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Latest Supreme Court Obamacare challenge could hit 155,000 in state

By Jessica Boehm

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More than 155,000 Arizonans could lose the federal assistance that helps them pay for health insurance, if the Supreme Court rules against the administration in the latest challenge to Obamacare to be argued Wednesday.

The decision in *King v. Burwell* could be a “game-changer,” said Allen Gjersvig, healthcare innovation director of the Arizona Alliance for Community Health Centers.

The case deals with federal subsidies established by the Affordable Care Act – or Obamacare – to help lower- and middle-income Americans buy insurance through a state-run marketplace.

But in the 34 states that did not set up their own marketplaces, including Arizona, residents bought insurance through a federal health-insurance exchange, healthcare.gov. The IRS expanded the subsidies so that they are also available to individuals who used the federal marketplace.

King v. Burwell challenges “whether the IRS has the power to grant these tax credits that are at issue,” said Ilya Shapiro, senior fellow in constitutional studies at the Cato Institute.

“If it doesn’t, then the executive branch here is rewriting the law without congressional approval,” he said.

If the subsidies are voided, it could do more than make insurance expensive for those now getting assistance. It could drive up costs for those still in the insurance pool, drive down the number of individuals required to get insurance and potentially eliminate the “employer mandate,” which says businesses with more than 50 workers have to provide insurance where subsidies are available.

“There’s all sorts of bad that could happen if there’s not a correction or a means to help people have affordable coverage,” Gjersvig said.

At the end of the 2015 open enrollment period for health care coverage, 204,187 Arizonans had signed up for insurance through the federal marketplace. About 76 percent of those people

qualified for federal assistance, and would be likely to forgo insurance if the court rules against the administration.

“Every person that gets a premium may not drop their coverage, but I would expect a very small percentage would have the resources and ability to continue to get insurance in force,” Gjersvig said.

Christina Sandefur, senior attorney for the Goldwater Institute, said this case is about more than just federal subsidies.

“The subject of the case are these subsidies, but these subsidies trigger various mandates,” Sandefur said, including the employer mandate and, by extension, the individual mandate.

The individual mandate requires all Americans to purchase health care or face a penalty – unless the lowest-priced coverage available, after subsidies, is more than 8 percent of a person’s household income. Without subsidies, a lot more people would be exempt from the individual mandate, Sandefur said.

Those who aren’t exempted will end up paying more than ever if the court rejects the subsidies.

According to an analysis by the Urban Institute and the Robert Wood Johnson Foundation, premiums for all non-group insurance in the 34 states without a state marketplace would increase by about 35 percent.

Linda Blumberg, senior fellow at the Urban Institute, said that if the court rules against the administration, two-thirds of the people who qualified for subsidies will likely become uninsured – and healthier people will be the first to ditch their now-inflated insurance.

“They are going to look at insurance as less of a necessity than somebody who has health problems,” Blumberg said.

Premiums are based on the average cost of health care of those insured – and a mass exodus of healthy people will leave the pool of people seeking insurance “sicker than it was before,” causing premiums to rise for everyone, Blumberg said.

That is unless Congress amends the Affordable Care Act to grant federal assistance for those using the federal marketplace, Gjersvig said.

Sandefur said this could be a “lesson to Congress” on the importance of “passing thoughtful, deliberative legislation.” The Affordable Care Act was “rammed” through Congress – which left room for “problems like this,” she said.

She said a good outcome in this case would be a ruling against the administration that could send the Affordable Care Act back to Congress, where lawmakers will decide the future of the subsidies, instead of allowing “unaccountable bureaucrats” at the IRS to interpret the law.

“If the people want that kind of a system, or if they don’t want that kind of a system, their legislators are going to be responsible for that,” Sandefur said. “If the IRS just gets to come in and make up rules about how these laws apply after they’re passed – well then nobody is accountable.”

Shapiro said a decision against the Obama administration could allow Congress to “unwind as much of Obamacare as possible.”

He said Congress could implement “a host of new reforms” instead of just amending the current law to include subsidies for the federal marketplace. But Shapiro said “it’s anybody’s guess” what would happen to the 155,000 Arizonans that currently use these tax credits in the meantime.

The Cato Institute filed a court brief supporting the challenge to the subsidies to “show that this was just the latest in a series of lawless actions by the executive in implementing the law,” Shapiro said.

But at a news conference in February to release enrollment numbers, Department of Health and Human Services Secretary Sylvia Burwell said she believes the government was acting within its rights.

“We’re confident about our position and believe that the U.S. Congress would not have passed legislation that would so exclude people from states across the country in that way,” Burwell said.