

# What the Supreme Court health care ruling means for Utahns

June 25 2015

By Kristen Moulton | The Salt Lake Tribune

Link: <http://www.sltrib.com/home/2664608-155/supreme-court-upholds-nationwide-health-care>

The cloud that put Utah's Medicaid expansion talks in the shade for months is now gone.

U.S. Supreme Court justices ruled 6-3 on Thursday for the Obama administration in *King v. Burwell*, which means millions of Americans in states using the federal exchange — including 86,300 Utahns — can keep their subsidies for health insurance.

But it also makes the task of striking a Medicaid expansion deal under the glare of a self-imposed July 31 deadline harder for Utah's GOP governor and legislative leaders.



Besides giving subsidies to millions of low-income Americans, the Affordable Care Act expanded Medicaid to millions of even needier Americans.

A 2012 Supreme Court ruling, however, let states opt out of expansion. Utah leaders have refused to implement full expansion and still haven't agreed to an alternative way of covering those who don't now qualify for Medicaid or for subsidies to buy insurance. The majority are adults working at low-paying jobs.

Utah House Majority Leader Jim Dunnigan said it's possible a plan will take shape by the end of next month, the date by which the governor and legislative leaders promised they'd have a plan, after unsuccessfully negotiating during the legislative session.

"That's a month away," the Taylorsville Republican said. "I still think that's ambitious."

Sen. Brian Shiozawa, R-Cottonwood Heights, said, "I don't know if it will be July 31 or Aug. 30 ... but certainly before September."

Dunnigan and Shiozawa were sponsors of rival alternative expansion bills during the 2015 legislative session.

The two said the discussion among the "gang of six" — the GOP governor, lieutenant governor, House speaker, Senate president, Dunnigan and Shiozawa — continues to revolve around projected costs to Utah, who pays and for how long.

Gov. Gary Herbert remains optimistic that an agreement in principle can be reached by July 31, his spokesman Marty Carpenter said earlier in the week.

King goes down • Republicans in Congress as well as in Utah had hoped the Supreme Court would rule for King, invalidating the subsidies in federal exchange states and opening the door for federal lawmakers to rewrite the Affordable Care Act.

Sen. Orrin Hatch, R-Utah, called Obamacare a "series of broken promises from the start" and said GOP lawmakers plan to repeal and replace the ACA "with reforms that put patients — not Washington — first."

Observers widely agree that's unlikely before the 2016 elections.

Herbert, Dunnigan and House Speaker Greg Hughes, R-Draper, all were disappointed the court didn't gut the ACA.

Herbert said in a statement that he will support the "repeal and replace" effort in Congress.

Hughes called the high court's ruling destructive and said it allows the Obama administration to ignore the law.

"Here, in Utah, we follow the law and we balance our budget," the House speaker said in a statement. "Obamacare has forced states to make up for the failures of this poorly designed federal legislation."

King v. Burwell was all about four words in the Affordable Care Act, "established by the State," referring to the exchanges by which low-income Americans get subsidies.

For Dunnigan, that clearly meant those using the federal exchange — residents of Utah and 33 other states — should not get subsidies.

Nationally, 10.2 million people are paying for insurance they bought on the state and federal exchanges this year. Of those, 8.7 million people are receiving subsidies that average \$272 a month to cover their premiums. Of those, 6.4 million are in states that use the federal exchange.

"At some point," Dunnigan said, "the law has to mean what it says."

Chief Justice John Roberts, writing the majority opinion, conceded that the ACA "contains more than a few examples of inartful drafting."

But Roberts said that to read the law the way challengers wanted — limiting tax credits to people who live in states that set up their own health insurance marketplaces — would lead to a "calamitous result" that Congress could not have intended.

"Congress passed the Affordable Care Act to improve health insurance markets," he declared, "not to destroy them."

Roberts was joined by four liberal colleagues and Justice Anthony Kennedy.

Justice Antonin Scalia, in a dissent he summarized from the bench, strongly disagreed. "We should start calling this law SCOTUScare," he said, using an acronym for the U.S. Supreme Court and suggesting his colleagues' ownership of the law by virtue of their twice stepping in to save it from what he considered worthy challenges.

His comment drew a smile from Roberts.

Scalia said Roberts' 2012 decision upholding the law and his opinion on Thursday "will publish forever the discouraging truth that the Supreme Court of the United States favors some laws over others and is prepared to do whatever it takes to uphold and assist its favorites."

Justices Samuel Alito and Clarence Thomas joined the dissent, as they did in 2012.

'Sigh of relief' • While conservatives derided the decision, subsidy recipients, health care advocates, Democrats and insurance industry representatives applauded it.

"That collective sigh of relief you hear is coming from all the insurers in the state," said Shaun Greene, chief operating officer for Arches Health Plan.

Arches covers about a quarter of the 128,220 Utahns who bought insurance this year via the federal exchange, [healthcare.gov](http://healthcare.gov).

The ACA needs work, Greene acknowledged, but a ruling for King would have meant massive disruption in the insurance markets. "It's nice to see common sense prevail."

Salt Lake City resident Sonja Blackham, who with her husband gets a subsidy that reduces their insurance costs from about \$450 per month to \$100 per month, was thrilled.

"I'm grateful for my family," she said, "and all the other families that are getting the subsidies."

The Supreme Court decision makes it more difficult for Congress to kill the ACA, she said. "It's going to be harder and harder to go against [the Affordable Care Act] now."

Jason Stevenson, communications director for Utah Health Policy Project, was unsurprised but relieved by the ruling.

"This enables tens of thousands of Utah families to continue to be protected by the health care they're already paying for," Stevenson said. "It just continues the access that Utahns have shown a great interest in."

A whopping 22 percent of the Utahns covered by insurance purchased on the federal exchange this year are children under age 18, the highest percentage of any state, and 55 percent are 34 and under.

UHPP helps people sign up for insurance, and Stevenson had worried that many low-income people would stop paying if they lost their subsidies, which average more than \$200 a month in Utah.

"We knew people who were getting chemotherapy right now who were very worried they would get stuck," he said.

With Thursday's ruling, Utah House Democratic Whip Rebecca Chavez-Houck said, state Republican leaders have to act.

"There are no more 'red herrings' to fish out," the Salt Lake City Democrat said. "The Affordable Care Act has provided accessible health coverage to so many Utahns, and now it is time to insure many more."

Utah, at a minimum, should pass the governor's Healthy Utah plan, she said.

But Sen. Jim Dabakis, D-Salt Lake City, urged GOP leaders to opt for full Medicaid expansion.

It's 'doable' • Dunnigan said the King v. Burwell case did not slow the work toward an alternative Medicaid expansion plan for Utah.

But "it's good to have it settled, one way or the other. We're still evaluating the different pieces and looking at what's happened in other states," he said. "The assumptions are extremely important in how you build it."

Agreeing to a plan by the end of July, he said, "is doable, but there is still a lot of work to be done."

Shiozawa said there is essentially agreement on who should be covered and the benefits they should receive.

The sticking points are "how much it's going to cost and who is going to pay for it," Shiozawa said. The duration of the program — whether for two years or five or longer — also is an issue.

The plan likely will have hospitals and other medical providers picking up more of the tab for expanding Medicaid. Those providers, he said, "are more willing to talk" than in the past.

While decrying the Supreme Court's decision, Herbert repeated one of his key arguments for the Healthy Utah plan, which he negotiated with the Obama administration last year.

"We must ensure federal tax dollars Utahns pay under this law provide optimal benefit to our state," the governor said in a statement.

Hughes said the ruling will not change the House's commitment "to caring for Utah's uninsured in an effective and sustainable way."

"We remain dedicated," he said, "to finding a fiscally responsible and meaningful solution to the obstacles created by Obamacare."

The Associated Press contributed to this story.

[kmoulton@sltrib.com](mailto:kmoulton@sltrib.com)

Twitter: [@KristenMoulton](https://twitter.com/KristenMoulton)