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Here's the single best analysis of the Halbig anti-Obamacare ruling

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Will he have the last word on Halbig? Chief Justice John Roberts, seen here attending the 2014 State of the Union address. (Chip Somodevilla / Getty Images)
The moral repulsiveness at the heart of the Halbig lawsuit
Are 4.8 million Americans losing their health insurance 'collateral damage'? The Halbig lawyers think so

Northwestern University law and political science professor Andrew Koppelman moves past the absurd legal theory underlying the Halbig ruling on the Affordable Care Act -- in which a federal appeals court invalidated subsidies provided to insurance buyers on federal, as opposed to state, insurance exchanges -- to ask why the lawsuit's backers brought the case in the first place.

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We know the consequences of the ruling: If it stands, about 4.8 million Americans will lose their subsidies and likely their health insurance, since it would be rendered unaffordable; there are residents of as many as 36 states that let the federal government establish their exchanges.

But is that what the plaintiffs and their backers really desired? And if not, what was their real goal?

Koppelman's conclusion is that the lawsuit is a product of the "moral dysfunction" infecting the fight over Obamacare.

"The opponents of Obamacare," he writes in the New Republic, "have from the beginning found themselves driven by the logic of their position to make arguments that are increasingly morally repulsive."

In this case and others aimed at overturning the ACA, he writes, the argument is that "if you get sick and you can't pay for it, that's your tough luck."

Koppelman doesn't think the plaintiffs really believe that. He thinks they're merely out to make a narrow ideological point about government responsibility, and the 4.8 million possible victims of their campaign are merely collateral damage.

Koppelman's analysis gets to the heart of what's wrong with the Halbig case. He's correct that the ACA's opponents are focused largely on scoring an ideological victory, not on bringing harm to individuals on the ground.

What keeps many people from recognizing ideologues' real intention in campaigns like this is that they conceal their goals behind misleading words. There's nothing new about this. I witnessed it first-hand back in 2005 when I was writing a book about Social Security and asked the Cato Institute's Michael Tanner about his organization's attack on the then-70-year-old program.

"This isn't a debate about the system's solvency," he told me. "This is about whether we redefine a relationship between individuals and government that we've had since 1935. We say that what was done was wrong then, and it's wrong now. Our position is that people need to be responsible for their own lives."

Yet you rarely hear such candor in conservative attacks on Social Security -- what you hear is only the debate over the "system's solvency" -- whether it's going "bankrupt" (it's not), etc., etc. It's an ideological debate that appropriates the vocabulary of fiscal policy. There's no mystery why that's so -- it's because if people understood the attackers' actual intentions, they'd reject them.

In the same way, the Halbig plaintiffs have cloaked their ideological attack on the ACA in the vocabulary of statutory interpretation -- that a law must mean what it says, that its words are the window into congressional intent. They claim to wish only to uphold the "rule of law." But that's the window-dressing that Federal Judge Harry Edwards, author of the dissent in the Halbig case, swept aside to reach the ugly reality: "This case is about Appellants' not-so-veiled attempt to gut the Patient Protection and Affordable Care Act," he wrote.

As part of their campaign of concealment, Halbig's promoters have tried to post a rational reason for Congress to write into the ACA the seeds of its own destruction, by barring tax credits for buyers of insurance on the federally facilitated insurance exchanges. They've been searching, so far in vain, for evidence of this congressional intent. (You can forget the tape of MIT professor Jonathan Gruber appearing to assert in 2012 that citizens of states that didn't set up their own exchanges wouldn't get subsidies. Although Gruber is often described as Obamacare's "architect" and the tape is viewed on the right as a "gotcha," he's not a member of Congress, and more typically he asserts that the law entitles all citizens to subsidies, subject to their income.

The evidence from lawmakers, drafters, congressional analysts and even state officials responsible for dealing with the ACA's various mandates is overwhelming that Congress did not intend to bar subsidies on the federal exchanges -- as I observed last week, if Congress wished to use the loss of subsidies as a threat to force states to set up their own exchanges, why conceal it from the states themselves?

Northwestern's Koppelman observes that these issues raise questions about the ethics of the political combat represented by Halbig and related cases.

"Many people, right now, are getting diabetes and cancer treatment through the subsidies that this litigation aims to terminate," he writes. "An ethical person would think about those consequences before bringing a case whose ultimate purpose is merely to harass one's political adversaries."

That's what makes the triumphalism of conservative commentary on the Halbig ruling so repellent. (They're not so outspoken about the ruling on the same issue that came down the same day as Halbig, this one from the Fourth Circuit Court of Appeals in Richmond, Va., which upheld the subsidies.)

The goal of the ACA was to widen access to health insurance for all Americans, in part by giving them financial help to pay their premiums. Only rarely do Halbig's fans admit that their goal in undermining this mechanism is ideological, not legalistic. (One who does, to his credit, is Michael Cannon of Cato, who notes approvingly that the ruling would "prevent the IRS from shifting the burden of those premiums from enrollees to taxpayers.")

But not Cannon nor any other Halbig's promoters have a practical suggestion for bringing affordable healthcare to the millions of Americans who would lose it if Halbig stands. There lies the "moral dysfunction" at the heart of this campaign, as Koppelman puts it.

"Harm to noncombatants is sometimes an unintended collateral consequences," he writes, "but there's no excuse for deliberately bringing it about."