



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

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BILL OF RIGHTS DAY: CELEBRATING THE FOURTH AMENDMENT

A little-known day of commemoration, Bill of Rights Day, will soon be upon us. It was on December 15, 1791, that the first ten Amendments to the United States Constitution—the Bill of Rights—were ratified. One hundred fifty years later, in 1941, Congress passed a joint resolution calling on the president to designate December 15 as Bill of Rights Day. In response, President Franklin D. Roosevelt proclaimed December 15, 1941, as Bill of Rights Day, saying: “I call upon the officials of the Government, and upon the people of the United States, to observe the day by displaying the flag of the United States on public buildings and by meeting together for such prayers and such ceremonies as may seem to them appropriate.” He went on to specifically mention the freedoms embodied in the First Amendment, which are among our most treasured rights and are revered around the world.

But on Bill of Rights Day this year, we should not overlook another important freedom set out in the Bill of Rights: the Fourth Amendment’s **freedom from unreasonable searches and seizures**. This freedom has been at the forefront of public debate in recent months, and it is worth a closer look.

The words of the Fourth Amendment are, at first glance, straight-forward:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The federal courts have devoted a great deal of attention to these words, and the courts’ interpretations govern much of how law enforcement in this country is conducted. These interpretations play a significant role not only in criminal cases, but also in civil litigation in federal and state courts. When ordinary citizens bring civil claims alleging their Fourth Amendment rights have been violated, the same principles from criminal cases apply. Three types of commonly litigated disputes illustrate the importance of the Fourth Amendment in either context.

Search or Seizure

Evidence of a crime may be found during the search of a location or seized from a suspect’s person. The Fourth Amendment comes into play because of the prohibition on “unreasonable” searches and seizures. If a defendant challenges a search or seizure in a criminal case, the government must

prove it has complied with the Fourth Amendment. A person who has been subjected to a search or seizure may also bring a civil case to challenge its reasonableness under the Fourth Amendment.

The Fourth Amendment's mention of a warrant has been interpreted to mean that the preferred method of searching a person or a place or seizing a person or items is to first get a warrant from a court. A warrant must be supported by probable cause to be "reasonable." However, there are exceptions to the warrant requirement, all primarily based on the word "unreasonable" in the Fourth Amendment. For example, if a law enforcement officer sees something illegal in plain sight—say, seeing what appears to be an illegal drug in the front seat of a car after stopping the car for speeding—then the officer may be able to seize the item without a warrant, because courts have generally found such a seizure to be "reasonable." In both civil and criminal cases, courts must thus determine whether searches and seizures were "reasonable" given the specific facts of the case and whether warrants were supported by probable cause.

Excessive Force

Another Fourth Amendment claim seen in federal court is that law enforcement used excessive force in arresting, detaining, or interacting with a person, or, in the most extreme cases, where law enforcement has killed someone. The courts consider these types of incidents as "seizures" within the meaning of the Fourth Amendment. Just as in the search and seizure cases, excessive force cases often turn on the word "unreasonable." Judges and juries must examine all of the circumstances to decide whether the force used in the course of the seizure was unreasonable.

Wrongful Arrest

Wrongful arrests are yet another issue under the Fourth Amendment. A person may allege an arrest was made without a warrant or without probable cause. These cases are analyzed under the standards discussed above. If the officer had an arrest warrant and the warrant was supported by probable cause, the arrest likely will be found reasonable. But officers are also allowed to make arrests without warrants if they see or are told of crimes while they are being committed or soon after. In such circumstances, stopping to obtain a warrant is generally not required, but the Fourth Amendment still requires the officer to have probable cause for the arrest to be lawful.

On Bill of Rights Day, let us celebrate our valuable rights under the Fourth Amendment. Let us also remember the role of the courts in vindicating those rights in both criminal and civil cases. This is just another example of how the courts take the words written in the Constitution and make them a reality in the lives of everyday citizens.

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