

INTERNATIONAL JURISDICTION PROFILES

THE UNITED STATES FEDERAL JUDICIARY: ITS STRUCTURE AND JURISDICTION

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I INTRODUCTION

Federal courts through their interpretation of the U.S. Constitution have had a profound effect on the development of law in the United States generally and education law specifically. In cases involving American public schools, the Supreme Court's interpretation of the Constitution has furnished legal definition for such seminal concepts as equal educational opportunities,¹ procedural due process,² and substantive due process.³ The role that federal courts (and the Supreme Court in particular) should have in effecting changes in education reflects a longstanding debate in judicial circles as to whether the purpose of the judiciary is one of social activism or a more restrained function of strict construction of the Constitution. While the purpose of the this article is not to resolve this dispute, the views of judges regarding the role of the federal courts frequently become an issue at the time of their confirmation hearings and whether judges, once confirmed, choose to intervene in schools to superimpose constitutional guidelines on their management or whether, pursuant to the implied power of states to control education, choose to defer to the decisions of states and local school officials, the opinions of these judges will have long and lasting effects on the operation and management of schools.

The U.S. federal judicial system follows the adversarial system inherited from England that relies upon attorneys during a trial to discover facts relevant to a dispute before a court. The primary functions of federal judges are limited to applying federal rules of civil and criminal procedure and resolving questions of substantive law. Despite the influence of the English judicial system on the federal judiciary though, the federal courts have never developed a common law. Common law, patterned on that of the English law, has been developed in almost all states and federal courts when called upon to address mixed federal and state issues in a case can apply the common law of that state to the state issues.

The purpose of this article is to sketch the structure and jurisdiction of the federal courts in the U.S. Although only a broad outline of the federal courts, the author hopes that it will provide a useful introduction to a hierarchal system of courts that have had profound influence on American law. The federal judiciary as currently constituted in the United States did not spring full-blown in its current form, but rather, except where specifically designated in the Constitution,

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has been the product of two hundred years of congressional action. The relationship between Congress and the federal judiciary has involved over the years an interpretive tug of war over Congress' interpretation of its powers under Article II of the Constitution and the Supreme Court's interpretation of what the Constitution permits.⁴

II STRUCTURE OF THE FEDERAL JUDICIARY

Of the first three articles of the United States Constitution that outline the function of each of the three branches of government,⁵ the briefest by far is Article III that addresses the federal judiciary. Article III contains only three short sections and only sections one and two are relevant for our discussion in this article.⁶ Section one, the subject of this portion of the discussion, provides the barest of outlines for the constituency of the judiciary while section two, the subject of the next part of the discussion, provides guidelines for the jurisdiction of federal courts.

The only federal court explicitly provided for in Article III is 'one supreme court' with the establishment of all other 'inferior courts' left up to Congress. Article III further provides that all federal court judges serve 'during good behavior' and their compensation cannot be diminished during their term as a judge.⁷ The process for removing a federal judge is impeachment. Under Article II of the Constitution, all federal judges are appointed by the President of the United States with the advice and consent of the U.S. Senate.⁸

A *The Supreme Court*

Members of the Supreme court, while federal judges in the broad sense, are referred to as justices. The number of justices on the Supreme Court is not prescribed in the Constitution and has varied over the years. Originally set in 1789 at six (the Chief Justice and five justices),⁹ the total number reached ten in 1863¹⁰ and then in 1869 was set at its current number of nine (one Chief Justice and eight associate justices).¹¹ All Supreme Court justices are appointed by the President and must be confirmed by the United States Senate, a process that requires a hearing by the appointee before the Senate Judiciary Committee and then a vote by the committee and the full Senate. When a Chief Justice retires or dies, the President can appoint a current member of the Court as was done with Chief Justice Rehnquist (appointed and confirmed as an Associate Justice in 1971 and appointed and confirmed in 1986 as Chief Justice upon the retirement of Chief Justice Burger) or can he can appoint a person from outside the Court as was done with the current Chief Justice, John Roberts, Jr. (appointed and confirmed in 2005 upon the death of Chief Justice Rehnquist).

Under Article III, the Supreme Court has both original and appellate jurisdiction depending on the nature of the case. The Court has original jurisdiction as to 'all Cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party' and appellate jurisdiction in all other cases, subject to Congress' regulation of that jurisdiction.¹² However, the extent to which Congress can actually and effectually limit the appellate jurisdiction of the Supreme Court has become mired in issues of separation of powers¹³ and due process¹⁴ and thus the question is still an open one.

Although approximately 7,000-8,000 cases are filed each year for consideration by the Court, the Court only hears a small fraction of this number, rendering formal written decisions in fewer than 100 of the cases and disposing of another 50-60 without granting formal review.

At the heart of the appeals process in the federal judiciary is the authority of the Supreme Court to exercise judicial review of lower court decisions. The Supreme Court is the final court of

review in the United States and the authority of the Court to engage in judicial review, the process of testing federal and state legislative enactments and other actions by the standards of what the Constitution grants, has made it the nation's final arbiter of disputes involving the Constitution or federal law. While this authority to review legislative acts is nowhere found in Article III of the Constitution, Chief Justice Marshall's artful opinion in *Marbury v Madison*¹⁵ solidified the Court's power to exercise judicial review

Appeal cases can reach the Supreme Court through a variety of avenues. The most common method of appeal is through a writ of certiorari which, if granted and issued by the Court, essentially is an order to deliver up a lower court record for review by the Court. Even if granted though, the writ can later be denied if the facts are found not to present a sufficient federal or constitutional claim¹⁶ or if the legal issues are sufficiently close to another case granted certiorari earlier and decided in the same term, resulting in the later case being remanded for reconsideration in light of the Court's decision.¹⁷ Although most cases are appealed to the Supreme Court from one of the *federal circuit courts of appeal*, a direct avenue of appeal exists from the decisions of special three-judge *federal district courts*¹⁸ and from the decisions of state supreme courts.¹⁹

B *Federal Circuit Courts of Appeal*

The number of federal courts of appeal is subject to the control of Congress under Article III of the Constitution. The federal appellate courts currently are composed of thirteen circuit courts of appeal, each of which is presided over by three judges. The most recent additions to the federal circuit courts of appeal include the Federal Circuit created by Congress in 1982²⁰ and the Eleventh Circuit created in 1981.

The circuit courts of appeal include twelve geographic courts plus the Court of Appeals for the Federal Circuit. The Federal Circuit is unique among the circuit courts of appeal in that it is the only circuit not restricted to cases from a geographic area. This court of appeals has nationwide jurisdiction in a variety of subject matter areas, including international trade, government contracts, and patents, certain claims for money from the United States government, federal personnel, and veterans' benefits and hears appeals from all federal district courts, the United States Court of Federal Claims, the United States Court of International Trade, the United States Court of Veterans Appeals, as well as hearing appeals from a variety of government administrative agencies, commissions, and boards. The Federal Court of Appeals sits in Washington, D.C. but is authorized to hear cases anywhere in the United States.

In terms of influence upon education law and the operation of the nation's schools, one must look at the twelve geographic appeal courts. Except for the District of Columbia Court of Appeals that has jurisdiction only over the District of Columbia, each of these twelve circuits has within its jurisdiction a number of states and can hear appeals only from federal district courts located within those states. The states located within each federal circuit²¹ and the number of judges in each circuit²² are determined by Congress. Each of the circuit courts is located in a city in one of its states, but in a manner reminiscent of the circuit riders of the Nineteenth Century who traveled about on horseback, the circuit courts occasionally hear cases in other cities within their circuits.²³

As one would anticipate, the courts of appeal have only appellate jurisdiction. A member of the Supreme Court is assigned to each of the federal circuits and in the event of emergency appeals (such as capital punishment cases), can issue an interim order pending a review of the full Court.²⁴

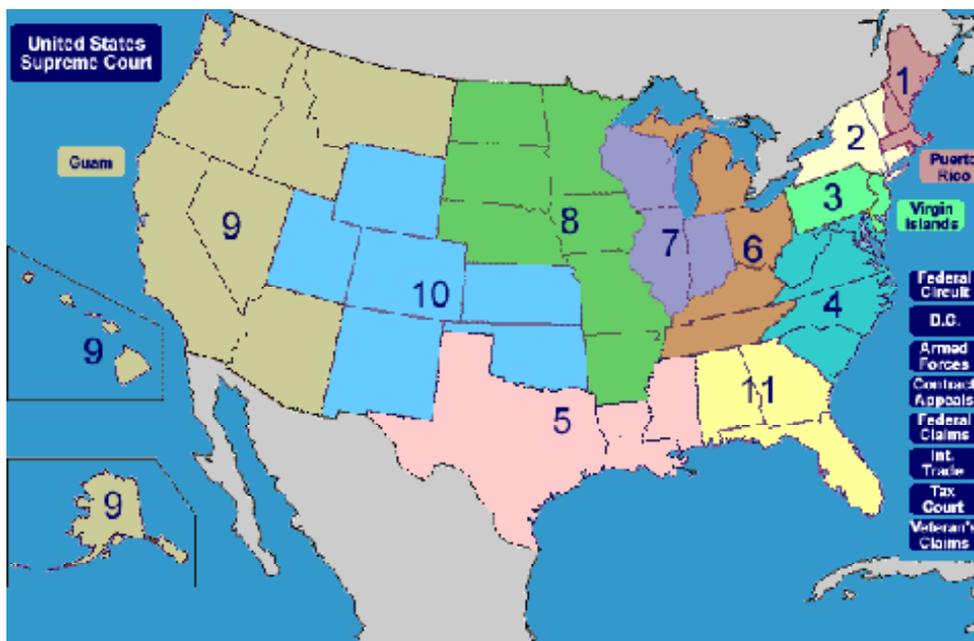


FIGURE 1: Federal Courts Finder (Source: Emory University Law Library website)²⁵

C Federal District Courts

In addition to the Supreme Court and the thirteen courts of appeal, the federal judicial system is also composed of 94 federal districts, 92 of which are located in the 50 states with the other two being for Puerto Rico and the District of Columbia. Federal district court judges, like the judges in the courts of appeal and the justices in the Supreme Court, are appointed by the President with the advice and consent of Congress. The number of federal districts per state is determined by Congress as well as the number of judges assigned per district.²⁶ Federal district courts have been created within states and no district court boundaries extend across state lines. Each federal district court has an assigned geographic district within a state and the court's jurisdiction is limited to cases arising within that geographic district. In states such as Montana and Alaska each with only one federal district, the court's jurisdiction is statewide and its decisions are binding on all citizens in the state. On the other hand, some states have more than one federal district court, such as New York and California each with four. Where multiple federal courts exist within the same state, each court has jurisdiction only over cases arising within its geographic district and its decisions are binding only over citizens within that district. While the size of the geographic area of federal districts depends on the population of a district, inequities in size occur. Thus, the largest state in geographical area, Alaska, comprises one federal district and has three federal judges, the same as for the smallest state, Rhode Island.

Federal district courts are the trial courts of general jurisdiction in the federal judiciary which means that they try both civil and criminal cases. For fiscal year 2003, over 250,000 civil and 70,000 criminal cases were filed in all federal district courts. However, only 4,206 cases, or 1.7 percent of the total were decided through the trial process and of that number, only 2,674 cases

went to a jury, with the remaining 1,532 cases being heard as bench trials. Of the cases that went to trial, 40% involved civil rights issues.²⁷

III FEDERAL JURISDICTION

Article III of the Constitution expressly provides that federal judicial power extends to nine enumerated ‘cases’ and ‘controversies’, the first four of which (‘cases’) confer jurisdiction depending on the cause, while the remaining five (‘controversies’) confer jurisdiction depending on the parties.²⁸ The ‘cases’ identified in Article III are those in law and equity ‘arising under the Constitution, the laws of the United States, and treaties thereof’, those ‘affecting ambassadors, other public ministers, and consuls’ and those involving ‘admiralty and maritime jurisdiction’.²⁹ ‘Controversies’ include those matters ‘to which the United States shall be a party’, those ‘between two or more states’, those ‘between a state and citizens of another state’, those ‘between citizens of different states’, those ‘between citizens of the same state claiming lands under grants of different states’, and those ‘between a state or the citizens thereof, and foreign states citizens or subjects’.³⁰

The requirement of a case or controversy prohibits advisory opinions and ‘limit[s] the business of federal courts to questions presented in an adversary context’.³¹ The most important element of adverseness of the parties is that they have standing which has been explained by the Supreme Court as a party having ‘alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions’.³² The elements of standing — injury in fact, causation, and redressability — require not only an alleged injury but a wrong that has resulted in the violation of a legal right. While the interpretation of standing can vary with fact patterns,³³ in certain constitutional issues such as those dealing with the establishment clause, federal courts have interpreted almost all challenges to the involvement of religion and government to be sufficient to confer standing.³⁴

Broadly speaking, federal court jurisdiction falls into three categories: federal question jurisdiction, diversity jurisdiction, and supplemental jurisdiction. The most frequently litigated federal questions are those involving the Constitution and federal laws.

Federal case law is replete with cases challenging the actions of school boards and school officials where constitutional rights such as free expression³⁵ or procedural due process³⁶ or federal statutes such as the Family Education Rights and Privacy Act (FERPA)³⁷ and the Individuals with Disabilities Education Act (IDEA)³⁸ are at issue. Diversity jurisdiction allows lawsuits based on the location of parties without regard to a federal question. Thus, federal courts can hear lawsuits involving citizens of different states even though the lawsuit does not concern a federal question. However, there are exceptions and diversity civil lawsuits must have an amount in controversy of at least \$75,000³⁹ and cannot involve certain areas such as probate and family law issues that are considered to be the prerogative of the states.⁴⁰ Supplemental jurisdiction, or, as it is more frequently referred to, pendent or ancillary jurisdiction, permits federal courts to hear state claims that normally would come under the jurisdiction of state courts where the state claims concern a federal claim that is legitimately before the court. While supplementary jurisdiction is discretionary, it has an advantage of permitting federal courts to resolve state claims by applying state law without requiring a claimant to exercise the time and expense of litigating the state issues separately.

IV CONCLUSION

Federal courts in the U.S. have become for many litigants the venue of preference but both the Constitution and Congress set limits on the jurisdiction of those courts. Many of the lawsuits that can be brought in federal courts could also be filed in state courts but the procedural uniformity among all courts in the federal judiciary, contrary to differences in rule and procedures among the fifty state court systems, make the federal judiciary attractive for litigants. Whenever litigation occurs in a federal court, different interpretations among district courts and courts of appeal can result in the anomaly that applicable law may depend on where one lives. Thus, a person living in Ohio in the Sixth Circuit Court of Appeals may be subject to a Sixth Circuit interpretation of the Constitution or a federal statute that differs from that for a person in another federal circuit. The role of the U.S. Supreme Court as the final interpreter of the Constitution and federal laws is to provide some measure of consistency among these differing lower court interpretations. In the end, the purpose of the federal judiciary in the United States federal system of government is to assure that rights and benefits bestowed by the Constitution or federal statute are fairly and uniformly applied to all citizens.

ENDNOTES

1. See, e.g., *Brown v Bd. of Educ.*, 347 483 (1954) (invalidating under the equal protection clause the segregative concept of separate but equal).
2. See, e.g., *Goss v Lopez*, 419 U.S. 565 (1975) (holding that a student disciplined by school officials for violation of school rules was entitled to minimal rights of fair treatment under the due process clause of the Fourteenth Amendment).
3. See, e.g., *Tinker v Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969) (holding that students in public schools had free speech rights under the First Amendment of the Constitution).
4. See *West Coast Hotel Co. v Parrish*, 300 U.S. 379 (1937) (Court upholding State of Washington's minimum wage law in what came to be known as 'the switch in time that saved nine' decision, reversing the Court's past record of striking down a number of Congress' New Deal legislation).
5. Article I (the longest) addresses the legislative branch, Article II addresses the executive, and Article III the judicial.
6. Section three contains a definition of treason, the evidentiary requirements that conviction for treason can occur only with at least two witnesses and in open court, and the prohibition on Congress of extending the punishment for treason to include corruption of blood or forfeiture.
7. See *United States v Will*, 449 U.S. 200, 217-18 (1980) ('The Compensation Clause has its roots in the longstanding Anglo-American tradition of an independent Judiciary. A Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government?').
8. See U.S. Const., art II, cl, 2.
9. Act of September 24, 1789, 1 Stat. 73.
10. Act of March 3, 1863, 12 Stat. 794, Sec. 1.
11. Act of April 10, 1869, 16 Stat. 44.
12. The seminal and most important example of Congress cutting off the jurisdiction of the Supreme Court to hear a case is *Ex Parte McCordle*, 73 U.S. 318 (1868).
13. See *U.S. v Klein*, 80 U.S. 128 (1872).
14. See *Crowell v Benson*, 285 U.S. 22 (1932). However, whether this case remains good law is not clear. Cf *Webster v Doe*, 486 592, 603 (1988) (Scalia, J., concurring) (arguing for complete congressional discretion in determining appellate jurisdiction) with *Estep v U.S.*, 327 U.S. 114 (1946 (Frankfurter, J., concurring) (arguing that judicial review might be available where Congress has stated that an administrative decision is final but without stating that no judicial review is possible).
15. 5 U.S. 137 (1803).

16. See, e.g., *Taxman v Bd. of Educ. of Township of Piscataway*, 521 U.S. 1117 (1997), cert. granted and dismissed, 522 U.S. 1010 (2000), for lack of justiciable issue.
17. See, e.g., *Adler v Duvall County Sch. Bd.*, 531 U.S. 801 (2000), cert. granted and vacated for reconsideration in light of *Santa Fe Independent School District v Doe*, 530 U.S. 290 (2000).
18. See, e.g., *Pierce v Society of Sisters*, 268 U.S. 510 (1925).
19. See, e.g., *Wisconsin v Yoder*, 406 U.S. 205 (1972).
20. See 28 U.S.C. Sec. 1295 (Federal Courts Improvement Act of 1982).
21. 28 U.S.C. § 41. The federal circuit courts of appeal and the states located with each circuit are: District of Columbia – D.C.; First Circuit – Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island; Second – Connecticut, New York, Vermont; Third – Delaware, New Jersey, Pennsylvania, Virgin Islands; Fourth – Maryland, North Carolina, South Carolina, Virginia, West Virginia; Fifth – District of the Canal Zone, Louisiana, Mississippi, Texas; Sixth – Kentucky, Michigan, Ohio, Tennessee; Seventh – Illinois, Indiana, Wisconsin; Eighth – Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; Ninth – Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii; Tenth – Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming; Eleventh – Alabama, Florida, Georgia.
22. 28 U.S.C. § 44. The number of judges per circuit: District of Columbia – 12; First – 6; Second – 13; Third – 14; Fourth – 15; Fifth – 17; Sixth – 16; Seventh – 11; Eighth – 11; Ninth – 28; Tenth – 12; Eleventh – 12. the Federal Circuit has 12 judges.
23. Circuit courts of appeal are located in the following cities: Federal – District of Columbia; District of Columbia – D.C.; First – Boston MA; Second - New York City NY; Third – Philadelphia PA; Fourth – Richmond VA; Fifth - New Orleans LA; Sixth – Cincinnati OH; Seventh – Chicago IL; Eighth – St. Louis MO; Ninth - San Francisco CA; Tenth – Denver CO; Eleventh – Atlanta GA.
24. The current allotment of the Supreme Court justices to the circuits is: C. J. Roberts – Fourth, Federal Circuit, and District of Columbia; J. Ginsburg – Second; J. Souter – Third; J. Scalia – Fifth; J. Stevens – Sixth and Seventh; J. Thomas – Eighth; J. O’Connor – Ninth; J. Breyer – Tenth; J. Kennedy – Eleventh.
25. School of Law Emory, *Federal Court Finder* <www.law.emory.edu/FEDCTS/> at 16 July 2006.
26. 28 U.S.C. § 133. The number of federal districts and judges per state: Alabama - 3/13; Alaska – 1/3; Arizona – 1/12; Arkansas – 2/8; California – 4/60; Colorado – 1/7; Connecticut – 1/8; Delaware – 1/4; District of Columbia – 1/15; Florida – 3/36; Georgia – 3/18; Hawaii – 1/3; Idaho – 1/2; Illinois – 3/30; Indiana – 2/10; Iowa – 2/5; Kansas – 1/5; Kentucky – 3/10; Louisiana – 3/22; Maine – 1/3; Maryland – 1/10; Massachusetts – 1/13; Michigan – 2/19; Mississippi – 2/9; Missouri – 3/13; Montana – 1/3; Nebraska – 1/3; Nevada – 1/7; New Hampshire – 1/3; New Jersey – 1/17; New Mexico – 1/6; New York – 4/52; North Carolina – 3/12; North Dakota – 1/2; Ohio – 2/19; Oklahoma – 4/11; Oregon - 1/6; Pennsylvania – 3/38; Puerto Rico – 1/7; Rhode Island – 1/3; South Carolina – 1/10; South Dakota – 1/3; Tennessee – 3/14; Texas – 4/51; Utah – 1/5; Vermont – 1/2; Virginia – 2/11; Washington – 2/11; West Virginia – 2/8; Wisconsin – 2/7; Wyoming – 1/3.
27. Administrative Office of the U.S. Courts, *2003 Annual Report*, p. 34 (Table S-7), 120 (Table C), 175 (Table D).
28. See *Chief Justice Marshall’s discussion in Cohens v Virginia*, 19 U.S. 264, 378 (1821)
29. U.S. Const., sec. 2. Congress has declared that the Supreme Court ‘shall have original and exclusive jurisdiction of all controversies between two or more States’ but concerning the other three areas under ‘cases’, the Supreme Court ‘shall have original but not exclusive jurisdiction’. 28 U.S.C. § 1251. See also, 28 U.S.C. § 1331 (‘The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States’) and 28 U.S.C. § 1333 (district courts have original jurisdiction over maritime and admiralty cases exclusive of state courts).
30. *Ibid.*
31. *Flast v Cohen*, 392 U.S. 83, 94 (1968).
32. *Baker v Carr*, 369 U.S. 186, 204 (1962).
33. For a narrow interpretation of standing see, *Shaw v Hunt*, 517 U.S. 899 (1996) (in voter challenge to alleged racial gerrymandering for congressional districts in North Carolina, the Court held that only

persons, living in a gerrymandered district had standing to challenge the redistricting).

34. See *Texas Monthly, Inc. v Bullock*, 489 U.S. 1 (1989) (upholding standing of nonreligious magazine to challenge constitutionality of tax exemption for religious magazine to recover tax paid, over state claim that Court's finding the statute to be unconstitutional would place plaintiff on par with religious magazines in that all would have to pay the tax prospectively). But see, *Elk Grove Unified Sch. Dist. v Newdow*, 524 U.S. 1 (2004) (an establishment clause claim can be disallowed where, as in this case, a parent lacked standing under state law to challenge a state mandated pledge of allegiance with the words 'under God' in a public school attended by his child because he had not been awarded custody of child under a divorce settlement); *Bender v Williamsport Area Sch. Dist.*, 475 U.S. 534 (1986) (in establishment clause challenge to student-initiated prayer group to meet during student activity period, school board member lacked standing to sue in his individual capacity where he had been sued in his official capacity).
35. See, e.g., *Hazelwood Sch. Dist. v Kuhlmeier*, 484 U.S. 260 (1988) (balancing the need for school officials to exercise reasonable control over content of school sponsored newspaper versus student newspaper editors' claim that their selection of items for publication were protected by free speech).
36. See, e.g., *Bethel Sch. Dist. No. 403 v Fraser*, 478 U.S. 675 (1986) (upholding suspension of student following vulgar speech where school rules provided sufficient notice as to acceptable standards for student conduct).
37. See, e.g., *Owasso Indep. Sch. Dist. I-001 v Falvo*, 534 U.S. 426 (2002) (holding that school's procedure of having students grade each other's papers did not constitute a disclosure of an 'education record' under FERPA).
38. See, e.g., *Honig v Doe*, 484 U.S. 305 (1988) (school's exclusion of student from education services without satisfying requirements of stay put violated the IDEA).
39. 28 U.S.C. § 1332.
40. See, e.g., *Bryden v Davis*, 522 F.Supp. 1168 (D. Mo. 1981). However, the family law exception to jurisdiction will not prevent federal courts from intervening where a federal statute, such as 18 U.S.C. § 228, criminalizes failure to pay lawful child support obligations. See *U.S. v Nichols*, 113 F.3d 1230 (2d Cir. 1997).