



# Ending Obamacare subsidies: Risks vs. rewards debated

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October 30, 2014

A leading health insurance expert warned Thursday that if the Supreme Court rules against Obamacare subsidies for millions of [HealthCare.gov](#) customers the political backlash would be severe for Republican opponents of the law and efforts to fix it.

"You're just going to have blood in the streets," said Robert Laszewski of Health Policy and Strategy Associates on the eve of the high court's expected decision on whether or not to hear a challenge to the federally funded subsidies. "The politics of this, if this just goes through, are devastating."

The challenge that could land before the Supreme Court is based on the fact that the Affordable Care Act as written does not explicitly authorize subsidies for customers of the federal Obamacare insurance exchange HealthCare.gov, while it does explicitly authorize that financial assistance for enrollees on state-run exchanges.

About 85 percent of the nearly 5 million HealthCare.gov customers received such subsidies due to their low or moderate incomes, significantly reducing premiums for many of them.

"I think there's a point that you have to sit back and say, 'What if we win,'" Laszewski said at a Cato Institute panel discussion on the implications for Obamacare if the Supreme Court invalidates the subsidies to enrollees of the federal health-care exchange.

He noted that he is a "pretty big Obamacare critic," but said Republicans should try to reform the law through winning congressional and presidential elections, not through the courts.

"If you fix it through the political process it will be fixed in a way that you have a soft landing. People won't get screwed," Laszewski said, referring to the fact several million people could be left unable to afford their new HealthCare.gov-sold plans without the subsidies.

## 'A quick resolution'

But Michael Cannon, the Cato Institute's resident health-care expert, said that the time to end the subsidies, which he argues are illegal, is now, rather than later.

"The potential for disruption gets worse over time," said Cannon. He noted both the billions of dollars in federal money that has been borrowed to fund the subsidies, as well as the imposition of fines on people and businesses if they don't comply with Obamacare mandates that are inextricably linked to the subsidies' existence.

"You want a quick resolution of these cases," he said.

Cannon conceded that the fallout from a decision would be "bad."

"There will be people that desperately needed these subsidies that will lose these subsidies," he said.

"But it'd be better than what we have right now," Cannon said, referring to his argument that President [Barack Obama](#) "is not implementing the law Congress intended."

The high court on Friday is set to decide whether to hear a case that challenges the legality of the subsidies. However, the public may not learn the court's decision until next week.

Cannon is one of the intellectual godfathers of the legal challenges to the subsidies, which for the past several years have been pressed in four different federal courts.

For most of that time, the challenges were considered esoteric and unlikely to succeed. Obamacare advocates argued that the failure of the ACA to explicitly authorize the subsidies for HealthCare.gov customers was trumped by the overall goal of the law, which is to provide affordable health care to the uninsured.

"This case and this issue was pooh-poohed in the beginning," said James Blumstein, a Vanderbilt University professor of constitutional law and health law and policy who spoke at the Cato event.

But in July, a federal appeals court in Washington, D.C., stunned the Obama administration and ACA supporters by saying the subsidies were illegal. Hours later another federal appeals panel in Virginia ruled just the opposite, saying they are legal.

The Supreme Court has been asked by plaintiffs to overturn the Virginia decision, which would render the subsidies illegal in all 36 states where HealthCare.gov sold individual market insurance policies for 2014. The subsidies for more than 2 million people who received them via 15 state-run exchanges would not be affected.

Laszewski said such a ruling would be "the nuclear option of the individual insurance market in these 36 states."

He said that data suggest that most of the nearly 5 million people who got subsidies there were low-income earners. "These people would simply not be able, by and large, to afford their health insurance" without those subsidies," he said.

## **Political fallout**

The fallout from that, Laszewski said, would be even greater in HealthCare.gov states that have not expanded Medicaid eligibility to include most poor adults, meaning that hundreds of thousands of adults in big states like Texas and Florida would be left without affordable health insurance options that are available in states that expanded Medicaid and have their own exchanges.

"It does not understate it to say it would be an extraordinary mess, which would create one hell of a problem," he said. "Then the debate would move on to, 'Who broke it?' Because it would be broken, in spades."

Len Nichols, a professor of health policy at George Mason University, also questioned the political wisdom of attacking subsidies that go to the one group of adults "paying retail" for insurance. Nichols noted that poor adults in a little more than half the states can get Medicaid, at no cost to them, while employer-sponsored insurance is subsidized by a tax exemption for such benefits.

"Why would you want to turn 30 million people into opponents of your political positions?" Nichols asked, referring to the people now eligible for Obamacare subsidies.

But Tom Miller, a fellow at the American Enterprise Institute, scoffed at suggestions that a court-ordered end to the subsidies would be the end of the world.

"You can almost smell the napalm in the morning," Miller said sarcastically. "I would say, in fact, it's 'Apocalypse Not.'"

Miller said a ruling against the subsidies would prod Republicans and Democrats to negotiate a solution to the "good bit of disruption" that would be seen in the individual insurance market in HealthCare.gov states.

"What we'd likely see is efforts to liberalize and expand an alternative subsidy delivery system," Miller said. He also said that in the wake of a Supreme Court decision overturning the HealthCare.gov subsidies, the federal government could loosen standards on what would qualify as a state-run exchange, where the subsidies could be disbursed.