

ABSTRACT

Theodore C. Hirt,
Current Issues Involving the Defense of Congressional and Administrative Agency
Programs

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Abstract by Allison Marinoff

This piece focuses on the responsibilities of the Federal Programs Branch of the Department of Justice's Civil Division and its role in the defense of federal programs created by both statutes enacted by Congress and rules promulgated by administrative agencies. Recognizing that litigation is a part of the overall governmental process, the author asserts that the mission of the Branch is to represent the interest of the federal government in litigation so that Congress and federal agencies can focus on their respective objectives. The Article first outlines the formal and informal working relationship between the Branch and the federal agencies that it represents. In this section, the author analyses the types of cases Branch attorneys control, the process of litigation within the backdrop of formal relationships between agencies, and the benefits of centralizing the litigating authority in the Department of Justice. Second, the Article describes the various threshold defenses, namely standing, ripeness, and exhaustion, used by Branch attorneys in defense of challenges to federal laws or regulations. The third part of the Article explains the Branch's responsibility for defending the constitutionality of Acts of Congress, evaluates the criteria that Branch attorneys' use to decide if a statute or rule should be defended, and outlines the Branch's role in this litigation. The final section of the article examines the Branch's role in defending agency regulations, orders, and other agency decisions from legal challenges through an analysis of the recent Supreme Court Case *Christensen v. Harris County*. Finally, the author concludes by asserting that the issues of what deference courts give agencies own interpretations of their own governing statutes will continue to be litigated.