



benefitNEWS

US Supreme Court Upholds the Legality of Premium Subsidies under the ACA

As we reported yesterday, the US Supreme Court issued the Obama administration a significant ruling by a vote of 6-3 in *King v. Burwell* case by upholding the availability of premium subsidies under the Patient Protection and Affordable Care Act (“ACA”) for coverage purchased by individuals through any insurance exchange. Below is a more detailed analysis of the case and its impact.

The *King v. Burwell* Issues

At issue in the case was a provision in the ACA providing that the availability of premium subsidies to low income Americans was based on whether the person was enrolled with insurance through "an Exchange established by the State". Since the ACA allows for exchanges to be created in each state in addition to the federal government in states that opted not to establish their own exchange. As such, the Internal Revenue Service issued a ruling in 2012 that made tax credits under the ACA available for coverage purchased in both the state and federal exchanges. King challenged the wording of the law and argued that premium subsidies were only available when one was enrolled in “an Exchange established by the State”. King’s contention was that premium subsidies issued to individuals in states that did not set up their own exchange were illegal. The government responded that the IRS rule was lawful because the phrase "an Exchange established by the State" should be read to include the federal exchanges as well.

The significance of premium subsidies cannot be understated. Absent premium subsidies, an estimated 6 million + individuals would be unable to afford the cost of unsubsidized premiums and the crux of the law would collapse. The case also impacted employers as well. To the extent that the employer was located in a state with a federal exchange, no employees would have been able to obtain premium subsidies and therefore employer penalties could not be assessed against the employer (even if the employer did not offer the necessary affordable coverage to its full time employees).

The Court’s Ruling

In an opinion written by Chief Justice Roberts, the Court ruled that the phrase "an Exchange established by the State" is properly viewed as ambiguous—it may be limited in its reach to state exchanges, but it is also possible that the phrase refers to all exchanges, both state and federal, at least for purposes of the tax credits at issue. The Court also noted many instances of "in-artful drafting" in the ACA and that the ACA does not reflect the type of care and deliberation that would expect of such significant legislation. Given that the Court found the text at issue ambiguous, it turned to the broader structure of the ACA to determine its meaning. In doing so, the Court ruled

that the statutory intention of the ACA compelled it to reject the interpretation that premium subsidies do not apply to coverage purchased through a federal exchange because "it would destabilize the individual insurance market in any State with a Federal Exchange, and likely create the very 'death spirals' that Congress designed the Act to avoid. " The Court went on to say it believes that "it is implausible that Congress meant the Act to operate in this manner." In the ruling the Court acknowledged that the arguments in the dissenting opinion authored by Justice Scalia with respect to the plan meaning of the ACA "are strong." However, the Court's majority felt that the context and structure of the ACA compelled it to depart from what otherwise would be the most simple reading of the law. As a result, the court ruled that the ACA does allow premium subsidies for insurance purchased on *any* exchange created under the law. Justice Scalia's dissenting opinion is stinging, stating that "words no longer have meaning if an Exchange that is *not* established by a State is 'established by the State.'" Justice Scalia also said: "Under all the usual rules of interpretation, in short, the Government should lose this case. But normal rules of interpretation seem always to yield to the overriding principle of the present Court: The Affordable Care Act must be saved."

The Impact

The *King* opinion appears to have saved the ACA from collapse since the inability of individuals to obtain premium subsidies credits in the 36 states that have not established their own exchanges would have crippled the law. The *King* opinion preserves the "status quo" with respect to the ACA. At the same time, legislation intended to alter the ACA continues to work its way through the Congress to address issues dealing with the Cadillac Tax, the 30-hour benefit work rule and the record keeping and reporting provisions. Some of these proposed changes have broad bi-partisan support and may make the law substantially more palatable for employers and plan sponsors. It is unclear if the President will sign any such laws. We are tracking all of these items and will provide updates as applicable.



connerstrong.com



877-861-3220



news@connerstrong.com



[Change My Preferences](#)



INSURANCE | RISK MANAGEMENT | EMPLOYEE BENEFITS



[Click here to change your email preferences or unsubscribe from all communication.](#)