

The Significance of King v. Burwell

Since its inception, the Affordable Care Act (ACA), also known as Obamacare, has been one of the most polarizing issues in modern American politics. Many hail the ACA's overhaul of the health insurance system as President Obama's "signature domestic achievement."¹ Democrats praised Obamacare as being a positive force that would improve the lives of Americans. In contrast, Republicans denounced the bill as dangerous to the well-being of the healthcare system and the economy of the United States. The Republican Congress voted to repeal the entire bill, in whole or in part, over fifty times.² Despite Republican pushback, the law had a significant impact on the American public, providing healthcare coverage to an estimated 17.6 million people.³

President Obama signed the ACA into law on March 23, 2010 and attempted to increase the number of people who had healthcare in the United States.⁴ The mechanism to ensure that as many people had access to healthcare as possible was an individual mandate to have health insurance or to pay a penalty unless the individual had an exception.⁵ The penalty paid by the individual who violated the individual would be in the form of a tax assessed for every month that the individual did not have insurance or an exception.⁶ This tax would be in the amount of two percent of a household's yearly income or \$325 for each uninsured adult and \$162.50 for each uninsured child in the household.⁷ Individuals can purchase health insurance privately or through exchanges (marketplaces) set up by the government.⁸ These exchanges can be federal exchanges or state exchanges.

Unsurprisingly, a number of legal challenges followed the implementation of Obamacare. The first major legal challenge to Obamacare came in the form of *National Federation of Independent Business v. Sebelius*.⁹ The case was brought forward by a lobbying firm for businesses challenging the constitutionality of Obamacare. Among the arguments made, perhaps

the most significant was the challenge to the individual mandate.¹⁰ The National Federation of Independent Business (NFIB) argued that the individual mandate was an unconstitutional exercise of the Commerce Clause.¹¹ The Supreme Court, however, upheld the individual mandate, calling it a “tax” thus falling under Congress’ tax power.¹²

Sebelius was not the last challenge to Obamacare. A number of legal challenges emerged on various aspects of the law, the most significant of which is *King v. Burwell*.¹³ This case dealt again with the individual mandate and associated tax credits, and had significant legal, political and policy implications. After the ACA survived *Sebelius*, *King* had the ability to effectively destroy the federal exchanges by eliminating the tax credits provided to individuals who had enrolled in the federal exchanges.¹⁴

In *King* the petitioners were four individuals who lived Virginia, a state that had the federal exchange. The petitioners did not want to be required to purchase healthcare like they would be under Obamacare (with the alternative being to pay a penalty that they would not have to pay if the law was overturned).¹⁵ One of the exemptions under the ACA was that if an individual had to pay more than eight percent of their income on health insurance, they did not have to get health insurance. 26 U. S. C. §§5000A(e)(1)(A), (e)(1)(B)(ii).

King challenged two main aspects of Obamacare: the validity of federal exchanges and the tax credits offered for federal exchanges. Exchanges are “basically, a marketplace that allows people to compare and purchase insurance plans.”¹⁶ If states do not create their own exchanges, the federal government may create an exchange for the state.¹⁷

The tax credits were also a key part of Obamacare. Tax credits to purchase health insurance were given to individuals with incomes between 100 percent and 400 percent of the poverty line.¹⁸ For the tax credit the IRS had determined that, “the amount...depends in part on

whether the taxpayer has enrolled in an insurance plan through ‘an Exchange established by the State.’”¹⁹ According to the Court, “the coverage requirement would not work without the tax credits...without the tax credits, the cost of buying insurance would exceed eight percent of income for a large number of individuals, which would exempt them from the coverage requirement.”²⁰

The main arguments before the Supreme Court concerned whether or not the ACA “authorizes tax credits for individuals who enroll in an insurance plan through a Federal Exchange.”²¹ The petitioners argued that federal exchanges were not “an Exchange established by the State under 42 U.S.C. § 18031.”²² This was bolstered by the fact that the text of the ACA was “ambiguous.”²³ The word “State” could have meant the government or the states themselves. If it had merely meant the states, the federal exchanges would not have qualified as an exchange which would authorize tax credits to defray the cost to the individual.

Burwell was decided on June 25, 2015.²⁴ The Court ruled six to three in favor of upholding the disputed clause as applying to every state, not just those with state-operated exchanges, and declined to give *Chevron* deference.²⁵ The Court declined *Chevron* deference (following the interpretation of the governmental agency: in this case the IRS) and believed it is within Congress’s authority to decide the meaning of the word “State” and that “had Congress wished to assign that question to an agency, it surely would have done so expressly,” and moreover that “[i]t is especially unlikely that Congress would have delegated this decision to the IRS, which has no expertise in crafting health insurance policy of this sort.”²⁶ Because it believed the IRS to be the wrong entity to regulate health insurance, the Court denied *Chevron* deference.²⁷

The Court also upheld the authorized tax credits for health insurance purchased from federally-established exchanges.²⁸ The Court held it was necessary to continue the federal exchanges because “[h]ere, the statutory scheme compels us to reject petitioners' interpretation because it would destabilize the individual insurance market in any State with a Federal Exchange, and likely create the very ‘death spirals’ that Congress designed the Act to avoid.”²⁹

King v. Burwell had a substantial impact from legal, political, and public policy perspectives. Each of these had the chance to change the very fabric of the nation as a major social program used by millions was upheld by the Supreme Court.

From a legal perspective, *King* was the last major pending challenge to the ACA. As of early 2016 there have not been any other Supreme Court cases dealing with the core tenets of Obamacare.³⁰ This means that, at least for now, Obamacare seems to have survived largely intact. If *King* had been successful in dismantling the federal exchanges in Obamacare by eliminating the tax credits for the federal exchanges, the entire ACA would have been meaningless from a federal standpoint and only the state exchanges would have survived from a legal standpoint. This would have destroyed the individual mandate in the states that had decided not to implement the state exchanges and ultimately would have ended the most core principles of Obamacare. Since the challenges to the ACA in *King* failed, Obamacare is still the law of the land and will likely remain so unless Congress and a new president successfully repeal the ACA.

From a political point of view, *King* served as a major victory for President Obama and the Democratic Party as Obamacare was one of the signature issues of the Obama presidency and even is colloquially known by his name. If *King* had been successful in effectively ending Obamacare, President Obama would have had the biggest domestic policy achievement of his presidency invalidated by the Supreme Court and his legacy would have been greatly

diminished. Since Obamacare was such a contentious political issue, the Supreme Court overturning one of the most key provisions of the act would have been a major victory for the Republican Party, both politically and from a psychological standpoint. This political win for the Republican Party could have carried over into electoral wins as it would have energized their base and been a crushing defeat to the Democratic Party.

Finally, from a public policy standpoint, *King* means that the federal health insurance exchanges can continue to function. This is the exchange used in a number of states.³¹ As of 2015, when the case was decided thirty-seven states had only federally-facilitated marketplaces.³² If *King* had overturned the ACA, the states with federal exchanges would have the ability to effectively opt out of Obamacare since the federal exchanges would no longer be viable. While the states would have been able to decide whether or not they wanted to set up a state exchange, it is likely that many of the states would not have set up their own exchanges since they did not already have them in place and many of the states had Republican governors and state legislatures. A breakdown of the number of people in the federal exchanges decided by *King v. Burwell* is in the chart below.

Federal Exchange Enrollment March 31, 2015³³

State	Total Enrollment
Federal Exchange Total	7,314,952
AK	18,320
AL	145,763
AR	52,784
AZ	165,026
DE	22,397
FL	1,415,981
GA	452,815
IA	39,090
IL	293,661
IN	180,529
KS	85,490
LA	149,954
ME	68,037
MI	293,843
MO	219,953
MS	80,011
MT	49,140
NC	492,014
ND	16,222
NE	63,380
NH	45,607
NJ	208,467
OH	188,867
OK	106,392
PA	427,454
SC	170,948
SD	19,004
TN	182,893
TX	966,412
UT	128,220
VA	335,033
WI	183,155
WV	29,862
WY	18,228

As shown in the chart above, the human impact of *King v. Burwell* was quite substantial, as over seven million individuals were enrolled in federal exchanges as of March 31, 2015. Without the federal exchanges up to seven million people would have potentially lost their health insurance or seen their rates skyrocket. This would have made hospital visits, doctor's appointments, and prescriptions likely much more expensive.

What the future holds for the ACA is uncertain. A new administration might continue or completely dismantle Obamacare. For the immediate future, however, Obamacare appears to be

securely ensconced as the law of the land because of the Supreme Court's decision in *King v.*

Burwell.

¹ *Obama Vetoes Bill to Repeal Signature Health Care Law*, Chicago Tribune (January 28)

<http://www.chicagotribune.com/news/nationworld/ct-obama-vetoes-bill-to-repeal-obamacare-20160108-story.html>

² Kathleen Miller and Terrence Dopp, *Core of Obamacare Would Be Repealed in Bill Passed by U.S. House*, BLOOMBERG POLITICS (October 30, 9:55 pm), <http://www.bloomberg.com/politics/articles/2015-10-23/core-of-obamacare-would-be-repealed-in-bill-passed-by-u-s-house>

³ *Health Insurance Coverage and the Affordable Care Act*, ASPE Data Point (2015),

<http://aspe.hhs.gov/sites/default/files/pdf/111826/ACA%20health%20insurance%20coverage%20brief%2009212015.pdf>

⁴ PATIENT PROTECTION AND AFFORDABLE CARE ACT, PL 111-148, March 23, 2010, 124 Stat 119.

⁵ *How Does Obamacare Work*. Obamacare Facts. <http://obamacarefacts.com/howdoes-obamacare-work/>.

⁶ *Obamacare Explained*. Obamacare Facts. <http://obamacarefacts.com/obamacare-explained/>

⁷ *Id.*

⁸ *Health Insurance Exchange*. Obamacare Facts. <http://obamacarefacts.com/obamacare-health-insurance-exchange/>.

⁹ *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (2012).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *King v. Burwell*, 135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015). Prior challenges to the ACA include: *Sissel v. U.S. Dep't of Health & Human Servs.*, 760 F.3d 1 (D.C. Cir. 2014) (adhered to on denial of reh'g sub nom); *Sissel v. U.S. Dep't of Health & Human Servs.*, No. 13-5202, 2015 WL 6472205 (D.C. Cir. Aug. 7, 2015); *Halbig v. Burwell*, 758 F.3d 390 (D.C. Cir. 2014); and *Okla. ex rel. Pruitt v. Burwell*, 135 S.Ct. 1178 (2015) (cert. denied).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 42 U. S. C. §§18031, 18041

¹⁸ *King v. Burwell*, 135 S. Ct. 2480, 2487 (2015).

¹⁹ *Id.* at 2487.

²⁰ *Id.*

²¹ *Id.* at 2488.

²² *Id.*

²³ *Id.* at 2492.

²⁴ *Id.*

²⁵ *Id.* at 2489.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 2480.

³⁰ Although *Zubik v. Burwell* will deal with Obamacare's contraceptive mandate *Geneva Coll. v. Sec'y U.S. Dep't of Health & Human Servs.*, 778 F.3d 422 (3d Cir.) (cert. granted in part sub nom.) *Zubik v. Burwell*, 136 S. Ct. 444, 193 L. Ed. 2d 345 (2015); and *Geneva Coll. v. Burwell*, 136 S. Ct. 445, 193 L. Ed. 2d 346 (2015) (cert. granted sub nom.).

³¹ *March 31, 2015 Effectuated Enrollment Snapshot*. Centers for Medicaid & Medicaid Services

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-06-02.html>

³² *Id.* (the states with federally-facilitated marketplaces were: Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana,

Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming).

³³ *Id.*