

# Commentary

## SCOTUS and ObamaCare: Round Two

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The Supreme Court today granted certiorari in the case of [King v. Burwell](#), in which several senators and congressmen and an assortment of non-governmental organizations such as the Cato Institute and several states sued, claiming that the IRS interpretation of the Affordable Care Act was contrary to the plain text of the law.

The ACA grants subsidies to people with lower incomes who buy insurance through the exchanges “established by the states.” Since only 16 states set up such exchanges, the federal government stepped in and set up exchanges in the other 34 states. But the IRS has ruled that the subsidies are available through these exchanges as well.

The plaintiffs lost in both the district court and in the 4th Circuit, which sits in Richmond. Both courts argued that the act as a whole shows that Congress’s intent was not to limit subsidies only to state exchanges. The fact that the Supreme Court agreed to hear the case does not necessarily mean that it disagrees with the lower court, only that at least four justices want the Supreme Court to finally decide the case.

But it is very interesting indeed that the Court did not wait for the en banc hearing in the D.C. Circuit Court in the *Halbig v. Sebelius* case. In that case, a three-judge panel of the D.C. Circuit threw out the subsidies, saying the plain language of the statute prevailed. But Harry Reid threw out the filibuster rule in the Senate in order to pack that court, and the whole court voided that decision and agreed to hear the case en banc—i.e. with the whole court sitting. Whether the Supreme Court wants to get the issue settled, or whether it was annoyed at the D.C. Circuit Court for not following its own rules regarding en banc hearings we cannot know. The Supreme Court is just about the only institution in Washington that doesn’t leak like a sieve.

Should the high court go with the plaintiffs, it is hard to see how ObamaCare could survive. With no subsidies, many people could not afford the insurance and only the sickest would sign up. That would send premiums skyrocketing, sending the whole program into what the administration has dubbed a “death spiral.”

Since the court grants a writ of certiorari in only about one percent of the cases that appeal to the court, there is at least a substantial chance that the court will reverse the circuit court decision and thus effectively kill the Obama administration’s signature accomplishment. It doesn’t have a lot of other accomplishments to call its own.

President Obama is not having a good week.