

Federal appeals court rules against Affordable Care Act exchange subsidies **Ruling would effectively make insurance much more expensive for people who bought coverage through Obamacare exchanges**

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A panel of federal appeals court judges sitting in DC dealt a powerful blow to President Obama's landmark Affordable Care Act on Tuesday in a ruling that, if allowed to stand, could remove federal health insurance subsidies from millions of Americans and threaten the very viability of the scheme.

The two-to-one ruling would effectively make insurance much more expensive for people who bought coverage through the exchanges that the federal government has set up under the 2010 "Obamacare" legislation to fill in the gaps left by largely Republican-controlled states that refused to establish their own exchanges. The judgment has potentially far-reaching ramifications across 36 states where federal exchanges have been created and could drastically impact almost 5 million Americans.

In the [majority opinion](#), written by Judge Thomas Griffith with the support of Judge Arthur Randolph, the court took a literal view of the wording of the ACA, saying that when the law states that health insurance subsidies can only be given through an "exchange established by the State" it refers only to those marketplaces set up by states and cannot be taken to mean exchanges formed by the federal government.

The judges in the majority made clear that they were aware of the high stakes involved, and said they had reached their conclusion "frankly, with reluctance. At least until states that wish to can set up Exchanges, 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."

But Griffith added that the principle of legislative supremacy "is higher still ... Our duty when interpreting a statute is to ascertain the meaning of the words of the statute duly enacted through the formal legislative process."

In the face of such a serious threat to the financial underpinning of Obamacare, administration lawyers are now likely to challenge the ruling to the full panel of the DC appeals court. Whatever the outcome of that hearing, the issue is likely to find itself before the US supreme court, the nation's highest judicial panel, which last month dealt its own blow to the ACA in its [Hobby Lobby ruling](#) that granted some companies a religious exemption from covering certain types of contraception in their insurance policies.

The probability that the US supreme court will be asked to adjudicate in this matter rose substantially later on Tuesday morning when the federal appeals court for the fourth circuit, sitting in Richmond, Virginia, [came to the opposite conclusion](#) to its equivalent in the DC circuit. It found that the wording of the "Obamacare" statute is ambiguous and as such open to multiple interpretations.

As a result, the court said in a nuanced ruling that it was reasonable to allow federal agencies discretion in how they applied the law – in this case by setting up federal health insurance exchanges.

Advocates for Obamacare will take some comfort from the dissenting opinion of Judge Harry Edwards. Edwards accused the appellants behind the challenge of making a “not-so-veiled attempt to gut the ... ACA”, and dismissed their argument that the wording of the act excludes the possibility of federal health insurance exchanges as “specious”.

Edwards likened the ACA to a three-legged stool that can stand only if each of its legs are in place. The first leg of the stool bans health insurance providers from denying coverage to anyone based on prior health conditions; the second leg – the individual mandate – requires every individual to purchase health insurance or face a penalty; and the third leg are the subsidies that help make such insurance affordable.

Edwards wrote that the third leg is crucial to the success of the whole scheme as subsidies “ensure that the individual mandate will have a broad enough sweep to attract enough healthy individuals into the individual insurance markets to create stability”. Without such subsidies, “the individual mandate is simply not viable as a mechanism for creating a stable insurance market”.

As Edwards' dissent highlights, ACA supporters have suggested that is the very intention of those behind the legal challenge – to destabilize Obamacare to such an extent that it is no longer workable. One of the main inspirations behind the lawsuit is [Michael Cannon](#) of the libertarian Cato Institute who is a forceful opponent of the ACA.

The DC appeals court ruling blasts a hole through the centre of the new health care system. [Federal research has shown](#) that on average individuals who subscribe to federal health insurance exchanges have their premiums slashed through tax credits from \$346 to \$82 a month.

By undermining the existence of those federal exchanges, Tuesday's ruling could force a steep increase in premiums for millions of Americans. That in turn would trigger an exemption clause

that would exempt people from the individual mandate, potentially causing the numbers of participants in ACA to plummet and thus threatening the financial future of the entire scheme.

For now, the White House says, it will continue the subsidies despite the ruling.