

Draft, 12/26/24

CLIMATE CHANGE LAW – E598

SYLLABUS

University of Washington School of Law

Winter Quarter, 2025

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Office Hours: Before or after class, or by appointment.

Mondays and Wednesdays, 3:30-5:20

Class Overview:

The purpose of this class is to introduce students to the fast-evolving body of law aimed at mitigating the impacts of climate change. We'll identify the science-based goals of that effort, and then start with the role played by state governments, then the federal government, and finally international agreements. Along the way, we'll see how climate change law is affecting virtually every sector of our modern economy, including energy, transportation, manufacturing, agriculture, and the buildings in which we live and work.

In week 1, we'll discuss this overview of the class, and ask you to share your climate-related background (if any) and what you'd like to get out of this class. We'll then turn to the basic science of climate change, describe how energy is produced, transported, and used in the U.S. economy, and provide a status report on the progress that's being made toward decarbonization.

In week 2, we'll start with state law, focusing on Washington State because it now rivals California in terms of having the most comprehensive and ambitious climate laws in the nation. We'll begin with the state's 2019 Clean Energy Transformation Act (CETA), which requires utilities to emit net-zero carbon by 2050. Along the way, we'll survey the evolution of the U.S. electric utility industry over its almost 150 year history.

In week 3, we won't have class on Monday because of MLK's birthday. On Wednesday, we'll transition to the 2021 Climate Commitment Act (CCA), which created a cap and trade system that has already produced over \$2.25 billion in revenue for climate-related projects. Unlike CETA, which is limited to utilities, the CCA is economy-wide, meaning that it covers about 75%

of the state's total emissions by regulating the roughly 160 largest GHG emitting facilities across every major industry.

In week 4, we'll continue with the CCA, including the provision directing the Washington Department of Ecology to pursue linkage with the cap and trade program currently administered by California and Quebec. We'll also discuss the emergence of voluntary carbon markets, and how they may eventually merge into compliance carbon markets like those created the CCA.

In week 5, we'll pivot to Washington's Clean Transportation Fuels Act, which uses a cap and trade approach to reduce greenhouse gas (GHG emissions) from the transportation sector. We'll then unpack Washington's Healthy Environment for All Act (HEAL)), which requires consideration of environmental justice when addressing climate change and other environmental matters. We'll then examine the Energy Facility Site Evaluation Council (EFSEC), charged with the crucial role of siting energy projects, particularly wind, solar, and battery storage. We'll round out our coverage of state law by touching on the efforts to decarbonize the building sector, including pending litigation regarding Initiative 2066, which passed last November but is now being challenged on state constitutional grounds.

In week 6, we do a big pivot from Washington State to the role of federal agencies, beginning with EPA's role under the Clean Air Act. We'll cover the arc from the Supreme Court's 2006 decision in *Massachusetts v. EPA* (holding that the EPA must regulate greenhouse gas emissions under the Clean Air Act) through the Supreme Court's 2022 decision in *West Virginia v. EPA* (invalidating GHG regulations proposed by EPA under the same statute). With that background, we'll discuss how Trump's EPA is likely to proceed. We'll then crack the door on the Inflation Reduction Act (IRA), which is boosting the clean energy transition by providing hundreds of billions of dollars of tax incentives for everything from huge wind and solar projects to geologic carbon sequestration to residential heat pumps.

In week 7, we won't have class on Monday because of Washington's birthday. On Wednesday, we'll dive deeper into the IRA. It's off to a great start, but will Trump and Congressional Republicans carry through on their talk of killing it? And if that's not scary enough, what about the role of the Federal Energy Regulatory Commission (FERC), an independent agency that regulates the wholesale transportation and marketing of electricity and natural gas? If FERC can't speed the process of connecting new wind, solar, and energy storage facilities to the transmission system, and can't expand the capacity of that transmission system to carry more electricity, will that choke the development of projects incentivized by the IRA?

In week 8, On Wednesday, we'll focus on the Securities and Exchange Commission (SEC), which under Biden had aimed to require large corporations to disclose both their GHG emissions and their vulnerability to climate change, only to be foiled by the Supreme Court and the election. But wait, there's a Plan B – California has stepped into the breach by enacting legislation arguably broader than the proposed SEC rule.

In week 9, we'll turn to the National Environmental Policy Act of 1969 (NEPA), sometimes called the "Magna Carta" of environmental law. It requires all federal agencies to consider environmental impacts before permitting projects that could significantly affect the quality of the environment. The application of NEPA to climate change has become extremely controversial, including a case pending before the Supreme Court. We'll then turn to litigation, both in U.S. and abroad, brought by citizens against their own governments for not doing enough, and by

state and local governments against large emitters. After years of mostly failure, these efforts are beginning to gain traction in the courts.

In week 10, we'll wrap up with the international legal framework around climate change. How did we get from the 1992 UN Framework Convention on Climate Change to last Fall's conference of parties (COP) in Baku, Azerbaijan? Are we making meaningful progress under the 2015 Paris Climate Agreement? And if not, do we need a different approach?

Learning Objectives – To Understand:

- The basic causes and impacts of climate change.
- Key climate change terminology, such as “mitigation,” “adaptation,” “carbon dioxide equivalency,” “geologic sequestration,” and “geoengineering.”
- The role of Congress and state legislatures in addressing climate change through legislation and oversight.
- The role of federal and state agencies (e.g., EPA, FERC, and corresponding state agencies) in addressing climate change through regulation and enforcement.
- The role of the courts in interpreting statutes, regulations, and the Constitution in the context of efforts to address climate change.
- The international legal framework (i.e. the 1992 U.N. Framework Convention on Climate Change and the 2015 Paris Agreement).
- The role of the private sector in addressing climate change (e.g., through internal goal-setting, supply chain contracts, technological innovation, deployment of capital, and policy influence).

Textbook: There's no required textbook; readings will be provided through links for each class, as shown below. In addition, an advance copy of a forthcoming chapter on Washington climate change law in the State Bar Association's Real Property Deskbook will be posted on Canvas; it's referenced below as “WSBA Climate Chapter.” We're also big fans of David Roberts' [podcast, Volts.](#)

Access and Accommodation:

Your experience in this class is important to us. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability@uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions.

Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

Religious Accommodations:

Washington state law requires that UW develop a policy for accommodation of student absences or significant hardship due to reasons of faith or conscience, or for organized religious activities. The UW's policy, including more information about how to request an accommodation, is available at [Religious Accommodations Policy](https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/) (<https://registrar.washington.edu/staffandfaculty/religious-accommodations-policy/>) ([Links to an external site.](#))[Links to an external site.](#). Accommodations must be requested within the first two weeks of this course using the [Religious Accommodations Request form](https://registrar.washington.edu/students/religious-accommodations-request/) (<https://registrar.washington.edu/students/religious-accommodations-request/>) ([Links to an external site.](#))[Links to an external site.](#)

Grading:

40% -- 8 short quizzes (5 multiple choice questions each).

40% -- A paper on a climate law-related topic of your choosing, within the scope of our class; 12-15 pages, double-spaced, with footnotes or endnotes. The structure of the paper must be in three sections: (1) a description of a climate-related problem that at least has a legal component; (2) a description of 2-4 potential solutions to the problem; and (3) identification of your preferred solution and explanation as to why it is the best. **Due:** March 15 (two days before exams begin).

20% -- Class participation.

Research Services Librarians:

The Research Services librarians are legal research experts who are dedicated to helping students with research questions, database training, locating academic resources, etc. Visit the library's [UW Law Students page](#)[Links to an external site.](#) for more information about their services generally. To get help, you can email the Research Services librarians directly at lawref@uw.edu.

Law School Attendance Policy:

Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance. At any time after the fourth week of a course, a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor's so indicating to the Academic Services Office.

Course Evaluation:

An opportunity for evaluation of the course will be available online during the last week of class.

Guests and Visitors:

Guests and visitors are always welcome.

Review Session:

To be arranged upon request.

Week One

Monday, January 6 (Class 1) – Introduction & Overview

After introductions and a conversation regarding student backgrounds and interests, we'll provide an overview of the class. We'll then discuss:

- (a) What is the greenhouse gas (GHG) effect, and why does it matter?
- (b) What is the Keeling Curve, and why is it so important?
- (c) What is the goal for reducing worldwide GHG emissions by 2050, and why?
- (d) Are we on track to reaching that goal?

Readings:

Start by watching this [short video on the Keeling Curve](#), which shows the history of rising carbon dioxide levels in the world's atmosphere. Then spend some time with these 30 climate-related [graphs gathered by the NYT](#), and this [NYT story](#) on the most recent Synthesis Report of the U.N. Intergovernmental Panel on Climate Change (IPCC).

Wednesday, January 8 (Class 2) – Energy System Overview

We'll discuss the crucial role that our evolving energy system plays in the effort to mitigate GHG emissions in the U.S. Consider:

- (a) How does the U.S. electrical grid work?
- (b) How do the various fuels used to generate electricity compare in terms of GHG emissions?
- (c) How is the mix of fuels changing, and how is the Inflation Reduction Act (IRA) influencing those changes?
- (d) How are these trends likely to be influenced by the incoming Trump Administration?

Readings:

Watch this [short video](#) on the electricity grid (no need to take the quiz at the end), and read this [Washington Post story](#) on Biden's most recent goals and the potential effects of the Trump Administration.

Week Two

Monday, January 13 (Class 3) – CETA

We'll briefly review the arc of Washington State climate change law since 2006, starting with Initiative 937 (the Energy Independence Act), a renewable portfolio standard and conservation mandate adopted by the voters that year. We'll then touch on two failed initiatives: Initiative 732, a revenue-neutral carbon tax rejected by voters in 2016, and Initiative 1631, a revenue-positive carbon fee rejected by voters in 2018. We'll then introduce Washington's Clean Energy Transformation Act (CETA), enacted by the Legislature in 2019. Consider these questions:

- (a) How is CETA different from the initiatives that failed in 2016 and 2018?
- (b) What entities are regulated under CETA?
- (c) What GHG reduction milestones are the regulated entities required to meet between now and 2050?
- (d) What are the penalties for violating CETA?

Readings:

Review Section II of the WSBA Climate Chapter, then begin reviewing CETA itself, [RCW 19.405](#).

Wednesday, January 15 (Class 4) – More CETA

In this class, we'll dive deeper into CETA, including a short history of the electric utility industry, particularly the differences between investor-owned utilities (IOUs) and publicly-owned utilities. As you prepare, consider:

- (a) Who enforces CETA, and how?
- (b) Does CETA provide alternative means of compliance?
- (c) Does CETA provide regulatory "safety valves" in case things go awry?
- (d) How does CETA benefit "highly-impacted communities" and "vulnerable populations"?

Readings:

No additional readings.

Week Three

Monday, January 20, no class (MLK's Birthday)

Wednesday, January 22 (Class 5) – The Climate Commitment Act (CCA)

In this class, we'll pivot to the CCA, Washington's GHG cap and trade program, only the second one in the U.S. As you prepare, consider these questions:

- (a) What entities are regulated under the CCA?
- (b) How does cap and trade work generally?
- (c) How does the auctioning of GHG allowances work?

- (d) Where do the auction revenues go, and what can they be used for?
- (e) How are utilities treated, given that they're already regulated under CETA?
- (f) Why and how are certain industries given special treatment?

Readings:

Review Section III of the WSBA Climate Chapter, then review the overall GHG reduction goals set in [RCW 70A.45.020](#), and the CCA itself, codified primarily in [RCW 70A.65](#).

Week Four

Monday, January 27 (Class 6) – More CCA

In this class, we'll finish our coverage of the CCA. Among other things, we'll focus on enforcement, regulatory safety valves, the opportunity for linkage with California and Quebec's cap and trade program, and the environmental justice provisions. Consider:

- (a) What are the penalties for violating the CCA?
- (b) Does the CCA provide regulatory "safety valves"?
- (c) What prerequisites must be met before Washington can link with California and Quebec?
- (d) How does the CCA benefit "highly-impacted communities" and "vulnerable populations"?

Readings:

Continue your review of the CCA with the above questions in mind.

Wednesday, January 29 (Class 7) – Decarbonization Efforts Adjacent to Cap & Trade

We'll discuss the emergence of voluntary carbon markets, and how they relate to compliance obligations like the CCA. We'll also touch on the role that large corporations are playing in the clean energy transition. Questions:

- (a) What's the difference between a voluntary carbon market and a compliance carbon market?
- (b) Why would anyone bother participating in a voluntary carbon market?
- (c) What's the difference between an allowance and an offset?
- (d) Why do corporations care about the GHG emissions of their suppliers?

Readings:

Read this [overview of voluntary carbon markets](#), and this [blog](#) on how companies are driving decarbonization through their supply chain contracts.

Week Five

Monday, February 3 (Class 8) -- Clean Fuels + Environmental Justice

We'll turn to Washington's 2021 Clean Transportation Fuels Act, which uses a cap and trade approach to reduce GHG emissions from the transportation sector, and Washington's Healthy Environment for All Act (HEAL), which requires consideration of environmental justice when addressing climate change and other environmental matters. Consider:

- (a) Why is the transportation sector such a large percentage of Washington's total GHG emissions?
- (b) Who is regulated by the Clean Fuels Program?
- (c) How does the Clean Fuels Program compare to the CCA?
- (d) What is the role of the Environmental Justice Council?
- (e) When an agency is considering significant action, what must it do to comply with the HEAL Act?

Readings:

Review Sections IV and V of the WSBA Climate Chapter, then the [Clean Transportation Fuels Act](#), and the [HEAL Act](#).

Wednesday, February 5 (Class 9) – Energy Facility Siting + The Transition from Gas in Buildings

Lastly, as we round out our tour of Washington State law, we'll examine the Energy Facility Site Evaluation Council (EFSEC), charged with the crucial role of siting energy projects, particularly wind, solar, and battery storage. We'll also cover the efforts to decarbonize the building sector, including pending litigation regarding Initiative 2066. That initiative overturned recent legislation to facilitate Puget Sound Energy's transition from gas to electricity, but is now being challenged on state constitutional grounds. Consider:

- (a) What is EFSEC, and what types of energy projects fall within its siting jurisdiction?
- (b) What is the EFSEC process for making a siting decision?
- (c) If the EFSEC process working fast enough?
- (d) How can we transition buildings from gas to electric without unfairly harming utilities?

Readings:

Review Sections VII of the WSBA Climate Chapter, regarding the EFSEC process.

Week Six

Monday, February 10 (Class 10) – The Role of EPA

This week we do a big pivot from Washington State law to the role of federal law and federal agencies, beginning with EPA's role under the Clean Air Act. We'll cover the arc from the Supreme Court's 2006 decision in *Massachusetts v. EPA* (holding that the EPA must regulate greenhouse gas emissions under the Clean Air Act) through the Supreme Court's 2022 decision in *West Virginia v. EPA* (invalidating GHG regulations proposed by EPA under the same statute). Consider:

- (a) What is the endangerment finding, and why is it important?
- (b) Is it possible for the Trump Administration to overturn the endangerment finding?
- (c) What is the major question doctrine, and where did it come from?
- (d) How does the major question doctrine change the balance of power among Congress, the President, and the judiciary, and how does that affect future efforts to address climate change at the federal level?

Readings:

Review [Massachusetts v. EPA](#), [West Virginia v. EPA](#), and this [blog](#) about the latter.

Wednesday, February 12 (Class 11) – The Inflation Reduction Act

After wrapping up EPA, we'll turn to the IRA, which is boosting the clean energy transition by providing hundreds of billions of dollars of tax incentives for everything from huge wind and solar projects to geologic carbon sequestration to residential heat pumps. But with Republicans in control of both Congress and the White House, how much jeopardy is it in? Consider:

- (e) Why did Congress choose tax incentives instead of tighter regulation of GHG emissions?
- (f) In addition to incentivizing clean energy, what other policy goals are advanced by the IRA?
- (g) What parts of the IRA are the Republicans most likely to try to repeal?
- (h) Instead of repealing the IRA, how could Trump simply frustrate its effectiveness through agency action or inaction?

Readings:

Review this [summary](#) of the IRA, and then watch this [webinar on whether the IRA is meeting its goals](#) two-plus years after its enactment.

Week Seven

Monday, February 17 -- No class because of Washington's birthday

Wednesday, February 19 (Class 12) – More IRA + The Role of FERC

Once we've covered the basics of the IRA, we'll turn to the closely-related topic of FERC, an independent agency that regulates the wholesale transportation and marketing of electricity and natural gas. In particular, we'll examine recent FERC rules intended to expedite the process of connecting new electric generating facilities to the high-voltage transmission system, and expanding the capacity of that transmission system to carry more electricity between and across

regions. Failure of either of these rules would choke development of the wind and solar projects incentivized by the IRA. Consider:

- (a) How effective will the IRA be if new clean energy projects can't get connected to the transmission grid?
- (b) How did FERC's recent rulemaking change the process of interconnecting energy facilities to the transmission grid?
- (c) How effective will the IRA be if we don't dramatically expand the capacity of the transmission grid?
- (d) How did FERC's recent rulemaking change the transmission planning process?

Readings:

Read this summary of [FERC's new interconnection rule](#), and this summary of [FERC's new transmission planning rule](#).

Week Eight

Monday, February 24 (Class 13) -- The Role of the SEC and California's Recent Disclosure Laws

[Add overview of class]

Readings:

Watch this [hour-long webinar](#) on California's climate change disclosure laws, and briefly review this [blog on supply chain contracts](#) that we talked about in an earlier class.

Wednesday, February 26 (Class 14) -- NEPA

We'll turn to the National Environmental Policy Act (NEPA), and a case argued December 10 before the U.S. Supreme Court regarding the extent to which federal agencies must consider climate change when taking major actions. We'll also discuss a recent D.C. Circuit case holding that all of the NEPA regulations issued by the Council on Environmental Quality (CEQ) since the early 1970s are unconstitutional and therefore unenforceable. Consider:

- (a) What is the basic purpose of NEPA?
- (b) What agency actions does it apply to, and what must the agency do?
- (c) How do you think agencies should treat climate change under NEPA?
- (d) Why didn't Congress expressly authorize CEQ to issue regulations, and should that matter?

Readings:

Review this [summary](#) of *Seven County Infrastructure Coalition v. Eagle County*, regarding the application of NEPA to climate change, and this [D.C. Circuit Court of Appeals decision](#) in *Marin Audubon Society v. FAA*, upending all NEPA regulations issued by the CEQ.

Week Nine

Monday, March 3 (Class 15) Litigation Brought by Citizens

We'll turn to a recent landmark case out of Montana, where the State Supreme Court held that citizens have a right to a clean environment under Montana's Constitution. This comes after many years of almost total failure by Our Children's Trust, a legal advocacy group that has pursued several other legal theories in other courts. Consider:

- (a) What does the Montana Constitution say, and how did that come about?
- (b) What state legislation were the plaintiffs complaining about, and why?
- (c) How many other states have similar constitutional provisions, and are other states in the process of adopting them?
- (d) Does this case have any weight in states without similar Constitutional provisions, or in cases brought under the U.S. Constitution?

Readings:

Read this [NYT story](#) about the Montana Supreme Court's December 18, 2024 decision, and then [the decision itself](#). Similar litigation is also pending before the [New Mexico Court of Appeals](#). Then compare to [this Ninth Circuit decision](#) rejecting a claim that the federal government violated the plaintiffs' U.S. Constitutional rights by allowing dangerous levels of GHGs.

Class 16

Wednesday, March 5 (Class 16) -- Litigation Brought by State and Local Governments

We'll also discuss the status of litigation brought by state and local governments against large emitters.

Readings:

[Review this Second Circuit decision](#) in a case brought by the City of New York against several oil companies under the common law. [Add some foreign cases in the same vein.]

Week Ten

Monday, March 10 (Class 17) – International Climate Law: How Did we Get Here?

We'll review the history of international agreements addressing climate change, from the 1992 UNFCCC Agreement through the Paris Agreement.

Readings:

Review this [chronological history](#) of international climate change agreements, focusing on 1992 through 2007.

Wednesday, March 12 (Class 18) International Climate Law: Where are we Going?

Have we made meaningful progress from the 2015 Paris Agreement to the recent conference of parties (COP) in Baku, Azerbaijan? If not, do we need a different approach?

Readings: