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King v. Burwell: Assessing the Claimed Effects of a Decision for the Plaintiffs

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Should the Supreme Court rule in *King v. Burwell*—a case challenging the Obama Administration's implementation of the premium tax credit provisions of the Affordable Care Act (ACA)—that the statute restricts the payment of premium tax credits only to individuals obtaining coverage "through an Exchange established by [a] State," its ruling would preclude the Treasury paying the tax credits to those obtaining coverage through the federally run exchange—or what the Obama Administration calls the Federally Facilitated Marketplace (FFM)—currently serving 34 states.[1]

The ACA's defenders have conjured a "parade of horribles" (to use a favorite phrase of the Justices) that they claim would result from such a decision. While there might be some individuals who are adversely affected by such a ruling, it is important to examine these claims more closely.

Claim #1: Millions will lose subsidies.

"About 9.3 million people in FFM states would lose marketplace premium tax credits in 2016 if the Supreme Court finds for King."[2]

Reality: Based on existing enrollment trends, this projection for 2016 is highly unlikely. A more realistic estimate is that around 5.5 million individuals could lose subsidies in 2015.

Last April, the Department of Health and Human Services (HHS) reported that 8 million individuals selected an exchange plan during the 2014 open enrollment period.[3] However, by the end of the year, only about 6.7 million enrollees still had coverage—16.5 percent fewer than had initially selected a plan.[4]

That attrition rate is not surprising. The earlier 8 million figure was for "pre-effectuated" enrollments—meaning individuals who selected a plan, not ones who paid their first month's premium (necessary for coverage to take effect). For various reasons, some people never completed their purchases, and others later dropped coverage.

HHS has now released pre-effectuated enrollment data for 2015 that shows 6,566,837 subsidy-eligible enrollees in the 34 FFM states.[5] Applying last year's 16.5 percent attrition rate to that figure yields an estimate of about 5.5 million actual subsidy recipients in those states this year.[6] While that is still consequential, it is 41 percent less than the projected 9.3 million individuals.

The 9.3 million figure is a projection for 2016.[7] Yet, given that the increase in the number of subsidized enrollees in 2015 will be less than the 1.97 million difference between the 2014 and 2015 pre-effectuated counts—and more likely about 1.65 million, after the inevitable attrition—it is hard to envision how subsidized enrollments could reach 9.3 million in 2016.

Claim #2: The goal of expanding coverage will be thwarted.

"Eliminating subsidies in FFM states would hamper the ACA's ability to accomplish one of its key objectives: expanding access to health insurance coverage."[8]

"This would undermine the ACA's current and future success in reducing the number of uninsured

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Americans, which dropped by an estimated 8 to 10 million during the first open enrollment period."[9]

Reality: This claim is based on the assumption that the vast majority of exchange enrollees would be previously uninsured individuals. Yet, insurance-market data indicates that the actual result has, in fact, been the opposite.

During the first nine months of 2014, individual-market enrollment (both on and off the exchanges) increased by 5.83 million individuals, while enrollment in employer-sponsored plans declined by 4.93 million individuals. Thus, the decline in employment-based coverage offset 85 percent of the increase in individual-market coverage, for a net increase in private coverage of only 893,000 individuals.[10]

In reality, the vast majority of the ACA's coverage expansion has come from increased Medicaid enrollment, which grew by 7.49 million individuals during the same period. So, while 8.38 million Americans gained coverage during the first three quarters of 2014, Medicaid accounted for 89.3 percent of that gain. Consequently, a court finding for the plaintiffs in *King v. Burwell* would not actually thwart, to any meaningful extent, the ACA expanding coverage.

Claim #3: Millions will become uninsured.

"About 8.2 million more people would be uninsured than would be the case with the financial assistance provided under the ACA as currently implemented."[11]

Reality: While this claim has some merit—as there would likely be *some* increase in the number of uninsured, at least initially—many affected individuals would likely seek replacement coverage elsewhere.

Even though the majority of exchange enrollees were apparently already insured, absent subsidies, it will be more difficult for them to afford coverage due to the added costs that Obamacare imposes on all

1. 26 U.S. Code § 36B(b)(2)(A). Nevada, New Mexico, and Oregon are all building state-based exchanges while still using the federal Healthcare.gov platform. Proponents as well as opponents of the ACA assume that those states would be treated as having state-based exchanges for purposes of the Supreme Court's eventual decision in *King v. Burwell*. Consequently, those three states are not included with the 34 FFM states in analyses of the effects of the Court's ruling.
2. Linda J. Blumberg, Matthew Buettgens, and John Holahan, "The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell: 8.2 Million More Uninsured and 35% Higher Premiums," Robert Wood Johnson Foundation, January 2015, http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2015/rwjf417289 (accessed February 18, 2015).
3. U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, "Health Insurance Marketplace: Summary Enrollment Report for the Initial Annual Open Enrollment Period, for the Period: October 1, 2013–March 31, 2014 (Including Additional Special Enrollment Period Activity Reported through 4-19-14)," May 1, 2014, http://aspe.hhs.gov/health/reports/2014/MarketPlaceEnrollment/Apr2014/ib_2014Apr_enrollment.pdf (accessed February 18, 2015).
4. Brett Norman, Rachana Pradhan, and Joanne Kenen, "Administration Admits Obamacare Enrollment Numbers Error," *Politico*, November 21, 2014, http://www.politico.com/story/2014/11/inflated-obamacare-enrollment-dental-113064.html (accessed February 18, 2015).
5. Data compiled from: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, "Health Insurance Marketplace 2015 Open Enrollment Period: January Enrollment Report For the period: November 15, 2014–January 16, 2015," January 27, 2015 http://aspe.hhs.gov/health/reports/2015/MarketPlaceEnrollment/Jan2015/ib_2015jan_enrollment.pdf (accessed February 18, 2015); U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, "Health Insurance Marketplace 2015: Average Premiums After Advance Premium Tax Credits Through January 30 in 37 States Using The Healthcare.gov Platform," February 9, 2015, http://aspe.hhs.gov/health/reports/2015/MarketPlaceEnrollment/APTC/ib_APTC.pdf (accessed February 18, 2015); and HHS.gov/HealthCare, "Open Enrollment Week 12: January 31, 2015–February 6, 2015," February 11, 2015, http://www.hhs.gov/healthcare/facts/blog/2015/02/open-enrollment-week-twelve.html (accessed February 18, 2015).
6. Given that plausible arguments can be made for why the eventual 2015 attrition rate might be either higher or lower than the 2014 rate, it seems reasonable to use the 2014 rate.
7. Blumberg, Buettgens, and Holahan, "The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell."
8. Evan Saltzman and Christine Eibner, "The Effect of Eliminating the Affordable Care Act's Tax Credits in Federally Facilitated Marketplaces," RAND Corporation, 2015, http://www.rand.org/content/dam/rand/pubs/research_reports/RR900/RR980/RAND_RR980.pdf (accessed February 18, 2015).
9. David Blumenthal and Sara R. Collins, "The Supreme Court Decides to Hear King v. Burwell: What Are the Implications?" The Commonwealth Fund Blog, November 7, 2014, http://www.commonwealthfund.org/publications/blog/2014/nov/the-supreme-court-decides-to-hear-king (accessed February 18, 2015).
10. Edmund F. Haislmaier and Drew Gonshorowski, "Q3 2014 Health Insurance Enrollment: Employer Coverage Continues to Decline, Medicaid Keeps Growing," Heritage Foundation *Backgrounder* No. 2988, January 29, 2015, http://thf_media.s3.amazonaws.com/2015/pdf/BG2988.pdf.
11. Blumberg, Buettgens, and Holahan, "The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell."

plans. They will also find that their prior, less expensive coverage no longer exists.

Given their predisposition to obtain coverage, many would probably respond to a loss of subsidies by seeking new coverage, most likely under employer plans. But, because the timing and extent of such a response is uncertain, some individuals might initially become uninsured. However, the actual number would likely be much less than the claim of 8 million uninsured.

Claim #4: Health insurance premiums will soar.

"Unsubsidized premiums in the ACA-compliant individual market would increase 47 percent in FFM states."[12]

Reality: While there would likely be some increase in premiums, given the relatively small size of the affected population it would not be near the projected 47 percent.

The logic behind projecting premium increases is that, absent subsidies, the affected enrollees will have to pay the full cost of their coverage. That would likely induce healthier ones to drop coverage—forcing insurers to increase premiums to bring expected revenues back in line with expected costs. While that reasoning is broadly correct, any projections based on it are dependent on the assumptions used.

The study assumes that, without subsidies, "enrollment in the ACA-compliant individual market will decline by 9.6 million" in the FFM states. Yet that projection is 74 percent higher than the more realistic estimate for the total number (5.5 million) of 2015 subsidy recipients in those states.

A better estimate for premium increases can be derived from the HHS data, using enrollee age as a proxy for health status and price sensitivity. Younger adults consume much less medical care, but also generally have less income out of which to pay premiums. The 2015 HHS data for pre-effectuated enrollments reports that young adults (18 to 34 years of age) account for 26.6 percent of all enrollees (subsidized and unsubsidized for all plans) in the FFM states.[13] That is close to the study's baseline estimate that the same group comprises 27.2 of the individual market. Applying the 26.6 percent ratio to the estimate of 5.5 million subsidized enrollees in the FFM states in 2015 yields an estimate of 1.46 million subsidized young adults in 2015.

The authors also "estimate that premiums would increase by 0.44 percent for every 1 percentage point decrease in the share of young adults participating in the market." They also estimate that total individual-market enrollment (both on and off the exchanges) in the FFM states will be 13.7 million individuals. Thus, if *all* of the projected 1.46 million subsidized young adults dropped coverage in response to losing subsidies, the market would shrink by 10.6 percent. Applying the authors' assumption for premium effects to that estimated 10.6 percent reduction in the size of the market yields projected premium increases of only 4.7 percent.[14]

In sum, the claim that premiums would jump by 47 percent appears to be based on an assumption for the number of individuals receiving subsidized coverage that is substantially higher than the likely real figure.

Claim #5: There will be less insurer competition.

"Areas experiencing increased insurer competition under the ACA's initial years are likely to revert to smaller numbers of insurers."[15]

Reality: There has been almost no increase in insurer competition in response to the ACA—and thus, no reason to believe that, absent subsidies, insurer competition would decrease.

A Government Accountability Office (GAO) study found that in every state fewer carriers offered coverage through the exchanges in 2015 than offered individual-market plans in 2013.[16] The Heritage Foundation performed a similar analysis, but applied a more

12. Saltzman and Eibner, "The Effect of Eliminating the Affordable Care Act's Tax Credits in Federally Facilitated Marketplaces."
13. ASPE January Enrollment Report, Appendix Table B5.
14. The authors also modeled other follow-on interactions, most of which generate relatively modest additional effects. The second-largest effect is derived from their assumption that "if the share of young adults fell by 1 percentage point, total enrollment among older adults and children would fall by about 0.71 percent." Applying that calculus yields a projected enrollment decline of a further 910,000 individuals.
15. Blumberg, Buettgens, and Holahan, "The Implications of a Supreme Court Finding for the Plaintiff in King vs. Burwell."
16. U.S. Government Accountability Office, "Concentration of Enrollees Among Individual, Small Group, and Large Group Insurers From 2010 Through 2013," December 1, 2014, http://www.gao.gov/assets/670/667245.pdf (accessed February 18, 2015).

restrictive methodology to the base data.[17] Yet, even using that more restrictive methodology, only nine states have more carriers that offer exchange coverage in 2015 than offered individual-market coverage in 2013.[18] Also, four of the nine operate state-based exchanges, and thus would be unaffected by the court's decision.[19]

Claim #6: Insurers will suffer major financial losses.

"Still another effect of a successful challenge to federal subsidies would be major financial losses for the insurance industry, which has seen new growth since the ACA's implementation."[20]

Reality: While a few small insurers might incur notable financial losses, that would not be the case for the industry as a whole, and it certainly would not be true for larger carriers.

That is because individual-market plans (whether offered inside or outside the exchanges) constitute only about 10 percent of total private-market coverage, and a correspondingly small share of the total business of most health insurers. Also, the largest carrier with individual-market coverage as its principal business, Assurant, did not participate in the exchanges in 2014, and is offering exchange coverage in just 16 states in 2015.

Furthermore, the health insurance industry has not "seen new growth." Insurance-market data shows that 85 percent of the growth in the individual coverage has been offset by declines in employer-group coverage. The only significant new growth has been in Medicaid managed-care plans in the states that adopted the Medicaid expansion—which would not be affected by the Court's ruling.

Conclusion

The "horribles" in this particular parade are less frightening than portrayed. Moreover, it is the ACA's fundamental design flaws that are inherently disruptive and unstable. The ultimate source of dislocation is the ACA itself.

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17. Specifically, Heritage only counted those carriers in each state with 1,000 or more individual-market enrollees in 2013, on the assumption that carriers with few covered lives in 2013 were no longer actively writing new individual-market policies. Heritage's methodology also has the effect of making the resulting comparison much more favorable to the ACA. See Alyene Senger, "Measuring Choice and Competition in the Exchanges: Still Worse than Before the ACA," Heritage Foundation *Issue Brief* No. 4324, December 22, 2014, http://thf_media.s3.amazonaws.com/2014/pdf/IB4324.pdf.
18. Ibid. The paper includes tables reporting state-level insurer completion as measured using both the GAO and Heritage Foundation methodologies.
19. The four states with increased insurer competition that operate state-based exchanges are Massachusetts, New York, Rhode Island, and Washington.
20. Blumenthal and Collins, "The Supreme Court Decides to Hear King v. Burwell."