

June 25, 2015

## Supreme Court Upholds Availability of Affordable Care Act Subsidies in States with Federally-Run Exchanges

On Thursday, June 25, 2015, the Supreme Court of the United States issued a 6-3 decision in *King v. Burwell*, ruling that the health insurance subsidies under the Affordable Care Act would be available in all states, including those with a health insurance exchange run by the federal government. As a direct consequence of the decision, millions of Americans can continue to purchase affordable insurance under the ACA. But the decision will also have continuing ramifications in the debate over the proper role of the courts and the executive branch in interpreting statutes.

Unlike the Supreme Court's decision in *National Federation of Independent Business v. Sebelius* (2012), which dealt with constitutional challenges to the ACA, *King* focused entirely on statutory construction. Under the ACA, subsidies are available for insurance policies purchased from "an Exchange established by the State." The petitioners in *King* argued that this language expressly conditioned the availability of subsidies on the State establishing and operating the exchange, and that the plain language of the Affordable Care Act forbade providing subsidies in states with federally-operated exchanges.

The Supreme Court, in a 6-3 decision authored by Chief Justice Roberts, disagreed. The Court acknowledged that the plain language of the statute at first blush appeared to support the petitioner's reading. But the Court concluded that the phrase "established by the State" was ambiguous when read in context, both because numerous other provisions assumed that tax credits would be available on both state and federal exchanges and because of peculiarities that would result from taking a literal reading. The Court then resolved this statutory ambiguity by relying on the fundamental canon of statutory construction that "the words of a statute must be read in context with a view to their place in the overall statutory scheme." The purpose of the Act was to extend health coverage, and the Court ultimately concluded that Congress could not have intended the Act push insurance markets into a death spiral in states that declined to establish their own exchanges. The Court concluded that "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them."

The Court reached this decision without applying *Chevron* deference to the challenged IRS regulation (which made subsidies available in all states). The Court found that the availability of tax credits was a question of deep "economic and political significance" involving billions of dollars in annual spending, an issue of such importance that Congress would not have delegated it to the IRS without explicitly saying so. The Court therefore reasoned that it was its role to properly interpret this provision, and that even in the face of ambiguity it would not defer to the administrative interpretation.

Justice Scalia dissented, joined by Justices Alito and Thomas. The dissent accused the majority of turning "Exchange established by the State" into "Exchange established by the State or the Federal Government," and suggested that normal rules of interpretation were being thrown out in order to save the Act. Justice Scalia suggested that the Court was rewriting the law rather than allowing the states to respond or Congress to amend the statute, ultimately concluding that the law should be called "SCOTUScare."

Today's decision avoids a massive disruption to millions of residents in States with federally run exchanges who rely on the ACA's subsidies to afford insurance, and to the health insurance and healthcare providers who do business in those states. It also avoids the "death spiral" that could have arisen in those insurance markets had the Court eliminated those subsidies. And the Court's decision to rely on its own construction of the Act, rather than simply defer to the administrative interpretation, means that a future Administration with a different view of the subsidies

cannot alter their availability. It remains an open question whether, now that the ACA and its subsidies are here to stay, more states will take up its Medicaid expansion, or shift how their exchanges operate.

Going forward, the decision may be cited more for its approach to statutory interpretation, two aspects of which jump out. First is the six-Justice majority's reliance on structure, context, and overall purpose rather than the meaning of an isolated phrase. While the majority did not cite traditional legislative history fare, such as committee reports or floor statements, it did rely heavily on the "purposes" of Congress, such as to avoid a destabilizing "death spiral" in the individual insurance market. A second notable feature is the opinion's rejection of *Chevron* deference to administrative interpretation, notwithstanding acknowledged ambiguity in the statute. Justice Scalia's dissent portends a continued debate on proper principles for statutory construction.