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June 2015

Supreme Court Upholds Affordable Care Act Rule Authorizing Health Subsidies in States with Federal Exchanges

On June 25, 2015, in *King v. Burwell*, the Supreme Court in a 6-3 decision authored by the Chief Justice upheld the IRS Regulation ("the Regulation") that provided subsidies under the Affordable Care Act (ACA) to individuals in States with only federally established — as opposed to State established — American Health Benefit Exchanges ("Exchanges"). Those who challenged the Regulation had argued that the ACA only authorized Federal subsidies to those enrollees who purchase insurance through an Exchange established by a State, as opposed to one established by the Federal government. The Court's ruling leaves in place the subsidies being provided to enrollees in those States that did not establish their own Exchanges, but instead relied on the Federal Exchange.

At issue in the case was whether the phrase "established by a state" or "established by the state," as used in the ACA § 1311 & IRC § 36B(b) respectively, should be given its ordinary and plain meaning as petitioners suggested, or be read as a term of art as the government suggested.

The ACA authorized States to establish and operate Exchanges under § 1311 and also authorized the Federal government under ACA § 1321 to establish and operate Exchanges in those States that had failed to set up their own Exchanges. However, the language authorizing Federal subsidies stated that those subsidies, in the form of premium assistance, would be available only to those who were enrolled through "an Exchange established by the state under section 1311 [IRC § 36B(b)]."

The Court concluded that to treat the two types of Exchanges differently would be inconsistent with the series of interlocking reforms in the Act designed to expand coverage in the individual health insurance market.

The Court analyzed the text of the statute and concluded that Congress did not intend to treat Federal and State Exchanges differently. First, it noted that by using the phrase "such Exchange," the ACA instructs the Secretary to establish and operate the *same* Exchange that the State was directed to establish under Section 18031. According to the

Court, "State Exchanges and Federal Exchanges are equivalent — they must meet the same requirements, perform the same functions, and serve the same purposes." However, if those in Federal Exchanges were not authorized to receive subsidies while those in State Exchanges were authorized to receive subsidies, the two Exchanges would not be equivalent. Second, the Court was concerned that the interpretation urged by petitioners would create an insurance death spiral and be destabilizing, two outcomes that Congress would have sought to avoid.

Interestingly, the Court refused to apply *Chevron* deference finding this was not the type of decision that Congress would have entrusted to an agency. So even though the statute was ambiguous, the agency's interpretation was not viewed with deference.

Justice Scalia in dissent chastised the majority for rewriting the ACA to avoid an inconvenient result. Justices Thomas and Alito joined in dissent.

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