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## The Use of Legislative History in a System of Separated Powers, Putting Legislative History to a Vote: A Response to Professor Siegel, Timing and Delegation: A Reply

Jonathan R. Siegel

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# The Use of Legislative History in a System of Separated Powers

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*Jonathan R. Siegel*

53 Vand. L. Rev. 1457 (2000)

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## Putting Legislative History to a Vote: A Response to Professor Siegel

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*John F. Manning*

53 Vand. L. Rev. 1529 (2000)

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## Timing and Delegation: A Reply

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*Jonathan R. Siegel*

53 Vand. L. Rev. 1543 (2000)

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*The debate over the legitimacy of judicial use of legislative history has significant legal and political ramifications that have long sparked controversy. As additional commentators join this long-running engagement, the focus of the debate necessarily changes.*

*In a previous article, John Manning argued that the use of legislative history violates the constitutional rule barring congressional self-delegation. Jonathan Siegel argues here that judicial reliance on legislative history does not implicate that rule, because a statute's legislative history already exists at the time of the statute's passage, and statutory incorporation of pre-existing materials operates as an adoption of those materials, not as a delegation of legislative power. To illustrate this point, Professor Siegel introduces, as a thought experiment, a hypothetical Interpretation of Statutes Act. The Act provides that the legislative history of every future statute will be automatically incorporated into the statute, without express adoption, and instructs courts to give customary weight to that in-*

*corporated legislative history. Siegel concludes that, because legislatures are permitted to incorporate, by reference, pre-enactment legislative history into statutes, such an Act would be constitutional.*

*Disagreeing with that conclusion, Professor Manning responds that Siegel's Act would only formalize an unconstitutional delegation of power. He argues that the resulting arrangement—of the Act or of judicial reliance on legislative history—would allow members of Congress to subvert the aims of bicameralism and presentment. He posits that the hypothetical Act would effectively enable them to vote for a statute without taking full responsibility for legislative history that resulted from factional logrolling. This separation of the legislators' responsibility from the legislative result (viz. statutory text), Manning concludes, permits Congress to enact binding statutory details through a process condemned by Supreme Court jurisprudence because it is not prescribed by the Constitution.*

*In a brief reply, Professor Siegel argues that the hypothetical Interpretation of Statutes Act would not allow lawmakers to evade responsibility, because Congress would still be obligated to ratify agent-prepared legislative history when voting for each statute. Because of this chronology, Siegel concludes, the Act would take legislative history out of the delegation doctrine altogether.*