

US Supreme Court to hear challenge to Obamacare subsidies

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The US Supreme Court agreed Friday that it would consider a challenge to the subsidies to the Affordable Care Act (ACA). Arguments in *King v. Burwell* are likely to be heard in March, with a decision by the court expected before July.

The high court justices' decision to hear the case, which poses a potential threat to one of the central pillars of the health care bill, comes just days before the beginning of open enrollment for the second year of the ACA.

Under what is popularly known as Obamacare, individuals and families that do not have health insurance through their employer or a government program such as Medicare or Medicaid are required to obtain insurance or pay a tax penalty. Low-income individuals and families are eligible to receive tax credits to offset some of the costs of premiums for health insurance sold by private insurers on the exchanges set up under the law. More than 4 million people have so far qualified for the subsidies.

At issue in the case before the court is a four-word statutory phrase in the ACA. The law says people qualify for tax credits when they buy insurance on an online marketplace "established by the state." While at least a dozen of the 50 states and the District of Columbia have set up their own health care exchanges, residents in the balance of states are relying on the exchange set up by the federal government, HealthCare.gov. More than four-fifths of people who have received coverage through the federal exchange have qualified for tax credits.

In *King v. Burwell*, individuals in Virginia are challenging the legitimacy of the subsidies. Washington lawyer Michael Carvin, in a brief representing the plaintiffs, urged the high court to act quickly. If the court rules in their favor, he wrote, "it means millions

of people are ineligible for subsidies and exempt from the ACA's individual mandate penalty. It means hundreds of thousands of employers are free of the Act's employer mandate."

He added, "And it means that the IRS is illegally spending billions of taxpayer dollars every month without congressional authority." The Obama administration contends that the tax credit provisions comply with the spirit of the legislation. In a statement, White House press secretary Josh Earnest said, "This lawsuit reflects just another partisan attempt to undermine the Affordable Care Act and to strip millions of American families of tax credits that Congress intended for them to have."

The Supreme Court's decision to hear the case is unusual, as the issue is still pending before another federal appeals court. In July, the Fourth US Circuit Court of Appeals in Richmond, Virginia, upheld the federal exchange subsidies on the same day a panel of the US Court of Appeals for the District of Columbia Circuit struck them down. The full DC circuit subsequently set aside its panel's ruling and scheduled to rehear the decision in December, a move that could be canceled in light of the high court's decision to consider the case.

Republican and religious right challenges to the ACA have targeted the few nominally progressive components of the legislation, which otherwise leaves the for-profit health care system in place and stands to funnel billions of dollars to the insurance industry through the "individual mandate," which requires people to buy insurance under threat of financial penalty.

This is the third time the Supreme Court has heard a case involving the Affordable Care Act. In 2012 Chief Justice John Roberts joined four more liberal justices to

uphold the overall constitutionality of the law, while also ruling that states could not be required to expand their Medicaid programs. This means that nearly 5 million poor people have fallen into the “Medicaid gap,” with incomes above the poverty level but not enough to qualify for Obamacare subsidies.

Earlier this year, Roberts joined Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas and Samuel Alito in a reactionary ruling in *Burwell v. Hobby Lobby*. This decision allows private corporations to deny their workers insurance for birth control, coverage otherwise required under the ACA, as long as the corporate owners claim their religious beliefs oppose contraception.

A Supreme Court ruling against the Obama administration on the subsidies could mean that more than half of the 7.3 million people who have bought Obamacare policies are not entitled to the tax credits. Without these subsidies, many would find the insurance policies prohibitively expensive. They might then qualify for the law’s financial hardship exemption, which would render them uninsured. It would also potentially leave only the sickest and most desperate people in the pool of insured, raising overall costs.

As those shopping for insurance on the exchanges have already discovered, most of the affordable policies come with high deductibles and other out-of-pocket costs, as there is no meaningful oversight of what the for-profit insurers can charge for premiums. A ruling blocking the tax credits could potentially destabilize insurance markets, and cause insurers to pull out of the exchanges.

A ruling against the subsidies could also prompt some states to nominally “establish” their own exchanges, while authorizing the federal government to run it.



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