

**Advanced Legal Research**  
Spring 2014  
Professor Etheredge

Assignment for Week Three: Federal Legislative History  
Due: Friday, Jan. 31, 2014

Name: \_\_\_\_\_

**Part One: Petition for Writ of Certiorari in U.S. Supreme Court (*attached*)**

**You are working for a large law firm that is just starting to handle some federal cases, including cases involving sexual orientation. One day your supervising attorney comes in and gives you a few pages of the petition for writ of certiorari that was filed in the U.S. Supreme Court for the recently decided case of *Pedersen v. OPM* (the pages were faxed to him by a friend who works at the Court). He tells you that, except for what he's read in newspapers, he doesn't really know much about the federal Act involved in the case and wants you to do some legislative history research on it. Your only clues are the faxed pages of the writ, and the fact that he's pretty sure that the Act was passed during Clinton's administration, sometime in the 1990s. Since there is no client (and thus, no client money), the attorney does NOT want you to use the firm's subscription to Lexis yet. You remember the federal government website THOMAS, <http://thomas.loc.gov/home/thomas.php>, so you decide to use that.**

1. First let's get some preliminary facts about the Act involved.
  - a. The "Question Presented" section of the writ tells you that this case involves the constitutionality of a federal law. What is the "popular name" of the law (e.g., "No Child Left Behind")?
  - b. The "Table of Authorities" section gives you the Public Law number of this Act. What is it?
  - c. From a Public Law number we can always tell during what Congress a law was passed (e.g., 112<sup>th</sup>, 98<sup>th</sup>, etc.). We are currently in the 113<sup>th</sup> Congress. During what Congress was this Act passed?

2. Using the critical piece of information you now have (*i.e.*, the Public Law number), **pull up the “Bill Summary and Status” page** for the Act on the THOMAS website, which will provide you with a lot of useful information. (*Hint: Do not panic – use the “Quick Tips for Using THOMAS and FDSys Websites” handout*)
  - a. What was the bill number for this Act?
  - b. Based on the bill number, in what chamber of Congress was it introduced (*i.e.*, House of Representatives or Senate)?
  - c. Who introduced the bill (sponsored it)?
  - d. On what date was it introduced?
  
3. Click on the “All Congressional Actions with Amendments” link.
  - a. What committee *and* subcommittee was the bill referred to?  
(*two answers*)
  - b. When were the *subcommittee* hearings held (ignore the Mark-Up Session)?
  - c. On July 9, 1996, the House Committee on the Judiciary reported the bill favorably back to the entire House for consideration. What is the citation (*i.e.*, number) of the committee report that was issued at that point?
  - d. The House passed the bill on July 12, 1996, in “Roll No. 316” (*Hint: it was a little after 2pm, just to help your tired eyes out a bit! LOL*). What was the vote, Yeas and Nays (*i.e.*, for and against)?

- e. Click on the “Roll” link to bring up the list of votes. How did Nick Rahall, a representative from West Virginia, vote - Yea or Nay?
  
- f. Go back to the “All Congressional Actions with Amendments” page. On Sept. 10, 1996, the Senate passed the bill, in “Record Vote No: 280”. What was the vote, Yeas and Nays?
  
- g. Click on the “Record Vote” link to bring up the list of votes. How did Robert Byrd, a senator from West Virginia, vote – Yea or Nay?
  
- h. Go back to the “All Congressional Actions with Amendments” page. When did the President sign the Act into law?

You go to your supervising attorney and present him with all this factual information. He is very pleased, but now wants you to dig deeper into what you have found. You decide to check some of the floor debates from the Congressional Record, so you return to the THOMAS “All Congressional Actions with Amendments” page that you had been using.

You see that on Sept. 10, 1996, the bill was considered in the Senate, which was reported in the Congressional Record on pages S10100-10125. Click on that link. Then click on either the “Beginning” or “DEFENSE OF MARRIAGE ACT” or “Page s10100” links. After you pull the CR pages up, click on the “GPO’s PDF” link (okay, no, you don’t have to bring up the .pdf to answer these questions, but it would make me happy if you did so you can see what it actually looks like in print – and you want a happy professor, don’t you? I thought so.).

- 4. You see that they start talking about the DOMA bill at the bottom of the third column on page s10100. Sen. Kennedy starts talking on page s10101 and on page s10102 he begins a discussion of a clause of the U.S. Constitution that he believes is violated by this bill.
  - a. Which clause does he discuss? (*Professors Tribe and Sunstein also mention it in the quotes attributed to them*).

5. Sen. Kerry begins speaking about the bill on page s10106 of the Congressional Record. Go to that page.
  - a. Is Kerry against same-sex marriage?
  - b. Is he going to vote for the DOMA bill?
  - c. Does he think the bill is unconstitutional? (*Hint: try second column of s10107*)
6. You decide to take a look at the committee report (that you found in Question 3c), so you go back to the “All Congressional Actions with Amendments” page (*believe me, it’s best to just use the back button*), and click on the link for the report. (Again, it would make me happy if you pulled up the .pdf for it – click on “PDF” under “Full Display”, and then click on “Continue to GPO site”)
  - a. Briefly, (*i.e.*, we don’t need the *entire* statement of the second purpose), what does the committee believe are the **two** primary purposes of the bill? (*Hint: it’s in the “Purpose and Summary” section*). (*two answers*)
  - b. In Part II of the “Background and Need for Legislation” section (page 4), the report talks about the lawsuit that was the motivation for this bill. What was the name of the lawsuit, what state was it in, **and** what year was it decided by that state’s Supreme Court? (*three answers*)
  - c. On page 19 of the committee report, under the “Vote of the Committee” section, the report lists amendments to the bill that were considered by the committee. Were any of these amendments adopted?
7. Very often the committee report will include the views of executive agencies, as submitted to the committee by official letters.
  - a. Ann Harkins from the US Department of Justice, Office of Legislative Affairs, sent a letter to Rep. Charles Canady, dated May 29, 1996 (*Hint: p.*

34). According to this letter, is it the administration's opinion that the bill is constitutionally sustainable **and** will be signed by the president if presented to him? (*two answers*)

8. Committee reports also often include views of the dissenting members of the committee (*i.e.*, the ones who do *not* want to report the bill back out to the floor of the chamber for debate and vote).
  - a. "Dissenting Views on HR 3396" begins on page 36 of the committee report. According to the first paragraph, what is one of the major problems of the bill?
  
9. Committee reports usually refer to the hearings that were held, if there were any. The hearings for the DOMA bill are discussed on page 18 of our report.
  - a. We already know from THOMAS when the hearings were held and by what subcommittee (see Questions 3a and 3b). But we don't know who appeared. Who is the first person (of 13) listed as a witness, **and** where is he from (*i.e.*, what does he represent)? (*two answers*)

You want to look at the transcript for this hearing and the presidential remarks and signing statement (if any), but THOMAS doesn't contain those two things. So now you go to FDSys, the Government Printing Office (GPO) website, [www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/).

Using the same "Quick Tips for Using THOMAS and FDSys Websites" handout, find the congressional hearing for the DOMA bill (*Hint: see Questions 1c, 3a and 3b*) and pull up the .pdf version (*please do the .pdf version, for me?*). (Notice that we got lucky, because this is the only hearing that FDSys.gov has from that committee for that year.)

10. Go to the testimony for Rep. Terrance Tom (his *oral* statement, not the previously submitted written statement).
  - a. According to Tom (*Hint: first page of his oral statement*), after the 1993 Hawaii case, did the 1994 Hawaii Legislature overwhelmingly vote to reject the court's interpretation of the State constitution and amend the marriage statutes to make clear that legal marriage was only between a man and a woman?

11. The last thing you want to check is whether the president made any remarks or issued a signing statement when he received or signed the DOMA act. Using the “Quick Tips” tipsheet, go to the “Compilation of Presidential Documents” section of the FDSys.gov website, where you will find a statement by President Clinton.

*(Hint: In this instance, the remarks were on the date he was presented the bill; if you need to, you can find this information back in THOMAS, but as a HINT we’ll tell you that he was presented the bill the day before he signed it, see Question 3h).*

- a. Does Clinton oppose government recognition of same-sex marriages?

**Part Two: [Morgantown Dominion Post Newspaper Article](#) (Yahoo! login required)**

**You are a summer associate for a law firm in Morgantown that has just taken on a local Native American tribe as a client. One day your supervising attorney comes in and hands you an old posting from a listserv that is geared towards Native Americans, which she stumbled across on the web. The poster basically reposts an entire article from the Morgantown Dominion Post newspaper from 2000, and your attorney is very interested in a federal law that is mentioned in it. She admits that she doesn’t know anything about the law, but thinks it would be something important for your firm to know and so asks you to find its legislative history as a start. Before she leaves, she reminds you that the firm’s WestlawNext subscription is very expensive and she only wants you to use it if you feel it is absolutely necessary – which it isn’t.**

1. In the article, someone is quoted as mentioning a law that has to do with Native American gravesites.
  - a. What is the popular name of that law?
2. The article doesn’t give any details about NAGPRA (the acronym for the law), and you’re not sure where to start your research. You decide to go to the interwebs and pull up the **Wikipedia** article about the law, using the full popular name of the law as your search.

You are astounded by the amount of information the article gives you. You write it down, but remember that your ALR professors told you that sites like this should only be used as starting points. You will always need to double-check the information before you rely on it for anything further.

- a. What was the bill number of the Act? *(Hint: See the “Legislative History” section on the right side of the page)*

- b. During what Congress was it enacted (*e.g.*, 112<sup>th</sup>, 85<sup>th</sup>)?
  - c. What chamber of Congress was the bill introduced in?
  - d. What committee was it assigned to?
  - e. What president signed it, **and** when? (*two answers*)
  - f. What Public Law number was assigned to it?
3. You remember a government website your professors told you about, THOMAS, where you can go to find legislative history about this law. You go to that site and, by using the Public Law number (*Hint: remember the “Quick Tips” handout*), pull up the **“Bill Summary and Status”** page for this law. Click on the “All Congressional Actions with Amendments” link.
  - a. When were committee hearings held?
  - b. On what date was the bill (amended) reported favorably from the committee back to the entire chamber? (*Hint: Not “ordered to be reported”, but “reported”*)
  - c. What is the citation to the committee report that was issued when it was reported by the committee out to the floor of the House?

You notice that, although there are references to the committee report and the dates of floor action (debates), there are no links to these documents. You realize that THOMAS and FDSys aren't going to be able to help this time because their coverage doesn't go back far enough. For a minute you consider going on to WestlawNext, but since you are in Morgantown you decide that it's more cost-effective to visit the WVU College of Law

library so you can (gasp!) check their print resources. You don't worry, because you personally know some very friendly law librarians there who will help you.

When you get to the library, go to a set of books put out by West called the "United States Code, Congressional and Administrative News", or "USCCAN" (you will find this set in the very first row of the tall bookshelves, on the left after you walk into the library ... or ask us ...). In this resource you can find both the Public Law AND the committee report that went with it. I know! Too cool!

4. Find the Act, *i.e.*, the law as passed by Congress and signed by the president, by its Public Law Number. (*Hint: Since we didn't have time to show you how to use the USCCAN books in class, we'll tell you where this Act is. It's in Vol. 3 of the 1990 set, which covers the 101<sup>st</sup> Congress, Second Session. Remember, the first part of the Public Law number tells you what Congress it was passed in, and you also already know the year, so you could have found it with no help from us – we were just being nice*).

  - a. Just to remind you that the passed Act always refers you to the original bill number, what is the original bill number (*Hint: Very top of the page*)?
  - b. Under "Sec. 2. DEFINITIONS", what is the definition of "Native American"?

5. Go to the last page of the Act. At the bottom of the page, you notice that they give you some legislative history information.
  - a. What is the citation of the committee report?
  - b. What are the four dates given for consideration and passage by the House and Senate, which you can find in the Congressional Record?

You are excited that you are going to get your hands on that committee report. No, seriously, you're excited. You know (because we told you up above) that the USCCAN set also contains these reports. Go back to the first page of the Act; under the title of the Act it says "For Legislative History of Act, see p. xxxx" (and gives you a page number, which I'm not going to give you). Go to that page (in the same set of volumes that cover the 101<sup>st</sup> Congress, Second Session, in 1990; these volumes will say "Legislative History" on the spine), and find the report.

*(Helpful Hint: Don't ask me why, but the reports are arranged in chronological order of the public law numbers, not the committee report numbers. I said don't ask me why. So if you didn't have a page number, you'd have to find the report by looking for the Public Law number. We sigh ...)*

6. You're now looking at the committee report. The first page gives you all kinds of good citation information, some of which you got from Wikipedia and can now verify. You also notice that there was a Senate committee report about this bill.
  - a. What is the citation (*i.e.*, number) of the *Senate* report, **and** what Senate bill did it accompany? (*two answers*) (NOTE: this is a good example of two similar bills being introduced concurrently in the House and the Senate, which is why there are two different bill numbers)
  - b. Is that Senate committee report printed in USCCAN along with the House committee report? (*Hint: It tells you which reports are "set out below"; if a report's not listed, then it's not printed in the volume*)
  - c. Briefly, from the "Purpose" section (p. 4367), what is the purpose of the bill (first sentence only is okay)?
  - d. Under the "Definitions" section (p. 4373), what happened to several key terms used in the legislation? (*Hint: very first paragraph*)

The next thing you decide to look at is the Congressional Record (CR), for the floor debates. You are specifically looking for the CR for October 27, 1990, because that is when the House concurred with the Senate amendment, and the Act was cleared for the President (as your earlier research showed you).

Since you know what date of the Congressional Record you are looking for, you ask the staff at the Circulation Desk where it is kept. They tell you it's downstairs on the bottom floor, but that it's your lucky day as they just happen to have that particular volume handy (*seriously, for convenience sake, and because we don't want you misfiling our stuff, ha ha!, the Congressional Record for Oct. 27, 1990, will be at the Circ Desk, in the Legal Research and Writing course reserves*).

7. Each day's Congressional Record has a "Daily Digest" in the back (very back), which summarizes that day's happenings. On page D1445, the Daily Digest has a summary of what happened in the House that day concerning the Native American graves bill.
  - a. So, what happened?
  - b. It refers you to a page of the CR, where you can see the floor debate and discussion about the bill. What page of the CR does it refer you to?
  - c. Go to that page (*Hint: not surprisingly, "H" stands for the House part of the CR and "S" stands for the Senate part of the CR*). Representative Richardson says that in the amended bill, the term "museum" now deletes the Smithsonian Institution from inclusion in the legislation. Why is he agreeing to the Senate's amended change that deletes the Smithsonian from inclusion in the bill? (*Hint: p. 12336, bottom of third column*)

The last thing you want to look at is the committee hearing (from Questions 2d and 3a). You ask and learn that the print copy is missing from the law library (it actually is!). However, you remember that the FDSys website has hearings so you go there and look for it, but discover that hearings from that particular year of Congress are not loaded yet. Okay, no problem. You know about a really nifty website from the Hathi Trust, [www.hathitrust.org](http://www.hathitrust.org), which has tons of hearings scanned in by libraries across the country (well, you know now, anyway).

8. Go to the Hathi Trust site and switch the Search box from "Full-Text" to "Catalog". Then run the search "native american graves protection repatriation hearing" (without the quotes). You should pull up 9 results. You want the 7<sup>th</sup> result in the list, because that's the one that has the correct committee name (never mind that the year listed is off by one year, that's the year the GPO finally got around to *publishing* the hearing). Click on "Catalog Record", and then under "Viewability" (really? that's a word?) click on the one from Penn State.
  - a. What is the full title of the hearing?
  - b. The Wikipedia article abbreviated the name of the House Committee that reported on the bill (see Question 2d). What is the full name of the House Committee?

- c. On what page does the testimony of James Reid start? (*Hint: using the navigation arrows in the upper right corner, go in two pages past the title page to find the Table of Contents*)
  
- d. Using the “Jump to” box, go to that page. What organization does he represent, and what is his position with that organization. (*two answers*)
  
- e. According to the first page of his testimony, is his group taking issue with several provisions of the bill?

### Part Three – Legislative History Using WestlawNext



**Your supervising attorney gives you the citation to a federal statute, 15 U.S.C § 6301, and tells you she needs some legislative history references for it. She needs it quickly, so she tells you to go ahead and use WestlawNext this time. In WestlawNext, pull up 15 USC 6301 (by typing that into the search bar on top of the screen). Using the “Legislative History Materials” link, found under the “History” tab (on top of the statute), answer the following questions.**

- a. The information in the Legislative History Materials is organized by Public Laws. There are two Public Laws listed for this statute (the oldest one created it, the most recent one amended it somehow). We are interested in the most recent one, P.L. 106-210 (and *not* P.L. 104-272). What is the popular name for this Act? (*Hint: Click on the “Pub.L. 106-210” link to bring up the text of the Act*)
  
- b. What was the bill number for P.L. 106-210 (remember, you’ll always find that information in the Act)?

- c. When did P.L. 106-210 become a law (*i.e.*, what date was it “approved” by the president)? (*Hint: At the very end of the Act*)
- d. Go back to the Legislative History Materials page. What is the citation to the House committee report, issued on Nov. 4, 1999?
- e. Click on the link for the committee report. What House Committee is the report from?
- f. Go back to the Legislative History Materials page. Pull up the Congressional Record entry from Nov. 8, 1999 (labeled “Muhammad Ali Boxing Reform Act”). At 2:15, who does Mr. Bliley yield the floor to? (*Hint: You can do an Edit/Find command for “2:15”*)
- g. Go back to the Legislative History Materials page. On what date was there a congressional hearing held? (*Hint: This section is labeled “Testimony”*)
- h. Click on the link for that hearing. What House Committee and Subcommittee were responsible for the hearing? (*two answers*)
- i. What organization’s statement is given?

#### **Part Four – You’re On Your Own**

**You work in a firm that specializes in Intellectual Property and is gearing up to take on patent cases. Your supervising attorney wants to start learning as much as he can on the recent Leahy-Smith America Invents Act, and has charged you with compiling a legislative history. He googled the Act and discovered that the Public Law number is P.L. 112-29 ... but that’s all he knows. He’s also panicking because all of this is going to cost a boatload of bucks on their Lexis Advance subscription. You say, “Not to worry, boss. I can do all of this for free. So, how’s about that corner office now?”.**

**You should be able to answer all of the following questions using THOMAS (<http://thomas.loc.gov/home/thomas.php>), FDSys ([www.fdsys.gov](http://www.fdsys.gov)), the “Quick Tips” handout, and other hints and instructions given to you in the first three parts of this assignment.**

1. What was the bill number for this Act?
  
2. Which chamber was it introduced in, the House or the Senate?
  
3. What two committees were the bill referred to?
  
4. One committee referred the bill to a subcommittee, which held hearings on the bill.
  - a. What was the name of the subcommittee
  
  - b. When was the hearing held?
  
5. Does the hearing transcript include the text of the bill?
  
6. During the hearing, Mark Chandler, Senior VP of Cisco Systems, appeared as a witness. In his oral testimony he makes four suggestions. What is the fourth suggestion?
  
7. The bill (amended) was reported out to the entire chamber on June 1, 2011, along with a committee report. What is the citation of the committee report?

8. In the committee report, under the “Background and Need for the Legislation” section, it states that the bill would create a new United States system of patent filings, which is followed by other industrialized nations. What is this system?
  
9. In the committee report, under the “Dissenting Views” section, Rep. Conyers mentions the creation of a 3-year safe harbor. Why is he concerned?
  
  
  
  
  
  
  
  
  
  
10. When the chamber was debating the bill on June 23, 2011, Rep. Conyers proposed Amendment A002 (H.Amdt.492). Representative Rohrabacher starts talking on p. H4482 of the Congressional Record and sarcastically calls the bill the “Unilateral Disclosure Act”. What other humorous name does he call it?
  
  
  
  
  
  
  
  
  
  
11. The Act was signed into the law by President Obama on Sept. 16, 2011.
  - a. Where was Obama when he signed the Act (school and city)?
  
  
  
  
  
  
  
  
  
  
  - b. During his remarks on the Act he talks extensively about another bill that he would like to see passed. What is that bill?

## **Part Five – Short Answers**

**Each question is worth five points, and will be graded on the breadth and depth of the answer. However, I am not looking for “essays” so much as concise but thoughtful responses.**

1. How does a bill become a law? In other words, explain the legislative process that happens from the introduction of the bill through the president signing the act into law (or vetoing it).

2. What are the documents associated with a legislative history? Briefly explain what each type of document is and where in the legislative process it comes from.

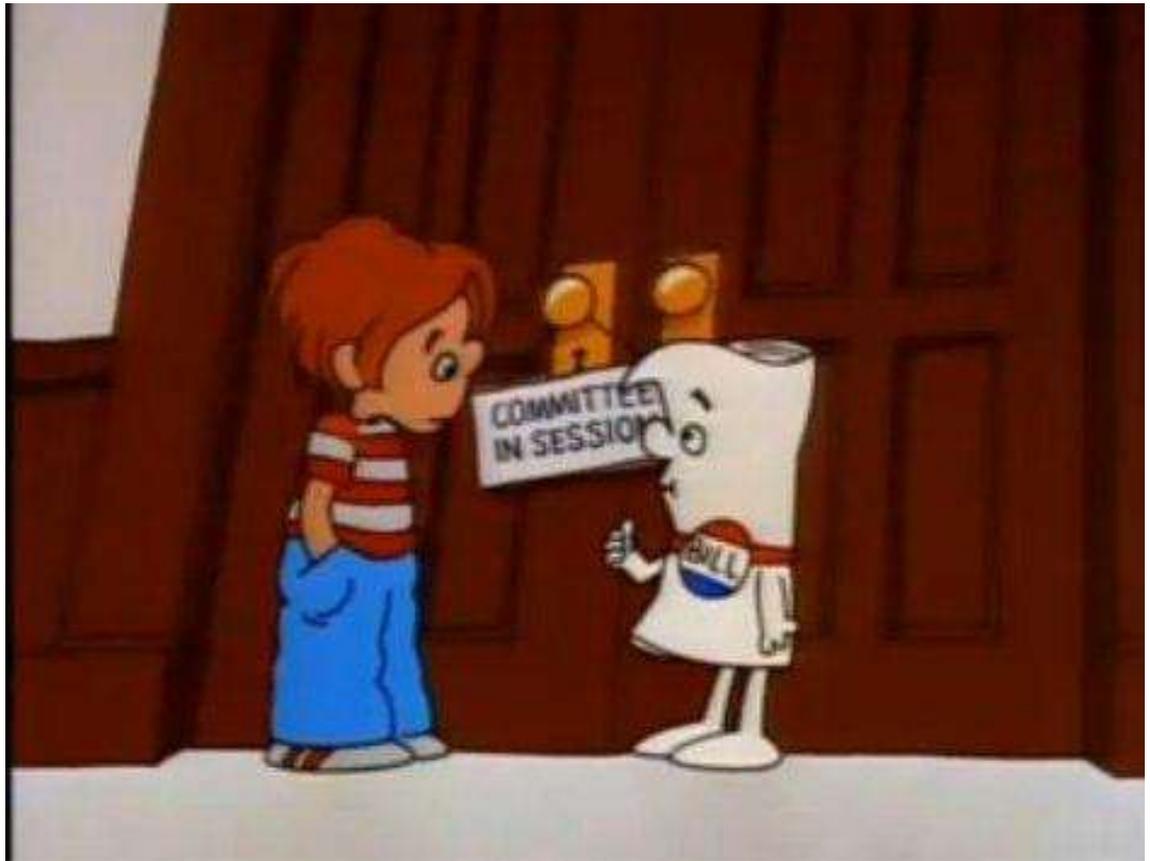
3. What is a “legislative history”, and why would you do/use one? Also, some judges are for using legislative histories and some are against - explain both sides.

**Part Last – Extra Fun Bonus Question!**

You are done with your research and decide to call it a day. However, you have to admit that:

\_\_\_\_\_ Doing legislative history is just about the most fun a person can have!

\_\_\_\_\_ You have a headache and just want to lie down!



For an updated, more cynical version of “I’m Just a Bill”, go to <http://www.youtube.com/watch?v=hKhXxvT9iak>