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For Supreme Court Justices, Only the Law and the Constitution Should Matter

By Ilya Shapiro

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A judge's job is to apply the law to a given set of facts as best he or she can and let the political chips fall where they may. Such rulings may be popular or unpopular. In big cases a court will make many people unhappy regardless of what it does.

Yet the essence of the rule of law is that everyone has to live by a set of clearly delineated rules — including powerful interests and the government itself — which judges must interpret dispassionately in difficult cases.

That's not to say that judges live in isolation from society or have to pretend that their words have no more power than a professor's theory or this mini op-ed.

Indeed, every case that comes before a judge has real-world consequences. That may be an obvious point, but it bears repeating that interpreting a lease, adjudicating a divorce, evaluating a billion-dollar commercial dispute, deciding whether to apply the exclusionary rule, and determining whether a government official or agency has gone beyond its authority all have serious consequences.

Still, the law is the law — whether common, contract, statutory or constitutional — and judges are paid to make those kinds of hard calls.

Of course, sometimes the law commands judges to examine practicalities. A family court judge will look at what's in the "best interests" of the child. A trial judge considering a motion for preliminary injunction — which commands someone to stop doing something — looks at whether there will otherwise be "irreparable harm."

When deciding whether to stay a ruling pending appeal, judges have to consider whether denying such a stay effectively eviscerates that appeal because of what will happen in the meantime. The prudential doctrine of "stare decisis" is built on the idea that judges (and especially justices) should weigh the reliance interests that have grown around an erroneous precedent — whether

overturning it would do more damage to the rule of law than correcting it.

But many, perhaps most, cases don't have room for such considerations. When you get to the merits of these claims, especially the statutory issues that are the Supreme Court's bread and butter, it would be irresponsible and extra-legal to hold, for example, "this regulation is contrary to the legislation it purports to interpret but we will uphold it because otherwise people will lose subsidies that the government has been (illegally) providing them."

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