

## With court ruling, millions of Georgians should be freed from Obamacare mandates

By Kyle Wingfield

A federal court has -- for now, anyway -- gutted some of the most crucial elements of Obamacare.

In a **just-released ruling**, judges on the federal appeals court for Washington, D.C., said the IRS ignored the "unambiguous" language of the Affordable Care Act when it said Americans who buy insurance plans on the federal health exchange are eligible for federal subsidies. The upshot is that, in Georgia and 35 other states, neither the long-delayed employer mandate nor the individual mandate can be fully enforced. In Georgia, that means **as many as 3 million people** may no longer be subject to those mandates. Nationwide, the figure is closer to 60 million people, or almost 1 in 5 Americans.

To paraphrase Joe Biden, this is a big bleepin' deal.

The case, known as *Halbig v. Burwell*, was brought by a group of plaintiffs which included employers with more than 50 workers (which were thus subject to Obamacare's employer mandate to provide health coverage or pay a tax) and individuals who would be subject to the Obamacare tax if they did not meet its mandate to purchase health insurance. The critical common factor for these firms and individuals is that they are located in one of the 36 states that chose not to build its own health exchange in compliance with Obamacare, and for which the now-infamous Healthcare.gov website was created.

Because the federal government cannot coerce states to do anything, it tried to incentivize them to set up exchanges. The incentives included federal subsidies for individual health plans, but only if they are purchased on a state-run exchange. Yet, Georgia and 35 other states elected not to build an exchange anyway, and their residents instead can shop on the federal exchange.

For many people buying insurance in the individual market, these subsidies are the only reason the plans offered under the "Affordable" Care Act are affordable. According to data for the federal exchange **reported by the Obama administration**, these tax credits bring down the out-of-pocket cost for the average person buying insurance on

the exchange by 76 percent. It is this post-tax credit figure that Obamacare proponents cite as "evidence" the law is bringing down premiums. Without that subsidy, premiums would be higher for most people buying on the individual market, due to the mandates and restrictions the law requires for "qualified" plans.

So, anyone in Georgia who bought insurance on the federal exchange and received a subsidy may no longer be eligible for that subsidy. The federal government risked those people's finances on the idea it would win in court. The government, and those people, lost that bet.

But the silver lining is much brighter than this apparently dark cloud. That's because many of these same people are no longer subject to the mandate that they buy health insurance. The explanation is found in today's court ruling:

*"The individual mandate requires individuals to maintain 'minimum essential coverage' and, in general, enforces that requirement with a penalty. The penalty does not apply, however, to individuals for whom the annual cost of the cheapest available coverage, less any tax credits, would exceed eight percent of their projected household income. By some estimates, credits will determine on which side of the eight-percent threshold millions of individuals fall. Thus, by making tax credits available in the 36 states with federal Exchanges, the IRS Rule significantly increases the number of people who must purchase health insurance or face a penalty." (legal citations omitted)*

According to **estimates** by Michael Cannon, a health expert at the libertarian Cato Institute, about 420,000 Georgians would not be subject to the individual mandate in this case. Given **that statistics indicate** about 75 percent of Georgians get their health insurance through an employer, Medicaid, Medicaid or some other public program (think Tricare or the VA), and 19 percent remain uninsured, that 420,000 figure would represent the majority of everyone else.

What's more, Cannon also estimates about 2.5 million Georgians work for firms that would have been subject to the employer mandate but now are not, because it was also tied to the existence of state-run exchanges. Together that means as many as 3 million Georgians are no longer subject to one or both of the mandates (though there may well be some overlap between those two groups).

Nationally, Cannon says the number of people freed from a mandate is about 10 times as large as the number newly ineligible for subsidies. Sounds like there are more winners than losers here.

This isn't final, as the Obama administration could ask for a rehearing of the case by all the judges of the D.C. circuit court, the majority of whom were appointed by Democratic presidents. After that, of course, the case could go to the Supreme Court. I wasn't going to suggest this lawless administration might blatantly disregard an opinion from what's

generally considered the second-highest court in the land, but **reportedly that's what it is going to do.**

Yet, as the judges who said they "reluctantly" issued this ruling noted, there is nothing ambiguous about the way the law was written. This administration may remain all too happy to ignore inconvenient facts and laws with which it disagrees, but courts should not be so feckless. If the rule of law still exists in this country, today's ruling should stand in the end.