



GOP Will Never Stop Coming for Obamacare

Even if the Supreme Court sides with the administration in *Burwell v. King*, the GOP will stop at nothing to repeal Obamacare.

David Freedlander

March 25, 2015

Obamacare turned 5 on Monday, a birthday achieved despite sustained and repeated efforts to smother the law in its cradle.

The law has taken some hits, including a 2012 Supreme Court decision that buckled the knees of the bill's backers but seemed to make the Affordable Care Act the settled law of the land.

Now the Supreme Court has again taken up another challenge to the law.

King v. Burwell hinges on whether or not four words buried deep in the text of the law contain the seeds of Obamacare's destruction by eliminating tax subsidies for people living in states that declined to set up their own insurance exchanges.

But even if they lose again at the court, conservatives say that they will continue to try to undo the law through the courts.

Michael Cannon, a health-policy expert at the Cato Institute, said the most promising challenge to the ACA comes from the state of Maine, which, after the Roberts court ruled in 2012 that the federal government was limited in how much it could compel states to expand Medicaid, sued to roll back its existing Medicaid coverage.

Last year, a federal appeals court ruled against the state, but Gov. Paul LePage has appealed to the Supreme Court, even as Maine's attorney general has refused to represent the state in its challenge of the law.

Other remaining challenges include *Sissel v. U.S. Department of Health and Human Services*, which argues the ACA is unconstitutional because it violated the Constitution's origination clause that states spending bills must originate in the House, not the Senate.

“They are both kind of long shots,” acknowledged Cannon, noting that “the Supreme Court has never struck anything down on origination grounds” and that the House likely lacks standing in its lawsuit against the administration.

If the administration loses *King v. Burwell*, most health-policy experts predict that it will create a “death spiral” as low-income beneficiaries lose their subsidies in states that did not set up their own exchanges, and insurers are forced to raise rates. But conservatives say they will not delay in kneeling the law into the grave by filing lawsuits in states that set up their own exchanges.

Because many states rushed to do so, conservatives say they expect that governors and their health departments may have violated their state constitutions, and so even residents of those states that believed they were immune from the *Burwell* decision could face a loss of subsidies as well.

If the Supreme Court decides in favor of the government in *King*, conservative legal scholars said that what they decide to do in the future to tear down the law depends upon precisely the way in which the judgment is rendered. *Halbig v. Burwell* mirrors the *King* case in many respects, but other cases could still go forward, in particular one in Indiana in which several dozen school districts have argued that the employer mandate to provide health insurance puts too much of a burden on state and local governments.

Smaller challenges to the law, meanwhile, continue to mount. Little Sisters of the Poor sued to exempt themselves from the contraceptive mandate. If successful, the suit would allow more organizations to opt out than the *Hobby Lobby* decision did.

Another challenge, brought by the Goldwater Institute of Arizona, takes aim at the Independent Payment Advisory Board, which was designed to permit the Executive Branch to limit Medicare payments. Even some of the law’s liberal supporters, like former Vermont Gov. Howard Dean, have said that the board should be eliminated or rethought.

Meanwhile, conservative legal scholars say they continue to pore over the text of the law in the hopes that they will find some other legal weaknesses that were not readily apparent. The *King* case, after all, hinges on four words in the text that were discovered by a legal scholar months after the law was passed.

“This law is so complicated that even those who have read it don’t understand the depths of it,” said John R. Graham, a senior fellow at the conservative National Center for Policy Analysis. “Every time we look at it, we find something else to take to a judge.”

And such lawsuits, he added, help galvanize opposition to the bill years after it has passed.

“They keep the energy up, keep Obamacare on the front pages, keep hope alive.”

Which is necessary, because many conservatives still hope that the law will collapse under its own weight.

“They have really reached the limit of sign-ups. Enrollment is flattening as people see more and more how expensive the coverage is, how high the deductibles are, all the hoops they have to jump through, and they realize it is just not very attractive insurance,” said Grace-Marie Turner

of the Galen Institute. She said that many states would be able to opt out of some of the law's provisions in 2017, and find their own alternatives.

"There is going to be huge momentum going forward to make changes to this law," Turner said. "I could go on forever about how damaging this law has been to people's lives. It has to be changed."