreciated nature from a young age. You recognize how fragile it is and become aware of the resources we consume.”

As an undergraduate at Yale, Phillips worked in the Office of Sustainability, helping to set up composting at the dining hall and create a clothing and furniture exchange to reduce landfill deposits. After graduation, she began attending protests in New York, rallying against fracking and educating her friends about climate change. She returned to the Bronx to teach grade school students with disabilities. In 2012, after Hurricane Sandy left many traumatized, displaced and hungry, she felt an overwhelming desire to work on the issues that were most directly harming her students.

“I wanted to study law that would help address the climate crisis,” Phillips said. The aftermath of the hurricane acutely illustrated the issues around environmental justice, and she understood first-hand that the brunt of environmental issues (pollution, extreme temperatures, flooding, etc.) were felt by the most vulnerable populations.

Phillips chose Georgetown because of its incredible location in the city where environmental laws are debated, adjudicated and enforced; its long-standing environmental program, led by professors including Babcock, Lisa Heinzerling, William Buzbee,

Edith Brown Weiss, Peter Byrne and Colangelo; and opportunities for hands-on experience, such as externships, the *Georgetown Environmental Law Review*, the Georgetown Climate Center led by Assistant Dean Vicki Arroyo (L'94) and the environmental litigation clinic.

By the time she arrived at the Law Center in the fall of 2016, Phillips was determined to get to work to address climate change.

“The window is shrinking,” Phillips said. “The progress made in previous administrations could disappear. The fact that we’d have four, maybe eight years of this administration that doesn’t think climate change is real has engendered a high level of worry.”

During her first year, Phillips worked at the Georgetown Climate Center, researching strategies that marginalized communities around the country are adopting to deal with climate change. In January 2017, she and her peers at the Center — and those at other environmental and climate change organizations — worked to save copies of documents on climate change adaptation that could disappear from the internet or be difficult to find after the transition to the new administration (many have disappeared from online government resources, but they are now linked to the Center’s site). In the fall of her second year, she completed a legal externship at the Sierra Club. She began full-time work at IPR as a student attorney in January 2018.

12 DRAFTS, 26 PROFESSORS, 1 AMICUS BRIEF

Phillips’ first job on the amicus brief was to draft an email to environmental law professors with expertise in the Endangered Species Act, soliciting interest in signing the forthcoming brief. Babcock provided names of professors, starting with those who had signed previous IPR briefs. Phillips set up a spreadsheet to track responses.

Then she turned her focus to writing. The case raises two questions, which the law school clinics divided: One deals with whether FWS properly determined whether the private land — historically occupied by the frog — is critical habitat; the other, which IPR tackled, concerns the agency’s discretionary authority and whether the decision *not* to exclude an area from a

critical habitat designation could even be reviewed by the Court. Among Phillips' challenges — how to argue that something is not reviewable when such an argument often runs counter to a public interest posture. The solution was crafting a very narrow argument focused on a specific section of the Endangered Species Act so the clinic staff wouldn't find themselves arguing a position that would hurt their chances in potential future cases.

Phillips watched YouTube videos of the frog, made a PowerPoint about it and outlined the arguments. She began writing, under close supervision, often late into the night. At each stage, Nelson and Babcock reviewed her work, providing written and oral feedback. They critiqued every sentence, added commas, challenged word choice and pushed her to think critically about the arguments the other side might make. The team sometimes met several times a day to discuss the brief, and they regularly sent drafts to the Vermont clinic for additional feedback.

"It's collaborative," Babcock said. "When students come out of the clinic experience, they should have the fellow and me sitting on their shoulders saying, 'Do I really need this adjective? How can I rephrase that?' It's the nuanced fine-tuning feedback that you don't get at a firm."

By the sixth draft, with more restructuring and tinkering on the horizon, Phillips wondered if she would ever get the brief right. The case — and its uncertain outcome — weighed heavily on her.

"The power of Fish and Wildlife to protect species and ensure that biodiversity gets priority over development goals has never been more critical," Phillips said. "Species move around in response to climate

change. **If this case goes the way we fear and the Supreme Court strikes this down, it will be a major blow to the Endangered Species Act."**

Nelson said the attention to detail required for this type of work can be stressful. "Students hear, ad nauseam, that they must pay attention to detail, but it's hard for them to know what we mean until they work on a brief from the initial outlining phase to the final filing," she said, noting that Phillips handled the pressure and the work wonderfully.

The clinic's 15-page, 8,140-word section of the brief ultimately went through 12 drafts, and 26 law professors reviewed and signed it. After the spring semester, Nelson fine-tuned the document and began working with a printer to make sure the final piece was formatted correctly for the Supreme Court — administrative tasks that typically would be handled by paralegals at a law firm. "The last thing you want," she said, "is to file your brief and have them reject it for a technicality."

For starters, the brief must be submitted in paper form — a booklet of card stock, similar in size to a playbill. It must include a table of authorities that lists every source referenced in the brief and a certificate of compliance stating, under penalty of perjury, the word count. The brief also must be filed electronically and emailed to the parties, so Nelson found herself in the surreal position of typing an email that began, "Dear Mr. Solicitor General..." Once the petitioner, the government and the environmental nonprofits submitted their briefs, Nelson reviewed them to make sure the clinics' amicus brief was filling in holes and adding new information; the Court disfavors the filing of amicus briefs that merely repeat arguments made by the parties. The clinics filed their brief July 3.

THE SUPREME
COURT HEARD
*WEYERHAEUSER
COMPANY V.
UNITED STATES
FISH AND WILDLIFE
SERVICE* OCTOBER 1,
THE FIRST DAY OF THE TERM





Lauren Phillips, Professor Hope Babcock and Ariel Nelson

Phillips and Nelson attended the arguments. That afternoon, a few blocks from the Court, Georgetown Law hosted a post-argument panel representing both sides of the case. Professor Lisa Heinzerling, who moderated the panel, also offered real-time insights for SCOTUSblog.com.

This fall, Phillips will begin an externship at the Natural Resources Defense Council. She said her IPR experience — working long days in an environmental law office, writing for hours on end — only cemented her long-term plans. She'd like to do exactly that after graduation. And if she finds herself in coastal Mississippi, she knows what she'll do. "I now understand so much about the dusky gopher frog, but I've never seen one in person," she said. "If I'm ever in that area, I need to try and find one."

ENVIRONMENTAL LAW AND POLICY PROGRAM

Georgetown's Environmental Law & Policy Program provides unmatched opportunities for students to study, gain practical experience in, and contribute to the environmental legal field.

ACADEMICS

We offer one of the most extensive range of courses worldwide. Our curriculum covers core and advanced topics in:

- U.S. and international environmental law
- energy law
- natural resources law
- land use and historic preservation law, and
- food law.

We also offer a one-year specialized **LL.M. degree in Environmental and Energy Law**. As part of this program, we established the UNEP-Georgetown Global Environment & Sustainability Law Fellowship which aims to strengthen the environmental capacity of lawyers worldwide. It is the only scholarship program of its kind around the globe.

EXPERIENTIAL OPPORTUNITIES

Our students also learn practical skills through an array of experiential learning opportunities:

- environmental litigation and policy clinics;
- practicum courses covering climate change, animal law, and more;
- the *Georgetown Environmental Law Review* and Environmental Law Society;

- the **Georgetown Climate Center**, which gives students the chance to work on cutting-edge climate and energy policy issues; and
- an unparalleled range of internships.

Indeed, internship opportunities abound in D.C.: Our students work for Congress, courts, government agencies, international organizations, non-profit environmental organizations, energy companies, and trade associations.

FACULTY

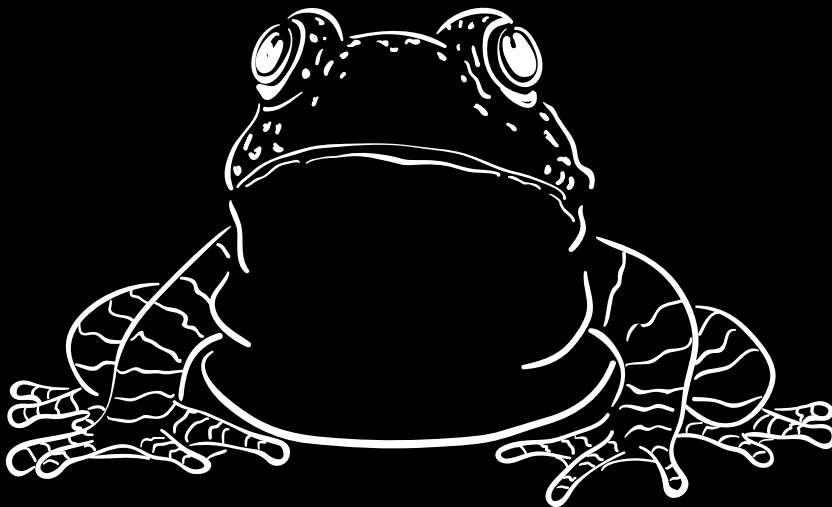
Our faculty provide critical legal knowledge and real-world experience to prepare our students for success. A snapshot of their influence includes:

- authoring winning briefs in landmark Supreme Court cases, such as *Massachusetts v. EPA*;
- serving on international bodies including UNEP's International Advisory Council on Environmental Justice;
- and serving in senior policy posts at federal and state agencies.

Further, our exceptional adjunct faculty are among the nation's leading practitioners of environmental and energy law. From these experts, such as a former FERC Commissioner, our students gain first-hand insights into today's most compelling issues.

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LAUREN PHILLIPS



Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001



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