



Everything you need to know about Halbig: How did the lawsuits originate?

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Former Department of Justice official Tom Christina is credited as being the first to publicly call attention to the troubled legal text at the heart of these lawsuits. He mentioned it during a presentation at the conservative American Enterprise Institute in December 2010.

Following that, other legal scholars began to examine this as a potential issue. Among them was Jonathan Adler, a law professor at Case Western Reserve University. He featured the quirk in a lecture he gave at the University of Kansas in March 2011. In August of that year, Adler mentioned the issue to Michael Cannon, director of health policy at the Cato Institute, a libertarian think tank.

Shortly after that, the IRS issued regulations clarifying that subsidies will be available on all exchanges, whether established by the state or by the federal government. These regulations are the specific target of legal challenges; in the eyes of the challengers, they contradict the plain text of the Affordable Care Act.

Cannon reached out to reporters hoping to generate some attention around the issue, though no suits had yet been filed. David Hogberg at the Investor's Business Daily was the first journalist to pick up the story.

Cannon and Adler co-authored a November 2011 editorial in the Wall Street Journal, characterizing the problem as a "glitch" in the way the law was written.

The two started writing an extensive paper on the problem, posting a draft online (at SSRN) in July 2012. A final version of the paper was published in HealthMatrix in March 2013. In the course of their research, Cannon and Adler's position on the issue evolved: rather than seeing it as a drafting error, they believe there's strong evidence that this was what Congress intended all along.

Challenges started being filed against the government in 2012, drawing on the work of Cannon and Adler.