

Supreme Court sets arguments in pivotal Obamacare subsidies case for March 4

By [Tom Howell Jr.](#)

Monday, December 22, 2014

Arguments in a Supreme Court case that could decide the fate of Obamacare have been scheduled for March 4.

The date, confirmed Monday, sets up a pivotal showdown that will determine whether two-thirds of America can access crucial tax credits that help enrollees pay their monthly health premiums.

The justices must decide whether the law allows tax credits to flow to all of the Obamacare exchanges or just those "established by the state," as the law prescribes.

Obamacare critics take that to mean the 16 states plus the District of Columbia that set up their own exchanges, while the Obama administration says customers who use the federal exchange are also entitled to the subsidies.

The administration's lawyers say interlocking provisions in the law make it clear that the Department of Health and Human Services can step in for any state that refuses to set up its own exchange, effectively creating a state exchange entitled to tax credits.

But challengers cite speeches by White House advisers and pro-Obamacare policy analysts as proving the administration wanted to entice states to set up their own marketplaces and used the subsidies to taxpayers as a carrot — and the lack of subsidies as a stick — to get them to do so.

The IRS then extended the tax credits to all the states through regulations — unlawfully, according to the critics — once it became clear that the administration's political calculation that the states would set up exchanges turned out to be wrong.

Republican lawmakers are eyeing a decision in the case, expected by June, as their best opportunity to dismantle President Obama's signature achievement.

Michael Cannon, a health policy expert at the libertarian Cato Institute and key architect of the "King" challenge, said having a viable GOP alternative waiting in the wings will "create room for the Supreme Court to do the right thing."

But he said it makes little sense to actually move legislation until the justices weigh in, giving Congress a sense of the law's new contours and a boost in their efforts to shake up the health care landscape.

"They should wait for that momentum," he said.