

Free essay on judicial independence and politics

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South Korea's Constitutional Court V, US Constitution

a. Judicial independence requires that all issues brought unto it be decided impartially and such decisions should be guided by facts and legal directions (Gordon, 2008). I agree with the judicial review assertions from traditional theories regarding neutrality and principality of decisions, and I do see some element of fairness in it. As much as Justices would like to stay human, a number of issues often influence their decisions and some of these issues include political issues. I think the Judicial Review exists in order to halt non-constitutional laws approved by the legislature. It is difficult to categorize decisions made by Judges as being political or principled (Gordon, 2008). For instance, different issues drive a controversial issue like gun ownership. For one, it is the right of law abiding citizens to own guns provided they are not convicted criminals while for another, allowing individuals to own guns threatens the security of the society. A good case of a principled decision is the Chicago v. McDonald case in the US whereby the Supreme Court made a decision that led to the ban on handguns in Chicago.

b. This is true for US given that judicial review is the final decision. In such situations, politicians must find a way of avoiding criticism. A good example is the acceptance of same-sex marriages by politicians even though the State is yet to accept same sex marriage under the constitution (Gordon, 2008).

c. In controversial issues such as marijuana use and gun ownership, it is more likely that the majority of the people make laws and therefore, the political group often tries to take advantage of it. In both situations, people resort to going to courts in order to settle their constitutional issues and for

this reason, the trend will keep on increasing.

d. A good example is the Wade v, Roe case in Texas regarding abortion.

Since, Texas laws banned abortion, the woman filed for abuse of her privacy rights after she was forced to give birth. The case was heard in the Supreme Court three times before the final decision was made. With such controversies, I believe that such cases will continue being forwarded to the Supreme Court for Judicial Review (Gordon, 2008).

Gordon G. Y. (2008) " Justifying Motive Analysis in Judicial Review," Wm. & Mary Bill of Rts. J. 191. 17(1): 191-261