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Office Hours: Monday, 4-6 PM or by
appointment

Legislation Spring 2009

Course Time and Location

Tuesday, 8-9:50 PM
Rm. 329

Reading Materials

Textbook: Eskridge, Frickey, and Garrett, *Cases and Materials on Legislation: Statutes and the Creation of Public Policy* (4th Ed. 2007) (EFG). Available at GMU Book Store.

Readings not in the textbook are available on TWEN.

Grading

Grades will be based on a combination of the final exam and class participation. Specifically, the course grade will be the final exam grade plus a bonus for good class participation as high as 1/2 of a letter grade (e.g. – a B+ might become an A-). The final exam will consist of essay questions and issue spotter questions. Further details of the final exam will be announced later in the semester. Class participation will be assessed on a combination of quantity and quality.

Assignments

Although I will try to stick to the schedule, we may occasionally fall behind. In such an unfortunate case, we will begin the next class with the next case on the syllabus, unless I say otherwise.

Note: In some cases, I have included a complete case or article on TWEN, but the syllabus indicates specific pages for you to read. You are only responsible for the pages noted in the

syllabus, though you may wish to skim the rest. Pages noted in the syllabus refer to page numbers in the US reports (for cases) or journal (for articles), NOT to other page numbers that may be present in the packet.

January 13: Introduction

Griggs v. Duke Power EFG 42-47, 82-87
United Steelworkers v. Weber EFG 87-103

January 20: Theories of the Legislative Process

EFG 47-81

January 27: From Eclecticism to Legal Process

British precedents EFG 693-95
Holy Trinity Church v. US EFG 695-703
Materials on Legal Process Interpretation EFG 712-722
Shine v. Shine EFG 723-27

February 3: Dynamic Statutory Interpretation

In the Matter of Jacob EFG 732-37
State v. 1979 Pontiac Trans Am EFG 744-49
Davis v. Monroe Cty. Bd. of Education, 526 U.S. 629 (1999) (TWEN)

February 10: Textualism

Textualist Criticisms of Legal Process EFG 749-51
TVA v. Hill EFG 752-55
Griffin v. Oceanic Contractors EFG 755-64
FDA v. Brown & Williamson Tobacco EFG 820-30

February 17: New Textualism

Green v. Bock Laundry Machine Co. EFG 766-77
Antonin Scalia, *A Matter of Interpretation*, (excerpted EFG 778-81).
William Eskridge & Philip Frickey, "Statutory Interpretation as Critical Reasoning" (excerpted EFG 830-35)
Chisom v. Romer EFG 781-90
US v. Marshall EFG 801-12

February 24: Legislative History I

Leo Sheep Co. v. US EFG 973-81

Blanchard v. Bergeron EFG 983-87

New Textualist Criticism of Legislative history EFG 987-91

In re Sinclair EFG 991-98

March 3: Legislative History II

Perez v. Wyeth Laboratories EFG 998-1000

Pepper v. Hart 1001-14

BankAmerica Corp. v. US EFG 1021-22

Rapanos v. United States EFG 1022-26

March 17: Legislative History III: Postenactment History

Statements by presidents and legislators EFG 1040-47

Kosak v. US EFG 1014-20

Montana Wilderness Association v. US Forest Service EFG 1027-40

Bob Jones v. US EFG 1050-63

March 24: Canons of Interpretation: Textual and Substantive Canons

List of Textual Canons EFG 847-67

Babbitt v. Sweet Home EFG 868-80

Substantive Canons EFT 880-84

Rule of Lenity 884-88

Muscarello v. US EFG 888-97

March 31: Canons of Interpretation II: Avoiding Constitutional Problems and Federalism

NLRB v. Catholic Bishop of Chicago EFG 911-20

Solid Waste Agency of N. Cook Cty. v. US Army Corps of Engineers, 531 U.S. 159 (2000)
(TWEN)

Gregory v. Ashcroft EFG 923-35

Pennhurst State School & Hospital v. Halderman, 451 U.S. 1 (1981) (TWEN).

April 7: Canons of Interpretation III: Interpretation in Light of the Common Law and other Statutes

Smith v. Wade EFG 959-68

Interpretation in Light of other Statutes EFG 968-71

Cartledge v. Miller EFG 1066-70

Lorillard v. Pons EFG 1070-76

April 14: Canons III/Stare Decisis & Discussion of Final exam.

Zerbe v. State EFG 1077-82

Morton v. Mancari EFG 1082-89

Flood v. Kuhn EFG 631-646

April 21: Deference to Agency Interpretations & Conclusion

Chevron v. Natural Resources Defense Council EFG 1197-1204

MCI v. AT&T EFG 1204-1209

United States v. Mead EFG 1213-23

Notes on recent developments in deference doctrine EFG 1223-27

Recommended, but not required: Antonin M. Scalia, “Judicial Deference to Agency Interpretations of Law” 1989 *Duke L.J.* 511 (TWEN).