

WHY A SUPREME COURT DECISION TO RESTRICT HEALTH REFORM SUBSIDIES WOULD BACKFIRE ON REPUBLICANS

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Recently, the U.S. Supreme Court agreed to hear on March 4, 2015 a lawsuit called *King v. Burwell* funded by the libertarian Competitive Enterprise Institute. A major part of the Affordable Care Act of 2010 aims to expand access to health insurance by offering tax credit subsidies to middle-income people who purchase private plans on regulated marketplaces called “exchanges.” The *King* plaintiffs claim that one short phrase in the 900-page law prohibits the subsidies for people who live in states that use exchanges supported by the federal government rather than exchanges they built from scratch themselves.

Conservative activists anticipate that a June 2015 decision by a Supreme Court majority will “blow up” health reform; and many liberals also worry that a decision to restrict subsidies would eviscerate the law or “make Obama kill Obamacare” (in the words of Michael Tomasky). However, as political scientists who track the interplay of policy and politics, we conclude that doomsayers right and left are exaggerating policy effects and overlooking predictable ways in which a pro-*King* ruling would backfire politically on Republicans in Congress and many states.

Serious – But Contained – Policy Impact

Any Supreme Court decision to restrict subsidies would leave intact core provisions of the Affordable Care Act – and be met by immediate efforts to adjust.

- No changes would occur in national rules that guarantee new consumer protections and prevent private companies from refusing to offer standard plans to consumers with health problems.
- Federal funding would continue to flow to 28 blue and red states (and more to follow) that are using the health law to expand Medicaid coverage to about 8 million near-poor people.
- A pro-*King* ruling certainly would cut back the part of reform that facilitates subsidized purchases of private health insurance. During 2014, about 7.3 million middle-income people purchased private plans on regulated marketplaces in all fifty states – and another four to six million are projected to make purchases in 2015. More than 85% of these consumers get tax credits, substantial credits for half to two-thirds. Without the credits, premiums would become unaffordable for three to four million people living in 15 to 25 states. Insurers would lose customers, raise prices, and perhaps withdraw from those states, harming other purchasers.
- But insurance markets under health reform function state by state, so even if the Supreme Court rules for the *King* plaintiffs, subsidies and regulated insurance markets will continue in 18 states that already run or clearly authorize their exchanges (including GOP-run Idaho as well as Democratic and some divided states). Another seven to 15 states have always cooperated with federal officials and might authorize their exchanges. Overall, from half to

three-fifths of Americans reside in states where subsidies probably or certainly would not be discontinued. These states almost all have effectively functioning marketplaces where growing numbers of insurers are offering competitively priced plans and making solid profits.

Explosive Political Downsides for the GOP

Ironically, the citizens and private companies most at risk for big economic losses following a pro-King decision are overwhelmingly located in states governed by conservative Republicans. Furthermore, those who would be harmed are not very poor people who vote for Democrats or skip elections. They are middle-income people, at least half of whom support Republicans.

- In many GOP states tens of thousands of citizens facing the loss of affordable health plans would surely team up with insurance companies to pressure officials to authorize already functioning exchanges. That might not be so hard. Many presume that “state exchanges” must set up their own enrollment websites and directly conduct all functions. But under the health law, authorized state exchanges can contract or delegate functions to other states, federal agencies, or nonprofit boards. Funding might come through contributions from participating insurers. When states want new solutions, they will find them – and Obama administration officials would ease adjustments to keep exchanges operating in as many states as possible.
- Republican governors in Ohio, New Jersey, Iowa, Indiana, North Dakota, Nevada, and Michigan would face acute dilemmas, because their states have already expanded Medicaid to the near-poor. Officials would have to explain why the poor and near-poor continue to enjoy subsidized health coverage no longer available to middle-income residents.
- Governors in Iowa and Arkansas have worked out “waiver” agreements with federal authorities to use Medicaid expansion money to subsidize purchases of private health plans on their federally facilitated exchanges – and other states including Utah are engaged in similar discussions. If the federally facilitated exchanges in such states collapse, the Medicaid waivers will not work. Citizens will lose health coverage and hospitals will face major financial losses.
- If the Supreme Court restricts subsidies, Congressional Republicans will react with glee and press President Obama to accept repeal or major changes to the 2010 law – especially to relax insurance rules so that companies operating in states without subsidies would not have to enroll sick people still willing to pay higher premiums. *But polls show that insurance rules and exchange subsidies are approved by more than two-thirds of Americans across party lines.* President Obama would demand that Congress take simple steps to restore subsidies in all states. If Republicans were to refuse – or turn to partial or temporary fixes – they would invite blame and create a high-stakes issue for November 2016, when a large and diverse electorate is expected to go to the polls. In the pivotal states of Florida, North Carolina, New Hampshire, Ohio, Pennsylvania, and Virginia, the ranks of people who already benefit from premium subsidies exceed the vote gaps between the 2012 Republican and Democratic presidential candidates – and beneficiaries are close to that margin in Arizona, Michigan, and Wisconsin.

So far, Republicans have been able to denounce “ObamaCare” without discussing popular specifics. But that strategy will collapse if the Supreme Court threatens profits and benefits already in place – and a new Republican Party strategy may prove hard to devise amid splits between ultra-conservatives eager to destroy the health reform law and pragmatists seeking to modify and live with it.