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King v. Burwell: The ACA Survives Second Supreme Court Challenge

The National The Affordable Care Act (“ACA”) survived its second major legal challenge on June 25, 2015, when the United States Supreme Court ruled in *King v. Burwell* that federal tax subsidies designed to make individual health insurance affordable can continue in states that have not established their own insurance “exchange.” An opposite ruling would have fundamentally disrupted the ACA’s purpose and rendered much of the law ineffective. In 2012, the Supreme Court upheld the ACA’s individual mandate provisions. The two most controversial components of the ACA have now survived Supreme Court scrutiny.

Important Components of the ACA

Congress designed the ACA to stop a long-running insurance “death spiral” in which many individuals would not purchase health insurance until they needed it. As fewer healthy people were purchasing health insurance, premiums continued to rise as the insured population became more unhealthy and the cost of claims increased. The increasing premiums for health insurance made it even more difficult and economically undesirable to obtain. The ACA has three key provisions designed to remedy this situation:

- **Coverage Guarantee:** Insurance companies cannot consider an individual’s health when deciding whether to insure the individual or what rate to charge for coverage.
- **Individual Mandate:** Each individual must maintain health insurance coverage or pay a tax penalty, unless the cost of insurance exceeds 8 percent of the individual’s income.
- **Tax Subsidies:** For individuals in health insurance “exchanges,” the ACA provides for tax subsidies if the cost for health insurance exceeds 8 percent of their income. Exchanges are marketplaces that allow consumers to compare and purchase insurance plans. The federal government will create an exchange in any state that does not establish its own exchange. At this point, there are federal exchanges in 34 states. Following enactment of the ACA, the IRS adopted rules providing tax credits to eligible participants regardless of whether a state or the federal government established the exchange.

Legal Challenge to Tax Subsidies in Federal Exchanges

The plaintiffs in *King v. Burwell* reside in Virginia, which has a federal exchange. The plaintiffs did not want to purchase health insurance and argued that language in the ACA allowing for tax credits for certain individuals in “an Exchange established by the State” did not apply to the federal exchange established in Virginia. Without these tax credits, the cost of purchasing insurance would be more than 8 percent of the plaintiffs’ income and, as a result, the plaintiffs and similarly situated individuals would be exempt from the individual mandate.

The Court’s Ruling and Reasoning

The case hinged on the meaning of an “Exchange established by the State.” The Court found that this phrase was “inartful” and ambiguous when placed in the context of other provisions of the ACA. Notably, the ACA provides that if a state decides not to establish an exchange, HHS is to establish “such Exchange,” suggesting that state and federal exchanges should be the same. State and federal

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exchanges would be fundamentally different, the Court explained, if tax subsidies were only available to state exchanges. That would result in one type of exchange making insurance more affordable while the other would not. Numerous other provisions of the ACA would make little sense if tax subsidies were not available to any individuals in federal exchanges.

The Court looked to the broader structure of the ACA to determine whether the plaintiffs' suggested interpretation would produce an effect compatible with the rest of the law. The Court reasoned that not allowing the tax subsidies in any state with a federal exchange would destabilize the individual insurance market and create the very "death spiral" Congress sought to avoid. Without the tax subsidies, numerous individuals would be exempt from the individual mandate, and the Act would be rendered ineffective in the 34 states that have federal exchanges. The Court explained that "Congress passed the [ACA] 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."

Looking Forward

With no strong political or legal challenges remaining, the ACA appears to be "here to stay" as President Obama declared on the day of the ruling. However, many health care political pundits expect the Republicans in Congress to attempt to amend or repeal the ACA, but there is little expectation that there will be a comprehensive rewrite of the ACA. There certainly will be action on the contraceptive services mandate.

For large employers in the 34 states with federal exchanges, a different outcome would have allowed them to drop health coverage without risk of triggering penalties, but this Supreme Court decision has little impact on employer-provided health coverage. Large employers, plan sponsors, administrators, and legal counsel need to continue to focus on implementing data collection processes for compliance with the health reporting requirements that take effect this year, and, they need to keep an eye out for more clarification on the definition of full-time employees, as well as for guidance on, and challenges to, the Cadillac tax.

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