

CFO

Will You Be Happy if Obamacare Goes Poof?

The Supreme Court wields the power to make it happen, but be careful about what you wish for.

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While CFOs [haven't generally felt](#) all warm and fuzzy about the Affordable Care Act, the associated compliance demands and administrative costs that they dislike pale in comparison with the law's impact on the individual insurance market.

Indeed, the Supreme Court ruling [expected in late June](#) that could spell doom for the ACA will turn on an issue relating almost exclusively to the nongroup market: whether users of [healthcare.gov](#), the federally operated insurance exchange that's available in states that didn't set up their own exchanges, are eligible for federal subsidies.

That doesn't, of course, mean finance chiefs should have no interest in the case. If the challenge to the law is upheld, after a short while they may not have to worry about complying with it anymore.

But nobody should go floating off on a cloud of dreamy happiness at the thought of the ACA going poof. Gutting it could very well crash the insurance markets in the three dozen states that didn't set up exchanges — not a happy prospect for an economy that, regardless of the booming stock markets, is hardly scoring robust growth as it is.

Some views on the ACA are, of course, extreme. Since the law is so often bashed, allow me to even the scales just a bit.

Just the other day, the new Republican presidential candidate Ben Carson was on TV saying that Obamacare is “the [worst thing to happen](#) in this nation since slavery.” It was actually a clip from 2013, but let's assume his feelings haven't changed. Indeed, last year he specified that the ACA is worse than 9/11, calling the latter “an isolated incident.”

[An editorial](#) shortly after that in *Outside the Beltway* captured my feeling about that: “Regardless of what one's opinion about the Affordable Care Act might be, anyone asserting that it is worse

than a terrorist attack that killed 3,000 people and set the nation on a course toward more than a decade of war, new restrictions on civil liberties, torture, drone attacks, and NSA spying all authorized by sitting Presidents, and all the security restrictions we must now deal with on a daily basis, is quite simply a fool.”

Heavyweight Fight

In April I attended a half-day health-care conference in New York City called the [Sun Life Wake Up Summit](#), hosted by [Sun Life Financial](#). Sun Life scored a coup with one session’s speakers. On the left was Massachusetts Institute of Technology economics professor [Jonathan Gruber](#), who was heavily involved in creating the ACA (and also in writing the look-alike Massachusetts Health Connector health-care reform law launched when Mitt Romney was governor of the commonwealth). On the right was [Michael Cannon](#), director of health policy studies at the [Cato Institute](#) and arguably the most ardent Obamacare opponent walking the Earth.

Actually they were on the left and right only figuratively. They were interviewed separately by Bloomberg reporter Shannon Pettypiece, and they appeared on stage together for a brief Q&A session, but they did not debate face to face. What a shame, but also a good thing, I suppose. We might have witnessed some actual [spontaneous combustion](#).

Gruber, up first, was asked how the ACA is doing so far. “It’s still early, but it’s doing pretty well,” he said. He noted that 14 million previously uninsured Americans, about 30% of the total uninsured, are now covered; that there’s no evidence of major disruption to the insurance market; and that there’s also no evidence of large companies dropping employer-sponsored coverage.

“Most importantly,” he said, “we fixed a broken nongroup insurance market. America was the only nation in the developed world where you could be denied insurance or have your insurance dropped because you became sick. That’s sort of not the idea of insurance.”

For 2014, Gruber said, non-group premiums in the federal exchange came in about 15% below what the Congressional Budget Office (CBO) had projected; and this year grew only 2% to 4%, compared with a 10% to 12% growth trend before the law. He added that over the five years since the law was passed the government’s price tag for the law is about 20% below what the CBO had initially estimated.

Then he was asked about the case before the Supreme Court, called [King v. Burwell](#). At the heart of the case are several passages in the law mentioning subsidies being available in states that established an exchange, versus language elsewhere in the law stating that the government would establish an exchange for use in states that did not do so. The government contends that the latter was intended to make subsidies available in every state to people who met income tests.

“It’s not like asking the framers of the Constitution [what they were thinking],” Gruber said. “All the framers of this law are alive. No one who ever worked on this law has said it means what the plaintiffs in this case say it means.”

Asked what would happen if the Supreme Court sides with the plaintiffs, he suggested that it would be far-fetched to think that Congress would intervene to salvage the ACA, given how many people in the two chambers were elected while opposing it, or that states would then set up their own exchanges.

Gruber said, “I do know that there are now consensus estimates from two independent sources, the [Urban Institute](#) and the [Rand Corporation](#), which suggest that if this case goes in the plaintiffs’ favor, 8 to 10 million Americans will lose health insurance ... and as a result premiums in the non-group market will go up by 35 to 50%.”

He referred to the ACA as a three-legged stool, with the insurance-market reforms made possible by the individual mandate, which in turn is made possible by the subsidies. “Why would Congress write a law which sets up all this mechanism, and deny a leg of the stool which would cause it to collapse?” he said.

Perhaps, the Bloomberg reporter offered, it was to encourage states to set up their own exchanges?

“You would have thought if that was the case,” Gruber replied, “that there would be something in the record to indicate that and that states would have known it. If this was set up that way, it was very poorly designed, because no states knew it was part of the plan.”

On the Other Hand

Then it was Cannon’s turn. Gruber had said that a fair evaluation of the ACA should rest not on anecdotes but rather on aggregate results. Not to be deterred, Cannon began by illustrating Obamacare’s ills via an anecdote about [Kevin Pace](#), a teacher at a community college in Virginia that cut employees’ hours so that it would not be subject to the ACA’s employer mandate to provide affordable health insurance to everyone working 30 or more hours a week. In the process, \$8,000 was sliced out of Pace’s income, according to Cannon.

“That’s an unintended consequence that occurs with mandates like this,” said Cannon. “It’s bad enough when those unintended consequences are awful. But what happened here is that the IRS did not have the authority to impose those penalties” (i.e., the tax penalties collected under the employer mandate and the individual mandate).

In the Supreme Court case, he said, “The facts and the law are 100% on the plaintiffs’ side. The government doesn’t have a leg to stand on.” He then got in a good line: “Which means that the challengers’ odds of winning in court are about 20%.”

He explained that “because the courts are so deferential to the government in cases like this, when you take on the government you’re betting against the casino. The case wouldn’t have gotten this far if there were anything on the government’s side that supported the IRS’s interpretation of the statute.”

Congress, he insisted, cannot command states to implement federal programs. “The Supreme Court has said it can only create incentives for states to do so,” he said. “This is an incentive: you create an exchange, and your residents get these subsidies.”

The interviewer asked Cannon about the millions of people who will lose health insurance if the court challenge succeeds, and about a projection by the George Washington University School of Public Health that one result could be [10,000 preventable deaths](#) per year.

“I don’t think we have the evidence to show that there is some sort of clear connection between giving people health insurance subsidies and saving lives,” he stated.

And, he said, “If there’s anything awful that happens after a ruling for the challengers in *King v. Burwell*, it’s because that *is* the ACA. The court will be saying, anything bad that happens is the fault of the ACA itself.”

Cannon further said that “subsidies don’t reduce the cost of anything — they shift it, in this case from the premium payer to the taxpayer. For the average federal exchange enrollee who’s receiving a subsidy, it covers 72% of the premium cost. So if those subsidies disappear, people won’t just see 28% of the cost of their ACA coverage, they’ll see 100% — and that’s a good thing, because it means we’re making the costs of this law more transparent to people.”

In Conclusion

Whatever you think about the Affordable Care Act, you can hitch your wagon to a brilliant expert as your standard bearer. But while the Supreme Court justices may be political creatures, they must be somewhat happy they don’t have to arbitrate between the likes of Gruber and Cannon. All they have to do is interpret the wording of the statute and decide whether the IRS exceeded its authority.

For my part, I hope the challenge to the ACA fails. My apologies to the CFOs lined up on the other side. As a society we have a moral obligation to make sure, to the extent possible, that good health is a function of more than personal wealth. That’s more important than a tiny morsel of profit margin.

Can you accept Cannon’s take that subsidies allowing low-income folks to buy health insurance don’t prevent deaths? Or the notion that it’s great for 8 million Americans’ insurance to be sacrificed so that he can score a rhetorical point?

Case closed — in six or seven weeks.