



Critical day for ObamaCare as high court hears new challenge

By Sarah Ferris and Peter Sullivan

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The nine justices of the Supreme Court on Wednesday will again hold the future of ObamaCare in their hands, as they take up a new legal challenge that could strip insurance subsidies from millions of people.

The court on Wednesday will hear oral arguments in the *King v. Burwell* case, with the plaintiffs contending that people in 37 states are illegally receiving subsidies through President Obama's signature law.

Should the justices rule against the administration, the consequences could be lasting and dramatic.

The Obama administration says it is impossible to carry out the healthcare law without the subsidies, which were designed to help people cover the cost of health insurance.

A victory for the plaintiffs would instantly revoke the insurances subsidies for up to 9.3 million people, according to the nonpartisan Urban Institute, sending shockwaves across the healthcare system.

“Not only would many millions of people lose health insurance and rejoin the ranks of the uninsured, but premiums for everyone else would skyrocket,” said Ron Pollack, the executive director of the pro-ObamaCare Families USA.

Republicans acknowledge the high stakes in the case and have drafted emergency plans to soften the financial blow for ObamaCare participants if the lawsuit succeeds.

The case hinges on the meaning of four words in the text of the law: “established by the state.”

The challengers argue that a plain English reading of the phrase means that subsidies are invalid in the roughly three-dozen states that opted not to set up their own healthcare marketplaces, instead relying on the federal website HealthCare.gov.

Administration lawyers argue a literal reading of the phrase is nonsensical and contradicted by the rest of the law, which they say makes clear that subsidies were intended to be available nationwide.

The outcome of the case could rest on whether a majority of the justices focus on the four-word phrase or opt to view it within the broader context of the Affordable Care Act, experts say.

Court observers will be keeping a close eye on Chief Justice John Roberts, who was the decisive vote in the previous ObamaCare challenge in 2012, and on Justice Anthony Kennedy, often the swing vote in major cases.

Should the court decide to strike down the subsidies, the political fallout could be intense.

Republicans have fretted about having to pick up the pieces from the case, and in recent days, have floated plans to temporarily restore insurance subsidies through 2017, when they hope to have control of the White House.

If Republicans can't agree to a plan, many fear their home states will be forced to accept a deal from the administration that would end up making the Affordable Care Act more entrenched.

At least nine states, many in the South, are already considering legislation to create a stopgap that would keep subsidies flowing.

“When Team Obama then turns its guns on the holdout states and their 37 governors, the political pressure to adopt ObamaCare will be crippling. I fear that most governors will fold,” Sen. Ben Sasse (R-Neb.) wrote in an op-ed last week.

Meanwhile, the Obama administration has maintained it has no fallback if the court breaks against them, in part to ramp up pressure on the justices.

“If they rule against us, we'll have to take a look at what our options are,” Obama told Reuters on Monday. “But I'm not going to anticipate that. I'm not going to anticipate bad law.”

The healthcare industry has lined up behind the administration, warning that the loss of subsidies would mean only the sickest people would sign up for insurance. That would then drive up premiums and push even more people away, leading to a “death spiral” in the insurance markets.

Former congressional aides who helped draft the law have stressed that the conservatives' argument rests on just four words in a massive, complicated bill.

“They didn't just pull out a clause. They pulled out a few words out of a clause. This is the game that's been going on,” John McDonough, a former aide for the Senate Health, Education, Labor and Pensions Committee, said at a recent press conference.

The phrase at the heart of the case, “established by the state,” appears to have originated from the Senate Health and Finance committees, though those involved have said they had no intention of restricting the subsidies only to some states.

“The only surprise we have is that this case has gone as far as it has,” said McDonough, a longtime aide to the late Sen. Ted Kennedy (D-Mass.), a longtime advocate for healthcare reform.

Groups backing the plaintiffs say they are confident of victory.

Michael Cannon, the director of health policy studies at the Cato Institute and an architect of the legal challenge, said the case should be open and shut.

“This is a simple case of statutory interpretation that is so clear, that if it was about anything but ObamaCare, the plaintiffs would win nine-nothing,” he said.