

# The Star-Ledger

## Obamacare suit: Republicans may get more than they bargained for

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Watch closely how the U.S. Supreme Court handles the case of King v. Burwell. You may get to see what happens when a dog catches a car.

The car in question is called Obamacare. The Beltway Republicans have been claiming for four years now that they want to take a big bite out of its tires.

This is nonsense. If the Republicans were opposed to the approach to health care embodied in the Affordable Care Act, then they wouldn't have nominated the architect of that approach for president in 2012.

That of course is Mitt Romney. He's still busy barking at Barack Obama for taking the keys to his car. But he and his fellow Beltway Republicans have yet to admit that when it comes to Obamacare, they were for it before they were against it.

When Romney was running Massachusetts, it was mainstream GOP policy to support the individual mandate to purchase health insurance that forms the linchpin of Obamacare. Typical was Newt Gingrich's statement in his 2005 book "Winning the Future" that "we should make clear that a 21st Century Intelligent Health System requires everyone to participate in the insurance system." (Read a hilarious argument between Gingrich and Romney [here](#).)

No, we shouldn't says Michael Cannon. He's a health policy analyst with the free-market Cato Institute who's been fighting against the individual mandate since it was first proposed by Republicans like Romney. That's why he conceived the argument that forms the core of the case the Supreme Court decided to take up last week.

If you read the headlines, you probably saw that lawsuit characterized as a "challenge to Obamacare" or some such thing. Nonsense, said Cannon when I called him the other day.

“The fact is that this is not a challenge to Obamacare,” he said. “It’s a suit to cause the administration to implement the law as written.”

That gets complicated quick, but the gist of the plaintiffs’ case is that the ACA calls for the income-tax credits central to Obamacare to be granted only to those who get insurance through exchanges “established by the state.”

There are only 14 of them, including of course Massachusetts, where Romney set up the first such exchange way back in 2006. The elected officials in the other 36 states decided not to set up exchanges. This confounded the bill’s sponsors, said Cannon.

“What happened there was that they totally misjudged the popularity of their own handiwork and the willingness of the states to implement exchanges,” he said.

Cannon argues that bill’s framers saw those tax credits as an incentive for states to create exchanges and they assumed that all 50 would do so. But if a state didn’t set up an exchange, then neither the tax credits nor the mandates in the ACA can be enforced in that state, the plaintiffs contend.

Whether the court will accept that argument remains to be seen. But if it does, then a whole lot of Republican governors will be in the position of a schnauzer that caught up to an SUV.

Most prominent among them would be our governor. Last year, Christie vetoed a bill to set up an Obamacare exchange in New Jersey. He could afford to for the simple reason that the feds would be paying the same benefits through the exchange they set up.

But imagine the Supreme Court were to decide next summer that the letter of the law doesn’t permit federal exchanges - just as Christie was getting ready to take part in the Iowa straw poll of potential presidential nominees.

Would he decide to turn down hundreds of millions in federal subsidies? Would he let a couple hundred thousand New Jerseyans get kicked off health insurance? Or would he set up a state-run exchange?

A lot of other Republican governors would face a similar choice. But that’s what they get for ducking the issue.

It is Cannon’s considered opinion, and mine, that it’s silly to talk about free-market health care while ignoring the need to replace Medicare, which is the single most expensive single-payer health system on the planet. Cannon calls for folding it and other public programs into a system of Personal Medical Accounts that would be truly market-oriented.

As for the Republican leadership, just what do they stand for? In one breath they call Obamacare socialized medicine despite the fact Republicans invented it. And in the next they defend Medicare, which really is socialized medicine and was invented by Democrats.

They’ve yet to tell us just what they’d replace Obamacare with. But if the Supreme Court lets them off the leash, they’re finally going to have to make a choice.

ADD: Every time I mentioned that Romney was the pioneer of the Obamacare approach I get comments from some credulous sort who actually believes Romney's absurd contention that the national plan is not based on what he did in Massachusetts - even though both plans have the same sort of individual mandate and tax penalty.

If you are the sort who believes politicians, then I urge you to read this 2009 column Romney wrote for USA Today imploring Obama to adopt his approach rather than the public option then being pushed by Democrats.

Obama promptly did exactly that.

Also note the way Romney weasels out of admitting his plan is based on an individual mandate to purchase insurance:

"The Massachusetts reform aimed at getting virtually all our citizens insured. In that, it worked: 98% of our citizens are insured, 440,000 previously uninsured are covered and almost half of those purchased insurance on their own, with no subsidy."

What he doesn't mention is that the reason so many are insured is that they face a hefty fine if they fail to participate in the state's health-care exchange. He also fails to mention that at income-tax time every Massachusetts resident has to fill out a five-page form proving he had health insurance for every month of the prior year.

Oh yeah, Romney also left out the fact that he pioneered the idea of canceling residents' insurance if it didn't meet his mandates. Or in other words, even if you like it, you can't keep it.

Now ask yourself why Republicans thought it was a good idea to have him run for president in 2012. I have no idea. I was much more sympathetic to the ideas of Ron Paul, who in 2007 told me he was against any such mandates.