

Modern Healthcare

King v. Burwell outcome gets the fantasy football treatment

By Bob Herman

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Oral arguments are Wednesday for King v. Burwell, the case before the U.S. Supreme Court that will decide the fate of the Affordable Care Act's subsidies in many states. According to a popular analytics tool, the law's challengers are favored to win.

As of Tuesday, FantasySCOTUS predicted a 5-4 ruling against the Obama administration. FantasySCOTUS is less like your typical fantasy football league and more like the nerdy confines of Nate Silver's FiveThirtyEight.

Instead of a place for choosing star running backs and quarterbacks, FantasySCOTUS is a prediction market where lawyers, students and political science gurus forecast how the nine Supreme Court justices will rule on pending cases and the site aggregates their results. The website also has a computer algorithm to predict Supreme Court outcomes, which it claims had a 70% accuracy rate in predicting the outcome of every case over the past 60 years. The model only incorporated data available prior to each decision.

Josh Blackman, an assistant law professor at the South Texas College of Law in Houston, created FantasySCOTUS in 2009. It combined his professional background with what he thought would be a “fun game,” he said in an interview.

In the King case, Blackman admits the current consensus relies on “very weak” initial data, since arguments have not been heard. But “at this point, predictions are still really close,” he said.

Not surprisingly, Chief Justice John Roberts and Justice Anthony Kennedy are viewed as the two biggest swing votes in early crowd predictions. How Roberts will vote, according to FantasySCOTUS players, is at practically even odds right now. The website's algorithm has not yet offered its forecast.

Blackman has a horse in the race when it comes to the King decision. He filed a friend-of-the-court brief late last year on behalf of the libertarian Cato Institute in support of the plaintiffs. Tim

Jost, a law professor at Washington and Lee University, criticized the brief in January as “marred by factual errors.”

Several financial observers believe the opposite of the early FantasySCOTUS prognosis—that the Supreme Court will favor the federal government and keep the subsidies intact for people in the roughly three dozen states that operate federally operated marketplaces. Analysts at Sterne Agee distributed a research note Monday reiterating that investors expect the subsidies will be “upheld at a consensus 80% probability.”