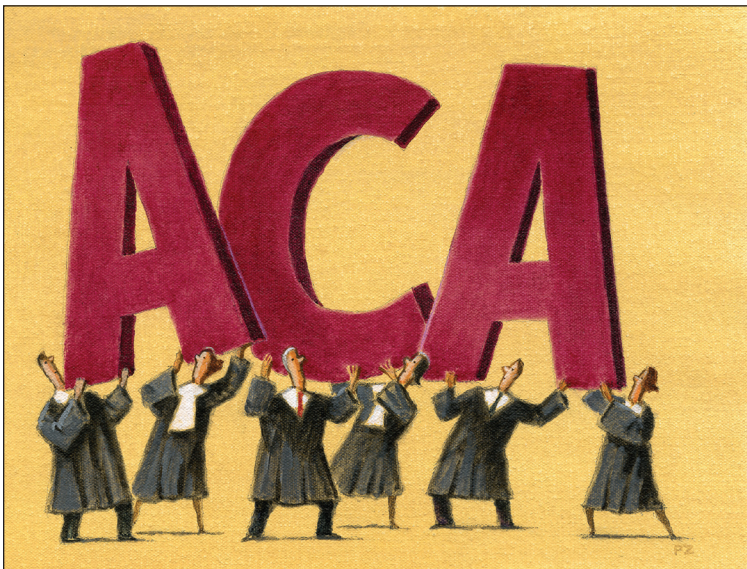




# What the Supreme Court ruling in *King v. Burwell* means for women's health

➔ By finding in favor of the Obama Administration, the Supreme Court averted a death knell for the Affordable Care Act—at least until the next presidential election

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*King v. Burwell*, challenged whether individuals purchasing health insurance through federal exchanges were eligible for federal premium subsidies. This ruling cemented the ACA into law and avoided a potential calamity in the private health insurance market. Let's take a closer look.

## What the case was about

The ACA allows states to set up their own health insurance exchanges or participate in a federally run exchange. Although the drafters of the ACA had expected each state to set up its own exchange, two-thirds of the states declined to do so, many in opposition to the ACA. As a result, 7 million citizens in 34 states now purchase their health insurance through federally created exchanges.

The plaintiffs in *King v. Burwell* argued that, because the legislation refers to those enrolled “through an Exchange established by the State,” individuals in states with federally run exchanges are not eligible for subsidies.

The law states:

**PREMIUM ASSISTANCE AMOUNT.—**  
The premium assistance amount determined under this subsection with respect to any coverage month is the amount equal to the lesser of—

In a widely anticipated judgment on the Affordable Care Act (ACA), the US Supreme Court ruled 6-3 in favor of the law on June 26, 2015. The case at hand,



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(A) the monthly premiums for such month for 1 or more qualified health plans offered in the individual market within a State which cover the taxpayer, the taxpayer's spouse, or any dependent (as defined in section 152) of the taxpayer and which were **enrolled in through an Exchange established by the State** under 1311 of the Patient Protection and Affordable Care Act...[emphasis added].

The Supreme Court was asked to decide whether to adhere to those exact words or to honor Congress' intent to allow individuals to purchase subsidized insurance on any type of exchange.

### What might have happened

We've explored in previous articles the interconnectedness of many sections of the ACA. Nowhere is that interconnectedness more clearly demonstrated than here. In order to ensure that private health insurers provide better coverage, the law requires them to abide by important consumer protections, including the elimination of "preexisting condition" exclusions. In order to prevent adverse selection and keep insurers solvent under these new rules, all individuals are required to have health care coverage—the individual mandate. If everyone is required to purchase health insurance, it has to be affordable, so lower-income individuals were promised subsidies, paid for 100% by the federal government, to help them cover their premiums when insurance is purchased through an exchange. Take away the subsidies and the whole thing starts to unravel.

The Urban Institute estimated that a Supreme Court ruling in favor of King, which would have eliminated the subsidies in states using a federal exchange, would have reduced federal tax subsidies by \$29 billion in 2016, making coverage unaffordable for many and increasing the ranks of the uninsured by 8.2 million people.<sup>1</sup>

Louise Sheiner and Brendan Mochoruk of the Brookings Institute speculated that healthy individuals would disproportionately leave the marketplace, triggering 35% increases in insurance premiums for those remaining, as well as significant increases in premiums for those who just lost their subsidies.<sup>2</sup> Many observers, including these experts, forecast that insurance companies

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### What other commentators are saying about the *King v. Burwell* decision

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In his majority opinion, Chief Justice John Roberts noted that the "meaning of the phrase 'established by the State' is not so clear." And as Amy Howe articulated on SCOTUSblog: "if the phrase...is in fact not clear...then the next step is to look at the Affordable Care Act more broadly to determine what Congress meant by the phrase. And when you do that, the Court reasoned, it becomes apparent that Congress actually intended for the subsidies to be available to everyone who buys health insurance on an exchange, no matter who created it. If the subsidies weren't available in the states with federal exchanges, the Court explained, the insurance markets in those states simply wouldn't work properly: without the subsidies, almost all of the people who purchased insurance on the exchanges would no longer be required to purchase insurance because it would be too expensive. This would create a 'death spiral'...."

—Amy Howe, *SCOTUSblog*<sup>3</sup>

"Additional court challenges to other ACA provisions are still possible, but *King's* six-member majority shows little appetite for challenges threatening the Act's core structure. Even Scalia's dissent recognizes that the ACA may one day 'attain the enduring status of the Social Security Act.' Thus, the decision may usher in a new era of policy maturity, in which efforts to undermine the ACA diminish, as focus shifts to efforts to implement and improve it."

—Mark A. Hall, JD, *New England Journal of Medicine*<sup>4</sup>

"With the Court upholding the administration's interpretation of the law, the Obama administration has little reason to accede to Republican proposals. The Court's decision effectively puts the future of the ACA on hold until the 2016 elections, when the people will decide whether to stay the course or to chart a very different path."

—Timothy Jost, *Health Affairs*<sup>5</sup>

"A case that 6 months ago seemed to offer the Court's conservatives a low-risk opportunity to accomplish what they almost did in 2012—kill the Affordable Care Act—became suffused with danger, for the millions of newly insured Americans, of course, but also for the Supreme Court itself. Ideology came face to face with reality, and reality prevailed."

—Linda Greenhouse, *New York Times*<sup>6</sup>

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**TABLE 1** Premium tax credits at risk in *King v. Burwell*<sup>1</sup>

Location	Marketplace type	Number of people at risk of losing tax credits	Total monthly tax credit dollars at risk	Average tax credit per enrollee	Percent increase in average premium if tax credit is not available
United States	17 state marketplaces; 34 federal marketplaces	6,387,789	\$1,737,476,989	\$272	287%
Alabama	Federal	132,253	\$35,708,310	\$270	321%
Alaska	Federal	16,583	\$8,888,488	\$536	520%
Arizona	Federal	126,506	\$19,987,948	\$158	132%
Arkansas	Federal	48,100	\$13,660,400	\$284	270%
California	State	N/A	N/A	N/A	N/A
Colorado	State	N/A	N/A	N/A	N/A
Connecticut	State	N/A	N/A	N/A	N/A
Delaware	Federal	19,128	\$5,068,920	\$265	191%
District of Columbia	State	N/A	N/A	N/A	N/A
Florida	Federal	1,324,516	\$389,407,704	\$294	359%
Georgia	Federal	412,385	\$112,993,490	\$274	381%
Hawaii	State	N/A	N/A	N/A	N/A
Idaho	State	N/A	N/A	N/A	N/A
Illinois	Federal	232,371	\$49,030,281	\$211	169%
Indiana	Federal	159,802	\$51,136,640	\$320	271%
Iowa	Federal	34,172	\$8,987,236	\$263	244%
Kansas	Federal	69,979	\$14,695,590	\$210	231%
Kentucky	State	N/A	N/A	N/A	N/A
Louisiana	Federal	137,940	\$44,554,620	\$323	347%
Maine	Federal	60,939	\$20,536,443	\$337	383%
Maryland	State	N/A	N/A	N/A	N/A
Massachusetts	State	N/A	N/A	N/A	N/A
Michigan	Federal	228,388	\$62,349,924	\$273	294%
Minnesota	State	N/A	N/A	N/A	N/A
Mississippi	Federal	75,613	\$26,540,163	\$351	650%
Missouri	Federal	197,663	\$54,950,314	\$278	327%
Montana	Federal	41,766	\$9,606,180	\$230	198%
Nebraska	Federal	56,910	\$14,625,870	\$257	265%
Nevada	State	N/A	N/A	N/A	N/A
New Hampshire	Federal	29,996	\$7,918,944	\$264	218%
New Jersey	Federal	172,345	\$53,943,985	\$313	199%
New Mexico	State	N/A	N/A	N/A	N/A
New York	State	N/A	N/A	N/A	N/A
North Carolina	Federal	458,738	\$144,961,208	\$316	336%
North Dakota	Federal	14,115	\$3,274,680	\$232	169%
Ohio	Federal	161,011	\$41,057,805	\$255	190%
Oklahoma	Federal	87,136	\$18,211,424	\$209	243%
Oregon	State	N/A	N/A	N/A	N/A
Pennsylvania	Federal	348,823	\$79,182,821	\$227	177%
Rhode Island	State	N/A	N/A	N/A	N/A
South Carolina	Federal	154,221	\$43,336,101	\$281	335%
South Dakota	Federal	16,811	\$3,849,719	\$229	178%
Tennessee	Federal	155,753	\$33,954,154	\$218	222%
Texas	Federal	832,334	\$202,586,498	\$247	305%
Utah	Federal	86,330	\$17,956,640	\$208	520%
Vermont	State	N/A	N/A	N/A	N/A
Virginia	Federal	285,938	\$73,772,004	\$258	287%
Washington	State	N/A	N/A	N/A	N/A
West Virginia	Federal	26,145	\$8,209,530	\$314	234%
Wisconsin	Federal	166,142	\$52,334,730	\$315	252%
Wyoming	Federal	16,937	\$7,198,225	\$425	340%

would exit the federal exchanges altogether, triggering a health insurance “death spiral”: As premiums rise, the healthiest customers leave the marketplace, causing premiums to rise more, causing more healthy people to leave, and so on.

Clearly, this Supreme Court decision has had dramatic, long-term, real-world effects on millions of Americans. On the national level, 6,387,789 individuals were at risk of losing their tax credits if the Supreme Court had ruled in favor of King. That number represents more than \$1.7 billion in total monthly tax credits. For a look at how a judgment in favor of King would have affected subsidies on a state-by-state basis, see **TABLE 1**.

## How premium subsidies work

Premium subsidies are actually tax credits. Individuals and families can qualify for them to purchase any type of health insurance offered on an exchange, except catastrophic coverage. To receive the premium tax credit for coverage starting in 2015, a marketplace enrollee must:

- have a household income that is 1 to 4 times the federal poverty level. In 2015, the range of incomes that qualify for subsidies is \$11,670 for an individual and \$23,850 for a family of 4 at 100% of the federal poverty level. At 400% of the federal poverty level, it is \$46,680 for an individual

and \$95,400 for a family of 4.

- lack access to affordable coverage through an employer (including a family member’s employer)
- be ineligible for Medicare, Medicaid, the Children’s Health Insurance Program, or other forms of public assistance
- have US citizenship or proof of legal residency
- file taxes jointly if married.

The premium tax credit caps the amount that an individual or family must spend on their monthly payments for health insurance. The cap depends on the family’s income; lower-income families have a lower cap. The amount of the tax credit remains the same, so a person who purchases a more expensive plan pays the cost difference (**TABLE 2**).

## The ruling’s effect on women’s health

On June 26, American College of Obstetricians and Gynecologists President Mark S. DeFrancesco, MD, MBA, hailed the Supreme Court decision, saying, “Importantly, recent data have shown that newly insured adults under the ACA were more likely to be women. Those who did gain coverage through the ACA reported better access to health care and better financial security from medical costs.”



**On a national level, more than 6 million people were at risk of losing their health care tax credits if the Supreme Court had backed King**

**TABLE 2** Premium caps by income in 2014 and 2015<sup>7</sup>

Income (% poverty level)	Premium cap (maximum % of income for second-lowest silver plan)	
	2014	2015
Under 100%	No cap	No cap
100%–133%	2%	2.01%
133%–150%	3%–4%	3.02%–4.02%
150%–200%	4%–6.3%	4.02%–6.34%
200%–250%	6.3%	8.05%
250%–300%	8.05%–9.5%	8.1%–9.56%
300%–400%	9.5%	9.56%
Over 400%	No cap	No cap

NOTE: Alaska and Hawaii have different poverty guidelines. Also note that tax credits for the 2015 benefit year are calculated using 2014 federal poverty guidelines, while tax credits for the 2014 benefit year are calculated using 2013 federal poverty guidelines.

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“Without question, many women enrollees were able to purchase health insurance coverage due, in part, to the ACA subsidies that helped make this purchase affordable. In fact, government data have suggested that roughly 85% of health exchange enrollees received subsidies,” Dr. DeFrancesco said.

“If the Supreme Court had overturned this important assistance, approximately 4.8 million women would have been unable to afford the coverage that they need. The impact also would have been widespread; as these women were forced to leave the insurance marketplace, it is likely that premiums throughout the marketplace would have risen dramatically,” he continued.

“Instead, patients—especially the low- and moderate-income American women who have particularly benefited from ACA subsidies—will continue to have the peace of mind that comes with insurance coverage.”

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