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## **The Lawyer Who Helped Spark This Week's Affordable Care Act Rulings** **Thomas Christina, South Carolina Attorney, Spotted Wording That Triggered Suits**

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South Carolina lawyer Thomas Christina spotted wording in the Affordable Care Act that helped trigger legal challenges. Tami Chappell for The Wall Street Journal

Months after the Affordable Care Act became law, employment benefits lawyer Thomas Christina paced in his Greenville, S.C., office with its oil portrait of a greenhouse. He was reading the statute to learn its impact on clients.

By his reading, the wording only allowed health insurance subsidies to be provided through state exchanges. It began to dawn on him that he'd stumbled on something big.

His 2010 discovery ultimately spurred a legal battle that on Tuesday resulted in two conflicting rulings from U.S. Appeals courts regarding the government's authority to provide consumers with subsidies on the federal insurance exchange. The continuing legal dispute now threatens the subsidies provided to more than four million Americans.

"It wasn't like lightning struck," said Mr. Christina, 59, a shareholder at the labor and employment law firm Ogletree Deakins. "It was a gradual process. But I knew this was a significant enough issue that it would end up in the courts."

The bearded and bespectacled Mr. Christina, an avid gardener and father of three grown children, is a relatively obscure figure behind the litigation. But the Harvard University graduate has been a central figure in a legal standoff that is likely to wind up at the U.S. Supreme Court.

"He's the person who came up with this," said Thomas Miller, a resident fellow at the conservative American Enterprise Institute. "He deserves full credit."

On Tuesday, a panel of the U.S. Court of Appeals for the District of Columbia Circuit struck down the authority for the subsidies on the federal exchange used by up to 36 states. It held that a regulation by the Internal Revenue Service allowing the subsidies nationwide wasn't a permissible interpretation.

But that same day, a panel of the U.S. Court of Appeals for the Fourth Circuit in Richmond, Va. came to the opposite conclusion, ruling that consumers in states using the federal marketplace could get subsidies.

Mr. Christina is reluctant to discuss his reasons for scouring the law. "It's not really that I was looking for anything in particular," he said. "My role at the firm was to be the person keeping up with the statute."

He also declined to discuss his view of this week's contrasting opinions, saying diplomatically that "each opinion explains its own reason for reaching the opposite conclusion."

Mr. Christina had previously played a role in other conservative causes. He submitted an amicus brief to the Eleventh Circuit for the South Carolina Chamber of Commerce in Florida, v. the Department of Health and Human Services, urging the court to invalidate the individual mandate. Asked if he's opposed to the health law, Mr. Christina says it is so vast that he's not sure anyone can say they are for or against it.

The lawsuits that triggered this week's opinions center on how to interpret language in the 2010 health law that allows subsidies when consumers buy insurance on an exchange "established by the state." Challengers say that precludes the federal exchange; supporters say that wasn't Congress's intent.

"It's absolutely crystal clear that when a state elects not to set up the exchange but have the federal government do it for the state, the federal government stands in the shoes of the exchange," said Sara Rosenbaum, a law professor at George Washington University, adding, "The statute couldn't be clearer that that's what they meant."

In December 2010, Mr. Christina presented his findings at the American Enterprise Institute. AEI's Mr. Miller was intrigued. He saw the seed of a potential legal challenge to the health law.

The issue gained steam in 2011 when Jonathan Adler, a law professor at Cleveland's Case Western Reserve University, began looking at the language of the statute, he said, and did a Google search where he found information on Mr. Christina's work.

Mr. Adler emailed Michael Cannon, an acquaintance and the director of health policy studies at the libertarian Cato Institute, about the statute's language. "When I got this email, my jaw dropped," said Mr. Cannon, a vocal opponent of the law.

In May 2012, the IRS issued a final rule allowing subsidies to be distributed to people who buy health coverage on the federal exchange. To Mr. Adler and Mr. Cannon, that ran afoul of the statutory language of the law.

Mr. Miller was also discussing a fallback if the Supreme Court upheld the health law's individual mandate, including a possible legal challenge over the language of the law. Mr. Christina wrote draft complaints just in case.

In June 2012, the Supreme Court handed opponents of the law a defeat by upholding the individual mandate. That day, Mr. Miller jumped on a conference call with Mr. Christina and others to discuss moving ahead with a lawsuit on the law's language.

He drew on Sam Kazman, general counsel at the Competitive Enterprise Institute, a libertarian think tank. They coordinated the lawsuits and funded the effort. The institute reached out to Michael Carvin, a lawyer at Jones Day who brought the two cases the courts ruled on Tuesday. The first lawsuit raising the claim was filed in September 2012 and there are currently four cases in the courts.

Mr. Christina's seen a subdued response to this week's ruling given his role remains relatively unknown. Although Mr. Miller credits him with the lawsuits' origin, Mr. Christina prefers to say it was the work of many.