

FACT SHEET

***King v. Burwell* Places Women's Health at Risk**

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The Affordable Care Act (ACA) makes historic strides for women's health and economic security but is once again under attack. The ACA provides tax credits to help low and moderate income individuals and families purchase health insurance – many of whom are women. In the 2014-2015 term, the Supreme Court will review King v. Burwell, a case challenging this core provision of the ACA. The Court will determine whether the ACA allows the Internal Revenue Service (IRS) to provide these subsidies to individuals and families who purchase insurance from the federally-facilitated health insurance Exchanges.¹ The decision will have a significant impact on the health and economic security of nearly three million women who are enrolled in health insurance through these Exchanges now and millions more in the future.²

***King v. Burwell* challenges women's health and economic security**

In 2012, the IRS issued regulations on the Premium Tax Credit—the tax credit that helps low and moderate income individuals and families pay for health insurance through the health insurance Exchanges.³ Consistent with the overarching goals and purpose of the ACA, the IRS made these premium subsidies available to people in every state, regardless of whether or not a state created its own health insurance Exchange.

The plaintiffs in *King v. Burwell* are residents of Virginia who are challenging the IRS's determination that eligible residents in all states may receive tax credits. Virginia is one of 37 states that turned to the Department of Health and Human Services (HHS) to set up and operate its health insurance Exchange instead of doing so itself. The Supreme Court will therefore decide whether the IRS had the authority to make tax credits available to eligible individuals who purchase coverage through a federally-facilitated Exchange.

The ACA language at issue specifies that tax credits are available to individuals enrolled in "exchanges established by the State." The ACA authorizes the federal government to establish and run state Exchanges when the states themselves opt out. Despite this, the plaintiffs argue that "exchanges established by the State" means that only individuals and families in those 13 states and the District of Columbia that have established their own health insurance Exchanges can receive tax credits—and not individuals and families in the 37 states that rely on federally-facilitated Exchanges, including Virginia.

When Congress passed the ACA, it stated that the unequivocal purpose of the law was to achieve "near-universal coverage" and "lower health insurance premiums."⁴ If the Supreme Court allows a cramped reading of a section of the ACA out of context, as the challengers in *King* urge, it would thwart one of the main objectives of the law: to make health insurance more affordable and thus attainable for millions of Americans.

When the relevant sections of the ACA are read together, instead of studied in a vacuum, it is clear that the plaintiffs' isolation of a phrase in the statute is inconsistent with the structure and purpose of the ACA. In fact, the law's drafters specify that "the purpose of the tax credit provision was to facilitate access to affordable insurance

through all Exchanges, state-run or federally-facilitated, and to ensure that all Exchanges could work with other fundamental components of the law in order to provide near-universal access to insurance.”⁵

Women could lose their financial help to purchase health coverage

Many women are already benefitting from the financial help of tax credits to purchase health insurance and the cost-sharing reductions which reduce out-of-pocket expenses such as deductibles and copayments. Fifty-five percent of enrollees who purchased coverage on the federally-facilitated Marketplaces are women.⁶ Overall, 86 percent of enrollees are receiving financial help to purchase their health coverage, receiving an average of \$264 per month towards their health insurance premium.^{7,8} Without this financial help, approximately 2.6 million women are at risk of losing their health insurance because they could not afford full cost of monthly health insurance premiums.⁹ Low-income women would also lose access to cost-sharing reductions, which reduce what women pay when they receive medical care.

Health insurance purchased on the Marketplace has important benefits for women

The ACA protects women from discriminatory health insurance practices, makes health coverage more affordable and easier to obtain, and improves access to many of the health services women need. Without financial help, women will lose access to comprehensive health coverage, including:

- **Access to preventive care without cost-sharing:** Health plans must now cover certain preventive services such as mammograms, flu shots, and colon cancer screenings with no additional out-of-pocket-costs such as co-payments. All health plans on the Exchange must also cover certain women’s preventive services without cost-sharing, such as the full range of FDA-approved contraceptive methods and contraceptive counseling, well-woman visits, screening for gestational diabetes, breastfeeding support, supplies, and counseling and domestic violence screening and counseling.
- **Access to services women need:** All health plans offered on the health insurance Exchanges must cover specified essential health benefits, including maternity and newborn care, mental health treatment, and pediatric services. Prior to the Affordable Care Act, only 12 percent of individual market plans covered maternity care.¹⁰
- **Continued care for existing medical conditions:** Women already enrolled in health plans could lose access to their health care professionals and prescription drugs, if they can no longer afford their health insurance.

King v. Burwell could destabilize the health care law

The success of the health care law rests on three important principles – reforming the health insurance market, requiring individuals to purchase health insurance, and providing financial help for individuals to purchase coverage. By attacking the financial help in the form of tax credits that is already available to millions of women, *King* could destabilize the entire health care law. Without financial help to purchase health insurance, *King* threatens to disrupt the functioning of the insurance market in these 37 states, which would be disastrous for millions of women and their families now and in the future. *King* puts in jeopardy the great progress of the ACA towards ensuring women’s access to affordable, comprehensive health coverage.

1. While the Affordable Care Act uses the term “Exchange,” policymakers often refer to “Marketplaces” in materials meant for the general public.
2. Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, “Health Insurance Marketplace: Summary Enrollment Report for the Initial Annual Open Enrollment Period,” (May 1, 2014) *available at* http://aspe.hhs.gov/health/reports/2014/marketplaceenrollment/apr2014/ib_2014apr_enrollment.pdf.
3. Treas. Reg. § 1.36(B) (2012).
4. 42 U.S.C. § 18091(2)(D)-(H) (2012).
5. Brief Amici Curiae of Members of Congress and State Legislatures at 4, Halbig v. Burwell, 758 F.3d 390 (D.C. Cir. 2014) (No. 14-5018).
6. Office of the Assistant Secretary for Planning and Evaluation “Health Insurance Marketplace: Summary Enrollment Report for the Initial Annual Open Enrollment Period.”
7. Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, “Premium Affordability, Competition, and Choice in the Health Insurance Marketplace, 2014” (June 18, 2014) *available at* <http://aspe.hhs.gov/HEALTH/REPORTS/2014/PREMIUMS/2014MKTPPLACEPREMBRF.PDF>.
8. Office of the Assistant Secretary for Planning and Evaluation “Health Insurance Marketplace: Summary Enrollment Report for the Initial Annual Open Enrollment Period.”
9. Office of the Assistant Secretary for Planning and Evaluation “Health Insurance Marketplace: Summary Enrollment Report for the Initial Annual Open Enrollment Period.”
10. Danielle Garrett, National Women’s Law Center, “Turning to Fairness: Insurance Discrimination against Women Today and the Affordable Care Act,” (March 2012).