



The Daily Dish

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BRITTANY LA COUTURE | DECEMBER 8, 2014

Only half of the [senators who voted](#) for Obamacare in 2009 remain in office. On Saturday, Senator Landrieu became the 30th “yes” vote to exit the Senate in 2015 when she lost her reelection bid. The loss gives Senate Republicans a 54-member majority.

Talks will continue on the Trans-Pacific Partnership (TPP) in Washington as the twelve countries involved spoke of reaching an agreement as soon as possible. According to [The Japan Times](#), “The TPP countries are expected to discuss outstanding issues such as intellectual property and reform of state-owned firms to establish fair business competition...” [In the US, TPP has the potential](#) to increase GDP by \$77 billion, boost exports by \$124 billion, and create 550,000 jobs.

Tomorrow, Jonathan Gruber will be [called before](#) the House Oversight Committee to discuss his role shaping the ACA as a consultant for the government. The committee will likely focus on Gruber’s recent comment that the “the stupidity of the American voter” helped pass the controversial bill.

Eakinomics: ACA and The Courts, Guest Authored by Brittany La Couture, AAF Health Care Policy Analyst

After contradictory decisions were handed down in two separate court cases involving the Affordable Care Act (King v. Burwell and Halbig v Burwell) on the same day, it became apparent that the main question in these cases would ultimately need to be settled by the Supreme Court. And on November 7th, at least four Justices voted to hear King v. Burwell.

The issue presented in these cases is almost offensively simple: may the IRS grant premium subsidies in health care exchanges established by the federal government despite the fact that the literal text of the ACA only authorizes spending that money in exchanges established by the state?

Supporters of the Obama Administration's decision to spend that money without explicit congressional authorization argue that Congress obviously intended subsidies be available to all Americans. Those opposed to the administration’s actions point out that Congress also intended that all exchanges would be established by state governments. Drafters of the law recognized that Congress could not constitutionally force states to establish exchanges so they would have to be induced to shoulder that burden. Millions of dollars in federal subsidies has, in the past, always proven to be a sufficient inducement – this time it wasn’t.

The outcome of this case could have significant meaning for the separation of powers in American government. Should the Court rule in favor of the Obama Administration, the executive branch will have essentially been given a blank check to do whatever it pleases, so long as its actions can be painted as fitting within the 'general intent' of any federal statute. While giving the president more power, the Court would simultaneously be stripping Congress of an important tool: the ability to negotiate limits on the scope of its legislation. If the administration refuses to enforce some laws, while vastly broadening the scope of others, it will become near impossible for legislators to negotiate with one another to draft laws that people on both sides of the aisle support because the administration will have free rein to amend the law to its liking.

Should the Court rule in favor of the plaintiffs, however, the practical effects will be more immediate: premium subsidies will stop flowing in about two-thirds of states. Without the presence of these subsidies, millions of Americans will be exempted from the individual mandate, they will be permitted to purchase insurance plans that best suit their individual needs, and many will find employment opportunities multiplying in the absence of the job-killing employer mandate. Most importantly, as two-thirds of Americans are released from the untenable restrictions placed on them by Obamacare there will be space for a serious, bipartisan discussion about appropriate, market-driven options for sustainable health care reform.

From the Forum

[100 National and State Parks Could Fail to Comply with EPA's New Ozone Regulations](#) by Sam Batkins, AAF Director of Regulatory Policy; and Catrina Rorke, AAF Director of Energy and Environmental Policy

[Week in Regulation](#) by Sam Batkins, AAF Director of Regulatory Policy