



# Legal Defense for ACA Subsidies Means GOP President Could End Them

August 14, 2014

Supporters of the lawsuits challenging the legality of subsidies in the Affordable Care Act's federal exchanges on Tuesday said that one argument against the challenge could backfire if a Republican president took office, *CQ HealthBeat* reports.

## BACKGROUND

Two lawsuits, *Halbig v. Burwell* and *King v. Burwell*, address whether language in the ACA authorizes the federal government to give subsidies to consumers purchasing health care coverage in states using the federal exchange. Supporters of the law argue that Congress intended to make subsidies available in all 50 states, regardless of whether the states selected the federal exchange or a state-operated exchange. They argue that the law's language on the issue is clear but that if the courts think the language is ambiguous, they should defer to the interpretation of the federal agency tasked with implementing the provision.

## Argument is Double-Edged Sword

Two men who helped design the legal challenge -- the Cato Institute's Michael Cannon and Jonathan Adler, a professor at Case Western Reserve University School of Law -- said that the argument is a double-edged sword because it would allow a GOP president to change federal interpretation of the law "in a stroke of the pen." Adler said that if a Republican becomes president and the GOP controls both chambers of Congress in 2016, the IRS "could issue a new regulation saying we no longer believe that the prior interpretation of the statutory language is accurate" and that subsidies would end in states that opted for a federal exchange.

## **Subsidies Would Be Entrenched by 2017**

Timothy Jost, a professor at Washington and Lee Law School and supporter of the ACA, said that while a Republican president might seek to change some provisions of the ACA, the GOP would be unlikely to reverse course on the subsidies because "by 2017 millions of Americans would have relied on the IRS current interpretation of the law ... and a precipitous change in the rules would surely be challenged in court as arbitrary and capricious" (Reichard, *CQ HealthBeat*, 8/12).-- *compiled by Marcelle Maginnis*