



Why Obamacare without subsidies would be a disaster

By Adam Serwer
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Since the Affordable Care Act was passed in 2010, Republicans have warned that health insurance premiums would reach escape velocity, traveling far out of reach of the average American and dooming Obamacare. That hasn't happened yet, but Tuesday's court ruling, universally celebrated by Republicans, could make that a reality.

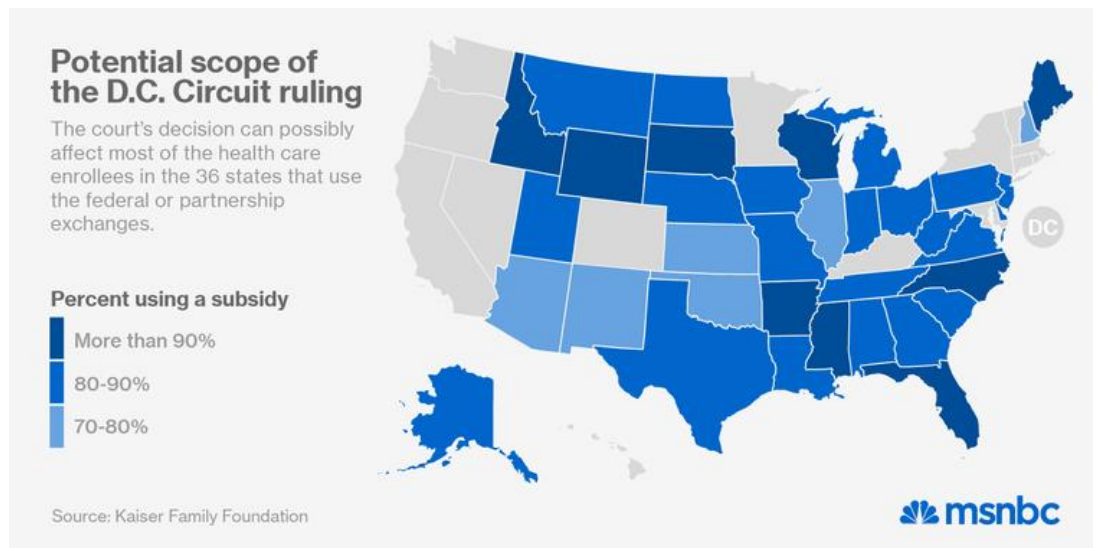
"Tens of millions of people who have received tax credits and who are under the government's view entitled to those tax credits, would now no longer receive them," said Nicholas Bagley of Michigan Law. "That would make it impossible for lots of families that have secured health insurance through the Affordable Care Act to retain it."

The D.C. Circuit Court of Appeals knocked down a rule from the Internal Revenue Service allowing people in federally run health insurance marketplaces, known as exchanges, to be eligible for subsidies. Two Republican-appointed judges on the three-judge panel agreed with the challengers that the law, which refers to subsidies being available "in an exchange established by the state," meant those living in states that haven't set up their own exchanges aren't eligible.

Both President Obama and the Democratic leadership in Congress have scoffed at that interpretation, but a majority of judges on the panel didn't believe them. Largely because of Republican resistance to the ACA, thirty-six states have refused to set up exchanges, and more than five million Americans have purchased insurance through federally-run marketplaces, 86% with help from the subsidies. That insurance is, according to the government's estimates, 76% cheaper on average than it would be otherwise.

One brief in the case, filed by a group of economists, estimates that the absence of the subsidies could push the cost of insurance up to 23% of income for an individual purchasing the cheapest plan, and up to 28% of income for the mid-level plan. Without

the subsidies, they predict, “health insurance coverage would remain unaffordable for more than 99 percent of the families and individuals eligible for subsidies under the current IRS rule.”



The Obama administration has said it will appeal the D.C. Circuit’s ruling to the full panel, which – thanks to Senate Democrats abolishing the filibuster – no longer has a Republican-appointed majority. But if the ruling were upheld, “It would certainly throw the Affordable Care Act, which has really started to hit its stride, into turmoil again,” said Doug Kendall, head of the liberal Constitutional Accountability Center.

In other words, without the subsidies, insurance premiums would go way up for Americans in those thirty-six states. Rather than creating a near-universal system of insurance coverage, as it was intended to do, the Affordable Care Act would leave millions of people in more than half the states in the country without insurance. Some of the sickest people would still find ways to purchase insurance, even at prohibitively expensive prices, while healthier people could choose to pay the individual mandate tax instead, further driving up premiums. Lawmakers could find themselves under increased pressure to set up exchanges by residents facing much higher health care costs, but there’s no guarantee they ultimately would.

“There’s no way that people would have passed health reform if they thought they were just going to do it in the liberal states,” said Harold Pollack, a professor at the University of Chicago’s School of Social Service Administration. “That’s why it’s so crazy to believe there was any ambiguity in congressional intent.”

It wasn’t all bad news for the Affordable Care Act on Monday. A second three-judge panel from the Fourth Circuit Court, made up of Democratic appointees, unanimously upheld the IRS rule, calling the challengers’ argument “tortured and nonsensical.”

Supreme Court watchers like Tom Goldstein have argued that if the challenge to the DC Circuit ruling makes it to the high court, the same justices who prevented the law from being struck down two years ago would do so again.

As for those who could face steep increases in the cost of health care coverage as a result of the lawsuit and find themselves uninsured once again, one of the architects of the lawsuit, the libertarian Cato Institute's Michael Cannon, says Obama is at fault. If the challenge "results in people losing health-insurance subsidies," Cannon wrote, "the blame lies with a president who recklessly offered millions of Americans tens of billions of dollars in subsidies he had no authority to offer, that could vanish with a single court ruling."