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## Meet the man who laid the way for Obamacare's latest legal challenges

By Max Ehrenfreund

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A federal appeals court on Tuesday accepted a clever legal argument against the Affordable Care Act, the signature health-reform law of President Obama's first term. If the decision is upheld -- and another court issued a contrary opinion later Tuesday in a separate but similar case -- then the entire system established by the law would be in danger in many states.

That's exactly the outcome intended by Michael Cannon, an expert on health care at the libertarian Cato Institute widely regarded as the intellectual architect of the latest cases against Obamacare. In an item for Forbes on Monday, Cannon acknowledged the consequences a victory would have: Millions of people would pay more money for health insurance, and many who can afford insurance as a result of the law would no longer be able to.

If his argument prevails with the courts, then five million people of lower and middle incomes would pay 76 percent more on average for health insurance, by one estimate, because they would no longer receive financial help from the government.

"We're talking about a situation where these modest-income people are getting some very substantial subsidies that Michael Cannon's interpretation of the law would take away from them," Linda Blumberg, an economist at The Urban Institute, told me. She added that she thought Cannon's view was "clearly false."

Cannon argues that these consequences are not his doing, but instead a result of the shortcomings of the law, both as it is written and as it was fundamentally conceived. The financial support those families expect to receive from the government is and always would have been illegal, he wrote Monday:

Though that small detail doesn't change the fact that 5 million people have been deeply wronged, it does clarify who wronged them: not the Halbig plaintiffs or a few judges, but a president who induced 5 million low- and middle-income Americans to enroll in overly expensive health plans with the promise of subsidies he had no authority to offer.

Cannon has been honing this argument since before the Supreme Court upheld most provisions of Obamacare in the first major legal challenge to the law in 2012. Last year, he and his coauthor

Jonathan Adler, a legal scholar at Case Western Reserve University, elaborated on their ideas in the journal Health Matrix.

They were not the only ones to notice the possibility of a new legal challenge, but Cannon, arguably, was the most visible proponent of the idea. He was making his case in the press, testifying before Congress, and traveling the country for meetings with state officials who opposed the law.

The theory rests on an ambiguity that supporters of the law say was a harmless oversight on the part of legislators.

In some states, insurance exchanges are administered by the federal government, while in others, the exchanges are administered by state governments. Cannon has argued that the law does not give the federal government the authority to help families pay for their health insurance in states where Washington runs the market. Many of those households might go without insurance entirely -- they won't be required to purchase it, due to an exemption for families that would have to spend more than about 8 percent of their income on health insurance.

Just a few more words in the law would have settled this confusion. (For more on what Democrats in Congress think the law says, continue reading here.) In the looping parade of dominoes that is Obamacare, however, even a few words can lead to a cascade of unexpected consequences.

Without federal help, many people would be hardly able to afford insurance, but the less healthy ones would have strong reasons to buy it anyway. Insurers would still be required to offer coverage to everyone, even those who are sick or who know they might need medical help in the future. That group costs insurers more, and the companies would be forced to raise prices across the board, further discouraging healthy people from buying insurance in the type of vicious cycle that health care experts have called a "death spiral."

This death spiral would give state governments an effective veto over Obamacare, creating a scenario, as he has written, in which Congress must repeal the law. Whether that would ever actually happen, or whether millions of less wealthy Americans will just continue paying more for health insurance indefinitely, is anyone's guess.

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