

# National security and constitutional rights term paper examples

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Constitutional rights have always been regarded supreme to other rights and, therefore, prima facie would take preference in case of any conflict with any other rights. However, as the world develops there have been proliferations of other conditions and needs that are essential and should be protected to ensure tranquility in the society. This means that despite civil rights being created to grant citizens exclusive rights to enjoy their free will in response to the conditions at that time; the law and the supreme court have in some cases found it necessary to curtail these rights in order serve other overriding objectives that are critical to law and order. There has been a hotly contested debate about how far constitutional rights should be pushed to accommodate national security concerns. It should be acknowledged that constitutional rights should be amended periodically in order to ensure a rational balance. With increasing globalization, terrorism and numerous other changing circumstances that were not envisioned during the drafting of the constitution coming into the picture, it is cardinal that competing constitutional rights, for example, public safety and personal liberty, should have a rational balance. In case of a conflict, then public safety should be prioritized. The United States congress and the Supreme Court have been instrumental in ensuring that there is harmony between these two competing yet essential constitutional rights. Therefore, in case of a national emergency or break of war, courts of law have in most cases responded swiftly to curtail civil liberties in the recognition that national security concerns outweighs them. However, when there is no imminent threat on the American public the courts have retained they role of being a custodian of the constitution and protected personal liberties. This is the

pragmatic approach adopted not only by the American justice system, but by most democracies in the world at large. This paper will canvas the role of courts of law in a matter relating to war power cases and foreign affairs. The paper will discuss the conflicting constitutional provisions, and then examine how courts have applied them in specific cases, in order to arrive at a just and fair determination. This paper will be divided into two main sections; the first will discuss the competing constitutional rights while the second section will provide case law illustrations on how the courts have applied them.

### **The competing constitutional rights**

The first amendment is a section of the bill of rights. This amendment was enacted to ensure that no laws are passed to prohibit free exercise of religious rights, hinders free speech, affect the rights of freedom of assembly, infringe on the right of the media for freedom of the press or disallowing a person redress from government after suffering an injurious act. However, in order to protect its citizens, the U. S government should find a way of respecting these rights and still be able to maintain national security in the face enemies, both domestic and foreign. The final word is usually the role of the Supreme Court in such weighty matters. The Supreme Court can determine when the government should pursue and arrest people believed to be planning to dethrone the government of the day, despite them having protection under the first amendment. This is an offense under the Smith Act of 1940. In the case of *Denis v United States*, the supreme court was to determine whether a section of the community party leaders who were alleged to have engaged in a conspiracy to violate the Smith act with regard to freedom of speech. The Court devised a plurality test that would

determine whether the possibility of the damage caused could justify the suppression of the constitutional right.

The fourth amendment seeks to protect citizens against unreasonable searches and seizures. It states that a law enforcement officer must have a warranty from a judicial officer that shows a probable cause for the search. This protects citizens from arbitrary abuse of powers by policing agencies. However, there are a few exceptions to the fourth amendment. In August 22, 2009, the Foreign Intelligence Court of Review permitted the executive in some cases to authorize, unilaterally, surveillance that involved private conversations that occurred in international communication that mentioned people from the U. S. This ruling grants powers to the Director of National intelligence and the Attorney General the power to authorize monitoring of people's phone calls and emails if the agency believes that the communication will provide sufficient intelligence, to help the agency protect Americans.

The 14th amendment prohibits the government from denying any person within the U. S jurisdiction the constitutional rights of equal protection of the law. Consequently, the rule of law should be supreme, and everyone is treated as any other person under the same set of circumstances. The Supreme Court exercises an oversight role in ensuring compliance with these provisions. The court will only rule in favor of a state if the state exercises a rational basis to a legitimate state purpose in treating a person differently. The writ of habeas corpus is used when the court wants to enforce an appearance of the accused in court. This is used in order to protect citizens from illegal detention by police agencies. However, the suspension clause in

the constitution provides that this right can be suspended when there is a question on the legality of extradition of the accused person to a foreign country. It also provides that in cases where public safety is threatened or a case or rebellion is imminent, then the privileges of the writ of habeas corpus cannot be entertained. Moreover, the 14th amendment enshrines in the constitution the requirement of due process of law. The constitution requires every accused person to be granted procedural justice as a precondition to substantial justice.

This section will expand on the above constitutional rights using case law to illustrate their application. In the case of *Youngstown sheet & Tube Co v Sawyer* (1951), President Truman, during the Korean war of 1952, issues an executive order whose purpose was to authorize seize and operation of the nation's steel mills by the secretary of commerce. The intention of the order was to prevent predicted effects of a looming union strike. The question before the court was whether President Truman had the constitutional powers to make such an order to seize the mills. The supreme court of the United States held that the president actions were unconstitutional and, therefore, null and void because they lacked legitimacy and contravened article II of the United States constitution. The court reasoned that, despite the president being the commander-in-chief of the armed forces, he did not have authority over private property. Moreover, he did not have any legal powers to interfere in labor relations. This is a case that illustrates the Supreme Court invalidating the actions of the executive despite there being foreign concerns and the Korean War. In the case of *Dellums v Bush*, the members of congress sought a preliminary injunction against the then

president of the United States, George Bush in order to prevent him from declaring war to Iraq without seeking the approval of congress. The president sought to prevent Iraq from attacking Kuwait, a country the U. S had a special interest. The question before the court was whether the president had constitutional powers declare war without congress approval. They argued that article 1 section 8 and clause 11 of the constitution made such a declaration unlawful. However, the war clause could only be implemented if congress had voted in the majority against the president. Therefore, the court held the petition was premature, and it was struck out. However, in the case of Ange v. Bush (D. D. C. 1990), the plaintiff sought a preliminary injunction to stop the president deploying him to the Persian Gulf. He argues that the president exceeded his powers under the constitutional war clause. He also argued the president contravened the War Power Resolutions. His pleaded that the Fifth Amendment stated that he should be accorded due process, to determine his suitability to go to a war region in his state of health. The court considered all these consideration, and it dismissed all claims challenging the president's orders because he is the commander-in-chief. The court also held that the Fifth Amendment cannot be used to justify non judicial political reasons, which cannot be argued coherently in court.

As illustrated, it is evident that the judiciary will weigh both the needs to interfere with executive actions relating to war clauses and foreign affairs, and interests and rights of its citizens. It is worth noting that courts always take a cautious approach in matters relating to foreign affairs. This is due to the recognition that this is an area that the court is not adequately

competent to handle and falls within the executive's jurisdiction in the spirit of separation of powers. Therefore, a court will only interfere with the actions of the executive if the plaintiff proves that the executive did not only have the constitutional powers to do so, but also that the executive infringed on the plaintiff rights or contravened the constitution. In the case of *New York Times v United States* (1970), the Nixon administration wanted to prevent the New York Times from printing and publishing information that regarding the U. S activities in Vietnam. The government argument was based on national security. The question before the court was whether President Nixon violated the First Amendment. The court ruled in favor of the New York Times. It argued that the word ' security' cannot be used merely to curtail fundamental rights of citizens, which are enshrined in the constitution. In order for such rights to be curtailed a justified case with a heavy presumption to the detriment of public interest must be established. On the other hand, in the case of *Olmstead v United States* (1927), the plaintiff was a suspected bootlegger. In order to build a case against him, the police set up wiretaps. The question before the honorable court was whether the federal agents violated the Fourth and Fifth Amendments by wiretapping private telephones conversations. The court held that the agents did not contravene the constitution. It held that despite the wiretapping being unethical, it was not illegal.

Another significant concern about foreign policy of the United States and war, which has been a cause of numerous legal battles, is with regard to the Guantanamo Bay detention camp. The camp was established to hold prisoners of war with links to terrorist connections. The detentions are

usually without trial, and there are numerous cases of human rights abuse. In the case of *Hamdi V Rumsfeld* (2004), the Supreme Court declared that the detainees had a right to challenge in a court of law their detention. This was to be before an impartial tribunal, in order, to respect and uphold constitutional rights.

In a mature democracy, it is extremely vital that even at times of war, the country should retain its fundamental democratic principles of governance. The courts of law, and specifically the Supreme Court, have continued with its traditional role of being the custodian of the constitution. The tendency of the United States government to exercise a policing role over other nation and engaging in periodic wars has put stains on civil liberties, in order to ensure public safety. Therefore, the courts have become to ensure the respect of rule of law even with conflicting foreign affairs interest and at times of war.

## **Works Cited**

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