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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 six to three landmark decision, with the majority opinion written by Chief Justice John 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 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, which allowed the court to defer to the interpretation currently in place (i.e., allowing federal exchange participants to receive subsidies),[5] a decision that was affirmed on appeal by the Fourth Circuit 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 regarding the effects of a finding that subsidies for federally-run exchanges are illegal, a concern that affected their voting decisions.[8] 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.[9] 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 currently use federally-run exchanges.[10] 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*."[11]

In its majority opinion, the SCOTUS took into consideration the legislative purpose of the ACA when it determined what the ambiguous phrase "*established by the State*" meant.[12] Supporters of this method, known as *purposivists*, believe a balance between Congressional intent, purpose, and plain language is necessary when interpreting laws that contain ambiguities.[13] In the majority's opinion, the Court decided to compare the ambiguous language to the "*broader structure of the Act to determine whether one of Section 36B's 'permissible meanings produces a substantive effect that is compatible with the rest of the law.*'"[14] When analyzing the issue in *King v. Burwell*, the Court chose not to use the more common *Chevron* approach. In the majority opinion, Chief Justice Roberts explained that the Court avoided the use of *Chevron* because this was "*an 'extraordinary' question of deep 'economic and political significance*,'" thus, the Court would not defer to the IRS unless specifically told to do so by Congress.[15] The majority opinion also noted that the IRS "*has no expertise in crafting health insurance policy*," so Congress would not likely have assigned to the IRS the task of deciding what the language meant.[16] Instead of utilizing the *Chevron* approach, the Court analyzed the issue under the *major questions doctrine*,[17] which dictates that if Congress wanted to "*delegate interpretive authority over a major policy question to an administrative agency*" it must explicitly say so.[18] Had the Court applied the *Chevron* approach, a future political party change in Congress or the White House might have resulted in an interpretive change of the ACA's language, based on political opinions.[19] Instead, the *major questions doctrine* protects the Court's decision from future political party changes in both Congress and the White House, thus safeguarding subsidies for federal and state exchanges under Section 36B of the ACA.

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In contrast, the dissent, written by Justice Antonin Scalia, admonished the majority's "*interpretive jiggery-pokery*" of the law and accused the majority of transforming itself into a legislative body when the majority, in his opinion, "*rewrote*" three parts of the law to match what it wanted the law to say.[20] To emphasize his point that the SCOTUS was becoming too involved, Justice Scalia commented that perhaps *Obamacare* should instead be called "*SCOTUScare*."[21] In his dissent from the majority's analysis of what Congress meant when it used the word "*State*" in the phrase "*exchange established by the State*," Scalia expressed his frustration when he pointed out that not only did the Court accept that "*State*" means a state, it also accepted that "*State*" could refer to all states and/or the federal government.[22] It is this dual interpretation of the word he called an "*impossible impossibility*."[23] He also argued that the Court ignored how Congress used the word "*State*" in seven other areas of the ACA, and asserted that the use of the word elsewhere demonstrates that Congress intended the phrase to mean states generally, not the federal state.[24]

Justice Scalia's dissenting opinion demonstrates the view of *new textualism*, a theory of interpretation that focuses on the plain meaning of words when analyzing legislative language.[25] Advocates of *new textualism* discourage the consideration of any legislative history when interpreting the language of laws.[26] Applying this theory to the ACA, Justice Scalia asserted his belief that the only true interpretation of the ACA's statutory language is found by defining the actual words, which was why interpreting "*State*" to mean anything other than a state was incomprehensible to him.[27] The dissenting justices did not consider the language to be ambiguous, so they did not recognize a need to compare the language to the overall purpose and intent of the ACA.[28]

In an apparent "*dig*" at Justice Scalia's dissenting opinion, Chief Justice Roberts, in the majority opinion, directly quoted a portion of an opinion written by Justice Scalia in 2001, stating, "*Congress does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions."*[29] In the *King v. Burwell* decision, the majority pointed out that "*in petitioners' view, Congress made the viability of the entire Affordable Care Act turn on the ultimate ancillary provision: a sub-sub-sub section of the Tax Code. We doubt that is what Congress meant to do*."[30] Here, in *King v. Burwell*, the majority seems to reference Justice Scalia's previous belief from his 2001 opinion, wherein he points out that Congress does not "*hide elephants in mouseholes."*[31] In contrast to his previous opinion, Justice Scalia's current dissenting opinion argues a single word's meaning was meant to control the legality of the ACA's subsidies.[32]

The majority opinion clearly asserts that "*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* [of the ACA] *can fairly be read consistent with what we see as Congress's plan, and that is the reading we adopt*."[33] This landmark decision again affirms the legality and constitutionality of the ACA, thus strengthening the law's viability for the future.

The second installment in this two-part series will discuss the impact this decision will have on consumers, insurance markets, and more. It will also discuss any additional challenges to the ACA that can be expected over the next few years.

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1 "King et al. v. Burwell, Secretary of Health and Human Services, et al" No. 14-114 (U.S. June 25, 2015), Slip Opinion, Majority, p. 4, 21.
2 Ibid.
3 "King v. Sebelius" 997 F. Supp. 2d 415, 418, 423 (E.D. Va., 2014).
4 Ibid.
5 Ibid.
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 No. 14-114, Majority, p. 15.
9 "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.
10 Ibid, p. 16.
11 Ibid.
12 No. 14-114, Majority, p. 5.
13 "Misunderstanding Congress: Statutory Interpretation, the Supermajoritarian Difficulty, and the Separation of Powers" By Victoria Nourse, Georgetown Law Journal, 2011, p. 1147.
14 No. 14-114, Majority, p. 15.
15 "The ACA Survives, But with a Note of Caution for the Future" By Rachel Sachs, Health Affairs Blog, June 30, 2015, http://healthaffairs.org/blog/2015/06/30/the-aca-survives-but-with-a-note-of-caution-for-the-future/ (Accessed 7/10/15); No. 14-114, Majority, p. 8.
16 Rachel Sachs, June 30, 2015; No. 14-114, Majority, p. 8.
17 "King v. Burwell: Game On" Webinar, American Health Lawyers Association, July 9, 2015, slide 6.
18 Rachel Sachs, June 30, 2015.
19 Ibid.
20 No. 14-114, Dissent, p. 8, 21.
21 Ibid, p. 21.
22 Ibid, p. 4.
23 Ibid, p. 3.
24 Ibid, p. 6.
25 "Book Review: The New Textualism and Normative Canons" By William N. Eskridge, Jr., Columbia Law Review, Vol. 113, No. 2, 2013, p. 532.
26 Ibid.
27 No. 14-114, Dissent, p. 2-3.
28 Ibid, p. 3.
29 No. 14-114, Majority, p. 20; "Whitman v. American Trucking Associations" 531 U.S. 457, 468 (2001).
30 No. 14-114, Majority, p. 20.
31 531 U.S. at 468.
32 Ibid; See generally No. 14-114, Dissent.
33 No. 14-114, Majority, p. 21.

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