



Is It the Beginning of the End for Obamacare?

By Paul Strand

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WASHINGTON -- The U.S. Supreme Court justices appeared sharply divided Wednesday over President Barack Obama's controversial healthcare law.

Justices argued bitterly during a hearing over a case that could sink the landmark law. The sticking point: the legality of tax subsidies that allow millions of Americans in 37 states to pay for healthcare under Obamacare.

When Congress passed the law in 2010, it wrote that those subsidies would only be available to people participating in health insurance exchanges "established by the state."

But only 13 states have established such exchanges. The rest rely on the system set up by the federal government, the HealthCare.gov system.

If the high court rules the tax subsidies to people in all but those 13 states are illegal, it could make health care unaffordable for some 5 to 8 million more Americans and send Obamacare into a death spiral..

Liberals say that's why many conservatives and Republicans are backing this case: they want to kill off Obamacare, which was passed exclusively with Democrat votes in Congress.

A number of Republican senators and representatives have said they stand ready to implement a new health care system if the Court makes a ruling that mortally wounds Obamacare.

The four liberal justices appeared unwilling to let that happen. They ripped into Michael Carvin, the attorney representing those challenging the law.

They suggested it's obvious Congress would not have passed a health care plan aimed at making health care more affordable and accessible if its very wording would instead make it less affordable for millions of Americans.

But Carvin said Congress did indeed include the words "established by the state" when saying which health care exchanges could make tax credits available.

So Carvin argued that for this case, "...the plain language of the statute dictates the results."

Conservative justice Antonin Scalia agreed, saying "How can the federal government establish a state exchange? That is gobbledygook."

But the liberal justices and the U.S. Solicitor General defending Obamacare argued it would be illogical and catastrophic to read the statute so literally that it kills off Obamacare and throws millions of people out of the health care system.

Scalia hinted at a compromise, suggesting the Court could hold off on making a ruling until Congress has time to fix the wording.

He asked Solicitor General Donald Verrilli, "You really think Congress is just going to sit there while all of these disastrous consequences ensue?"

"This Congress, Your Honor?" Verrilli asked, eliciting laughter throughout the courtroom.

Outside the Supreme Court, many partisans on both sides of the issue gathered.

Some in favor of Obamacare held signs showing how many millions of people in various states not offering their own health care exchanges would likely lose coverage.

The tax subsidies are a linchpin in making Obamacare affordable. For many people, they cover some 75 percent or more of the cost of health care premiums.

Throughout the day, legal scholars weighed in with their opinions about the case.

"Obamacare is a disaster in every way, and the Supreme Court clearly realized that fact today," Jonathan Keim, with the Judicial Crisis Network said. "Congress passed a law that even the Obama administration doesn't like. But as most of the justices seemed to recognize, it's not the court's place to rewrite the law just to fix an urgent policy problem."

"If the government wins here, then not only will Obamacare continue to be rewritten by the IRS, but any executive agency -- and any future president -- will be able to rewrite any law," Ilya Shapiro, with the libertarian Cato Institute said.

"It seemed to me that the liberal justices were almost desperate to distract the Court from the statute language, which is very plain and straightforward," Hans von Spakovsky, senior legal fellow at the Heritage Foundation, said.

"Laws should be written by the people and their elected officials, not the IRS," Charlotte Hays of the Independent Women's Forum said. "Obamacare made a messy healthcare system even worse.

The Supreme Court, by siding with petitioners, can empower states to better solve the problems facing our healthcare system."

"In *King v. Burwell*, the Supreme Court will decide something very simple. Can the IRS impose illegal subsidies, mandates, and penalties on states that lawfully opted out?" Phil Kerpen, with American Commitment, said. "Pretty straightforward...right? Wrong! The justices are, without much subtlety, being told it will be their fault if millions of people lose subsidies - even if those subsidies were always illegal."

On the other side of the aisle, Dr. Georges Benjamin, with the American Public Health Association, decried the staggering potential for millions who could lose the coverage.

"According to a recent study, 9.3 million people who live in states in which the federal government has set up insurance markets will lose tax credits by 2016 if the Supreme Court decides in favor of those challenging the law," he wrote on the *The Huffington Post*. "Of those 9.3 million, an estimated 8.2 million people will lose their health insurance. Care will be delayed, denied, and will once again simply be out of reach for too many."

"The human cost of care delayed or denied is staggering," he said. "As told to the Supreme Court in a brief we filed last month, the loss of health insurance by 8.2 million people can be expected to translate into over 9,800 additional deaths each year."

Solicitor General Verrilli argued Congress didn't mean to authorize tax subsidies only for residents of states with their own health care exchanges.

But opponents point out Jonathan Gruber, the main architect of Obamacare, has revealed those subsidies were very clearly meant to be carrots offered only to states that would go along with the federal government's desire for them to create their own health care exchanges under Obamacare's many strict rules and regulations.

What was a surprise to those Obamacare architects was that at least 34 states controlled by Republican lawmakers would refuse to go along, not wanting to force their citizens into a health care system with so many onerous mandates and penalties.

Republican lawmakers have indicated they're willing to quickly pass legislation so millions of Americans don't suddenly lose their health care because of this court case.

But they're also indicating they'd like to use the opportunity to get rid of many of the worst parts of Obamacare at the same time, like onerous mandates and penalties.