Written by **Joe Wolverton, II, J.D.** on July 4, 2014

Will Latest Legal Challenge Kill ObamaCare?

Now that the Supreme Court has deigned to decide that the federal government cannot force people of faith to pay for other people's reproductive retardants, the next challenge to key ObamaCare provisions is working its way through the federal courts.

In the case of *Halbig v. Sebelius*, four Americans and three employers are seeking relief from an IRS order in which the tax collectors claim the authority under ObamaCare to impose penalties on individuals and companies located in states without an ObamaCare-approved healthcare "exchange."

The Cato Institute describes the potential impact of the *Halbig* case on ObamaCare:

> The *Halbig* plaintiffs assert this decree would penalize them in violation of the clear, consistent, and unambiguous language of the PPACA [Patient Protection and Affordable Care Act], as well as congressional intent. The Congressional Research Service writes that *Halbig* "could be a major obstacle to the implementation of the Act." Law professor Michael Greve writes, "all of ObamaCare hangs on the outcome." The lead attorney in *Halbig*, Michael Carvin, and three other panelists will discuss the legality of the IRS's decree and the implications for the PPACA.

At the heart of Halbig's complaint is whether Congress in passing the Patient Protection and Affordable Care Act (ObamaCare) intended to deny healthcare subsidies to Americans who have insurance plans purchased outside of the federally established exchanges or whether the law should be interpreted as written, and apply only to those plans purchased under state-created insurance marketplaces.

As *The New American* reported at the time of the Supreme Court's ObamaCare ruling, these subsidies were one of many similar financial incentives to state legislatures to participate in federal exchanges. If states demurred, the IRS would set about charging penalties to residents of those states who did not play ball with ObamaCare.

Regarding the plain text of the legislation, 26 U.S.C. § 36B says that the insurance plan subsidies provided by this provision apply only to plans offered in exchanges "established by the State." The IRS disregarded the letter of the law and set about offering subsidies to federally-funded health care plans, as well.

This interpretation, contrary to the apparent intent of Congress, was codified in an IRS regulation, an act that led Halbig and his co-plaintiffs to file suit.

At trial, the district court found in favor of the IRS and its interpretation of ObamaCare. The plaintiffs then appealed to the D.C. Circuit Court.

In oral arguments before the Appeals Court, plaintiffs' counsel argued that the text of the act is straightforward and should be interpreted as written. On the other side, lawyers for the Obama

administration insisted that the letter of the law is not as important as the underlying purpose — namely, to make healthcare affordable.

The D.C. Circuit Court is expected to rule any day on the questions raised in the *Halbig* case. There is a bigger question, however, that mainstream (including many conservative) news outlets are ignoring: the authority of the federal government to force a state government to fund federal programs.

Rather than referring to the Supreme Court *Hobby Lobby* decision for an answer to that key constitutional question, Americans should look to an earlier decision reaffirming the rightful roles of the state and federal governments.

In its examination of the issues in *Halbig*, *National Review* reports, "The ACA explicitly directs that states "shall" set up exchanges, even though this mandate would not be enforceable in light of anticommandeering doctrines established in *Printz v. United States* and *New York v. United States*."

Although *National Review* goes no farther in exploring why these two cases are so controlling on the legal questions at the heart of *Halbig*, *The New American* recognizes the importance of the principles of federalism set out in this pair of cases.

Put simply, anti-commandeering prohibits the federal government from forcing states to participate in any federal program that does not concern "international and interstate matters."

While this expression of federalism ("dual sovereignty," as it was named by Justice Antonin Scalia) was first set forth in the case of *New York v. United States* (1992), most recently it was reaffirmed by the high court in the case of *Mack and Printz v. United States* (1997).

Former Arizona Sheriff Richard Mack was one of the named plaintiffs in the latter landmark case, and on the website of his organization, the Constitutional Sheriffs and Peace Officers Association, he recounts the basic facts of the case:

> The *Mack/Printz* case was the case that set Sheriff Mack on a path of nationwide renown as he and Sheriff Printz sued the Clinton administration over unconstitutional gun control measures, were eventually joined by other sheriffs for a total of seven, went all the way to the Supreme Court and won.
>
> There is much more "ammo" in this historic and liberty-saving Supreme Court ruling. We have been trying to get state and local officials from all over the country to read and study this most amazing ruling for almost two decades. Please get a copy of it today and pass it around to your legislators, county commissioners, city councils, state reps, even governors!

The *Mack/Printz* ruling makes it clear that the states do not have to accept orders from the feds!

Writing for the majority, Justice Antonin Scalia explained:

> As Madison expressed it: "The local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere." *The Federalist* No. 39, at 245. [n.11]
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> This separation of the two spheres is one of the Constitution's structural protections of liberty. "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from

either front."

When the federal government assumes powers not explicitly granted to it in the Constitution, it puts the states on the road toward obliteration and citizens on the road to enslavement.

Although Americans should not look to the Supreme Court for confirmation of constitutional separation and limitation of powers, it is likely that the strength of the anti-commandeering principle will be tested as the IRS and the Obama administration persist in interpreting statutes in ways that unconstitutionally grant the federal government command and control over state governments.

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