

# Supreme Court Health Insurance Coverage Case: *King v. Burwell*

## Women's Access to Health Insurance Coverage

### *King v. Burwell*

**Docket Number: (14-114)**

**Argument: March 4, 2015**

**Opinion: TBD (possibly June)**

Only 13 states set up a state-facilitated Health Exchange in accordance with the Affordable Care Act (ACA), leaving 37 states with a federally-facilitated Health Exchange. Health Exchanges are where individuals and families can apply to receive health insurance coverage under the ACA and where many can also qualify for subsidies via tax credits to help pay premiums. If the Supreme Court decides “wrongly” (in our view) in *King v. Burwell*, some eight to 10 million persons would likely lose their health insurance in these states because many would lose the subsidies that have made their insurance affordable.

The case poses the question to the Supreme Court as to whether the ACA text allows for tax credit-subsidies to be extended by the IRS to people in states with federally-facilitated exchanges. Plaintiffs claim that four words within the text, “established by the state,” mean that tax-credit subsidies can *only* go to people insured through state-run exchanges and that those individuals and families insured through federally-facilitated Exchanges in the 37 states may not receive subsidies.

Historically, women have been far more likely than men to forgo health care, including preventative care, because of cost. Prior to the ACA, four in 10 low-income women were uninsured. Many medical issues pertinent to women previously qualified as a “pre-existing condition.” In fact, before the ACA, in nine states, insurance companies were able to deny coverage to domestic violence survivors. A woman who previously had a Caesarean delivery could be denied coverage as having had the procedure could be considered a “pre-existing condition.” “Gender-rating” was common in health insurance plans; this meant a woman could be charged more for health insurance solely on the fact that she was a woman. The ACA limited rating factors to age, geography, and smoking status – women can no longer be charged higher premiums just because they are women.

The ACA prohibits discrimination in health care and health insurance on the basis of sex, pregnancy, gender identity, and sexual stereotyping, along with others. The act also requires that new plans cover recommended gynecological services and screenings at no cost to the woman. The ACA guarantees access to all FDA-approved methods of contraception, sterilization, and related education and counseling for women without cost. In 2013, the average woman saved \$269 on out-of-pocket costs for contraceptives.

The majority of participants in the federally-facilitated Exchanges are low- and moderate-income women. More than nine million women in the United States are eligible to benefit from the tax credits, seven million of whom live in states with federally-facilitated Exchanges.

Communities of color are also benefitting from the ACA. Since the beginning of the ACA first enrollment period in October 2013, 14.1 million adults gained coverage, thus reducing the national rate of uninsurance to 13.2 percent. African-Americans and Latinos/Latinas have experienced the most dramatic improvements. According to Families USA, African-Americans' uninsurance rate fell by 9.2 percent points and Latinos'/Latinas' by a dramatic 12.4 percentage points.

Striking down the tax credits in states with federally-facilitated Exchanges would result in large increases in premiums, significant decreases in ACA enrollment, chaos in private insurance markets and, some say, would deal a death blow to the Affordable Care Act. Experts say that the loss of tax credits would also result in the closing of some hospitals. Certainly, persons with pre-existing health conditions would not be able to obtain insurance coverage and women would be returned to an era when they paid more for less coverage and provision of maternity coverage was rare.

This lawsuit was mounted by conservative politicians and right wing legal advocacy firms who have been gunning for the ACA since before it was signed into law in March, 2010.

NOW Foundation joined an amicus brief for this case.