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## HEALTH LAW

### ***King v. Burwell*: US Supreme Court Extends Tax Credits for Health Insurance Coverage to All 50 States**

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On the morning of June 25, 2015, the Supreme Court decided *King v. Burwell*, a landmark case regarding the [Patient Protection and Affordable Care Act \(ACA\)](#). At the heart of the case is the statutory interpretation of a phrase in a provision dealing with the distribution of tax credits for the purchase of health insurance on the health insurance marketplaces known as “[exchanges](#)” [1-3]. The extension of federal tax credits to lower-income citizens for the purchase of health care is one of three major reforms mandated by the ACA [4]. The plaintiffs argued that those who bought insurance on federal exchanges were not eligible for tax credits because the states in which they resided had not created their own exchanges, and the ACA only provided tax credits to citizens who used “an Exchange established by the State” [5]. The defendants, several government agencies, claimed that exchanges created by the federal Department of Health and Human Services (HHS) qualified as exchanges “established by the State” [6]. After much testimony, the Supreme Court interpreted the phrase to include the federal HHS exchanges [7], thereby making users of HHS exchanges eligible to receive tax credits [7].

As mentioned, the ACA contains three reforms for extending health insurance coverage to all United States citizens. First, Congress created [insurance market regulations](#) that prohibit insurers from raising premiums or denying coverage to anyone because of a preexisting health condition [8]. Second, Congress required that all citizens purchase health insurance or pay a tax [8]. This “coverage mandate” is essential to the insurance market reforms because it prevents people from waiting until they are sick to purchase coverage, which would lead to dramatic rises in premium costs for those who are continuously insured [8]. Lastly and most relevantly, Congress offered “tax credits to individuals with household incomes between 100 percent and 400 percent of the federal poverty line” [9]. So an individual purchaser with an income between \$11,770 and \$47,080 or a family of four with an income between \$24,250 and \$97,000 would qualify for tax credits to purchase insurance [10]. The tax credits prevent the coverage mandate from causing unfair financial hardship to lower- and middle-income citizens.

### **The Case**

The phrase at issue concerns this last provision—the disbursement of tax credits. The ACA sets forth a framework for each state to create a health insurance marketplace, called an “exchange,” through which individuals can compare and purchase coverage

plans [11]. The ACA explains that “[e]ach State shall...establish an...Exchange [12],” but provides that the Secretary of Health and Human Services will create “such Exchange” if a state chooses not to do so itself [13]. Further, section 36B of the Internal Revenue Code (part of the ACA) states that citizens are only eligible for tax credits if they find coverage through “an Exchange established by the State under” 42 USC section 18031 [14], but an Internal Revenue Service (IRS) regulation claimed tax credits were available to users of all exchanges, including those created by the federal HHS [15, 16]. The question addressed by the court was whether HHS exchanges qualified as exchanges “established by the State.”

### **Arguments**

The plaintiffs argued that the plain meaning of the phrase “established by the State” precludes citizens in states with HHS exchanges from receiving federal tax credits [5]. The plaintiffs were Virginian citizens who filed claims against US Secretary of Health and Human Services Sylvia Burwell, US Secretary of the Treasury Jacob Lew, Commissioner of Internal Revenue John Koskinen, and their respective departments [17]. The plaintiffs alleged that the IRS rule altered a clear and unambiguous portion of the ACA [18].

Virginia was one of the 34 states that did not establish its own exchange [19]. According to the IRS rule, people must comply with the ACA’s coverage mandate when the annual cost of coverage amounts to less than 8 percent of their projected income, including the eligible tax credits [20]. When the IRS rule proclaimed that tax credits were available not only to users of state exchanges but also to users of HHS exchanges, the plaintiffs were held to the coverage mandate because the tax credits pushed the cost of coverage just below 8 percent of their incomes [19]. The plaintiffs claimed that they should not have been subjected to the coverage mandate because the language of the ACA restricted tax credits to state-created exchanges and Virginia had not created a state exchange [21]. If the ACA clearly and unambiguously restricted tax credits to users of state exchanges, the plaintiffs argued, the IRS could not change the law’s meaning [22]. The plaintiffs also argued that Congress’s intention was to restrict tax credits to users of state exchanges to encourage states to create and operate their own exchanges [23].

The defendants—the government—argued that the text and structure of the ACA make tax credits available in all states [24]. They claimed that “established by the state” is a “term of art” that encompasses both an exchange created by a state and an exchange created by HHS on behalf of a state [25] and that, when HHS is directed to “establish and operate *such Exchange* within the State” if the state does not do so itself, the term “such Exchange” conveys that the HHS is acting as a surrogate for the state [26].

The defendants maintained that giving the phrase the limited reading the plaintiffs requested would change the meaning of other ACA provisions. For example, the definition of a “qualified individual” as a person “who resides in the State that

established the Exchange,” would mean there are no “qualified individuals” in states with HHS exchanges [27]. Secondly, they contended that the coverage mandate “could not perform its market-stabilizing function” without the tax credits [28]. Also, the alleged implication of loss of subsidies to residents of a state choosing not to develop and maintain its own exchange is located in “isolated phrases” of the tax code that discuss the calculations for an individual’s tax credit. On the plaintiffs’ reading, according to the defendants, this easy-to-miss qualification would not give clear notice to states of the drastic implication of utilizing an HHS exchange [29].

Much of the defendants’ argument focused on the validity of the IRS interpretation of the rule rather than the validity of the rule itself, but it also claimed that the IRS rule should be given deference if the court still found ambiguity about whether an HHS exchange qualified as “an Exchange established by the State” [30]. Under *Chevron* deference—a framework established in *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*—the Supreme Court is required to give deference to a government agency’s interpretation of a federal statute when the “statute’s ambiguity constitutes an implicit delegation from Congress to the agency to fill the statutory gaps” [31]. The Supreme Court had to decide whether to give deference to the act’s Congressional purpose when reading the phrase or simply apply the plain meaning of the words contained in the phrase.

On March 4, 2015, the Supreme Court heard argument from both parties to the case. The oral arguments foreshadowed the Supreme Court’s decision on the matter. Michael A. Carvin, representing the plaintiffs, submitted that the specific wording in provision 36B eliminated ambiguity created by previous definitional sections [32], that Congress “was not agnostic as between State and Federal Exchanges” [33], and that, although considering context was important, providing tax credits to federal exchanges would have “essentially gutted Section 1311’s strong preference for State Exchanges” [34].

Solicitor General Donald B. Verrilli, Jr. represented the US government. He argued that the context of the law must be taken into account in interpreting provision 36B, citing the 2000 case *FDA v. Brown & Williamson* [35]. Verrilli argued further that, according to section 18041 of the ACA, the federal government would be acting on a state’s behalf by creating an exchange that would function in the same manner as a state-established exchange [35]. Finally, he argued that, during the public hearing about rulemaking “covered by C-SPAN,” the states were not aware of the alleged state exchange-only tax credit stipulation, which would have been pointed out conspicuously had the plaintiffs’ reading been the one intended by Congress [36].

### **Decision**

On the morning of June 25, 2015, the Supreme Court issued a 5-4 decision in favor of the US government, finding that the ACA provides tax credits to buyers on both federal and

state exchanges [3]. The decision addressed three matters: whether the IRS's interpretation should be given deference according to the "*Chevron* deference" framework; whether the language of provision 36B is ambiguous; and how it should be interpreted in light of the rest of the document and Congress's intentions.

As for deference to the IRS's interpretation, the court declared that Congress would not implicitly leave the IRS, a body that lacks expertise in dealing with health insurance policies, to interpret a question of "deep 'economic and political significance'" [22] involving billions of dollars of federal tax money and the health care of millions of people. Hence, if the IRS were intended to interpret such a question, Congress would have explicitly stated so. Without deference to the IRS's interpretation, the Supreme Court had to interpret the statute for itself.

Per Supreme Court precedent, "[i]f the statutory language is plain, [the court] must enforce it according to its terms" [37]. To determine whether the language was plain, the court interpreted the words "in their context and with a view to their place in the overall statutory scheme" [38]. First, the court looked to section 18041, which states that the Secretary "shall...establish and operate such exchange within the State" if the state chooses not to do so, deeming that "such exchange" denotatively means "State Exchanges and Federal Exchanges are equivalent—they must meet the same requirements, perform the same functions, and serve the same purposes" [22]. Next, the court looked to another part of the act, which required "all Exchanges to make available qualified health plans to qualified individuals," with "qualified individual" defined as an individual who "resides in the State that established the Exchange" [39]. In this context, if "State" were given its most "natural" (that is, most commonly understood) meaning, then there would be no qualified individuals on federal exchanges,—clearly not the intended meaning [40]. The court concluded that the provision "established by the State" does not always convey its most natural meaning and is, therefore, ambiguous [39]. Supporting its conclusion, the court cited examples of "inartful drafting" within the ACA attributed to the methods Congress used to pass the act, which provided evidence that "established by the State" was used as a "surplusage construction" rather than as a phrase limiting application to state exchanges [41].

Having established the ambiguity of the phrase "established by the State," the court further explained that, because "a provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme" and "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law," it was the duty of the court to interpret provision 36B under the "broader structure" of the document [42]. The court noted that if the tax credits were not given to all "individuals with household incomes between 100 percent and 400 percent of the federal poverty line," the "tax credit" arm of the ACA's reforms would be ineffective and thereby cause the collapse of the other two reforms—the individual coverage mandate

and the insurance market regulations [43]. The court reasoned that this surely could not have been the intention of Congress [44]. From the court's perspective, Congress had created section 18041 as a fallback option for states' citizens to receive tax credits regardless of whether the state chose to set up its own exchange, not as a means of coercing states to create them [44]. Further, the court reasoned that Congress would not have buried such a potentially deal-breaking provision deep within an esoteric "sub-sub section of the Tax Code" [45].

It also restated that, if a state fails to establish an exchange, HHS is required to do so in its place and that, therefore, a federal exchange qualifies as an exchange [39]. It pronounced that, based on Congressional intent and the structure of the document, the only permissible interpretation was that tax credits were available to citizens who purchased insurance through both federal and state exchanges [45].

The Supreme Court's decision prevented the collapse of the ACA and upheld the ability of millions of Americans to afford health insurance coverage. If the Supreme Court had ruled in favor of the plaintiffs, about 6.4 million people would have lost the tax credits that helped them afford coverage [46]. In addition, the decision would have affected all purchasers of insurance because insurance pools would become older and sicker, driving premiums upwards [46]. Applying the plain meaning of six words would have had [severe consequences](#) for individuals and for the health insurance market.

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