

# Legislation and Statutory Interpretation

Professor Joshua Kleinfeld

George Mason Scalia Law School

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## Description:

The primary source of law in the United States today is not common law, nor the Constitution, but statutes. It is through statutes that Congress and state legislatures express the democratic will. It is statutes that create administrative agencies, that agencies are charged with interpreting and enforcing, and that agencies expound when they pass regulations. It is statutes that judges interpret and enforce, except in constitutional and common law cases. And it is statutes that practicing lawyers interpret and enforce when advising clients as to what the law is.

The ability to interpret statutes is thus at the absolute center of the practice of law. This course is chiefly about the interpretive techniques that lawyers have evolved to that end. We will study four large-scale methodologies: constructive intent, legal process purposivism, textualism, and pragmatism. We will also study particular doctrines of statutory construction like the linguistic canons, the whole statute rule, and the rule of lenity. Finally, we will discuss the political processes that lead to and prevent legislation, and the balance of power between judges and agencies in interpreting statutes, asking throughout whether statutes are performing their basic function of expressing a democratic polity's will.

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## Learning Objectives:

- Understand four large-scale interpretive methodologies—constructive intent, legal process purposivism, textualism, and pragmatism—and a set of particular interpretive doctrines.
  - Develop the ability to wield those methodologies and doctrines in legal argument.
  - Understand how legislation functions in the overall structure of American democracy.
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## Logistics:

- The casebook is: Eskridge, Brudney, Chafetz, Frickey, & Garret, *Legislation and Regulation: Statutes and the Creation of Public Policy* (6th edition). There's no harm in getting a second-hand copy of the 6th edition; however, I don't know how the 6th edition differs from earlier editions. There may be differences in pagination or content that affects your learning.
- The Blackboard site is your key to this course: that's where reading assignments are posted. This syllabus is big picture; the Blackboard site is class-to-class guidance.
- During class, please do not surf the net, email, virtually communicate with other students, or otherwise use your computers, phones, or other devices in ways that distract you, distract others, or undermine the spirit of the class.
- Please don't come to class if you think you might be contagious with COVID or another illness. I will never object; just let me know if that is the case.
- Office hours are on Wednesdays from 5:30-6:30pm. Office hours are *your* time: please feel welcome—not just authorized, but welcome—to stop by. Bring whatever thoughts or questions engage you, big or small, course-related or more general. You can write me to make a one-on-one appointment during office hours or, if no one has individually booked a slot, I'll hold a roundtable discussion for anyone who wants to join. I'm also happy to meet outside of office hours by appointment, though I ask that you please try to make use of office hours if you can.

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## Grading:

- Your grade will be based exclusively on your final exam, which will be anonymized and blind-graded. Please do not include any identifying information in your exam answer.
- The entire semester of material (readings and class discussion) will be fair game on the exam.
- As per academic regulation 4-3, the exam will be in-person and internet-blocked, and all use of generative AI is prohibited. Your computers will also be closed such that you can only type the exam, not access apps or downloaded materials. The exam is open-book, however, with respect to physical, printed materials, which you can bring to and consult during the exam.
- The first half of the course ends with moot courts designed to help you practice wielding different approaches to statutory interpretation in legal argument. These moot

courts, although ungraded, are meant to help you develop the skills necessary for the final exam. Although I make no representations about what the final exam will look like, the moot courts are your best preparation resource. As in standard moot courts, you will be given a fact pattern, legal materials, and a client to represent. You will make a legal argument on behalf of your client in front of a panel of mock judges. Unlike some moot courts, however, the materials you are given will present acute problems of statutory interpretation. Your task as an advocate will be to construct legal arguments that reflect your growing mastery of such interpretive questions.

- Tips on studying for the exam:
    - Bear in mind the learning objectives above.
    - Because the exam is comprehensive, and because it requires developing a skillset rather than solely a body of knowledge, you'll find it very difficult to prep by cramming for the exam while skirting the week-to-week reading and class discussion. Your best bet, both strategically and educationally, is to bring good preparation and thoughtful engagement to class every week. The exam is designed to incentivize and reward that approach.
    - Some other tips that might serve you well on the exam: practice applying the concepts you learn throughout the course in novel contexts; work toward having convictions of your own about the topics we cover, but convictions that reflect genuine and thoughtful engagement with the ideas on the other side; be able to present, with fairness and sympathy, the best arguments on all sides of an issue.
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