

# To Subsidize or Not to Subsidize: King v. Burwell

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A major challenge to the Affordable Care Act (ACA) is before the Supreme Court, which is expected to make a decision in the King v. Burwell case by the end of its term in June 2015. The case concerns the legality of health insurance tax credits offered through a federally run health insurance marketplace, as opposed to a marketplace established by an individual state.

Currently, the federal government is operating insurance marketplaces in more than 30 states, and as of February 2015, 7.5 million people receive premium subsidies in states with a federally-run marketplace.<sup>1</sup> A ruling for the King petitioners could mean that individuals will no longer be able to receive subsidies to purchase health insurance through the federal marketplace, depending on action by Congress or individual states. This Alliance for Health Reform toolkit summarizes key resources that provide legal, policy, and political analyses on the King v. Burwell case and its implications.

## Suggested Reading General Background

**King v. Burwell: The Facts and Implications**  
Alliance for Health Reform. June 5, 2015.

Available at:

<http://goo.gl/CsWtGU>

This Alliance for Health Reform briefing covered key background information on the King v. Burwell case, including legal arguments and implications for consumers, states and the federal government.

## What's At Stake When the Supreme Court Rules on Health Plan Subsidies

Rovner, J. and Carey, M.A., Kaiser Health News. June 8, 2015. Available at:

<http://goo.gl/QRgR6p>

This article provides general background information on the King v. Burwell case via a set of frequently asked questions.

## The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums

Blumberg, L. J.; Buettgens, M.; Holahan, J., Robert Wood Johnson Foundation & Urban Institute. January 2015. Available at:

<http://goo.gl/WsZd9W>

This brief analyzes the possible direct and indirect effects of eliminating tax subsidies and cost-sharing reductions. The findings focus on the states with federally facilitated marketplaces. In broad terms, it notes that the effects would be a decrease in affordability and insurance coverage and an increase in non-group health insurance premiums.

## New Analysis Details Impact on Residents in Different States If the U.S. Supreme Court Rules for Challengers in King v. Burwell

Kaiser Family Foundation. June 3, 2015.

Available at:

<http://goo.gl/pu7SrN>

This analysis and interactive map uses 2015 enrollment data to break down how residents in the 34 states without state-based exchanges would fare, if the Supreme Court sides with challengers.

## The King v. Burwell Case: Resources

Ario, J.; Kolber, M. and Bachrach, D., The Commonwealth Fund. February 2015.

Available at:

<http://goo.gl/tWs2Ab>

This series of four blog posts addresses implications of a decision for the King plaintiffs for consumers, insurers, health care providers, and states.



## Legal Analysis

### Are Premium Subsidies Available in States with a Federally-run Marketplace? A Guide to the Supreme Court Argument in *King v. Burwell*

Musumeci, M., Kaiser Family Foundation. February 25, 2015. Available at:

<http://goo.gl/YI2UJK>

This issue brief provides background on the issue, examines the major questions raised by the *King* case, explains the parties' legal arguments, and considers the potential effects of a Supreme Court decision.

### How States' Rights Shapes *King v. Burwell*

Gluck, A. R., *Politico*. March 5, 2015. Available at:

<http://goo.gl/RdSOra>

The author, who also authored an amicus brief in the case at hand, explains how the meaning of federalism doctrines and the clarity of statutory language at the time of enactment of a law comes into play. In addition, Ms. Gluck provides some insight into the possible outcome of the case, based on the Justices' questions and comments during oral arguments.

### *King v. Burwell*: Unpacking The Supreme Court Oral Arguments

Jost, T., Health Affairs. March 5, 2015. Available at:

<http://goo.gl/MvY70E>

This blog reviews the arguments made during the Supreme Court oral arguments for the case on March 4, 2015.

### There Is No 'Glitch' in Obamacare

Lazarus, S., *New Republic*. November 18, 2014.

Available at:

<http://goo.gl/vha93l>

This article analyzes different points of view on how the language regarding the exchanges is used in the ACA. It compares and contrasts conservative and liberal perspectives and how various justices might rule based on their known opinions.

## Policy Options

### Testimony: Congress, Here's How to Prepare for *King v. Burwell*

Cannon, M. F., Cato Institute. April 29, 2015.

Available at:

<http://goo.gl/6RRgcZ>

Mr. Cannon states his position in support of the plaintiffs in *King v. Burwell*. His testimony before the U.S. Senate Committee on Small Business and Entrepreneurship asserts that the IRS ruling on tax subsidies that has been in effect since implementation of the ACA is in violation of its authority under the ACA.

## GOP Open to Extending ObamaCare Subsidies

Sullivan, P., *The Hill*. June 4, 2015.

Available at:

<http://goo.gl/AueqF6>

This article reports that Republicans are looking at legislative options to extend the subsidies should the Court rule in favor of *King*. The reporter notes that an extension could be accompanied by provisions repealing the individual and employer mandates.

## Media Coverage and Public Opinion

### *King v. Burwell* and Media Coverage

Altman, D., *The Wall Street Journal*. June 2, 2015.

Available at:

<http://goo.gl/gTu0RE>

Based on a Kaiser Health Policy News Index, this article reports that a majority of Americans have not been following the *King v. Burwell* case. It explains that the news media will have to provide background on the issues in the case when it reports the results.

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[www.aei.org](http://www.aei.org)

Brookings Institution  
[www.brookings.edu](http://www.brookings.edu)

Centers for Medicare & Medicaid (CMS)  
[www.cms.gov](http://www.cms.gov)

Consumers Union  
[www.consumersunion.org](http://www.consumersunion.org)

Enroll America  
[www.enrollamerica.org](http://www.enrollamerica.org)

Families USA  
[www.familiesusa.org](http://www.familiesusa.org)

Georgetown University Center on Health  
Insurance Reforms  
[www.chir.georgetown.edu](http://www.chir.georgetown.edu)

Galen Institute  
<http://www.galen.org>

Health Reform GPS  
[www.healthreformgps.org](http://www.healthreformgps.org)

Healthcare.gov  
[www.healthcare.gov](http://www.healthcare.gov)

Kaiser Family Foundation  
[www.kff.org](http://www.kff.org);

Health Insurance Marketplace Calculator  
[www.kff.org/interactive/subsidy-calculator](http://www.kff.org/interactive/subsidy-calculator)

National Academy for State Health Policy  
[www.nashp.org](http://www.nashp.org)

National Association of Insurance Commissioners  
[www.naic.org](http://www.naic.org)

National Governors Association  
[www.nga.org](http://www.nga.org)

Robert Wood Johnson Foundation  
[www.rwjf.org](http://www.rwjf.org)

The Advisory Board  
[www.advisory.com](http://www.advisory.com)

The Commonwealth Fund  
[www.commonwealthfund.org](http://www.commonwealthfund.org)

Urban Institute  
[www.urban.org](http://www.urban.org)

## Endnotes

- 1 Musumeci, MaryBeth. Are Premium Subsidies Available in States with a Federally-run Marketplace? A Guide to the Supreme Court Argument in King v. Burwell. Kaiser Family Foundation. February 25, 2015. Available at: <http://goo.gl/YI2UJK>.