

Finally, the End of Obamacare Is in Sight

Tuesday's critical decision in the U.S. Court of Appeals in favor of the plaintiffs in *Halbig vs. Burwell* is the beginning of the end for **Obamacare**, says one health-care expert and patient advocate.

The ruling has far-reaching implications. The plaintiffs in the case argued that per the actual language of the **Affordable Care Act**, subsidies to help Americans pay for government health care coverage are available only through state exchanges, not through the federal exchange at . This means that more than 5 million Americans who live in states that chose not to set up exchanges and who, therefore, purchased their coverage through the federal exchange using state subsidies may see vast changes in their premiums—or in their enrollment eligibility altogether.

Twila Brase, co-founder and president of Citizens' Council for Health Freedom, a Minnesota-based national organization dedicated to preserving patient-centered health care and protecting patient and privacy rights, says that because 36 states have declined to build and maintain a state exchange, today's decision for the plaintiffs confirms that Obamacare is unsustainable, and the only solution is full repeal.

"The administration's overreach has been curbed," Brase stated. "The justices read the law written by Congress and found that the plain reading of the text of the law says only states with state-based exchanges can offer subsidies. The IRS and the **Obama administration** cannot interpret law whatever way they want when the way they wrote it doesn't turn out the way they wanted it to. The law has had significant consequences for the American public. Once again, the administration's willful violation of the law has been made clear by the

courts. Without the subsidies, 36 states will be free from the individual mandate and the penalties.

“This decision, although it will undoubtedly be appealed by HHS Secretary Sylvia Burwell, will begin to unravel the already floundering federal health-care system,” Brase added. “Law is not about arbitrary interpretations. Law is very black and white, and this court ruled correctly today in favor of the Halbig plaintiffs by standing on the letter of the law.”

The case, formerly titled *Halbig vs. Sebelius*, listed 12 plaintiffs, including a hospital chain and a restaurant franchise, which argued that an IRS rule that allowed state subsidies to be used in the federal exchange should be null and void because it contradicts what Congress originally intended in the Affordable Care Act. The plaintiffs claim the IRS ventured out of the bounds of its legal authority when it issued the rule in the first place.

Brase went on to say that victory for Halbig means a crumbling of the infrastructure of Obamacare.

“The infrastructure is the heart and soul of Obama’s health-care ‘reform,’” Brase said. “The 5 million Americans affected by this decision will quickly find that they now cannot afford the high premiums of Obamacare without state subsidies. Halbig plaintiffs rightly claimed that the law allows subsidies only through a state exchange. And because the mandate and its penalties are hinged on the existence of Obamacare premium subsidies, actually called Advanced Premium Tax Credits (APTC), Halbig claimed harm done. Without subsidies, there’s no mandate and no penalties.

“The authors of Obamacare thought they were being clever—twice,” she continued. “First, they established the state health insurance exchanges with language making it appear as a mandate. Then because the U.S. Constitution prohibits the federal government from ‘commandeering’ a state

through such a mandate, they created the federal exchange as a fallback position in a separate section (1321) of the law. They hoped states would accept the mandate, never see Section 1321 and forget the constitutional prohibition on commandeering. They never intended to build a federal exchange and gave themselves no money to do so. Thus, as they have testified, 30 to 40 percent of it isn't even built."

Brase added that Obamacare authors wrote that subsidies could be issued only by state-established exchanges.

"This was a bribe, however," Brase said. "If governors and state legislators agreed to build an exchange with federal dollars and then maintain it with hundreds of millions of state dollars and fees on users, the federal government would agree to give their constituents money to pay the higher cost of Obamacare coverage. But 36 states saw the trap and refused to build a state exchange. They didn't want to cede state control over health care. State exchanges are state exchanges in name only. HHS controls everything about them, and states didn't want to be on the hook for the tens to hundreds of millions of dollars it would take to run the online exchange."

As more and more states refused to build exchanges, the IRS declared an interpretation of the law that did not line up with the language of the law, Brase argued. Their rule, which was ultimately challenged by Halbig, made subsidies available from *any* exchange, including "a State Exchange, regional Exchange, subsidiary Exchange, and Federally-facilitated Exchange."

Currently, just 14 states have their own exchanges, and two—Oregon and Nevada—are taking steps to ditch their struggling exchanges and funnel their residents to the federal exchange at .

Waiting in the wings is *Pruitt vs. Burwell*, a case filed by

the Oklahoma attorney general, which also challenges the subsidies. One or both of the cases could end up before the Supreme Court.