



## Court ruling on Halbig may 'free' millions from Obamacare

By: Dan Mangan  
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The intellectual godfather of a serious court challenge to Obamacare says that if the effort continues to be successful tens of millions of people would be "free" from the law's individual and employer mandates.

Leading critic of the act, Michael Cannon, revealed that eye-popping number Monday, ahead of Tuesday's potentially crippling blow to the health-care reform law.

In Tuesday's 2-1 ruling, a judicial panel said subsidies to buy health insurance coverage can only be granted to people who purchased insurance on an Obamacare exchange run by an individual state or the District of Columbia—not on the federally run exchange.

Tuesday's ruling does not have an immediate effect on the law. The Obama administration is likely to appeal the decision by the U.S. Court of Appeals panel to the full appellate court.

According to Cannon, if the decision is upheld, more than 250,000 firms in those states, which have about 57 million workers, would not be subject to the employer mandate being phased in starting next year. That rule, which hinges on the availability of subsidies on Obamacare exchanges, will compel employers with 50 or more full-time workers to offer affordable health insurance or pay a fine.

And a total of about 8.3 million individuals will be removed from the rule that they have health insurance or pay a fine equal to as much as 1 percent of their taxable income, Cannon said. He added that the number could be a conservative estimate.

The number includes people who were previously uninsured before the exchanges opened last fall and whose options for insurance on the exchanges would not be considered affordable under the law without subsidy assistance.

<p>The big threat to Obamacare you've never heard</p> <p>CNBC.com health care reporter Dan Mangan breaks down a potential ruling from a top federal court that could severely damage the Affordable Care Act and health care subsidies used by millions.</p>

"Such a ruling would free nearly 1 million Floridians and more than 1.5 million Texans from the individual-mandate tax," Cannon wrote on his Forbes.com blog, Darwin's Fool. "In 2016, it would free families of four earning as little as \$24,000 per year from an illegal tax of \$2,085."

Cannon did not add together his estimates for how many people would be removed from the employer and individual mandates because there is some overlap between the two groups. But he contrasted the tens of millions of people who would no longer be subject to fines or tax penalties from the mandates with the 4.7 million people who currently receive subsidies for their HealthCare.gov-purchased plans in the 36 states.

"The winners under such a ruling would outnumber the losers by more than 10-to-1," he wrote in the blog.

Even as he released those numbers, Cannon acknowledged to CNBC.com the long odds facing the court challenge attacking the legality of billions of dollars in subsidies.

"My standard response is, the cases against the [subsidies] are iron-clad, which means the odds for our success are a solid 20 percent," the director of health policy studies at the libertarian Cato Institute joked ahead of Tuesday's ruling.

Cannon and Case Western Reserve University law professor Jonathan Adler are the primary authors of the claim that the Affordable Care Act only allows federal tax credits to be issued to people who buy insurance plans on an exchange established by a state—not on one run by the federal government. People received those subsidies if they had low or moderate incomes.

Just 14 states and the District of Columbia set up their own exchanges, and the legality of the subsidies on those markets was not challenged.

The case that was decided Tuesday, *Halbig v. Burwell*, was the first one of its kind to be decided at the appellate level, and its outcome may play a decisive role in determining whether the issue is ever heard by the U.S. Supreme Court.

All told there are four lawsuits challenging the legality of the HealthCare.gov subsidies that were authorized by an IRS rule have been filed in different federal courts.

Critics of Cannon's argument say that it misreads the overall intent of Obamacare—to offer affordable health insurance to people around the U.S., regardless of whether they buy insurance on a state-run exchange or the federal exchange.

Last week, two analyses underscored the potential effects of the high court ruling against the legality of the subsidies. The consultancy Avalere Health estimated that people who currently receive subsidies in the affected states would see their premium rates rise an average of 76 percent. And the Robert Wood Johnson Foundation and the Urban Institute said that by 2016, about 7.3 million enrollees would lose about \$36 billion in subsidies.

In his Forbes.com blog post Monday, Cannon wrote that "a victory for the Halbig plaintiffs would not increase anyone's premiums."

"What it would do is prevent the IRS from shifting the burden of those premiums from enrollees to taxpayers. Premiums from federal-Exchange enrollees would not rise, but those enrollees would face the full cost of their 'ObamaCare' plans," Cannon wrote.

### **Firms and employees whom Halbig would free from the employer mandate in Federal-Exchange states**

	<b>Firms &gt; 50 Employees</b>	<b>State employees</b>	<b>Total employees</b>	
Alabama	6,070	1,143,499	77,517	1,221,016
Alaska	1,165	170,449	24,918	195,367
Arizona	7,745	1,597,199	58,514	1,655,713
Arkansas	4,004	705,692	57,847	763,539
Delaware	2,497	262,049	23,291	285,340
Florida	16,264	4,969,299	164,607	5,133,906
Georgia	11,397	2,470,358	112,991	2,583,349
Idaho	2,539	310,726	18,373	329,099
Illinois	16,156	3,728,559	103,578	3,832,137
Indiana	8,657	1,810,843	75,516	1,886,359
Iowa	4,886	921,166	40,529	961,695
Kansas	5,043	795,207	43,464	838,671
Louisiana	6,399	1,134,086	72,132	1,206,218
Maine	2,258	317,344	18,437	335,781
Michigan	10,574	2,417,281	110,576	2,527,857
Mississippi	3,785	636,616	52,720	689,336
Missouri	8,272	1,682,209	76,691	1,758,900
Montana	1,743	191,009	16,670	207,679
Nebraska	3,363	576,718	26,690	603,408
New Hampshire	2,694	388,255	14,911	403,166
New Jersey	10,911	2,388,145	132,767	2,520,912
New Mexico	3,225	405,826	39,561	445,387
North Carolina	10,577	2,381,206	131,676	2,512,882
North Dakota	1,691	204,117	15,721	219,838
Ohio	13,437	3,302,101	108,649	3,410,750
Oklahoma	5,280	874,569	57,853	932,422
Pennsylvania	14,914	3,736,101	141,130	3,877,231
South Carolina	5,940	1,098,946	70,684	1,169,630
South Dakota	1,763	212,882	13,062	225,944
Tennessee	8,176	1,739,701	75,441	1,815,142
Texas	24,019	6,715,793	274,987	6,990,180
Utah	4,289	748,401	44,301	792,702

	<b>Firms &gt; 50 Employees</b>	<b>State employees</b>	<b>Total employees</b>	
Virginia	10,121	2,218,226	107,379	2,325,605
West Virginia	2,666	401,871	36,387	438,258
Wisconsin	8,061	1,708,445	56,094	1,764,539
Wyoming	1,396	123,377	12,463	135,840
Subtotals	251,977	54,487,671	2,508,127	56,995,798

Source: U.S. Census Bureau

**Residents of Federal-Exchange states whom Halbig would free from individual mandate**

<b>States</b>	<b># of residents</b>
Alabama	141,495
Alaska	35,631
Arizona	289,207
Arkansas	129,162
Deleware	25,695
Florida	925,276
Georgia	420,277
Idaho	77,820
Illinois	455,272
Indiana	195,627
Iowa	89,566
Kansas	96,370
Louisiana	210,359
Maine	36,854
Michigan	288,130
Mississippi	127,693
Missouri	208,010
Montana	42,434
Nebraska	65,976
New Hampshire	40,966
New Jersey	328,802
New Mexico	94,363
North Carolina	400,994
North Dakota	18,647
Ohio	386,751
Oklahoma	167,876
Pennsylvania	357,679
South Carolina	220,882
South Dakota	25,695
Tennessee	235,565
Texas	1,553,367

<b>States</b>	<b># of residents</b>
Utah	103,320
Virginia	287,102
West Virginia	61,620
Wisconsin	140,859
Wyoming	26,625
Subtotal	8,311,967