

**LEGISLATION SYLLABUS**  
FALL 2016

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<b>Classes:</b>	Thursday & Friday, 1:30 PM — 2:50 PM
<b>Office hours:</b>	Thursday & Friday, 3 PM — 4 PM
<b>Casebook:</b>	Eskridge, Frickey, Garrett and Brudney: <i>Cases and Materials on Legislation: Statutes and the Creation of Public Policy</i> , 5 <sup>th</sup> edition (2014) & 2016 supplement (listed as § in readings)
<b>Website:</b>	All additional materials available at <a href="http://tonjajacobi.com">tonjajacobi.com</a>

**Course content:**

This course is a general introduction to the constitutional and interpretative issues arising out of statutes and legal issues associated with the political process. In essence, we first study legislatures as bodies, and then their work product in detail.

Statutes have increasingly replaced common law court decisions as the principal expression of public policy and the dominant source of law in the United States. Reflecting this development, many law courses are orienting toward statutory law. The emphasis in most courses, however, is necessarily on the law and policy of a particular substantive area, not on legislation as such. This course lays the groundwork for the study and practice of statutory law in all substantive areas, by exploring some of the major theories, techniques and issues of modern legislation. The course is designed to be both theoretical and practical.

The course begins with an overview of the process of enacting legislation. It then examines the major theories of the legislative process in a democracy and the implications of those theories for the treatment of statutes. Next, the course explores the relationship between statutes and other sources of law, including judicial and executive decisions. Finally, we examine statutory interpretation, looking both at currently controversial theories of interpretation and at the tools of interpretation used by courts, such as language and grammar, legislative history, and policy-based maxims.

**Assessment:**

Students have two options:

1. a 100% exam: open book, self-scheduled, duration 4 hours, consisting of 2 parts: one long problem question and a number of short answer questions; or
2. a 50% paper and a 50% exam:
  - a. 50% exam: open book, self-scheduled, duration 2 hours, consisting of only the short answer questions; and
  - b. 50% paper, on a topic of your choice that is approved by me by March 3, length 10-15 pages double spaced, with bluebook footnotes.

The exam will require less than 2/4 hours, but you have additional time to ensure that your exam complies with strict word limits.

Paper topics can be either a typical research question, or else a write-up of a student's hands-on experience in some aspect relevant to the course. For instance, in the past some students chose to volunteer for a legislative or presidential campaign and describe what they experienced. Students should discuss their topics with me.

Previous years' exams, A+ answers, and A+ papers are available on the website. Slides will also be posted there each week.

Attendance and participation will be considered if your final grade is close.

**Classes:**

We make use of a range of different approaches to learning, so as to keep the classes varied and stimulating. To this end, I have arranged for visits by some guest speakers, who have great expertise in their respective areas, and in the past the students have greatly enjoyed those classes. We will also use some small-group discussion and strategy sessions, analyze detailed real-world statutory applications and case studies, and use various other approaches, in addition to the standard Socratic dialogue. Each of these is underlined in the outline below.

Everyone is strongly encouraged to attend class regularly, if they are healthy and able. But if you are ill or have e.g. a family emergency or religious holiday, let me know and I will record class for you.

You are expected to contribute in class, but if you are not prepared on a given day, let me know *before class* and I will not call on you.

## LEGISLATION COURSE OUTLINE:

### Classes & Reading

### Subjects

#### I. Representation

1. Jan 12 & Jan 13  
pp1–60, §1-8  
Introduction to Legislation  
Introduction to voting systems & procedures  
Case study – the Civil Rights Act
2. Jan 19 & Jan 20  
pp117–170, §9-18  
Electoral Structures  
Gerrymandering & racial gerrymandering  
Guest speakers: (date to be confirmed)  
**Ruth Greenwood**, Lead Attorney, Voting Rights Project, Chicago Lawyers' Committee for Civil Rights Under Law, & **Nick Stephanopoulos**, Prof. of Law, Univ. of Chicago, & CLC's Expert
3. Jan 26 & Jan 27  
pp61–79, Handout  
Agency implementation Part I  
Legislative agenda-setting  
Case Study: the Clinton Energy Tax
4. Feb 2 & Feb 3  
pp171–206  
Eligibility qualifications  
Term Limits  
Guest Speaker: Feb 2: **Representative Lou Lang**,  
Deputy Majority Leader, Illinois  
House of Representatives
5. Feb 9 & Feb 10  
pp207–260, §19-23  
Campaign finance restrictions  
Statutory case study: p1599–1602 of  
[http://docs.house.gov/billsthisweek/20141208/C  
PRT-113-HPRT-RU00-HR83sa.pdf](http://docs.house.gov/billsthisweek/20141208/C<br/>PRT-113-HPRT-RU00-HR83sa.pdf)

#### II. Deliberation

6. Feb 16 & Feb 17  
pp261–305, §25-39  
Bribery  
Conflicts of interest  
Lobbying  
Guest speaker: Feb 16: **Barry Matchett**, Director  
of External Affairs, NRG
7. Feb 23 & Feb 24  
pp306–327  
State deliberation rules  
Agency implementation Part II . . .

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Guest speaker: Feb 24: **Brendan Dailey**, Senior Attorney, Metropolitan Water Reclamation District of Greater Chicago

### III. Statutory Interpretation

8. Mar 2 & Mar 3  
pp477–494, 503–530,  
& 551–567
- Theories of interpretation  
Statutory case studies:  
- 28 U.S.C. § 1332 Class Action Fairness Act;  
- 21 U.S.C. § 841 Enhanced criminal penalties
9. Mar 9 & Mar 10  
pp551–592, 643–685,  
& Appx B, 1195
- Plain Meaning Rule and New Textualism  
Textual canons  
Statutory case study: Sex Offender Registration and Notification Act, 42 U.S.C. §§ 16901-;  
& 18 U.S.C. § 2250(a)
10. Mar 16 & Mar 17  
pp690–748, §63-93
- Substantive canons:  
- Rule of lenity  
- Avoiding unconstitutionality;  
- Federalism  
Statutory case study: Armed Career Criminal Act 18 U.S.C. §924(e)
- Mar 23 & Mar 24
- Spring break – no class
11. Mar 30 & Mar 31  
pp776–852, §93-112
- Legislative history  
Application: Presidential signing statements  
(probably also substantive canons leftovers)

### IV Overview

12. Apr 6 & Apr 7  
pp878–890, 327–346,  
§40-41
- Statutory interpretation overview  
Notions of Responsible Government:  
- Legislative immunity  
- Delegation of law-making authority  
Oral argument: Bethune-Hill v. Virginia State Board of Elections\*  
\* subject to change if Scotus takes even more salient case between now and then
13. Apr 13 & Apr 14  
No reading
- Catch up & Review