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Charles E. Grassley

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THE ROLE OF THE SUPREME COURT

*Charles E. Grassley**

Many people think of the Supreme Court exclusively as a place to safeguard individual rights. Without question, this is an important duty of the Court. However, the Supreme Court serves many other institutional functions as well. These crucial responsibilities are often overlooked, not only by the public, but by those who closely watch the Supreme Court at work.

The most important reason to have a Supreme Court is to ensure uniformity in the law. Thousands of questions arise as to the meaning of provisions of federal law. Federal law should be uniform across the country. Because courts often disagree regarding the meaning of federal law, only the Supreme Court can ultimately decide what the uniform federal law should be. For instance, this year, the Court will decide whether the date a check is written or the date it is received is the operative factor determining whether a payment to a creditor is a voidable preference in bankruptcy. The specific rule that is adopted is not of monumental importance. However, it is extremely important that whatever rule is chosen be the same across the country. Justice requires uniform application of the law.

A second function of the Court is to ensure uniformity between state and federal law. The Court must permit states to act within the sphere reserved to them under the Constitution, but it must as well resist state efforts to exceed their powers at the expense of the federal government. Justice Holmes once remarked that the nation would survive if the Supreme Court did not have the power to declare federal statutes unconstitutional, but would be imperiled if the Court could not strike down state statutes.

Third, the Supreme Court resolves conflicts between the executive and legislative branches. In an era of divided government, the Supreme Court has been called upon with greater frequency to be the arbiter between Congress and the President. Whether the issue

* United States Senator from Iowa and member of the Senate Judiciary Committee. B.A., 1955, M.A., 1956, University of Northern Iowa; Ph.D. work, University of Iowa.

is the constitutionality of Gramm-Rudman, the Sentencing Commission, or independent counsel, only the Supreme Court can resolve these questions.

Finally, the Supreme Court rules on whether governmental actions violate the Constitution. The cases can raise questions regarding the constitutionality of federal statutes or regulations, or state actions. Frequently, the issue is whether individual rights secured by the Constitution have been violated. The Supreme Court must have the final authority to decide these questions. But while these are the cases that generate the media attention, abortion and the First Amendment are a small fraction of the Court's caseload. Criminal constitutional cases occupy a larger portion of the Court's docket. Since the Court can only decide 130 or so cases each year, and decides cases involving individual rights only on the basis of the importance of the issue, individual rights are protected in particular cases primarily by the lower courts.

In the past, the Supreme Court expansively broadened or interpreted constitutional rights. This expansion had the effect of increasing the powers of the federal judiciary relative to the elected branches. The Court could not ignore the temptation to use its constitutional power to legislate what it believed were desirable results. Today, the Court respects the limitations of the law in carrying out its duties. Judicial restraint has replaced judicial activism as justices have applied the Constitution rather than their own predilections. I am hopeful that this trend will continue. There is no more important question than judicial restraint when I consider the fitness of judicial nominees.