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OBAMACARE RULING MAY END CIVILIZATION AS WE KNOW IT

By David Catron

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The Supreme Court will hear oral arguments in *King v. Burwell* three weeks from now, and the possibility that the justices might uphold the health care "reform" law *as written* has driven our liberal friends to the edge of lunacy. This is never a long journey for anyone on the left, of course, but they have arrived at the precipice with unusual alacrity this time. Their predictions about the outcome should the Court rule that "established by the state" actually means "established by the state" have gone from the merely portentous to the downright apocalyptic in only a few months.

When the Court agreed last November to hear this lawsuit, which challenges the IRS decision to ignore the text of the law and issue tax credits through federally created insurance exchanges, Obamacare advocates were clearly shocked. Still, they affected confidence that the plaintiffs had no prayer of prevailing. The justices, they said, would never rule against the government based on a "drafting error" in the statute. But when these people discovered that the typo argument was so thin that even the Obama administration had stopped using it, they began to show signs of alarm.

They started predicting that the Court would "cripple" Obamacare. But 60 percent of Americans disapprove of the law, so this didn't exactly cause panic in streets. Next, they said that a ruling against the government could deprive many of taxpayer-funded insurance subsidies. The taxpayers were oddly unmoved. Now, they have resorted to claims so wild that even progressives will have trouble taking them seriously. *Think Progress*, for example, published a screed last week with the following title: "How King v. Burwell Threatens the Lives of Millions of Children."

And DNC mouthpieces like *Think Progress* are by no means the only purveyors of such balderdash. The nominally independent *Slate* warns that "9,800 additional Americans will die each year" if the Court rules against the Obama administration. Even relatively respectable

publications have joined this chorus. The *Hill* posted a story last Friday titled, "King v. Burwell will decide the Fate of Millions," whose author solemnly warns that "the wrong outcome" would put "American lives in peril" and "erode some of the largest coverage expansions in decades."

Those expansions are precisely the problem, of course. By issuing subsidies to people whose coverage was not purchased through exchanges established by a state, the IRS has illegally expanded Obamacare to millions whom Congress did not include among those entitled to subsidies. The *Hill* continues thus: "Turning the insurance market upside down… is not what Congress intended." But the Supreme Court isn't in the business of divining what Congress intended. Its job is to read the text of the law and decide which party to the lawsuit has correctly interpreted the words.

In this case, it's not really a very difficult call. "The eligibility rules for those subsidies," Michael Cannon of the Cato Institute explains, "repeatedly and consistently say that taxpayers may receive them only if they are enrolled in a qualified health plan 'through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act.'" Cannon goes on to point out that PPACA ties "premium-assistance tax credits" to state exchanges no fewer than nine times while remaining as silent as the tomb regarding tax credits from federal exchanges.

This is the inconvenient fact that has forced PPACA's defenders in the media to resort to their standard repertoire of red herrings, straw men, and ad hominem attacks. The latter tactic reared its slimy head last week, when *Politico* ran a dumpster dive story on the primary plaintiff in the lawsuit, David M. King. This "news" item delves into such grave constitutional issues as King's Facebook posts: "King frequently criticizes Obamacare and immigration policies and espouses support for limited government, the Second Amendment and Republican political candidates." How sinister.

Meanwhile, other media outlets continue to shout that Hell's foundations are quivering at the prospect that at least five of the Court's nine justices can read plain English. Inevitably, the shrill voice of Linda Greenhouse pierces the din. In the *New York Times*, she attempts to intimidate the justices who voted to "grant cert" in *King v. Burwell*: "To those justices, I offer the same advice I give my despairing friends: Read the briefs. If you do, and you proceed to destroy the Affordable Care Act nonetheless, you will have a great deal of explaining to do—not to me, but to history."

Doubtless the justices are much relieved that Greenhouse will not require them to explain themselves to her. More to the point, she has it exactly backwards. History will be far less kind to the Court if it permits executive branch bureaucrats to disregard the unambiguous text of a federal law than will be the case if the justices "just say no." The latter course is their only choice

if they are concerned with what Greenhouse calls “the honor of the Supreme Court.” If the Court caves to political pressure, as it did in 2012, its credibility will sink to the level enjoyed by Brian Williams.

King v. Burwell is not, as the above-quoted *Slate* piece claims, “a case against Obamacare.” It is rather an attempt to force the Obama administration to follow that law *as written*. If the justices rule in favor of David M. King and his fellow plaintiffs, neither children nor adults will begin dying in the streets. It will not turn the insurance market upside down and it certainly won’t damage the prestige of the Court. Civilization as we know it will survive, as will the separation of powers doctrine and the Constitution. Perhaps the latter is what our jittery friends on the left truly fear.