



## **ISSUE ADVISORY: Women Benefit by Supreme Court Ruling on ACA Subsidies**

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**Affordable Care Act Subsidies Available in All States** - As millions of recently insured persons anxiously awaited, the decision in the *King v. Burwell* case where conservatives made another desperate attempt to take down the Affordable Care Act (ACA) came as welcome and comforting news. Women, as the majority of persons enrolled in health insurance plans under the ACA, can rest easy now that the Court has said subsidies offered in the federally-facilitated health insurance marketplaces were certainly intended by Congressional lawmakers.

A solid majority of six justices, including Supreme Court Justice John Roberts Jr., ruled that individuals buying private insurance in marketplaces run by the federal government are eligible for subsidies, permitting millions to keep their coverage and the law to continue to apply in dozens of states where it was threatened. The plaintiffs had challenged the ACA over the omission of a few words that would have made it absolutely clear that the subsidies were to be made available in federally –facilitated health insurance marketplaces as well as the state health exchanges.

**Chief Justice: Congress Wanted to Improve Health Insurance Markets** - In his majority opinion, Chief Justice Roberts wrote, “Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them.” He also noted the harmful consequences which would occur if the subsidies in the federally-facilitated marketplaces were no longer available, “pushing a state’s individual insurance market into a death spiral.” Health experts also predicted such dire outcomes as numerous hospital closings and dramatically increased rates of death among uninsured persons with chronic or life-threatening health conditions. Directly affected were the 6.4 million persons in states with the federal marketplace, plus millions more who may enroll in the next few years, losing what is perhaps the only health insurance coverage they could afford.

**Women are Majority of Beneficiaries** - As to ACA’s importance for women, the law’s requirement for preventive health care services, such as breast and cervical cancer screening and no cost-sharing contraceptives, is crucial as is the law’s prohibition against insurance company denials of coverage for maternity care or for pre-existing health conditions. Women now comprise 54 percent of those with coverage under the ACA, about nine million. The National Organization for Women Foundation with 68 other organizations signed on to an amicus brief in *King v. Burwell*, submitted by the National Women’s Law Center which argued that the subsidies in the form of tax credits are essential for millions of women in order to have access to comprehensive health insurance coverage, see <http://www.nwlc.org/sites/default/files/pdfs/nwckingvburwell.pdf> .

**Terry O’Neill: Too Many without Health Insurance** - NOW President Terry O’Neill said of the ruling, “This is excellent news for those who, having insurance for the first time because of the ACA, were threatened with losing their subsidies. However, despite the ACA’s success, too many people remain

without health insurance. Most shamefully, the ACA blocks millions of immigrants from buying insurance on the exchanges at all.”

O’Neill continued, “Access to healthcare is a fundamental human right... That is why NOW will continue to work for a single-payer healthcare system – the common sense solution that would guarantee healthcare for all.” See, <http://now.org/media-center/press-release/supreme-court-ruling-in-affordable-care-act-case-means-millions-will-be-able-to-keep-their-health-insurance/> (In late May, the New York state Assembly voted 89-47 to establish a statewide single-payer health care system, but the GOP-controlled Senate is not expected to approve the legislation.)

For the Court’s majority opinion, Roberts was joined by Justice Anthony Kennedy – usually the swing vote in important cases – and the four liberal justices: Ruth Bader Ginsberg, Elena Kagan, Sonia Sotomayor and Stephen Breyer. Read this at, [http://www.supremecourt.gov/opinions/14pdf/14-114\\_gol1.pdf](http://www.supremecourt.gov/opinions/14pdf/14-114_gol1.pdf) . Predictably, the conservative justices – Antonin Scalia, Samuel Alito and Clarence Thomas – issued the minority opinion. Justice Scalia, using dignified language, effectively accused colleagues of siding with the chief justice as saving the ACA for political reasons and said that the law should be called “SCOTUScare.” In predicting what he sees as a disastrous precedent, Scalia said, “The cases will publish forever the discouraging truth that the Supreme Court of the United States (SCOTUS) favors some laws over others, and is prepared to do whatever it takes to uphold and assist its favorites. I dissent.”

**Conservatives Vow to Continue Efforts to Repeal ACA** - It is no accident that 34 states have refused to set up their own health exchanges – most of those are controlled by conservative Republican governors and legislatures – who together with conservative members of Congress have carried on a relentless campaign to undermine the ACA and President Obama since the law was adopted in 2010. The U.S. House of Representatives has passed legislation on more than 50 occasions to repeal or weaken the ACA and, apparently, some conservative are still intent on repealing the ACA. At a news conference Thursday, House Speaker John Boehner (R-Oh.) promised to continue working to overturn the Affordable Care Act claiming that it is “fundamentally broken.” Despite the Court’s majority being Republican appointees, Republican presidential candidates Rand Paul, Jeb Bush, Marco Rubio, Scott Walker, Bobby Jindal, Mike Huckabee and Donald Trump lined up to condemn the ruling, with several vowing to lead efforts to overturn the ACA if elected.

**Republican Governors come to their Senses** - In recent years, a handful of Republican governors have seen the value of establishing State Health Exchanges under the ACA. These include North Dakota Gov. Jack Dalrymple (R) signed legislation in April of last year to expand Medicaid for about 20,000 new state residents; Gov. Jan Brewer (R) enacted the Medicaid expansion for nearly 300,000 Arizonians, following an intense battle with conservative legislators; Iowa Gov. Terry Branstad (R) enacted a Medicaid expansion to cover an estimated 150,000 state residents; New Jersey Gov. Chris Christie (R) signed into law a state budget that extends the Medicaid expansion to roughly 104,000 residents of that state; and, Michigan Gov. Rick Snyder (R) boasted about the state’s successful Medicaid expansion predicting that there would be 322,000 sign-ups by the end of 2014.

**27 Million Enrolled by 2017** - At the end of the 2015 ACA open enrollment period, a total of 11.7 million persons had enrolled (or were automatically re-enrolled) for coverage in the State and Federal Exchanges. Of that total, about 87 percent are getting some form of cost-assistance. This is in addition to the 10 million who signed up for Medicaid, plus three million young adults, up to age 26, remained on their parents' health care plan in 2015. These gains brought the proportion of uninsured adults in the U.S. from 18 percent in mid-2013 to less than 12 percent currently. The Congressional Budget Office (CBO) estimates that 21 million persons could be enrolled under the ACA in 2016 and possibly 27 million by 2017. Now that the Supreme Court has ruled twice in favor of the Affordable Care Act, perhaps more individuals will see the advantage of seeking affordable health insurance through the Exchanges and a few more Republican governors will realize the important benefits that the law brings to residents of their states.

More Information:

Court backs Obama administration on health-care subsidies: In Plain English,  
<http://www.scotusblog.com/2015/06/court-backs-obama-administration-on-health-care-subsidies-in-plain-english/>

Opinion Analysis: Saving the subsidies, saving the health care law, by Lyle Denniston,  
<http://www.scotusblog.com/2015/06/opinion-analysis-saving-the-subsidies-saving-the-health-care-law/>

The 8 Best Lines that from the Supreme Court Decision that Saved Obamacare,  
<http://www.motherjones.com/politics/2015/06/king-burwell-obamacare-best-lines-john-roberts>

The 7 Most Ridiculous Lines from Justice Antonin Scalia's Obamacare Dissent,  
<http://www.motherjones.com/politics/2015/06/obamacare-king-burwell-scalia-dissent>