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Wild day for Obamacare: Appeals court rulings conflict

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Two federal appeals courts issued contradictory rulings on Obamacare subsidies within a few hours Tuesday, one delivering a victory and the other a major blow to the White House in a chaotic legal fight that will determine whether millions of Americans can get subsidized coverage through HealthCare.gov.

First, the U.S. Court of Appeals for the D.C. Circuit in a 2-1 decision said the insurance subsidies can't be awarded through the 36 federal-run exchanges, that they can only flow through the state-run markets. Hours later, the Fourth Circuit court ruled 3-0 that people can draw on the subsidies in both kinds of exchanges. The divergent opinions set up a clash that could eventually end up at the Supreme Court — and reverberate through the fall campaign.

The ruling against the subsidies is the second Obamacare strike against the White House in less than a month, after it lost in the Supreme Court's *Hobby Lobby* ruling on birth control coverage. But unlike the contraception rule, which is a small piece of the health law, the subsidies go to the heart of coverage expansion in the Affordable Care Act. This case also poses different legal questions from the 2012 challenge to the law's individual mandate, which the court ruled was constitutional.

For now, no one will have their subsidies cut off while the legal battle continues. The Obama administration said it will appeal the D.C. ruling on *Halbig v. Burwell* by asking for an en banc review involving the full panel. "We are confident in the legal case that the Department of Justice will be making," said White House press secretary Josh Earnest. The plaintiffs in the fourth circuit's *King v. Burwell* in Virginia haven't yet said what they'll do next.

The legal battle arises partly because of ambiguity in the long and complex statute. It's also another outgrowth of the bitter politics surrounding President Barack Obama's crowning domestic legislation. States were originally expected to run their own exchanges, but as Republican governors refused to implement the health law and some Democratic states couldn't handle the technical complexity of a state exchange, most opted for using the federal HealthCare.gov instead.

Opponents of the health law said that if the subsidies are ultimately cut off from the federal exchanges, it's the administration's own fault.

"If *Halbig* results in people losing health-insurance subsidies, 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," said the Cato Institute's Michael Cannon, who has been involved in the legal battle.

Unlike other major Obamacare challenges, this controversy hinges on just a few words in a lengthy law. The D.C. Circuit concluded — "frankly, with reluctance," as one judge wrote — that the statute narrowly but explicitly authorizes only state-run exchange subsidies, no matter what Congress may have intended. The Richmond court saw ambiguity in the text, but said the IRS had the power to interpret the statute broadly as it set the rules.

The Department of Justice said it would seek a review of the decision it lost.

"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," a DOJ spokeswoman said.

The *Halbig* and *King* cases are two of several lawsuits in which individuals or state officials are challenging the Obama administration's authority to grant subsidies in the form of tax credits to low- and middle-income Americans buying health coverage through the federal-run exchanges.

Both sides claim that a full reading of the 2010 health care law—and Congress' intent when passing it—supports their own interpretation. The plaintiffs argue that Congress intended to motivate the states to run their own exchanges by tying the subsidies to them. The administration says that would have gone against the whole goal of the law: to help Americans find affordable health coverage.

In both rulings, the judges said it's unclear exactly what Congress intended when passing the 2010 law. And both courts said a literal reading of its text better supports the challengers' case than the administration's — though in the *King* decision that wasn't the final word.

In *Halbig*, Judge Thomas Griffith said the phrase in question trumped the limited evidence of what exactly Congress intended. "The fact is that the legislative record provides little indication one way or the other of congressional intent, but the statutory text does. Section 36B plainly makes subsidies available only on Exchanges established by states," he wrote.

Judge Arthur Randolph issued a concurring opinion with Griffith, while Judge Harry Edwards dissented. Griffith and Randolph were appointed by Republican presidents. Edwards was appointed by a Democrat.

"Appellants' interpretation is implausible because it would destroy the fundamental policy structure and goals of the ACA that are apparent when the statute is read as a whole," Edwards wrote.

In the *King* case, however, all three judges ruled that the IRS correctly determined that subsidies, or tax credits, can flow through all Obamacare exchanges despite the law's unclear wording. "Confronted with the Act's ambiguity, the IRS crafted a rule ensuring the credits' broad

availability and furthering the goals of the law,” Judge Roger Gregory wrote. “In the face of this permissible construction, we must defer to the IRS Rule.”

King was brought by four Virginia residents. Virginia Attorney General Mark Herring, who had defended the subsidies in his state’s federal-run exchanges in a reversal of his predecessor Ken Cuccinelli’s position, applauded the decision.

“Today’s ruling is welcome news for 177,000 Virginians who have already purchased a plan and received financial assistance, and for those who may purchase healthcare through the exchange in the future,” he said in a statement.

If the subsidies are ultimately blocked, an estimated 7.3 million people — about 62 percent of those expected to enroll in federal-run exchanges by 2016 — could lose out on \$36.1 billion, according to a report from the Robert Wood Johnson Foundation.

The individuals and businesses who filed both cases argued that the subsidies were illegally awarded in their states. The individuals said that without the subsidies, they could have been freed from the law’s individual mandate to buy health coverage based on economic hardship—an exemption granted to some people who still find coverage options unaffordable.

But the administration countered that the law allows the subsidies to be provided through the insurance marketplaces in all 50 states and the District of Columbia.

The subsidies are a key part of the health care law’s goal of making health coverage affordable for all Americans. They’re available on a sliding scale to individuals getting a plan through an exchange and who earn between 133 percent and 400 percent of the federal poverty level.

State officials have also filed similar lawsuits in Indiana and Oklahoma, but neither case *has yet been heard in court*.