Judicial Review

Module 8

KENNESAW STATE UNIVERSITY

Upcoming Assignments

- Module 8 Quiz
- Application Questions 1 (Oct. 20)
- State Administrative Law Paper Draft (Nov. 3)

KENNESAW STATE UNIVERSITY

Discussion Question

- How does judicial review of administrative actions differ from legislative and executive review?

KENNESAW STATE UNIVERSITY

Understanding the Structure of the Courts

KENNESAW STATE UNIVERSITY

Creation of the Federal Judicial Branch

- Article III, Section 1 of the U.S. Constitution states:
  - "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

- This provision of the Constitution establishes one Supreme Court, the highest court of the land, and it gives Congress the authority to create lower federal courts.

KENNESAW STATE UNIVERSITY

Creation of the Federal Judicial Branch

- Article III, Section II of the U.S. Constitution states:
  - "The judicial power shall extend to cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

- This provision of the Constitution explains the types of cases that may be heard by the federal judiciary.

KENNESAW STATE UNIVERSITY

Creation of the Federal Judicial Branch

The Judiciary Act of 1789:

- Although the U.S. Constitution gave guidance regarding the establishment of the Supreme Court and lower courts, many decisions about the role and structure of the judiciary were left to Congress.
- As a result, Congress enacted the Judiciary Act of 1789.

KENNESAW STATE UNIVERSITY

Current Structure of Judiciary

- Today, the federal judiciary includes the following different types of courts:
  - U.S. Supreme Court (1)
  - Courts of Appeals (13)
  - District Courts (94)
  - Others

KENNESAW STATE UNIVERSITY

Understanding the Judiciary

- Does the judicial branch make policy?
  - Although the judicial branch is charged with interpreting the Constitution and federal laws and applying them to individual cases, since the 1950s, the U.S. Supreme Court has “had an unusually strong influence over policy creation” (Hall, 2011, p. 4).

KENNESAW STATE UNIVERSITY

Understanding the Judiciary (2)

- Some of these policies have covered topics such as:
  - School integration
  - Abortion
  - Criminal law
  - Privacy
  - Same-sex marriage

KENNESAW STATE UNIVERSITY

Understanding the Judiciary (3)

- As a result, some critics argue that the Court's role as a policymaking institution is undemocratic.

KENNESAW STATE UNIVERSITY

Understanding the Judiciary (4)

There are two prevailing, yet conflicting views, regarding the relative power of the Supreme Court.

- View 1: “[T]he Supreme Court is a powerful institution, capable of promoting justice and protecting minority rights by enforcing its interpretation of the Constitution” (Hall, 2011, p.2).
- View 2: “[T]he Court [is] an almost powerless institution that may issue high-minded rulings but lacks the power to ensure that those rulings are actually implemented” (Hall, 2011, p. 2).

KENNESAW STATE UNIVERSITY

Understanding the Judiciary (5)

There are several reasons why the U.S. Supreme Court is viewed as a powerful policymaking institution:

- The Court has the power of judicial review.
- The Court acts as a “gatekeeper” to the judicial branch.
- The Court often has the last word on policy issues.
- Judges exercise political preferences through decisions.

KENNESAW STATE UNIVERSITY

Judicial Review

- The U.S. Supreme Court has the power of judicial review.
  - The Court gave itself this power in *Marbury v. Madison* (1803).

KENNESAW STATE UNIVERSITY

Judicial Review (2)

- What is judicial review?

  1) “power to declare governmental actions unconstitutional (and therefore null and void)” (Rosenbloom, 2015, p. 159).

  - Examples of government action:
    - Acts of Congress
    - Presidential executive orders
    - Lower court actions
    - Agency action

  2). Federal courts can only resolve legal cases and controversies and cannot give advisory opinions (Rosenbloom, 2015).

KENNESAW STATE UNIVERSITY

Judicial Review (3)

- The U.S. Supreme Court, as well as the lower courts, act as “gatekeepers” by deciding who may or may not challenge governmental actions and policies.
  - However, not all cases may be reviewed by federal courts:
    - Original jurisdiction
    - Appellate jurisdiction

KENNESAW STATE UNIVERSITY

Judicial Review (4)

- In addition, the courts have established certain “preconditions of judicial review” that must be in place for citizens to use the court to influence policy (see Rosenbloom, 2015).

KENNESAW STATE UNIVERSITY

Preconditions

- Standing to sue: “one has [to have] a sufficient stake to bring a case against another party to court” (Rosenbloom, 2015, p. 160)
  - Plaintiff suffered an “injury in fact” that is
    - Concrete and particularized
    - Actual or imminent, not hypothetical
  - Injury must be the result of defendant’s actions
  - Injury can be “redressed by favorable decision”

  Justice Scalia in Lujan v. Defenders of Wildlife (1992)

KENNESAW STATE UNIVERSITY

Preconditions (2)

- Standing to sue:
  - Example: Imagine that the Affordable Care Act was just passed, and you want to challenge the individual mandate. You are currently employed and have employer-provided health insurance. Do you have standing to sue? (*Baldwin v. Sebelius,* 654 F.3d 877 (9th Cir. 2011))

KENNESAW STATE UNIVERSITY

Preconditions (3)

- Mootness: a court may not hear a case if the “decision will have no practical effect because the specific legal dispute has disappeared or already been resolved in some other way” (Rosenbloom, 2015, p. 162).
  - Exception: issue before the court is “capable of repetition and yet evading review”

- Ripeness: a court may only hear a case if it is sufficiently developed

KENNESAW STATE UNIVERSITY

Preconditions (4)

Example: Imagine that you are 24 years old. The state where you live passes a law changing the legal drinking age to 25. You bring suit. However, before your case is decided, you turn 25. Can you sue? (*Craig v. Boren*)

KENNESAW STATE UNIVERSITY

Preconditions (5)

- Exhaustion of administrative remedies: “As a rule, parties are required to exhaust their administrative remedies before turning to the courts for relief” (Rosenbloom 2015, 166).

KENNESAW STATE UNIVERSITY

Preconditions (6)

- Exceptions:
  - “the issue is purely legal, with no factual dispute” (p. 166)
  - “the agency lacks the wherewithal to provide the remedy sought or any meaningful one” (pp. 166-7)
  - “the agency has clearly exceeded or misused its authority” (p. 167)
  - “the agency is responsible for unreasonable delays” (p. 167)
  - “the only step not exhausted in the agency’s process is an optional one” (p. 167)

KENNESAW STATE UNIVERSITY

Questions?

KENNESAW STATE UNIVERSITY

Sources

- Rosenbloom (2015)

KENNESAW STATE UNIVERSITY