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District Court: Obamacare Tax Subsidy Is ‘Clear’ and ‘Unambiguous’

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On Wednesday morning, federal district judge Paul L. Friedman (a Clinton appointee) concluded that somewhere in the thousands of pages of the Affordable Care Act (ACA), one “clear” and “unambiguous” provision means the opposite of what it says.

The case is *Halbig v. Sebelius*, a lawsuit challenging Internal Revenue Service (IRS) regulations that permit—without statutory authorization—tax subsidies to residents of the 26 states that are refusing to capitulate to Obamacare’s demand for state-run health-insurance exchanges. Unfortunately, Judge Friedman granted the government’s motion for summary judgment against the plaintiffs, ending the case at the trial-court level and setting it up for appeal to the newly appointed Obama loyalists at the D.C. Circuit.

Judge Friedman’s opinion is a fascinating example of loop-the-loop statutory interpretation. The key question is whether the phrase “an Exchange established by the State” means “an Exchange established by the State,” or whether it actually means “an Exchange established by the State or HHS.” He acknowledges that the “plain language . . . viewed in isolation” appears to support the challengers’ contention that “by the State” refers to a state, not to HHS, that the definitions of all of the relevant statutory terms match the plaintiffs’ interpretation of the law, and that the ACA repeatedly refers to a tax subsidy for plans on an exchange “established by a State.” (Slip op. at 26–28). But Judge Friedman is not content with statutory definitions and intra-textual uniformity. No, to spring the interpretive lock, he accepts the IRS’s explanation of how the statute works and in light of that explanation, concludes that the statute is “unambiguous.” (Slip op. at 28–29). He goes on to cast the net wider to find “context” for this interpretation in the rest of the Obamacare statute. (Slip op. at 29–35).

There are several important flaws in this analysis. To begin with, Judge Friedman holds that the statute is unambiguous, so he doesn’t have to defer to the IRS interpretation. But he also doesn’t explain why the statute is textually unambiguous. He asks: Why would Congress have said that the credit applies to exchanges “established by the State” if it intended to mean “Exchanges created by a state or by HHS?”

Good question. That’s why the plaintiffs sued.

To answer the question, however, Judge Friedman accepts without qualification the government's self-serving explanation of how the statute is supposed to work, then claims that any other interpretation of the statute would create "anomalies." (Never mind that these "anomalies" actually make clear that Congress knew how to distinguish between provisions that apply only to State exchanges and repeatedly did so.) But that issue is actually the whole case, and Judge Friedman just accepts the IRS's say-so without significant analysis. In other words, the statute is so "unambiguous" and "clear" that it can only mean something completely different from what it says. Got that?

Moreover, Judge Friedman drops a footnote on the second-to-last page of his opinion saying that even if the statute were ambiguous, the IRS interpretation would be upheld as a reasonable construction of the statute. (Under *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, when a statute is ambiguous, courts defer to the administrative agency's reasonable interpretation of the statute.) But this, too, elides the central issue in the case: The IRS says the statute *means* something it doesn't say. This means that the ACA is not ambiguous and the government's interpretation is unreasonable.

Although summary judgment in the district court is a setback, appeal seems likely. For in-depth discussion of the ACA subsidies, Case Western Reserve law professor Jonathan Adler and Cato Institute scholar Michael Cannon published a scholarly article about these issues. In addition, Michael Cannon maintains a list of resources about the case at *Forbes*.