

King v. Burwell: Round 2 for the Affordable Care Act

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On June 25, 2015, the U.S. Supreme Court announced its long-awaited decision in *King v. Burwell*. The Court concluded that statutory language in the Affordable Care Act (ACA) authorizing tax credits for consumers on “an Exchange established by the State” allows the federal government to provide tax credits to consumers on both state and federal exchanges. This was the second major legal challenge to the law to have reached the Supreme Court in just three years and the last significant legal hurdle to the full implementation of the ACA. In 2012, in *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 2566, the Supreme Court upheld the ACA against a constitutional challenge to the law’s individual mandate provision.

Although not a constitutional challenge, the stakes in *King v. Burwell* were just as high. An adverse ruling for the government would have prohibited federal tax credits to individuals in states that had not established their own exchanges, causing major disruptions for plans and individuals in those states and jeopardizing the overall reform scheme at the heart of the ACA. At the time *King v. Burwell* was decided, only 16 states and the District of Columbia had elected to establish their own exchanges; the remaining 34 were operating under exchanges established by the federal government.

The practical implications of the decision are significant. The decision allows the administration to move forward with full implementation and administration of the ACA without the threat of legal challenges to the basic structure or operation of the law. A contrary decision would have caused major disruptions in the U.S. health insurance market, with consequence for individuals, health insurance plans, health care providers and employers.

The Supreme Court Opinion

Chief Justice John Roberts, writing for a 6-3 majority, began his opinion with a brief discussion of the history of modern health care reform. Foreshadowing the rest of his opinion, Chief Justice Roberts emphasized the importance of the ACA’s three major provisions: the comprehensive coverage requirements, the individual mandate and the tax credits. Noting that the three provisions were “closely intertwined,” Roberts then turned to the core issue in the case — the availability of tax credits for policies purchased on federal exchanges.

Before diving into the statutory interpretation, however, Chief Justice Roberts took the additional step of removing this case from the ambit of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The *Chevron* doctrine holds that, where a federal agency is empowered to administer a statute and some provision of that statute is ambiguous, deference should be given to the federal agency’s reasoned interpretation of that provision because Congress implicitly delegated to the agency the authority to fill statutory gaps. Calling this an “extraordinary case,” the Court’s opinion concluded that it would be “especially unlikely” for Congress to have implicitly delegated decisions regarding health care policy to the IRS, which has “no expertise in crafting health insurance policy of this sort.” *King v. Burwell*, No. 14-114, slip op. at 8.

Since no *Chevron* deference was appropriate, the majority then turned to interpreting whether the phrase “an Exchange established by the State” in Section 36B of the ACA only authorizes tax credits for those who purchase their health insurance policies through state exchanges, or whether it also authorizes tax credits for those who purchase policies on federal exchanges. Focusing on the text, Chief Justice Roberts and the majority explored the idiosyncratic usage of “Exchange” in Section 36B and concluded that the phrase at issue here is “properly viewed as ambiguous.” *Id.* at 12.

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Having made that threshold finding of ambiguity, the Court looked to the rest of the ACA for context to inform the appropriate understanding of the ambiguous passage. Chief Justice Roberts emphasized the importance of the tax credits within the overall scheme of the ACA, noting that the petitioners' interpretation of Section 36B (that it applies only to state exchanges) would disturb the "closely intertwined" trio of health care reforms enacted in the ACA. Arguing that such an interpretation threatened to send state health insurance markets into a "death spiral," the majority opinion concluded that it was an implausible construction of Congress' intent. *Id.* at 17. Thus, the majority adopted a reading they found "consistent with ... Congress's plan" to improve health insurance markets and held that Section 36B authorizes tax credits for state and federal exchanges alike. *Id.* at 21. Chief Justice Roberts' opinion was joined by Justices Anthony Kennedy, Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan.

Justice Antonin Scalia dissented, joined by Justices Clarence Thomas and Samuel Alito. Justice Scalia vehemently objected to the majority's statutory interpretation: In his view, "[w]ords no longer have meaning if an Exchange that is *not* established by a State is 'established by the State,'" and the Court's opinion "changes the usual rules of statutory interpretation for the sake of the Affordable Care Act." *King v. Burwell*, opinion of Scalia, J., dissenting, at 2, 20.

Implications

From an economic standpoint, the decision in *King v. Burwell* ensures that tax credits will still be available on health insurance markets in the 34 states that rely on federal exchanges. This means that the estimated 6.4 million Americans who are currently receiving subsidies in these states will continue to benefit from the ACA for the foreseeable future.¹

From a legal standpoint, the decision removes a major legal cloud over this far-reaching piece of legislation and allows exchanges around the country to proceed unimpeded. The decision also has potentially significant ramifications for administrative law. The Court's decision not to apply *Chevron* in a context of acknowledged statutory ambiguity is striking. It remains to be seen if the Court's decision not to give deference to the executive branch is rooted in the unique context of the ACA or if it signals a possible shift in reducing the judicial deference given to the executive branch on ambiguous statutory provisions.

¹ "Coverage and Financial Security Preserved for Millions of Americans in the Supreme Court Ruling for the Government" (June 25, 2015), <http://www.commonwealthfund.org/publications/blog/2015/jun/coverage-and-financial-security-preserved>.