



These 10 words have put Obamacare on death row again

By Brett LoGiurato

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The last time a major case involving the Affordable Care Act went before the Supreme Court, many of the law's provisions were still theoretical. It was a case that decided the constitutionality of the individual mandate to purchase health insurance — before the mandate went into effect.

Three years later, a new case involving the Affordable Care Act is different. The law — which is designed to expand health-insurance coverage and lower the overall cost of health care — has been almost fully implemented. Millions have felt its effects through its various provisions, as the Supreme Court prepares to hear a challenge that supporters and detractors say could leave it completely dismantled.

“It would throw the law into pandemonium,” said Sen. Chris Murphy (D-Connecticut), a supporter of the law casually known as Obamacare.

So what's the case?

On Wednesday, the high court will hear arguments in the case *King v. Burwell*. The challenge is aimed at federal insurance subsidies, a key mechanism of President Obama's signature legislative achievement, that have helped millions of lower-income Americans sign up for private insurance plans through the federal exchange. The challenge aims to block subsidies in states where insurance exchanges are handled by the federal government because of 10 words:

“Through an exchange established by the state under Section 1311.”

The plaintiffs in the case have argued the way the law was written does not allow for subsidies to be provided by the federal government, pointing to a statute that says subsidies should be issued

to plans purchased “through an Exchange established by the State under Section 1311” of the Affordable Care Act. Section 1311 establishes the state-run exchanges.

The plaintiffs have said this means Congress only meant to establish exchanges run by the state — not by the federal government, as is the case with the HealthCare.gov marketplace. They have argued Congress meant to try to force states to establish insurance exchanges and were surprised when 37 states declined to do so.

To the plaintiffs and their supporters, the case is as clear as the light of day.

“Members of Congress have not been forthright about what their intent is, and I don’t know why we should expect them to start being forthright today,” Michael Cannon, the director of health policy at the Cato Institute and one of the architects of this legal challenge, told this reporter in an interview last year.

“These are the people who said, ‘If you like your health plan, you can keep it.’ These are not reliable sources. What’s reliable is the text.”

What happens if the challengers win?

The case was viewed as an unserious challenge to the law until late last year, when the Supreme Court decided it would hear it despite an absence of conflicting opinions in lower courts. (One circuit court ruled in favor of the government, and the other was scheduled to rehear the case before the Supreme Court picked it up.)

Suddenly, the stakes are high. Millions of people count on the subsidies to afford health insurance under the new exchanges.

The non-partisan RAND Corporation released a study in January estimating that about 8 million people would lose coverage if that part of the law is overturned. Enrollment in the exchanges would decline by about 70 percent. Insurance premiums would skyrocket by about 47 percent in the individual market. And according to the nonpartisan advisory and consulting firm Avalere Health, those relying on subsidies could see whopping 122 percent to 774 percent premium increases.

“The authors of the ACA never intended for state boundaries to become fences,” Sen. Chuck Schumer (D-New York) said on a conference call with reporters on Tuesday. “It would be devastating to millions of families ... It would do nothing short of throwing our health care system into chaos.”

So what’s the backup plan?

Uh, well, funny you should ask. As for the potential fixes ... well, no one really seems to know just yet.

Secretary of Health and Human Services Sylvia Mathews Burwell admitted last week during a congressional hearing that the Obama administration has no contingency plan should the court rule against the federal government.

As for Republicans? Well, they're in the same pickle they've been in since Obamacare passed — they'd like the law to be damaged and/or fully repealed, but they are far from unified on a plan to replace it. That's an especially sensitive subject now that millions are benefitting from gaining health insurance under the law.

Last week at the Conservative Political Action Conference near Washington, D.C, several Republicans expressed hope that the case could lead to an overhaul of the health care law and a debate about the future of health care in the U.S.

Rep. Marsha Blackburn (R-Tennessee) sounded almost gleeful when she described the court case as one that could “put the death knell in Obamacare.” But Sen. John Barrasso suggested that Republicans coalescing around a replacement plan could be the key to winning back the White House in 2016.

“You can imagine if a Supreme Court rules against the president,” Barrasso said at the conference. “He's going to call it a partisan court. And then he's going to say I have a simple one-page bill as the solution. Just make everything I've done, make it legal. And we are not prepared to do that.”

Three House Republican committee chairs — including Ways and Means Chair Paul Ryan — unveiled on Tuesday the outline of a potential replacement plan in a Wall Street Journal op-ed.

Senate Democrats on Tuesday pointed to the Republican infighting surrounding the spending bill to keep the Department of Homeland Security funded as a possible preview of the chaos in the event of the Supreme Court siding with the challengers.

Said Sen. Jeff Merkley (D-Oregon): “If you sat through the tortuous process to establish the Affordable Care Act to begin with, and then you look at the hyper-partisanship and lack of common sense in leadership, it does not bode well for the possibility of having some sort of substitute.”