

**Cato's Shapiro: Sutton's Opinion Was "Shocking."** From a post by Cato Institute senior fellow Ilya Shapiro headlined, "The Sixth Circuit Got It Wrong":

Today's 2-1 Sixth Circuit Obamacare decision was an exercise in unwarranted judicial deference, not by the author of the majority opinion, Judge Boyce Martin, who regularly rubberstamps misuses of federal power, but by concurring Judge Jeffrey Sutton, who avoided the logical implications of this ruling and punted the main issue to the Supreme Court. Under a document establishing a government of enumerated and therefore limited powers, the burden is on that government to prove that it has the power to do something, not on the plaintiffs to disprove that power.

[...]

While a progressive like Judge Martin could be expected to accept any exercise of federal power, it is shocking that an avowed constitutionalist like Judge Sutton requires Congress to show only a rational basis behind what it does -- a "reasonable fit" between the means it chooses and the ends of regulating interstate commerce -- to survive constitutional scrutiny. Under such logic, Congress can do anything it wants so far as it is essential to a larger regulatory scheme. That cannot be the law. [Cato Institute, [6/29/11](#)]