

THE DAILY CALLER

Lawsuit takes aim at subsidies in federal Obamacare exchanges

By: Sarah Hurtubise- October 23, 2013

Website glitches may soon be the least of the federal Obamacare exchange's problems. A federal court is considering a lawsuit arguing that people who buy insurance through the Washington run exchange aren't eligible for subsidies.

The lawsuit, brought by a group of three employers and four individuals, argued that the health-care law's actual wording prohibits federal subsidies via tax credits in the federally-established exchange.

Judge Paul Friedman of the D.C. District Court rejected the Justice Department's arguments Tuesday that the case should be dismissed, but decided against issuing an injunction to block the subsidies in the federal exchange while the lawsuit proceeds.

According to the text of the Affordable Care Act, the IRS may issue tax-credit subsidies for premium assistance only to an exchange "established by the state."

Those filing the lawsuit contend that this wording doesn't apply to those on the federal exchange that serves 36 states.


The Justice Department has claimed for months that not only are they empowered to authorize the subsidies, but that opposition groups don't even have the standing to challenge them in court.

"All along, the IRS' supporters have said, 'We should do this and there's nobody that can stop us, because nobody has standing to challenge us,'" Michael Cannon, the director of health policy at the Cato Institute, told The Daily Caller News Foundation. "[Tuesday's] ruling is a defeat for the IRS, victory for the plaintiffs, taxpayers and democracy."

Friedman's decision not to dismiss the lawsuit per the Justice Department's request solidifies individuals' right to stand up to the IRS and strengthens a Virginia lawsuit also proceeding against Obamacare in a federal court in Richmond, Cannon told TheDCNF.

"What the IRS is trying to do here is taxation without representation," Cannon told TheDCNF. "The ruling is a victory for the plaintiffs and taxpayers and democracy."

Friedman said he would decide on the merits of the case by Feb. 15, when the open enrollment period for the federal exchange ends. If he ultimately rules in favor of the plaintiffs, it would be a massive blow to the Affordable Care Act.

Studies  have shown that premiums in most states will be higher in exchanges. Without subsidies to cushion consumers from this blow, participation in the marketplace could plummet.

Some have even argued that the Department of Health and Human Services specifically had the infamously glitchy HealthCare.gov website fashioned so that consumers would not be able to see actual insurance quotes without the subsidies included first.