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Supreme Court Upholds Affordable Care Act Tax Credits in *King v. Burwell*

Yesterday, the Supreme Court released its heavily anticipated decision in *King v. Burwell*, affirming the availability of tax credits under the Patient Protection and Affordable Care Act (PPACA) for individuals in states that have not established their own health insurance exchanges. In a 6-3 decision authored by Chief Justice Roberts, the Court held that the "context and structure" of PPACA compelled the Court to uphold the availability of federal tax credits to individuals in states where the federal government established an exchange.

In reaching this decision, the Court reviewed what it described as the three "interlocking reforms" implemented by PPACA to expand coverage in the individual health insurance market: (1) the prohibition on consideration of pre-existing conditions by health insurers; (2) the individual mandate that requires each person to maintain insurance coverage or pay a penalty; and (3) the provision of tax credits to certain individuals to make such insurance coverage affordable. In connection with these reforms, PPACA requires each state to create an exchange for the purchase of health insurance coverage, but provides that the federal government will establish an exchange on behalf of any state that fails to do so.

At the heart of the dispute was a provision of PPACA, now codified as Section 36B of the Internal Revenue Code, which by its terms appears to limit the availability of federal tax credits only to those individuals who purchase insurance coverage through an exchange "established by the State." The petitioners in this case challenged as contradictory to Section 36B a rule promulgated by the Internal Revenue Service that interpreted PPACA to make federal tax credits available to individuals who purchased insurance through a federal *or* state exchange. The Court thus viewed its task as determining whether the "interlocking reforms" of PPACA apply equally in each state, regardless of whether the state or the federal government established the relevant exchange, and specifically whether federal tax credits were available to individuals who purchased insurance through an exchange established by the federal government.

The Court found that Section 36B was ambiguous when analyzed in the context of PPACA's various provisions concerning the establishment of health insurance exchanges by states and the federal government. The Court construed Section 36B as an example of "inartful drafting" and refused to limit its interpretation to the plain meaning of that provision. The Court determined that the statutory scheme of PPACA compelled the Court to reject the petitioner's interpretation of Section 36B because the potentially devastating impact such interpretation could have on the individual insurance market would directly contradict Congress's intent in enacting PPACA. Interestingly, Chief Justice Roberts cited Justice Scalia's

2012 dissent in the Court's previous major PPACA case, *National Federation of Independent Business v. Sebelius,* as support for the proposition that the exchanges would not operate as Congress intended without federal subsidies, an implicit rebuttal to Justice Scalia's forceful dissent in *King v. Burwell*. The Court concluded its decision by noting that Congress enacted PPACA "to improve health insurance markets, not to destroy them," and therefore the Court is obligated, where possible, to interpret PPACA in a manner "that is consistent with the former, and avoids the latter."

The Court's decision in *King v. Burwell* holds major significance for health insurance companies, hospitals, health care providers, and individuals throughout the country, as the federal government has established an exchange for individuals in 34 states. This decision represents another key victory for the Obama administration and supporters of PPACA.

If you have any questions, please contact a member of Robinson+Cole's Health Law Group:

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