



H P (Buddy) Brooks III, Agent

701 Market Street, PO Box 457  
Cheraw, SC 29520-0457  
Bus 843 537 6505 Fax 843 537 4582  
buddy.brooks.bwuo@statefarm.com

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Senators & Reps & Gov.  
This was in *Idaho*  
Charlotte Observer and gives  
Americans hope that such  
an unpopular Act - "railroaded  
through" by one branch of govt  
might have a "leg" to  
reverse.

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Brooks, H. P. (Buddy)  
7027359  
5046596

# Obamacare's smoking gun

BY LEROY GOLDMAN  
Special to the Observer

In 2012 the U.S. Supreme Court in a complicated ruling upheld the constitutionality of the centerpiece of Obamacare, the individual mandate, which requires Americans to purchase health insurance or face financial penalties imposed by the Internal Revenue Service.



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But now the president's signature domestic accomplishment is back under scrutiny by the Supreme Court. And the danger posed by the latest legal challenge, *King v. Burwell*, is existential. The question the Supreme Court has taken up is whether Obamacare's subsidies — tax credits, if you will — apply nationally or whether they are limited to only the handful of states that chose to establish their own exchange for individuals to purchase health insurance under Obamacare. In most states the exchanges have been established by the federal government because the state refused to do so.

And there's the rub because in the section of the Act that establishes state exchanges and the tax credits for the millions of Americans qualifying therefor, the operative language says such subsidies are available only in exchanges "established by a state."

If, indeed, the subsidies were so limited, the likelihood is high Obamacare would self-destruct. About 5.5 million Americans have signed up for coverage in states where the Feds run the exchanges. And the vast majority of them, 87 percent, have received subsidies. If the Court strikes those subsidies, those persons would no longer be able to afford coverage under Obamacare. Their departure from the insurance pool would trigger a sub-



CAROLYN KASTER - AP FILE PHOTO

## Anti-Obamacare protesters at the U.S. Supreme Court in 2012.

sent danger, the Internal Revenue Service has issued regulations that permit the subsidies in all states. The Obama administration argues that congressional intent respecting the entirety of the law makes it evident that Congress intended subsidies to be available in all states. Additionally, they argue that the statutory language restricting subsidies only to those individuals in state-established exchanges was simply an unintended "drafting error."

On its face this argument appears both plausible and reasonable. But it's not. For openers you can be sure that the Senate Office of Legislative Counsel, which drafted Obamacare and which is made up of skilled lawyers whose independence and impartiality is above question, would have brought to the attention of the Senate Finance Committee from which the bill emerged the policy discrepancy concerning the section that placed the limitation on the subsidies. Had the language been a drafting error, it would have been rewritten. But it wasn't.

Could the restrictive language have been intended by the Obama administration and the Democrats on the Senate Finance Committee? Amazingly, there is

Obamacare. After the law passed he consulted with numerous states concerning the establishment of their exchanges. Here is what he said in January of 2012: "What's important to remember politically about this is if you're a state and you don't set up an exchange, that means your citizens don't get their tax credits."

Gruber was giving voice to the real reason Obamacare restricted subsidies only to the states that established exchanges. The Obama administration and their Democratic allies in the Senate assumed the inducement of the subsidies would be sufficient to get all, or most all, of the states to establish exchanges. They were wrong. And now they're trying to rewrite the law to obscure and preserve their fatal error of judgment.

What's at stake in *King v. Burwell* is nothing less than preserving the constitutional doctrine of Separation of Powers. The Obama administration will soon urge the Court to enable it to deem the plain language of a statute passed by Congress to mean what it does not say. That is a precedent that should send a chill down the spine of all Americans.