

The Oregonian

Supreme Court challenge to health care law probably won't affect Oregonians in the short term

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A closely watched case headed to the U.S. Supreme Court Wednesday, *King v. Burwell*, could have major national impacts on health insurance markets and the millions who benefited from the federal reform law that kicked in last year.

But it may not have much of an impact on Oregonians who benefited from the law -- in the short term, at least.

Here's what to make of [all the hubbub](#) over the case.

Foes of the Patient Protection and Affordable Care Act claim that the law prohibits states using the federal exchange called HealthCare.gov from awarding tax credits to reduce consumers' premiums. Only homegrown exchanges set up by states can do so, they contend. Supporters of the law disagree.

Regardless, the bottom line for Oregon is this:

- Even though consumers here are using HealthCare.gov to get tax credits after the Cover Oregon implosion, the ruling likely won't affect them, at least in the short term.
- Even if the lawsuit succeeds, Oregonians who received tax credits through Cover Oregon in 2014 won't have to pay back any of the money they received.
- And even Oregonians receiving tax credits in 2015 might not have to pay back any of that money.
- In fact, they may be able to keep receiving those tax credits even if they used HealthCare.gov to sign up for insurance.

Huh? The explanation is a little bit complicated.

Oregon fits into a special category. The state set up the legal structure and bureaucracy for its own exchange, just as the federal law's foes claim was necessary to award tax credits.

So, despite that Cover Oregon's troubled technology never quite got off the ground, the state's premium tax credits doled out in 2014 are safe.

The 2015 picture is slightly more complicated. But the gist may well be the same.

Starting last October, the state contracted with HealthCare.gov to help enroll people for the 2015 year. However, Oregon still has fulfilled most of the qualifications spelled out by the law to be considered a state-based exchange under the federal law.

That's why legal briefs filed by both sides in the *King v. Burwell* case say only 34 states are in play as potentially affected by the outcome, as the news [website Politico](#) and blogger Charles Gaba [pointed out recently](#). That's how many states began 2014 as federal exchange states. Oregon was one of the 16 states that jumped through the legal hoops for a state exchange.

[Michael Cannon](#), the legally trained conservative activist who is widely considered the driving force behind plaintiff's theory of the case, considers it likely that [Oregon sidesteps a ruling](#) against federal exchange tax credits.

He said last week that even if the Supreme Court rules against federal exchange subsidies nationally, the ruling probably won't affect Oregon because of its special status. He said it would probably take a second, Oregon-focused challenge to knock out subsidies here.

That means that the mandates requiring health coverage for individuals and businesses would stay in place in Oregon, too -- which to foes of the law is a bad thing.

Under Cannon's analysis, should a more narrow, Oregon-focused challenge be filed, Oregon lawmakers [could easily tweak](#) the state's exchange law to circumvent it.

Meanwhile, many [legal observers agree](#) with lawyers arguing the case for the Obama administration on a key point. They say that even if the plaintiffs win, tax credits already awarded [need not be paid back retroactively](#) because of a statute giving the IRS broad authority in that regard. The ruling would only affect tax credits awarded in the future, they say. So Oregonians seemingly can accept tax credits from HealthCare.gov with confidence.

Of course the Supreme Court is hard to predict, and the actual text of a ruling could change the way Cannon and others think of it. And even if it is largely unaffected by a ruling, Oregon could still feel ripple effects from how a ruling affects the health insurance market. That could start as soon as next year, and some observers claim it will happen [regardless of the outcome](#) in court.

The biggest question: how other states and Congress would react to a ruling against the law's tax credits. Legal and political observers disagree on how that would play out, with some saying Obamacare would effectively end. So regardless of the short-term effect, the case could mean big changes for Oregonians down the road.