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A Litmus Test for ObamaCare and the Rule of Law

The president has ignored the law's plain language. Now the Supreme Court decides if that's all right.

By Ilya Shapiro and Josh Blackman

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This spring will mark the 800th anniversary of the signing of the Magna Carta, the landmark agreement by King John of England at Runnymede ceding certain rights to rebel barons. Liberty will have another chance to shine on Wednesday when the Supreme Court hears a case with momentous implications about another sort of executive power. In this instance, though, it is the rebels who have the royal name: King v. Burwell raises questions about how President Obama has enforced the ObamaCare law—or, more precisely, modified, delayed and suspended it.

This will be the third challenge to the Affordable Care Act to reach the court. But King is different. The law's constitutionality was challenged in NFIB v. Sebelius, 2012, and the way certain regulations burden particular types of plaintiffs was addressed by Burwell v. Hobby Lobby last year. Now comes King, challenging the administration's implementation of the law. Even though the ACA gives wide latitude to the executive branch over implementation, its most important parts—coverage rules, mandates and subsidies—were addressed by Congress with specific dates, formulas and other directions. None of these provisions has gone into effect as Congress designed, simply because the plan conflicted with the president's political calculus.

For example, the executive branch delayed the "minimum essential coverage" provision for two years, suspended the requirement that millions maintain qualifying insurance, and modified the employer mandate into something very different than what the law demands. Through a series of memorandums, regulations and even blog posts, President Obama has disregarded statutory text, ignored legislative history and remade ObamaCare in his own image.

King focuses on the subsidies that help people pay increased premiums, one ACA pillar that the administration has toppled. Because Congress couldn't constitutionally command states to establish exchanges, it authorized these credits for people who buy insurance "through an Exchange established by the State." If a state didn't establish an exchange, its residents—who would instead use the federal exchange Healthcare.gov—wouldn't be eligible for subsidies.

But a funny thing happened on the way to utopia: Only 14 states set up exchanges, meaning that the text of the law denied subsidies in nearly three quarters of the states. This result was untenable to an administration intent on pain-free implementation. And so the administration engaged in its own lawmaking process, issuing an Internal Revenue Service rule that nullified the relevant ACA provision, making subsidies available in all states.

As documented in a detailed 2014 report by the House Oversight Committee, at least one Treasury Department official recognized that there "was no direct statutory authority to interpret federal exchanges as an 'Exchange established by the State.' " But the rogue rule was released anyway, as if the law meant whatever the executive chose. No matter how unmoored from statutory authority, the administration justified these actions because they "expanded coverage" and fit into the ACA's "broader purpose."

Executive lawmaking of this sort poses a severe threat to the separation-of-powers principles enumerated in the Constitution. The president has acted on the belief that legislative gridlock allows him to transcend his constitutional limits. A ruling that upholds this behavior would set a dangerous precedent for the nascent health-care law, which will be implemented for years to come by administrations with different views. More troubling, such a precedent could license virtually any executive action that modifies, amends or suspends any duly enacted law.

King, which the Supreme Court is expected to decide in June, is thus about much more than interpreting statutory language or evaluating the "deference" that judges owe bureaucrats. It isn't a technical debate over the finer points of administrative law; it is an existential one about the rule of law itself.

Chief Justice John Roberts was correct in 2012 when he wrote in the NFIB v. Sebelius decision that it isn't the court's role to "express any opinion on the wisdom of the Affordable Care Act."

But he also correctly noted "the Framers created a Federal Government of limited powers, and assigned to this Court the duty of enforcing those limits." The court's duty is to be a bulwark against arbitrary rule.

This is especially true in disputes between the political branches; the judiciary thus provides the ultimate safeguard of the separation of powers. Or, as Justice Robert Jackson put it in the famous Youngstown case of 1952 that rebuked President Truman 's unilateral seizure of steel mills: "With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations. Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up."

The president has shown deliberate indifference toward the plain text of the law. The Supreme Court must strike down the IRS rule and confirm the principle that, like King John at Runnymede, all political leaders are bound by the rule of law.

Mr. Shapiro is a senior fellow in constitutional studies at the Cato Institute. Mr. Blackman is a constitutional law professor at the South Texas College of Law in Houston. They recently filed a brief on Cato's behalf in King v. Burwell.