***The Supreme Court Confronts Climate Change***

**Spring 2021**

**Professor Daniel Farber**

**1 unit**

**Overview.** In 2007, the Supreme Court decided its first case relating to climate change. Massachusetts v. EPA was a historic ruling. It marked the first time a branch of the U.S. government official acknowledged the reality of climate change. The Court rejected the Bush Administration’s excuses for inaction and started the U.S. down the road to reduce emissions.

In this seminar, we’ll try to understand this litigation: the historical context, the strategies of the environmental lawyers, the legal issues, and the dynamics within the Supreme Court. We’ll also look at how EPA responded to the decision under Presidents Obama and Trump, and where the future may lead. This course is designed for students who have not taken other environmental law courses, and no environmental background is required. Students will be required to write two very short papers (3 pp. apiece) based on the readings and current events.

This course meets every other week for 7 sessions: January 25th, February 8th, February 22nd, March 8th, March 29th, April 12th and April 26th

This class is designed to give students an extra opportunity to engage despite our remote form of interaction. In light of that goal, this class will expect real-time attendance and may not be recorded. The total written work requirement will be no more than 8 double-spaced pages.

**Readings.** Readings will be excerpts from Richard J. Lazarus, *The Rule of Five: Making Climate History at the Supreme Court* (2020), and additional material posted on bcourses (including the full Supreme Court opinion).

**Goals.** After completing this class, you should have an understanding of an important Supreme Court opinion and some of the basics of administrative and environmental law.

**Links.** The Zoom information for ***the class*** is:

<https://berkeley.zoom.us/j/95085890724?pwd=OFU4YzhNeXRvenBFRTJXUnNSeEdrZz09>

Meeting ID: 950 8589 0724

Passcode: 104263

One tap mobile +12133388477,,95085890724#,,,,,,0#,,104263# US (Los Angeles)

**Office Hours:** My office hours are 3:30-4:30 on Tuesdays.

The Zoom information for ***office hours*** is:

<https://berkeley.zoom.us/j/97517134001?pwd=cnFTRmplN0RneStVRDZ4a3Nyc0wwZz09>

Meeting ID: 975 1713 4001

Passcode: 443842

**Modifications for distance learning**. Class will be held entirely on Zoom.

**Writing requirements.** You will be required to submit two written papers, three pages each, dealing with one of the topics discussed in class. You should focus on providing an additional perspective or critique of the material, not simply summarizing the class. The first paper is due March 22. The second paper is due April 30.

**Class Schedule**

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| **Jan. 25** | Historical and legal context | Chapter 1 & 2, short bcourse readings |
| **Feb. 8** | Launching the litigation | Chapters 3 & 4 |
| **Feb. 22** | The D.C. Circuit | Chapters 6-9, opinion excerpts |
| **March 8** | The Supreme Court decision | Chapters 15, 17-18  First paper due March 22 |
| **March 29** | The standing issue | Opinion excerpts |
| **April 12** | The statutory issues | Opinion excerpts, statutory provisions |
| **April 26** | From *Mass. v. EPA* to the present | bcourse readings  Second paper due April 30. |

**Contact Information**

My e-mail is dfarber@law.berkeley.edu. You can also reach me via the messaging service on bcourses.

If you’re interested, I’m a frequent contributor to the Legal Planet blog, www.legal-planet.org.

**Other Information**

**Class Meetings Format**

You are required to attend classes live on Zoom if that is possible for you. If you cannot attend a particular class because of illness or some other reason, please notify me in advance.

**Learning Outcomes**

This course will advance two of the Law School’s learning outcomes: lLegal analysis and reasoning, and written and oral communication in the legal context.

**Exam:** There is no final exam.

**Formative Assessments:** Students will receive feedback on the first written assignment, which is due during the semester.

**Grading:** The grade will be based on your short papers and class participation.

**General Information**

**School-wide Policies**

• Student Services schedules all exams, including accommodated exams, as the law school is committed to anonymous grading. Professors do not have the authority to reschedule exams. Any student who seeks an accommodated or rescheduled exam for documented medical reasons, disability, or for religious observance, should contact Student Services, 510-643-2744, kvalenti@berkeley.edu.

• The Academic Honor Code [Academic Honor Code] governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. We expect students to adhere to this code scrupulously. If you have any question whether your conduct may violate the code, please contact your professor before you act. You may face severe consequences, including a failing grade in this class or removal from the program, if you violate the code, even if similar conduct is not considered wrong in your home country.

• A common and serious form of misconduct and Honor Code violation is plagiarism. You must cite the sources of any words or ideas that are not your own. Cite all sources — hard copy, web-based, and others — in proper academic format.