
LEGAL ALERT

The Supreme Court Preserves Key Insurance Subsidy Provisions Of The Affordable Care Act

On June 25, 2015, in an anxiously awaited opinion, the U.S. Supreme Court preserved key provisions of President Obama's Affordable Care Act (ACA), maintaining insurance subsidies despite a stiff challenge from opponents. By a 6 to 3 vote, the Court ruled that health insurance subsidies are available to all qualifying individuals buying coverage in the public exchanges regardless of whether the exchange is established by a state or run by the federal government.

A contrary ruling by the Court would have created havoc in the insurance market and undermined several key components of the ACA, including the employer shared responsibility mandate. With today's ruling, the second time the Supreme Court has stepped up to defend the law, the status quo is preserved and the ACA lives another day. *King v. Burwell*.

Background

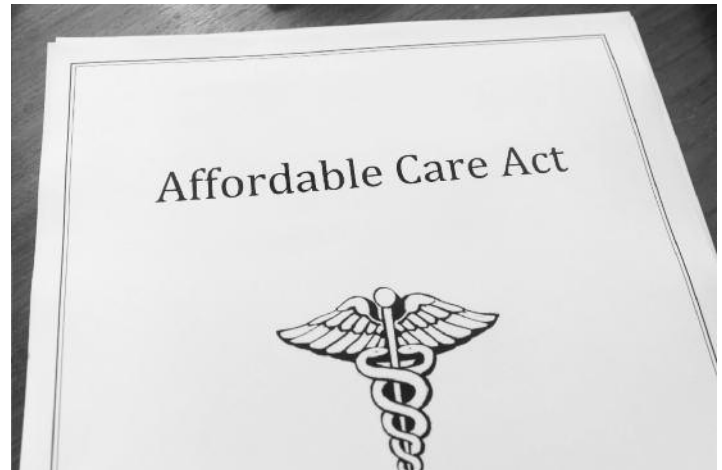
In order to understand today's decision, some background is helpful. At the risk of oversimplifying an incredibly complex statute, there are four key components to the ACA that are relevant to the Court's decision and its impact on employers.

Four Critical Components Of The ACA

The first is the market reforms requiring insurers to cover everyone who applies for insurance without charging higher rates or denying coverage for preexisting conditions.

The second key component requires all Americans to have health insurance or face a penalty tax. This so-called "individual mandate" guarantees participation of healthy individuals in the insurance market to offset the risks to insurers of providing coverage at a lower price to individuals who are sick. However, the ACA also provides an exemption from the individual mandate for anyone who has to spend more than 8% of their income on insurance. To make coverage more affordable for lower income Americans not qualifying for Medicaid, the ACA provides for government assistance in the form of premium tax credits and coverage subsidies. The subsidies also increase the number of Americans subject to the individual mandate by reducing the percentage of income the individual must spend on insurance below the 8% required to qualify for an exemption from the individual mandate.

The third key component requires applicable large employers who do not provide affordable and adequate coverage to their full-time employees to pay a penalty if any of their full-time employees receive a government



subsidy to buy an individual policy. This is referred to as the "employer shared responsibility mandate."

The fourth key component is the public marketplaces or exchanges for individuals to compare and buy health insurance. The ACA requires each state to establish an exchange, but also requires the federal government to establish an exchange to operate in states that fail to do so. The difference between the state and federally-facilitated exchanges is where the disputed subsidies come into play.

Challengers Attacked Using ACA's Own Language

The challengers in this case asserted that the ACA only authorizes subsidies for individuals enrolling in an exchange established by a state – not those established by the federal government – and was intended that way by Congress as additional incentive for states to establish their own marketplace. They cited to specific language in the statute which seemed to raise legitimate questions about the scope of the Act's coverage.

The government, on the other hand, interpreted the ACA to provide subsidies to individuals enrolling in either a state-established exchange or the federal exchange. Significantly for employers, if the subsidies are not available in the states with the federally-facilitated exchange (FFE), there would be no penalty for large employers not providing health insurance to their employees. In this regard, the "pay or play" penalty is only triggered when an employee qualifies for a subsidy in

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the exchange and was not offered an adequate and affordable employer-sponsored plan.

David King, along with three other Virginia residents, filed a lawsuit challenging the government's interpretation of the ACA. Since Virginia relies on the FFE, the challengers argued that making the subsidies available to them forces the petitioners to buy health insurance that they do not want, at the risk of paying a penalty for violating the individual mandate. They argued that if the subsidies were not available to them, they would qualify for an exemption from the individual mandate because the cost to obtain the coverage would be deemed unaffordable as a percentage of their income.

The U.S. Court of Appeals for the 4th Circuit acknowledged the "common-sense appeal" of the petitioner's position, but upheld the federal interpretation and rejected their lawsuit.

The Supreme Court's Ruling

While the Supreme Court acknowledged that the petitioners' plain meaning arguments were strong, the majority ultimately determined that Congress could not have intended to deny subsidies in states with an FFE in light of the disastrous consequences that would result in the insurance markets of those states.

The majority decision, written by Chief Justice Roberts, begins with a history lesson of failed insurance reforms in states that imposed mandatory coverage of sick individuals at the same price charged to healthy individuals without a corresponding reform to encourage healthy individuals to buy insurance. The result was an "economic death spiral," as healthy individuals waited to become sick before buying insurance, and carriers were forced to raise rates for all individuals to account for the cost of covering a disproportionate number of sick individuals enrolled in coverage. As premiums rose, healthy individuals dropped coverage and the number of uninsured individuals and carriers pulling out of markets in those states increased dramatically.

The Supreme Court noted that, in light of these prior failed attempts at reform, Congress recognized that without the requirement for individuals to enroll and subsidies to make the coverage affordable, the ACA "would not work." This theme permeates the Supreme Court's decision. In this regard, the opinion notes that whether the ACA authorizes subsidies in both the state exchanges and the FFE is "a question of deep economic and political significance" that should not be left to the IRS to decide. Accordingly, the Supreme Court rejected application of the *Chevron* analysis applied by the 4th Circuit, which provides deference to an agency interpretation of a statute that is found to be "ambiguous" as drafted, and instead determined that the proper interpretation of the ACA must be analyzed and decided by the Supreme Court.

After a detailed analysis of the ACA language that makes subsidies available to individuals enrolling in an insurance plan "through an Exchange established by the State under [42 U.S.C. 18031]", the majority held that when viewed in the context of the overall statutory scheme the meaning of the phrase "established by the State" is "not so clear." Interpreting this language in isolation and giving it its "most natural meaning" would create problems of interpretation in other provisions of the ACA where similar language is clearly intended to include both State and Federal Exchanges. The majority pointed out that the ACA "contains more than a few examples of inartful drafting" and does not "reflect the type of care and deliberation that one might expect of such significant legislation." Thus, the majority rejected the "plain meaning" argument asserted by the petitioners and found Section 36B to be ambiguous and subject to judicial interpretation for clarification.

The Court then interpreted Section 36B to provide subsidies for individuals enrolling in either a State or Federal Exchange, justifying its decision by noting that Congress passed the ACA "to improve health insurance markets, not to destroy them." Adopting the interpretation asserted by petitioners "would destabilize the individual insurance market in any State with a Federal exchange, and likely create the very 'death spirals' that Congress designed the Act to avoid." Finding it "implausible" that Congress intended for the ACA to operate in any manner that would result in such a "calamitous result," a majority of the Supreme Court was compelled to interpret the ACA in a manner that prevented such consequences by making subsidies available in both the State and Federal Exchanges. Although the Court criticized some sloppy drafting by the ACA authors, it did not believe that such inept writing should doom the entire statute.

Significance For Employers

Today's decision will have very little practical impact for employers who provide adequate and affordable coverage to their full-time employees in compliance with the ACA shared responsibility mandate. For those large employers that were hoping for a last minute reprieve from the ACA penalties, the Supreme Court's decision means they will need to reevaluate whether to offer coverage.

In addition, if not previously undertaken, we suggest that employers should review their group health plan benefits to ensure the coverage is being offered in compliance with the ACA now that the penalties appear here to stay.

For more information visit our website at www.laborlawyers.com or contact your regular Fisher & Phillips attorney.

This Legal Alert provides an overview of a specific Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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