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News Alert
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SCOTUS Finds Obamacare Insurance Subsidies Legal

On June 25, 2015, the *Supreme Court of the United States* (SCOTUS) announced its decision to uphold the legality of health insurance subsidies for individuals participating in federally-run insurance exchanges.[1] In a 6 to 3 landmark decision, with the majority opinion written by Chief Justice Roberts, the Court upheld the federal government's interpretation of the *Patient Protection and Affordable Care Act* (ACA), also known as *Obamacare*, allowing the *Internal Revenue Service* (IRS) to issue tax credits, or subsidies, to participants who purchase insurance on federally-funded and run exchanges.[2]

The case, *David King, et al. v. Sylvia Burwell, Secretary of Health and Human Services, et al.*, originated when four private citizens who expected to be subject to tax penalties under the ACA's *Individual Mandate* (i.e., the plaintiffs) argued that the IRS's *Health Insurance Premium Tax Credit* rule, which gives the IRS the authority to grant subsidies to participants of health insurance exchanges, only applied to state-run exchanges.[3] The plaintiffs' argument is derived from a portion of the ACA that explains how the *U.S Department of Treasury* will calculate the subsidies for individuals, which includes the statement "*established by the State under [section] 1311*," which the plaintiffs have interpreted to mean that Congress intended tax subsidies to be used *exclusively* for state-run exchanges.[4] The case was dismissed by the Eastern District Court of Virginia on February 18, 2014, as a result of the court's application of the *Chevron* doctrine that allowed the court to defer to the interpretation in place (i.e., allowing federal exchange participants to receive subsidies),[5] a decision that was affirmed by the Fourth Circuit on appeal on July 22, 2014.[6] The plaintiffs subsequently filed a writ of certiorari with the SCOTUS, which was granted on November 7, 2014.[7]

During oral arguments on March 4, 2015, some of the justices expressed concern for the effects of a finding that subsidies for federally-run exchanges are illegal, a concern that may have affected their voting decisions. Justice Sonia Sotomayor discussed the "*death spiral*" that would occur if federal exchange participants did not receive subsidies, pointing to the loss of healthy participants and the addition of older and/or non-healthy participants that would follow, causing insurance premiums to dramatically escalate.[8] Perhaps even more noteworthy, Justice Anthony Kennedy, who typically favors states' rights, expressed similar concerns for the effect that such a decision would have on the 34 states that use federally-run exchanges.[9] Emphasizing and expounding upon the opinion of Justice Sotomayor, Justice Kennedy noted that a decision against the government had the potential to violate the states' constitutional rights because it would force states to "*choose between the death spiral [or] creating an exchange*."[10]

In the majority opinion, Chief Justice Roberts concurred with this sentiment, stating, "*Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter. Section 36B can fairly be read consistent with what we see as Congress's plan, and that is the reading we adopt*."[11]

This decision again affirms the legality and constitutionality of the ACA pending before the SCOTUS. The next possible, and potentially final, challenges to the ACA may arise in the 2016 Congressional Budget and the 2016 presidential race. However, the *Congressional Budget Office's* June 19, 2015 report entitled, "*Budgetary and Economic Effects of Repealing the Affordable Care Act,*" which determined the anticipated financial impact, from 2016 to 2025, that would occur if the ACA was repealed, estimated that the federal deficit would increase by $137 billion, including the effects of macroeconomic feedback such as an increased labor supply.[12] This deficit, which was unexpectedly higher than previous reports,[13] may impact future political and legislative opinions that challenge the provisions of the ACA. As of now, the *King v. Burwell* case is the last legal challenge to the constitutionality of the ACA pending before the SCOTUS, so remaining challenges, if any, will likely arise from the legislature.

1 "King et al. v. Burwell, Secretary of Health and Human Services, et al" No. 14-114 (U.S. June 25, 2015), Slip Opinion, p. 4, 21.
2 "King et al. v. Burwell, Secretary of Health and Human Services, et al" No. 14-114 (U.S. June 25, 2015), Slip Opinion, p. 4, 21.
3 "King v. Sebelius" 997 F. Supp. 2d 415, 418, 423 (E.D. Va., 2014).
4 Ibid.
5 Ibid.

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(Continued on next page)

6 “King et al. v. Burwell, Secretary of Health and Human Services, et al.” 759 F.3d 358, 376 (4th Cir., 2014).
7 “King et al. v. Burwell, Secretary of Health and Human Services, et al” 135 S. Ct. 475 (U.S., 2014).
8 “King, et al. v. Burwell, Secretary of Health and Human Services, et al.” No. 14-114 (U.S., March 4, 2015), Oral Argument Transcript, p. 15.
9 Ibid, p. 16.
10 Ibid.
11 “King et al. v. Burwell, Secretary of Health and Human Services, et al” No. 14-114 (U.S. June 25, 2015), Slip Opinion, p. 21.
12 “Budgetary and Economic Effects of Repealing the Affordable Care Act” Congressional Budget Office and Joint Committee on Taxation, June 19, 2015, http://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/50252-Effects_of_ACA_Repeal.pdf (Accessed 6/19/15) p. 1.
13 “CBO Puts $353 Billion Price Tag on Obamacare Repeal” By Brian Faler, June 19, 2015, http://www.politico.com/story/2015/06/obamacare-repeal-congressional-budget-office-deficit-119228.html?hp=t1_r (Accessed 6/19/15).

(Continued on next page)

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HEALTH CAPITAL CONSULTANTS (HCC) is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.

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