

Ilya Somin  
Professor of Law  
Scalia Law School  
George Mason University  
Office: Rm. 322  
Ph: 703-993-8069  
isomin@gmu.edu  
Office Hours: Tuesday 12:30-2:30 PM or  
by appointment

## **Legislation and Statutory Interpretation Spring 2023**

### **Course Time and Location**

Tuesday: 10:15-12:15

### **Reading Materials**

Textbook: Eskridge, Brudney, Chafetz, Frickey, and Garrett, *Cases and Materials on Legislation: Statutes and the Creation of Public Policy* (6th Ed. 2020) (EBCFG). Available at GMU Book Store.

EBCFG 2022 Supplement (Supp) (available on TWEN)

Readings not in the textbook are available on Westlaw and/or TWEN, and are listed in the syllabus as such.

### **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.

## **Learning Outcomes**

Students will become conversant with different approaches to statutory interpretation, such as textualism and purposivism, the pros and cons of reliance on legislative history, and a variety of canons of interpretation utilized by courts. They will also learn different theories of the legislative process and become familiar with competing perspectives on statutory interpretation developed by judges and legal scholars.

## **Coronavirus/Natural Disaster Contingency Plans**

In the event that either state or university guidelines prevent this class from meeting in-person, it will be held online utilizing Zoom or other similar platform. Should this prove necessary, I will inform the class of relevant procedures online. But, to the extent possible, we will observe the same rules and procedures as during in-person sessions.

Should classes be cancelled because of a snowstorm or other natural disaster, the professor – in consultation with students – will determine whether makeups will be in-person or remote.

## **Permission to Record Classes**

I hereby formally permit students to use any video or audio equipment of their choice to record classes, so long as the resulting video or audio is not used for commercial purposes or financial gain.

### **January 17: Introduction**

*Griggs v. Duke Power* (lower court decision) EBCFG 50-56  
*Griggs v. Duke Power*, 401 U.S. 424 (1971) Westlaw/TWEN  
*United Steelworkers v. Weber* EBCFG 60-74

### **January 24: Theories of the Legislative Process/Eclectic Interpretation**

*State v. Greene*, 388 P.3d 1132 (Oregon Ct. App. 2016) Westlaw/TWEN  
Theories of the Legislative Process EBCFG 18-36  
British precedents EBCFG 406-10  
*Holy Trinity Church v. United States* EBCFG 410-18

### **January 31: Legal Process and Dynamic Statutory Interpretation**

Materials on Legal Process Interpretation EBCFG 424-34  
*Shine v. Shine*, 802 F.2d 583 (1st Cir. 1986) Westlaw/TWEN  
William Eskridge, “Dynamic Statutory Interpretation,” EBCFG 448-51

*In the Matter of Jacob* EBCFG 451-60  
*Davis v. Monroe Cty. Bd. of Education*, 526 U.S. 629 (1999) Westlaw/TWEN

### **February 6: Textualism**

Textualist Criticisms of Legal Process EBCFG 483-85  
*TVA v. Hill* EBCFG 485-89  
*Griffin v. Oceanic Contractors* EBCFG 489-97  
*FDA v. Brown & Williamson Tobacco* EBCFG 541-50

### **February 13: New Textualism**

*Green v. Bock Laundry Machine Co.* EBCFG 500-510  
Antonin Scalia, *A Matter of Interpretation* EBCFG 511-15  
William Eskridge and Philip Frickey, "Statutory Interpretation as Critical Reasoning," EBCFG 551-56  
*US v. Marshall* EBCFG 527-37  
New Textualist Criticism of Legislative history EBCFG 755-60

### **February 20: Major Questions/Purposivism**

*Bostock v. Clayton County* SUPP 73-103  
*King v. Burwell* EBCFG 737-49  
*FDA v. Brown & Williamson Tobacco* EBCFG 541-50  
*West Virginia v. EPA* TWEN (under course materials)

### **February 27: Legislative History II**

*In re Sinclair* EBCFG 760-65  
*Carr v. United States*, 560 U.S. 438 (2010) Westlaw/TWEN  
Reliance on statements by legislators, committee reports, and sponsor statements EBCFG 769-73  
*Pepper v. Hart* EBCFG 773-85

### **March 7: Legislative History III: Postenactment History/Textual Canons**

*Montana Wilderness Association v. US Forest Service* EBCFG 790-805  
*Bob Jones v. United States* EBCFG 464-76  
Statements by presidents and legislators EBCFG 802-810  
Textual Canons EBCFG 581-611

### **March 21: Canons of Interpretation (Continued): Textual and Substantive Canons**

*Babbitt v. Sweet Home* EBCFG 837-47  
Substantive Canons EBCFG 648-51  
Rule of Lenity 651-54

*Muscarello v. United States* EBCFG 654-64

**March 28: Canons of Interpretation II: Avoiding Constitutional Problems and Federalism**

*NLRB v. Catholic Bishop of Chicago* EBCFG 670-80

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

*Gregory v. Ashcroft* EBCFG 681-89

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

**April 4: Canons of Interpretation III: Interpretation in Light of the Common Law and other Statutes**

*Smith v. Wade* EBCFG 717-27

Interpretation in light of other statutes EBCFG 816-17, 824

*Lorillard v. Pons* EBCFG 817-24

*Smith v. Bayer* EBCFG 824-26

**April 11: Canons III (Continued)/Stare Decisis & Discussion of Final Exam**

*Morton v. Mancari* EBCFG 826-35

The Role of Precedent and Stare Decisis EBCFG 433-34

*Flood v. Kuhn* EBCFG 434-44

*Patterson v. McLean Credit Union* EBCFG 444-46

**April 18: Deference to Agency Interpretations**

*Chevron v. Natural Resources Defense Council* EBCFG 1042-50

*Gutierrez-Brizuela v. Lynch*, 834 F. 3d 1142 (10th Cir. 2016), 1142-44, 1149-56 (Gorsuch concurrence) Westlaw/TWEN

*MCI v. AT&T* EBCFG 1050-57

*United States v. Mead* EBCFG 1057-64

Notes on “the Chevron Revolution” EBCFG 1065-67