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## **North Carolina Will Face Insurance Upheaval If Supreme Court Rules Obamacare Subsidies Illegal**

By Katherine Restrepo

Jan. 30, 2015

Mark your calendars for March 4. Obamacare is headed to the high court yet again where oral arguments will question whether health insurance subsidies are legally being distributed to North Carolina and 35 other states that have set up federal exchanges.

The plaintiffs of *King v Burwell* rightfully argue that the federal health law expressly limits health insurance subsidies to policies purchased on state-based exchanges, not those purchased through federal marketplaces. To briefly get into the specifics here, section 1311 in the Affordable Care Act refers to state exchanges while section 1321 refers to the federal exchange. Section 1401 represents the premium assistance subsidies that will assist individuals living between 100-400% of the federal poverty level (FPL) to purchase health coverage. *Section 1401 is expressly written with reference to section 1311 and section 1311 only – i.e. with reference only to state, and not federal, exchanges.*

Critics counter that Congress always intended for subsidies to be allocated nationwide. But Michael Cannon at the Cato Institute and Case Western Reserve University law professor Jonathan Adler have been thoroughly investigating this issue for years. Their cogent arguments that Congress and prominent Obamacare supporters intended for these subsidies to be

conditional can be found [here](#), [here](#), and [here](#). You can also read about the lawyer who discovered this distinction [here](#).

Until oral arguments take place, the media will most likely portray *King v Burwell* as a challenge to Obamacare. But this is misleading, since plaintiffs are really just asking that the law operate as written.

Should the court's final ruling in June deem that subsidy distribution in federal exchanges is illegal, what will this mean for North Carolina?

Since these subsidies are tied to the individual mandate along with the bipartisan-panned employer mandate, over 10,000 large employers, 2.5 million employees, and 400,000 individuals in the Tar Heel State could indeed be liberated from these penalties.

Let me explain. In a state-based exchange – where subsidies are legal – if an employer with 50 or more full time workers does not provide health insurance and one of the employees purchases an exchange plan on his own and qualifies for a subsidy, then the employer is hit with a penalty. *Receiving a subsidy triggers a tax on the employer*. However, for federal exchange states the absence of subsidies would eliminate the law's tax on employers who do not provide health coverage for their workers.

Outrage would also ensue. No subsidies means that millions of citizens would be exposed to the full cost of Obamacare health insurance premiums. To date, a vast majority of North Carolina's individual market enrollees have qualified for discounted health plans at the taxpayers' expense.

Policy commentators weighing in on the situation suggest that chaos can easily be avoided by having states merely switch from federal to state exchanges. Yet for North Carolina to make this transition, apparently more than legislation is needed. And the seed money needed to establish a state exchange is no longer available from the federal government. North Carolina was once set on establishing its own exchange under Democratic Governor Beverly Perdue, but a newly elected Republican majority ceased to use more than \$70 million in start-up grants in 2013.

Despite Republicans' steadfast opposition to the federal health law, *New York Times* columnist Robert Pear's recent article indicates that some GOP legislators may be distancing themselves from further endorsing *King*, and not all attorneys general in federal exchange states have filed amicus briefs agreeing that the law clearly limits subsidies to state exchanges:

*Six Republican state attorneys general — in Alabama, Georgia, Nebraska, Oklahoma, South Carolina and West Virginia — filed a brief agreeing that subsidies were illegal if distributed through the federal marketplace. “Those were the states that expressed an interest in joining,” said Aaron Cooper, a spokesman for Attorney General Scott Pruitt of Oklahoma, who led the effort.*

*But 31 states have Republican governors, and most did not file briefs. State-level Republicans were far more involved in the landmark 2012 case challenging the constitutionality of the Affordable Care Act, when more than two dozen Republican attorneys general were plaintiffs.*

Will anti-Obamacare North Carolina legislators hold fast to their constitutional principles?

Federal exchange states like Ohio and Missouri went as far as introducing legislation entitled the Health Care Freedom Act, which would suspend insurers' licenses if they accept subsidies from the federal government.

The Republican Congressional majority is now equipped with more opportunities to negotiate with President Obama on this unworkable law. Medical care can certainly be more affordable with fewer of the taxes and regulatory requirements Obamacare currently imposes. And there are ways that insurance companies can compete for individuals with pre-existing conditions by offering portable, secure, guaranteed renewable policies.

A popular proposal co-sponsored by our very own Senator Richard Burr advises the repeal of all 20 Obamacare taxes and fees that economically burden employers, insurance companies, medical device companies, individuals, and the like. Instead, it proposes to liberalize the exchanges (liberalization in the good sense) so that insurers can be more flexible with the products they offer, like copper plans.

The legislation also calls for a universal, refundable tax credit to be distributed to individuals as an incentive to purchase suitable health plans — the idea being that money put into the hands of a consumer is spent more wisely.

However, libertarians argue that a universal tax credit equates to redistribution of taxpayer money in another form. Rather, they support tax deductions combined with large health savings accounts (HSAs).

Regardless of the justices' ruling, it is paramount that North Carolina lawmakers warn citizens of the potential consequences this lawsuit brings. In the meantime, Congress needs to produce a game plan prior to the oral arguments as a way to demonstrate their commitment towards making medical care legitimately accessible and affordable for low to middle income individuals.