



2nd Annual Marquette University Law School Federalist Society Writing Competition

Purpose

The Federalist Society is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be. The Federalist Society seeks both to promote an awareness of these principles and to further their application through its activities.

This semester, the Marquette chapter of the Federalist Society is focusing on the separation of powers, particularly as it relates to the powers of the executive branch in response to terrorism. Accordingly, our topic (**see attached**) for the Writing Competition reflects this focus.

Prizes

To encourage participation in the Writing Competition, prizes will be awarded to the top three finishers. The prizes are as follows:

- 1st Place: 5 tickets (for you and 4 guests) to attend a Milwaukee Brewers game in the Foley & Lardner, LLP Founder's Suite at Miller Park. *Date of game to be determined mutually by winner and suite holder.*
- 2nd Place: \$75 gift certificate to the MU Spirit Shop (formerly known as the Golden Eagle Gift Shop, Warrior Shoppe) located in the Alumni Memorial Union.
- 3rd Place: \$50 gift certificate to the MU Spirit Shop.

Instructions & Guidelines

- ❑ Essays must be 1000 words or less, and double-spaced.
- ❑ All essays are due March 31st; submit essays to the folder in room 146.
- ❑ Please include a cover sheet with your name, and an anonymous four-digit number. All pages of the essay should include your four-digit anonymous number.
- ❑ Essays will be judged by a panel of students and faculty.
- ❑ Participants should retain an electronic version of the essay for possible future publication.
- ❑ Winners will be notified in early April.

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Second Annual Federalist Society Writing Competition

It has recently been reported that the President of the United States in the aftermath of 9/11 ordered the National Security Agency (NSA) to conduct warrantless domestic surveillance.

Opponents of the program have argued that this order has violated §1809 of the Foreign Intelligence Surveillance Act (FISA). The text of FISA states that, “a person is guilty if he intentionally engages in electronic surveillance ... except as authorized by statute.” The Wiretap Act further provides that “procedures in the Wiretap Act and FISA of 1978 shall be the exclusive means by which electronic surveillance ... may be conducted.”

Proponents of the program have argued that it was approved under the authorization to use military force against terrorism. Other proponents argue that the President’s inherent Article II powers allow him to order such surveillance. Proponents cite Justice Jackson’s concurrence in *Youngstown Sheet & Tube v. Sawyer* that stated the president can take measures incompatible with the express or implied will of congress, although the President’s power is at its weakest point in that instance.

Please discuss in 1000 words or less whether President Bush does or does not have the power and whether he should or should not have the power to authorize such a program. We encourage students from all viewpoints to express his or her opinion on this matter.