



SUBSCRIBE TO NATIONAL REVIEW NOW!

Click Here For Our Special Introductory Offer

Click Here For Our Digital Edition

Get **FREE** NRO Newsletters

Your E-Mail Here!

Go

Subscribe to NR and **Save 75%!**



Log In | Register
Follow Us Everywhere

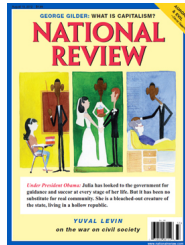


NATIONAL REVIEW ONLINE

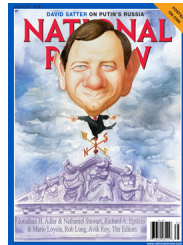
August 13 Issue
Subscribe to NR
Renew

- Home
- The Corner
- The Agenda
- Campaign Spot
- The Home Front
- Right Field
- Bench Memos
- The Feed
- Media Blog
- Critical Condition
- The Tyranny Blog
- Larry Kudlow
- David Calling
- Exchequer
- Phi Beta Cons
- Planet Gore
- UK
- Between the Covers
- Tweet Tracker

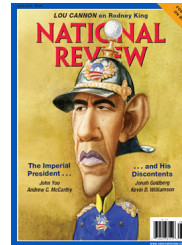
NR / Digital | Subscribe: NR | Subscribe: NR / Digital | Give: NR / Digital | NR Renewals & Changes | Shop! | Donate | Media Kit | Contact



The Hollow Republic
August 13, 2012



The Line That Held
July 30, 2012



The Immigration Proclamation
July 09, 2012



A Real Race
June 25, 2012



12 Month Archive ...

NATIONAL REVIEW / Digital

Latest Issue

Archive by Year

Your Account

Send →

Contents

JULY 30, 2012 | VOLUME LXIV, NO. 14

By the Roots

The Supreme Court should overturn unsound precedents

By Richard Epstein & Mario Loyola

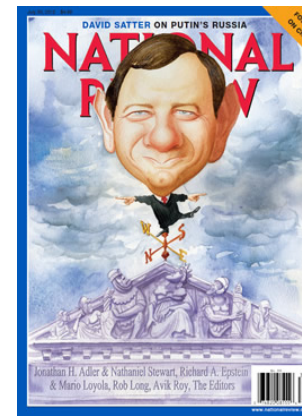
Precedent is the glue that holds the American legal system together, giving both adaptability and predictability to the decisions of our courts. When a precedent is good, it's great, but when it's bad, its effects can be terrible. The real story of the Obamacare decision is that it was driven by flawed precedents that should have been modified long ago. To make matters worse, the Court's decision created a new precedent that could do lasting damage to the Constitution if it is not reversed.

Those flawed precedents have a couple of things in common. First, they replace binary, categorical, yes/no decision rules with tests that rely on indeterminate sliding scales, leaving legislators and the public little guidance for the future. Second, they blur important limitations on the power of the federal government, thereby undermining the accountability and institutional competition that were the genius of the original constitutional scheme. In Obamacare, the Court not only missed an important opportunity to fix these problems, it entrenched them more deeply.

The individual insurance mandate was unprecedented. The federal government had never before claimed the power under the Commerce Clause to force individuals to purchase something merely because they were alive. A bare majority of the Court properly refused to uphold the mandate as an exercise of the federal power to regulate interstate commerce. The Framers might have wondered: How did we ever get here? The Constitution made it unequivocally clear that the federal government could not regulate

Comments 0

Print  | Text  



[Flash Version](#)

[PDF Version](#)

Apps:

[iPhone/iPad](#)

[Android](#)



Articles

The Line That Held

Why the Commerce Clause ruling matters.

By Jonathan H. Adler & Nathaniel Stewart

By the Roots

The Supreme Court should overturn unsound precedents.

By Richard Epstein & Mario Loyola

How Obamacare Harms the Poor

Where to begin?

By Avik Roy

Your Complimentary Gavel Is in the Tote Bag!

And other advertisements for Supreme Court justices.

By Rob Long

A World of Labels

'Moderate liberals' and other interesting creatures.

By Jay Nordlinger

This Isn't CNN

By Daniel Foster

Totalitarian Tasting Menu

North Korean dining in the Netherlands.

By Anthony Daniels

Features

Russia's Choice

Will it establish democracy at last or let Vladimir Putin rule for life?

the “purely internal commerce” (in the Supreme Court’s phrase) of any state, a position to which the Court held adamantly for 150 years.

You’re one click away from viewing the rest of this article. No subscription required. It’s this simple:

Card	Expires	CVV2
<input type="text" value="Card Number"/>	<input type="text" value="1"/> / <input type="text" value="2012"/>	<input type="text" value="CW2"/>

Email My Receipt to

<input type="text" value="Email Address"/>	Buy Article for \$0.50
--	--

If you have already purchased this article, enter your original payment information and you won’t be charged again. (Awesome!)

I agree to Swishu’s [Terms of Service](#). ([What’s this?](#))

Put me on NR’s mailing list.

[Buy Article \(\\$0.50\)](#)

[Buy Issue \(\\$1.99\)](#)

[Log In to NR / Digital](#)

[Subscribe to NR / Digital](#)

LOG IN TO POST A COMMENT

COMMENTS **0**

EXPAND

© National Review Online 2012
All Rights Reserved.

Subscriptions

[NR / Print](#)
[NR / Digital](#)

[Gift Subscriptions](#)

NR Apps

[iPhone/iPad](#)
[Android](#)

[NRO Apps](#)

Support Us

[Donate](#)
[Media Kit](#)
[Contact](#)

By David Satter

The Crime Reporting You Never Read

If it doesn’t bash the police, it isn’t fit to print.

By Heather Mac Donald

A Jeremiah for Everyone

Why Left and Right like Wendell Berry.

By John J. Miller

Books, Arts & Manners

Cronies, Clients, and Corruption

Vincent J. Cannato reviews *Spoiled Rotten: How the Politics of Patronage Corrupted the Once Noble Democratic Party and Now Threatens the American Republic*, by Jay Cost.

The Thirty Years’ War

Michael Rubin reviews *The Twilight War: The Secret History of America’s Thirty-Year Conflict with Iran*, by David Crist.

The Marriage Mess

Ryan T. Anderson reviews *Debating Same-Sex Marriage*, by John Corvino and Maggie Gallagher.

Quidditch, It’s Not

Andrew Stuttaford reviews *The Hunger Games*, *Catching Fire*, and *Mockingjay*, by Suzanne Collins.

Love Poetry

Diane Scharper reviews *Pity the Beautiful: Poems*, by Dana Gioia.

Shock Plus Nothing

Ross Douhat reviews *Ted*.

Sections

Letters to the Editor

The Week

Athwart *James Lileks*

The Long View *Rob Long*

Poetry *William W. Runyeon*

Happy Warrior *Mark Steyn*

NR / Print
NR / Digital

iPhone

More Issues

© National Review Online 2012. All Rights Reserved.

[Home](#) | [Search](#) | [NR / Digital](#) | [Donate](#) | [Media Kit](#) | [Contact Us](#) | [Privacy Policy](#) | [Log In](#)