

PREFACE

The second edition of the *Administrative Law* casebook is intended to meet several objectives. First, we hope to accomplish the core goal of the first edition of the text. That goal was described in the preface to the first edition:

This book is designed to serve as a streamlined workhorse for professors who like to teach out of cases and to focus on the principles underlying core doctrines. It lets the cases speak for themselves, with a minimum of editorializing text. This approach gives professors and students alike the opportunity to reconcile the principles of the case, each in his or her own way.

The second edition accordingly retains the organizational structure of the first edition. That structure is dictated by the four fundamental components of administrative law: (1) procedural requirements for agency adjudication; (2) procedural requirements for, and other issues related to, agency rule-making; (3) separation-of-powers issues related to administrative agencies; and (4) judicial review of agency action. The authors' experience is that the course is most successful when taught in this order and the second edition of the text adheres to this order for presenting the materials. The four components are, however, presented in chapters that are largely independent. Instructors may change the order of presentation to conform to their own judgment about the optimal order of presentation.

While adhering to the organizing principles and structure of the first edition, this new edition has been revised to account for developments in administrative law that have occurred since the text was first published. The revised text includes as lead cases the recent decisions in *Sierra Club v. Johnson* and *Gonzales v. Oregon*. New notes have been added to the text addressing a range of emerging administrative law issues. For example, the new edition includes note materials addressing how administrative law principles have been affected by the War on Terror. Key recent cases addressed in these notes are *Hamdi v. Rumsfeld* and *Hamdan v. Rumsfeld*. There is an expanded and substantially revised note on the role of the President in implementing statutes. The note includes new material on presidential signing statements and updates the materials on Office of Management and Budget ("OMB") review of rulemaking by presenting President George W. Bush's amendments to the Clinton Executive Order requiring OMB review. There are also new notes addressing the ossification of administrative law and taxpayer standing. Throughout the text, questions and notes for students have been added to reflect the insights of decisions in recent cases, including *Gonzales v. Oregon*; *Dismas Charities, Inc. v. U.S. Department of Justice*; *Town of Castle Rock v. Gonzales*; *Dominion Energy Brayton Point v. Johnson*; *Zuni Public School District No. 89 v. Department of Education*; *Long Island Care at Home, Ltd. v. Coke*; *National Cable &*

Telecommunications Ass'n v. Brand X Internet Services; *National Ass'n of Home Builders v. Defenders of Wildlife*; *Hein v. Freedom From Religion Foundation, Inc.*; and *Woodford v. Ngo*.

The third objective of the new text was to provide opportunities for students to apply their understanding of administrative law principles in new legal contexts. Although the second edition does not adopt the problem approach to teaching administrative law, the second edition now includes a series of "Theory Applied Problems" at the conclusion of different sections of the text. These problems will allow students to test their understanding of the principles of administrative law. Several of the problems implicate contemporary public policy issues, including airline passenger screening and U.S. Attorney independence.

The final objective of the second edition is to improve the content of the text by responding to the suggestions of adopters. These teachers of administrative law know the text best by having worked closely with the materials. The second edition now includes expanded treatment of the Freedom of Information Act, including inclusion of *EPA v. Mink* as a lead case. The treatment of judicial review has also been expanded with a new lead case on deference to agency interpretations of regulations and new notes on harmless error in the administrative process and judicial remedies for unlawful agency action.

In addition to revising the text to cover recent developments and to respond to adopters' comments, we have sought to ensure that the materials included in the second edition may be taught in a three-hour course. Meeting this objective has meant that some materials have been removed from the first edition. Whenever we have made a significant change from the first edition by editing or removing materials, we will be including the material that was in the first edition on the web site for the text. Faculty who have adopted the text may use those materials no longer contained in the second edition by printing the pages from the web site.

Finally, we wish to acknowledge in this preface the debt that we also acknowledged in the preface to the first edition. That debt is owed to the teachers of administrative law and authors of administrative law texts who have affected our understanding of this subject. That group of law professors has grown since the date of publication of the first edition, because we are now indebted to the adopters of that text who have helped us to revise and, we hope, improve it in this second edition.

John Rogers
Michael Healy
Ronald Krotoszynski

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