



## **Obamacare could be in jeopardy with today's court ruling**

By: Stephen Koff  
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Taxpayer subsidies of the Affordable Care Act in many states, including Ohio, could be in jeopardy because of a federal appeals court decision this morning.

The case, *Halbig v. Sebelius*, did not specifically involve Ohio, although the legal scholarship of a particular Ohioan, Case Western Reserve University law professor Jonathan Adler, provided the basis for the argument against providing the subsidies.

In a nutshell, the U.S Circuit Court of Appeals for the District of Columbia ruled that when Congress wrote the Affordable Care Act, or ACA, it specifically said that federal taxpayer subsidies should help offset the costs for people buying health coverage in new, state-based marketplaces.

But a number of states, including Ohio, declined to set up their own marketplaces, or "exchanges," in the ACA's parlance. Instead, they piggybacked on the federal exchange, although each state offered policies specific to insurers and medical providers in the state.

The problem with this, as Adler first found while doing academic research, is that Congress specifically called for subsidies in state exchanges. While the federal exchange offered a fallback in states that would not set up their own, state-specific exchanges – many in states with Republican governors – that did not automatically transfer the right to give subsidies in federal-exchange states. Adler wrote this first in a scholarly paper after reviewing the law, and his analysis soon made the rounds in conservative and libertarian circles and became championed as a legal theory for challenging the ACA.

More than 80 percent of policy buyers on ACA exchanges have relied on subsidies. Three dozen states are using the federal exchange. So in those states, a court agreeing with Adler and other conservative legal authorities could shoot a substantial hole in the underpinnings of the ACA – namely, insurance coverage made affordable through federal subsidies.

In a 2-1 ruling today in Washington, D.C., a federal appeals court did just that. The court ruled that language in the ACA "unambiguously restricts" the taxpayer subsidies to exchanges "established by the state."

President Barack Obama's administration argued that Congress intended for subsidies to be offered in every state, and that the ACA established complete equivalence.

But the appeals court said that the wording in the ACA "plainly distinguishes exchanges established by states from those established by the federal government."

The ruling was 2-1, and parties in the case may ask the full court for an opinion. Some analysts believe the full court may be more friendly to the Obama administration. If not, the Obama administration could appeal to the U.S. Supreme Court, although that would come with risk.