

Supreme Court will hear new case challenging Obamacare

The White House is promising a vigorous defense when the Supreme Court hears a new case involving the health care law. (Nov. 7) AP

WASHINGTON — The Supreme Court agreed Friday to consider a major new challenge to President Obama's health care law.

The decision to hear the case without waiting for a split among federal appeals courts represents a major victory for opponents, who had lost a unanimous verdict at the U.S. Court of Appeals for the 4th Circuit.

The justices agreed without comment to reconsider that ruling, which upheld the law's system of subsidizing the insurance coverage it requires. That's a setback for the administration and proponents of Obamacare, but it is not the final word.

The controversial program faces four separate lawsuits charging that billions of dollars in subsidies can only be offered in health care exchanges run by states. The federal government operates more than two-thirds of the exchanges.

Opponents mounted the challenges based on the specific language of the law, which states that subsidies, offered in the form of tax credits, will be offered in exchanges "established by the state." They contend that nullifies the subsidies offered since the program began in 36 states that did not set up their own exchanges, relying instead on the federal exchange — a form of online marketplace.

Any ultimate ruling against the system of subsidies would blow a major hole in the law. Those subsidies make the private health insurance policies offered on the exchanges affordable to most Americans without employer-sponsored insurance plans.

If the subsidies are invalidated in 36 states, then many of the tax penalties imposed on employers and individuals for non-compliance with the law also would be eliminated. Employers pay a penalty when their workers get subsidized on the exchange. Individuals get penalized if they don't buy affordable insurance, but the subsidies often are what make it affordable.

White House press secretary Josh Earnest said officials still believe the law will be upheld, just as it was in 2012, when Chief Justice John Roberts wrote the court's 5-4 decision upholding the insurance requirement as a form of taxation.

"This will work its way through the legal process," Earnest said. "We continue to have high confidence in the legal argument, as a legal matter but also from a common-sense perspective."

Other proponents of the law were not nearly so sanguine. Ron Pollack, executive director of the consumer health group Families USA, said the court's willingness to hear the case so soon "is a clear indication that at least some of the justices are determined to enter the political fray about the Affordable Care Act."

But Jonathan Adler, a law professor at Case Western Reserve University who helped conceive of the challenge, said it gives the court a chance to reaffirm that "the law is what Congress enacts, not what the administration or others wish Congress had enacted with the benefit of hindsight."

A three-judge panel of the U.S. Court of Appeals for the 4th Circuit in Richmond ruled unanimously against opponents in July, hours after a similar appeals court panel in Washington, D.C., ruled 2-1 in their favor.

That latter ruling has been appealed by the administration to the full appeals court, which will hear the case next month. While the panel that ruled against the law contained two judges nominated by Republican presidents, the full D.C. appeals court tilts the other way. Two similar cases remain pending in Indiana and Oklahoma.

The justices' decision Friday shows that they saw no reason to wait for the other rulings before deciding the subsidy issue on their own — and in that sense, it came as a surprise. The justices also may decide to hear a major case on same-sex marriage by spring, making this one of the most consequential Supreme Court terms in decades.

More than 5 million Americans would be affected if the subsidies are struck down. They have reduced monthly insurance premiums by 76% for those who qualify, federal health officials say. The average monthly premium dropped from \$346 to \$82.

In 2016, an estimated 7.3 million people in the 36 states with federal exchanges would receive subsidies totaling \$36 billion, according to the Urban Institute. To qualify for subsidies, participants must have incomes below 400% of the federal poverty line, or \$95,400 for a family of four.

The D.C. appeals panel ruled in July that as written, the health care law allows tax credits to be offered only in state-run exchanges. The administration had expected most if not all states to create their own exchanges, but only 14 states did so. A majority of states purposely did not set up health exchanges because their governors and legislatures objected to the law.

The court said the IRS went too far in allowing participants in other states served by the federal exchange to qualify for billions of dollars in government assistance. The aid has helped boost enrollment figures to more than 8 million.

"We reach this conclusion, frankly, with reluctance," Judge Thomas Griffith, a Republican appointee, said. "At least until states that wish to can set up exchanges, our ruling will likely have significant consequences both for the millions of individuals receiving tax credits through federal exchanges and for health insurance markets more broadly."

Judge Harry Edwards, the lone Democratic appointee on the panel, dissented, calling the challenge "a not-so-veiled attempt to gut the Patient Protection and Affordable Care Act" and warning that the panel's ruling "portends disastrous consequences."

The only states, along with D.C., not affected by the case are those that created their own health exchanges: California, Colorado, Connecticut, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Nevada, New York, Oregon, Rhode Island, Vermont and Washington.

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