

HOLD ON A SEC

edition of its new annual, the *Cato Supreme Court Review*, is divided about 50-50 between essayists who approve of various aspects of the work of the Supreme Court, and those who do not. Richard Epstein, for example, is unhappy with the Court's most recent regulatory takings case: "Justice delayed is justice denied is an old theme that has found a new home in the *Tahoe* view of the Takings Clause." While James Swanson is cautiously optimistic about the future of political speech after *Republican Party of Minnesota v. White* (the Minnesota judicial speech case), and Clint Bolick is understandably euphoric about the prospects for school voucher programs after *Zelman v. Simmons-Harris*.

From the standpoint of institutional culture, the new *Review* is also a reminder that the Cato Institute is a disarmingly or alarmingly (depending on your point of view) forthright campaigner for its libertarian vision. Consider the following from the Introduction:

[T]he *Cato Supreme Court Review* has a singular point of view, which we will not attempt to conceal behind a mask of impartiality. I confess our ideology at the outset: This *Review* will look at the Court and its decisions from the classical Madisonian perspective, emphasizing our first principles of individual liberty, secure property rights, federalism, and a government of enumerated, delegated and thus limited powers.

John Trenchard & Thomas Gordon, 1 CATO'S LETTERS, no. 15 (3d ed. 1733) (Russell & Russell 1969 reprint); CATO SUPREME COURT REVIEW 2001-2002 (Cato Institute 2002).

THIS JUST IN FROM a *Green Bag* editor who was not involved in the work on "Ex Ante" for our previous issue:

I have just read the Summer issue's extended "Ex Ante" entry on "some quotation marks omitted." See *Hold Some of My Calls*, 5 GREEN BAG 2D 360 (2002). Though it is amusing, I wonder why it does not mention the most-logical reason for not including all of those internal quotation marks. The Court obviously felt that it was useful to give a partial-but-not-complete pedigree for its quotation, establishing the "identical words" principle as far back as 1986, but not troubling to go farther – a decision that was perhaps justified by the notion that the Court's statutory-interpretation history neatly divides into two eras: pre-Rehnquist-Court and Rehnquist Court. (If you can provide one case from each era, you have, for all intents and purposes, covered the waterfront.)

"Ex Ante" does not quibble with the partial pedigree, but instead ponders those omitted quotation marks. But isn't it clear that the Court has calibrated its quotation marks to match its citation information? It gives us ACF and tells us ACF is quoting *Sorenson*. Thus, it shows us the relevant quotation marks for both ACF and *Sorenson*. If it used only one set of quotation marks, then it would not be quite so clear that all seventeen words of the quotation were also in *Sorenson*. Because it has decided we don't need to know about the primordial existence of *Helvering* and *Atlantic Cleaners* anyway, why confuse us with extra (and unexplained) quotation marks? *GB*