The 7th Amendment Advocate

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." - - The 7th Amendment to the Constitution of the United States of America

Good ObamaCare Ruling Reveals Experts' Constitutional Inconsistency

By Andrew Cochran on December 14, 2010 8:52 AM| 0 Comments

The ObamaCare ruling by Judge Henry Hudson (full text here) is a victory for our Founding Fathers' concepts of limited national government and the supremacy of individual rights. But it also reveals the inconsistency (or hypocrisy) of some Beltway legal experts who favor preemption, which is the takeover of state functions and state common law courts by federal bureaucracies in some instances, but oppose a federal takeover when it comes to health care. Indeed, some of the same groups participating in the federal preemption movement are also front and center in the fight against ObamaCare in the federal courts.

Case in point: the Cato Institute, which filed this amicus brief in the Virginia case, arguing the following:

"In other words, this case presents the Court with 'the arduous . . . task of marking the proper line of partition between the authority of the general and that of the State governments.'.. **Congress identified the Commerce Clause as the source of its authority, a position the Government now asserts in its Motion to Dismiss... Congress may not enact laws that are not 'plainly adapted' to further an enumerated end, or that do so at the expense of the rights reserved to the States or the people under the Tenth Amendment**."

But as I posted on December 6, Cato's Vice President for Legal Affairs Roger Pilon argued just the opposite at the National Convention of the Federalist Society, when it came to preemption of state common law suits for certain defective medical devices. He said, "**if the Commerce Clause was meant for anything, it was meant to ensure the free flow of goods and services among the states, and jury trials can really make a mess of that if pharmaceutical companies, for example, have to have 50 different labels for warnings on their medications**" Sure sounded to me as if he was arguing that the Commerce Clause trumps the 10th and 7th Amendments in that instance.

After the ObamaCare ruling, Pilon had the audacity to write, "for today, at least, the Tenth Amendment and the limited government it implies are alive and well." Well, at least for causes of his own choosing.

Pilon didn't sign the amicus brief filed in the Virginia case, and the Cato staff who did sign it apparently weren't at the Federalist Society when Pilon spoke. Maybe the folks at Cato need to have an in-house meeting and figure out whether the Bill of Rights limits the sweeping power of the Commerce Clause.

Categories: Court rulings, Current legislation, Founders writings, Groups & Positions, Preemption

Tags: 7th Amendment, AAJ, arbitration, Bill of Rights, civil suits, Constitution, federal preemption, Federalist Society, Founding Fathers of the United States, George Mason, jury trials, medical devices, religious liberty, Supreme Court, tort reform

LEAVE A COMMENT

Sign in to comment.

CATEGORIES

19th century (1)
British law (3)
Court rulings (16)
Current legislation (19)
Founders writings (16)
Groups & Positions (24)
History (29)
Liability limits (14)
Preemption (15)
Quote of the Day (17)

MONTHLY ARCHIVES

December 2010 (3)
November 2010 (7)
October 2010 (7)
September 2010 (11)
August 2010 (10)
July 2010 (20)
June 2010 (12)

FOLLOW US

twitter FOLLOW ME
facebook

ABOUT THIS ENTRY

This page contains a single entry by Andrew Cochran published on *December 14, 2010 8:52 AM*.

Beltway Legal Elitists Support Supremacy of Federal Law Over 7th & 10th Amendments was the previous entry in this blog.

Find recent content on the home page or look in the archives to find all content.

Home