

Two appellate courts differ on key tax item in health care reform law

By Michael Doyle and Tony Pugh
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WASHINGTON: Two appeals courts on Tuesday split over the Affordable Care Act, reaching different conclusions about whether tax credits can help consumers buy coverage in the 36 states that use the federal health insurance marketplace.

The conflicting and nearly simultaneous rulings potentially tee up for the Supreme Court its next landmark health care case, and leave in limbo the Obama administration's health care ambitions.

In a 2-1 ruling, the U.S. Court of Appeals for the D.C. Circuit concluded the Obama administration stretched the law too far in extending the subsidies through the HealthCare.gov website.

“We reach this conclusion, frankly, with reluctance,” Judge Thomas Griffith wrote, noting that “our ruling will likely have significant consequences both for the millions of individuals receiving tax credits through federal exchanges and for health insurance markets more broadly.”

More bluntly, Senior Judge Harry Edwards called the challenge in his dissent a “not-so-veiled attempt to gut” the health care law. The one thing all sides agreed on was the significance of the case.

From the right, Texas Republican Sen. Ted Cruz cheered the ruling as “a repudiation of Obamacare and all the lawlessness that has come with it.” From the left, Ron Pollack, executive director of Families USA, called the D.C. court's decision “the high-water mark for Affordable Care Act opponents.”

But while the D.C.-based court struck down the tax credit, the Richmond, Va.-based U.S. 4th Circuit Court of Appeals reached a different conclusion about the same set of facts.

In its unanimous decision, the three-judge panel of the Richmond-based appellate court called extension of the tax credits by the Internal Revenue Service a “permissible exercise of the agency's discretion.”

“It is ... clear that widely available tax credits are essential to fulfilling the Act’s primary goals and that Congress was aware of their importance when drafting the bill,” Judge Roger Gregory wrote, adding that “the economic framework supporting the Act would crumble if the credits were unavailable on federal exchanges.”

The disagreement between the two circuit courts is a recipe for eventual Supreme Court action, as resolving so-called circuit splits is one of the high court’s top priorities. Two other federal courts are still considering similar challenges.

The challengers argue that the health law doesn’t allow the federal government to provide subsidies — which help people purchase health coverage — in states that use the federal marketplace.

A section of the health care law says the tax credits can only be applied to coverage purchased “through an exchange established by the state.”

Conservative scholars Jonathan Adler and Michael Cannon, who first touted the loophole in the law, have said it was intentionally written in order to coerce states into running their own marketplaces. The federal government argued the language was merely a drafting error, which could easily be fixed. The government maintained Congress intended to provide the tax credits in all states.