Teresa R. Wagner, a conservative Republican who applied for a faculty job at Iowa and was turned down, thinks so:

> Ms. Wagner, who graduated from the law school in 1993 and had taught at the George Mason University School of Law, was not hired. She sued, alleging discrimination because of her political beliefs. Late last month, a unanimous three-judge panel of the United States Court of Appeals for the Eighth Circuit, in St. Louis, ruled that her case should go to trial, saying she had presented enough evidence to suggest that "Dean Jones's repeated decisions not to hire Wagner were in part motivated by Wagner's constitutionally protected First Amendment rights of political belief and association."

I have no information other than the Times piece about the Iowa case. It wouldn't surprise me, though, if there was a non-trivial amount of ideological discrimination occurring in law school hiring around the country — even though it takes a very different form than that alleged by Wagner, viz. direct, intentional reluctance to hire because of ideology.

Just about any piece of scholarly work — and particularly legal scholarship — relies upon assumptions about the way the world works. It's unavoidable: you can't reinvent the wheel in every piece. But if the majority of people in a department have certain background assumptions, a candidate whose work carries different assumptions will be seen as having significant gaps and flaws. A candidate whose work contains the same assumptions will not fall victim to such assumptions, because those assumptions will seem simply like "common sense" or at least "reasonable." This is why faculties tend to reproduce themselves, even if there is nothing conscious occurring.

In contemporary environmental law, the problem might be worse because Movement Conservatism has so totally gone off the rails when it comes to environmental issues. The problem is that in environmental law, if you are a conservative with an actual goal of influencing policy, you might have to say things that are quite inane. You might have to endorse Congressional efforts to block "farm dust" regulation. Or to get rid of energy-saving light bulbs. Or deny anthropogenic climate change. But if you do that, it will be hard to get hired at any law school worth its salt. Those law schools will "discriminate" against

conservatives, but that would be discrimination simply based upon a scholarly record. No one who denies anthropogenic climate change would or should get a faculty position.

Well, what if you don't seek to be a Washington insider? The problem is that what now passes for the " mainstream conservative" environmental position ranges from neglect to abuse. So if you advocate positions that a few years ago would have been thought of as Republican environmental positions — say, cap-and-trade, or even a carbon tax — you still run the risk of not being thought of as a conservative, because those positions no longer are considered conservative. Rock-ribbed conservative South Carolina Congressmember Bob Inglis advocated a revenue-netural carbon tax, and lost his primary by more than 40 points. David Frum favors a carbon tax, and has been written out of the movement. Put another way, conservative environmental scholars have to deal with discrimination as much as from their supposed ideological allies as by the "liberal establishment."

Can a conservative environmental scholar avoid embracing the anti-environmental stance of Movement Conservatism and still maintain his or her standing in the Movement? Yes; some do. But it is a difficult balancing act. It's hard enough to be a productive scholar without also having to look over your shoulder — or, given what I have said above about assumptions, over *both* shoulders. It's little wonder that, under these circumstances, there are fewer conservative environmental law scholars than I would like.

As I see it, we have three choices: 1) affirmative action for conservatives, which might counteract the problem of assumptions; 2) a return to sanity within Movement Conservatism; or 3) maintenance of the status quo. The first would be, shall we say, ironic, and unlikely give conservatives' supposed hatred of preferences. The second would be the best solution, but is unlikely in the foreseeable future. So the status quo it is. Which in some ways is the most "conservative" result of all.