Supreme Court will hear King v. Burwell

On November 7, the Supreme Court announced it would hear its second significant legal challenge to the Affordable Care Act (ACA). *King v. Burwell*, expected to be heard this spring and ruled on by the end of June, is a direct challenge to the subsidies enabling more low-and middle-income Americans to purchase health insurance. The case challenges an Internal Revenue Service (IRS) rule that authorizes the subsidies for those who enroll in the federally run insurance marketplace.

Under the current interpretation and IRS guidance, individuals are able to receive subsidies if they meet certain criteria based on household income, regardless of where they purchase their insurance coverage. However, should the Supreme Court rule against the Obama administration this summer, any individual who purchased coverage through the federally operated "HealthCare.gov" website would see their subsidies nullified. Currently, only 14 states, including California, Colorado, Connecticut, the District of Columbia, Hawaii, Idaho, Kentucky, Maryland, Massachusetts, Minnesota, New York, Rhode Island, Vermont and Washington, are operating their own state-run exchanges.

The central debate will focus on what Congress's intent was while crafting the ACA. The law is currently constructed to read that individuals would be eligible to receive subsidies when they purchase health insurance through a "Health Benefits Exchange," defined in statute as "a governmental agency or nonprofit entity that is established by a State." The plaintiffs in the case maintain that the language of the law only provides subsidies to individuals who reside in states that are operating their own insurance market. They argue that residents of the 37 states that chose not to operate exchanges are not entitled to the subsidies. The administration has argued in defending guidance provided by the IRS that the law further defines the term "Exchange" (annotated with a capital 'E') as having the same meaning as the definition above. Therefore, when the law later provides authority for the Secretary of Health and Human Services to "establish and operate such Exchange," in the event a state should elect not to operate its own Exchange, it allows for federal substitution of the state agency. Therefore the "Exchange" would be interchangeable whether established by the state or the federal government.

The Supreme Court's announcement that the case will be heard is unusual since there are no current conflicting decisions by the Circuit Courts of Appeals on the issue of subsidies and only a single appeals court had ruled against the Obama administration. Similar cases whose appellate arguments were already scheduled in front of the D.C. Circuit Court and the Tenth Circuit Court will now be put on hold, with the high court's ruling ultimately superseding any lower-court decisions.

The Supreme Court requires at least four justices agree to hear the case in order for it to be brought before the court. The decision of the court to move now could mean that these justices are confident that a majority of the court believes the 4th Circuit Court of Appeals was incorrect in their interpretation. However, it is also common practice for a justice to agree to hear a case if two or three other justices have strong opinions. But this does not mean the justices will all agree on the merits of the case.

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One of the central funding mechanisms of the ACA relies on penalties paid by employers that do not provide adequate coverage for employees who would qualify for subsidies. Should the court decide that the IRS acted outside of its authority by permitting the subsidies be issued to individuals purchasing health insurance outside of a state-run exchange, the "employer mandate"—penalties on employers triggered only if full-time employees are eligible for subsidies—would also not apply. A 2013 RAND study estimated that the impact of full repeal of the employer mandate would result in a loss of $149 billion, providing substantially less federal revenue to sustain the ACA. This division between states operating exchanges, and therefore subjecting large employers to federal penalties, and those that do not operate state exchanges will certainly have additional economic impacts as businesses expand or choose to relocate in the future.

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