



ObamaCare's next court threat

By Elise Viebeck

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A federal appeals court is poised to rule in a case that could blow a gaping hole in ObamaCare's scheme for providing healthcare coverage.

The plaintiffs in *Halbig v. Burwell* argue that the healthcare law does not authorize the Internal Revenue Service (IRS) to offer premium subsidies on the federal exchanges.

It's an issue that strikes at the heart of the Affordable Care Act's insurance benefits and could potentially end financial help for nearly 5 million enrollees.

That is, if the plaintiffs succeed. Legal experts have generally looked askance at the lawsuit, which has a losing record in federal court so far.

But some believe that a looming decision by the U.S. Court of Appeals for the D.C. Circuit could break that trend. A ruling could come out on Tuesday.

Either way, it's a case that could wind up at the Supreme Court.

"The IRS has arrogated for itself the power to rewrite a federal statute, triggering federal appropriations and financial penalties beyond those authorized by the legislature," wrote Jonathan H. Adler and Michael F. Cannon in an amicus brief to the D.C. appeals court in support of the plaintiffs.

"Such 'administrative hubris' cannot stand," they said.

Adler and Cannon, from Case Western Reserve University and the Cato Institute, crafted the legal theory behind the case.

The lawsuit's critics, though, say plaintiffs are missing the forest for the trees.

"Courts do not read statutes by cherry-picking single phrases to defeat the entire purpose of laws," wrote Washington and Lee University Law School Professor Timothy Jost in the *Washington Post*.

"If one views the totality of the [law] ... it's clear that tax credits are available in the federal exchange."

Court watchers expect Judge Thomas Griffith to be the swing vote in the case.

An appointee of former President George W. Bush, he appeared somewhat friendly to the plaintiffs' view during oral arguments before a three-judge panel.

Still, it is unclear whether the challengers would succeed if the government appealed the case to the full circuit.

The 4th Circuit Court of Appeals is also due to issue its ruling soon in a similar case.