



Meet the men helping to return Obamacare to the Supreme Court

By Philip Klein
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If President Obama's health care law makes it back to the Supreme Court, it will be in no small part due to two men.

In 2011, Cato Institute director of policy studies Michael Cannon and Case Western Reserve University law professor Jonathan Adler began developing a legal argument based on the fact that the text of Obamacare says subsidies to purchase health insurance were to go to individuals obtaining insurance through an “exchange established by the state.” A rule released by the Internal Revenue Service subsequently instructed that subsidies would also apply to exchanges set up on behalf of states by the federal government, triggering numerous legal challenges.

Now, with a victory before a federal appeals court in the case *Halbig v. Burwell*, based on the intellectual architecture developed by Adler and Cannon, Obamacare finds itself on the cusp of another major Supreme Court case.

For the latest edition of the "Dialogue" video series, I spoke to both Adler and Cannon about the legal challenges and the related policy implications, some of the criticisms of their position, and the common misconceptions of the cases.

For one thing, Adler these challenges shouldn't be seen as cases seeking to strike down Obamacare.

“This is a case about the administrative implementation of the statute,” Adler said. “It’s not a challenge to the statute itself. It’s not a constitutional claim. It’s not a claim that Congress overstepped its bounds. It’s a claim that the executive branch, in trying to implement the law and issue regulations to make it operate, has exceeded the authority that Congress gave it.”

Cannon said that if the Supreme Court were to rule with the challengers, the ramifications could lead to a re-opening of the law.

“I would imagine that even Democrats would be open to re-opening this law and repealing the law would become feasible at that point, even with President Obama wielding the veto pen,” he said. “It might not happen, but it would become feasible. And

at a minimum, Congress would have to do something to remedy this problem that [the health care law] created.”