



# Court case pushed by think tank could leave uninsured out in the cold

*Commentary: Supremes to decide challenge to Obamacare based on a single sentence*

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At least four million Americans will rejoin the ranks of the uninsured—and consequently lose access to affordable health care—if the Supreme Court sides with opponents of Obamacare in a case that hinges on the interpretation of a single sentence in the law. But if that’s the price that has to be paid to impose an ideology that worships the so-called free market no matter what the cost, so be it, say the folks at a libertarian influence shop in Washington.

When the high court announced earlier this month that it would decide a case on the legality of the federal government’s efforts to help low-income Americans pay for their health insurance, it was time for high-fives at the [Cato Institute](#) in Washington.

Cato’s director of health policy studies, Michael Cannon, has argued for more than a year that because of the wording in a single sentence in the Affordable Care Act, the subsidies that have made it possible for millions of folks to buy coverage are unlawful. That’s the crux of *King v. Burwell*, the case the justices agreed to hear.

The Cato Institute, which began life 40 years ago as the Charles Koch Foundation, describes itself as a think tank “dedicated to the values of individual liberty, limited government, free markets, and peace.” Cannon and his colleagues believe the federal government is now more involved in health care than it should be, at least from a libertarian’s perspective, because of Obamacare. And they contend we’d be a lot better off if we could turn back the clock and let the “free market” decide whether or not people can buy health insurance and how much it will cost them.

In the unfettered market Cato wants to restore, health insurers would once again be able to refuse to sell policies to millions of Americans who’ve been sick in the past. And since that free market wouldn’t include government subsidies, millions of others would once again be unable to afford coverage even if insurers were willing to sell it to them. But those stark possibilities apparently are less offensive to the folks at Cato than the provisions of Obamacare that try to fix those fundamental flaws of the free market.

While I get their ideology, I don’t think Cannon and his associates have given nearly enough thought to the repercussions of a Supreme Court ruling that goes their way. I’ve not seen any

evidence of a well-thought-out Plan B from Cato. Aside from getting rid of regulations on the insurance industry—especially the Obamacare regulations that protect consumers from unscrupulous business practices—Cato’s idea of reform is largely limited to allowing people to put more of their money into health savings accounts to pay for medical care when they get sick or injured.

For the healthy and wealthy among us, that might sound pretty good. But it’s not a plan that would be of any help to the low-income folks who have long comprised the uninsured population. Because of the high cost of health insurance (and anti-consumer industry business practices), nearly 50 million of us had become uninsured by 2009, the year before Obamacare was enacted. If the law hadn’t passed, the number was projected to increase to 59.7 by 2015 and to 67.6 by 2020, according to an analysis by the Robert Wood Johnson Foundation, a health care philanthropy.

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The drafters of the Affordable Care Act knew the main reasons for the rapid growth in the number of uninsured Americans—the equally rapid increase in health insurance premiums and the ability of insurance firms to condemn many of us to the status of “uninsurable.” So they took away insurers’ ability to deny coverage to legal residents, and they created subsidies to help low-income individuals and families buy policies on the state exchanges established by Obamacare.

The problem is that those drafters included a section in the law that says that tax benefits enabling low-income taxpayers to afford insurance (the subsidies) should be based on the price of insurance on an “Exchange established by the State.” Because 36 states opted to allow the federal government to operate their exchanges, Cato and the plaintiffs in *King v. Burwell* argue that those exchanges were not technically “established” by the states. And because of that, the subsidies people in those states are getting are illegal.

If the Court agrees with Cato, opponents believe Obamacare will collapse. And there is good reason to believe it would. But where would that leave us? In a market that might indeed be “free” for insurers to pick and choose whom they want to sell coverage to. And a market that would be devastating for a large and growing percentage of the population.