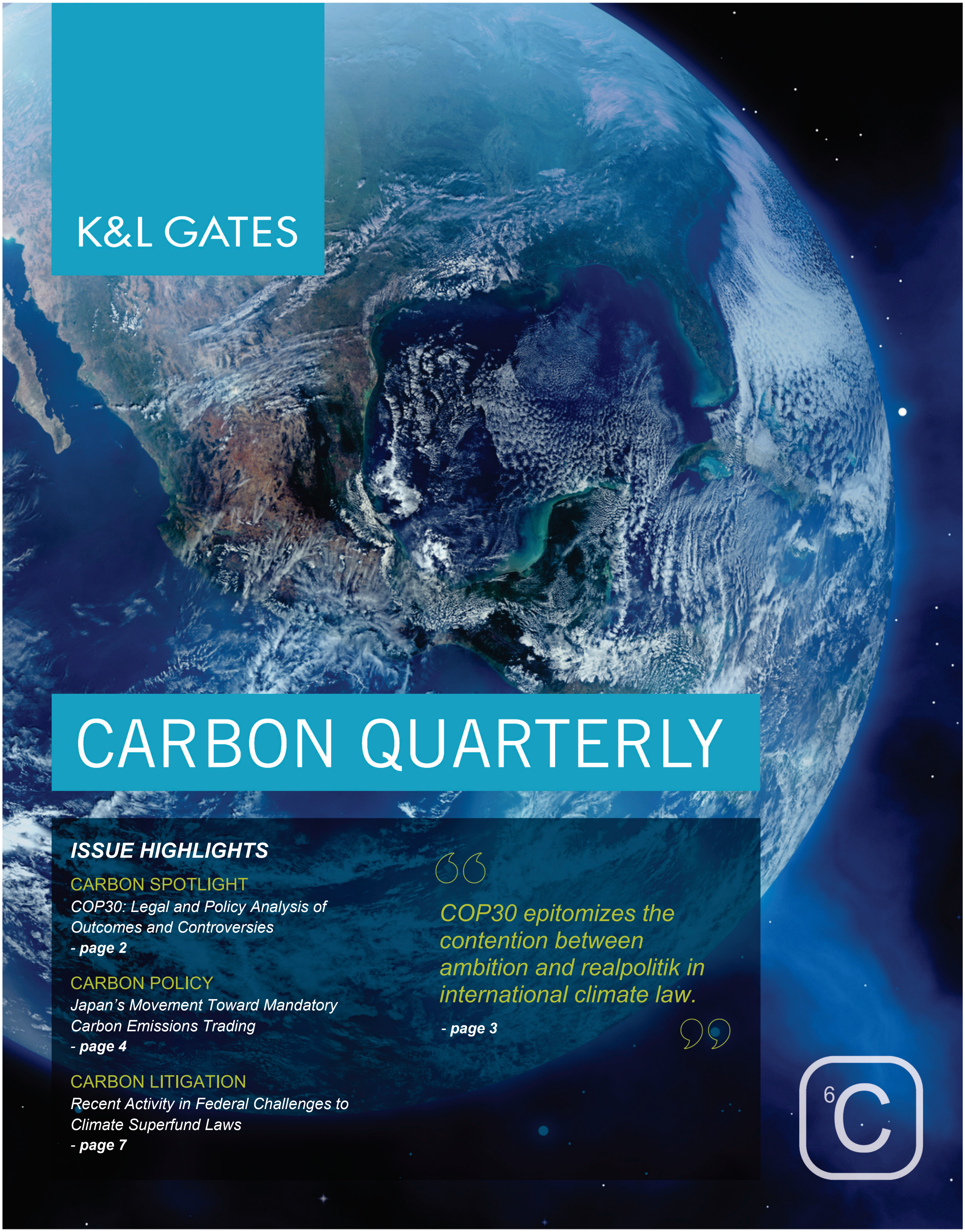

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CARBON QUARTERLY

ISSUE HIGHLIGHTS

"COP30 epitomizes the contention between ambition and realpolitik in international climate law."

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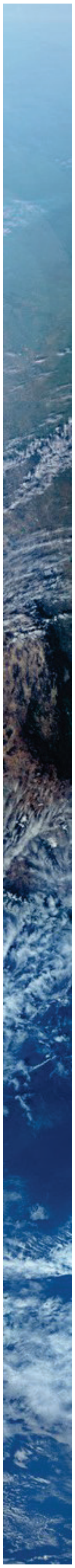


What's Inside

No matter your views on climate change policy, there is no avoiding an increasing focus on carbon regulation, resiliency planning, and energy efficiency at nearly every level of government and business. Changes in carbon—and, more broadly, greenhouse gas—policies have the potential to broadly impact our lives and livelihoods.

Covering developments in carbon policy, law, and innovation, *Carbon Quarterly* is a collaborative effort of our lawyers in the Asset Management and Investment Funds; Corporate; Energy, Infrastructure, and Resources; Real Estate; and Policy and Regulatory practices.

Carbon Spotlight

COP30: Legal and Policy Analysis of Outcomes and Controversies

The 30th Conference of the Parties (COP30), convened under the United Nations Framework Convention on Climate Change (UNFCCC) in Belém, Brazil, from 10 to 21 November 2025, was anticipated as a pivotal juncture for global climate governance. Expectations centered on operationalizing commitments under the 10-year-old Paris Agreement and advancing a legally coherent framework for fossil fuel phase-out and climate finance.

The summit drew over 56,000 participants, including world leaders, scientists, private-sector organizations, Indigenous Peoples, and civil society representatives.[1] This unprecedented attendance underscored the urgency and complexity of climate negotiations. Despite growing participation globally, COP30 was the first Conference of the Parties with no participation from the US government since it began 30 years ago.

COP30 reaffirmed that multilateral agreements remain possible, but exposed deep fractures in global governance, signaling the need for innovative collaboration models. Multistakeholder action emerged as a critical—not optional—component of future progress.

However, while progress was made on adaptation and finance, the summit's final instruments—the so-called *Belém Political Package*[2]—reflect both incremental progress and significant gaps in normative development.

Achievements

COP30 featured several announcements and agreements. Negotiators committed to tripling adaptation finance to US$120 billion annually, though the absence of a baseline or binding obligations raises questions about enforceability. Similarly, the Global Goal on Adaptation received 59 indicators, but compromises may turn them into decorative checkboxes rather than actionable tools.[3]

Trade discussions gained prominence, with carbon border adjustments such as the European Union's Carbon Border Adjustment Mechanism included in formal talks. A dedicated trade workstream was established, signaling closer interaction between trade and climate policy. Brazil announced the Tropical Forest Forever Facility, an initiative to compensate countries for conserving their tropical forests, supported by Germany's US$1.16 billion pledge and additional contributions.[4] Agriculture received attention through the creation of the Catalytic Capital for the Agriculture Transition Fund, a fund to scale investments in the production of soy and beef in Brazil, while restoring degraded land and without expanding deforestation.[5] Brazil also announced a voluntary road map to stop deforestation, with implementation expected at COP31 in Turkey. The aim is to create a plan to halt and reverse deforestation by 2030, building on a similar goal set at COP26 that is currently off-track.

Fossil fuels remained a contentious issue. Despite support from 80 nations backing a road map for a fossil fuel phase-out, COP30 did not adopt a binding road map.[6] The conference's final text avoided explicit references to fossil fuels, and the proposed road map became only a voluntary initiative outside the UNFCCC framework.

As no binding fossil-fuel road map was agreed upon, legal gaps persist, leaving Paris Agreement obligations uncertain. Voluntary pledges lack enforcement, and major oil-producing countries like Saudi Arabia and Russia opposed stronger language. Financing strategies rely heavily on concessional lending and private capital, raising concerns about debt risks for vulnerable nations. Full implementation of several key goals—primarily a new, scaled-up target for international climate finance and specific national emissions-reduction targets—has been projected for 2035, which some critics view as insufficient given the urgency of climate action.

As a positive development, however, Colombia and the Netherlands announced at COP30 that they will co-host the first International Conference for the Just Transition Away from Fossil Fuels in Santa Marta, Colombia, in April next year. This initiative brings together a coalition of countries seeking to establish a binding treaty to phase out fossil fuels. The coalition includes 140 cities and subnational governments, the World Health Organization, the European Parliament, over 4,000 civil society organizations, more than 3,000 scientists and academics, 101 Nobel laureates, over 900 parliamentarians worldwide, and numerous businesses.[7] The conference aims to advance global efforts toward a legally enforceable framework for fossil-fuel transition, marking a potential turning point in international climate diplomacy.

Ancillary Developments and Emerging Norms

While COP30 fell short on hard law commitments for fossil fuel phase-out, it nonetheless introduced a suite of normative innovations that could reshape climate governance in the coming decade. Chief among these was the adoption of the Belém Adaptation Indicators, a technical framework designed to operationalize the Global Goal on Adaptation and strengthen transparency under Article 13 of the Paris Agreement. This development, hailed by the International Union for Conservation of Nature (IUCN) as a "critical step toward accountability," reflects a growing emphasis on measurable compliance rather than aspirational pledges.[8]

Equally significant was the launch of the Just Transition Mechanism (also referred to as "Belém Action Mechanism"), a dedicated UNFCCC platform aimed at coordinating capacity-building and safeguarding socioeconomic rights during decarbonization. By aligning with International Labor Organization standards, this mechanism embeds labor protections into climate policy, signaling a normative convergence between environmental and human-rights regimes.[9] Complementing these efforts, the Gender Action Plan (2026–2034) reinforces obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, mandating gender-responsive measures across climate governance structures. Together, these instruments underscore COP30's pivot toward integrated, rights-based approaches, even as the absence of binding commitments on fossil fuels leaves critical gaps in the legal architecture of global climate governance.

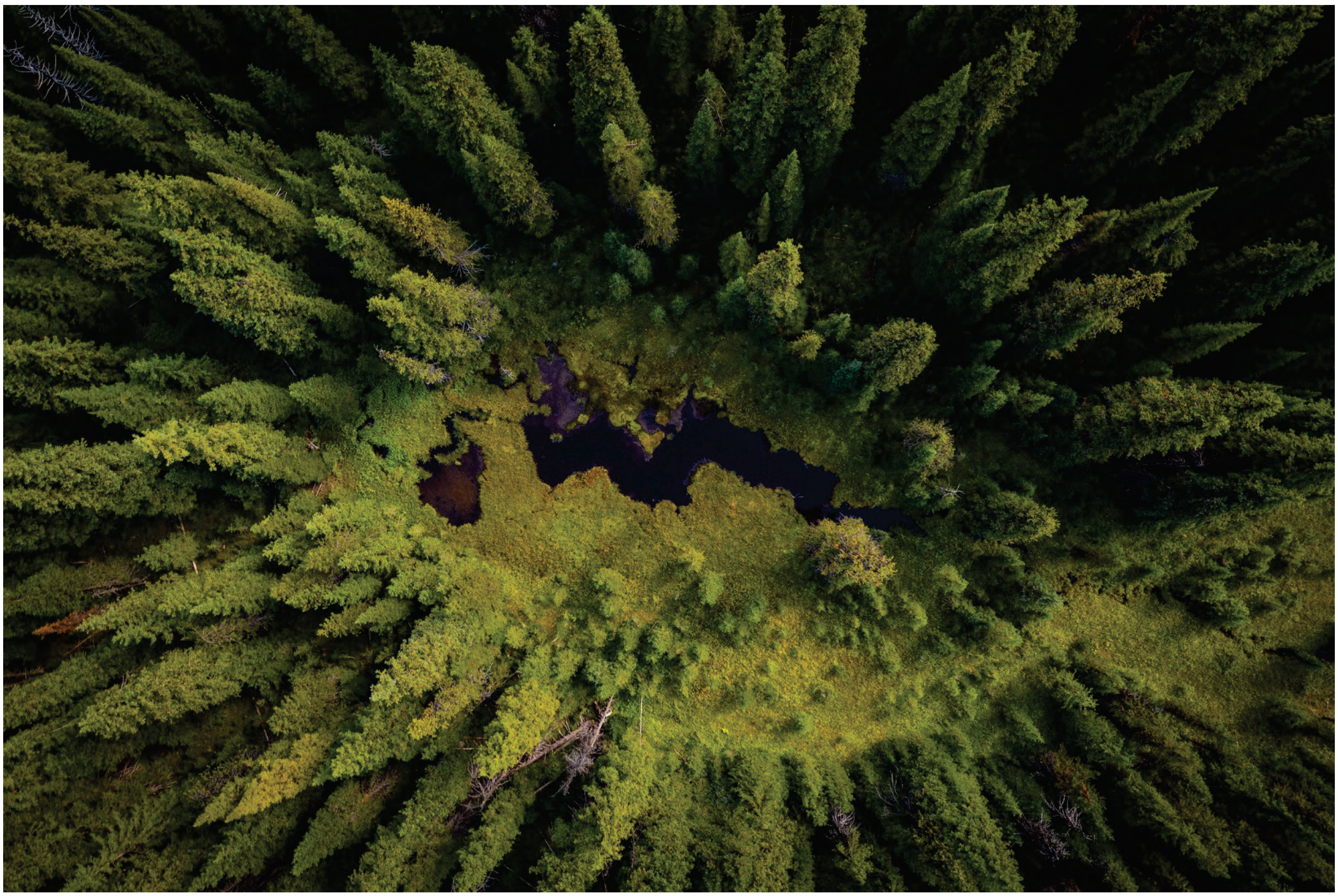
Yet, whether these soft law innovations can compensate for the lack of enforceable obligations remains doubtful; without binding norms, their transformative potential may hinge more on political will than on legal certainty.

Controversies and Legal Implications

The *Belém Political Package* exposed deep fissures in the architecture of global climate governance, as procedural deadlock and substantive omissions raised profound questions under international environmental law. The failure to secure consensus on a binding fossil fuel phase-out road map underscores the fragility of consensus-based decision-making under Article 7 of the UNFCCC. Announcements of fossil fuel and deforestation road map initiatives, while politically significant, risks normative fragmentation, potentially undermining the coherence of the UNFCCC regime and diluting the Paris Agreement's integrated approach to mitigation and adaptation.[10]

Equity concerns loom large. By deferring a legally enforceable fossil-fuel transition, COP30 perpetuates distributive imbalances between developed and developing states, contravening emerging principles of climate justice and intergenerational equity that increasingly inform customary environmental law. Critics argue that reliance on voluntary pledges and reputational incentives—rather than binding compliance mechanisms—renders enforcement precarious, reducing global climate governance to a patchwork of soft law instruments with limited normative force. In short, COP30's omissions do not merely reflect political compromise; they expose structural vulnerabilities in the international legal order, where ambition without enforceability risks becoming an empty gesture.[11] Moving forward, compliance mechanisms may find more success outside the UNFCCC framework in smaller coalitions like the one forming in Santa Marta, Colombia, in 2026.

COP30 epitomizes the contention between ambition and realpolitik in international climate law. While the financial commitments and adaptation frameworks represent incremental progress, the omission of a fossil-fuel transition road map constitutes a systemic vulnerability. For legal practitioners and policymakers, the post-COP30 landscape demands heightened engagement in transnational regulatory initiatives, contractual risk allocation in carbon markets, and advocacy for binding norms to avert further erosion of the Paris Agreement's objectives.



Carbon Policy

Japan's Movement Toward Mandatory Carbon Emissions Trading

Japan is moving toward mandatory carbon emissions trading as a part of its broader Green Transformation (GX) agenda, a national policy framework aimed at achieving carbon neutrality. Japan's emissions trading system (ETS) has already begun on a voluntary basis and will become mandatory for large emitters starting fiscal year 2026 (FY2026).[12] While details of the system continue to be refined, carbon pricing is gradually being incorporated into Japan's climate and industrial policy framework.

Japan's GX Agenda Background

Japan aims to achieve carbon neutrality by 2050 and has positioned Japan's GX agenda as a central framework for transforming its economy and energy system.[13] Japan's GX agenda places strong emphasis on pursuing decarbonization alongside enhanced energy security and strengthened industrial competitiveness.[14] Following the enactment of the Act on the Promoting Transition to the Decarbonized Growth Economic Structure (Act No. 32 of 2023) (GX Promotion Act), Japan has advanced a series of legislative and policy measures to achieve its goal of carbon neutrality. In May 2025, amendments to the GX Promotion Act established the initial framework for introducing a mandatory ETS from FY2026.[15][16]

At the core of Japan's GX agenda is the "Pro-Growth Carbon Pricing Concept," designed to encourage early decarbonization investment while gradually introducing carbon pricing.[17] The framework consists of: (1) promoting investment through subsidies funded by GX Economy Transition Bonds; (2) introducing carbon pricing in a phased manner through an ETS and fuel-based charges; and (3) expanding transition finance tools to support private-sector investment in low-carbon technologies.[18]

Shift Toward a Mandatory ETS

Japan's ETS began in 2023 as a voluntary scheme, allowing participants to set their own emission-reduction targets.[19] From FY2026, participation is expected to become mandatory for large emitters—currently anticipated to cover business with average annual direct emissions of around 100,000 tons of carbon dioxide ($CO2$) over the previous three years.[20] Covered entities will receive free emissions allowance and procure allowances if actual emissions exceed allocated levels.[21] Mandatory participation is expected to cover approximately 300–400 companies, accounting for roughly 60% of Japan's total emissions.[22]

To support market liquidity and appropriate price formation, Japan has discussed establishing an emissions allowance trading market accessible to both large emitters and financial institutions. Price stability measures, including upper and lower price bounds, have also been discussed. Power generators may transition toward auction-based allowance allocation in later phases.[23]

Outlook and Remaining Uncertainties

Many key aspects of the mandatory phase, including detailed coverage thresholds, allocation methods, and price-stabilization mechanisms, remain subject to further regulatory development. Most importantly, the overall emissions cap has not been specified. As a result, the effectiveness of Japan's ETS will depend on how these key design elements are ultimately structured.

Department of Energy Implements Big Beautiful Bill's Changes to Loan Programs Office

In October 2025, the Department of Energy (DOE) issued its regulations implementing significant changes to the Loan Programs Office (LPO) included in the One Big Beautiful Bill Act (OBBBA), the agenda-setting Republican legislation passed in mid-2025.[24] The OBBBA targeted several Biden administration clean-energy and climate-policy priorities, amending many and outright eliminating others. The Energy Dominance Financing section of the OBBBA amended provisions of the LPO's underlying statutory and regulatory authority eliminating emissions-based eligibility criteria for loan guarantees, expanded the scope of eligible projects, and significantly increased the DOE's lending authority.[25] These changes will result in the elimination of financing barriers for a wide collection of energy sources.

History and Purpose of the LPO

The LPO was originally established under Title XVII of the Energy Policy Act of 2005 (EPA) to support innovative energy projects that limited greenhouse gas emissions and deployed nascent or upgraded technology.[26] Since 2005, Congress has passed several pieces of legislation updating and expanding LPO loan authority, and the DOE has issued corresponding regulations to implement those Congressional efforts.

In 2022, the Inflation Reduction Act (IRA) expanded the LPO to include Section 1706, the Energy Infrastructure Reinvestment Program. Projects could apply for a federal loan or loan guarantee through Section 1706 to "retool, repower, repurpose, or replace energy infrastructure that has ceased operations" or improve the efficiency and environmental impact of operational energy infrastructure.[27] The IRA authorized a US$250 billion loan authority cap for the Section 1706 program until 2026.

Statutory and Regulatory Changes to Section 1706

The OBBBA made sweeping changes to the policies established by the IRA, from limiting energy tax credits to rescinding unspent emissions reduction grant obligations and more. The OBBBA specifically amended the DOE LPO and the Section 1706 program in two major ways.

First, the OBBBA expanded the definition of "energy infrastructure" to include all facilities and equipment used for the "identification, leasing, development, production, processing, transportation, transmission, refining, and generation" of energy and critical mineral resources.[28] Previously, energy infrastructure in the context of the DOE LPO loan eligibility had been explicitly limited to facilities and equipment used for the generation or transmission of electricity and the "production, processing, and delivery" of fossil fuels and other petroleum-derived fuels and chemical feedstocks.[29]

Second, the OBBBA rewrote the eligibility standards for projects applying for DOE financing through Section 1706 and the LPO to eliminate the requirements that projects “avoid, reduce, utilize, or sequester” greenhouse gas emissions or other air pollutants.[30] Under the new law, a project only needs to meet one of three criteria to be eligible for financing under the Section 1706 program: the project must (1) upgrade or replace shuttered energy infrastructure, (2) increase the capacity or output of existing energy infrastructure, or (3) support the provision of reliable and forecastable electrical supply to the electric grid.[31] Additionally, the OBBBA eliminated a Section 1706 requirement that project applications include an analysis of “how the proposed project will engage with and affect associated communities” and extended DOE’s US$250 billion loan authority to 2028.[32]

Impacts of Energy Dominance Financing Regulations

The DOE’s October regulations rebranded Section 1706 as the new Energy Dominance Financing Program and updated the definitions and criteria for eligible projects to conform with the new parameters set by the OBBBA.[33]

The DOE’s implementation of the OBBBA’s changes to Section 1706, rebranded as the new Energy Dominance Financing Program, will fundamentally change the program’s purpose and highlights the energy and natural-resource priorities of this Congress and the Trump administration. The expanded definition of energy infrastructure makes Section 1706 financing available for projects that would have previously been excluded from applying, including upstream energy development and critical mineral processing and refining facilities. The elimination of emissions-reduction eligibility requirements removes barriers from Section 1706 financing for a wide collection of energy sources, including fossil fuel generation facilities, nuclear power plants, and geothermal and hydropower projects. With the community impact analysis eliminated and the DOE’s loan authority extended to 2028, Section 1706 will include more projects and can provide federal financing with fewer barriers than ever before.

The new regulations signal the DOE and the Trump administration’s prioritization of energy generation and resource development over the previous administration’s decarbonization goals, and Section 1706 will now become an even more important tool to implement that agenda.

Singapore’s New Guide on Quality-Related Claims: Tips to Avoid Greenwashing Risks

On 6 October 2025, the Competition and Consumer Commission of Singapore (CCS) released Guide on Quality-Related Claims (CCS Guide) to assist businesses in avoiding unfair trade practices when making claims on qualities, uses, or benefits of their products, services, or businesses (Quality-Related Claims), including any representations concerning the quality, purpose, and benefits conveyed through words, images, symbols, brand names, certifications, and logos in relation to consumer transactions in Singapore.[34]

This CCS Guide was issued against a backdrop of increasing CCS concern about potential “greenwashing” in the marketplace, while its scope covers Quality-Related Claims more broadly.[35] These concerns are not unfounded—the 2022 study commissioned by the CCS and conducted by the National University of Singapore demonstrated that the risk of greenwashing was high.[36] The research found that 51% of the e-commerce sites reviewed made unsubstantiated environmental claims. Other issues highlighted by the study included the use of technical jargon that confuses or misleads consumers.[37]

Five Key Principles and Examples

The CCS Guide sets out five guiding principles, supported by extensive illustrations, to help companies ensure that Quality-Related Claims are not false, misleading, or insufficiently substantiated.[38]

1. True and Accurate: Companies must ensure that any Quality-Related Claims are factually correct, not exaggerated or misleading, including the overall impression created, and periodically reviewed for ongoing accuracy. This includes claims relating to certifications, affiliations, future ambitions, or implications about the benefit or the need for a product.[39]
2. Clear and Easily Understood: Claims must be unambiguous, avoid vague phrases, and be presented in a way that an average consumer can easily understand by refraining from using technical terms without adequate explanation. Self-declared labels must not imply third-party verification if none exists.[40]
3. Meaningful: Claims should concern material, nonstandard and nonmandatory product attributes. Where comparative claims are made, suppliers should be prepared to compare like-for-like with clearly identified competing products.[41]
4. Accompanied by Material Information: Companies should provide sufficient and material information to support their claims, including clearly and prominently disclosing key assumptions, limitations, conditions, and, where relevant, how the claimed benefits or outcomes are achieved. If certification is referenced, companies must provide access to relevant certification standards.[42]
5. Supportable by Evidence: Claims should be supported by up-to-date, valid, and credible evidence specific to a product. The CCS Guide cautions against relying on inconclusive or nonrepresentative studies, or outdated certifications.[43]

The CCS Guide also illustrates a range of claim examples that may amount to greenwashing. These include retailers promoting products as “green” based on upstream supplier’s claims without adequate verification; describing a product as “made of recycled material” when only certain parts are recycled; and using vague or proprietary terms such as “environmentally sustainable Eco-soft Technology” that suggest overall environmental benefits without explaining their actual effects or trade-offs.[44] These examples collectively demonstrate the CCS Guide’s emphasis on overall impression.

Impact on Compliance

In Singapore, greenwashing may be pursued as an unfair trade practice under the Consumer Protection (Fair Trading) Act 2003 (CPFTA) where environmental claims are false or misleading. This CCS Guide serves as an important reference point for how the CCS is likely to assess and enforce environmental marketing claims under the CPFTA. This guide aligns with the global trend toward preventing misleading sustainability claims, focusing on how environmental claims are likely to be understood by consumers overall rather than whether individual statements are technically accurate. For businesses, the guide highlights the risk of approaching environmental marketing without legal and compliance review, even where claims may appear accurate in isolation.

California and Washington Carbon Market Updates

In September 2025, California extended the expiration of its carbon market from 2030 to 2045, providing greater sense of stability among shifting national climate policies.[45] California’s market, originally called “Cap-and-Trade,” has also adopted the “Cap-and-Invest” moniker, matching the naming convention used by the existing Washington Cap-and-Invest carbon market.[46] As described in *Carbon Quarterly*, Volume 11, the Washington carbon market, on the one hand, and the already linked California and Québec carbon markets, on the other hand, continue to work toward a linkage of each of their individual carbon markets with the goal of achieving linkage in 2026 or 2027.[47] This extension of the California market to 2045 and alignment of naming provides further preliminary alignment between the markets and provides a clearer path toward linkage.[48]

Meanwhile, the prices in the Washington carbon market continue to trend upward, reaching an all-time high in December 2025.[49] Four auctions were held between September and December 2025, raising over US$1.1 billion through the sale of over 16 million carbon emission allowances, with each allowance representing 1 metric ton of emissions.[50] Prices for the allowances in September were US$64.30 and ticked up to US$70.86 in December, both besting the previous high of US$63.03 achieved in quarter three of 2023, the first year for the market.[51] The prices also represent a strong rebound

from 2024, where the average price was US$31.46, in large part suppressed by the threat of an ultimately unsuccessful ballot initiative to repeal the law creating the carbon market.[52] Through 2025, the Washington carbon market auctions have raised over US$4.3 billion, which goes toward the funding of state programs aligned with the climate goals of the Washington Climate Commitment Act, including electric school buses, solar and heat pump installations, battery research, electric vehicle rebates, and energy credits.[53]

Carbon Litigation

From Berkeley to Albany: Navigating the Pause in New York's Electrification Law

On 12 November 2025, New York agreed to a court stipulation delaying implementation of the All-Electric Buildings Act (AEBA) while appellate litigation proceeds.[54] The state's temporary pause—which the stipulation conditions to terminate 120 days after the appellate mandate (or, if certiorari is sought, 120 days after final Supreme Court action)—forestalls the AEBA's initial 1 January 2026 effective date for low-rise buildings.

Enacted as part of New York's climate agenda, the AEBA bars the installation of new natural-gas, propane, and oil space- and water-heating systems (and most fossil-fuel hookups) in most new buildings under seven stories starting 1 January 2026, with phased application for larger buildings.[55] The policy's goal is to cut building-sector greenhouse-gas emissions and accelerate electrification via heat pumps and other electric technologies; the statute also contains narrowly tailored exemptions (e.g., certain commercial kitchens, laboratories, emergency-power uses). Implementation required updated building-code regulations finalized by state agencies.

The challenge in *Mulhern Gas Co., Inc. v. Mosley* was filed by a coalition of companies, trade associations, and unions (including Mulhern Gas Co., the New York State Builders Association, the National Association of Home Builders, the New York Propane Gas Association, IBEW Local 97, Plumbers Local Union No. 200, and others).[56] Plaintiffs argue the AEBA is preempted by the federal Energy Policy and Conservation Act (EPCA), which, they say, displaces state regulation that effectively governs the "energy use" of appliances covered by federal standards. The complaint relies heavily on the Ninth Circuit's 2023 decision in *California Restaurant Association v. City of Berkeley*, which invalidated Berkeley's gas-piping ban as EPCA-preempted. The Ninth Circuit held that even though Berkeley's ordinance regulated building infrastructure rather than appliances directly, its practical effect was to prohibit the use of covered gas appliances—a result the EPCA forbids states from achieving indirectly.[57]

On 23 July 2025, the district court in *Mulhern* rejected the plaintiffs' reliance on *Berkeley*, concluding that the AEBA regulates buildings, not appliances, and does not set energy-use standards within the EPCA's meaning.[58] The Second Circuit appeal squarely presents whether *Berkeley*'s reasoning should apply beyond the Ninth Circuit.

If the Second Circuit affirms the district court and upholds the AEBA, it would create a circuit split on EPCA preemption of local or state electrification mandates. Such a split would significantly increase the likelihood of Supreme Court review and inject additional uncertainty into electrification policies nationwide. Conversely, if the Second Circuit follows *Berkeley*, it could substantially constrain similar all-electric building laws across multiple jurisdictions.

The November 2025 stipulation resolves competing emergency motions by pausing the law's effective date while the appeal proceeds. Under the stipulation, plaintiffs withdrew their pending injunction motion and agreed not to seek further emergency relief;

municipalities and permit-issuers may continue business as usual while the appellate process runs. If the Second Circuit affirms, the suspension ends 120 days after mandate (subject to any Supreme Court review timetable).

The pause limits immediate compliance risk and provides developers, code officials, and manufacturers predictable near-term rules. But it does not resolve the substantive question—whether the EPCA preempts state bans of covered gas appliances—and the ultimate outcome will shape electrification policy nationwide.

Recent Activity in Federal Challenges to Climate Superfund Laws

Since our prior discussion of state "Climate Superfund" laws in *Carbon Quarterly*, Volume 11 (May 2025)—where we analyzed emerging efforts by New York and Vermont to impose liability on fossil fuel producers modeled on CERCLA's framework—the litigation landscape has rapidly evolved. At the forefront are federal constitutional challenges launched by the US Department of Justice (DOJ) under the Trump administration, which filed *United States v. New York*[59] and *United States v. Vermont*[60] seeking to invalidate those states' climate superfund statutes as preempted by the Clean Air Act and violative of the Constitution's allocation of federal and state powers.

The DOJ, joined by the Environmental Protection Agency, alleges that New York and Vermont's strict liability regime for fossil fuel companies improperly regulates out of state and global greenhouse gas emissions and intrudes on federal authority over interstate commerce and foreign affairs. In the Vermont case, briefing is complete on the state's motion to dismiss for lack of jurisdiction and failure to state a claim and cross-motions for summary judgment.[61] In the New York case, briefing is complete on the federal government's motion for summary judgment.[62]

Parallel to these superfund challenges, the DOJ has taken the unprecedented step of preemptively suing to block planned state climate tort actions that have not yet been filed. In *United States v. Michigan*, the federal government seeks declaratory and injunctive relief to prevent the State of Michigan from initiating climate litigation against fossil fuel companies, asserting similar constitutional and preemption theories.[63] In particular, the complaint alleges that the Clean Air Act preempts state actions that would regulate air pollution from out-of-state sources, regulates extraterritorial conduct in violation of the Due Process Clause of the US Constitution, imposes substantial burdens on interstate commerce and foreign commerce in violation of the Interstate Commerce Clause and the Foreign Commerce Clause of the US Constitution, and undermines the president's ability to speak for the United States in the area of foreign policy.[64] A related suit was filed against Hawaii under the same theory.[65] These preemptive actions underscore the broad strategic effort to curtail state level climate accountability mechanisms before they gain traction in state courts, setting up a complex multijurisdictional battleground that will shape the future of climate liability.

Clipping the Wings on ESG Stewardship: Judge Issues Final Judgment in Spence v. American Airlines Proxy Voting Case

On 30 September 2025, Judge Reed O'Connor issued the final judgment in *Spence v. American Airlines*, resolving the case and determining damages.[66] As discussed in *Carbon Quarterly*, Volume 11, the case revolved around a class-action suit led by an American Airlines pilot who asserted that the company violated the Employee Retirement Income Security Act of 1974 (ERISA)—the federal law governing private retirement plans—by allegedly failing to seek the greatest possible returns for its employees.[67]

In January 2025, Judge O'Connor issued a ruling that American Airlines was liable for breaching its fiduciary duty by employing an investment manager (the Manager) to manage the majority of its US$26 billion retirement plan, due to the Manager's environmental, social, and governance (ESG) investment focus.[68] Specifically, the prior ruling determined that American Airlines violated its fiduciary duty of loyalty to "act solely" in the best interest of plan participants and that its actions harmed the financial interests of participants in light of the Manager's "ESG activism," which "considers or pursues a non-pecuniary interest as an end itself rather than as a means to some financial end."[69] Interestingly, the case did not involve ESG investing, as the Manager did not actually invest any American Airlines retirement plan funds into ESG funds, but rather focused on the Manager's proxy voting practices and alleged pro-ESG shareholder engagement.[70]

While the court's January 2025 decision concluded that American Airlines had breached its fiduciary duty of loyalty (but not its duty of prudence), it deferred ruling on losses and remedies.[71] The September 2025 ruling provides that American Airlines is not obligated to pay monetary damages, as the plaintiff failed to show that this breach of the duty of loyalty resulted in actual monetary losses for the retirement plan.[72] The court, however, chose to impose other equitable remedies to "ensure that defendants and their investment managers act solely for the pecuniary benefit of the [retirement plan] and implement compliance measures to ensure fidelity to ERISA's fiduciary standards."[73] As a result of the order, American Airlines is permanently enjoined from permitting any proxy voting, shareholder proposals, or other stewardship activities that are motivated by nonpecuniary goals and from working with the Manager, or other asset managers that are significant shareholders of the airline, without "policies preventing those who maintain the corporate relationship with the asset manager from also being [retirement plan] fiduciaries or playing a role in managing the [retirement plan]."[74]

The court also directed American Airlines to hire two independent members to its employee benefits committee.[75] These members cannot have any connection or relationship with the Manager. Additionally, the new employee benefits committee must certify in writing each year that the retirement plan will only invest based on provable financial performance, not Diversity, Equity, and Inclusion (DEI), ESG, sustainability, or other nonfinancial criteria.[76] American Airlines must also post on its website information concerning membership of American Airlines, and each administrator, advisor, or investment manager of retirement plan assets, in "any organization principally devoted to achieving DEI, ESG, climate-focused investment or stewardship objectives."[77]

The court's decision puts more pressure on these stewardship groups, which have been increasingly targeted over alleged "collusive activity" to advance ESG-related goals.[78] The decision also appears to specifically target perceived conflicts of interest between American Airlines and the Manager, but it may also be at odds with a 2022 ERISA rule promulgated by the US Department of Labor that provides that ERISA does not preclude plan fiduciaries from considering climate change and other ESG factors when they select retirement investments and exercise shareholder rights, such as proxy voting.[79]

Carbon Trading and Investment

CFTC Withdraws Guidance Regarding Listing Voluntary Carbon Credit Derivative Contracts

On 10 September 2025, the Commodity Futures Trading Commission (CFTC) announced the withdrawal of its "Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts."[80] Voluntary carbon credits (VCCs) are tradable, intangible instruments issued by a carbon crediting program and generally represent the equivalent of one metric ton of CO_2 avoided or removed from the atmosphere.[81] The purpose of the VCC guidance was to mitigate some of the inherent problems in proper verification and accreditation of carbon offset projects.[82] The guidance intended to do so by assisting designated contract markets (DCMs) with understanding how the CFTC's existing regulatory framework applied to VCC derivatives contracts and help DCMs advance the standardization of such products in a manner that promotes transparency and liquidity.[83] The VCC guidance—which was not legally binding—enumerated certain criteria that DCMs should consider when performing evaluations of VCC derivatives contracts.[84]

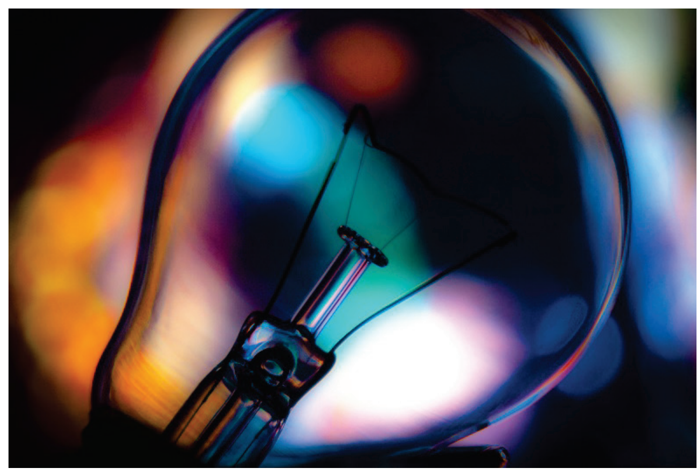
The Notice of Withdrawal states that the guidance was of limited value since Section 5c of the Commodity Exchange Act and Parts 38 and 40 of the CFTC Regulations already establish the regulatory framework for listing derivative contracts, including VCC derivative contracts.[85] The Notice of Withdrawal further states that the guidance resulted in a disproportionate focus on VCC derivative contracts, which could lead to confusion and inconsistencies in implementing the CFTC's existing product-listing regulatory framework.[86] Additionally, the CFTC found that the VCC guidance did not provide in any new regulatory structure or standards that resulted in the advancement of market transparency or liquidity for VCC derivatives contracts.[87]

The withdrawal follows the Trump administration's trend of deregulation and, specifically, the rollback of regulations that are—or are perceived to be—focused on efforts to combat climate change.[88] The rulemaking had already been circulated on a list of potential targets for review under the Congressional Review Act (CRA), a tool used by Congress to nullify federal agency rulemakings.[89] Given that there was some ambiguity as to whether the guidance—which was not-binding—could be subject to review under the CRA, the CFTC's decision to withdraw the guidance provides more regulatory clarity.[90]

Betting on This Month's Electric Bill: CFTC Staff Issues No-Action Letter Regarding Electricity Binary Options

Over the past year, the CFTC's Division of Market Oversight and Division of Clearing and Risk issued multiple Staff Letters providing no-action positions with respect to certain swap data reporting and recordkeeping regulations for binary options contracts in response to requests from various DCMs and derivatives clearing organizations (DCOs).[91] DCMs are futures exchanges that list for trading futures or option contracts based on any underlying commodity, index, or instrument, and can be accessed by all types of traders, including retail customers.[92] DCOs are entities that enable parties to an agreement or transaction to substitute, through novation or otherwise, the credit of the DCO for the credit of the parties, and arrange or provide for the settlement or netting of obligations.[93] These entities increasingly list for trading certain "binary options" that "provide for a payment that is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence."[94]

On 30 September 2025, the CFTC's Division of Market Oversight and Division of Clearing and Risk announced that they had taken a no-action position regarding swap data reporting and recordkeeping regulations for binary options in response to a request from Electron Exchange DCM LLC, a designated contract market, and Electron Exchange DCO LLC, a derivatives clearing organization.[95] In the request, Electron Exchange DCM LLC stated that it intends to list certain cash-settled binary options with underlying commodities relating to the electricity or power markets.[96]



Binary options have been in the news often lately due to the prevalence of "events contracts" (a type of binary option) on professional sports and other traditionally nonfinancial scenarios.[97] However, this is the first instance of the CFTC issuing a no-action position with respect to a binary option based on electricity generation and power usage.[98] The proliferation of options contracts, and event contracts in particular, have raised concerns about the gamification of these markets and the similarities to traditional sports-betting.[99] Certain states and Native American tribes have sued companies that offer sports event contracts—which often refer to themselves as "prediction markets" in order to distinguish themselves from traditional sportsbooks or casinos—alleging that such contracts constitute illegal gambling contracts.[100] Most recently, the US District Court for the District of Nevada sided with the Nevada Gaming Control Board and dissolved a preliminary injunction that allowed one of the largest prediction markets—Kalshi—to continue operations while it fights the state of Nevada's cease and desist order.[101] In a 29-page ruling, US District Judge Andrew Gordon states that Kalshi's interpretation "would require all sports betting across the country to come within the jurisdiction of the CFTC" rather than state and tribal gaming regulators and would thereby upset decades of federalism regarding gaming regulation and be contrary to Congress' intent.[102]

The electricity binary options contracts are largely identical in their design to most other types of cash-settled binary options with underlying commodities.[103] In its request for no-action relief, Electron Exchange DCM LLC stated that its electricity binary options contracts have a binary outcome that pays a fixed dollar amount of either US$0 or US$100, depending on whether the price for 1MWh of power settles above or below the previous day's day-ahead market value for a particular hourly time period.[104] The request states that these contracts are DCM-listed binary options with similar characteristics to other exchange-listed products and are fully collateralized so that collateral transfers made by a market participant are irrevocable and unconditional when effected except in the case of funds transferred to a market participant in the event of fraud or error.[105] Electron Exchange DCM LLC's request also states that it intends to list other contracts outside the scope of this particular requested relief, including "bounded futures contracts with underlying commodities relating to electricity and/or power markets."[106]

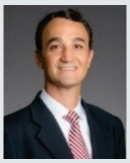
The CFTC's Staff Letter provides that, subject to certain terms described therein, the relevant divisions will not recommend that the CFTC initiate an enforcement action against Electron Exchange DCM LLC, Electron Exchange DCO LLC, or their participants for failure to comply with certain swap-related recordkeeping requirements and for failure to report swap data repositories data associated with binary option transactions executed on or subject to the rules of the respective entities.[107] The no-action letter applies only in narrow circumstances and is comparable to no-action letters issued for other similarly situated DCMs and DCOs in the past related to events contracts and other binary options contracts.[108]

Authors


JOHN C. CROSSLEY
Partner
Kansas City
+1.816.627.3002
john.crossley@klgates.com


JOHN W. CARLSON
Associate
Seattle
+1.206.370.5750
john.carlson@klgates.com

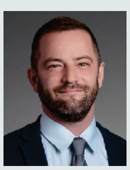

SHIAU YEN CHIN-DENNIS
Managing Partner, Portland Office
Portland
+1.503.226.5765
shiauyen.chin-dennis@klgates.com


FELIPE E. CREAZZO
Partner
Orange County
+55.11.3704.5706
felipe.creazzo@klgates.com

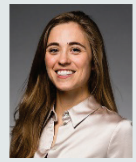

DANIEL F.C. CROWLEY
Partner
Washington, DC
+1.202.778.9447
dan.crowley@klgates.com

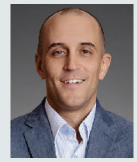

NATHAN C. HOWE
Partner
Newark
+1.973.848.4133
nathan.howe@klgates.com


CHERYL L. ISAAC
Partner
Washington, DC
+1.202.778.9089
cheryl.isaac@klgates.com

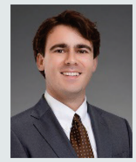

DEREK B. KALBFLEISCH
Associate
Seattle
+1.206.370.7644
derek.kalbfleisch@klgates.com

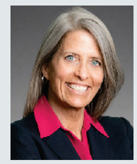

CLARE KEMPKENS
Partner
London
+44.20.7360.8211
clare.kempkens@klgates.com

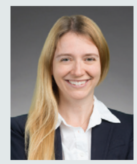

EMMA LIDSTÖM
Senior Associate
London
+44.20.7360.6392
emma.lidstrom@klgates.com

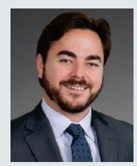

BENJAMIN A. MAYER
Partner
Seattle
+1.206.370.8074
ben.mayer@klgates.com

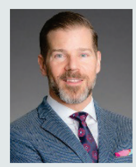

BRENDAN GUTIERREZ MCDONNELL
Partner
Portland
+1.503.226.5710
brendan.mcdonnell@klgates.com


JASPER G. NOBLE
Associate
Washington, DC
+1.202.778.9221
jasper.noble@klgates.com


LAURIE B. PURPURO
Government Affairs Counselor
Washington, DC
+1.202.778.9206
laurie.purpuro@klgates.com


CAITLIN M. SARPAL
Associate
Raleigh
+1.919.831.7047
caitlin.sarpal@klgates.com


BENJAMIN C. SKILLIN
Associate
Boston
+1.617.951.9090
ben.skillin@klgates.com


DAVID L. WOCHNER
Managing Partner, United States
Washington, DC
+1.202.778.9014
david.wochner@klgates.com

We acknowledge the contributions to this publication from Seattle law clerk, Misaki Shibata.

Learn more about our lawyers and our practice at klgates.com

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