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Access to Health Care for Millions in the Balance as US Supreme Court Reviews Federal Subsidies for Insurance

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When the Supreme Court narrowly upheld the individual health insurance mandate in National Federation of Independent Business v Sebelius (2012), the future of the Affordable Care Act (ACA) appeared secure. However, the case opened the door to 22 states refusing to expand Medicaid coverage for the poor—a major setback for health equity.

In addition, 19 states opted for fully federally operated exchanges (marketplaces to purchase insurance), and another 15 for a hybrid system, with the federal government retaining ownership. When states decided not to form state-run exchanges, few experts expected adverse consequences.

But all that could change.

On November 7, 2014, the US Supreme Court agreed to hear King v Burwell, which challenges an Internal Revenue Service (IRS) ruling that ACA subsidies could be granted to individuals purchasing insurance in federally operated exchanges. If the Court were to render these subsidies unlawful, it would threaten access to health care for millions and undermine the integrity of the ACA.

The ACA is often called a 3-legged stool—removing any leg would make the law unsustainable. First, insurers must offer certain defined “essential benefits” without price discrimination based on health status (limited exceptions are made for age and smoking). The Court had already chipped away at this ACA pillar in Burwell v Hobby Lobby Stores, Inc (2014), holding that the US Department of Health and Human Services (HHS) could not require “closely held” for-profit corporations to provide contraceptive coverage against their religious beliefs. Second, to prevent costs from spiraling out of control if the mix of enrollees included a disproportionate number of sick individuals because healthy people opted out, the ACA requires everyone to have health insurance or pay a fine. Third, because many lower-income Americans could not afford health insurance, the government helps to subsidize the cost. Without subsidies, insurance would remain unaffordable and the individual mandate would be unconscionable.

King v Burwell threatens to significantly undermine this third leg. The case centers on 5 words of the 900-page law (ACA §1401): subsidies are available to individuals enrolled under an “Exchange established by the State.” The ACA’s drafters expected states to run their own exchanges, but in reality most have declined. Under a literal interpretation, the law would apply only to individuals enrolled through a state exchange, excluding those residing in the 34 states using a federally established exchange. Notwithstanding this literal interpretation, the Internal Revenue Service (IRS) has permitted subsidies (“premium tax credits”) for all exchanges, whether state or federally operated.

The Supreme Court should never have agreed to hear the case because there was no split in the lower courts. The Fourth Circuit upheld the IRS’ rule. Although a DC Circuit panel struck it down, the full DC Circuit vacated that opinion, and with new Obama appointees, it was widely expected they too would uphold the IRS ruling.

Although “established by the state” appears clear, when read within the ACA’s context, it makes little sense—defying the ACA’s purpose and structure. The law says that if states opt out of state-run exchanges, HHS shall “establish and operate such Exchange” (ACA §321), suggesting that the federal exchange stand in for the state’s, assuming its function. It is well established that in the face of statutory ambiguity, the Court should defer to the agency’s interpretation. Thus, the Court’s precedents clearly call for upholding the IRS’ reasonable interpretation.

King v Burwell has the potential to severely impede health care access, eviscerating the ACA’s purpose of universal equitable access. About 83% of nationwide insurance enrollees applying through the national exchange are eligible for subsidies, worth an average of $2890 annually. The ACA has helped up to 9.5 million uninsured Americans obtain coverage. Withdrawing subsidies in states with federally established exchanges would make insurance unaffordable for a wide swathe of the population, undoing the gains made in access and equity.

Of course, individuals without insurance are not a representative sample of the population, but are more likely to be living in poverty, affected by a chronic disease, or belong to a racial and ethnic minority. Price barriers for these groups would create enormous hardship.

Striking down subsidies also could have dire consequences for the ACA itself. If insurance becomes unaffordable, an individual mandate to purchase insurance would be morally and politically unacceptable. However, removing the individual mandate could quickly overwhelm insurance markets, which would face a higher proportion of sick and at-risk people, with the young and healthy choosing to forego insurance until they needed it. This could lead to a “death spiral” in which premiums become increasingly expensive, leading to ever-fewer healthy people enrolling.

The Supreme Court is the branch of government intended to be a politically neutral arbiter. Will the Court uphold Congress’ clear intention and safeguard the public’s health?

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