

The Washington Times

Obamacare in intensive care The president could pay the full price for ignoring Congress

Editorial
July 22, 2014

Obamacare was moved Tuesday to intensive care. Two federal appellate courts split over whether the administration can bypass Congress and rewrite the Obamacare law as it wishes Congress had written it. Such a split on a high-profile case can be resolved only by the Supreme Court.

The U.S. Court of Appeals for the District of Columbia Circuit held that the IRS cannot subsidize the premiums for Obamacare insurance in the 36 states that did not establish a state health-insurance exchange. The 4th U.S. Circuit Court in Richmond came to the opposite conclusion.

The dilemma was wrought when the IRS, under White House direction, offered tax credits to subsidize policies bought through federal exchanges. This runs contrary to the plain words of the Obamacare statute, which says that only insurance purchased through state-run exchanges qualifies for the subsidy.

In drafting his law, President Obama intended the subsidies as the carrot to entice states to create their own health care insurance exchanges. He never expected states to reject the scheme — what politician would turn his back on “free” money? This is no minor legal detail. The subsidies add up to \$36 billion a year.

The burden was on the administration to prove that it was operating within the bounds of the law, but Mr. Obama’s lawyers begged the appellate courts to re-draft Obamacare with a court order, which two of the three judges of the D.C. Circuit panel were unwilling to do. “We find that the government has failed to make the extraordinary showing required for such judicial rewriting of an act of Congress,” Judge Thomas Griffith wrote for the panel.

The judges in Richmond were persuaded to throw Mr. Obama a life preserver. They feared the consequences of striking down a key aspect of the federal health care takeover because it would cost 5 million Americans the subsidies that make health insurance “more affordable.” Michael Cannon of the Cato Institute estimates that 57 million Americans would be freed from the employer mandate.

When the decision lands in the lap of the Supreme Court, as it surely will, Chief Justice John Roberts will once more decide whether to save Obamacare or the Constitution.

If the subsidies do not survive, it won't be the fault of the judges who struck down the handouts, the men who brought these cases to federal courts or the millions who oppose Obamacare. The fault will lie with Mr. Obama, who with impatience and arrogance pushed this change in public policy, with enormous consequences, through Congress without a smidgen of bipartisanship or deliberation.

He gave Congress no time to read the 2,700 pages of the legislation, with no thought of the consequences for one-sixth of the American economy. This was a recipe for disaster. Everyone could see it coming.

Had Mr. Obama not burned every bridge to get his way on his signature bill, he might have persuaded Republicans to write a legislative fix. Republicans who endured remarkable presidential insult are likely to sit back now to watch his failed experiment in socialized medicine crash at the president's feet.