



2016 HSR IMPACT AWARD: POTENTIAL EFFECTS OF A SUPREME COURT FINDING FOR THE PLAINTIFFS IN *KING V. BURWELL*

Situational Overview:

On March 4, 2015, the Supreme Court heard arguments in the high-profile *King v. Burwell* case. The case—taken amid a highly-charged political environment in which opponents of the Affordable Care Act (ACA) were seeking its full repeal—came at the heels of another Supreme Court decision that upheld the constitutionality of the ACA’s individual mandate, but made Medicaid eligibility expansion a state option. In the *King v. Burwell* case, a critical one for the ACA, the federal government argued

the law was intended to treat enrollees in all health insurance marketplaces in the same way, regardless of their management structure, while the plaintiffs argued that the law prohibited the payment of premium tax credits and cost-sharing reductions to people in those states that hadn’t set up state-managed marketplaces. Due to the interdependence between federal financial assistance, the insurance market regulatory reforms, and the individual mandate, many believed that a finding for the plaintiffs would so severely undermine the ACA that it would result in its undoing.



Summary of the Work:

In early 2015, a team of Urban Institute researchers developed a series of papers that outlined the implications of a finding for the plaintiffs.

The researchers produced four distinct analyses. The first paper,

The Implications of a Supreme

Court Finding for the Plaintiff in *King vs. Burwell*,

provided estimates of the effect of eliminating tax credits and cost-sharing reductions in 34 states. Specifically, it looked at the effects on the distribution of health insurance coverage, including the number uninsured; marketplace enrollment; the number of people receiving financial assistance; and the aggregate and average value of financial assistance lost. Results by state were also provided. In addition, they estimated the effect of such a finding on premiums in the nongroup insurance markets, taking into account resulting changes in the nongroup insurance risk pools and shifting from more comprehensive to less comprehensive plans. Among findings of 44 percent increases in the number of non-elderly uninsured and increasing average nongroup premiums by 35 percent, the analysis indicated that 9.3 million people would lose financial assistance, totaling \$28.8 billion in 2016, an average of \$3,090 per person receiving assistance.

The second analysis, **Characteristics of Those Affected by a Supreme Court Finding for the Plaintiff in *King v. Burwell***, provided a picture of the individuals purchasing nongroup insurance coverage under the ACA who would become uninsured or face substantially higher health care costs. Additionally, researchers estimated the change in premium payments that would be required under the changed markets in order for individuals of different income levels to keep the same coverage they would otherwise have; also computed these changes in payments relative to enrollees’ incomes. The analysis found that of those losing nongroup insurance and becoming uninsured, three-quarters would be low or middle income, but not poor; over 60 percent would live in the south and more than three-quarters of the adults would be workers. In addition, researchers found that a typical single adult with income below 200 percent of the federal poverty level would spend 4 percent of his income on health insurance using his tax credit, but keeping that same insurance under a *King* victory would cost roughly 30 percent of his income.

The third paper, **Health Care Spending by Those Becoming Uninsured if the Supreme Court Finds for the Plaintiff in *King v. Burwell* Would Fall by at Least 35 Percent**, provided estimates of the decline in health spending for the 8.2 million additional people who would have become uninsured if the Court found for the plaintiffs. The analysis broke out the changes by hospital,

IMPACT:

While the case ultimately rested on a complex legal analysis, a set of four Urban Institute briefs contributed immediately and directly to the Court's work by illustrating the multi-dimensional fallout that would result if the plaintiffs' arguments were accepted. The Justice Department brief and eighteen amicus briefs cited these analyses, including the Economists' brief that ultimately appeared

extensively in the *King* majority opinion. One of the Urban briefs was also cited directly in the Court's majority opinion. The Urban analyses were developed to be accessible to a broad readership, which added to their utility. The Department of Justice turned to this body of work, while countless news organizations, commentators, and analysts across the country also used it to gauge the effects of the decision in their states.

physician, and prescription drug spending and highlighted the uncertainty around the levels of continued government and provider investment in uncompensated care. The analysis found that health care spending on behalf of these individuals would decrease from \$27.1 billion to at most \$17.4 billion in 2016 if those additional uninsured had to be covered via self-pay and uncompensated care, adversely affecting the amount of care received and the revenues of health care providers.

The fourth paper, **The Combined Effect of Not Expanding Medicaid and Losing Marketplace Assistance**, looked at the tremendous crossover between states that would be affected by a decision for the plaintiffs and those that had not expanded eligibility for Medicaid under the ACA. It found the combined effect of the two meant that the 20 states not expanding Medicaid and losing marketplace assistance would forego a total of \$61 billion in federal funding in 2016 or \$721 billion over 10 years. In addition, the number of uninsured in these states would have been higher by 9.8 million people compared to the scenario where they had expanded Medicaid and retained marketplace assistance.

Cumulatively, the analytic work done by the team – including Linda J. Blumberg, John Holahan and Matthew Buettgens – was cited in the government's brief to the Court and in 18 amicus briefs, as well as hundreds of media stories, and Blumberg testified on the team's findings before the U.S. Senate Committee on Small Business and Entrepreneurship.

Ultimately, the Urban Institute work was prominently cited in Chief Justice Robert's majority opinion, which found for the government, keeping the premium tax credits and cost-sharing reductions in place in all states.

In addition to the quality of the research, why do you believe your research had the effect it did at the time it did?

- **Multi-dimensionality.** The analyses were designed to provide a comprehensive picture of the consequences of eliminating premium tax credits and cost-sharing reductions, including coverage effects, increased household financial burdens, effects on health care providers, effects on state financial well-being, and more. No other analysis captured the same multi-dimensional consequences.
- **Value.** The potential implications of the case were significant, and the analyses effectively highlighted what was at stake.
- **Relevance and Accessibility.** Not only were the analyses timely so they could be incorporated into legal briefs, but they were written to be broadly accessible; journalists and lawyers without a background in health care policy or economics could understand them and explain them to others, which greatly increased their clout.

Published Papers Encompassing the Work Described:

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," Urban Institute, January 2015. <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000062-The-Implications-King-vs-Burwell.pdf>

Linda J. Blumberg, Matthew Buettgens, and John Holahan, "Characteristics of Those Affected by a Supreme Court Finding for the Plaintiff in *King v. Burwell*," Urban Institute, January 2015. <http://www.urban.org/sites/default/>

files/alfresco/publication-pdfs/2000078-Characteristics-of-Those-Affected-by-King-v-Burwell.pdf

Matthew Buettgens, John Holahan, Linda J. Blumberg, and Hannah Recht, “Health Care Spending by Those Becoming Uninsured if the Supreme Court Finds for the Plaintiff in *King v. Burwell* Would Fall by at Least 35 Percent,” Urban Institute, February 2015. <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000106-Health-Care-Spending-by-Those-Becoming-Uninsured-if-the-Supreme-Court-Finds-for-the-Plaintiff-in-King-v-Burwell-Would-Fall-by-at-Least-35-Percent.pdf>

Matthew Buettgens, Linda J. Blumberg, and John Holahan, “The Combined Effect of Not Expanding Medicaid and Losing Marketplace Assistance,” Urban Institute, May 2015. <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000223-The-Combined-Effect-of-Not-Expanding-Medicaid-and-Losing-Marketplace-Assistance.pdf>

Linda J. Blumberg, “The Implications of a Finding for the Plaintiffs in *King v. Burwell* for Small Employers, Their Workers, and the Self-Employed,” Oral Statement, the

United States Senate Committee on Small Business and Entrepreneurship, April 2015. <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000206-The-Implications-of-a-Finding-for-the-Plaintiffs-in-King-v-Burwell-for-Small-Employers.pdf>

Related Readings:

Timothy S. Jost, “The Affordable Care Act Returns to the US Supreme Court,” *Health Affairs*, 34:3367-370; doi: 10.1377/hlthaff.2015.0043, 2015.

Timothy S. Jost, “Implementing Health Reform: The Supreme Court Upholds Tax Credits in the Federal Exchange,” *Health Affairs Blog*, June 2015, <http://healthaffairs.org/blog/2015/06/25/implementing-health-reform-the-supreme-court-upholds-tax-credits-in-the-federal-exchange/>.

Timothy S. Jost, “*King V. Burwell*: Unpacking the Supreme Court Oral Arguments,” *Health Affairs Blog*, March 2015, <http://healthaffairs.org/blog/2015/03/05/king-v-burwell-unpacking-the-supreme-court-oral-arguments/>.