

Spring 2007 □ **POLITICAL SCIENCE 102L**  
**The Politics of Regulation**  
Visiting Professor Glenn Smith  
Tuesdays, 5 P.M. to 7:50 P.M. # Ledden Auditorium

## **BASIC COURSE INFORMATION**

### **OVERALL COURSE APPROACH**

This course introduces you to the major theoretical and practical issues flowing from the reality that in modern America substantial regulatory power is exercised by unelected administrative agencies and executive branch officials (with substantial oversight by executive-branch and judicial officials, the media, and representatives of private interest groups—who are generally not elected either). The course examines the scope and importance of the modern regulatory power, and the relative strengths and weaknesses of mechanisms for controlling it politically and legally.

The class is conducted “modified law school” style; sessions will usually focus on class discussion of questions based on assigned materials. At times I will lecture to provide an overview of relevant materials. At times, class members will discuss questions or hypothetical problems in small groups.

To get maximum value from the course, you will need to do the assigned reading for each session fully and actively and come to class prepared to engage in a lively discussion. We will have FUN!

### **READINGS AND SYLLABI**

At present, you are required to purchase two texts for the class:

1. C. Kerwin, RULEMAKING: HOW GOVERNMENT AGENCIES WRITE LAW AND MAKE POLICY (2003 3<sup>rd</sup> Ed. CQ Press)
2. D. T. Studlar, TOBACCO CONTROL: COMPARATIVE POLITICS IN THE UNITED STATES AND CANADA (2002 Broadview Press)

I will make additional assigned readings available through the class WebPage (see below).

Please bring the appropriate text(s) to each class.

There are two Assignment Syllabi for this course. The first Syllabus is distributed in class the first day. The second syllabus will be distributed separately. All syllabi and any other class handouts will be posted on the class WebPage.

### **EXAMINATIONS**

You will take an in-class midterm exam during the first portion (lasting between one and a half and two hours) of the class on Tuesday, May 8<sup>th</sup>. (NOTE: This midterm will not be the only class-related activity that day; after the exam is completed and a break is taken, a special guest speaker will lecture on a regulatory-politics topic of current interest. This guest lecture is an integral part of the course.)

You will also take a final exam during the designated time slot for this course: Monday, June 11<sup>th</sup>, 7 to 10 P.M. The final exam may not take the entire three hour period. The exact time frame will be announced on the last class day.

**IMPORTANT: PLEASE CHECK NOW** to ensure that you do not have a conflict with this final exam time. Conflicts *identified early and communicated to me* can usually be accommodated by makeup exams.

[NOTE: We will resolve the conflict with the P Sc 104B final exam, also scheduled for Monday evening, June 11<sup>th</sup>, by offering an alternative makeup time for the P Sc 104B exam. (The time of this makeup final will be set early in the quarter, after consultation with affected students in both classes.) Students enrolled in both P Sc 102L and P Sc 104B will take the 102L final during the regular time period.]

More information about the format and coverage of the examinations will be provided through in-class discussion and in documents posted on the Class WebPage. Both exams will be open book / open note. The midterm is 40% of total course points; the final is worth 50%. The final examination will be largely cumulative.

### **ADDITIONAL "CASE STUDY" ASSIGNMENT**

The last graded course requirement is to write a short, 600-word "regulatory case study memorandum." This memorandum, described more fully in a separate handout, will significantly enhance your learning about regulatory politics by connecting the insights you are having in the course to a current real-world regulatory area of specific interest to you. In writing the memorandum, you will answer several directed questions about how your chosen case study does, and does not, exemplify what course materials say about regulatory politics.

You may turn in the memorandum at any time before the beginning of the 9<sup>th</sup> class session, on Tuesday, May 29<sup>th</sup>. The memorandum, which will be worth 10% of your course grade, will be graded on a three-tiered T+/T/T- system.

### **ADDITIONAL LEARNING OPPORTUNITY**

I invite you to take on an additional practice that will significantly enhance your learning in the course: as you interact with general informational media (i.e. newspapers, magazines, newsletters, online databases, etc.) I invite you to notice media reports discussing current regulatory matters and controversies involving local, regional, state, federal, or foreign regulatory entities. (As noted earlier, making the connection between class materials and the “real world out there” can be an important learning opportunity.)

When you identify media reports that you believe would be interesting to the class—ideally, reports will contain enough information to understand the substance of the regulatory matter and will suggest themes discussed in the class—I would very much appreciate your giving me a hard-copy version (or sending an email with the text of the media report in the body of the email) so that I can consider sharing it with the class at an appropriate time.

### **CLASS WEBPAGE ACCESS INSTRUCTIONS**

- (1) Visit the California Western Law School Website (“[www.cwsl.edu](http://www.cwsl.edu)”).
- (2) Click on “FACULTY” (one of several categories in big red capital letters on top left).
- (3) On the alphabetical faculty list, click “Glenn C. Smith”.
- (4) On my WebPage – you’ll know it from the very handsome picture of me – Click on “Class WebPages” (to top right of page).
- (5) Click on “P Sc 102L (Politics of Regulation)”

### **INFORMATION ON MY AVAILABILITY**

\*\*\*For “virtual office hours,” or to arrange office hours at a mutually convenient time other than regular office hours, email me at [gsmith@cwsl.edu](mailto:gsmith@cwsl.edu). [WHEN YOU EMAIL ME, please INCLUDE A REFERENCE TO “P SC 102L” in the subject line, so that I will know your message is not spam.]

\*\*\*For UCSD office hours: *Wednesdays, 3 PM to 5:30 PM*, in SSB 363.

\*\*\*Additionally, you are welcome to meet with me during the following law-school office hours, BEGINNING TUESDAY, MAY 1:

–*Tuesdays and Thursdays, 11:15 AM to Noon*

*–Wednesdays, 10 AM to 1:30 PM*

*NOTE: It is always a good idea to verify these arrangements via email or an advance phone call to my Law School office: (619) 525-1495.*

My law school office is located at 225 Cedar St., Room 314 (Directions: I-5 South; Take "Front St./Civic Center" exit; take left fork, which will exit on Cedar St. at 2<sup>nd</sup> Avenue. 225 Cedar is on the right, between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues.)

\*\*\*For law-school-planning questions and recommendations: Past experience indicates that a substantial portion of the students taking this course are planning to attend (or thinking about attending) law school. As a full-time law professor guest teaching this course, I am committed to being a resource to such students by providing general counseling about law school and legal careers, arranging visits to law school classes taught by others at my home institution, and writing letters of recommendation in appropriate cases. (Please note that I am not recruiting students to law school in general or my law school in particular. In fairness, I simply wish to make sure all potentially interested students know in advance of my policy on this. Please also note that the one area in which I am NOT a useful resource is in answering questions about the procedures and realities of law-school *admission*).

\*\*In appropriate cases I am also willing to write recommendation letters for graduate study, UCSD internships, foreign study, or other related opportunities.

Do not hesitate to contact me if I can be of any assistance to you!

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| All references to “Smith” are to excerpts from leading court cases; these excerpts are prepared by Professor Smith and will be made available in advance of the class for which they are assigned via the P Sc 102L WebPage.

## I. AN INTRODUCTION TO REGULATION AND THE AWKWARD LEGAL AND POLITICAL POSITION OF ADMINISTRATIVE REGULATORS

### A. An Introduction to the Course and the Importance of Its Subject

Introductory lecture (in part covering Chap. 1, pp. 1-2 & 22-28 [*PLEASE READ THESE PAGES AFTER THE APRIL 3 CLASS*])

## B. The Constitutional Scheme of Separated Powers, and the Awkward Place of Regulators in That Framework

# Introductory Lecture

### C. The Functions and Work Product of Regulators: Federal Regulators as Case Study

Introductory Lecture (in part covering Chap. 1, pp. 2-7) [PLEASE READ THESE PAGES AFTER THE APRIL 3 CLASS]

## II. SEMI-FORMALIZED LEGISLATING AT THE ADMINISTRATIVE LEVEL (“RULEMAKING”): AN IN-DEPTH LOOK AT THE POLITICAL AND LEGAL ISSUES IT RAISES

**[ ] [ ] PLEASE READ THE FOLLOWING FOR APRIL 10<sup>TH</sup> [ ] [ ]**

### A. The History and Rationale for Rulemaking

Kerwin, Chap. 1, pp. 7-21 ("The History of Rulemaking") & 28-38 ("The Reasons for Rulemaking")

## B. Analyzing Rulemaking: Some Initial Theoretical and Practical

## **Perspectives**

Kerwin, Chap. 3 ("Issues and Contradictions")

Kerwin, Chap. 7 ("Theory, an Agenda for Research, and an Appreciation")

[ ] ] PLEASE READ THE FOLLOWING FOR APRIL 17<sup>th</sup> [ ] ]

### **C. Rulemaking Procedures: Attempting to Control Political Processes through (Largely) Legal Means**

Kerwin, Chap. 2 ("The Process of Rulemaking")

Smith, Excerpts from leading court cases

[ ] ] PLEASE READ THE FOLLOWING FOR APRIL 24<sup>TH</sup> [ ] ]

### **D. Controlling Rulemaking "From the Inside"**

Kerwin, Chap. 4 ("The Management of Rulemaking")

Kerwin, Chap. 6, pp. 212-213 (introductory observations); 224-238 ("Accountability to the President")

Smith, Excerpts from leading court cases

[ ] ] PLEASE READ THE FOLLOWING FOR MAY 1<sup>ST</sup> [ ] ]

### **E. Controlling Rulemaking "From the Outside"**

Kerwin, Chap. 5 ("Participation in Rulemaking")

Kerwin, Chap. 6, pp. 213-224 ("Accountability and Congress") & 238-255 ("Accountability to the Courts" and conclusion)

Smith, Excerpts from leading court cases

*[NOTE: The above subjects and assignments will form the potential coverage for the in-class midterm on Tuesday, May 8<sup>th</sup>]*

**ASSIGNMENT SYLLABUS FOR PHASE III**  
(Assignments for four post-midterm weeks of classes)

All references are to Studlar, *TOBACCO CONTROL: COMPARATIVE POLITICS IN THE UNITED STATES AND CANADA* (2002 Broadview Press). (Unless page numbers are given the reference to a Chapter is to the entire Chapter.)

Note: Although the per-week page assignments from Studlar are longer than for Kerwin, you will notice that Studlar's book has fewer words per page and is not as fact-dense as Kerwin's.☺

**III. LESS-FORMALIZED AND MULTI-FACETED REGULATION OUTSIDE OF RULEMAKING: TOBACCO CONTROL AS CASE STUDY**

*[▼▼▼ BEFORE THE FINAL EXAM, PLEASE READ THE FOLLOWING ADDITIONAL ASSIGNMENT, MUCH OF WHICH WILL BE COVERED DURING THE LATTER PART OF CLASS ON MAY 15<sup>TH</sup> ▼▼▼]*

**A. Establishing The Background for Analysis**

**1. The Problems & Phases of Tobacco Control**

Studlar, Chap. 1, pp. 17-40

**2. Regulatory Theories in Action: Laying The Predicate**

Studlar, Chap. 2

*[▼▼▼ PLEASE READ THE FOLLOWING FOR MAY 22<sup>ND</sup> ▼▼▼]*

**3. The "Players" and Context of Tobacco Control**

Studlar, Chap. 1, pp. 40-60

**B. Comparative Regulatory Approaches: America vs. Canada**

**1. The Lessons of Comparative Regulation At the National Government Level**

Studlar, Chap. 3

Excerpts from major court decisions re: federal regulatory authority over tobacco (On Website; pages FR-1 through FR-\_\_\_)

*[▼▼▼ PLEASE READ THE FOLLOWING FOR MAY 29<sup>TH</sup> ▼▼▼]*

**2. Managing "Regulatory Federalism" in Each Country**

Excerpts from major court decisions re: state regulatory authority over tobacco (On Website, pages SR-1 through SR-\_\_)

[▼▼▼ PLEASE READ THE FOLLOWING FOR JUNE 5<sup>TH</sup> ▼▼▼]

- C. **Revisiting the Regulatory Theories: Reassessing their Relative Importance and Explanatory Power**  
Studlar, Chap. 5
- D. **Tobacco Control Across Borders: Regulation in the Era of Globalization**  
Studlar, Chap. 7