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Alan Pannell

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BRAG: Bridge the Research and Analysis Gap
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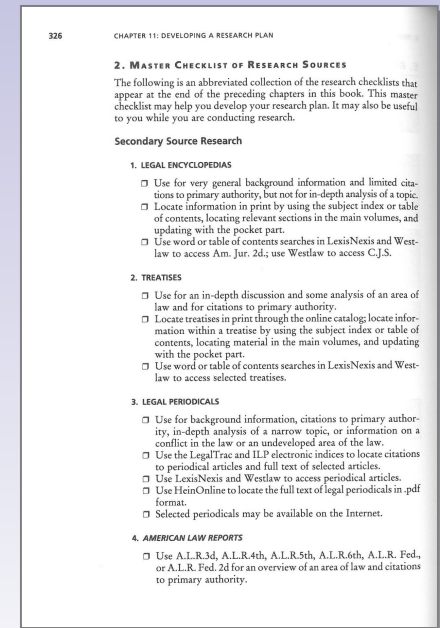
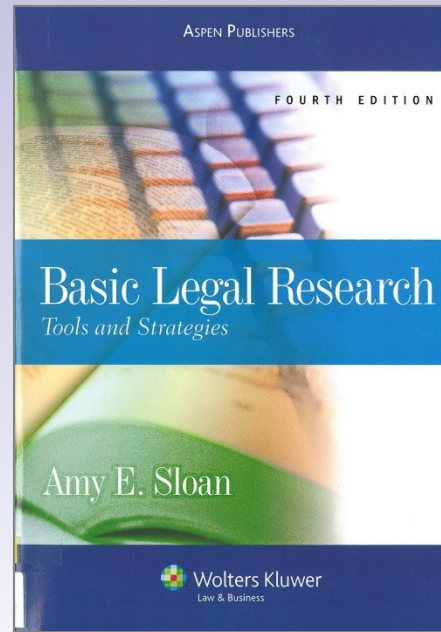
disclaimer

Always research fully if time allows

research tip

Use a research checklist

Example: Amy Sloan, Basic Legal Research



why this topic?

**You will often be under severe
time constraints**

**Tendency to forget the basics
under deadline pressure**

Process is important!

when does this apply?

New client with upcoming hearing

Opposing counsel motion during trial

Last minute memo assignment

general rule

Start with what you have

Opposing counsel complaint/answer/brief

Case name

next step

Expand your research
(to the extent time permits)

final step

Shepardize or KeyCite all citations

starting from scratch

Example

Your supervising attorney asks you to find a case holding that judges should not legislate from the bench.

analysis

Analysis comes into play from the start

Create a research plan:

Jurisdiction

Time frame

Possible research resources

Keywords

etc.

keywords

Create list of searchable terms

TAPP (Things/Actions/People/Places)

Terms of art
Legal jargon

Thought process:

“legislating from the bench”

Too informal?

“separation of powers”

Too broad?

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[News for courts legislating from the bench](#)

[State Senator Van Wanggaard Says Dane County Judge Legislating ...](#) 

22 hours ago

In short, Wanggaard said Sumi was **legislating from the bench** about an issue where she has no ... and it's more appropriate for the State Supreme **Court**. ...

[Patch.com](#) - 700 related articles

[Legislating from the bench](#) [« Mike Kueber's Blog](#)

May 27, 2011 ... Ever since the Civil Rights movement in the 50s, conservatives have decried **courts** that **legislate from the bench**. ...

[mkueber001.wordpress.com/2011/05/27/legislating-from-the-bench/](#)

[Kean criticizes state Supreme Court for legislating from bench in ...](#)

May 24, 2011 ... Senate Republican Leader Tom Kean, Jr., (R-21), Union, blasted the state Supreme **Court** today for essentially **legislating from the bench** in ...

[www.politickernj.com/.../kean-criticizes-state-supreme-court-legislating-bench-abbott-decision](#) - Cached

[Judicial activism - Wikipedia, the free encyclopedia](#)

Schlesinger's article pr... filed all nine Supreme **Court** justices on the **Court** at another example of judicial activism and **legislating from the bench**..." ...

[en.wikipedia.org/wiki/Judicial_activism](#) - Cached - Similar

[\[PDF\] LEGISLATING FROM THE BENCH: A DEFINITION AND A DEFENSE](#)

File Format: PDF/Adobe Acrobat - Quick View

by BG Peabody - Cited by 15 - Related articles

against **courts**—and the threats they may pose. B. A Short History of the "**Legislating from the Bench**" Critique. As indicated, scholars and politicians have a ...

[legacy.lclark.edu/org/lclr/objects/LCB_11_1_Peabody.pdf](#) - Similar

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Use Google Scholar or Google Uncle Sam for locating *specific* documents

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Consult Correlation Tables in text volumes for references to materials published after this index.

AmJur

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AMERICAN JURISPRUDENCE

CONSTITUTIONAL LAW
§§ 163 to 627

KF
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v. 16A
2009

16A

CONSTITUTIONAL LAW (CONT.) § 274

...ue,⁹ law enforcement matters,⁹ or with the executive's commutation of sentences.¹⁰

Also, an assessment of the wisdom of an administrative agency's policy choices is a matter generally outside the purview of the judiciary.¹¹

c. Limitations as Respects Legislative Branch

§ 274 Limitations generally; encroachment

§ 275 Impermissible judicial legislation

c. Limitations as Respects Legislative Branch

§ 274 Limitations generally; encroachment

Research References

West's Key Number Digest, Constitutional Law ⇨ 2470

The separation of powers doctrine requires the judiciary to refrain from interfering with the legislative process.¹ The judiciary must not

⁹Burrifato v. U.S. Dept. of State, 523 F.2d 554 (2d Cir. 1975).

Courts must give special deference to congressional and executive branch policy choices pertaining to immigration. State of Tex. v. U.S., 106 F.3d 661 (5th Cir. 1997).

¹⁰Carmel v. U.S. Dep. of Soc. Sec. Admin., 359 U.S. 24, 80 S.Ct. 160, 3 L.Ed. 124 (1958).

The limits on the scope of the Rainbow Child Welfare Agency's policy judgments are defined by the scope of the agency's jurisdiction. See Goodhue v. U.S. Dep. of Soc. Sec. Admin., 2007 WL 214,347 (S.D. N.Y. 2007).

¹¹U.S. v. Brown, 381 U.S. 479 (S.D. Cal. 1965).

¹²NISH v. U.S. Dep. of Soc. Sec. Admin., 2000 WL 100,000 (E.D. Va. 2000).

A court's duty to interpret the law is not to be confused with the duty to legislate. See U.S. v. Brown, 381 U.S. 479 (S.D. Cal. 1965).

[Section 274]

¹League of Arizona Cities and Towns v. Brewer, 213 Ariz. 557, 146 P.3d 58 (2006).

The right of a legislative body to exercise its legislative powers will not be invaded by the judicial branch of government. *Brown v. Owen*, 165 Wash. 2d 706, 206 P.3d 310 (2009).

§ 274

AMERICAN JURISPRUDENCE 2D

...usurp the constitutional function of the legislature.²

§ 275 Impermissible judicial legislation

Constitutional Law ⇨ 2470, 2471, 2473 to 2476

The court's role to interpret the laws as they are written, not to modify statutes as enacted.² It is not for the court to add words or sentences to a statute to make it work, or to supply that which is not there.³ In the plain language of a statute, they risk the danger of usurping the function to decide what the law should be.

⁴Thus, under the doctrine of separation of powers, courts may not, under the guise of interpretation,⁵ legislate, rewrite, or extend legislation.⁶ In interpreting statutes, it is the duty of the court to give

²*U.S. v. Berkeley Unified School Dist.*, 172 Cal. App. 4th 207, 90 Cal. Rptr. 3d 789, 242 Ed. Law Rep. 285 (1st Dist. 2009), review denied, (June 10, 2009).

As a general rule, when the terms of a statute are clear, its language is conclusive and courts are not free to replace that clear language with an unenacted legislative intent. *U.S. v. Hatcher*, 560 F.3d 222 (4th Cir. 2009).

Laws passed by Congress and duly signed by the President are presumed constitutional; it is only in the rare instance when the dictates of a statute

2008).

⁵*Kasserman and Bowman, PLLC v. Cline*, 223 W. Va. 414, 675 S.E.2d 890 (2009).

⁶*Lewis Family Farm, Inc. v. Adirondack Park Agency*, 22 Misc.3d 568, 868 N.Y.S.2d 481 (Sup 2008), aff'd, 64 A.D.3d 1009, 882 N.Y.S.2d 762 (3d Dep't 2009).

Courts are not free to disregard the plain language of a statute and, instead, conjure up legislative purposes and intent out of thin air. *Ruiz v. Bally Total Fitness Holding Corp.*, 496 F.3d 1 (1st Cir. 2007).

AmJur

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Constitutional Law

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 - § 274. Limitations generally; encroachment**
 - § 275. Impermissible judicial legislation

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Associate Research Process

AMJUR CONSTLAW § 274

4. Limitations generally; encroachment

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1. Petition, Certification of Sufficiency, Refusal for Invalidity of Proposed Initiative

Am.Jur.2d: Initiative and Referendum
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League of Arizona Cities and Towns v. Brewer
213 Ariz. 557, 146 P.3d 58
Ariz., 2006.
November 08, 2006 (Approx. 7 pages)

[3] [KeyCite Citing References for this Headnote](#)

- 92 Constitutional Law
 - 92XX Separation of Powers
 - 92XX(C) Judicial Powers and Functions
 - 92XX(C)2 Encroachment on Legislature
 - 92k2470 k. In General. Most Cited Cases (Formerly 92k70.1(1))**

The separation of powers clause of the state Constitution requires the judiciary to refrain from interfering with the legislative process. [A.R.S. Const. Art. 3.](#)

[4] [KeyCite Citing References for this Headnote](#)

- 361 Statutes
 - 361X Initiative
 - 361k301 k. Initiative in General. [Most Cited Cases](#)

When the people exercise their right to legislate by initiative, they enjoy the same protection from judicial interference the legislature is afforded by the separation of powers clause of the state Constitution. [A.R.S. Const. Art. 3;](#) Art. 4, Pt. 1, § 1; Art. 22, § 14.

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92 CONSTITUTIONAL LAW
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92 k2470 k. In general.
Formerly 92k70.1(1)
Colo., 1893
It is a general principle in our government that the legislative power is vested in the local legislative bodies of municipal corporations.

C [Cited 9 times for this legal issue]
[Lewis v. Denver City Waterworks Co.](#), 34 P. 993
92 CONSTITUTIONAL LAW
92XX Separation of Powers
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92XX(C)2 Encroachment on Legislature

P [Cited 8 times for this legal issue]
[Town of Telluride v. Lot Thirty-Four](#),
Formerly 92k70.1(2)
Colo., 2000
Courts must avoid making decisions that are intrinsically legislative, because it is not up to the court to make policy or to weigh policy.

H [Cited 7 times for this legal issue]
[Conrad v. City and County of Denver](#), 656 P.2d 662
Formerly 92k70.1(1)
Colo., 1982
Courts cannot, under the pretense of an actual case, assume power vested in either the executive or the legislative branches of government.

C [Cited 6 times for this legal issue]
[Pena v. District Court of Second Judicial Dist. In and For City and County of Denver](#), 681 P.2d 953

ends to the local legislative bodies of municipal

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Alan's Research (0)

League of Arizona Cities and Towns v. Brewer

Supreme Court of Arizona, En Banc. November 8, 2006 213 Ariz. 557 146 P.3d 58

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1 Statutes Determination of Sufficiency and Certification Thereof

Violation of state Constitution's revenue source rule, as alleged by league of city and towns and others in their challenge to proposed voter initiative that sought to limit use of eminent domain and to expand definition of regulatory takings, would not render initiative legally insufficient, thereby allowing preelection judicial review and removal of proposition from ballot, and thus such

92	Constitutional Law
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2 Appeal and Error

The Supreme Court

3 Constitutional Law Encroachment on Legislature

The separation of powers clause of the state Constitution requires the judiciary to refrain from interfering with the legislative process. *A.R.S. Const. Art. 3.*

4 Statutes Initiative in General

When the people exercise their right to legislate by initiative, they enjoy the same protection from judicial interference the legislature is afforded by the separation of powers clause of the state Constitution. *A.R.S. Const. Art. 3; Art. 4, Pt. 1, § 1; Art. 22, § 14.*

5 Statutes Initiative in General

Just as the courts may not predetermine the substantive validity of the legislature's measures, so too must they refrain from predetermining the substantive validity of the people's initiatives, even if the legislation might conflict with the state

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2470 In general (59)

Jurisdiction: Arizona (State & Fed.)

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92 CONSTITUTIONAL LAW (Up to 10,000)

92XX Separation of Powers (3,478)

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92XX(C)2 Encroachment on Legislature (1,193)

922470 In general.(59)



1. Horne v. Flores

Supreme Court of the United States | June 25, 2009 | 129 S.Ct. 2579

Headnote: Institutional reform injunctions bind state and local officials to the policy preferences of their predecessors and may thereby improperly deprive future officials of their designated legislative and executive powers.

Document Preview: EDUCATION - Textbooks and Curriculum. Changed circumstances would justify relief from court-ordered increase in funding of English language instruction in public schools.



2. Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Com'n

Supreme Court of Arizona, En Banc. | May 20, 2009 | 220 Ariz. 587

Headnote: If an entity performs a legislative function, courts should regard that entity as a legislative body, for purposes of determining the level of judicial review afforded when a decision by the entity is appealed.

Document Preview: GOVERNMENT - Elections. Arizona Independent Redistricting Commission engaged in an deliberate effort to accommodate competitive districts.



3. Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Com'n

Supreme Court of Arizona, En Banc. | May 20, 2009 | 220 Ariz. 587

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2. Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Com'n
Supreme Court of Arizona, En Banc. | May 20, 2009 | 220 Ariz. 587

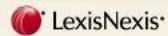
Headnote: If an entity performs a legislative function, courts should regard that entity as a legislative body, for purposes of determining the level of judicial review afforded when a decision by the entity is appealed.

Document Preview: GOVERNMENT - Elections. Arizona Independent Redistricting Commission engaged in an deliberate effort to accommodate competitive districts.

3. Arizona Minority Coalition for Fair Redistricting v. Arizona Independent Redistricting Com'n
Supreme Court of Arizona, En Banc. | May 20, 2009 | 220 Ariz. 587

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HNS Courts are reluctant to intrude on the prerogative of the people or the legislature to proffer legislation. The Separation of Powers Clause of the Arizona Constitution expressly prohibits one branch of government from intruding into or exercising the powers properly belonging to another branch. Ariz. Const. art. III. The supreme court has consistently interpreted this clause to require the judiciary to refrain from interfering with the legislative process. [More Like This Headnote](#)

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HNG A fundamental component of the legislative process in Arizona is the right of the people to offer legislation through the initiative. Ariz. Const. art. IV, pt. 1, § 1. This legislative power of the people is as great as that of the legislature. When the people exercise their right to legislate by initiative, they therefore enjoy the same protection from judicial interference the legislature is afforded. [More Like This Headnote](#)

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