

January 16, 2006    The Senate hearings regarding the confirmation of Judge Samuel Alito to the Supreme Court demonstrated that few in Washington view the Constitution as our founders did. The Constitution first and foremost is a document that limits the power of the federal government. It prevents the president, Congress, and the Supreme Court from doing all kinds of things. But judging by last week's hearings, the Constitution is an enabling document, one that authorizes the federal government to involve itself in nearly every aspect of our lives. The only controversy, it seems, is whether the current nominee will favor the power of one branch over another, or the preferences of one political party over another. Last week's hearings were purely political, because the role of Supreme Court justices has become increasingly political. Nearly all of the Senators, witnesses, and Judge Alito himself spoke repeatedly about the importance of respecting Supreme Court precedents. The clear implication is that we must equate Supreme Court decisions with the text of the Constitution itself, giving them equal legal weight. But what if some precedents are bad? Should the American people be forced to live with unpopular judicial "laws" forever? The Constitution itself can be amended; are we to accept that Supreme Court rulings are written in stone? Also troubling was the apparent consensus among both the Senators and Judge Alito that Congress has no authority to limit federal court jurisdiction by forbidding it to hear certain types of cases. This is completely false: Article III Section 2 of the Constitution plainly grants Congress the authority to limit federal court jurisdiction in many kinds of cases. It is perfectly constitutional for Congress to pass court-stripping legislation to reflect public sentiment against an overreaching Supreme Court. We're being told two very troubling things: First, Supreme Court decisions are the absolute law of the land, equal in weight to the text of the Constitution itself. Supreme Court precedents should never be changed, and all nominees to the Court must accept them as settled law or be disqualified. Second, if the American people don't like any of the "laws" created by the Supreme Court, they have no choice but to live with them unless by some miracle the Court later overturns itself. The people have no recourse through Congress to address unpopular Court decisions. The ramifications of these assertions are very serious. They mean the Supreme Court not only can invalidate the actions of Congress or the President, but also craft de facto laws that cannot be undone by the people's elected legislators! This is wildly beyond the role of the federal judiciary as envisioned by the founders. They certainly never intended to create an unelected, lifetime-tenured, superlegislature. Our federal courts, like the rest of our federal government, have become far too powerful. When federal judges impose their preferred policies on the American people, the ability of average citizens to influence the laws under which they must live diminishes. This is why every American should read or reread the Constitution and the Federalist Papers. Only when we understand the proper role of the judiciary in our federal system will we stop viewing judges as purveyors of social, political, and economic rules for our nation.