



**THE HEARTLAND INSTITUTE**  
IDEAS THAT EMPOWER PEOPLE

# **An Appeals Court Ruling Means Obamacare Will Head Back to SCOTUS**

By: Benjamin Domenech  
July 23, 2014

Today a federal appeals court in Washington DC found words mean what they mean, and not what the Obama Administration interprets them to mean – a revolutionary concept in this era of unfettered government. The court found “a federal exchange is not an ‘Exchange established by the State’” under the law, and the nine separate times eligibility is described under the law in these terms do not indicate a mere typo or drafting error, but reflect the intent of Congress.

The decision is here. Philip Klein describes the nature of the issue here:

At issue in the case, *Halbig v. Burwell*, are the subsidies that the federal government provides for individuals purchasing insurance through Obamacare. Though the text of the law says the subsidies were to go to individuals obtaining insurance through an “exchange established by the state,” a rule released by the Internal Revenue Service subsequently instructed that subsidies would also apply to exchanges set up on behalf of states by the federal government.

But the U.S. Court of Appeals for the D.C. Circuit concluded that Obamacare “unambiguously restricts the ... subsidy to insurance purchased on Exchanges ‘established by the State.’” If the decision were to survive, it would mean that hundreds of billions of dollars of taxpayer money would be saved. It would mean that businesses in states that have a federal exchange would no longer be subject to the employer mandate, because the requirement to provide insurance is tied to the fact that uninsured workers could obtain government subsidies. It would also mean that millions of Americans who signed up for insurance through Obamacare in those 36 states would no longer qualify for subsidies.

The angst from supporters of the law was immediate. This case was spearheaded by Cato Institute scholar Michael Cannon and law professor Jonathan Adler, who offered an argument dismissed by the law’s advocates but now vindicated by the court. The ramifications could be huge: It would mean the White House has been breaking the law by distributing funds it was never authorized to spend and enforcing mandates that were never supposed to go into effect. It

would essentially transform the Obamacare project toward private insurance the same way the Court's decision transformed the Medicaid expansion – from a gun-to-the-head decision for the states into an opt-in, opt-out choice.

Adler comments here on what comes after the ruling:

What comes next? The Administration will have to decide whether to seek en banc review of this decision or file a petition for certiorari. If I had to guess, I would say the former is more likely. Supreme Court review will likely wait until there are more decisions on this question. A decision remains pending in *King v. Sebelius* before the U.S. Court of Appeals for the Fourth Circuit and there are two pending cases in district courts.

If this decision is upheld, it will present some three-dozen states with a choice: Establish exchanges so as to authorize tax credits for state citizens while also triggering penalties on employers and individuals who do not wish to purchase qualifying health insurance. As my co-author Michael Cannon notes, the implications of this decision go beyond its effect on tax credits. How will states respond? Time will tell. As with the Medicaid expansion, it is not entirely clear how states will react now that so much of PPACA implementation is clearly in their hands.

Astoundingly enough, later in the day, the Fourth Circuit Court ruled in the opposite direction, finding the subsidies delivered via the federal exchange were allowed under the law. But that court's defense of this view was weak to say the least, allowing that the law did seem to be in conflict with itself. And in fact, the Fourth Circuit ruling may actually speed a review by the Supreme Court for the issues put forward by this case.

Currently, the White House has said it will continue to hand out billions of dollars in subsidies despite the DC Court's ruling – for reference, 83% of those purchasing coverage under Obamacare qualify for subsidies – as the administration is confident future rulings will uphold its position.

Despite his interest in doing so, President Barack Obama cannot spend tax dollars without federal authorization, and the court found no such authorization has been granted for the subsidies currently being offered via the federal health insurance exchange. The simple fact, as the Cato Institute's Michael Cannon and law professor Jonathan Adler have demonstrated, is that Congress intended to use the bias toward state exchange dollars to force states to set up exchanges – never expecting states would resist this push so emphatically.

Now citizens in the 36 states that chose not to bow to the administration's wishes must wait to see whether higher courts will find they ought to be free from Obamacare's requirements as well. Ultimately, this will be another opportunity for the Supreme Court to weigh in on Obamacare.