



## Health law subsidies upheld by the U.S. Supreme Court

June 26, 2015

On June 25, 2015, the U.S. Supreme Court upheld federal health insurance subsidies under the Affordable Care Act (ACA), preserving financial assistance for 161,000 Ohioans and millions more across 33 states nationwide. Chief Justice John Roberts wrote the majority opinion upholding the Fourth Circuit ruling in a 6-3 decision, marking the second time Justice Roberts and the Court have repelled a legal challenge to the ACA.

The issue in *King v. Burwell* (U.S., No. 14-114) was one of statutory construction. A specific phrase in the ACA appeared to limit the availability of subsidies to exchanges "established by the State." This raised the question of whether subsidies were *only* available through state-created exchanges or *also* available through exchanges created by the federal government, such as Ohio's.

The plaintiffs in *King v. Burwell* argued that because the federal government is not a "State," the phrase "established by the State" was exclusionary and could only mean that the subsidies were unavailable through federal exchanges.

However, the federal government has long contended that the ACA was predicated on the availability of subsidies nationwide, no matter the type of exchange. Indeed, after becoming aware of the ambiguity in the law's drafting – and prior to any litigation on the matter – the Internal Revenue Service attempted to clarify the provision by issuing a rule interpreting the phrase "established by the State" to mean that individuals who purchased health insurance in an exchange were eligible for tax credits or subsidies regardless of whether their purchase was made through a state or federal exchange.

In its analysis, the Court said that the "meaning of the phrase 'established by the State' is not so clear." As such, the majority's analysis turned to the ACA's four corners to determine what Congress meant by the phrase "established by the State." The Court reasoned that upon considering the full context of the law, Congress's intent became clear.

"Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them," Justice Roberts wrote for the majority. "If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter. [Internal Revenue Code] Section 36B can fairly be read consistent with what we see as Congress's plan, and that is the reading we adopt." With that intent clear, the majority rejected the plaintiff's argument because "it would destabilize the individual insurance market in any State with a Federal Exchange."

Indeed, both Democrats and Republicans were predicting a perilous fallout if the Court ruled that subsidies were limited to state exchanges: premiums would increase two or three times over, causing people to drop insurance altogether. This would require insurance companies to raise rates or cease coverage, jeopardizing the individual health insurance markets in many states. Over the past few months, both parties have been scrambling to identify solutions, concerns that are now moot. Instead, people in every state will remain eligible to purchase private and subsidized health insurance. Approximately 10 million Americans have enrolled thus far.

*King v. Burwell* also has a potential impact on employers. The Shared Responsibility Provisions of the ACA are meant to encourage large employers, generally those with more than 50 full-time employees, to provide coverage meeting the standards of minimum essential coverage (type of plan offered), value and affordability. A large employer that does not offer its full-time employees coverage that meets this criteria is subject to a penalty if at least one of their employees enrolls in a health care plan and is

eligible for, or receives, a tax credit or cost sharing reduction. If decided differently, *King v. Burwell* could have limited the application of these penalties. However, since the Court held that tax credits under Internal Revenue Code Section 36B are available for coverage obtained through either a federal or state exchange, large employers in all states will remain potentially liable for a penalty if they fail to provide the necessary coverage and an employee obtains coverage through the exchange.

From an individual's perspective, one who obtains coverage through a federal exchange, including through the federal exchange established in Ohio, will continue to be eligible for the tax credit under Internal Revenue Code Section 36B. Additionally, an individual residing in a state with a federal exchange also continues to remain subject to the individual mandate, which imposes a penalty on those who fail to obtain minimum essential coverage.

As the ACA survived its second challenge before the Court, it is believed that the current outcome raises the odds for ACA's survival under the current presidential administration. Click [here](#) to read the full opinion.

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