



Obamacare decision shows impact of Obama's judges

By Richard Wolf
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WASHINGTON -- A federal appeals court decided Thursday to reconsider a ruling that threatened to disrupt the nation's health insurance expansion for millions of consumers.

By doing so, it illustrated what liberals have yearned for and conservatives have feared for six years: President Obama's judges are having an impact.

The decision by the U.S. Court of Appeals for the D.C. Circuit to throw out a July ruling by a Republican-dominated, three-judge panel gives the administration another chance to win the case. That would make a risky Supreme Court showdown less likely.

The new hearing is scheduled for Dec. 17. It's critical for more than 5 million Americans in 34 states that did not set up their own health care exchanges, or online marketplaces. Federal subsidies in those states would be eliminated under the panel's earlier decision, which was based on the precise language of the law.

The subsidies offered through the exchanges have reduced monthly insurance premiums by 76% for those who qualify, federal health officials say. The average monthly premium dropped from \$346 to \$82. But only participants in state-run exchanges would be permitted to keep the subsidies unless the panel's ruling is reversed.

For decades a bastion of conservative jurists appointed by Republican presidents, the appeals court -- steppingstone to the Supreme Court for many a justice -- is undergoing a political metamorphosis that could affect everything from workplace rules to the air we breathe.

It took nearly five years for Obama and Senate Democrats to overcome Republicans' opposition to his most controversial nominees. In the end, they had to change the chamber's rules to prevent filibusters by a minority of senators. That cleared the way for Obama to fill out the 11-member court late last year.

As a result, the nation's second-most powerful court now has seven judges named by Democratic presidents and four named by Republicans. Seven senior judges serving part-time -- six of them Republican appointees -- tend to balance things out.

The Senate unanimously confirmed Obama's second nominee, Sri Srinivasan, after Republicans blocked the first. But his other three judges -- Patricia Millett, Nina Pillard and Robert Wilkins -- were confirmed with GOP opposition following the rules change.

Since they became active participants in the court's cases, the tables have turned on the court's conservatives. In the past, three-judge panels with judges named only by Republican presidents were common; now, the reverse is true.

In late July, a three-judge panel that included two of Obama's nominees upheld Obamacare against a long-shot challenge that sought to strike down the law because of the procedures Congress used to approve it.

Last month, two Democratic appointees ruled for the Sierra Club in an environmental case, with the lone Republican appointee dissenting. And earlier this week, two Democratic appointees overcame a Republican appointee's dissent in a case that went against D.C. police for errors made in making unlawful entry arrests.

Such examples are few thus far, and the cases were not particularly ideological. But liberal and conservative advocates who monitor federal courts say the trend line is unmistakable.

"The shift will happen, but due to the nature of the cases that the D.C. Circuit handles, I don't think it's going to come in revolutionary strokes," said Ian Millhiser, senior constitutional policy analyst at the liberal Center for American Progress Action Fund.

"What you were looking at before these appointees came on was a court that was really far out of the mainstream," said Michelle Schwartz, director of justice programs at the liberal Alliance for Justice. "Now you've got a more balanced court."

That's not how Michael Cannon, director of health policy studies at the libertarian Cato Institute, sees it. One of the originators of the lawsuit against Obamacare's federal tax subsidies, he said the decision to rehear the case "has the appearance of a political decision."

Said Carrie Severino, chief counsel at the conservative Judicial Crisis Network: "I don't think anyone has any doubt that those four judges are liberal, and that it will eventually be clear from their decisions on the court as they accrue more time on the bench."