



Health Law Gets Reprieve As Appeals Court Agrees To Rehear Key Case

By Julie Rovner
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The District of Columbia Court of Appeals' decision overrides a July ruling by a three-judge panel that imperiled subsidies for people buying insurance in states that rely on the federal exchange.

The controversial federal court decision that threatened the future of the Affordable Care Act is no more.

The full District of Columbia Court of Appeals Thursday agreed to rehear *Halbig v. Burwell*, a case charging that the federal government lacks the authority to provide consumers tax credits in health insurance exchanges not run by states.

The order technically cancels the three-judge ruling from July that found for the plaintiffs. That ruling, if upheld, could jeopardize the entire structure of the Affordable Care Act by making insurance unaffordable for millions of consumers in the 36 states where the federal government operates the exchange.

The court will hear oral arguments in the case in December. For the time being, the order also eliminates the so-called circuit split that could prompt the Supreme Court to take up the case. The same day the panel from the Washington, D.C., circuit had decided that tax credits are not allowed in federal exchanges, a three-judge panel from the 4th Circuit in Richmond, Va., decided exactly the opposite.

The losers in that case, *King v. Burwell*, appealed the decision to the Supreme Court on July 31.

But now that there are no appeals courts in technical disagreement, "it's much less likely the Supreme Court will take it," said Ian Millhiser of the Center for American Progress.

It is also considered likely that the full District Court of Appeals in Washington will rule that the subsidies are allowable in federal exchanges. A majority of judges on the full appeals court are Democratic appointees, including four appointed by President Obama and recently confirmed by the Senate.

Millhiser said the full appeals court's action is rare. "Usually they mean [a majority of the full court] disagree with the panel's decision."

The issue is still live, however. Similar lawsuits asserting the subsidies are not allowed in the federal exchange are pending in Indiana and Oklahoma. Those cases are still at the lower, district court level.

The Cato Institute's Michael Cannon, who has been among those advocating the hardest for the lawsuits' claims, called the full court's decision "unwise and unfortunate." He said the ruling "has the appearance of a political decision and will likely only delay Supreme Court review."

But Millhiser says the longer subsidies remain in place, the harder it would be for the Supreme Court to take them away. With a full D.C. Appeals Court decision not likely until next spring, the soonest the Supreme Court would hear the case would be in the 2015-2016 session. By that time, he said, "people will have had subsidies going on three years."