

*King v. Burwell*, No. 14-114 (previously described in the November 7, 2014, Docket Report)

The Patient Protection and Affordable Care Act (ACA) created statewide health insurance exchanges. Individuals who don't have employer-provided insurance are now generally required to obtain qualifying health insurance coverage or to pay a tax penalty. Low-income individuals who do not qualify for Medicaid are entitled to tax credits to subsidize the purchase of health insurance when they acquire that insurance through an exchange "established by the State" under 42 U.S.C. § 18031. 26 U.S.C. § 36B(c)(2)(A)(i) ("Section 36B"). After the Internal Revenue Service (IRS) issued a rule interpreting Section 36B's reference to an exchange "established by the State" to encompass exchanges facilitated by the federal government as well as exchanges set up by states, several groups of plaintiffs filed suit. (Ultimately, 16 states and the District of Columbia set up exchanges; 34 states are served by federally-facilitated exchanges.)

Today, in *King v. Burwell*, No. 14-114, the Supreme Court upheld the IRS rule by a 6-3 vote, holding that Congress authorized tax credits for individuals in states with federally facilitated exchanges.

The Court's opinion, written by Chief Justice Roberts, is consequential both for its outcome and for its reasoning.

In most statutory interpretation cases, the Court assesses the statutory text and, if it concludes the statute is ambiguous, applies the framework for statutory analysis that was set forth in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)—as the Fourth Circuit did below. Under *Chevron*, the Court will defer to an agency's interpretation of an ambiguous statute if that interpretation is reasonable. *Chevron* encourages such deference on the assumption that statutory "ambiguity constitutes an implicit delegation from Congress to the agency to fill in the statutory gaps."

Here, however, the Court concluded that Section 36B presented an "extraordinary case[]" where it could not properly assume that Congress intended such an implicit delegation to the IRS. The availability of credits through the federally-facilitated exchanges is "a question of 'deep economic and political significance' that is central to [the ACA]," and, "had Congress wished to assign that question to an agency," Congress "surely would have done so expressly." So, rather than defer to the IRS, the Court undertook its own interpretation of Section 36B.

After criticizing Congress's "inartful" drafting, the Court credited the plaintiffs with "strong" arguments about the "plain meaning" of Section 36B standing alone. But the Court found that interpreting the phrase "an Exchange established by the State" to exclude federally facilitated exchanges would have a series of surprising outcomes and would render a series of other statutory provisions ineffectual. As such, the Court found the meaning of Section 36B to be ambiguous.

Given the ambiguity of Section 36B's text, the Court evaluated "the broader structure of the [ACA]." To determine Congress's intent, the Court first looked to the ACA's "statutory scheme," which "compel[led] the Court to reject petitioners' interpretation because it would destabilize the individual insurance market in any State with a [federally-facilitated exchange], and likely create the very 'death spirals'"—a combination of premium increases and market contraction—"that Congress designed the Act to avoid." It was, therefore, "implausible that Congress meant the Act to operate in this manner." The threat of a death spiral could not reasonably be interpreted as evidence "that Congress believed it was offering a deal [the states] would not refuse," because the ACA's provisions allowing for the creation of federally-facilitated exchanges assumed that States might choose not to establish their own exchanges. As such, the Court held that the Government's interpretation of Section 36B—authorizing subsidies in federally facilitated exchanges—must be correct.

The dissent—authored by Justice Scalia and joined by Justices Thomas and Alito—rejected the majority's core premise that Section 36B was ambiguous and found no evidence in the greater statutory context or purpose to support tax credits for plans purchased on the federally-facilitated exchanges. "Rather than rewriting the law under the pretense of interpreting it," the dissent urged, "the Court should have left it to Congress to decide what to do about the [ACA's] limitation of tax credits to state exchanges."

*King* leaves the IRS's current tax-credit system intact, relieves health insurance providers of threats of market destabilization, and provides greater certainty to employers, whose responsibility to provide health insurance coverage for their employees depends on their employees' access to tax credits. The Court's departure from the *Chevron* framework suggests that federal agencies' statutory interpretations—including conclusions regarding agency authority to issue regulations—may be more vulnerable to challenge in a variety of other contexts.

In the proceedings before the Court, Mayer Brown filed an amicus curiae brief for America's Health Insurance Plans in support of the Government. Any questions about this case should be directed to Andrew J. Pincus (+1 202 263 3220) or Brian D. Netter (+1 202 263 3339) in our Washington office.