

For NYT, Originalism Is 'Political Bias,' ThinkProgress Blogger a 'Health Policy Analyst'

By [Lachlan Markay](#) | February 02, 2011 | 15:09

At the New York Times, apparently a belief in first principles and the wisdom of the founders is enough to be labeled a Tea Partier. On Wednesday the Times alleged (passively, of course) "political bias" by a federal judge in Florida, who on Monday ruled ObamaCare unconstitutional.

The smoking gun? Judge Roger Vinson cited colonial-era restrictions on the sale of tea that helped lead to the American revolution. For the Times, Vinson's originalist approach to the Constitution makes him politically biased - presumably a disregard for original intent would not - and portions of his written opinion referencing the founders represented "a deliberate nod to the Tea Party movement."

The Times [wrote](#):

"It is difficult to imagine," Judge Vinson, of Federal District Court in Pensacola, Fla., wrote in a central passage of his 78-page opinion, "that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America would have set out to create a government with the power to force people to buy tea in the first place."

Supporters of the health care act — which Judge Vinson invalidated after ruling it was unconstitutional to require citizens to buy health insurance — saw in the language a deliberate nod to the Tea Party movement.

Whether that was the judge's intent cannot be known. But legal scholars who disagreed with the ruling seized on it as evidence that Judge Vinson, who was appointed by President Ronald Reagan, a Republican, had infused his ruling with political bias.

Gee, could it be that the Tea Party, Reagan, *and* Vinson all revere the founders and believe in original intent? Since when is a federal judge's decision to quote Jefferson, Madison, and Hamilton indicative of any bias beyond a belief in their stated principles? Certainly a judge who rejects first principles is no less biased than one who embraces them.

It's a foregone conclusion that the Times does not share Vinson's view of the law, but the paper's apparent rejection of originalism - a legal theory that predates the Tea Party

movement by decades and is espoused by many of the nation's top judges, including a few on the Supreme Court - as "political bias" speaks volumes about its own preconceived notions about how the law should be applied and interpreted.

As for these "supporters of the health care act," they include Mark Hall, a law professor from Wake Forest University who was a supporter of ObamaCare before a law even passed - meaning his support for the law predated any concrete question of constitutionality.

That is not to say that his legal arguments are unsound, but clearly he is an advocate for this law - a fact the Times is presumably aware of, given it [reported on his support](#) for ObamaCare in its legislative stages - and yet is simply presented as one of the "legal scholars who disagreed with the ruling."

The other contrarian quoted is blogger Igor Volsky of the far-left smear machine ThinkProgress. The Times simply labeled him a "health policy analyst" and neglected to give ThinkProgress any ideological label:

Igor Volsky, a health policy analyst who writes on the blog ThinkProgress, also noted the judge's reference. "It's the kind of overreach that will do more to harm the Republican crusade against the law than help it," Mr. Volsky offered.

Not surprisingly, those who write from the right found Judge Vinson's wording worthy of applause. Ilya Shapiro, a constitutional scholar at the Cato Institute, cited the tea passage in his review of the judge's opinion, which he called "magisterial" and "breathtaking."

Got that? Volsky is a "health policy analyst" for an apparently non-ideological website, while Shapiro is one of "those who write from the right" and therefore "not surprisingly" supportive of Vinson's decision. Textbook labeling bias, that is.