



Supreme Court Upholds Subsidies for Federal Exchanges under the Affordable Care Act

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In a highly anticipated decision issued by the Supreme Court in the matter of *King v. Burwell*, the Court upheld the issuance of tax credits under the Affordable Care Act (“ACA”) to individuals purchasing insurance from an Exchange established by the federal government. As the Court acknowledged, a contrary ruling would have effectively destroyed the central purpose of the ACA, which is to provide affordable health insurance to Americans.

To increase the affordability of health insurance, the ACA offers tax credits to individuals whose household income is between 100 percent and 400 percent of the federal poverty line. If the cost of purchasing insurance is more than eight percent of an individual’s household income, they are exempt from the requirement of purchasing insurance.

Under the ACA, health insurance is purchased from “Exchanges.” The ACA permits States to set up their own Exchanges from which residents can purchase insurance. However, the Act mandates that, if a State chooses not to establish its own Exchange, the federal government must operate an Exchange in that State.

One specific provision of the ACA was at issue in *King*, which states that the amount of the tax credit available is dependent upon whether the taxpayer has enrolled in “an Exchange established by the State.” The Petitioners in *King*, four residents of Virginia, argued that the plain meaning of the ACA sets forth that tax credits are only available in States with their own Exchanges and, thus, because Virginia does not have its own Exchange, Petitioners were not eligible for tax credits and were therefore exempt from purchasing insurance under the eight percent income exemption.

The Supreme Court wholly disagreed, looking at the ACA in its entirety to determine that the Petitioners’ interpretation was “implausible.” For example, the Court looked to the meaning of a “qualified individual” as an individual who “resides in a State that established the Exchange.” The Court noted that, if it were to agree with the Petitioners’ reading of the ACA, then there would be no “qualified individuals” in States with federally-run Exchanges, which contradicts the requirement that *all* Exchanges—federally or State controlled—make health plans available to “qualified individuals.”

The Court’s decision revolved around the central assertion that, if they were to adopt Petitioners’ view, “State and Federal Exchanges would differ in a fundamental way . . . —one type of Exchange would make insurance more

affordable by providing billions of dollars to the States' citizens; the other type of Exchange would not." While acknowledging some "inartful drafting," the Court assessed a number of provisions that it believed were essentially non-functional if tax credits were available only to those individuals who purchased insurance from a State-run Exchange.

Justice Scalia dissented, with Justices Alito and Thomas joining him, arguing for a plain meaning of the ACA and writing that "[w]ords no longer have meaning if an Exchange that is *not* established by a State is 'established by the State.'"

While there will likely be numerous other challenges to the controversial ACA, the Court's holding in *King* reflects that the Supreme Court is likely to view such challenges in the context of the purpose and meaning of the Act itself.

If your institution has questions or concerns about this topic and you would like further information, please email James G. Ryan at jryan@cullenanddykman.com or Ariel E. Ronneburger at aronneburger@cullenanddykman.com.

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