

FEDERALISM

THE SYSTEM OF GOVERNMENT IN THE UNITED STATES

In the United States, we are governed by both national and state governments and our rights are protected by state and federal constitutions. Basically, the same structure of government exists at both the state and federal levels.

There are three branches of government - executive, legislative and judicial. The President is head of the federal executive branch, but it also includes various executive agencies such as the Department of Defense and the Office of Attorney General. The federal legislative branch is known as Congress and is composed of the House of Representatives and the Senate. Each state has two senators, but the number of representatives from a state varies, depending on the population of the state. Tennessee has nine representatives.

The federal judicial branch of government is composed of the federal courts. The United States Supreme Court is the highest court in the federal system, and has the last word on issues of federal law and the federal constitution. The courts just below the U.S. Supreme Court, the intermediate federal appellate courts, are known as Circuit Courts of Appeal. There are thirteen federal circuit courts in the country. Tennessee is located within the jurisdiction of the Sixth Circuit Court of Appeals. Thus, federal cases originating in Tennessee are appealed to the Sixth Circuit Court of Appeals. The federal trial court in which federal lawsuits originate is the Federal District Court. Tennessee is divided into three federal districts, western, middle and eastern. Federal courts may constitutionally hear only two types of cases: 1) a case involving a federal law question and 2) a case involving citizens of two different states when the amount in dispute is greater than \$50,000.

The governor is the head of the executive branch of state government. Just as the federal government, the state executive branch also includes agencies such as the Department of Agriculture and the Department of Correction. The legislative branch of the state government is known as the

General Assembly. It is composed of the State House of Representatives and the State Senate. The State of Tennessee is divided into both House and Senate districts. One senator and one representative are elected from each district. Currently there are 33 state senators and 99 state representatives.

The third branch of government in Tennessee is the judicial branch. Tennessee's judicial branch is derived from Article VI, Section 1, of the Tennessee Constitution which says that "The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior courts as the Legislature shall from time to time, ordain and establish...." Currently, Tennessee has four levels of courts - the Supreme Court, the intermediate appellate courts, the trial courts and the courts of limited jurisdiction. The highest state court is the Supreme Court of Tennessee. The Tennessee Supreme Court is the final authority on matters of state law. However, decisions of the State Supreme Court on matters of federal law may be reviewed by the United States Supreme Court. The next level, the intermediate appellate courts, includes both the Court of Appeals and the Court of Criminal Appeals. Civil cases, those not involving criminal law, can be appealed directly and automatically to the Court of Appeals. Examples of civil cases are medical malpractice cases, divorce cases, and property dispute cases. Criminal cases may be appealed directly and automatically to the Court of Criminal Appeals. Examples of criminal cases are death penalty first-degree murder cases, rape and robbery cases.

Directly below the intermediate appellate courts are the state trial courts where most suits of importance begin and end. It is in the trial courts that evidence is presented and jurors decide cases. Tennessee's trial courts include Chancery, Criminal and Circuit courts. Only civil cases are tried in Chancery courts and only criminal cases are tried in Criminal courts. However, both criminal and civil cases may be tried in Circuit courts. Judges in all of Tennessee's trial courts are chosen by popular election within their judicial district. There are thirty-one judicial districts in Tennessee. However, the number of courts in each district varies, so there are more than thirty-one trial judges in the state.

The fourth and final level of courts in Tennessee is generally known as the courts of limited jurisdiction, which includes Municipal, General Sessions and Juvenile courts. Limited jurisdiction means that the courts have only limited authority to hear particular types of disputes. For example, Juvenile courts may only resolve issues relating to juveniles. Most of the judges of these courts are popularly elected.

The federal constitution provides minimum protections for our individual liberties. Neither the state nor the federal government can pass laws infringing on that minimum protections. However, a state through its own constitution may provide a citizen with greater protection than the federal constitution. Therefore, although a state law or action may be constitutional under the federal constitution, it may be unconstitutional under the state constitution. Federal courts may rule on issues of state law when deciding a case that involves both federal and state law issues. On issues dealing with state law questions, the federal courts are bound by prior decisions of the state courts. Likewise, state courts may rule on issues of federal law, but as to those issues, the state courts are bound by prior decisions of the federal courts.

Examples of federal law questions are immigration issues, application of federal civil rights laws and federal constitutional law, such as 1st Amendment free speech questions, and 2nd Amendment right to bear arms questions.

Examples of state law issues are property line disputes between neighbors, contract disputes, personal injury lawsuits, and state constitutional law issues, such as the right to a free and appropriate public education and the state constitutional right to free speech.

Student Worksheet Activity #1 (Federalism)

Directions: You have just read and discussed the system of government in the United States, and specifically, the federal and state judiciary. Now is your chance to apply the knowledge you gained to some actual cases. Please read the short summaries below and decide whether the case involves a federal law issue or a state law issue.

CASE	ISSUE
1. I believe that my United States constitutional rights were violated when a book I wrote was censored by the government. I have decided to sue the United State government.	
2. My neighbor's pit bull terrier bit my child. I am angry and have decided to sue the owner for medical costs and suffering totaling \$4500.	
3. I was arrested for speeding. The police searched my car at the scene of the crime and found a stolen VCR. I objected to the search at the time it took place. I believe that my United States constitutional rights were violated.	
4. I am suing my dry cleaner for staining my favorite dress. I am seeking \$15,000 in costs and damages.	
5. I believe that my right to free speech was denied by the school administration. I was suspended for printing vulgarities. I am suing to get back into school with a clean record.	
6. My apartment building collapsed, and the builder has sued the construction material supplier, claiming the supplier was responsible for the building falling down.	
7. I was arrested for violating the Brady Bill concerning the registration of firearms.	
8. I was arrested for violating a local "pooper scooper" law that requires residents to clean up after their pets.	

Teacher Answer Key Activity #1 (Federalism)

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CASE	ISSUE
1. I believe that my United States constitutional rights were violated when a book I wrote was censored by the government. I have decided to sue the United State government.	FEDERAL LAW ISSUE
2. My neighbor's pit bull terrier bit my child. I am angry and have decided to sue the owner for medical costs and suffering totaling \$4500.	STATE LAW ISSUE
3. I was arrested for speeding. The police searched my car at the scene of the crime and found a stolen VCR. I objected to the search at the time it took place. I believe that my United States constitutional rights were violated.	FEDERAL LAW ISSUE
4. I am suing my dry cleaner for staining my favorite dress. I am seeking \$15,000 in costs and damages.	STATE LAW ISSUE
5. I believe that my right to free speech was denied by the school administration. I was suspended for printing vulgarities. I am suing to get back into school with a clean record.	BOTH FEDERAL AND STATE CONSTITUTIONAL LAW ISSUE
6. My apartment building collapsed, and the builder has sued the construction material supplier, claiming the supplier was responsible for the building falling down.	STATE LAW ISSUE
7. I was arrested for violating the Brady Bill concerning the registration of firearms.	FEDERAL LAW ISSUE
8. I was arrested for violating a local "pooper scooper" law that requires residents to clean up after their pets.	STATE LAW ISSUE

THE TENNESSEE SUPREME COURT

General Information

The Tennessee Supreme Court is the highest court in the State of Tennessee. It is similar to the United States Supreme Court, the highest court in the nation. The Tennessee Supreme Court derives its existence and authority from Article VI of the Tennessee Constitution. It is comprised of five justices, who are appointed by the governor and then elected every eight years on a “yes-no” retention vote. Two of the justices are at-large representatives while each of the remaining three represents a grand division of the state, west, middle and east. No more than two justices may reside in the same grand division of the state. To be eligible to serve on the Tennessee Supreme Court, one must be at least 35 years old, a resident of the state for five years or more, licensed to practice law in this state, and a citizen of the United States.

Once elected, the five justices choose a chief justice. The chief justice is the administrative head of the state court system. He or she has authority to assign special and retired judges, and to transfer judges to equalize docket imbalances. The position of chief justice currently rotates from one justice to another.

Jurisdiction

The Tennessee Supreme Court sits en banc, meaning that the entire court hears the oral arguments for a case. The court has both appellate and original jurisdiction. Appellate jurisdiction is the power of the court to review a case that has already been decided by a lower court. The scope of the court's appellate jurisdiction may be changed by legislation. Original jurisdiction gives the Tennessee Supreme Court power to hear cases in the first instance and is more limited than appellate jurisdiction. Examples of subjects over which the Supreme Court has original jurisdiction include matters involving regulation of the practice of law and Supreme Court rules.

The Tennessee Supreme Court is the court of last resort and the final arbiter of disputes arising under state law. It reviews judgments and rulings of the lower state courts, including the Court of Criminal Appeals and the Court of Appeals. Tennessee Supreme Court decisions interpret state law and set standards, or precedents, which must be followed by all Tennessee state courts in future similar cases. No other court has jurisdiction to review decisions of the Tennessee Supreme Court on issues of state law. However, the United States Supreme Court is the court of last resort and the final arbiter of disputes arising under federal law, and may review decisions of the Tennessee Supreme Court in which federal law issues are decided.

Appeals brought to the Tennessee Supreme Court do not involve a trial of the case in the sense that no witnesses appear and no evidence is taken. Instead, the Supreme Court reviews the record of the trial, which includes a transcript of the evidence, the orders entered by the court below, and the documents filed by the attorneys in the court below, and corrects any errors the lower court made in the application of law, such as rulings on the admission of evidence or interpretations of a law passed by the legislature. Either the plaintiff or defendant may appeal in a civil case. In a criminal case, the defendant may always appeal a conviction, but only certain rulings in criminal cases may be appealed by the state. For example, the state may never appeal a jury verdict of not guilty.

Gaining an Appeal

To gain an appeal, the party disagreeing with the lower court's decision must file both a notice of appeal and the record with the Supreme Court, if by law the appeal is direct to the Supreme Court without going through the Court of Appeals or the Court of Criminal Appeals. Automatic direct appeal to the Supreme Court is rare.

In most cases, the Tennessee Supreme Court is not required to grant an appeal and review a case. Instead, the court exercises what is known as discretionary review. Discretionary review means that a party cannot automatically appeal to the Tennessee Supreme Court, but must seek permission to appeal. The party disagreeing with the lower court's decision must file an application for permission to

appeal. The application contains a statement of the issues involved in the case and the reasons why the Supreme Court should grant review. Some of the more common reasons that prompt the court to grant review include, 1) the need to settle a question of law about which there is confusion, 2) the need to rule on a question of law that has not been ruled upon by any other Tennessee court, and 3) the need to correct an error in application of the law.

The party satisfied with the lower court's decision files an answer to the application for permission to appeal. In the answer, the party opposing an appeal discusses the reasons why the court should not grant review, and attempts to convince the justices to uphold the decision of the lower court.

The Tennessee Supreme Court holds a conference once every month during which the justices discuss and decide whether to grant or deny the applications for permission to appeal. The court reviews approximately 1000 applications each year, and of that number, grant permission to appeal in approximately 100 cases. Permission to appeal will be granted if two of the five justices vote yes on the application. If an application is denied, the party seeking an appeal has no other avenue of relief unless an issue of federal law is involved; in which case, the party may seek an appeal with the United States Supreme Court. The chances of gaining review with the United States Supreme Court are very slim.

Processing an Appeal

If an application is granted, the party seeking an appeal - the appellant - then files a supplemental brief which discusses in depth the issue in the case and lists and explains the laws and case decisions that support the appellant's arguments. The party opposing appeal - the appellee - has a specific time period after the appellant's supplemental brief is filed to file an answer brief. The appellant then has a short period of time within which to file a reply brief in response to the appellee's answer. If neither of the lawyers request oral argument, the case will be decided by the court on the basis of the record and the briefs. If the case is argued, appellate court rules give each side 30 minutes

to present its side of the case orally to the entire Supreme Court. The Constitution requires that the court meet in Nashville, Knoxville and Jackson to review cases, which are then argued in the city nearest the area where they arose.

The appellant argues first, then the appellee. During oral arguments, the lawyers highlight key points of their positions and answer questions from the justices. In deciding the cases the five justices read and study the briefs submitted by the parties, as well as the record. This requires a great deal of reading. Only issues presented in the briefs and at oral arguments will be considered, but the justices perform additional research on their own during the decision-making process. Of course, not every error in application of law will result in a reversal of the judgment or ruling that is the subject of the appeal. Only if the error had an impact upon the judgment of the lower court will reversal be ordered.

Immediately after completion of oral arguments, the justices meet in conference to discuss the views of the members of the court and to take a preliminary vote on the decision in the case. The chief justice presides, and in general, other members of the court express their views. The chief justice assigns the case to one of the justices who has voted in the majority.

Preparation of an Opinion

After the case is assigned, a proposed opinion will be prepared. An opinion is a statement of the Supreme Court's decision and a statement of the legal reasons supporting the decision. The written opinion will either affirm, which means that the judgment or ruling of the lower court is correct, reverse, which means that the judgment or ruling of the lower court is rejected, or modify the judgment or ruling of the lower court that is the focus of the appeal. Once prepared, the opinion is circulated to the other justices by the author one week before the court's monthly conference. Either before or during the monthly conference, other justices may make suggestions for modifying, adding to or deleting from the proposed opinion. Concurring opinions and dissenting opinions are circulated as early as possible by the justices who agree or disagree with the proposed opinion. A concurring opinion is one in which a justice agrees with the result reached by the proposed opinion, but not for the

same reasons given in the proposed opinion. A dissenting opinion is one in which a justice disagrees with the result reached by the majority of the other justices. At least three of the five justices are required to constitute a majority.

Concurring and dissenting opinions must be circulated no later than 2 months after the proposed opinion is circulated; however, any justice may request that a case be passed at conference for a reasonable time for further study or until a dissent or a concurring opinion may be prepared.

Once the proposed opinions - majority, dissents, and concurrences - have been discussed and approved by the members of the court, the opinion is released to the public and published by the West Publishing Company in the Southwestern Reporter, which is found in law libraries. Opinions ordinarily are released on Mondays, unless otherwise ordered by the court.

Teacher Answer Key Activity #2 (TN Supreme Court)

GROUP WORK ON THE TENNESSEE SUPREME COURT

Directions: Complete this worksheet on the Tennessee Supreme Court

Type of Court: Appellate

Jurisdiction: Original and Appellate

Number of Justices: Five

Where does the Court hear cases? Nashville, Knoxville and Jackson

How old does one have to be to be a justice on the Court? Thirty-five years old

Does the Court receive testimony from witnesses? No

How are the justices selected and for how long to they serve?

The justices are appointed by the governor and then elected every eight years on a “yes-no”
retention vote.

UNDERSTANDING THE ROLE OF PRECEDENT

What is the Role of Precedent?

Decisions of the Tennessee Supreme Court and the United States Supreme Court are recorded for public use. Although not the law in the sense of legislation, Supreme Court opinions help "flesh out" the "body of law" because they are often interpretations of the law, i.e., applications of the general law to a particular case. The court's decisions set precedent for all Tennessee courts. Precedent is a rule of law established for the first time by a court deciding a particular type of case and is thereafter a guide to other courts deciding similar cases. In that sense, the decisions courts make in individual cases argued before them are far more reaching than just the case being considered.

In the United States, the doctrine of precedent prevails and past decisions are generally considered to be binding in future cases involving the same material facts. This rule is called stare decisis, which is a Latin term that means, "let the decision stand." This rule is strictly followed by lower courts when applying decisions of higher courts in the same jurisdiction. Courts can limit the impact of the doctrine of precedent by distinguishing the facts in cases being decided from the facts in precedent-setting cases.

What is Persuasive Authority?

Precedent is binding only for courts in the same jurisdiction or judicial system. In other words, a Kentucky decision is not precedent for the courts of Tennessee, but it is persuasive authority. A Kentucky decision would be precedent for Kentucky courts, while a Tennessee decision in Kentucky would be viewed as persuasive authority.

Persuasive authority is a decision by a court of another jurisdiction, ordinarily the decision of another state's appellate or Supreme Court. The Tennessee Supreme Court may look to the law established and followed by other states' courts in decisions dealing with similar facts and issues. In examining the decisions of other states, our court is often able to profit from the expertise and

experience of other states in determining similar issues. Bear in mind that the key word is "persuasive." It is always within the discretion of the Tennessee Supreme Court as to whether it will adopt or discard the reasoning and decisions of the courts of other states.

NOTE: During oral arguments, notice if the lawyers mention precedent and/or persuasive authority.

CASE STUDY PROCEDURE

Using the facts of the case your class is scheduled to hear, complete the following exercise:

1. Identify the facts.

List the facts of the case. Do not make up any information that is not given. What are the most important facts? Are any important facts left out of the story?

2. Identify the issue/s.

Are any rights in conflict in this case? What questions or issues does this case ask the court to answer? State the question or questions the case raises in a few sentences.

3. List the arguments.

Make up an argument for each side, the appellant and the appellee.

4. Give your decision in the case and the reasons for the decision.

If you are working in a group, you might discuss your decision and reasoning with other group members and listen to their thoughts.

5. Read the briefs that the lawyers for each party have filed in the case. (Alternative: Read the case summary in the SCALES project student booklet.)

Compare your answers to questions 1, 2 and 3 above to the facts, issues, and arguments presented in the briefs (or case summary). Does the information given in the briefs (or case summary) change your decision in this case?