



## **Oklahoma Court Rules that IRS Obamacare Subsidy Rule is "arbitrary, capricious, an abuse of discretion"**

Peter Suderman

*Oct. 1, 2014 3:04 pm*

The most significant legal challenge to Obamacare right now involves a somewhat complex debate about statutory interpretation, the legal validity of the insurance subsidies offered through federal exchanges, and multiple simultaneous waves of court challenges across the country.

But at its heart is a single question: Should the text of the legislation be interpreted literally, according to its plain and unambiguous meaning, or, as the administration would prefer, should it not?

The administration and its supporters have argued that the challenge is frivolous and cynical, a legal ploy designed to gut the law, but it took another loss in court yesterday, suggesting once again that the argument from the challengers is not without merit.

The challengers argue that Internal Revenue Service (IRS) and the administration acted illegally by interpreting the legislative language, which says only that subsidies may be granted to insurance plans purchased in exchanges established by a state (defined as the 50 states plus the District of Columbia), to mean that subsidies may be granted for plans purchased on exchanges established by the state as well as the federal government, which last year set up and operated exchanges in 36 states. The final outcome of this dispute is potentially very significant: If the challengers win, then that means the subsidies offered in those 36 federally run exchanges will no longer be legally available.

Several versions of this challenge are now making their way through the court system: In Virginia, a panel of judges from the Fourth Circuit decided in July that, even though "a literal reading of the statute undoubtedly accords more closely with [the challengers'] position," the administration had the better case overall, after giving "deference" to the IRS interpretation. On the same day, a panel of judges in the D.C. Circuit ruled in favor of the challengers, agreeing that the legislation "plainly makes subsidies available only on Exchanges established by states." That decision was later vacated when the full D.C. circuit has agreed to rehear the case; most observers believe that the full circuit decision is likely to favor the administration.

In the meantime, the challengers have scored another victory, this time in a lower court in Oklahoma. Much like the three-judge panel in the D.C. Circuit, the Oklahoma judge ruled that

the plain language of the legislation is clear, and that absent ambiguity in the plain language, its meaning cannot be ignored or conveniently interpreted away.

"The court holds that the IRS rule is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law," writes District Judge Ronald White, in the case of *Pruitt v. Burwell*.

"This is a case of statutory interpretation. The text is what it is, no matter which side benefits'," White says, quoting *Bornes v. United States*. "Such a case...does not 'gut' or 'destroy' anything. On the contrary, the court is upholding the Act as written."

How much will this matter? In the short term, not much. White stayed his decision, pending the resolution of any potential appeal, and with the full D.C. Circuit rehearing the other case decided in favor of the challengers, its likely that there will be no circuit split, at least for the moment. The question is how the Supreme Court will treat the case. It's rare for the High Court to take a case without a circuit split, but if the Oklahoma case is decided in favor of the challengers, it could result in a circuit clash. And it's at least possible, though not in any way certain, that the ruling could help convince the Supreme Court to take the case even without a circuit split.

"It's a judicious opinion," writes Cato Institute Health Policy Direct Michael Cannon, who helped conceive the underlying legal challenge, "and now that we (once again) have different courts in different jurisdictions that have issued opposing rulings, *Pruitt* greatly strengthens the case for the Supreme Court to review [the Fourth Circuit case] *King*."

*Peter Suderman is a senior editor at Reason magazine.*