



Obamacare case is political pickle for Republicans

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With about a month to go before a major Supreme Court ruling on Obamacare, congressional Republicans have yet to pass any of several proposed contingency plans to deal with the possible loss of billions of dollars worth of federal financial aid for millions of health insurance customers.

And those plans, which would in some form or the other continue the Obamacare subsidies temporarily until as late as 2017, are extremely unlikely to get approved before that ruling, according to experts who have closely followed the high court case. ([Tweet This](#))

Some of those observers warn that the GOP is playing with fire by its inaction so far, because of the danger that the party will be blamed if the subsidies are ruled illegal, and millions of HealthCare.gov customers in 34 states lose their health coverage as a result.

"If the Supreme Court throws out the subsidies ... this is going to be a political disaster for Republicans, and they're unprepared for it," said Robert Laszewski, an Obamacare opponent who is president of Health Policy and Strategy Associates, a consulting firm. "It's unbelievable how short-sighted the Republicans have been here."

"The American people have a sense of fairness," and will be unhappy to learn that people in HealthCare.gov states are losing health coverage while those in states with their own exchanges will retain their insurance, Laszewski said.

"The Republicans are going to get the blame," he said. "I think the American people are going to see it for what it is, an attempt to kill Obamacare."

Laszewski said that congressional Republicans should pass a contingency plan in advance of the Supreme Court ruling that unconditionally continues the HealthCare.gov subsidies into 2017. That, he said, would eliminate the risk of any blame the GOP would incur in the coming

presidential election if the subsidies are ruled illegal, and leave it for a new president and a new Congress to craft an alternative to Obamacare or a significant reform of it.

"That would guarantee that Obamacare would be a 2016 election issue, which has always been a winning issue" for Republicans, he said.

However, he acknowledged that is unlikely to happen before the Supreme Court rules.

Laszewski, and others, cited two major factors behind that inaction to date. One is that some Republicans oppose the idea of subsidizing people at all in purchasing individual insurance plans. The other is that all of the GOP contingency plans include conditions that make them unpalatable to President [Barack Obama](#), whose signature would be needed to sign them into law.

Strings attached

The plan advanced by Sen. Ron Johnson, R-Wis., temporarily extends subsidies for current HealthCare.gov customers into the summer of 2017, but would not allow subsidies for new customers, Laszewski said. Johnson's bill also would eliminate Obamacare's "individual mandate," which requires all Americans to have health coverage or face a fine, and also would kill the "employer mandate" that requires mid- and large-sized employers to offer affordable health coverage to workers or pay a fine.

The proposal by Sen. Ben Sasse, R-Neb., would offer current subsidized Obamacare customers the ability to keep their current plans, with financial aid of up to 65 percent of premium costs for six months, and then wind down that aid over the next 12 months. Sasse's proposal would effectively kill the employer mandate, and cripple the individual mandate in affected states because it would not authorize financial aid for new customers.

"I haven't seen any Republican coming up with anything that Obama will remotely sign," Laszewski said.

But Michael Cannon, director of health policy studies at the libertarian Cato Institute, argued that Democrats and Obama will suffer politically if the subsidies are taken away from customers of the federal Obamacare marketplace.

"You're going to say Obamacare is not working," Cannon said. "You're going to think, 'Oh, my God, Obamacare sucks,' and that is going to translate into blaming the people who gave us Obamacare."

Cannon sees such a ruling as a "political opportunity" for Republicans and he expects the GOP contingency plans "are going to be put into the circular file the moment the Supreme Court rules for the challengers."

"I think this is going to strengthen the hand of those in Congress, those Republicans in Congress, who have always been most adamant about repeal," he said. However, even he acknowledged there is a lot of fear on Capitol Hill from Republicans who are afraid of such a result.

"Which is bizarre, because at the same time they're about to be proven right, they're hoarding canned goods ... and digging fallout shelters because they're thinking the public will blame them for a law passed by Democrats," said Cannon. He said he has told Republicans they are "overthinking this."

Cannon, with Case Western University law professor Jonathan Adler, is one of the intellectual architects of the current Supreme Court challenge to the subsidies, in a case known as *King v. Burwell*.

Plaintiffs in the case claim that federal tax credits, or subsidies, can only be given to customers of Obamacare insurance exchanges established by a state, not by the federal government, because of specific wording in the Affordable Care Act. If the Supreme Court agrees with them, people in 34 states served by the federal exchange HealthCare.gov would lose their subsidies, and many of them in turn would be unable afford their monthly plan premiums.

Although Republicans in Congress have long opposed Obamacare, such an outcome presents a potential political pickle because most of the [estimated 8.2 million people who would become uninsured](#) as a result live in GOP-led states. Those states are also expected to see dramatically higher individual insurance plan prices, because of the exodus of subsidized customers from the market.

In contrast, Obamacare enrollees in states that operate their own exchanges, which tend to be in Democrat-led states, would continue receiving federal financial aid.

Florida battleground

The contrast would be particularly striking for a state like Florida, whose residents are served by HealthCare.gov, said Dan Mendelson, CEO of the Avalere Health consultancy.

"In Florida, there would be a million people affected by this" ruling, said Mendelson. "That is going to cause a backlash" against Republicans there, he said.

And Florida, he noted, is a "battleground state" for the 2016 presidential election.

If you're a Republican, Mendelson said, "You've got to ask the question, 'is it worth risking the '16 election for this?'"

But Mendelson acknowledged that the GOP congressional "caucus is split between those who just want to see Obamacare go down, and those who face practical political [harm] around an insurance loss."

"I think it is extraordinarily unlikely that Republicans coalesce around a plan that is credible prior to the court's ruling, and I think this will be a weakness if the court rules for [the plaintiffs] because anything they will do at that point will be seen as a Hail Mary," Mendelson said.

"I think there are a lot of guys hoping that the court rules for the administration, so they don't have to deal with this as the 2016 election approaches."