

Tennessee Supreme Court Applicant Survey

Questions about the Judicial Power and Precedents

1. In Abraham Lincoln's speech at Springfield, Illinois on June 26, 1857, he said:

Judicial decisions are of greater or less authority as precedents, according to circumstances. That this should be so, accords both with common sense, and the customary understanding of the legal profession.

If this important decision had been made by the unanimous concurrence of the judges, and without any apparent partisan bias, and in accordance with legal public expectation, and with the steady practice of the departments throughout our history, and had been in no part, based on assumed historical facts which are not really true; or, if wanting in some of these, it had been before the court more than once, and had there been affirmed and re-affirmed through a course of years, it then might be, perhaps would be, factious, nay, even revolutionary, to not acquiesce in it as a precedent.

But when, as it is true we find it wanting in all these claims to the public confidence, it is not resistance, it is not factious, it is not even disrespectful, to treat it as not having yet quite established a settled doctrine for the country...

- A. Do you believe Tennessee's legislative and executive branches have the constitutional prerogative to follow or apply Abraham Lincoln's assessment of United States Supreme Court precedents in their determination of what the Supremacy Clause in Article VI of the United States Constitution requires of them?

Yes ___ No. ___

- B. Do you believe Tennessee's legislative and executive branches have the same constitutional prerogative to follow or apply Abraham Lincoln's judicial precedent assessment model to what the Tennessee Constitution requires of them when considering a Tennessee Supreme Court decision interpreting the Tennessee Constitution?

Yes ___ No. ___

- C. Do you believe a judgment by United States Supreme Court prohibiting an official in another state from enforcing or administering a state law is constitutionally binding on the official in Tennessee who administers a Tennessee law that is identical to the one in the other state?

Yes ___ No ___

Applicant's Initials

2. In his concurring opinion in *Gamble v. United States*, 139 S. Ct. 1960, 1985 (2019), Supreme Court Justice Clarence Thomas wrote that the Supremacy Clause in “the [U.S] Constitution does not mandate that judicial officers swear to uphold judicial precedents”

Do you believe that this interpretation of the Supremacy Clause in relation to federal judges and U.S. Supreme Court opinions also applies to state court judges should they have to decide whether or how to apply a U.S. Supreme Court precedent to a state law like that in another state to which that precedent pertains?

Yes ____ No ____

3. Do you agree or disagree with United States Chief Justice Earl Warren’s statement that “the federal judiciary is supreme in the exposition of the law of the Constitution” with respect to a state legislative body’s interpretation of the U.S. Constitution?

Agree ____ Disagree ____

4. Do you believe the power of the judicial branch under Article III of the Tennessee Constitution allows any court in Tennessee to fashion a remedy in a judgment for a particular individual plaintiff relative to a particular state or local official’s administration or enforcement of a state law and make that judgment binding on that official with respect to other similarly situated persons not parties to that action?

Yes ____ No ____

Questions About Constitutional Interpretation

5. In *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617, the United States Supreme Court write that state courts “possess the authority, absent a provision for exclusive federal jurisdiction, to render binding judicial decisions that rest on their own interpretations of federal law”?

Do you agree or disagree with this statement?

Agree ____ Disagree ____

6. After ratification of the Fourteenth Amendment, the United States Supreme Court, in *Smith v. Alabama*, 124 U.S. 465, 478, said, “The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history.”

Do you agree or disagree with this statement?

Agree ____ Disagree ____

Applicant’s Initials

Questions About Common Law

7. Please explain how a judge in the common law tradition declares law in a judicial opinion.
(attach additional pages as needed)

8. Please explain your understanding of the difference, if any, in the role the doctrine of *stare decisis* plays in cases involving a prior interpretation of positive law, like the state's Constitution or a state statute, vis-à-vis the role it plays in cases putting at issue a prior interpretation and application of common law. (attach additional pages as needed)

Applicant's Signature