

ADMINISTRATIVE LAW

AGENCY ACTION IN LEGAL CONTEXT

SECOND EDITION

ROBERT L. GLICKSMAN

RICHARD E. LEVY

UNIVERSITY CASEBOOK SERIES®

ADMINISTRATIVE LAW

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SECOND EDITION

by

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To Emily and Bertie
R.L.G.

To my parents
R.E.L.

PREFACE TO THE SECOND EDITION

The second edition of this book retains the distinctive features that, for reasons we described in the Preface to the first edition, ameliorate the difficulties students are likely to encounter in learning administrative law. First, we continue to use five important federal agencies (the Environmental Protection Agency, the National Labor Relations Board, the Social Security Administration, the Internal Revenue Service, and the Federal Communications Commission) as the foundation for the book's materials. Each agency's activities illustrate one of the five basic modes of procedure in which agencies are engaged—rulemaking, policymaking adjudication, mass adjudication, informal action, and enforcement. The principal cases, problems, and much of the textual material in the chapter addressing each of these modes of action are drawn from the relevant agency. The first chapter (including the materials on separation of powers) and the two judicial review chapters (Chapters Two and Eight) use cases and problems drawn from a mix of the five agencies. As a result, every principal case in the book except one (the second principal case in Unit 1.6) involves one of the five agencies, and the problems that appear at the end of every unit in the book (except Unit 1.2, which introduces the five agencies) all involve one of the five agencies. The book's reliance on these five agencies to illustrate administrative law issues and associated practical and policy implications enhances our ability to provide a holistic understanding of how a typical administrative agency operates in implementing its organic statute or statutes.

Second, we have retained a consistent format throughout the book, with all units (again, except for Unit 1.2) being comprised of an expository basic doctrine section, a principal case or cases to illustrate the application of the doctrine and raise key issues, a textual section on related matters, and a wrap-up problem. In keeping with this structure, questions following the principal cases are focused on the issues in the pertinent case and do not include extensive discussion of other issues or references to other authorities. Such material is provided instead in the related matters section. We think that this standard format is conducive to student learning and adaptable to a wide range of teaching methods, including the “flipped classroom.” In addition, we have written and organized the units with the aim of providing flexibility for teachers to adjust their coverage in accordance with their interests and their students' needs. We continue to provide choices to teachers to address topics in greater or lesser depth by including clusters of units on key administrative law topics such as separation of powers (Units 1.4 to 1.6), procedural due process (Units 5.3 and 5.4), and standing (Units 8.4 to 8.6).

At the same time, based on our experiences teaching the first edition and feedback we received from teachers using the book and from our students, we have made changes that we think improve the book as a tool for teaching and learning administrative law. To enhance clarity of presentation and reduce duplicative treatment, we have streamlined some of the materials by consolidating multiple units in the first edition into a single unit. In a few instances, we have eliminated units that addressed administrative issues of peripheral importance or pruned

them down so that the issues can be covered in basic doctrine or related matters sections in relevant units.

We have also replaced some of the principal cases in the first edition with more recent cases or with cases that we believe are better teaching vehicles than the ones they replace. Among the new principal cases are important Supreme Court decisions such as *Free Enterprise Fund v. Public Company Accounting Oversight Board* (Unit 1.6), *City of Arlington v. FCC* (Unit 2.4), *Mayo Foundation for Medical Education and Research v. United States* (Unit 6.2), and *Sackett v. EPA* (Unit 8.7). We have also drafted new problems or adjusted existing problems at the end of some units to reflect new developments or improve their effectiveness as teaching tools. Finally, we have thoroughly updated the entire book to reflect developments in administrative law that occurred since preparation of the first edition, including late-breaking decisions such as the Supreme Court's decision in *Noel Canning v. NLRB* on the constitutionality of recess appointments (Unit 1.6) and *Kuretski v. Commissioner of Internal Revenue Service*, a D.C. Circuit decision on the constitutionality of the Tax Court (a new principal case in Unit 1.5).

We once again want to extend our thanks to those who helped make this second edition possible. First and foremost, we express our deepest gratitude to Tessa Boury, our editor at Foundation Press. Tessa's unflagging enthusiasm for the book and frequent strategic advice inspired us and improved the quality of the product. Stephen Mazza, Dean of the University of Kansas School of Law, and Gregory Maggs, Interim Dean at the George Washington University Law School, provided critical support, including summer research grants, that allowed us to devote the time needed to prepare this edition. Kathleen Levy provided valuable editorial suggestions and proof-reading help. Finally, we would like to thank the professors who chose to use the first edition of our book to teach Administrative Law and the students we taught at Kansas, George Washington, and Lewis and Clark Law School for reactions to the book that we relied on to make pedagogical improvements. We remain interested in hearing from those who teach out of or learn from the book about their experiences. You may email us at rglicksman@law.gwu.edu or rlevy@ku.edu.

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August 2014

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