The Issue: Myriad environmental challenges—most notably climate change—demand immediate action, yet governments have not addressed (or inadequately addressed) the problems with existing law and policy. Even when governments do adopt environmental laws and regulations, environmental laws often struggle to meet identified goals, as in the context of protecting biodiversity, and may fail to advance deeply connected social justice and equity values. Where governments fail to act, act too slowly, or act inadequately, private environmental governance provides a means to make crucial progress toward environmental and connected justice goals by preceding, supporting, and complementing traditional, public, environmental law and policy.

Private environmental governance refers broadly to efforts by the private sector to induce action to reduce environmental harms even absent government requirements to do so and includes everything from corporate adoption of environmental, social, and governance (ESG) criteria to socially responsible investing and shareholder proposals to compel environmentally responsible corporate conduct and private certification and standards systems. It includes decisions by small businesses to eschew products made from plastic and efforts to cause consumers to choose green products. It includes multinational corporations adopting renewable power policies and requiring suppliers to meet climate and energy efficiency standards. And it includes law students, organized through Law Students for Climate Accountability, declining to work with certain law firms to encourage those law firms to voluntarily change when and how they represent fossil fuel interests.

Although private environmental governance does not, by definition, directly mandate private environmental conduct through government laws or regulations, law can and does contribute significantly to private environmental governance, including, for example, by requiring

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1 For a more complete definition and background of private environmental governance, see Michael P. Vandenbergh, Private Environmental Governance, 99 CORNELL L. REV. 129, 146 (2013) (defining private environmental governance as “actions taken by non-governmental entities that are designed to achieve traditionally governmental ends such as managing the exploitation of common pool resources, increasing the provision of public goods, reducing environmental externalities, or more justly distributing environmental amenities. The actions taken by these non-governmental entities often include the traditional standard-setting, implementation, monitoring, enforcement, and adjudication functions of government.”). See also Sarah E. Light & Michael Vandenbergh, Private Environmental Governance, in ENCYCLOPEDIA OF ENVIRONMENTAL LAW V. II (Lee Paddock, Nicholas Bryner, & Robert Glicksman eds. 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2645953.
environmental investigations and performance in many types of supply chain and other commercial contracts, requiring disclosure relating to carbon emissions and climate change risk, and policing environmental claims made to consumers. And private environmental actions can, in addition to supplementing existing law and achieving on-the-ground environmental benefits, contribute to the future adoption of comprehensive public laws by reducing the cost of compliance, creating a constituency that will benefit from environmental governance, and by offering a response that bypasses opposition to environmental action by many moderates and conservatives. Private environmental governance should thus be understood as a policy tool embedded within and in conversation with more traditional environmental laws and policies.

**The Problem:** We challenge you to propose an innovative private environmental governance intervention with the potential to spur meaningful on-the-ground environmental progress. The challenge is broad and successful proposals could take many forms, including, for example:

- Working with a local business to develop a concrete strategy to “green” its operations beyond applicable federal, state, or local government requirements.
- Developing an innovative approach for an individual business or industry to meet a recognized environmental goal.
- Drafting model supply chain contract provisions for corporate, university, or other institutional buyers to induce improved environmental performance in sectors that are difficult for governments to reach, such as non-point pollution or carbon emissions by farmers or emissions by industrial facilities in countries that are not adopting climate mitigation requirements.
- Crafting model environmental provisions for private contracts other than supply chain contracts, such as for commercial real estate leases, commercial loans, etc., along with the design of the initiatives that can induce companies to adopt them.
- Developing a strategy to harness investor, lender, and insurer pressure for carbon emissions reductions to reach companies that are not publicly traded and thus not subject to SEC securities disclosure requirements.
- Drafting a shareholder resolution to be offered by (a) shareholder(s) in a specific company or industry.
- Crafting environmental standards and guidelines for an industry in which such standards do not yet exist.
- Developing an advocacy group strategy to harness employee recruitment and retention to induce companies to participate in private climate mitigation efforts such as the Science Based Targets Initiative (SBTi).
- Creating an innovative method for small businesses to coordinate to achieve environmental goals.
- Proposing a new disclosure regime for an industry to support consumer activism, such as a private labeling and certification system modeled on the Marine Stewardship Council (for fish) or Forest Stewardship Council (for forests).
- Suggesting a suite of policies that employers can use to change individual behaviors with significant environmental effects, such as corporate employee energy benefits that can reduce energy use and carbon emissions arising from the shift toward working-from-home.
A key requirement is that the proposal should constitute private environmental governance as opposed to public lawmaking (draft legislation to mandate performance standards for an industry category would not, for example, qualify). Proposals should be grounded in and explain existing law and any relevant and significant voluntary ESG or similar standards and explain how the proposed intervention will intersect with these existing measures. Importantly, the proposed intervention need not be sufficient, standing alone, to solve a problem, but it should contribute to the solution, perhaps in conjunction with more traditional environmental policy tools. The proposal should also consider how the private action might spur public action or perhaps even undermine public support for government action that will also be necessary. And recall that individuals—as consumers, as sources of pollution—are also actors engaged subject to influence through private environmental governance.

**Submission guidelines:**

- Participating teams should propose a specific, private environmental governance intervention; identify the environmental problem(s) the intervention would address, including the relevant private actor’s contribution to the problem(s); situate the intervention within existing law, voluntary standards, and theories of private environmental governance; identify steps and actors necessary to implement the intervention; and clearly explain how the intervention would effect beneficial environmental change.

- Teams should clearly explain how the Hack award funds could be used to support implementation of the team’s proposed intervention (for example, by supporting the development of a webinar or website, funding travel to meet with interested industry representatives, funding the costs of a local business’ implementation of a new environmental protocol, etc.).

- The Hack encourages teams to consult and work with (even include as members of their team) groups or individuals drawn from a variety of fields whose contributions support the team’s work. Teams are welcome to work with government officials, private businesses, or community groups. Note, however, that submissions to the Hack are public. Confidential business information should not, therefore, be included in submissions.