Health care under attack: 
The Supreme Court and the Affordable Care Act

Resources:
- Audio analysis of Hobby Lobby
- Analysis of National Federation of Independent Business v. Sebelius
- AFJ’s statement on Hobby Lobby
- AFJ’s Supreme Court docket, with information on King v. Burwell

On March 4, the Supreme Court will hear oral arguments in King v. Burwell. The case involves the availability of tax credits in federally-run, as opposed to state-run, health care exchanges under the Affordable Care Act (ACA). If the Court eliminates the credits, premiums will rise and millions of Americans will be left uninsured. One study estimates that each year, 9,800 of them will die as a result of being uninsured. This shock to the insurance market could trigger a “death-spiral” of skyrocketing premiums that would mean the complete collapse of the ACA system and even more uninsured Americans.

The case is only the latest in a series of Supreme Court cases brought in an effort to undermine the law. Below, we take a close look at the latest case, and review those previous efforts.

The background

Passed in 2010, the ACA has revolutionized health insurance in the United States. Eight million people have signed up for private insurance in the newly created health insurances marketplaces. Three million young people kept health insurance coverage because they are now able to stay on their parents’ plans. Health care costs are growing at the lowest rate on record, premiums are 15 percent lower than had been projected, and the ACA will reduce the federal deficit by more than $100 billion over the next 10 years.

Yet the success of the ACA has not stopped those determined to undermine it. As of February 16, 2015, the Republican-led House of Representatives has voted 56 times to either repeal or dismantle parts of the act, and 22 states have resisted key aspects of the law, leaving millions of their own residents uninsured.

And they have found help from the United States Supreme Court.
The Court first addressed the ACA in *National Federation of Independent Business v. Sebelius*. That case is best known for Chief Justice John Roberts’s opinion that upheld the Act’s individual mandate—which requires people to either purchase health insurance or else pay a penalty—under Congress’s taxing power. But the Court also dangerously narrowed Congress’s authority to regulate health insurance markets, and voided the ACA’s mandate that states expand Medicaid coverage—a decision some states have used to deny affordable coverage to millions of their poorest residents. The Court further weakened the ACA in *Hobby Lobby v. Burwell*, when it held that for-profit, secular businesses can deny women access to contraceptive care based on the religious views of the businesses’ owners.

Now, in *King v. Burwell*, the Supreme Court has the opportunity to unravel the ACA. A ruling against the government in this case will lead to an industry-wide meltdown with massive, nationwide disruptions, and it will create chaos for the millions of Americans who would be left unable to afford health insurance.

**King v. Burwell: What’s at Stake**

**ACA Insurance Exchanges and Tax Credits**

The ACA requires states to establish a health insurance exchange, if they fail to do so, the federal government will establish one on the state’s behalf. Today, a majority of states use a federal exchange. A separate provision of the ACA provides tax credits to anyone who enrolled in a health insurance plan “through an Exchange established by the State” if their income is low enough to qualify for such credits.

Applying this provision, the IRS gives credits to eligible taxpayers in states that have established their own exchanges, and to those in states where the federal government has established an exchange on the state’s behalf.

The plaintiffs in *King* argue that “established by the State” only includes state-run exchanges, and that the millions of Americans who have purchased insurance through federally-run exchanges are ineligible for the tax credits that make health insurance affordable.

The practical implications of the plaintiffs’ legal theory betray its implausibility. Studies estimate that over eight million people will lose coverage if the Court rules in the plaintiffs’ favor. Approximately 9,800 of them will die each year as a result of being uninsured.

Worse, the market could fall into a death-spiral. Without tax credits, fewer people will buy health insurance and premiums will rise. The higher cost of insurance will lead to even more individuals dropping coverage, and premiums will continue to skyrocket. Eventually, only the sickest will have an incentive to stay insured, and the high cost of their care will drive up premiums even further, until the market collapses entirely.

Thus, the plaintiffs are essentially arguing that Congress included within the ACA a provision that renders the ACA entirely useless. The absurdity of this position is fleshed out.
in various *amicus* briefs from the medical community, almost all of which support the government’s position.

An *amicus* brief from our nation’s hospitals warns:

> We will not mince words: Petitioners’ position, if accepted, would be a disaster for millions of lower and middle-income Americans. The ACA’s subsidies have made it possible for more than 9 million men, women, and children to have health care coverage—some for the first time in years; some, no doubt, for the first time in their lives.

*This is no abstract case about principles of statutory construction. Petitioners’ position, if accepted, means many more people will get sick, go bankrupt, or die. [Emphasis added.]*

And a brief from public health deans, chairs, and faculty:

Petitioners’ interpret the Premium Tax Credit provision of the ACA in a manner that produces absurd results, such as the elimination of health insurance coverage for those that need it most.

**No “Circuit Split” on the Issue**

The Supreme Court is a court of discretionary review. It accepts only a fraction of the total number of cases appealed to it each year. Normally, it allows the lower courts to sort out legal issues first. Only when the lower courts disagree on an important legal issue will the Supreme Court get involved.

But this time, the Supreme Court is making an exception.

The lower court in *King v. Burwell*, the Fourth Circuit, found in favor of the IRS. In his concurrence, Judge Andre Davis wrote that he would not “help to deny to millions of Americans desperately-needed health insurance through a tortured, nonsensical construction of a federal statute whose manifest purpose, as revealed by the wholeness and coherence of its text and structure, could not be more clear.”

A similar case is awaiting *en banc* review by the full D.C. Circuit. The circuit panel there ruled 2-1 against the government, but that decision was vacated pending the full court’s review. Yet, despite the lack of disagreement on the issue—there is no D.C. Circuit decision until the *en banc* court rules—the Court granted *certiorari* to review the rule on tax credits.

Reaching for cases without a circuit split has been a recurring theme under Chief Justice John Roberts’s leadership. In many cases, this overreach has been used to protect corporate interests, and to preserve the *status quo* of wealth, privilege, and power at the expense of everyday Americans who depend on the courts to provide equal justice. In another egregious example this
term, the Supreme Court is deciding whether to contravene 35 years of agreement among the circuit courts by limiting claims under the Fair Housing Act.

The opinion in King v. Burwell should be easy to write. A statute designed to expand health insurance coverage should not be interpreted in a way that would destabilize the health insurance market. Yet, with the support of conservative scholars, think tanks, and businesses, the Court may be poised to do just that.

**Burwell v. Hobby Lobby Stores, Inc.**

The ACA requires health insurance plans to provide all Americans with access to preventive care without out-of-pocket costs. For women, that care includes access to common forms of birth control.

In 2014, the Supreme Court’s opinion in Burwell v. Hobby Lobby allowed for-profit corporations to opt-out of that requirement if they claimed a religious objection to birth control. Access to birth control is fundamental to improving the health of women and their families, but it is expensive. Co-pays for birth control pills can run up to $600 per year, a significant cost for low-income families. That can lead women to use birth control inconsistently or not at all.

The Supreme Court decided to leave this fundamental issue of access not to women, but to their bosses.

The Court ruled that the Religious Freedom Restoration Act, which prohibits a government action that places a substantial burden on an individual’s religious practice unless there is a compelling government interest, requires that Hobby Lobby and other for-profit corporations be allowed to opt-out of providing contraception.

The decision leaves open the possibility of the ACA being further eroded in future challenges. Some people are opposed to vaccinations on religious grounds. Some oppose blood transfusions. Some oppose almost all medical intervention. The lower courts now have to sort out how and when a corporation’s religious views trump the rights of its employees. As Justice Ruth Bader Ginsburg warned in her dissent “The court, I fear, has ventured into a minefield.”

- Read more about Hobby Lobby

**National Federation of Independent Business v. Sebelius**

The first challenge to the ACA came to the Supreme Court in 2012. In NFIB v. Sebelius, a group of businesses challenged another of the act’s parts: the individual mandate. In a 5-4 decision, Chief Justice John Roberts upheld the requirement as a valid exercise of Congress’ “taxing and spending” power, but in doing so, he drastically limited Congress’ ability to enact future laws and opened the door for states to leave millions of their own residents uninsured.

As a principle of constitutional interpretation, once a majority of the Court has upheld a law, it does not decide any other grounds upon which the law might not be valid. While Chief Justice
Roberts upheld the individual mandate as a valid tax, he went on to find that it violated Congress’ power under the Commerce Clause. This congressional power—which allows Congress to pass laws to regulate interstate commerce—has been used to enact anti-discrimination, environmental protection, labor, and consumer protection laws for over a century. As Justice Ginsburg noted in dissent, Chief Justice Roberts’s opinion “harks back to the era in which the Court routinely thwarted Congress' efforts to regulate the national economy in the interest of those who labor to sustain it.”

It is no surprise to see Chief Justice Roberts needlessly reach for the Commerce Clause question. AFJ has documented repeated efforts by the Court, in high-profile cases, to aggressively reshape the law by addressing questions not squarely before it.

Another section of the ACA required states, using federal funds, to expand their Medicaid programs to cover more residents. If a state refused, the federal government would eliminate all Medicaid funding for that state. Chief Justice Roberts’s opinion struck down this provision as an unconstitutional imposition on state sovereignty. As a direct result, 22 states have refused to expand Medicaid programs to cover some of their poorest residents. Millions of Americans will go uninsured this year because of the Court’s ruling.

**Conclusion**

The Affordable Care Act is under attack. In Congress, state legislatures, and the courts, there has been an effort to eliminate reforms that are responsible for millions of people obtaining health insurance coverage, reforms that could allow access to insurance for millions more.

The newest attack is now at the Supreme Court, and another defeat would create chaos throughout the system. The Supreme Court must stop this potential meltdown of our health insurance market.