

Nation's Highest Court Schedules Oral Arguments in *King v. Burwell* re: Affordable Care Act

Tuesday, December 23, 2014

A **Supreme Court of the United States** (SCOTUS) spokesperson announced on December 22, 2014, that **the Court will hear oral arguments in *King v. Burwell* on March 4, 2015**. This means that not only could the highest court soon resolve the circuit split on the case's key issue, but that the future course of the landmark Affordable Care Act (ACA) could be decided as soon as June 2015.

At issue in *King* is whether a May 2012 IRS rule should be upheld or stricken.^[1] The rule provides that health insurance premium tax credits are available to all U.S. taxpayers, irrespective of whether they obtain coverage through a state or federal exchange. Challengers to the IRS rule contend that the plain language of the ACA restricts the availability of the tax credits to health insurance policies purchased through state exchanges and not through the federal exchange.

Reading the ACA statutory language strictly, challengers note that there is no alternative interpretation to the words noting that premium tax credits are available for plans obtained "through an Exchange *established by the State* under section 1311" of the Act.^[2] (italics added).

The government has countered that other provisions of the ACA support the legislative intent of Congress—that the premium tax credits are meant to be made available for all taxpayers nationwide, including those who purchase plans on the federal exchange. It has noted that the IRS rule should not be invalidated because of a simple drafting error.

Earlier this year in July, the U.S. Court of Appeals for the Fourth Circuit had unanimously concluded in *King* that the ACA was ambiguous on the question of whether the tax credits applied to plans purchased through the federal exchange. Because of this, it allowed for the government to have a "reasonable interpretation" of the ACA via the IRS rule.^[3] This decision directly conflicted with the July 2014 U.S. Court of Appeals (District of Columbia) decision in *Halbig v. Burwell* on the same issue.

The D.C. Court sided with the plain language interpretation and restricted the tax credits to plans purchased through the state exchanges. The Court subsequently vacated the decision and is not expected to render its opinion until Spring 2015.

If SCOTUS resolves the circuit split in favor of the challengers, there are several potential implications that could leave millions of Americans without health insurance:

- Coverage would be less affordable for those on the federal exchange;
- Without the tax credit, individuals would be exempt from the individual mandate;^[4] and
- The ACA employer "pay-or-play" provision would not apply to as many employers.

The latter implication is likely due to the fact that pay-or-play penalties are triggered only if a covered employer fails to offer health insurance coverage and an employee takes advantage of a tax subsidy by purchasing an exchange plan. Without premium tax credits or subsidies available through the federal exchange, fewer employers would be penalized for failure to provide coverage in the first place.



Article By

[Florence T. Wang](#)

[Sheppard, Mullin, Richter & Hampton LLP](#)
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The Supreme Court's decision in the summer of 2015 may set the tone for the longevity of the ACA in light of the most recent mid-term elections.

[1] See 26 C.F.R. § 1.36B-1(k); Health Insurance Premium Tax 7 Credit, 77 Fed.Reg. 30,377, 30,378 (May 23, 2012) (collectively the "IRS Rule").

[2] See ACA § 1401(a), codified at 26 U.S.C. § 26B(c)(2)(A)(i).

[3] The Fourth Circuit U.S. Court of Appeals opinion can be found [here](#).

[4] As a matter of law, health insurance would be "unaffordable" and the individual mandate would be waived. See 26 U.S.C. § 5000A.

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