



Senate *King v. Burwell* 'Fix' Includes Same Failed Proposals to Repeal Health Reform

By Thomas Huelskoetter and Justin Morgan | June 16, 2015

Later this month, the Supreme Court will issue a ruling on *King v. Burwell*, the latest Republican attack on the Affordable Care Act, or ACA, through the courts. If the Court rules for the plaintiffs, 6.4 million people will lose tax credits in states using the federal marketplace, making health insurance unaffordable for millions.¹ Fearing a political backlash, Senate Republicans have recently touted a bill sponsored by Sen. Ron Johnson (R-WI) that would extend the tax credits for current enrollees through 2017.² While marketed as a compromise, the Johnson bill includes many of the same proposals to dismantle the core of the ACA that the House has been voting on nonstop for the past five years.

What would the Johnson bill do?

- **Extend tax credits in states using the federal marketplace through 2017 but prevent new enrollees in every state from accessing tax credits:** By limiting tax credits to current enrollees—even in the state-based marketplaces that would otherwise be unaffected by *King v. Burwell*—the bill would significantly curtail future enrollment in every state.³ This would also reduce current enrollment over time due to the high level of turnover in the individual market.
- **Repeal the individual mandate:** This would reduce the number of younger and healthier people who enroll or stay enrolled in the future, driving up premium costs and leading to a so-called death spiral in the individual market. According to the American Academy of Actuaries, this provision of the bill would “threaten the viability of the health insurance market” in every state.⁴
- **Repeal the employer mandate.**
- **Repeal the federal essential health benefits that plans are required to cover under the ACA:** This would increase the number of underinsured people, worsening access to services such as maternity care that were previously often excluded from coverage.

- **Expand the grandfather provision, undermining the ACA's consumer protections:**

Some pre-existing insurance plans that did not meet the ACA's requirements were temporarily grandfathered in to minimize disruption to enrollees. The Johnson bill would expand this provision, creating a massive loophole around many of the ACA's consumer protections, including the ban on insurers discriminating against people with pre-existing conditions.⁵

Has Congress tried this before?

These ideas are not new. Rather, they echo the same proposals to undermine and repeal the ACA that House Republicans have been pushing for years. (see sidebar)

Instead of offering a serious proposal to fix the potential chaos following a ruling for the plaintiffs in *King v. Burwell*, congressional Republicans are attempting to exploit it by repackaging their old attacks on the ACA. The Johnson bill is not a compromise. It is purposefully designed to sabotage the ACA by repealing important provisions of the law and preventing new enrollees from accessing tax credits. The bill offers partial short-term relief in 34 states in exchange for long-term chaos in every state's insurance market. The end result would be fewer insured people, higher costs in the individual market, and dramatically weakened consumer protections.

Thomas Huelskoetter is a Research Assistant for the Health Policy team at the Center for American Progress Action Fund. Justin Morgan is an intern for the Fund's Health Policy team.

Endnotes

1 Centers for Medicare & Medicaid Services, "March 31, 2015 Effectuated Enrollment Snapshot," Press release, June 2, 2015, available at <http://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-06-02.html>.

2 *Preserving Freedom and Choice in Health Care Act*, S. 1016, 114 Cong. 1 sess. (Government Printing Office, 2015).

3 Sarah Lueck and Edwin Park, "Johnson Health Plan Would Unravel Much of Health Reform" (Washington: Center on Budget and Policy Priorities, 2015), available at <http://www.cbpp.org/sites/default/files/atoms/files/6-10-15health.pdf>.

4 American Academy of Actuaries, "Implications of Proposed Changes to the ACA in Response to *King v. Burwell*" (2015).

5 Nicholas Bagley, "The Senate's Proposed King Fix is Flawed," Notice and Comment, April 28, 2015, available at <http://www.yalejreg.com/blog/the-senate-s-proposed-king-fix-is-flawed-by-nicholas-bagley>.

6 Includes legislation to repeal, defund, or delay the entire ACA, see H.R. 2, 112 Cong. 1 sess. (January 19, 2011); H.Con. Res. 35, 112 Cong. 1 sess. (April 14, 2011); H.Con.Res. 34, 112 Cong. 1 sess. (April 15, 2011); H.Con.Res. 112, 112 Cong. 2 sess. (March 29, 2012); H.R. 6079, 112 Cong. 2 sess. (July 11, 2012); H.Con.Res. 25, 113 Cong. 1 sess. (March 21, 2013); H.R. 45, 113 Cong. 1 sess. (May 16, 2013); H.J.Res. 59, 113 Cong.

1 sess. (September 20, 2013); H.Con.Res. 96, 113 Cong. 2 sess. (April 10, 2014); H.R. 596, 114 Cong. 1 sess. (February 3, 2015); H.Con.Res. 27, 114 Cong. 1 sess. (March 25, 2015); H.J.Res. 59, 113 Cong. 1 sess. (September 20, 2013).

7 Includes legislation to repeal, delay, and defund implementation of the individual mandate, see H.Amdt. 135 to H.R. 1, 112 Cong. 1 sess. (February 18, 2011); H.R. 2668, 113 Cong. 1 sess. (July 17, 2013); H.R. 2009, 113 Cong. 1 sess. (August 2, 2013); H.J.Res. 59, 113 Cong. 1 sess. (September 20, 2013); H.R. 4118, 113 Cong. 2 sess. (March 5, 2014); H.R. 4015, 113 Cong. 2 sess. (March 14, 2014).

8 Includes legislation to delay or dramatically reduce eligibility for the employer mandate, see H.R. 2667, 113 Cong. 1 sess. (July 17, 2013); H.R. 2575, 113 Cong. 2 sess. (April 3, 2014); H.R. 30, 114 Cong. 1 sess. (January 8, 2015).

9 Includes legislation to defund implementation of essential health benefits, see H.Amdt. 165 to H.R. 1, 112 Cong. 1 sess. (February 19, 2011).

10 Includes legislation to effectively expand the grandfather provision and permit noncompliant plans to enroll new customers, see H.R. 3350, 113 Cong. 1 sess. (November 15, 2013); H.R. 3522, 113 Cong. 2 sess. (September 11, 2014).

How many times has the House passed legislation to repeal, delay, or defund these provisions?

Full ACA (includes all of the provisions below) ⁶	13
Individual mandate ⁷	6
Employer mandate ⁸	3
Essential health benefits ⁹	1
Consumer protections via the grandfather provision ¹⁰	2
Total	25