“The administrative state wields vast power and touches almost every aspect of daily life. The Framers could hardly have envisioned today’s vast and varied federal bureaucracy and the authority administrative agencies now hold over our economic, social, and political activities.”


“[T]he Necessary and Proper Clause affords Congress broad authority to create governmental offices and to structure those offices as it chooses. And Congress has drawn on that power over the past century to create numerous federal agencies in response to various crises of human affairs as they have arisen.”


*  *  *

**Scope and Purpose:** This course examines the powers and processes of federal administrative agencies, and the control of agency action through judicial review and other means.

Because “an agency literally has no power to act . . . unless and until Congress confers power upon it,” *La. Pub. Serv. Comm’n v. FCC*, 476 U. S. 355, 374 (1986), we begin with constitutional considerations as to how much power Congress can delegate to agencies, and the means by which the President oversees those agencies. We then look to the agencies themselves—the processes by which agencies administer the law, primarily rulemakings and adjudications. Then we consider the standards by which courts review the agencies, as to matters of fact and law. Finally, we touch briefly on current debates over structural reform of federal administration.
Required Text: The casebook is *Federal Administrative Law: Cases and Materials* (2d ed.), by Kristin E. Hickman and Richard J. Pierce, Jr. Note that both the Constitution and relevant portions of the Administrative Procedure Act are found in appendices at the end of the casebook.

I will occasionally distribute or assign other readings, too, making them available on my course web site at www.adamjwhite.com.

Evaluation: Students will be evaluated on the basis of a final examination. I retain discretion to adjust your final grade by one-half letter to reflect exceptional class participation or a persistent lack of preparation.

Office Hours & Communications: I will have office hours on Mondays from 11:30–12:30, by appointment; email in advance. Room TBA.

Notes: The schedule below is subject to change, based on class pacing, new developments in the law, or other considerations. I try to make space throughout the semester to review major concepts before moving on.

No sound or video recording devices may be used in class without advance permission.

Above all else, keep in mind that “administrative law” is an extremely broad and complex subject, and thus some sessions will require significant amounts of reading. *See, e.g.*, Feb. 24, April 21.

**Schedule: Subjects and Reading Assignments**

**Introduction**

**Jan. 11** Introduction: Casebook 1–22; Federalist Nos. 47 (Madison), 51 (Madison), 70 (Hamilton)

**Congress and the Administrative Agencies**


Jan. 25  Delegation, cont’d: Casebook 91–115

Jan. 27  Limits on Congress, and recap: Casebook 135–154

The President and the Administrative Agencies

Feb. 1  The Power to Appoint: Const. art. II, § 1, cl. 1; Casebook 155–183

Feb. 3  The Power to Remove: Casebook 217–246

Feb. 8  Tools of Control: Exec. Order 12866; Casebook 255–275; Sherley v. Sebelius, 689 F.3d 776 (D.C. Cir. 2012) (focus on Part III.3 of the court’s analysis, regarding the President’s Executive Order).


The Means of Administration

Feb. 15  Rulemaking: APA §§ 551 & 553 (in your casebook); Casebook 417–426, 458–465

Feb. 17  Informal Rulemaking: Casebook 465–489

Feb. 22  Informal Rulemaking, cont’d: Casebook 489–500, 505–511, 513–523

Feb. 24  Exceptions to Rulemaking Requirements: Casebook 523–530, 539–560; Alaska Prof. Hunters Ass’n v. FAA, 177 F.3d 1030 (D.C. Cir. 1999) (focus on discussion of “Paralyzed Veterans” doctrine); Perez v. Mortgage Bankers Ass’n, 135 S. Ct. 1199 (2015) (focus on majority opinion Parts II–III)


Mar. 14  Adjudication & Due Process: Fifth Amendment; Casebook 286–296, 316-323

**Judicial Review of Agency Action**


Mar. 23  Interpreting the Law: APA § 706; Casebook 597–598, 605–607, 613–629

Mar. 28  **Chevron Step One:** Casebook 629–647; Federalist Nos. 78 (Hamilton), 37 (Madison)

Mar. 30  **Chevron Step Two:** Casebook 684–693, 708–710; Utility Air Regulatory Group v. EPA, 134 S. Ct. 2427 (2014)

Apr. 4  **Chevron and Stare Decisis, and recap:** Casebook 737–758, 736–737; Matthew Stephenson & Adrian Vermeule, *Chevron Has Only One Step*, 95 Va. L. Rev. 597 (2009); Kenneth Bamberger & Peter Strauss, *Chevron’s Two Steps*, 95 Va. L. Rev. 611 (2009).

Apr. 6  **Chevron Step Zero:** Casebook 711–730, 758–774; *King v. Burwell*, 135 S. Ct. 2480 (2015) (Part II of the majority opinion); *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014)


Apr. 18  **Matters “Committed to Agency Discretion By Law” or Otherwise Unreviewable:** APA § 701(a)(2); Casebook 810–811, 820–831, 842–848; Justice Department Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to*


Apr. 27 Exam, 12:00 p.m.