



Obamacare's Survival up to State Legislators

Figures for *Halbig's* Michigan impact

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The U.S. Court of Appeals for the D.C. Circuit has just ruled that the federal health care law does not authorize insurance subsidies provided through health care “exchanges” that were set up by the federal government. Only exchanges set up by the states can qualify for these taxpayer subsidies.

D.C. Circuit appeal rulings are especially significant because, unlike appeals courts for other districts, they can affect the entire nation, not just one region. Given a contradictory ruling from the Fourth Circuit Appeals Court (which directly affects four states in the Southeast), the issue is likely to be taken up by the Supreme Court sooner rather than later

If this decision prevails (and to the extent the rule of law is actually enforced on the current administration's actions), the ruling might force the suspension of exchange subsidies in 36 states — including Michigan — whose legislatures declined to create a state-run exchange. That will all play out in the fullness of time, but here's what the ruling means right now for Michigan:

Much of this state's political class — including many of the politicians who voted for the Obamacare Medicaid expansion — will loudly demand that the Michigan Legislature immediately create a state exchange. The chorus will be led by the law's cheerleaders in the mainstream media, and the state insurance industry (including the giant Blue Cross Blue Shield).

This case poses an existential threat to the law euphemistically known as “the Affordable Care Act.” If the current decision is upheld, the ACA's survival will be in the hands of legislators in Michigan and 35 other states. In plain English, Obamacare will likely collapse if its subsidies are not available in more than half the states, or even a significant number of those states. One study shows that, thanks to rate hikes driven mainly by the law's coverage mandates, the cost of insurance for those who currently get subsidies would increase 76 percent on average nationwide, and 74 to 78 percent in Michigan.

Legislators who vote to keep the law on life support by creating a state exchange will find it very difficult to claim that they also “oppose Obamacare.” (In 2011 the Michigan Senate voted to create a state exchange, but the House never took up the bill; see Mackinac Center coverage here.)

In addition, under this ruling if Michigan creates an exchange it will expose many more businesses and residents here to penalties for noncompliance with the “individual mandate” and employer mandate. The Cato Institute’s Michael Cannon has written extensively about this case, and also provided much of intellectual ammunition upon which *Halbig* is based. He has run the numbers on the ruling’s impact in the 36 federal exchange states.* Here are the figures for Michigan:

- Number of Michigan residents who would be freed by *Halbig* from the law’s individual mandate if *Halbig* is affirmed: 288,130
- Number of Michigan businesses with more than 50 employees that would be freed by *Halbig* from the employer mandate: 10,574
- Number of Michigan employees in those firms: 2,527,857

The following is speculation, but one outcome if the ruling stands - and the Michigan Legislature does not help maneuver around it — would be opportunities for individuals who would like to work full time but can only find part time jobs thanks to the employer mandate’s application to full time jobs (but not ones that provide fewer than 30 hours per week).

On that, the “household survey” component of the monthly employment report for June showed a nationwide decline of 523,000 full time jobs, and an increase of 799,000 part time jobs. (The component of the report that surveys employers showed a net gain of 288,000 payroll jobs.) These figures are subject to revisions that are often quite large, but they are still suggestive of magnitude of the employer mandate’s harmful effects.

*Sources:

Individual mandate exemptions: Explanation and methodology in “50 Vetoes: How States Can Stop the Obama Health Care Law,” Cato Institute, March 2013.

Employer mandate exemptions: U.S. Census data cited by Michael Cannon in “Halbig v. Burwell Would Free More Than 57 Million Americans From The ACA's Individual & Employer Mandates,” Forbes, July 21, 2014.