



## What Happens If The Supreme Court Strikes Down Obamacare Subsidies?

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The Supreme Court announced Friday that they'll hear a case that challenges the legality of Obamacare subsidies in federally-run exchanges, the Court's second chance to devastate the way Obamacare works.

No one knows yet how the Supreme Court will rule, but the looming decision means the fight over Obamacare is far from over — if Republicans' takeover of Congress on Tuesday didn't make that clear enough. But the immediate result of such a ruling would tear apart the way Obamacare is currently working.

Right away, the IRS will have to stop issuing tax credits to customers in the 36 states with federally-run exchanges. That would push the full brunt of the cost of health insurance onto almost 4.6 million Obamacare customers. Millions will likely have to drop their coverage as a result.

And because subsidies are tied to the employer mandate, those requirements will go out of effect in those 36 states as well. The individual mandate will be rolled back as well — it exempts those without coverage options that are below a certain percent of their income, and without subsidies cutting costs, the number of Americans qualifying for the exemption will skyrocket.

The Obama administration will certainly make every effort to find a way to make the subsidies available to their constituents, who never appreciate having an entitlement, legal or not, taken away from them. There are a couple of potential ways states could try to get their subsidies back, but it'll be a long, arduous process.

### **1. States Could Work With The IRS To Make Yet Another Workaround**

It's possible the Obama administration could take it upon itself to issue a second executive work-around to replace the one the Supreme Court declared illegal. One idea [floated by University of](#)

[Michigan Law School professor Nicholas Bagley](#) is that states could establish incorporations to run their exchanges, which could then hire HealthCare.gov to do the job.

Nothing would change, functionally — it'd be another few layers of bureaucracy that still result in the federal government running the Obamacare exchanges. Bagley thinks there's a legal way to do it; Michael Cannon, a Cato Institute health care expert and architect of the subsidy case, doesn't.

“There is no workaround,” Michael Cannon, a Cato Institute expert and one of the architects of the subsidy case, told TheDC. “This *is* the workaround.”

## **2. Congress Could Amend Obamacare To Make Subsidies Available Everywhere**

If the Court decides that Obamacare restricts subsidies to state-run exchanges, the quickest fix would be for Congress to change Obamacare.

With Republicans in charge of Congress and Sen. Mitch McConnell and Speaker of the House John Boehner already pledging to take the health-care law apart piece-by-piece, there's almost no hope that they'd be willing to make it easier for Obamacare to work as functioned. A Supreme Court decision striking down key parts of Obamacare in most of the country would only make the GOP's job easier.

## **3. States Could Just Build Their Own Exchanges**

The other viable solution is very, very long-term — and wouldn't fix the problem for the whole country.

It's here that Obamacare's disastrous first year will hurt the most: it's not clear how many states would agree to take up the burden of building a state exchange after the backbreaking year state-run exchanges had. There are the states that failed entirely (Oregon, Nevada), the states that had to start all over again (Maryland, Massachusetts), and the ones that are still struggling to make their sites function over a year later (Vermont, Washington).

And many states wouldn't want to buttress Obamacare at all. Many red states chose not to build their own exchanges out of resistance to the health-care law — every state that refused the Medicaid expansion also refused to build a state exchange.

“Some states could try to establish exchanges,” Cannon said, “but it's unlikely that any would. We just had a lot of Republicans swept into governors and statehouses.”

Residents seeking subsidies could put new pressure on the influx of Republican governors across the country, however, and some may cave. And some Democratic states went with HealthCare.gov, and could decide to belatedly build their own exchange.

But building exchanges will take years of planning and hundreds of millions in new federal grants, and it still wouldn't be a nationwide fix.

Millions of customers may have already cancelled their coverage. After losing so much of their customer base, the administration will be hard-pressed to bring lost customers back to the exchanges. If the Court doesn't rule in the Obama administration's favor this time, Obamacare could be effectively extinguished in most of the country.

"I think the only way they can do this is an act of Congress," Cannon said, and the chances of that happening are probably zero.