

Syllabus
“Legislation & Statutory Interpretation” (Law 266)
Professor Robert Luther III
Antonin Scalia Law School at George Mason University
Fall 2024
Tuesdays @ 8:10 pm–10:10 pm in Rm. TBD

Course Description and Learning Outcomes: With respect to **Legislation**, students enrolled in this course will learn the vocabulary, practice, and obstacles around law-making on Capitol Hill. With respect to **Statutory Interpretation**, students will study five large-scale methodologies: (1) constructive intent, (2) legal process purposivism, (3) ordinary/soft plain meaning textualism, (4) legal/hard plain meaning textualism (including the use of federalism, linguistic, and substantive canons within textualism), and (5) pragmatism by reviewing significant decisions of federal courts that have applied these interpretive techniques. Ultimately, students will deepen their understanding of the separation of powers by developing operational skills grounded in a practical knowledge of lawmaking and contemporary judicial decision-making.

Course Materials: Robert Luther III, *Legislation & Statutory Interpretation: Navigating the Separation of Powers* (1st ed. 2024).

Grading: This course will be letter graded (i.e., on an A+* to F scale). The Exam (set for December 4, 2024 at 6 pm) will be a typed, blind-graded, in-class essay Exam. Students who demonstrate exceptional class participation may have their Exam grade increased by 1/3 of a letter grade. Attendance rules are governed by [Academic Regulation 4](#).

Office Hours: If I am in my office without a pressing emergency you are always welcome to visit to discuss classwork, career goals, or the legal profession. Formal office hours are Tuesdays from 1:00-3:00 pm or by appointment. My email is rluther@gmu.edu and my office is Hazel Hall #423.

Disclaimer: A course like this one (involving federal court decisions interpreting federal statutes enacted into law by political actors) is likely to result in strong and divergent opinions. I will not make any great effort either to reveal or to conceal my views about the cases we’re going to study because I will play the Devil’s advocate. I will, however, insist that you offer reasoned arguments for whatever opinions you express.

Date	Reading Assignment Due for Class this Day
Class 1: August 27, 2024	Introduction: Legislation and statutory interpretation within the separation of powers
Class 2: September 3, 2024	<p>Lecture on Legislation: The vocabulary, practice, and obstacles around law-making on Capitol Hill.</p> <p>Jesse M. Cross, <i>Legislative History in the Modern Congress</i>, 57 Harv. J. on Legis. 91 (2020) (excerpts), pp. 6-36</p> <p>Sandra Strokoff, Senior Counsel, Office of the Legislative Counsel, U.S. House of Representatives, <i>How Our Laws Are Made: A Ghost Writer's View</i> (1996), pp. 37-39</p>
Class 3: September 10, 2024	<p>Theories of Interpretation</p> <p>Oliver Wendell Holmes, <i>The Theory of Legal Interpretation</i>, 12 Harv. L. Rev. 417 (1899) (pragmatism), pp. 40-44</p> <p>James M. Landis, <i>A Note on "Statutory Interpretation,"</i> 43 Harv. L. Rev. 886 (1930) (constructive intent), pp. 45-53</p> <p>Stephen G. Breyer, <i>Active Liberty</i> (2005), pp. 85-101 and 115-132 (purposivism) (excerpts), pp. 54-72</p> <p>Victoria Nourse, <i>Two Kinds of Plain Meaning</i>, 76 Brook. L. Rev. 997 (2011) (ordinary/soft plain meaning v. legal/hard plain meaning), pp. 73-82</p> <p>Neil M. Gorsuch, <i>A Republic, If you Can Keep It</i> (2019), pp. 128-44 (textualism) (excerpts), pp. 83-99</p>
Class 4: September 17, 2024	<p>Theories of Interpretation in Practice: An Overview</p> <p>Church of the Holy Trinity v. United States, 143 U.S. 457 (1892) (constructive intent/spirit of the law) (please also read the full underlying statute at issue in the case), pp. 100-117</p> <p>Wis. Cent. Ltd. v. United States, 856 F.3d 490 (7th Cir. 2017) (pragmatism v. ordinary/soft plain meaning), pp. 118-129</p> <p>Wis. Cent. Ltd. v. United States, 138 S. Ct. 2067 (2018) (legal/hard plain meaning v. purposivism), pp. 130-152</p>

<p>Class 5: September 24, 2024</p>	<p>Statutory Coherence</p> <p><i>Public Citizen v. U.S. Dep’t of Justice</i>, 491 U.S. 440 (1989) (excerpts), pp. 153-166</p>
<p>Class 6: October 1, 2024</p>	<p>The Shift to Textualism</p> <p><u><i>Nix v. Hedden</i>, 149 U.S. 304 (1893)</u> (Is a tomato a fruit or a vegetable?), pp. 167-170</p> <p><u><i>Muscarello v. United States</i>, 524 U.S. 125 (1998)</u> (textualism and purposivism), pp. 171-196</p> <p><u><i>Bennett v. State Farm Mut. Auto. Ins. Co.</i>, 731 F.3d 584 (6th Cir. 2013) (Kethledge, J.)</u>, pp. 197-199</p>
<p>Class 7: October 8, 2024</p>	<p>Is this Textualism?</p> <p><u>Speaker Nancy Pelosi’s quote on the ACA</u> (Mar. 3, 2010), pp. 200-201</p> <p><u>Abbe R. Gluck, <i>The grant in King – Obamacare subsidies as textualism’s big test</i>, SCOTUSblog (2014)</u>, pp. 202-207</p> <p><i>King v. Burwell</i>, 576 U.S. 473 (2015) (excerpts), pp. 208-223</p> <p><u>Abbe R. Gluck, <i>Congress has a “plan” and the Court can understand it – The Court rises to the challenge of statutory complexity in King v. Burwell</i> (2015)</u>, pp. 224-228</p>
	<p>Ordinary/Soft Plain Meaning Textualism</p> <p><i>Yates v. United States</i>, 135 S. Ct. 1074 (2015) (excerpts), pp. 229-245</p> <p><u><i>Fischer v. U.S.</i>, 603 U.S. ____ (Jun. 28, 2024)</u>, pp. 246-288</p>
<p>Class 8: October 15, 2024</p>	<p>Federalism Canons</p> <p><i>Bond v. United States</i>, 572 U.S. 844 (2014) (excerpts), pp. 289-299</p>

<p>Class 9: October 22, 2024</p>	<p>Linguistic Canons</p> <p><u>McBoyle v. U.S., 283 U.S. 25 (1931) (Holmes, J.) (ejusdem generis)</u>, pp. 300-302</p> <p><i>Lockhart v. United States</i>, 577 U.S. 347 (2016) (excerpts), pp. 302-316</p>
<p>Class 10: October 29, 2024</p>	<p>Pragmatism</p> <p><i>Hively v. Ivy Tech Cmty. Coll. of Indiana</i>, 853 F. 3d 339, 356 (7th Cir 2017) (Posner, J., concurring) (“judicial interpretive updating”), pp. 317-327</p> <p>Legal/Hard Plain Meaning Textualism</p> <p><i>Bostock v. Clayton County</i>, 590 U.S. 644 (2020) (excerpts), pp. 328-345</p> <p><u>N. Am. Co. for Life. & Health Ins. v. Caldwell, 55 F.4th 867 (11th Cir. 2022) (Pryor, C. J.)</u>, pp. 346-355</p>
<p>Class 11: November 12, 2024</p>	<p>Where Is Textualism Going?</p> <p><u>Snell v. United Specialty Insur. Comp., 2024 WL 2717700 (11th Cir. May 28, 2024)</u>, pp. 356-411</p>
<p>Class 12: November 19, 2024</p>	<p>The Major Questions Doctrine</p> <p><u>Amy Coney Barrett, Congressional Insiders and Outsiders, 84 U. Chi. L. Rev. 2193 (2017)</u>, pp. 412-431</p> <p><u>Biden v. Nebraska, 600 U.S. 477 (2023)</u>, pp. 432-508</p>
<p>Class 13: November 22, 2024</p>	<p>Exam Review</p> <p>***This is Friday evening – we are instructed to observe a Tuesday schedule on this date***</p>
	<p>EXAM: December 4, 2024 @ 6:00 pm</p>