

## Will the Supreme Court Re-Ignite the Health Reform Wars?

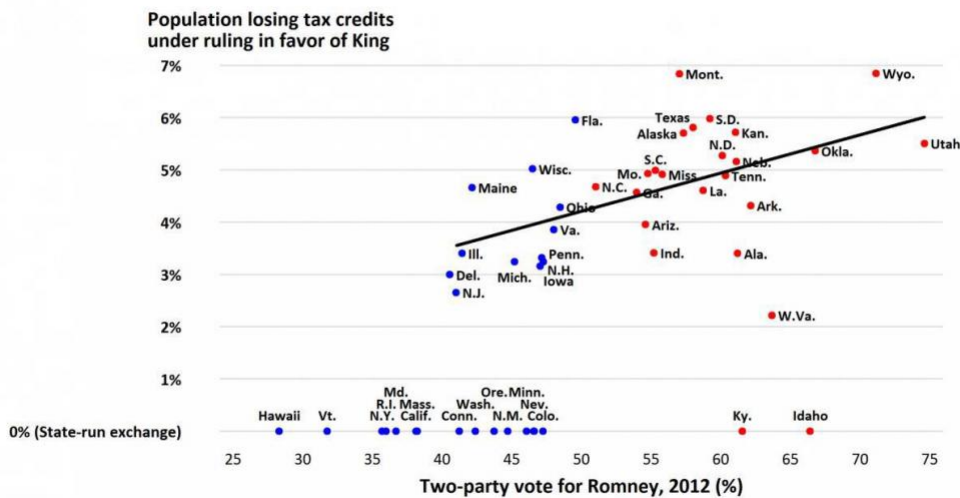
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With the Affordable Care Act working surprisingly well, conflicts have cooled a bit. But if the Supreme Court eliminates insurance subsidies for citizens in dozens of states, GOP governors and candidates will find themselves vulnerable on the firing lines of renewed partisan warfare headed into 2016.

The *King* case was argued at the Supreme Court on March 5, 2015, and the results will soon be announced as the nine Justices wrap up their current term. The plaintiffs are ideological conservatives, firm opponents of health reform, who have seized on one ambiguous phrase in a 900-page law to maintain that federal subsidies to help lower-middle-income people buy private health insurance plans cannot be given to citizens living in states that have not set up their own autonomous health care exchanges, or marketplaces. Of course, the Affordable Care Act never intended any such restriction: subsidies were meant to be available nationwide. But ultra conservatives see this case as one last chance to persuade five Supreme Court Justices to do what the Republican Party has not been able to do through regular electoral or legislative channels – register a body blow to President Obama’s signature health reform law.

Months ago, SSNers Theda Skocpol and Lawrence Jacobs wrote an [SSN brief explaining the political stakes in the \*King v. Burwell\*](#). A [feature story](#) in *Talking Points Memo* highlighted the implications of the Skocpol-Jacobs findings for the 2016 election, and Theda Skocpol published [an OpEd](#) in *The Atlantic* explaining why many GOP presidential and vice presidential hopefuls have strong reasons to worry if the Supreme Court nixes health reform subsidies in their states. As the outcome of the case approaches, many bloggers and media analysts have echoed these arguments. Writing for the *Monkey Cage* blog at the *Washington Post*, for example, Patrick Egan built off the Skocpol-Jacobs brief to show how hard a subsidy cut-off triggered by a pro-*King* ruling would hit Republican strongholds. Politically speaking, he explained, “... [the GOP loses if the Obamacare lawsuit wins](#).”

### King v. Burwell Would Hit Republican Strongholds the Hardest



As Skocpol and Jacobs [spelled out](#), the health reform law itself cannot be killed in this case. Its core insurance regulations and much of the federal spending to expand health insurance coverage to millions of additional Americans will survive no matter what the Court decides. But if the Court does decide to restrict subsidies now flowing to states that rely on the federal exchange to market health plans, millions of middle-income people will suddenly find insurance coverage unaffordable and two to three dozen states will suddenly face market meltdowns for health insurance. Ironically, these body blows will land on states governed by Republicans, leaving Democratic-run states and many divided states relatively untouched. Their citizens will still have affordable insurance; their insurance markets will continue to function well.

In short, a Supreme Court decision for the *King* plaintiffs would launch a new round of partisan polarization and conflicts over health reform. Affordable Care could be destroyed only if Democrats were foolish enough to accept blame for the Supreme Court case and vote for repeal or removal of key provisions. But Democrats and President Obama would probably stand firm, protecting the core Affordable Care Act regulations that make insurance work for all Americans and calling on Republicans to fix the problematic phrase in the Affordable Care Act and restore subsidies in all fifty states.

Ideologically conservative Republicans would resist taking corrective action, and the Republican-led Congress would not enact any fixes acceptable to the President. But many GOP governors would try to find ways to restore subsidies in their own states, and GOP candidates for the Senate and presidency in 2016 would have to explain why they would want to inflict losses on millions of American citizens, including many Republican voters. The future of health reform would become a top issue for all candidates headed into 2016. Given that most Americans tell pollsters they believe subsidies should be available to all Americans – and given that most Americans want the 2010 law to remain on the books and be improved, not repealed – a new round of partisan warfare would likely boost Democrats in the 2016 presidential and Senate races.