



## King v. Burwell

A ruling by the U.S. Supreme Court is expected this summer in *King v. Burwell*, a case challenging ObamaCare's subsidies to individuals who purchase health insurance in federal exchanges.

The plaintiff argues the IRS illegally authorized ObamaCare subsidies in states with federal exchanges, despite the law's clear language that subsidies may only be given in states that establish their own state-based exchange.

If the Supreme Court sides with the plaintiff, subsidies to individuals in states using the federal exchange will cease. In this scenario, the states could be under immense pressure to create and fund a state-based exchange.

FGA has prepared this FAQ to help you answer the questions you may face.

# FAQ for Policymakers

## Q. Why is this case important?

**A.** This case is about fairness. A ruling in favor of the plaintiffs in *King v. Burwell* protects the 34 states that declined to set up an ObamaCare exchange in their states. The law says a state may choose whether to establish its own ObamaCare exchanges and receive subsidies, OR it can opt-out and protect hardworking Americans from ObamaCare's mandates and penalties. A loss for the *King* plaintiff would rob states of the right to make this choice.

## Q. What are ObamaCare subsidies?

**A.** ObamaCare established taxpayer-funded subsidies on a sliding scale for people earning between 100 percent and 400 percent of the federal poverty level (FPL). In states that implemented ObamaCare's Medicaid expansion, subsidies are available between 138 percent and 400 percent FPL. This means a family of four earning up to \$97,000 is eligible for subsidies. These subsidies can only be used to purchase coverage on the ObamaCare exchange.

## Q. What is being argued in *King v. Burwell*?

**A.** The *King* plaintiff is asking the Supreme Court to follow the ObamaCare statute and only authorize the taxpayer-funded subsidies in state-based exchanges. The plaintiff argues that imposing the subsidies scheme is harmful because it subjects them to the law's requirement to carry insurance or pay a penalty. Without the subsidies, insurance would be too expensive for them, thus making them exempt from having to pay the fine for lacking insurance.

The plaintiff wants the Court to uphold the law. Section 1401 of ObamaCare authorizes premiums subsidies only to individuals who enroll in coverage "through an Exchange established by the State." But in May 2012, the IRS issued a final rule extending those subsidies to individuals enrolled in federal exchanges, ignoring statutory authority and even Congressional intent.

## Q. What types of ObamaCare exchanges are there?

**A.** There are four different types of exchanges under ObamaCare:

**#1: State-based exchanges** are exactly that—online health insurance marketplaces that facilitate the sale of ObamaCare plans. Most functions of a state-based exchange are managed by the state, either directly or through a third-party vendor. Individuals enroll via a state-specific website.

**#2: The federal exchange** facilitate the sale of ObamaCare plans, but leaves the federal government responsible for all exchange functions. Individuals enroll using [healthcare.gov](http://healthcare.gov).



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**#3: Partnership exchanges** facilitate the sale of ObamaCare plans. And while the states work with individuals to provide some services such as customer assistance and support, the federal government is responsible for the majority of the exchange functions. Individuals enroll using healthcare.gov.

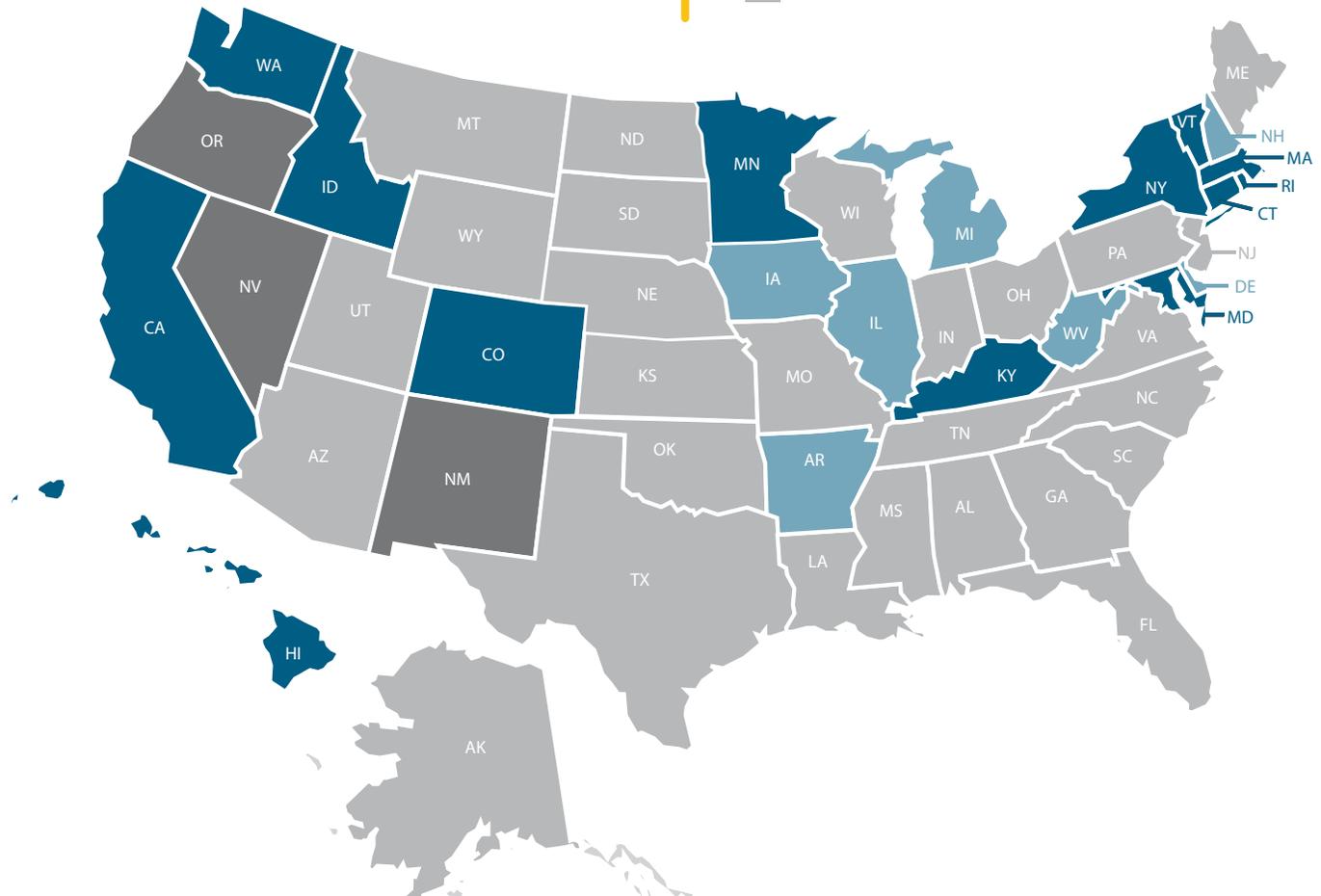
**#4: Federally-supported state-based exchanges** are exchanges that were initially established by states, but were later converted to federal exchanges by relying on healthcare.gov. Further litigation may be required to clarify the status of these exchanges.

## Q. Which type of exchange does my state have?

A. See map:

## State Health Insurance Marketplace Types, 2015

- 13 state-based exchanges
- 7 partnership exchanges
- 3 federally-supported state exchanges
- 27 states using the federal exchange





# FAQ for Policymakers

## Q. What would a ruling in favor of King mean for my state?

- A.** If you live in a state with a **state-based exchange**, nothing will change for you.

If you live in a state with the **federal exchange**, employers and most individuals would be exempt from the law's mandate. Enrollees with a subsidy would face the full cost of ObamaCare premiums.

If you live in a state with a **partnership exchange**, employers and most individuals would be exempt from the law's mandate. Enrollees with a subsidy would face the full cost of ObamaCare premiums.

If you live in a state with a **federally-supported state based-exchange**, employers and most individuals would be exempt from the law's mandate. Enrollees with a subsidy would face the full cost of ObamaCare premiums.

## Q. Is it easy to just set up a state-operated exchange?

- A.** Setting up a state-operated exchange is complicated and requires a lot of technical expertise, coordination, and spending. One of the most notorious examples is Oregon, which spent hundreds of millions to establish its state-operated exchange, Cover Oregon. The state even received a \$48 million early innovator grant since it was so enthusiastic about setting up a model exchange for other states to follow. But not a single individual ever enrolled in Cover Oregon, after 18 months of operation. Cover Oregon's rollout was so botched, the FBI is now investigating the operation. Earlier this year, Oregon closed its state-based exchange and relinquished control to the federal government. Hawaii joined Oregon recently in defaulting after spending more than \$250 million in taxpayer money.

Massachusetts has also run into massive issues switching to an ObamaCare exchange. After spending more than \$500 million, the state was on the verge of defaulting to healthcare.gov, and is still facing hundreds of technical issues. The state still does not have a fully-functional website, after spending almost 3 years on the project. The FBI has opened an ongoing investigation on the Massachusetts exchange as well.

Massachusetts and Oregon are not alone. Maryland, Minnesota, Nevada, and Vermont, among other states, have all had major problems running a state-based exchange. State-based exchanges have cost taxpayers almost \$5 billion so far.

## Q. If SCOTUS rules in favor of King, what happens next?

- A.** If King wins, Congress will have a fresh opportunity to re-open the law and address ObamaCare's specific problems and hidden costs.