

# Climate Change and Environmental Law: A Legal & Regulatory Overview

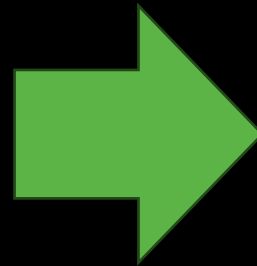
- International framework
- Domestic climate change law
- Headwinds: courts & politics

# United Nations Framework Convention on Climate Change (UNFCCC)

- **Established:** 1992
- **Objective:** Stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.
- **Key Principle:** Common but differentiated responsibilities.

# Shifting theories under the UNFCCC

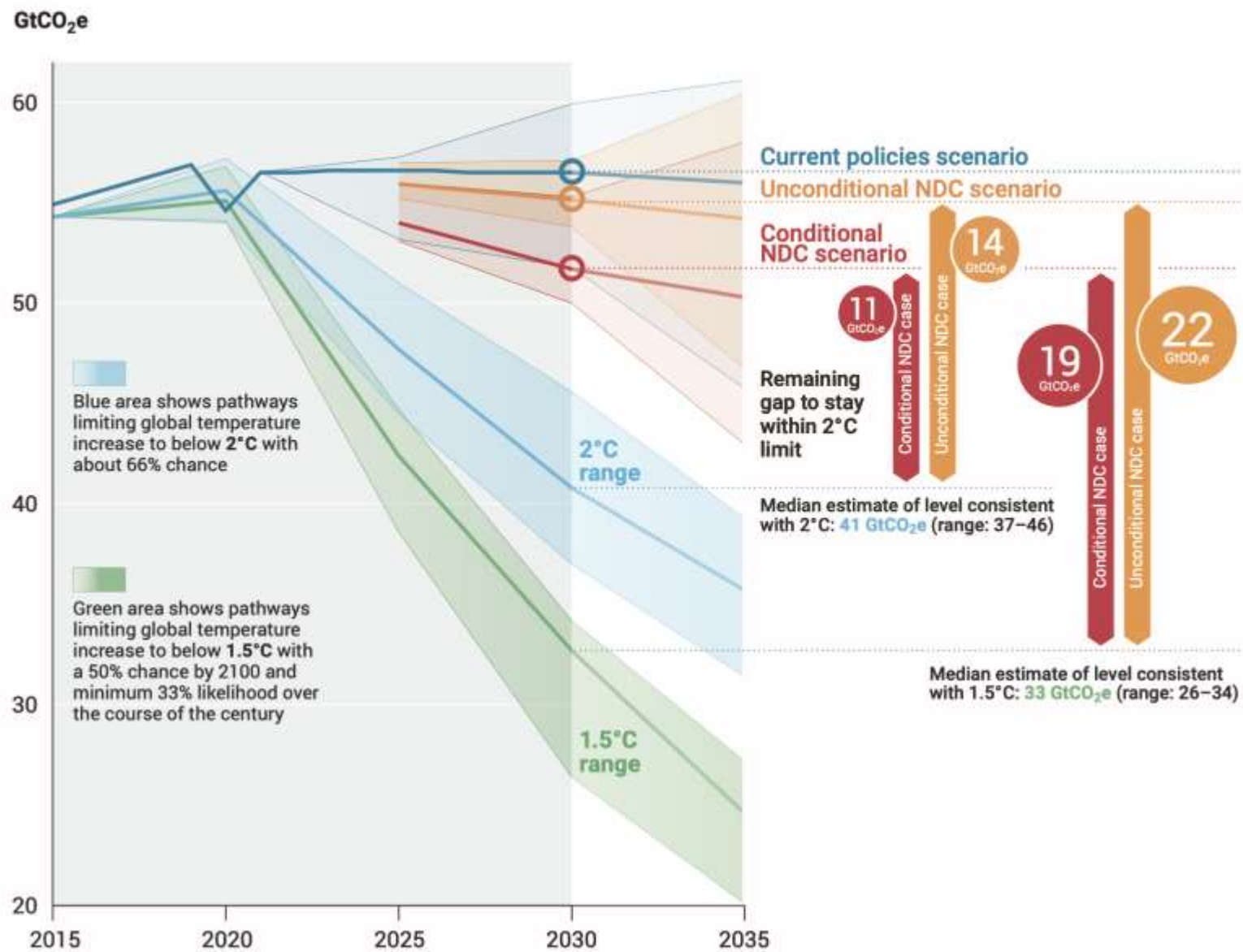
- **Kyoto Protocol** (adopted 1997, entered into force in 2005)
- **Approach:** Binding targets for industrialized countries to reduce GHGs by average of 5% below 1990 levels
  - Plus a bunch of “flexibility mechanisms” to make this less painful



- **Paris Agreement** (2015)
- **Approach:** “Nationally Determined Contributions” (NDCs). Each country sets its own targets and contributions.
  - **Global Stocktake:** Regular assessment of collective progress.
  - **Finance:** Support for climate-resilient development and adaptation in developing countries.

# Global Stocktake reveals a large “emissions gap”

Figure ES.4 Global GHG emissions under different scenarios and the emissions gap in 2030 and 2035 (median estimate and tenth to ninetieth percentile range)



# Translating Promises into Action: Domestic Climate Law

**US NDC:** The United States has committed to reducing its greenhouse gas emissions by 50-52% below 2005 levels by the year 2030.

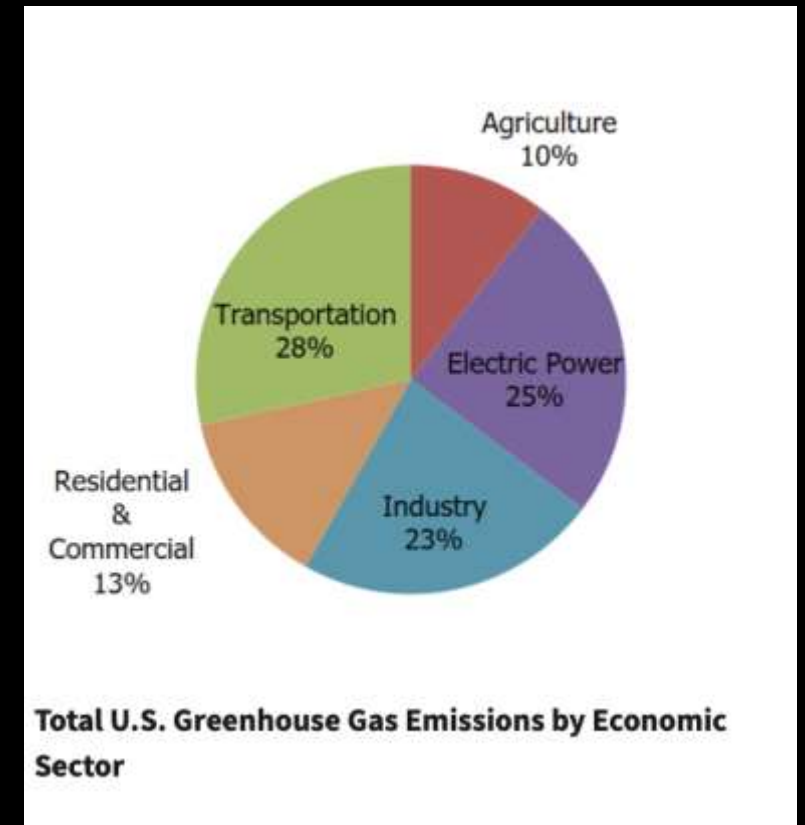
*How can it get there?*

Federal statutes, regulations, & executive orders

State analogs of the same

Voluntary corporate/private actions

Litigation to accelerate the above



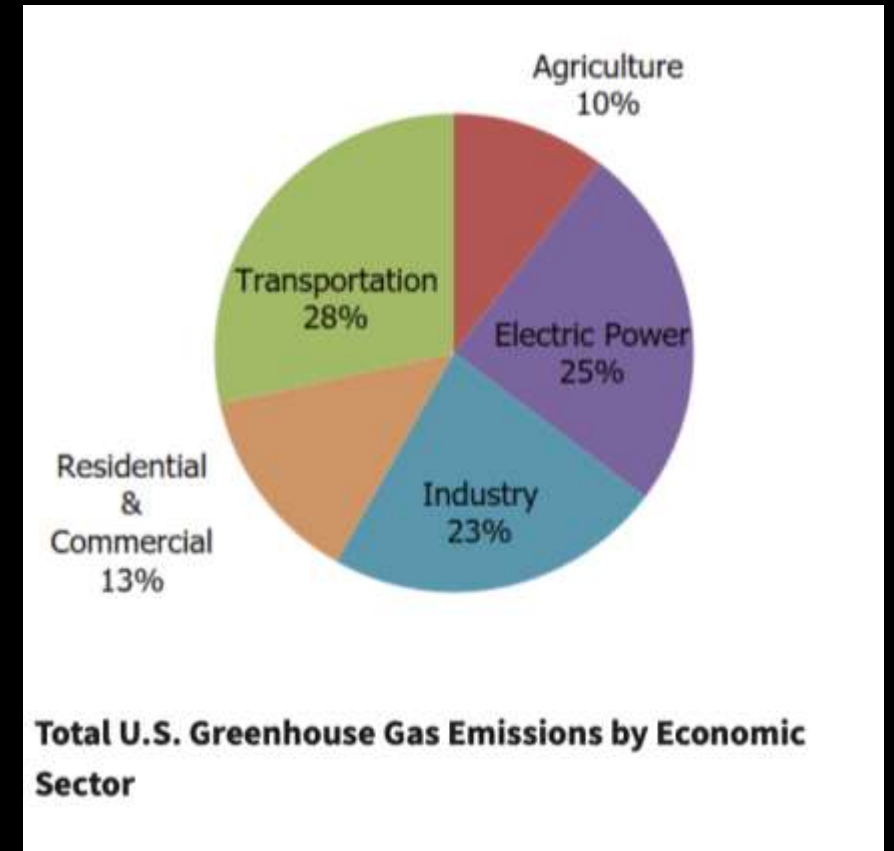
Source: US EPA

# U.S. Statutory Law for Climate

- Use older statutes for new purposes
  - Two “biggies”: the Clean Air Act and the National Environmental Policy Act
- Pass new statutes
  - The biggest: Inflation Reduction Act

# The Clean Air Act & Climate Change

- Precedent says that GHGs count as an “air pollutant” under the CAA
- CAA regulates both stationary and mobile sources → have targeted both for GHG purposes



# CAA, Climate, & Cars



The image is a screenshot of the EPA website's news release page. At the top left is the EPA logo with the text "United States Environmental Protection Agency". To the right is a search bar labeled "Search EPA.gov". Below the logo is a navigation bar with four items: "Environmental Topics", "Laws & Regulations", "Report a Violation", and "About EPA", each with a downward arrow. The main content area has a header with "News Releases: [Headquarters](#) | [Air and Radiation \(OAR\)](#)" and a "CONTACT US" link on the right. The main headline is in large, bold black text: "Biden-Harris Administration finalizes strongest-ever pollution standards for cars that position U.S. companies and workers to lead the clean vehicle future, protect public health, address the climate crisis, save drivers money". Below the headline is a sub-headline: "Final standards will expand consumer choice in clean vehicles and build on historic progress in U.S. auto manufacturing under President Biden's Investing in America agenda". At the bottom left is the date "March 20, 2024".

**EPA** United States Environmental Protection Agency

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## **Biden-Harris Administration finalizes strongest-ever pollution standards for cars that position U.S. companies and workers to lead the clean vehicle future, protect public health, address the climate crisis, save drivers money**

Final standards will expand consumer choice in clean vehicles and build on historic progress in U.S. auto manufacturing under President Biden's Investing in America agenda

March 20, 2024



# CAA, Climate, & Power Plants

- Section 111 requires EPA to establish “standards of performance” for categories of stationary sources based on the “best system of emission reduction . . . adequately demonstrated”
- **West Virginia v. EPA** (SCOTUS 2022): invalidated previous regs based on system-wide reductions, invoking “Major Questions Doctrine” → must stay “inside the fence”
- **Spring 2024**: latest version of regulations on power plant GHG emissions was finalized
  - *New limits on existing coal plants and new gas plants, based on carbon capture and storage as a viable tool for limiting emissions*
  - *Punted on existing gas plants*

Almost 100% destined for SCOTUS review

# National Environmental Policy Act & Climate Change

- NEPA requires federal agencies to assess the environmental effects of proposed major federal actions significantly affecting the quality of the human environment. *Relationship with climate change contested and complex:*

Should require agencies to carefully assess the climate impacts of proposed actions, work to mitigate these impacts

*June 2024 SCOTUS cert grant will clarify bounds of this analysis*

At times may impede rapid progress towards climate change mitigation, by delaying clean energy infrastructure

*“permitting reform” conversations continue in Congress*

# New Statutes: Inflation Reduction Act

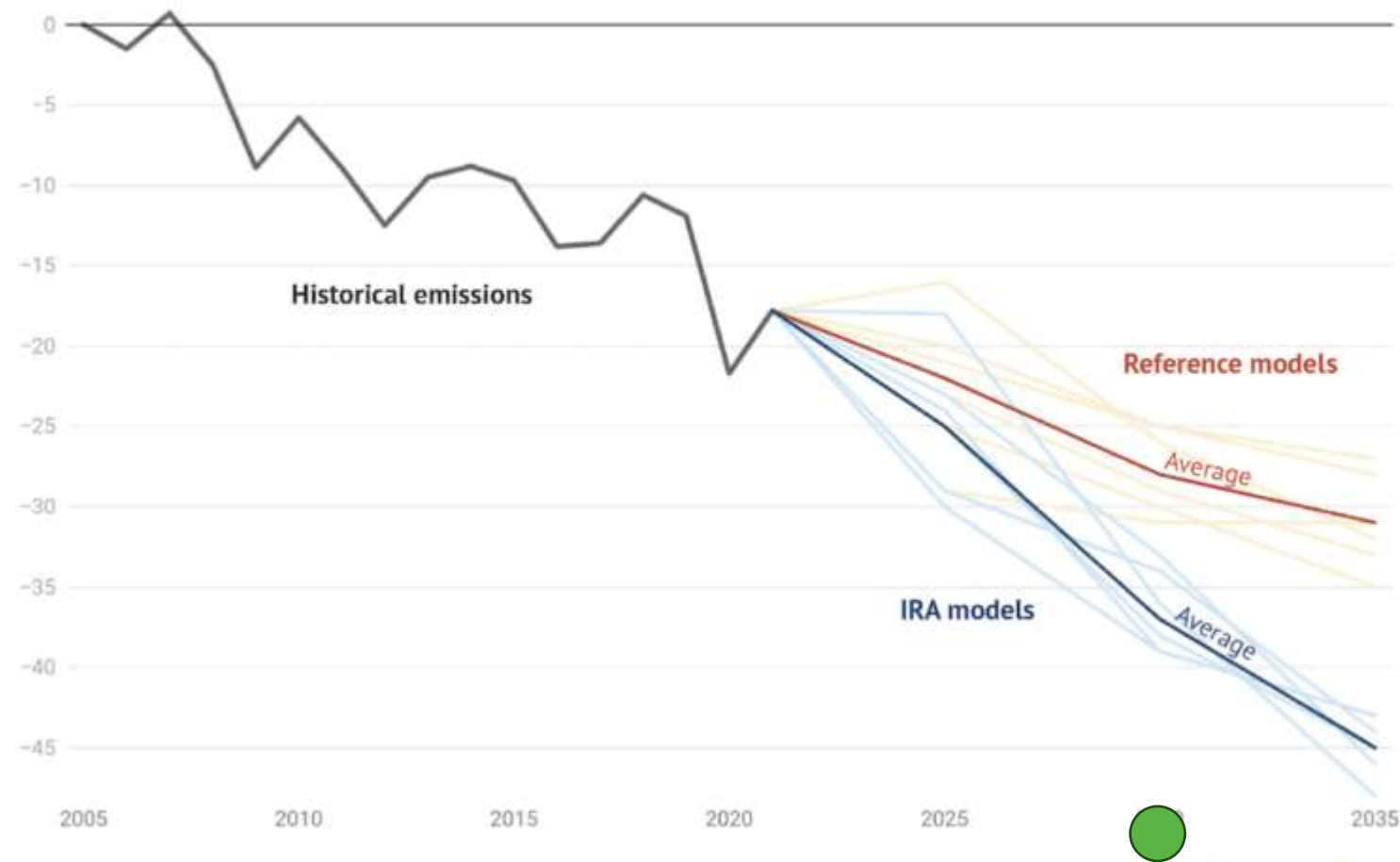
A **very different theory** of how to control emissions, centered on providing economic incentives for clean energy technologies.

- Tax credits to clean energy developers
- Tax credits to households for electrification of heating, vehicles, etc.

# New Statutes: Inflation Reduction Act

## Emissions fall between 33% and 40% by 2030 under the IRA

Economy-wide emissions (% below 2005 levels)



Source: Adapted from Bistline, et al. (2023)

# Headwinds

- Shrinking administrative power? *Loper Bright/Relentless* decision shakes up deference to agencies' interpretations of statutes
- Exceedingly disparate visions & plans based on November election outcomes