

Syllabus
“Legislation & Statutory Interpretation” (Law 266)
Professor Robert Luther III
Antonin Scalia Law School at George Mason University
Fall 2025
Tuesdays @ 8:10-10:10 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* (2d ed. 2025).

Grading: This course will be letter graded (i.e., on an A+* to F scale). The Final Exam (December 10, 2025 @ 6 pm) will be a typed, blind-graded, in-class essay Exam. Public speaking is important to your development as a lawyer, so I treat class participation as an integral part of this course. 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](#).

Reflection Essays: Oliver Wendell Holmes quipped that “[t]he life of the law has not been logic—it has been experience” and experience has taught me that writing about the law shortly after studying it yields long-term benefits. At the end of each class you are invited to write a reflection essay on the material not to exceed one side of a regular sheet of paper. Any reflection essays you deliver to me prior to the beginning of our next week of class will be returned to you at the beginning of the Final Exam and will be the only outside materials you may use to assist you during the Exam. Type your name and date of the classes/subjects at the top of each essay in bold. The goal here is to incentivize you to synthesize the material throughout the semester so that you retain the information for the long run.

Contact Info/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 Tuesday from 6:00-8:00 pm and by appointment in person or on Zoom. 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.

<i>Date</i>	<i>Reading Assignment Due for Class this Day</i>
Class 1: August 19, 2025	<p>Introduction: Legislation and statutory interpretation within the separation of powers</p> <p>Speaker Nancy Pelosi's quote on the ACA (Mar. 3, 2010), p. 2</p> <p>Adam Liptak, <i>An Exit Interview With Richard Posner, Judicial Provocateur</i>, THE NEW YORK TIMES (Sept. 11, 2017), pp. 3-4</p>
Class 2: August 26, 2025	<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. 5-35</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. 36-38</p>
Class 3: September 2, 2025	<p>Theories of Interpretation</p> <p>Oliver Wendell Holmes, <i>The Theory of Legal Interpretation</i>, 12 Harv. L. Rev. 417 (1899) (pragmatism), pp. 39-43</p> <p>James M. Landis, <i>A Note on "Statutory Interpretation,"</i> 43 Harv. L. Rev. 886 (1930) (constructive intent), pp. 44-52</p> <p>Stephen G. Breyer, <i>Active Liberty</i> (2005) (purposivism) (excerpts), pp. 53-61</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. 62-71</p> <p>Neil M. Gorsuch, <i>A Republic, If you Can Keep It</i> (2019) (textualism) (excerpts), pp. 72-88</p> <p>Antonin Scalia, <i>A Matter of Interpretation: Textualism</i> (1997), pp. 89-92</p>

September 9, 2025	<p>Theories of Interpretation in Practice: An Overview</p> <p><i>Wis. Cent. Ltd. v. United States</i>, 856 F.3d 490 (7th Cir. 2017) (pragmatism v. ordinary/soft plain meaning), pp. 93-104</p> <p><i>Wis. Cent. Ltd. v. United States</i>, 138 S. Ct. 2067 (2018) (legal/hard plain meaning v. purposivism), pp. 105-127</p>
Class 4: September 16, 2025	<p>Constructive Intent / “Spirit of the law”</p> <p><i>Church of the Holy Trinity v. United States</i>, 143 U.S. 457 (1892) (constructive intent/spirit of the law) (please also read the full underlying statute at issue in the case), pp. 128-145</p> <p><i>Public Citizen v. U.S. Dep’t of Justice</i>, 491 U.S. 440 (1989) (excerpts), pp. 146-159</p>
Class 5: September 23, 2025	<p>The Shift to Textualism</p> <p><i>Nix v. Hedden</i>, 149 U.S. 304 (1893) (“Is a tomato a fruit or a vegetable?”), pp. 160-163</p> <p><i>City of Rolling Meadows v. Kyle</i>, 494 N.E.2d 766 (1986) (Is a newborn monkey a “domesticated pet?”), pp. 164-167</p> <p><i>Muscarello v. United States</i>, 524 U.S. 125 (1998) (textualism and purposivism) (What does it mean to “carry?”), pp. 168-193</p> <p><i>Bennett v. State Farm Mut. Auto. Ins. Co.</i>, 731 F.3d 584 (6th Cir. 2013) (Kethledge, J.) (What does it mean to “occupy?”), pp. 194-196</p>
Class 6: September 30, 2025	<p>Is this Textualism?</p> <p><i>Abbe R. Gluck, The grant in King – Obamacare subsidies as textualism’s big test</i>, SCOTUSblog (2014), pp. 197-202</p> <p><i>King v. Burwell</i>, 576 U.S. 473 (2015) (excerpts), pp. 203-218</p> <p><i>Abbe R. Gluck, 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), pp. 219-223</p> <p><i>Yates v. United States</i>, 135 S. Ct. 1074 (2015) (excerpts), pp. 224-240</p>

Class 7: October 7, 2025	<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. 241-251</p> <p>Legal/Hard Plain Meaning Textualism [Literalism]</p> <p><i>Bostock v. Clayton County</i>, 590 U.S. 644 (2020) (excerpts), pp. 252-269</p> <p><i>N. Am. Co. for Life. & Health Ins. v. Caldwell</i>, 55 F.4th 867 (11th Cir. 2022) (Pryor, C. J.), pp. 270-279</p>
Class 8: October 14, 2025	<p>Linguistic Canons</p> <p><i>McBoyle v. U.S.</i>, 283 U.S. 25 (1931) (Holmes, J.) (<i>ejusdem generis</i>), pp. 280-282</p> <p><i>Lockhart v. United States</i>, 577 U.S. 347 (2016) (“rule of the last antecedent” and “series-qualifier canon”) (excerpts), pp. 283-298</p> <p>Federalism Canon</p> <p><i>Bond v. United States</i>, 572 U.S. 844 (2014) (excerpts), pp. 299-309</p>
Class 9: October 21, 2025	<p>The Future of Textualism (Class 1): Corpus Linguistics</p> <p><i>United States v. Costello</i>, 666 F.3d 1040 (7th Cir. 2012) (Posner, majority; Manion, dissent) pp. 310-336</p> <p><i>State v. Rastabout</i>, 2015 UT 72 356 P3d 1258 (Utah 2015) pp. 337-372</p> <p><i>John S. Ehrett, Against Corpus Linguistics</i>, 108 Geo. L.J. Online (2019) pp. 373-396</p>
Class 10: October 28, 2025	<p>The Future of Textualism (Class 2): Artificial Intelligence and The Major Questions Doctrine</p> <p><i>Snell v. United Specialty Insur. Comp.</i>, 2024 WL 2717700 (11th Cir. May 28, 2024) (Newsom, J., concurring), pp. 397-429 (AI)</p> <p><i>Biden v. Nebraska</i>, 600 U.S. 477 (2023), pp. 430-506</p>

November 4, 2025	NO CLASS – ELECTION DAY
Class 11: November 11, 2025	HOLDING FOR MAKEUP CLASS [IF NECESSARY]
Class 12: November 18, 2025	FINAL EXAM REVIEW
December 10, 2025 @ 6:00 pm	FINAL EXAM