

The preferred position balancing theory essay



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The preferred position balancing theory postulates, “ First amendment freedoms are fundamental to a free society and entitled to more judicial protection than other constitutional values.” Essentially, the theory advocates for upholding certain fundamental rights, most noteworthy being the right to freedom of expression (Galen, 1991). The First Amendment, a section of the Bill of Rights, prohibits Congress and the government in general from suppressing the freedom of speech and that of the press. Further, it asserts that the Congress should not interfere with organization and assembly of persons, especially for matters relating to religion and beliefs (Kokott, 1998).

This essay seeks to take a plunge into the debate on whether the preferred position balancing theory should be taken into effect or not. In addition, it highlights some of the effects (mainly advantages) of putting into practice the stipulations in the preferred position balancing theory. Further, the essay looks at case examples of taking the suggested measures. That is, it takes the reader through the resultant effects and what it would mean to adopt the preferred position balancing theory.

The preferred positioning theory is a controversial stipulation that would likely split a nation, a community, or a family right in the middle. The United Nations, one of the world’s leading and most influential international bodies, has been in the forefront in advocating for human rights and particularly freedom of speech (Galen, 1991). This is proven by the fact that it is that very first days in public domain were marked by callings for freedom of knowledge and with it for freedom of speech. Nevertheless, the challenging question arises: should the preferred position balancing theory and thereby

the right to freedom of speech and expression be effected? If so, what would be the benefits, and if not, what would likely be the cause of disagreement and the reasons behind the failure of its adoption?

If the preferred position balancing theory is put into effect and adopted, it would lead to numerous opportunities for a better living. As it has been underscored in various avenues, knowledge is power. Emancipation of the masses is the greatest power that can be accorded to the human race (Sadurski, 1999). By virtue of having prior knowledge about an activity or event, a person can make wiser and informed decisions. He or she can have the comfort of knowing what goes on around him or her. This is clearly indicated by the Civil War of the 1870s. The war, which began as a small uprising, quickly gained momentum and a significant insurgence due to the ease and speed with which news was spread across the nation. Through emancipation, the natives were able to share their experiences and compare notes on the effects of the British reign upon the United States. When the time to say 'enough was enough' came, they rose and echoed in one voice the sentiments that would later set America free from colonial bondage while granting them independence. Indeed, without the freedom of expression, such a fete would have remained a mere dream for an uncharacteristically long period. Thus, the preferred position balancing theory allows for emancipation and enlightenment of the masses. In some avenues, these two are sometimes viewed as incitement.

Adoption of the preferred position balancing theory would serve to make the world democratic and nations transparent. Naturally, no one likes to be put in compromising situations. When the right of freedom of speech is upheld,

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the rest of the population can cast a hawk-eye over the leaders, especially political leaders. When foul play is suspected and political leaders are suspected to have engaged in underhand deals or to have acted in any way that compromises the trust accorded to them by virtue of political positions they hold, it becomes easier for a warning to be sounded. Since laws, which suppress the rights of freedom of expression and freedom of speech, do not gag individuals, they can well be in the frontline in naming and shaming such office holders. In essence, this allows for a more democratic system of ruling where leaders act within the provisions of the law and do not engage in any activities or utterances that might likely jeopardize their positions of power (Siegel, 2011).

To adopt the preferred position balancing theory translates and equates to adopting a freer and franker society. It is a fact that a complete society comprises of people from different occupations. It is also true that for harmony to exist within the society there has to be respect among the members. Freedom of speech and freedom of expression allow for the opportunity for members of a society to exercise restraint and to learn valuable lessons as regards to co-existence with other humans. A person learns to be respectful enough to hold a peaceful and meaningful conversation with his or her counterpart even if their beliefs and ways do not marry. He or she learns not only to be a good speaker, but also to be a good listener. The latter point is more important than it has been presented. Listening allows a subject to exercise the right of freedom of speech better. In addition, it inculcates a special character in the subject allowing him or her to be rational in his or her undertakings.

The right to freedom of speech and freedom of expression is essential to a person's individual development and progression (Sadurski, 1999).

Therefore, adopting the preferred position balancing theory provides the opportunity for persons to grow and develop. This is especially true in reference to political and religious beliefs. It is through freedom of speech that a person gets the chance to share with another individual who could be like-minded or not. By listening and sharing ideas, he or she may find that at the end of the conversation there are more gains made, be it to his social life or to his intellectual growth. In addition, through freedom of expression, an individual can exercise the freedom of worship and religious belief without the fear of being reprimanded, derided, mocked, or even condemned (Kokott, 1998). If the preferred position balancing theory were adopted, an improved human race would be the resultant consequence. Improvement in this context refers to a more socially mature, emotionally stable, and religiously steadfast people.

One aspect, contrary to the ones highlighted above, paints the adoption of the preferred positioning balance theory in a somewhat grim picture. With all the advantages that it brings to the table, freedom of speech and freedom of expression could very well lead to wrangles within the society (Siegel, 2011). For instance, it might cause the infringement of the rights of other members of the society by self-centered individuals. Such individuals take advantage of the rights stipulated to engage in acts and utterances that border on being a nuisance. If, for example, one decides to use his/her freedom of speech and expression to address another person or party who is not willing to listen, this amounts to infringement of other party's rights. Indeed,

freedom of speech allows one to say what he or she deems fit. However, it becomes a very different scenario if the audience is not willing to listen because the speaker either is using derogatory terms or is being downright rude and uncivilized. This, in essence, amounts to unlawfully invading other party's space.