

# Supreme Court's new health law case cuts both ways

4 February 2015, by Ricardo Alonso-Zaldivar



In this March 28, 2012 file photo, Janis Haddon of Atlanta holds her glove high outside the United States Supreme Court in Washington, Wednesday, March 28, 2012, as the court concludes three days of hearing arguments on the constitutionality of President Barack Obama's health care overhaul, the Patient Protection and Affordable Care Act. Nearly five years after President Barack Obama signed his health care overhaul into law, the Supreme Court will again get to decide its fate. (AP Photo/Carolyn Kaster)

The Supreme Court is taking another look at President Barack Obama's health care law, and this time it's not just the White House that should be worried.

Republican lawmakers and governors, too, will feel the backlash if the court invalidates insurance subsidies worth billions of dollars to people in more than 30 states.

Obama's law offers subsidized private insurance to people who don't have access to it on the job. Without financial assistance with their premiums, millions of those consumers would drop coverage.

Disruptions in the affected states wouldn't end there. If droves of healthy people bail out of HealthCare.gov, residents buying individual policies outside the government market could be next. Self-pay customers would face a jump in premiums because they're in the same insurance pool as the subsidized ones.

Health insurers spent millions to defeat the law as it was being debated. But the industry told the court last month that the subsidies are a key to making the overhaul work. Withdrawing them would "make the situation worse than it was before" Congress passed the Affordable Care Act.

The debate over "Obamacare" was messy enough when just politics and ideology were involved. It gets really dicey with the well-being of millions of people in the balance.

"It is not simply a function of law or ideology; there are practical impacts on high numbers of people," said Republican Mike Leavitt, a former federal health secretary now heading a health care consulting firm.

The legal issues involve the leeway federal agencies have in applying complex legislation. Opponents argue that the precise wording of the law only allows subsidies in states that set up their own insurance markets, or exchanges. That would leave out most beneficiaries, who live in states where the federal government runs the exchanges. The administration and the law's Democratic authors say Congress clearly intended to provide subsidies in every state.

While predicting a victory, the White House has not prepared consumers for the consequences of a

reversal. Health and Human Services Secretary Sylvia M. Burwell repeatedly said that "nothing has changed," even as other supporters of the law grew alarmed when the Supreme Court unexpectedly took the case.

At a Senate hearing Wednesday, Burwell refused to get into 'what-if' scenarios, telling Republican lawmakers she is completely focused on the current sign-up season.

With oral arguments set for March 4 and a decision expected early in the summer, here's what's at stake:

### RED STATES IN THE PATH



In this March 28, 2012 file photo, supporters of health care reform rally in front of the Supreme Court in Washington on the final day of arguments regarding the health care law signed by President Barack Obama. Nearly five years after Obama signed his health care overhaul into law, the Supreme Court will again get to decide its fate. (AP Photo/Charles Dharapak, File)

Insurance losses would be concentrated in Republican-led states, which have resisted "Obamacare."

Florida, Texas, North Carolina, Georgia, Michigan, and New Jersey are among those with the most to lose. Residents of blue states that are running their own markets would continue to receive benefits.

Because the health law's 2015 sign-up season is still under way, it's unclear how many millions of people could become uninsured. Two independent studies estimate around 8 million.

Not all the 37 states where the federal government is currently running insurance markets would be affected equally. Some have made progress setting up their own exchanges.

### TIME TO SCRAMBLE

If the Supreme Court rules in late June, that would leave about three months until the start of the next sign-up season for coverage.

If the ruling goes against the subsidies, it's unclear whether the courts can delay the effects for more than a few weeks, and most state legislatures are not in session during the summer.

There's speculation that the White House could quickly roll out an administrative fix, but Obama could also toss the whole mess into the lap of the GOP-led Congress.

Technically, a tweak from Congress could fix the problem. But after repeated votes to repeal "Obamacare," would any Republicans be willing to facilitate its rescue?

"We don't see fixes the administration can make, and we don't see Congress acting to fix this," said Neera Tanden, president of the Center for American Progress, a public-policy center aligned with the White House.



restoring some or all of the subsidies would have to be paid for with spending cuts or tax increases.

The last time the Supreme Court ruled on the health care law, the result was a 5-4 decision upholding its central requirement that virtually all Americans must carry health insurance. This time, it won't just be political junkies holding their breath before the announcement, but many consumers as well.

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The case is King v. Burwell, docket No. 14-114.

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In this Nov. 17, 2014 file photo, Health and Human Services Secretary Sylvia Burwell speaks in Miami. Sen. John Cornyn, R-Texas accused Burwell of being "contemptuous" of Congress on Wednesday by sidestepping about the Obama administration's preparations for a Supreme Court challenge to President Barack Obama's health care law. (AP Photo/Alan Diaz, File)

## REPUBLICAN vs. REPUBLICAN?

Faced with constituents at risk of losing coverage, some congressional Republicans may be willing to fix the subsidies in exchange for concessions from Obama on a long hit list of health law provisions they object to.

But other Republicans will not want to lift a finger.

"The president will say, 'With one line of legislation, you could save 5 million people from losing their health insurance,' and the Republicans need to have a unified response," said Leavitt, the former HHS secretary. "If they don't, then it creates a problem for them."

Despite several proposals in the five years since Obama's overhaul passed, Republicans have not coalesced around an alternative and remain hard-pressed to do so.

To complicate matters, congressional action

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