



A Big F'ing Deal: D.C. Circuit Strikes Down Federal Obamacare Subsidies

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A 2-1 panel of the U.S. Court of Appeals for the District of Columbia Circuit has reversed a lower court's ruling and invalidated the Internal Revenue Service regulation that provides for insurance subsidies to millions of lower-income Americans using the federal Obamacare exchanges. The decision, handed down on Tuesday, will cancel the subsidies in 36 states, making Obamacare unaffordable to many and potentially crashing the system.

The case was thought to be the most significant challenge to Obama's signature domestic achievement, officially known as the Patient Protection and Affordable Care Act, since the law survived a Supreme Court challenge in 2012. The lawsuit was brought by individuals and employers in states that did not create their own insurance exchanges and who were therefore forced to use the troubled federal Obamacare exchanges--or face an IRS tax.

The basis of the challenge was the precise wording of the law, which restricts the federal subsidies to exchanges "established by the State." The IRS interpreted that wording liberally to cover even those states that did not establish Obamacare exchanges (though, ironically, the administration recently exempted U.S. territories by interpreting the term "state" narrowly). The D.C. Circuit sided with the plaintiffs' plain reading of the law.

"We conclude that appellants have the better of the argument: a federal Exchange is not an 'Exchange established by the State,' and section 36B does not authorize the IRS to provide tax credits for insurance purchased on federal Exchanges," the majority held. Arguments about the broader intent of the law, or about the possible negative results of a literal interpretation of the law, could not outweigh the text of the law itself.

Breitbart News' Senior Legal Analyst Ken Klukowski, who is involved litigating an Obamacare case raising this issue elsewhere in the country, praised the decision. While emphasizing that he is not speaking about his specific case--referring any questions to the press secretary of the elected official in charge of that case--Klukowski responded that today's opinion by the D.C. Circuit is extremely significant.

"Today the federal Court of Appeals issued the right decision, concluding that an federal agency cannot disregard the words of a federal law and insert their own meaning to produce a different outcome," Klukowski explained. "The way Congress wrote the Obamacare law, a state needs to set up its own exchange for any person in that state to force other Americans to pay for that person's healthcare through tax subsidies."

"The D.C. Circuit ruled today that the government isn't Humpty Dumpty and so statutory text doesn't mean whatever the government says it means," said Ilya Shapiro, who filed an *amici curie* brief with the California-based Pacific Legal Institute. "Today's ruling shows that Obamacare, a cynical political bargain that lacked popular support from day one, simply doesn't work as conceived," he told Breitbart News after the decision.

In addition, the majority found that a literal interpretation of the text did not lead to "absurd" consequences for the law--and that, in fact, it helped the law in some cases, such as in states where subsidies could jeopardize the eligibility of recipients for state Medicaid assistance. Though the majority said it reached its conclusions "with reluctance," the supremacy of Congress required them to rule in accordance with the letter of the law.

The dissenting judge--the lone Democrat appointee--complained that the lawsuit was a "not-so-veiled attempt to gut the Patient Protection and Affordable Care Act." He argued that the majority's ruling meant that the disputed section of the law "would function as a poison pill to the insurance markets in the States that did not elect to create their own Exchanges." Congress, he wrote, would not want state insurance markets to collapse.

The decision was made by a Court that has been at the center of political controversy lately. Though the D.C. Circuit has been balanced between Republican and Democrat appointees in recent years, President Barack Obama was able to appoint several new judges to fill vacancies after Democrats in the Senate unilaterally changed the filibuster rule. Republicans wanted to reduce the number of judges rather than allow an imbalance.

The government is expected to appeal the case to the full D.C. Circuit, which now has a 7-4 Democrat majority. Regardless of the outcome there, the case is likely to reach the U.S. Supreme Court, which has shown a tendency in the past to interpret the Obamacare statute rather creatively, ruling in the 2012 case, *NFIB v. Sebelius*, that Obamacare was a "tax," not a "penalty," though there was no textual basis for that controversial conclusion.

Congress could, in the meantime, solve the problem on its own--either by passing new legislation that would put the government's argument into effect (as the two-judge majority suggested), or by repealing Obamacare.

"It's time to repeal this Frankenstein's monster and instead pass market-based health care reform that lowers costs, expands choice, and increases quality--all while respecting the rule of law," Shapiro suggested.