Our "Constitutional" Supreme Court?

The November 22 New York Times editorial titled "Our Constitutional Court" included the surprising observation that the Supreme Court "... rewrite[s] the terms it uses to fulfill the constitutional mission of limiting each branch of government. Redefining itself as a constitutional court, this court seems limited only by limits it opts to recognize."

The *Times* was referring specifically to the Court's landmark decision in the *Citizens United* case last January, in which it ruled that corporate funding of independent political broadcasts in candidate elections cannot be limited under the First Amendment. But the editorial also took on the broader issue of the Court's overreach into the other branches of government, asserting:

> The ruling is the most dramatic recent example of how differently this court is functioning compared with its predecessors — and how the distance between it and them seems to be growing. With rare exceptions, the court gets to choose the cases it wants to hear.

> The Supreme Court continues to address cases where the decision turns on the intricate interpretation of a single word in a statute or regulation. But increasingly the cases that most engage the justices and that matter most to the court are about interpreting the Constitution and its allocation of power.

The *Citizens United* ruling overturned precedent that the Court had previously twice affirmed, and the Court inserted itself where it had said it should be most restrained, according to the *Times*.

Seth Waxman, former Clinton administration Solicitor General, in a speech before the American Law Institute, called the Court's attitude "a lack of procedural judicial modesty." He declared that justices should act "on the narrowest possible grounds and only to the extent absolutely required," citing other recent examples in which the Court has decided much broader questions than those presented to it. Indeed, a visit to the Constitution (Article III, Section 2) makes clear its definition of the Supreme Court's jurisdiction. Article III establishes the Court and limits its jurisdiction to specific cases. The oft-ignored, yet defining concept in Section 2 gives Congress the ultimate power to regulate the Supreme Court:

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Supreme Court's usurpation of powers not designated to it by the Constitution has been cause for concern for many Americans. The *Times* points to the Court's overreach in decisions that have

disregarded the intentional balance of power established among the three branches of government. The Constitution does not give the job of *interpreting* the Constitution to the Supreme Court.

Photo: Citizens United President David Bossie talks on his cell phone outside the Supreme Court in Washington, Jan. 21, 2010, after the Supreme Court ruled on a campaign finance reform case: AP Images

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