



## **King v. Burwell: A forecast for Oregon's ambivalent health care system**

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As Americans anticipate the release of the *King v. Burwell* oral arguments that were heard Wednesday by the U.S. Supreme Court, Oregonians will have a difficult time forecasting its impact given Cover Oregon's convoluted track record.

The plaintiff's case in *King* is based on the claim that the Internal Revenue Service changed and negated the clearly stated provision in the Affordable Care Act that only people in states with state-established exchanges could get health insurance subsidies. Subsidies are now being given to people in states which have refused to establish their own exchanges.

Transcripts of the oral arguments won't be available until Friday, but early reports indicate that the questioning was dominated by justices who seem to be attacking the plaintiffs in ways which would avoid engaging the IRS rewriting of the ACA provision that *only* people on *state-established* exchanges are entitled to the subsidies.

Justice Ruth Bader Ginsburg and Justice Stephen Breyer raised issues about whether the plaintiffs have standing to sue. If the case is decided on standing, it will be a very narrowly focused decision with no impact on the ACA. On the other hand, Justice Anthony Kennedy seems to suggest it may be unconstitutional for the federal government to coerce the states into setting up the state exchanges. If the court decides that the original provision in the ACA is itself unconstitutional, all bets are off.

What would the impact be on Oregon if the Supreme Court decided with the plaintiffs that only people on state-established exchanges would be subsidized? That question hangs on whether Oregon's exchange is "established by the state." There is no clear answer to that question.

Oregon's recently resigned Gov. John Kitzhaber, a staunch supporter of the ACA, wasted somewhere between \$248 and \$350 million on an ambitious system, Cover Oregon. Everything about Cover Oregon failed, including the 1960s pseudo folk music video to support it. According to *The Oregonian*, "Cover Oregon closed one of the sorrier chapters in the history of Oregon state government" in April 2014 when it opted to dump its troubled \$248 million health insurance exchange in favor of the federal exchange.

According to Lisa Lettenmaier of Health Resources NW, Oregon has a “hybrid” exchange which has been called “federally assisted.”

Most of the published maps show Oregon as having a state-established exchange. It is commonly believed that the entire transition from the failed Cover Oregon to the failing Healthcare.gov seems to have been designed to allow Oregon’s very pro Obama care’s Democratic government to save face.

In any case, the government of Oregon and the Department of Health and Human Services are allowing this ambivalent status to continue. According to the Cato Institute’s Michael Cannon who spoke in Portland last week at an event co-sponsored by Oregon’s Cascade Policy Institute, strictly speaking, Oregon’s plan no longer meets the ACA’s criteria for an exchange “established by the state.” The state would have had to contract with entities subject to the laws of the state. It did not do so. But, as Cannon also claims, “What the law says is not always what the administration does.”

In keeping with the HHS agenda, Oregon had already greatly expanded its Medicaid program. As Cannon argued, Medicaid provides “lousy coverage.” Last year, a federally-funded study in Oregon showed that when people newly enrolled in Medicaid were compared with people who had applied but were not enrolled, the people who did not receive Medicaid were healthier.

The studies also showed that emergency room use, hospital stays, and medical costs per patient increased under Medicaid. But, as Cannon also pointed out, Medicaid does not affect the middle class and so the *King* decision may not have a direct impact on Medicaid. The subsidized insurance on the exchanges does directly impact the middle class, however.

If, as the state government claims, Oregon has a state exchange, *King v Burwell* will not affect Oregon’s ACA program. If Oregon’s is not actually an exchange “established by the state,” than *King v. Burwell* could impact health care and taxes in very positive ways.

According to a press release by Cannon and Cascade Policy Institute’s Steve Buckstein, “If subsidies are denied under a *King* ruling, Oregon will join the majority of states in reaping benefits.” If the *King* ruling goes with the plaintiffs, “approximately 157,000 individuals likely will be freed from the law’s individual mandate requirement,” and 890,000 working Oregonians “also would be freed from the employer mandates that are putting downward pressure on our economy.”

Whether or not the plaintiffs are successful in *King*, which would gut the ACA, our health care system still needs to be fixed. States like Indiana are developing Medicaid systems which allow for a maximum amount of personal choice by patients. Other states are looking at other alternatives as are Republicans in Congress like U.S. Congressman Paul Ryan, who worked with Oregon’s own Sen. Ron Wyden to develop a more bi-partisan plan.

As one of the speakers at the demonstrations outside the Supreme Court said, there are a lot of good ideas out there. There are ways forward that would allow people to make their own health care decisions.

The Supreme Court is slated to deliver its decision on *King v. Burwell* in June.