VIEWPOINT

King v Burwell Subsidizing US Health Insurance for Low- and Middle-Income Individuals

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On June 25, 2015, the US Supreme Court once again saved the Patient Protection and Affordable Care Act (ACA) by acting to prevent a "calamitous result that Congress plainly meant to avoid."[1] In *King v Burwell*, the Court upheld subsidies (tax credits) for purchasing health insurance in federal exchanges, preserving financial assistance for 6.4 million low- and middle-income individuals. An adverse ruling would have placed affordable health insurance out of reach for millions more by disrupting the ACA's interlocking reforms and destabilizing insurance markets.

The ACA's Pillars of Expanded Access

The ACA expanded access to health insurance in several ways.[2] The first way is guaranteed issue, which bars insurers from denying coverage due to preexisting medical conditions. The second is community rating, which bars insurers from charging higher premiums based on health status or imposing lifetime caps on coverage. The third is subsidies, which are premium tax credits for those earning between 100% and 400% of the federal poverty level (currently $24 250 for a family of 4). The fourth is Medicaid expansion, which incentivizes states to expand coverage to those earning up to 138% of the federal poverty level. The fifth is the individual mandate, which requires most individuals to purchase insurance or pay a tax. In *National Federation of Independent Business v Sebelius*,[3] the Supreme Court upheld the individual mandate, but said Congress could not withhold existing Medicaid funding if states declined to expand coverage.

> In the aftermath of *King v Burwell*, a vital pillar of affordable access remains—subsidies for low- and middle-income individuals.

Federal subsidies have become a major vehicle for health insurance access for low- and middle-income individuals. Absent subsidies, fewer healthy people would have been able or willing to pay the unsubsidized price for insurance. Consequently, disproportionately sick and high-risk individuals would remain in the pool, making premiums more expensive. In the worst case, as prices increased, more people would be driven out until the market collapsed.

King v Burwell

The origin of *King v Burwell* is buried deep within a technical amendment to the tax code, limiting subsidies to individuals enrolled in an "Exchange established by the State."[2] Not imagining that their residents could be denied subsidies, 34 states allowed the federal government to run their exchanges. The challengers argued that subsidies could not be provided in federal exchanges because they were not "established by the State."[1] The Supreme Court in *King v Burwell* rejected the challengers' argument, upholding subsidies in federal exchanges, safeguarding a vital safety net, and preventing the health insurance market from becoming dysfunctional.

Chief Justice Roberts explained that "Exchange established by the State" must be read in context, with the ACA making "little sense" if tax credits were unavailable in federal exchanges.[1] The Court found it "implausible" that Congress would knowingly create the market destabilization and death spirals the act was designed to avoid.[1]

The Court's decision was grounded in common sense. Congress would not have given states the option of having the federal government operate their exchanges, while simultaneously rendering those exchanges dysfunctional. Although the challengers offered post hoc reasons (eg, Congress wanted to create strict incentives for states to set up their own exchanges), Congress never discussed the words "established by the State." Lawmakers and others involved in drafting the ACA agreed, saying it was not their intent to treat state and federal exchanges differently.

Future Prospects for Universal Health Coverage

When President Barack Obama signed the ACA in 2010, he remarked that the law enshrined "the core principle that everybody should have some basic [health] security." During the 5 years since the ACA's passage, the number of uninsured individuals has decreased by approximately 16 million, especially benefitting those in the near-poor category and racial minorities. During its first full-year of implementation, the number of uninsured black individuals decreased by one-third and the percentage of uninsured Hispanic individuals decreased from 30.2% to 25.2%.[4]

Despite the ACA's remarkable progress, the promise of universal coverage is unfulfilled, with affordable health insurance still out of reach for many, particularly poor individuals, minorities, and those who are unemployed. In 2014, nearly 16.5% of the overall population had been without insurance for at least some portion of the year and 8.4% for more than 1

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year, with racial minorities, particularly black and Hispanic individuals, still disproportionately left behind even accounting for the above-mentioned gains.[4]

The Medicaid Gap

Originally, the ACA envisaged that all states would expand Medicaid to cover everyone earning up to 138% of the federal poverty level. To ensure this expansion, the ACA offered a powerful incentive: a federal subsidy covering 100% of the state's costs during the first 3 years, tapering off to 90% by 2020. For states that failed to expand Medicaid, Congress imposed a steep penalty: the withdrawal of federal Medicaid funding.

In *National Federation of Independent Business v Sebelius*, however, the Court ruled the penalty was too coercive, which allowed states to opt out of expanding their Medicaid programs without penalty. To date, 21 states have done so, leaving many poor individuals ineligible for both Medicaid and subsidies, creating a new "donut hole" in the health care system.

In these states that have opted out, approximately 4 million individuals earn too much to qualify for Medicaid, but too little to qualify for subsidies.[5] Individuals living at the edge of poverty—more than half of them racial or ethnic minorities—are left behind, unable to afford health insurance, with major ramifications for their personal and financial security.[5] After *King v Burwell*, President Obama pledged to work diligently "to convince more governors and state legislatures to take advantage of the law, put politics aside, and expand Medicaid and cover their citizens."

States have powerful economic and humanitarian interests in expanding Medicaid. State-supported studies have found multibillion dollar economic benefits—up to $270 billion in Texas—projected to result from expansion, along with substantial job growth.[6] Health care institutions would also benefit financially. Most importantly, expansion would protect states' most vulnerable residents, making them healthier and less prone to financial hardship. A study in Oregon found that Medicaid coverage reduced the number of medical bills sent for collection by one-quarter, while increasing self-reported wellness.[7]

Undocumented Immigrants

The ACA leaves behind approximately 11 million undocumented immigrants. Not only are they excluded from premium tax credits and Medicaid (with narrow exceptions), they cannot even purchase health insurance on ACA exchanges at full price. Undocumented immigrants are very likely to be uninsured. Between 1999 and 2007, more than half were estimated to have gone without insurance.[8] Uninsured and undocumented immigrants, however, are still able to access limited care through emergency services—a highly cost-inefficient method.

Not only is this a moral and fiscal failure, it endangers the public's health by impeding access to prevention and treatment, particularly for infectious, sexually transmitted, and vaccine-preventable diseases (eg, human immunodeficiency virus/AIDS, tuberculosis, and measles). Instead of distributing costs evenly as health insurance would do, the financial burden falls primarily on safety-net hospitals, which will sustain funding cuts under the ACA.[9] In the absence of a humane federal policy, local government can make a difference. In California, for example, 47 of the state's 58 counties provide some low-cost health care to undocumented immigrants.[10] However, national action is needed to guarantee universal health coverage.

The ACA's Social Contract

In the aftermath of *King v Burwell*, a vital pillar of affordable access remains—subsidies for low- and middle-income individuals. After 2 elections, ongoing legal challenges (including 2 Supreme Court cases), and numerous repeal bills, political divisions should be put aside to ensure the social contract underlying the ACA. In a decent and just society, those who are relatively well-off, young, and healthy make it possible for everyone to access the care they need. If it is too easy for individuals, businesses, and states to opt out of this social bargain, the edifice of affordable care could unravel and with it the promise of a healthier, more secure population.

ARTICLE INFORMATION

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