SYLLABUS

The syllabus is divided by assignment, not by class. Some assignments will likely take more than one class period to cover; some may take less. I will announce assignments for each class either at the end of the previous class or by e-mail. The syllabus is subject to change. Handouts, problems, and practice exam questions will likely be added, particularly materials that reflect current events. Some readings may also be deleted or shortened.

You should keep all handouts you receive as part of the course materials. All page numbers in the syllabus refer to the casebook, Eskridge, Frickey & Garrett, Cases and Materials on Legislation (4th ed. 2007), unless otherwise noted.

I. INTRODUCTION TO THE LEGISLATIVE PROCESS

A. The Civil Rights Act of 1964 in Congress

1-38 History of the Civil Rights Act of 1964
   Handout How a Bill Becomes a Law
   U.S. Const. Art. I, §§ 1, 7-9; Art. II, § 1 (first sentence), §§ 2-3
   Handout Civil Rights Act Timeline
   Handout Problem on the Legislative Process

B. The Civil Rights Act of 1964 in the Courts

38-47 Title VII of the Civil Rights Act of 1964
82-104 Perspectives on Griggs
   Handout United Steelworkers v. Weber and Notes
104-15 Chief Justice Burger’s Weber dissent
   Handout Johnson v. Transportation Agency and Notes
   Handout Problem on Sexual Harassment
C. **Contemporary Problems in Making Law and the Balance of Power**

372-87 Federal Line Item Veto: *Clinton v. City of New York* and Notes
Handout Materials on Impeachment

II. **Limitations on the Legislative Process in the States**

A. **Single Subject Rule**

356-65 Note on Single Subject Rule
*Department of Education v. Lewis* and Notes
Handout Excerpts from Illinois Cases

B. **Line Item Veto**

365-72 Note on Line Item Veto
*Rush v. Ray* and Notes
Handouts on Illinois Amendatory and Line Item Veto

C. **Direct Democracy**

523-27 Note on Direct Democracy
Handout Materials on California Budgeting Problems
535-43 *St. Paul Citizens for Human Rts. v. City Council* and Notes
Handout *National Pride at Work, Inc. v. Governor of Michigan*

III. **Eligibility to Serve in Congress**

A. **Congressionally-Imposed Qualifications**

196-208 *Powell v. McCormack* and Notes
Handout Materials on the Appointment of Senators

B. **Qualifications Imposed by States**

208-26 *U.S. Term Limits, Inc. v. Thornton* and Notes
IV. THE ETHICS OF DELIBERATION

A. Regulation of Campaign Finance

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<tr>
<td>235-47</td>
<td>Structures of Campaign Finance and The Constitutional Framework</td>
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<td>252-61</td>
<td>Campaign Finance after Buckley and The Bipartisan Campaign Reform Act</td>
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<td>286-90</td>
<td>Notes on McConnell v. FEC (read through paragraph 3 on p. 290)</td>
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<td>Handout</td>
<td>Current issues in campaign finance</td>
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B. Regulation of Corruption

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<tr>
<td>301-11</td>
<td>Bribery Statutes</td>
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<td>People ex rel. Dickinson v. Van de Carr and Notes</td>
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<td>Extortion and the Hobbs Act</td>
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C. Regulation of Lobbying

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<td>318-22</td>
<td>Note on the Regulation of Lobbying</td>
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V. PULLING THINGS TOGETHER: THE CONSCIENTIOUS LAWMAKER, ACCOUNTABILITY, AND THE CONSTITUTION

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VI. STATUTORY INTERPRETATION AND IMPLEMENTATION

A. Reading a Statute

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<tr>
<td>Handout</td>
<td>Current text of Title VII, available at <a href="http://www.eeoc.gov/policy/vii.html">http://www.eeoc.gov/policy/vii.html</a> (read well enough to understand basic structure and to address the Problems)</td>
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<tr>
<td>Handout</td>
<td>Problems on Title VII</td>
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B. Stare Decisis

631-46 Note on Stare Decisis and Statutory Precedents
Flood v. Kuhn and Notes

C. Theories of Statutory Interpretation: Historical Development

1. Introduction and Background

689-707 Hart & Sacks, “The Legal Process” and Notes
Rector, Holy Church v. United States and Notes

2. Legal Process Theories

718-23 Hart & Sacks, “The Legal Process” and Notes
727-29 Notes on Judicial Correction of Legislative Mistakes
United States v. Locke
729-37 Eskridge, “Dynamic Statutory Interpretation”
In the Matter of Jacob
740 n.2-742 Note on Female Juror Cases
737-39 Li v. Yellow Cab of California and Notes
744-47 State of New Jersey v. 1979 Pontiac Trans Am and Note 1

3. Plain Meaning and the New Textualism

752-55 TVA v. Hill
763-81 Notes on Hill, Griffin, and the Revival of the Plain
Meaning Rule
Green v. Bock Laundry Machine Co. and Notes
Scalia, “A Matter of Interpretation”
810-11 Notes 1 and 2 on the LSD Case and Ex Ante Thinking
(Skim United States v. Marshall, 801-10, as needed
to make sense of the Notes)
793 n.2-795 Notes on New Textualism on the Court
Handout Problem on Dynamic Interpretation
781-90 Chisom v. Roemer
4. **Pragmatic Approaches to Statutory Interpretation**

830-35  Eskridge and Frickey, “Statutory Interpretation as Practical Reasoning”
Note on the Funnel of Abstraction
812-18  Notes on Public-Regarding Goals and Rent-Seeking
        *Perez v. Wyeth Laboratories, Inc.* and Notes
811-812  Note 3 on the LSD Case and *Ex Ante* Thinking
Breyer, *Active Liberty*, pp. 3-20, 85-101, 115-32

5. **What Does the Practitioner Do?**

Handout:  Problem on False Claims Act

**D. Doctrines of Statutory Interpretation**

1. **Textual Canons**

847-68  Introductory Problem
        Maxims of Word Meaning and Association
        Grammar Canons
        The Whole Act Rule
Handout  Textual Canons
Handout  Problems on Textual Canons
953-55  Note on Interpretive Directions in Statutes

2. **Substantive Canons**

880-84  Types of Substantive Canons

a. **The Rule of Lenity**

884-903  The Rule of Lenity
        *Muscarello v. United States*
        *McNally v. United States*
        Notes on *Muscarello, McNally*, and the Rule of Lenity
b. The Avoidance Canon and Clear Statement Principles

917-20 Notes on the Avoidance Canon
939-41 Note on Congressional Reliance
Handout NAMUDNO v. Holder

c. In Pari Materia, Repeal by Implication, and Whole Code Rule

1070-73 Lorillard v. Pons
1082-89 Morton v. Mancari and Notes
820-30 FDA v. Brown & Williamson Tobacco Co. and Notes

d. The Borrowed Statute Rule [if time]

1076-81 Zerbe v. State and Note

3. Debate Over Canons

941-52 Llewellyn, “Remarks on the Theory of Appellate Decision...”
Note on Intellectual Warfare Over Canons

E. The Role of the Common Law

956-71 Notes and Introductory Problem
Smith v. Wade
Notes on Common Law as Source of Construing Statutes

F. Legislative History

1. Legislative Context

971-81 Leo Sheep Co. v. United States and Notes

2. Committee Reports

981-91 Blanchard v. Bergeron
Note on the New Textualist Critique of Committee Reports
3. Statements by Sponsors or Drafters of Legislation

1000-01 Note
1027-35 *Montana Wilderness Ass’n v. United States Forest Service I*
   Notes on the First Checkerboard Case
1014-20 *Kosak v. United States* and Notes

4. Floor Debates

1020-21 Notes on Legislative Deliberation
   Handouts Floor Debate and *Hamdan v. Rumsfeld*

5. Legislative Inaction and Subsequent Legislative History

1035-43 Post-Enactment Legislative History
   *Montana Wilderness Ass’n v. United States Forest Service II*
   Notes on the Second Checkerboard Case
   Legislative Inaction
1026 Note on Rejected Proposals

6. Ballot Initiatives (Again)

1101-03 Note on Interpreting Ballot Initiatives
   Handout Statutory Interpretation and Direct Democracy

G. **Statutory Drafting Exercise [if time]**
VII. PULLING THINGS TOGETHER: CONTEMPORARY STRUGGLES IN STATUTORY INTERPRETATION AND THE POWER OF THE JUDICIARY, CONGRESS & THE EXECUTIVE

A. Administrative Delegation, Interpretation, and Implementation

421-28  Hampton v. Mow Sun Wong and Notes [if time]
1197-99  Chevron USA v. Natural Resources Defense Council
1204-13  MCI Telecommunications Corp. v. AT&T and Notes
1269-71  Note on Chevron and Stare Decisis
1258-61  Note on Deference to Agencies in the State Courts
1213-23  United States v. Mead Corp. [if time]
1276-83  Quo Vadis the “Chevron Revolution”? [if time]
Breyer, Active Liberty, pp. 102-08
Handout  Materials on Regulations

B. Presidential Signing Statements and Claims of Unconstitutionality

1043-47  Notes on Presidential Signing or Veto Statements
Handout  Materials on Presidential Signing Statements