



Conflicting Rulings Portend Supreme Court Showdown for ObamaCare

By Dave Bohon

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Conflicting decisions by two separate appeals courts have observers of the ongoing ObamaCare debacle predicting a Supreme Court showdown for the socialized healthcare nightmare. The contradicting decisions, which came just hours apart on July 22, deal with whether or not the federal government can continue to subsidize the health insurance used by millions of Americans through the federal health insurance exchange.

By a 2-1 vote in the first decision, a panel for the U.S. Court of Appeals for the District of Columbia ruled against an IRS regulation that allowed federal subsidies for middle- and low-income Americans whether they purchased health insurance through a state exchange or through the federal government.

Explaining the majority opinion, U.S. Circuit Judge Thomas Griffith explained that the justices reached their conclusion “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, high as those stakes are, the principle of legislative supremacy that guides us is higher still.”

Griffith wrote that a study of the IRS provision in the ObamaCare law reveals an authorization of “tax credits for insurance purchased on an Exchange established by one of the 50 states or the District of Columbia....” However, he noted, “the Internal Revenue Service has interpreted section 36B broadly to authorize the subsidy also for insurance purchased on an Exchange established by the federal government under section 1321 of the Act.”

Griffith and fellow Circuit Judge A. Raymond Randolph concluded that those challenging the IRS provision “have the better of the argument: a federal Exchange is not an ‘Exchange established by the State,’ and section 36B does not authorize the IRS to provide tax credits for insurance purchased on federal Exchanges.”

But even as opponents of ObamaCare cheered the ruling, the 4th U.S. Circuit Court of Appeals offered its own contradictory decision in favor of the IRS-approved subsidies, with U.S. Circuit Judge Roger Gregory explaining that granting the subsidies to consumers purchasing insurance from the federal government was a “permissible exercise of the agency's discretion” in light of the law's ambiguous language.

In the 4th Circuit opinion, Gregory insisted that the subsidies are essential to meeting the goals of ObamaCare, and that Congress was fully aware of their importance when crafting the legislation.

With 34 states choosing to rely on federalized health insurance, wrote Gregory, the importance of the federal subsidy was heightened “once a significant number of states indicated their intent to forgo establishing Exchanges.”

Added Gregory: “Confronted with the Act’s ambiguity, the IRS crafted a rule ensuring the credits’ broad availability and furthering the goals of the law. In the face of this permissible construction, we must defer to the IRS Rule.”

While expressing its gratitude over the 4th Circuit decision, the Obama administration said that it would appeal the ruling of the D.C. Circuit Court. “We believe that this decision is incorrect, inconsistent with congressional intent, different from previous rulings, and at odds with the goal of the law: to make health care affordable no matter where people live,” said Emily Pierce, a spokesperson for the Department of Justice, in a statement. “The government will therefore immediately seek further review of the court’s decision.”

Most legal observers have said that with such conflicting decisions, the fate of ObamaCare will ultimately end up in the hands of the Supreme Court. Adam Winkler, a law professor at UCLA, predicted that “if the D.C. Circuit’s opinion stands, it will be a devastating blow to ObamaCare. It would cripple the law in the 36 states with federal exchanges.”

Michael Cannon of the Cato Institute, which was part of the court challenge to the IRS subsidy, told *USA Today* that the D.C. Circuit ruling came as a result of a majority of states refusing to set up their own exchanges. “This is popular resistance to the law,” he said.

Sam Kazman, general counsel of the Competitive Enterprise Institute, the lead group coordinating the lawsuit, told *USA Today* that “this illegal rule would have cost employers crippling fines, destroyed jobs, and forced Americans to pay for insurance that they didn't want or need. The court's decision put an end to the administration's power grab that the IRS rule represented.”

In practical terms, however, it appears unlikely that the federal subsidies, which are accessed by as many as five million low-to-middle income Americans (who earn up to \$94,200 annually for a family of four), will be pulled back anytime soon. Legal appeals and a possible Supreme Court ruling will take years, and in the meantime the Obama administration will doubtless be working on a sleight-of-hand alternative in case the High Court ultimately rules against ObamaCare.