

# Los Angeles Times

## Dr. Strangelove explains the stupidity of Halbig ruling on Obamacare

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July 25, 2014

Even Dr. Strangelove could tell that the Halbig decision is absurd  
The Halbig question: If Congress wanted to force the states to launch their own exchanges, why not say so?

The controversial appeals court ruling Tuesday in the Halbig case turned on the question of whether Congress intended to withhold health insurance subsidies from people who enrolled through federal rather than state exchanges.

The 2-1 majority finding that Congress did so intend--based on a theory promulgated by Michael Cannon of the Cato Institute--will be debated until the full court reconsiders or the Supreme Court decides the issue.

The whole point of the Doomsday Machine is lost if you keep it a secret! - Dr. Strangelove

But over at the Incidental Economist, Nicholas Bagley of the University of Michigan puts a stake through the heart of the argument that Congress intended to threaten the states into establishing their own exchanges by barring subsidies for residents in states that failed to do so.

If that really was Congress's intent, Bagley observes, the lawmakers would have made the threat explicit, not buried it deep within an obscure provision of a 900-page law. He illustrates the point with a reference from "The Godfather," when Vito Corleone backed up his offer that can't be refused by having a gun held to the head of the guy receiving the offer.

We think the principle is illustrated even better by a line from "Dr. Strangelove." (We celebrated the dark comedy's 50th anniversary here.)

The dialogue concerned the Soviets' secret "Doomsday Machine," a system of nuclear bombs designed to automatically detonate and destroy life on Earth if Russia was attacked. Asked about the practicality of such a device, Dr. Strangelove (Peter Sellers)

informs the U.S. President (Peter Sellers) that it would indeed work. He then delivers the telling argument, observing to the Soviet ambassador:

"But the whole point of the Doomsday Machine is lost *if you keep it a secret!* Why didn't you tell the world, eh?"

(The ambassador sheepishly replies that it was to be revealed at the next party conference. "The premier loves surprises.")

The Halbig court's conclusion is that Congress intended to threaten the states, but kept the threat a secret.

The fundamental principle courts apply in statutory interpretation is to look to the whole statute to determine its intent, not pick isolated clauses out of context.

If Congress really intended to coerce the states into establishing their own exchanges by barring subsidies for insurance purchased through the federal exchange, plainly it would not have concealed the Doomsday Machine in an obscure section of the law, hoping it would be unearthed by a Cato Institute ideologue.

As Bagley notes, the threat was so well hidden that not a single state cited it in either deciding or refusing to establish an exchange.

For example, an amicus brief filed with the appeals court by the commonwealth of Virginia, which relies on the federal exchange, declares: "No one can reasonably claim that the federal government gave Virginia clear notice that its citizens would be denied... assistance as punishment for the Commonwealth's decision to forgo building its own health insurance exchange."

Dr. Strangelove had it right. If you're trying to deter the destruction of the human race (or trying to coerce states into establishing their own exchanges) you don't keep the consequences to yourself. Is there any better indication that the Halbig decision is absurd?