Written by [Raven Clabough](#) on March 16, 2015

HHS: 86 Percent of ObamaCare Enrollees Receive Subsidies

According to the Obama administration, 86 percent of ObamaCare enrollees receive financial assistance to help pay premiums. Of that amount, approximately three-fourths live in the 37 states that are currently served by the federal insurance exchange.

Reuters reports, "As of Feb. 22, about 8.8 million signed up in one of the 37 states that use online exchanges operated by the federal government and 2.85 million were in the 14 states, and Washington, D.C., that operate their own exchanges."

The Department of Health and Human Services provided these figures in order to underline the importance of subsidies, as they are currently being weighed in the Supreme Court, though critics can easily seize upon the same figures to criticize the socialistic nature of this program.

Sylvia Mathews Burwell, secretary of Health and Human Services, pointed to these figures as evidence of just how vital the subsidies are for the future of ObamaCare, stating that without the subsidies, the insurance is virtually unaffordable.

Single enrollees who make approximately $47,000, or families of four making less than $97,000 per year qualify for subsidies under the law, resulting in significant savings.

According to the *New York Times*, "For people in states using HealthCare.gov, tax credits averaged $263 a month and reduced the premium by 72 percent, on average. That is similar to the share of premiums paid by employers for their workers' family coverage."

But the legality of those subsidies is being challenged in the Supreme Court in the case of *King v. Burwell*, brought forward by the Competitive Enterprise Institute, a libertarian group in Washington, which argues that a strict reading of the statute makes subsidies available only in states that established their own insurance marketplaces.

The focus in the case is on language in the law regarding subsidies for those who purchase insurance on exchanges "established by the state." The plaintiffs contend that the administration incorrectly interpreted the language to allow subsidies nationwide. The plaintiffs argue that the language explicitly establishes that the subsidies should be available only to those who live in states that established their own health insurance marketplace.

According to the administration's representative, Solicitor General Donald Verrilli Jr., the law can be read more broadly than what the language indicates.

But Michael Carvin, lawyer for the challengers, argues, "This is a straightforward case of statutory construction, where the plain language of the statute dictates the result."

Of course, the cause of all this confusion is the Democratic majority's effort to drive through an undesirable, unpopular bill within a strict timeframe without providing the careful scrutiny that the thousands of pages in this bill warranted. And once the Democrats lost their supermajority in the Senate after the initial bill was passed, they were then unable to stage another vote on a cleaner version of the bill that would have gone through a reconciliation process.

Five years later, the administration's legal team is asking the Supreme Court to interpret the language the way it was "intended," without permitting the bill to undergo the typical legislative process.

If the Supreme Court were to cater to the administration's will, they risk accusations of writing, or in this case, rewriting, laws in violation of its constitutional limitations.

Just which direction the Supreme Court will take is anyone's guess at this moment. Based on the justices' interactions with both parties during opening arguments, it seems clear that there is an ideological split in the Supreme Court.

According to Reuters, Justice Anthony Kennedy is likely to be the swing vote in the ruling. Reuters writes, "Kennedy, a conservative who often casts the deciding vote in close cases, raised concerns to lawyers on both sides about the possible negative impact on states if the government loses the case, suggesting he could back the Obama administration. But he did not commit to supporting either side."

King v. Burwell is not the only case exploring the legality of ObamaCare's subsidies. Last November, the House of Representatives filed a lawsuit that asks a federal court to invalidate cost-sharing subsidies because Congress never appropriated funds for them.

Forbes provides some background on that suit:

> *House [v. Burwell]* claims the president cannot issue "cost-sharing subsidies" in *any* state, because Congress never appropriated funds for those subsidies. Spending federal dollars not pursuant to a congressional appropriation is [a federal crime](#). It would block $3 billion in subsidies this year, and $175 billion over the next 10 years. (The House also claims the president violated the law by unilaterally delaying the obligations the PPACA imposes on employers by delaying the onset of the employer mandate past the date specified in the statute.)

Both *King v. Burwell* and *House v. Burwell* would impact $2 billion in cost-sharing subsidies, but each case blocks subsidies that the other does not. *Forbes* elaborates,

> While *King* would also block the $7 billion ($523b/10yrs) in "premium-assistance tax credits" the administration is issuing in those 36 states, *House* would block the $1 billion ($49b/10yrs) in "cost-sharing subsidies" the administration is issuing in the 14 states that established Exchanges. Put differently, *King* would knock out two legs of the PPACA's three-legged stool in 36 states. *House* would at least shorten one of those legs in all 50 states.

Meanwhile, as the Supreme Court tackles healthcare subsidies on the bench, those Americans who have received subsidies may be in for a very rude awakening this tax season. Of the 86 percent of Americans who received subsidies for healthcare, a significant portion can expect to pay some of those subsidies back to the government. H&R Block released a report last month saying that 52 percent of customers who received health coverage through the insurance marketplaces last year underestimated their income and now owe the government. They estimate that the average subsidy repayment amount is $530.

Those who enrolled in ObamaCare now are realizing that certain positive life changes — a pay raise, a marriage, a spouse's new job — can turn out to be a liability at tax time. "We are definitely seeing some pain," said Jackie Perlman, a principal tax research analyst at H&R Block.

And while the Internal Revenue Service has announced it will allow payment in installments on subsidies that need to be repaid, even after the April 15 tax deadline, interest will continue to accrue until the balance is paid.

Alyene Senger, research associate at the Heritage Foundation, explains that most consumers were unaware that the subsidies were based on their total year-end income and were unable to predict what would happen over the course of the year to increase that year-end total. "How do you know if you are going to get that promotion?" she said. "How do you know what your Christmas bonus is going to be?"

Senger also observes that the government did not exactly publicize this bit of information. "It isn't really something the administration focused on heavily," she said. "It's not exactly popular."

In other words, the federal government lured consumers into its healthcare marketplace with the promise of subsidies that are later withdrawn and require repayment so that those consumers can fund healthcare for other families, while they themselves struggle to afford their own family's insurance. Meanwhile, the Obama administration can tout high enrollment figures.

Does that sound like a program designed to assist middle- and working-class families?