

Obamacare critics lose in ruling that supports Affordable Care Act tax subsidies

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on January 15, 2014 at 5:51 PM, updated January 16, 2014 at 7:23 AM

An Enroll America volunteer organizes her materials in July before canvassing in Englewood, N.J. Without federal tax subsidies, many people could find health insurance on the individual market unaffordable. Michael Nagle, Bloomberg Photo

WASHINGTON, D.C. – A federal judge Wednesday dealt a setback to critics who hoped to dismantle the Affordable Care Act, ruling that residents of all states can get tax subsidies to help buy health insurance.

The losing side has already filed an appeal, said Jonathan Adler, a Case Western Reserve University law professor who helped provide the legal underpinning for parties filing the case. Adler said he finds "portions of the court's reasoning to be questionable."

Adler noted that this is only one of four cases raising the claims about tax subsidies in the Affordable Care Act, or ACA. No rulings have come out in the others.

The subsidies, called premium tax credits, are crucial for many people buying health insurance under the ACA. Without subsidies, available to families earning up to 400 percent of the federal poverty level, or \$94,200 for a family of four in 2013, some people could be priced out and unable to afford coverage.

The ACA, commonly called "Obamacare," requires nearly all Americans to have health insurance by this April, although some enforcement mechanisms have been pushed back. Yet critics said that Congress wrote the 2010 law in a way that wound up exempting residents of some states from the very ability to get subsidies.

If true, not only would these residents be caught in a bind but so, too, would the law and its premise: "affordable" coverage for all. What is and isn't affordable is already a point of controversy.

But U.S. District Judge Paul L. Friedman, in Washington, D.C., said in a 39-page **opinion** Wednesday that "the plain text of the statute, the statutory structure, and the statutory purpose make clear that Congress intended to make premium tax credits available on both state-run and federally-facilitated Exchanges. What little relevant legislative history exists further supports this

conclusion and certainly – despite plaintiffs' best efforts to suggest otherwise – it does not undermine it."

The case, *Halbig v. Sebelius*, drew on legal research that **Adler conducted** for **scholarly purposes** before teaming with Michael Cannon of the libertarian-leaning Cato Institute and presenting it to others. Critics of the ACA said President Barack Obama's administration, including the IRS as it drew up rules for tax subsidies, overstepped its legal authority, and Adler's research appeared to lay out exactly how.

Adler, 44, has been at Case since 2001. Reviewing the ACA, he says that Congress created a system for providing tax subsidies and penalties as incentives for people to buy health insurance through state-run marketplaces, or for employers to provide it. States were supposed to create new agencies to offer online insurance-shopping options to their residents. These states and their new marketplaces or insurance "exchanges" would tie into the federal tax system to dole out the subsidies and assess the penalties. But the state exchanges would be authorized to make this all happen.

Yet **27 states**, including Ohio, declined or refused to set up exchanges. Instead, they tapped into the new federal marketplace or created joint federal-state exchanges. The problem with this, Adler and Cannon wrote, is that Congress never authorized the tax credits to be used on the federal exchange. The law was written in anticipation of states creating their own exchanges. The availability of tax credits was to be an incentive for the states to do this work.

The federal government stepped in when states refused. But that did not automatically confer all the law's provisions to this federal, substitute insurance exchange, according to Adler and others who examined the law's wording and history.

Based on the way the law was written, Adler said, the Internal Revenue Service had no authority to give tax subsidies to people enrolling in the federal exchange.

The IRS disagreed. It explained, as Judge Friedman wrote in his ruling, that "The statutory language of section 36B and other provisions of the Affordable Care Act support the interpretation that credits are available to taxpayers who obtain coverage through a State Exchange, regional Exchange, subsidiary Exchange, and the Federally-facilitated Exchange. Moreover, the relevant legislative history does not demonstrate that Congress intended to limit the premium tax credit to State Exchanges."

Friedman's ruling sought to reconcile the federal government's and critics' competing and contradictory interpretations of Congress's intent. The judge suggested it would make no "intuitive sense" for Congress to provide a full set of features, including tax subsidies, for one kind of exchange but not the other.

"A state-run Exchange is not an end in and of itself, but rather a mechanism intended to facilitate the purchase of affordable health insurance," Friedman wrote. "And there is evidence throughout the statute of Congress's desire to ensure broad access to affordable health coverage. It makes

little sense to assume that Congress sacrificed nationwide availability of the tax credit... in an attempt to promote state-run Exchanges."

Groups that support or promote the ACA were pleased with the ruling.

"Today's ruling is a win for common sense," said a statement from Ron Pollack, executive director of Families USA, an advocacy group that supported the Obama administration in the case. "The plaintiffs' argument was based on an implausible reading of the statute and a fabricated history of congressional intent. It is gratifying but unsurprising that the court rejected their claims."