

King v. Burwell: U.S. Supreme Court Decision Upholds ACA Tax Credits

On Thursday, June 25, 2015, the United States Supreme Court issued its long-awaited opinion in *King et al. v. Burwell, Secretary of Health and Human Services, et al.* .[\[i\]](#) The decision came the week before many of the nation's foremost health care attorneys met in Washington, D.C. to share information, meet with regulators and network in the interests of their clients. As you might imagine there was significant discussion about the impact of the decision both in the contexts of formal presentations and hallway conversations.

The decision in this case was considered by some attorneys and commentators to hold the key to the future of the Affordable Care Act (ACA).[\[ii\]](#) In the *King* case the ACA's premium tax credits, as applied to federally financed plans, were challenged. The premium tax credits worked to reduce the premium amounts for nearly 90% of all persons who have purchased health insurance through the state health insurance marketplace, known as a "health insurance exchange," which provides consumers the opportunity to compare prices and plans.

The Supreme Court's 6-3 decision held that the premium tax credits at issue would continue to be available in the dozen or so state-sponsored exchanges as well as in the more than thirty states with federally sponsored exchanges operated by the federal government. The Court applied familiar theories of statutory interpretation to interpret the both the meaning of the statute and the intent of Congress to make premium tax credits available to individuals enrolled in insurance plans through both state- and federally-operated exchanges. The Court chose not to defer the interpretation to the federal

agency responsible for enforcing the tax credit, the Internal Revenue Service. This is significant because it effectively forecloses the opportunity for any future administration to alter the interpretation to restrict the premium tax credits to the state-operated exchanges.

The challengers to the ACA language argued that, read literally, the specific ACA language at issue limits premium tax credits to state-operated exchanges only. Justice Scalia's twenty-one page dissent was described as scathing by many of us who made presentations at AHILA last week. Justice Scalia wrote that "[w]ords no longer have meaning if an Exchange that is not established by a State is 'established by the State.'" [\[iii\]](#) He also wrote in his dissent, "Perhaps sensing the dismal failure of its efforts to show that 'established by the State' means 'established by the State or the Federal Government,' the Court tries to palm off the pertinent statutory phrase as 'inartful drafting.' This Court, however, has no free-floating power to 'rescue Congress from its drafting errors.'" [\[iv\]](#)

Oklahoma is the site of a federal marketplace where, had the decision come down for the challengers, more than 87,000 persons would have been at risk for losing tax credits, and the state was at risk of losing over \$18,000.00 in revenue, according to the Kaiser Family Foundation. [\[v\]](#) The average tax credit per Oklahoma enrollee is \$209.00, and, without the tax credit, there would have been an estimated 243% increase in the average premium.

At least while President Obama is still in office, the Court's decision in *King v. Burwell* means that the threats to the ACA will mostly disappear. The national uninsurance rate is likely to continue to fall because the ACA incentives—the ACA requires individuals to buy health insurance or face a penalty on their taxes and helps them afford health insurance through the premium tax credits. Fewer uninsured presumably also means health care providers will have less uncompensated care.

In the nation and in Oklahoma, we will continue, at least during this administration, generally to see a decreasing uninsured population and less uncompensated care for providers. However, all of this is in the context of complex, increased regulation such as the proposed regulations for both Medicare and Medicaid that were indirectly and directly respectively spawned by the ACA. The *King* decision, so long-awaited, appears to have deflated the opponents to the ACA for the time being. The Court's decision also means that the next Presidential and congressional elections may be critical to the fate of the ACA as changes now would only be placed in motion by Congress.

[\[i\]](#) 576 U.S. ____ (2015), No. 14-114, slip op (June 25, 2015).

[\[ii\]](#) The Patient Protection and Affordable Care Act, 42 U.S.C. §18001 *et seq.* (2010).

[\[iii\]](#) 567 U.S. at ____-____ (principal opinion) (slip op. dissent, at 2.

[\[iv\]](#) *Id.* at 17.

[\[v\]](#) Kff.org/interactive/king-v-burwell-effects/