



The Wall Street Journal on *Halbig v. Sebelius*

By Michael F. Cannon
March 30, 2014

Today, the U.S. Court of Appeals for the D.C. Circuit will hear oral arguments in *Halbig v. Sebelius*, one of four cases that Jonathan Adler and I helped spur with our 2013 *Health Matrix* article, "[Taxation Without Representation: The Illegal IRS Rule to Expand Tax Credits Under the PPACA.](#)" Critics call *Halbig* "[the most significant existential threat to the Affordable Care Act.](#)" In anticipation of the hearing, the *Wall Street Journal* wrote a lengthy [editorial](#) explaining the issues. Excerpts:

Halbig v. Sebelius involves no great questions of constitutional interpretation. The plaintiffs are merely asking the judges to tell the Administration to faithfully execute the plain language of the statute that Congress passed and President Obama signed.

The Affordable Care Act—at least the version that passed in 2010—instructed the states to establish insurance exchanges, and if they didn't the Health and Human Services Department was authorized to build federal exchanges. The law says that subsidies will be available only to people who enroll "through an Exchange established by the State." The question in *Halbig* is whether these taxpayer subsidies can be distributed through the federal exchanges, as the Administration insists...

In 2012, HHS and the Internal Revenue Service arrogated to themselves the power to rewrite the law and published a regulation simply decreeing that subsidies would be available through the federal exchanges too. The IRS devoted only a single paragraph to its deviation from the statute, even though the "established by a State" language appears nine times in the law's text. The rule claims that an exchange established on behalf of a state is a "federally established state-established exchange," as if HHS is the 51st state.

Careful spadework into ObamaCare's legislative history by Case Western Reserve law professor Jonathan Adler and Michael Cannon of the Cato Institute has demonstrated that this jackalope rule-making was contrary to Congress's intent...

Mr. Obama has conceded that "obviously we didn't do a good enough job in terms of how we crafted the law." The right and only lawful way to repair ObamaCare is through another act of Congress. In *Halbig*, the judiciary can remind the Obama Administration of this basic constitutional truth.

Jonathan Adler [critiques](#) the *Halbig* district court's ruling in favor of the IRS here.

Find lots of commentary by me on the *Halbig* cases at [DarwinsFool.com](#).

This [reference guide](#) contains all the information you could want about these cases – and more.

Michael F. Cannon is the Cato Institute's director of health policy studies.