

# INVESTOR'S BUSINESS DAILY®

## Escape From Misery

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Affordable Care Act: When a few Republicans used the shutdown to try to tie up ObamaCare, its supporters said it was settled law, get over it, deal with it, move on. But it's not. It's merely a statute and courts are still looking at it.

The individual mandate provision of ObamaCare is the pivotal piece that many thought would fail the constitutional test. But the Supreme Court said the mandate is a tax and therefore falls within constitutional limits.

The ensuing re-election of President Obama further emboldened ObamaCare supporters, who, after the election, said it was a referendum on the Patient Protection and Affordable Care Act.

But no law is settled in our system -- the Constitution itself can be changed through a constitutional process -- and that includes ObamaCare. Even as Washington debates delaying implementation of the individual mandate for a year, a U.S. district court has refused to dismiss a legal challenge to the Democrats' reform.

This is not some petty complaint but a sober legal issue that "has the potential to sink ObamaCare," Cato Institute health policy analyst Michael Cannon said this week in the Los Angeles Times.

"It could make the current website problems seem minor by comparison," he said.

George Mason Law School professor Michael Greve believes that the legal challenge is so serious that "all of ObamaCare hangs on the outcome" of the case.

In the suit, *Halbig v. Sebelius*, private employers and individual taxpayers argue that the IRS does not have the authority to hand out hundreds of billions of dollars in subsidies to health insurance companies in the 36 states that have not set up health insurance exchanges, nor does it have the power to penalize individual taxpayers and employers in those states.

The plaintiffs' point: The language of the law does not allow the subsidies -- issued through the tax credit system -- to be used in the federally run exchanges in those 36 states.

A similar complaint, *King v. Sebelius*, is working its way through the federal court in Richmond. This case also has the potential to halt ObamaCare.

Clearly, the Patient Protection and Affordable Care Act is not settled law, even as Americans try -- and continue to fail -- to sign up. There is hope the country can still escape from its miserable clutches. We can be rid of this legislated nuisance if the courts do their job.