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Idaho Common Sense™



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Supreme Court - Constitutional guardian or Guardian Council?

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Does the Supreme Court submit to the authority of the United States Constitution, as it should? Or, is it complicit with Congress, functioning beyond its constitutional powers?

In 1803, Chief Justice of the Supreme Court John Marshall, trying to preserve the checks and balances in the Constitution, said, "To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained." He was addressing Congress, explaining that Congress could not decide if a law it passed was constitutional, that checking power reserved for the Supreme Court.

Sadly, subsequent justices used this process of judicial review to place themselves above the Constitution, and unlike their ruling on Congress, seeing no need for checks and balances on themselves. Is this unlimited, unchecked power constitutional?

How do judges and justices view the United States Constitution? Do they revere it as they should? Do they defend it as they should? Or do they perceive themselves superior to the Constitution, the Supreme Court becoming the American equivalent of the Iranian Guardian Council, a supreme oligarchy deciding all law?

In 1920, Associate Supreme Court Justice Oliver Wendell Holmes may have violated the Constitution when he said, "The case before us must be considered in

the light of our whole experience and not merely in that of what was said a hundred years ago. We must consider what this country has become in deciding what (the Tenth Amendment) has reserved." Where does the Constitution grant the court this intuitive power? Can a Supreme Court justice continue to serve if he or she seeks constitutional rulings outside the Constitution?

In 1949 Associate Supreme Court Justice Felix Frankfurter insulted our intelligence when he said, "The words of the Constitution . . . are so unrestricted by their intrinsic meaning or by their history or by tradition or by prior decisions that they leave the individual justice free . . . to gather meaning not from reading the Constitution but from reading life." Should a justice who claims the United States Constitution is immaterial be impeached and removed from the court?

In 1992 Judge Richard Posner of the United States Court of Appeals for the Seventh Circuit said, "We find it reassuring to think that the courts stand between us and legislative tyranny even if a particular form of tyranny was not foreseen and expressly forbidden by the framers of the Constitution." Could he not recall his oath was to uphold the Constitution, not to fix it?

Were the framers of the Constitution so flawed they failed to foresee it not addressing all that it should, needing judges and justices

to fill in the gaps? No. Fully aware of this probability, they addressed changing the Constitution in Article V, allowing us to amend it when needed.

The unacceptable rub for the courts? "We the people" must approve amendments to the Constitution. Nowhere in it is the Supreme Court granted the power to rule based on it "reading life" rather than "reading the Constitution." Only "we the people" decide changes. And this is as it should be.

Justices can be impeached; yet Congress continues to turn a blind eye to its constitutional responsibility to impeach justices who fail to "hold their Office during good Behavior."

The Supreme Court has become the American version of the Iranian Guardian Council, the Constitution subservient to its supreme power, just as in Iran. The only difference? The Iranian Council has six theologians and six jurists who each serve six-year terms; we have nine near-deities who serve for life.

Is it time to take back the unconstitutional powers the justices have usurped? Is it time to demand the Supreme Court and Congress submit to the United States Constitution? The justices and Congress have claimed powers not theirs. Is there a power above the Supreme Court? If so, what should happen?

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