



The Obama White House's whining doesn't change the fact that the IRS illegally tried to rewrite Obamacare

By Jason Pye
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The White House may not like the D.C. Circuit Court of Appeals' panel decision in *Halbig v. Burwell*, but President Barack Obama need only look to his own administration for what is yet another smackdown by the judicial branch.

Judge Thomas B. Griffith realized the impact the decision could have on the availability of Obamacare subsidies for consumers who purchased plans on the federal Exchange. He was mindful, however, of the role the judicial branch plays in interpreting statutes. And, in this instance, the Internal Revenue Service acted without authority by authorizing subsidies to consumers in states that refused to participate in Obamacare.

The Affordable Care Act, in §1311, makes it very clear that subsidies were limited to states with established Exchanges. Claims that Congress intended to apply the subsidies broadly, including to the federal Exchange, rang hollow. "The fact is that the legislative record provides little indication one way or the other of congressional intent," Griffith wrote, "but the statutory text does."

Rather than illegally promulgating guidance to dole out subsidies, the Obama administration should have gone to Congress to seek a legislative remedy to fix the problem. That's something President Obama just wasn't willing to do, whether it was pride holding him back or the prospect of having to try to forge a compromise with House Republicans on the law.

"The D.C. Circuit applied the law that Congress enacted. Any downstream effects of *Halbig* are the result of the [Affordable Care Act] itself, not today's ruling," explains Michael Cannon of the Cato Institute. "If those effects are intolerable, then it is up to Congress to change the law, not the IRS."

"If *Halbig* results in people losing health-insurance subsidies," he continued, "the blame lies with a president who recklessly offered millions of Americans tens of billions of dollars in subsidies he had no authority to offer, that could vanish with a single court ruling."

The law, of course, isn't dead yet. And, unsurprisingly, the administration has declared that the subsidies will continue, despite the *Halbig* decision, as it seeks review from the full D.C. Circuit Court of Appeals. But the future of this illegal IRS rule isn't going to end there. The *Halbig* case is likely headed to the Supreme Court, where justices will have the opportunity to do the job it should've done in 2012.