



Supreme Court to hear new Obamacare challenge

By Michael Doyle

November 7, 2014

Writing another prescription for showdown, the Supreme Court on Friday said it would consider a new challenge to the Patient Protection and Affordable Care Act.

In a highly anticipated decision, issued without written explanation, the court announced it would set arguments for the [King v. Burwell](#) case that will shape the future of the health exchanges set up under the law.

[The case](#) involves whether the federal government can provide tax-credit subsidies to coverage purchased through federal exchanges established in states that did not set up their own exchanges. If the court's conservative majority decides the answer is no, it would have serious consequences for the overall health care reform law.

"This is a challenge to the most consequential regulation promulgated under the Patient Protection and Affordable Care Act," attorney Michael Carvin stressed in his petition to the court.

In July, two appeals courts reached radically different conclusions about whether millions of consumers in 36 states can use the tax credits to help buy health coverage on the federal health insurance marketplace.

A divided panel of the U.S. Court of Appeals for the District of Columbia Circuit concluded that the Obama administration stretched the 2010 health care law too far in extending the subsidies. That decision is now set for review by the full D.C. appellate court in December.

The Richmond, Va.-based 4th U.S. Circuit Court of Appeals reached the opposite conclusion about the same set of facts. In a unanimous decision, the three-judge panel called extension of

the health insurance tax credits a “permissible exercise” of a federal agency’s discretion in interpreting ambiguous legislative language.

White House Press Secretary Josh Earnest said Friday that the congressional intent was “quite clear” in that it intended that eligible customers who signed up for health insurance through the marketplace would be eligible to receive assistance from the government to make their premiums more affordable.

"We continue to have high confidence in the legal argument both from a legal perspective, but also from a common sense perspective," Earnest said.

Michael Cannon, director of health policy studies at the libertarian Cato Institute, praised the decision, saying “it is essential that these cases receive expedited resolution, if only to eliminate the uncertainty currently facing states, employers, insurers, and taxpayers.”

Obamacare supporters denounced the court.

“From a legal standpoint, this is a specious lawsuit,” said Ron Pollack, executive director of Families USA. “It is surprising therefore that some members of the Court – which is supposed to represent the branch of government that is not supposed to be political – have decided to enter the political fray.”

Pollack noted that it’s relatively unusual for the Supreme Court to hear a case when there is no split among appellate circuits. Although a three-judge panel of the D.C.-based appellate court ruled differently than the 4th Circuit, this decision was struck once the full D.C. court agreed to hear the case en banc.

“The need for a quick and final resolution of this question is undeniable,” said Sam Kazman, general counsel for the conservative Competitive Enterprise Institute.

The last time the high court heard a challenge to a key plank of the health care law, Chief Justice John Roberts, Jr., dismayed his conservative allies by writing the 5-4 majority decision upholding the law’s individual mandate.

Arguments are likely to be held in March, and a decision would be expected by the end of June.