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Obamacare Challengers Have Good Feeling After SCOTUS Arguments

By Dylan Scott

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The two men who masterminded the latest legal challenge that imperils Obamacare were feeling pretty good about their chances after Wednesday's oral arguments at the Supreme Court.

Michael Cannon, a Cato Institute scholar, and Jonathan Adler, a Case Western University law professor, sat in on the hearing.

"I'm optimistic because the two swing justices were very skeptical of the government's argument," Cannon said.

Adler concurred. "I think we saw today is that the government's efforts to make this a textual case don't seem to be appealing to a majority of the Court," he said, "and that the sorts of arguments that could potentially support the government's position would pose grave risks to other federal programs."

Chief Justice John Roberts didn't say much during Wednesday's hearing, and Justice Anthony Kennedy was tough on both sides. He did seem concerned about the federalism implications of a ruling in favor of the plaintiffs, saying during the argument that it would raise "a serious constitutional problem." Adler acknowledged is one of the most difficult issues for their side.

But he countered that he didn't think the government wanted to win on those grounds because it would have uncertain implications beyond the Obamacare case.

"If the court were to say that those conditions are coercive, then that would not really be a victory for the government. That would be a victory for limiting government," Cannon said. "Congress would not be able to impose a lot of the burdens on states that it's now imposing. It would overturn Supreme Court precedents, and it would make a lot of federal programs vulnerable to challenge."

As Adler put it: "It would in effect save this IRS rule at the expense of other programs."

"I doubt the Court is willing to go that way," he said, "but if it were to go that direction, I don't think the federal government would consider that a long-term victory."

Cannon and Adler really got the case rolling with a July 2012 brief arguing that the Internal Revenue Service had illegally authorized Obamacare's tax credits in the 30-plus states that use the HealthCare.gov website. And after many had initially dismissed their argument as a strained attempt to gut the law, they got their day in front of the highest court in the land.

In the interim, they have been constant voices in support of the case in media and online and filed amicus briefs in support of the plaintiffs. The New Republic at one point dubbed Cannon "Obamacare's Single Most Relentless Antagonist."

Sam Baker contributed to this article.