

How *King v. Burwell* Could Wipe Out Insurance Coverage for 4.1 Million Women



In June of 2015, the U.S. Supreme Court will make a decision in the case of *King v. Burwell*. If a core component of the Affordable Care Act (ACA) is overturned, 4.1 million women in 34 states could immediately lose their health insurance subsidies, making their coverage unaffordable. These are women who now receive assistance the law provides for millions of low- and middle-income Americans who live in states that did not set up their own health insurance marketplaces. If you take into account all of the people currently eligible for this benefit who have not yet signed up for health care policies, affordable health care access for about 9.3 million people is at stake in this case.

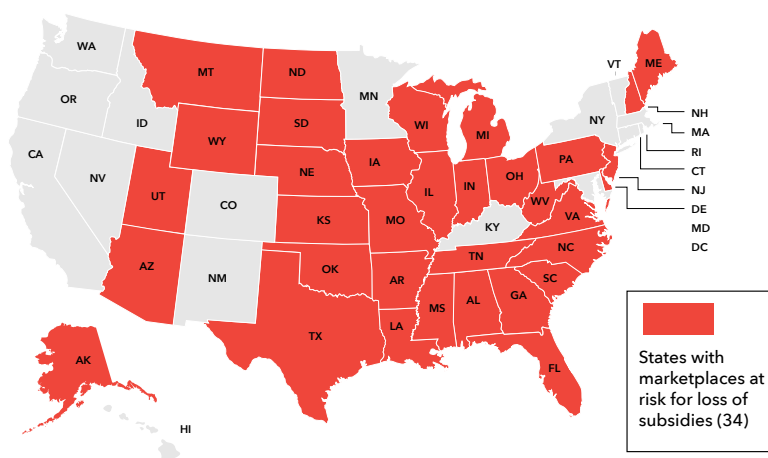
Here Are the Facts

Affordable birth control. Accessible cancer screenings. More and better health care for millions of Americans. Obamacare is working – but the U.S. Supreme Court is about to decide a case that could gut the ACA and roll back the amazing progress made. If the plaintiffs prevail, affordable health care coverage could be at risk for millions of men, women, and families, many of whom waited years to finally afford doctor's visits, prescription medications, and necessary medical procedures.

In this case, the Court is deciding whether or not federal financial assistance under the ACA should be available in all 50 states or only in the 16 states and the District of Columbia that have established their own state-based Marketplaces. A ruling in favor of *King* would mean that financial assistance – in the form of premium subsidies or tax credits – would no longer be available to low- and middle-income Americans who live in the 34 states using the federally facilitated Marketplace (FFM). About 87 percent of people signing up for coverage in the Marketplace have been eligible to receive premium subsidies – and millions of consumers were able to afford insurance for

the first time because of this financial assistance. If the Court rules in favor of *King*, the loss of premium subsidies would have a staggering, real-life impact for middle- and low-income Americans. Across the country, in 34 states, about 4.1 million women – including 1.4 million women of color – who have signed up for affordable health insurance would be at risk of losing their critical coverage.

Here's where the 4.1 million women live who will lose their insurance



Thirty-four states are wrapped up in *King v. Burwell*. About 4.1 million women – including 1.4 million women of color – would lose their affordable coverage if the plaintiffs prevail. If you take into account all eligible people, including those who have not yet signed up for benefits, 9.3 million people could be affected.

An Adverse Decision Would Move Us Backward on Health Care

Affordable health care access for 9.3 million people is at stake in this case. A ruling in favor of King would disproportionately impact women of color and families already struggling to make ends meet.

- **Over 7.5 million people have enrolled in affordable coverage with premium tax credits in the 34 states in the federal Marketplace.** ¹ If the Court rules in favor of King, these men, women, and children would lose federal premium subsidies that made coverage affordable for them and would be at risk of losing their health insurance.

- Taking into account those who have not yet signed up for a plan, **an estimated 9.3 million people are eligible for premium subsidies in the 34 states and are at risk of losing access to affordable health insurance.** ²

- If the Court rules for King, insurance premiums are estimated to increase by 35 percent, or a spike of about \$1,460 per year. ³ Loss of financial assistance plus the significant increase in premiums themselves would make health coverage unaffordable for millions of families, ⁴ which is what the ACA was designed to avoid.

- About half of the population at risk is located in five states – Florida, Georgia, North Carolina, Pennsylvania, and Texas. ⁵

- Of those who would feel the impact of a ruling in favor of King, nearly 5 million are low-income Americans earning less than \$24,000 a year. ⁶

- **About 4.1 million women, including 1.4 million women of color, who have enrolled in affordable Marketplace coverage in the 34 states** are at risk of losing their health coverage, including affordable birth control, maternity and prenatal care, cancer screenings, and other preventive care (See Table 1). This will have a profound impact

on women of color and families already struggling to make ends meet (See Table 1).

- In addition to women who already enrolled in coverage, millions more women who are eligible for health care subsidies, but not enrolled yet, would not be able to access financial help to afford coverage.

- A ruling in favor of King would disproportionately harm access to coverage and care in communities of color. **Of the 9.3 million people at risk of losing subsidies, about one-third are people in communities of color.** ⁷

- About 3.2 million people of color would lose access to affordable care if enrolled in Marketplace coverage with tax credits in the 34 FFM states if the Court ruled in favor of King.

- This includes about 1.5 million Hispanics, 1.2 million African Americans, and another 495,000 people of color who are at risk of losing access to tax credits and affordable coverage in the 34 FFM states. ⁸

- Research shows that a large majority of American voters believe that premium tax credits under the ACA should be available to people in all 50 states. The availability of financial assistance to help consumers afford health coverage is a popular element of the ACA. Seventy-one percent of voters want a Supreme Court decision that continues the availability of financial assistance in all 50 states and 63 percent would object to a decision that would limit the ACA's tax credits to only the 16 states that operate their own state-based Marketplaces. ⁹

4

million women



- including -

1.4

million women of color

gained insurance coverage that is now at risk

A Supreme Court ruling in favor of King would be a major step backward for women, taking away millions of women's access to basic health care, including birth control, maternity benefits, mammograms, and other critical preventive health care without a copay. A decision in favor of King would pose a dangerous threat to women's health.

- More women than ever have access to high-quality affordable health care and coverage for the full range of reproductive health services, including birth control, maternity benefits, mammograms, and other critical preventive health care without a copay¹⁰ – and they're not willing to go back.
- Thanks to the ACA and the availability of financial help, more than 55 million women are benefiting from access to fully covered women's health services, including birth control without a copay – which saved American women and families \$483 million, or an average savings of \$269 per woman, on birth control pills in the first year alone.¹¹
- The ACA has helped make health coverage more affordable and easier to get, and makes sure coverage includes a comprehensive set of benefits and services that women need.
- Without financial help, millions of women are at risk of losing critical health coverage, including maternity care, needed prescription drugs, and doctor's visits, as well as affordable birth control, well-woman exams, cancer screenings, and mammograms, without copays or other out-of-pocket expenses. These are the very benefits that sought to undo the previous sex discrimination in health care.

Background on the Case: *King v. Burwell*

To enable consumers to sign up for health insurance coverage, the ACA allows states to either set up their own Marketplaces or choose to have the federal government establish one for them. About 16 states and the District of Columbia operate their own state-based Marketplaces and 34 states use

the federally facilitated Marketplace. As the law stands now, middle- and low-income Americans are eligible for financial assistance from the federal government to help them afford the cost of health care premiums¹² – regardless of the Marketplace type in their state.¹³

DELMA'S STORY

Delma, 22, a college student in Austin, Texas, has health insurance for the first time in four years as a result of the ACA. She points out that Latinos in Texas comprise one of the highest uninsured groups in the nation.

She says, "I used to be one of the many individuals that fell into that group before the ACA. Health insurance had been inaccessible to me. It felt like a luxury. With the help of a Certified Applications Counselor at Planned Parenthood, I was able to enroll in a plan that met my needs. And with the help of a financial subsidy I qualified for, I could enroll in a plan that fit my budget too. I now have a plan that provides no-copay preventive care and affordable mental health services. For the first time in four years, I have a sense of security because I don't have to choose among rent, educational expenses, or a visit to the doctor. Because of the ACA, I can stay healthy."

Delma's mother has cervical cancer, a disease that could have been prevented had she been insured herself. "She was uninsured when she got cancer," explains Delma. "So this issue is very personal for me."

The plaintiffs in *King* are four Virginia residents who challenge the Obama administration's interpretation of the ACA and argue that premium tax credits should only be available in states that operate their own Marketplaces. The theory is based on wording in an ACA provision that amends Section 36B of the Internal Revenue Code and states that a taxpayer's premium subsidy amount is based on the cost of the Marketplace plan in which he or she is enrolled "through an Exchange established by the State".¹⁴ The plaintiff argues that this means *only* taxpayers enrolled in state-operated Marketplaces may receive premium tax credits and that the IRS may not provide tax credits to individuals living in states with a federally facilitated Marketplace, as has been happening since the ACA took effect.¹⁵

Both the district court and the U.S. Court of Appeals for the Fourth Circuit agreed with the Obama administration that this is an incorrect reading of the statute and that the text, structure, and history of the ACA make clear that tax credits are meant to be available to those buying coverage in both federal and state Marketplaces. The Department of Health & Human Services (HHS) is urging the Supreme Court to consider the design and structure of the statute as well as congressional intent, rather than focusing on a single phrase, particularly since other provisions of the ACA are clear that if a state does not establish the "required Exchange" for itself, HHS "shall...estab-

Adrienne, 26, from Indianapolis, Indiana, was allowed to remain on her parents' plan until she turned 26. Now she has her own Marketplace plan, which she is able to afford because she receives a \$175 tax credit. Adrienne works part-time as a medical assistant for a small private practice, receiving an irregular income, so is not able to afford health insurance without the ACA financial assistance.

Adrienne says, "I was recently diagnosed with hyperthyroidism, so there are monthly visits to my endocrinologist, and I have diagnostic testing and procedures coming my way. It's up to me to make sure I'm covered and can afford my medications, office visits, and procedures, so Obamacare works for me. Because of my health condition, being uninsured is really not an option."

lish and operate such Exchange within the State...."¹⁶ Prohibiting premium tax credits for individuals in states using the federal Marketplace contradicts congressional intent and undermines the design and purpose of the ACA.

HHS also argues that, even if the Court finds the statute ambiguous, it should defer to the agency directed by Congress to interpret the statute, which in this case is the IRS. After undergoing notice-and-comment rulemaking, the IRS interpreted the ACA's premium tax credit provisions to mean that tax credits are available both in states that establish their own Marketplaces for themselves and in states that opt to allow HHS to establish the Marketplace in their place.¹⁷

Potential Market Implications in *King*

If the Court rules in favor of *King* and eliminates access to premium tax credits for individuals in FFM states, there would be a significant impact on affordability of coverage, access to care, and uninsured rates, as well as indirect yet substantial implications for insurance premiums, health care providers, and the stability of the insurance market overall.

The direct and indirect impact is dramatic. As noted above,

millions of Americans would lose access to premium tax credits in the 34 states in the federal Marketplace, which would make coverage unaffordable for millions and increase the number of uninsured across the country. The impact would be felt by more than those who receive premium tax credits. Insurance premiums would skyrocket for those seeking coverage both inside and outside the Marketplaces, with and without tax credits — premiums would

increase an estimated 35 percent (about \$1,460 per year) for consumers who buy coverage inside and outside the Marketplaces.¹⁸

Why would the loss of tax credits be felt more broadly, increase premiums, and potentially destabilize insurance markets?¹⁹ The fact is that Congress designed the ACA as a “three-legged stool” made up of three interwoven pieces: the individual coverage requirement, insurance market reforms (such as no denial for pre-existing condition) and premium subsidies. Eliminating one leg of the stool may lead to what is often referred to as an insurance “death spiral.”²⁰ A lot of it has to do with the fact that these ACA provisions are interwoven in the law. Eliminating tax credits would make coverage unaffordable for many more individuals, and if coverage is unaffordable for a consumer (e.g., insurance costs more than 8 percent of a person’s income), he or she is exempt from the requirement to have coverage (also called the individual mandate). Estimates indicate that about 83 percent of individuals who were eligible for subsidies for Marketplace coverage in the FFM would become exempt from the requirement to have insurance if those subsidies are no longer available.²¹

So, without a requirement to have insurance for many more people, chances are some people will drop coverage. Those most likely to drop coverage are younger and healthier people, which means the mix of individuals enrolling in Marketplace coverage would likely become older and less healthy, on average. This type of change in the mix of people enrolled in insurance increases the average cost of care for the insurer and leads to higher insurance premiums both inside and outside the Marketplace. Premiums would skyrocket – an estimated increase of 35 percent for people buying coverage inside and outside the Marketplace.²² What might happen down the line? With fewer people signing up for coverage through the Marketplace, insurers may stop offering as many coverage choices or exit the Marketplace altogether. It’s clear the potential impact is significant and dramatic – more than those individuals directly impacted would be at risk here.

Health care providers, the health care industry, and states would feel the impact. Eliminating premium tax credits would make coverage unaffordable for millions and lead to significant increases in uninsured rates. Researchers at the Urban Institute found that a ruling in favor of King could lead to about 8.2 million individuals becoming uninsured in 34 states due to the loss of premium subsidies and increase in premium rates.²³ States would face an influx in uninsured patients, and due to funding cuts for Disproportionate Share Hospital (DSH) payments, as well as funding cuts for other safety-net providers, state and nonprofit providers would face an increased uninsured population but have fewer resources to ensure access to care.

SARAH'S STORY

Sarah, 29, from Orlando, Florida, is a substitute teacher with a limited income. Before the ACA, she did not have health insurance because she couldn’t afford it. Thanks to the ACA, she now pays \$46 a month and can see her doctor and get the medications she needs to stay healthy.

Sarah explains that before the ACA, she had to pay \$440 a month out of pocket for her medication. “It’s embarrassing to be standing at the pharmacy counter and trying to figure out how to pay – or not being able to pay. I’m not trying to mooch off of anyone. I contribute to my community. I work. I just don’t make a lot of money. Obamacare works for me because it makes the health care I need more accessible and one less worry on my plate.”

Table 1: Estimated Number of Women and Women of Color Enrolled in Marketplace Coverage with Financial Help in 34 Federal Marketplace States (March 2015)

State	# of Women Enrolled w/ Tax Credits	# of Women of Color w/ Tax Credits	State	# of Women Enrolled w/ Tax Credits	# of Women of Color w/ Tax Credits
Alabama	82,491	28,047	Nebraska	35,237	11,981
Alaska	10,332	3,513	New Hampshire	20,322	6,910
Arizona	84,405	28,698	New Jersey	113,984	38,755
Arkansas	31,213	10,612	North Carolina	278,385	94,651
Delaware	11,356	3,861	North Dakota	8,439	2,869
Florida	801,660	272,564	Ohio	106,297	36,141
Georgia	262,965	89,408	Oklahoma	55,163	18,755
Illinois	147,204	50,049	Pennsylvania	206,758	70,298
Indiana	104,157	35,413	South Carolina	99,949	33,983
Iowa	20,973	7,131	South Dakota	10,166	3,456
Kansas	41,557	14,129	Tennessee	103,731	35,269
Louisiana	89,525	30,438	Texas	559,683	190,292
Maine	35,951	12,223	Utah	66,819	22,718
Michigan	162,130	55,124	Virginia	174,706	59,400
Mississippi	53,063	18,042	West Virginia	15,521	5,277
Missouri	120,430	40,946	Wisconsin	100,772	34,262
Montana	24,908	8,469	Wyoming	10,365	3,524
Total in 34 FFM States:				4,050,617	1,377,210

Note: Nearly 11.7 million people enrolled in Marketplace coverage as of the end of the second open enrollment period (November 15, 2014 through February 15, 2015). Above estimates are based on the HHS ASPE March 2015 enrollment report (http://aspe.hhs.gov/health/reports/2015/MarketPlaceEnrollment/Mar2015/ib_2015mar_enrollment.pdf), which found that 54% of total enrollees are women, 34% of enrollees are people of color, and which includes state-specific enrollment numbers and state-specific information on the percentage of

enrollees receiving tax credits in each of the 34 states (between 71% and 94%, with 87% of enrollees in the 34 states receiving tax credits). Since the percentage of women and people of color are percentages across the FFM states, state-specific numbers may vary state-by-state (e.g., fewer than 54% of enrollees in some states may be women; or more than 34% of enrollees in some states may be people of color). This is an approximation based on average percentages to help show the real-life impact on women and women of color in the states.

Endnotes

1. Tolbert, Jennifer. (2015, March 2). *The Coverage Provisions in the Affordable Care Act: An Update*. Menlo Park, CA: Kaiser Family Foundation. Available at <http://kff.org/report-section/the-coverage-provisions-in-the-affordable-care-act-an-update-expand-ing-coverage>
2. Blumberg, Linda J., Matthew Buettgens, John Holahan. (2015, January). *The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums*. Washington, DC: Urban Institute and Robert Wood Johnson Foundation. Available at <http://www.urban.org/UploadedPDF/2000062-The-Implications-King-vs-Burwell.pdf>
3. Ibid.
4. Ibid.
5. Ibid.
6. Blumberg, Linda J., Matthew Buettgens, John Holahan. (2015, January). *Characteristics of Those Affected by a Supreme Court Finding for the Plaintiff in King v. Burwell*. Washington, DC: Urban Institute and Robert Wood Johnson Foundation. Available at <http://www.urban.org/UploadedPDF/2000078-Characteristics-of-Those-Affected-by-King-v-Burwell.pdf>
7. Ibid.
8. Ibid.
9. Garin, Geoff. (2015, February 26). *The Politics of King vs. Burwell*. Nationwide survey of 800 voters conducted by Hart Research Associates for the Service Employees International Union (SEIU). Washington, DC: Hart Research Associates. Available at <http://www.seiu.org/Hart%20Research%20Memo%20The%20Politics%20of%20King%20v%20Burwell%2022615.pdf>
10. *ASPE Data Point: The Affordable Care Act is Improving Access to Preventive Services for Millions of Americans*. (2015, May 14). Washington, DC: Department of Health and Human Services, Assistant Secretary for Planning and Evaluation (ASPE). Available at http://aspe.hhs.gov/health/reports/2015/Prevention/ib_Prevention.pdf
11. Aitken, Murray, et al. (April 2014). *Medicine Use and Shifting Costs of Healthcare: A Review of the Use of Medicines in the United States in 2013*. Parsippany, NJ: IMS Institute for Healthcare Informatics. Available at http://www.imshealth.com/deployed-files/imshealth/Global/Content/Corporate/IMS%20Health%20Institute/Reports/Secure/IIHI_US_Use_of_Meds_for_2013.pdf
12. Premium tax credits are available to most individuals with income between 100 percent and 400 percent federal poverty level (FPL) (between \$11,670 and \$46,680 per year) in states that did not expand Medicaid and individual with income between 138 percent and 400 percent FPL (between \$16,105 and \$46,680 per year) in states that did expand Medicaid.
13. In implementing the ACA and its tax credit provisions, the IRS interpreted the statute to authorize premium subsidies for individuals who purchase coverage in all Marketplaces, including in states with a federally-run Marketplace.
14. 26 U.S.C. §36B(b)(2)(A) and (c)(2)(A). Section 1401(a) of the ACA adds Section 36B to the Internal Revenue Code. Section 36B defines premium tax credits and outlines specifics on availability of premium tax credits in the Marketplace.
15. Seven states submitted a joint amicus brief in support of King: Alabama, Georgia, Indiana, Nebraska, Oklahoma, and South Carolina and West Virginia. Amicus brief in support of the government was filed by 23 states: 11 states with state-based Marketplaces (California, Connecticut, DC, Hawaii, Kentucky, Maryland, Massachusetts, New York, Rhode Island, Vermont and Washington), 2 states with a state Marketplace that uses Healthcare.gov platform (New Mexico and Oregon), 6 states in the FFM (Maine, Mississippi, North Carolina, North Dakota, Pennsylvania, and Virginia), and 4 states with a Partnership Marketplace (Delaware, Illinois, Iowa, and New Hampshire). All amicus briefs submitted are available at <http://www.scotusblog.com/case-files/cases/king-v-burwell/>.

16. ACA §1321(c), 42 U.S.C. § 18041(c)(1).
17. 26 C.F.R. 1.36B-1(k), 1.36B-2(a); see 77 Fed. Reg. 30377 (2012). Under *Chevron v. Natural Resources Defense Council*, unless the agency's reading of a law conflicts with "the unambiguously expressed intent of Congress," courts must defer to the agency's legal interpretation so long as it is "based on a permissible construction of the statute."
18. Blumberg, Linda J., Matthew Buettgens, John Holahan. (2015, January). *The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums*. Washington, DC: Urban Institute and Robert Wood Johnson Foundation. Available at <http://www.urban.org/UploadedPDF/2000062-The-Implications-King-vs-Burwell.pdf>
19. Eliminating subsidies "would make the individual insurance market unstable and potentially unworkable in federal marketplace states." See Levitt, Larry and Claxton, Gary. (2014, July 31). *The Potential Side Effects of Halbig*. Menlo Park, CA: Kaiser Family Foundation. Available at <http://kff.org/health-reform/perspective/the-potential-side-effects-of-halbig/>
20. To make health insurance available to more consumers, the ACA prohibits insurers from denying individuals with pre-existing conditions or charging higher premiums based on health. The law helps address the resulting increased risk insurers face for covering people with higher cost health conditions by requiring most individuals to have health insurance. But, to enforce that requirement, health coverage must be affordable and accessible. Tax credits for low- and middle-income Americans are critical to make this work and to ensure that those enrolled in coverage includes both healthy, younger individuals as well as those with health conditions. See Sanger-Katz, Margo. (2015, February 27). "How an Adverse Supreme Court Ruling Would Send Obamacare Into a Tailspin." *New York Times*. Available at http://www.nytimes.com/2015/03/02/upshot/how-an-adverse-supreme-court-ruling-would-send-obamacare-into-a-tailspin.html?_r=0&abt=0002&abg=1
21. Levitt, Larry and Claxton, Gary. (2014, July 31). *The Potential Side Effects of Halbig*. Menlo Park, CA: Kaiser Family Foundation. Available at <http://kff.org/health-reform/perspective/the-potential-side-effects-of-halbig/>. Note that this analysis is based on *Halbig v. Burwell* (D.C. Cir. 2014), which is "a materially identical case" to *King v. Burwell*. Brief for Respondents at 11, *King v. Burwell*, No. 14-114 (Oct. 3, 2014).
22. Blumberg, Linda J., Matthew Buettgens, John Holahan. (2015, January). *The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums*. Washington, DC: Urban Institute and Robert Wood Johnson Foundation. Available at <http://www.urban.org/UploadedPDF/2000062-The-Implications-King-vs-Burwell.pdf>
23. Ibid.



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