King v. Burwell

Michael F. Cannon, Director of Health Policy Studies, Cato Institute
NIHCM Foundation Webinar, February 5, 2015
Layer 1: Question Presented
Section 1311: “Each State shall... establish” an Exchange.

Section 1321: If states fail to establish or take other steps, HHS “shall... establish and operate such Exchange within the State.”

Section 1401: Authorizes subsidies (tax credits) in Exchanges “established by the State under section 1311.”
Exchange subsidies trigger penalties under the individual and employer mandates.

IRS implementing subsidies/penalties in all states, including 37 states with federal Exchanges.
Impact of *King v. Burwell*

(Federal-Exchange States)

- **Blue** Individuals/employers exempt from mandates
- **Red** Residents ineligible for Exchange subsidies
Question presented:

Did Congress authorize premium subsidies in states with Exchanges established by the federal government?
**Halbig v. Burwell:** No. The statute is clear & unambiguous. Government’s case is implausible. Disputed subsidies/penalties are unlawful.

**Pruitt v. Burwell:** No. Same reasoning.

**King v. Burwell:** Yes. Plaintiffs’ case is plausible, but statute is ambiguous. Subsidies/penalties lawful.
End illegal taxes & subsidies in 37 states with federal Exchanges

57m individuals/employers are, and always have been, exempt from penalties

4m HealthCare.gov enrollees are, and always have been, ineligible for subsidies
1. Tax hike up to $5,000
2. Premiums quadruple.
3. Could lose plans.
4. No replacement?
HealthCare.gov Enrollees Who Left Job-Based Coverage

- Texas: 124,000
- Florida: 72,000
- Ohio: 67,000
- Illinois: 62,000
- Pennsylvania: 60,000
- Georgia: 56,000
- Virginia: 43,000
- Arizona: 39,000
- Wisconsin: 34,000
- Tennessee: 34,000
- North Carolina: 33,000
- Missouri: 31,000
- Indiana: 29,000
- Oregon: 28,000
- Michigan: 27,000
- New Jersey: 26,000
- Louisiana: 24,000
- Oklahoma: 23,000
- South Carolina: 21,000
- Iowa: 19,000
- Alabama: 16,000
- Kansas: 15,000
- Utah: 13,000
- Nevada: 13,000
- Nebraska: 13,000
- Arkansas: 13,000
- New Mexico: 12,000
- Idaho: 11,000
- Montana: 9,000
- South Dakota: 8,000
- Mississippi: 8,000
- New Hampshire: 7,000
- West Virginia: 6,000
- North Dakota: 6,000
- Maine: 6,000
- Wyoming: 4,000
- Alaska: 4,000
- Delaware: 2,000

Source: Urban Institute, Georgetown University, Robert Wood Johnson Foundation.
Layer 2: Congressional Intent
“Failure on the part of States to enact the necessary authorities would prevent them from receiving any Federal support of their State-administered health assistance plan.”

February 6, 1974
“if the [State] fails to meet the applicable requirements of this Act...the Secretary of Health and Human Services shall reduce the amount of any of the payments...that would otherwise be made to individuals and entities in the State.”

H.R. 3600
"Initially, the credit would be available to qualifying small businesses that operate in states with patient-friendly insurance rating rules."

"The HCTC can be claimed for only 10 types of qualified health insurance specified in the statute, 7 of which require state action to become effective."

CRS on Health Coverage Tax Credit (enacted 2002).
Health and Education Committee Democratic Members

Senate Democratic members of the Health, Education, Labor and Pensions Committee spoke to reporters about the health care bill passed by... read more
Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. v. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 11–393. Argued March 26, 27, 28, 2012—Decided June 28, 2012*

In 2010, Congress enacted the Patient Protection and Affordable Care Act in order to increase the number of Americans covered by health insurance and decrease the cost of health care. One key provision is the individual mandate, which requires most Americans to maintain "minimum essential" health insurance coverage. 26 U.S.C. §5000A. For individuals who are not exempt, and who do not receive health
”[The PPACA] relies on states with indifferent state leadership [and] millions of people will be left no better off than before Congress acted.”

Rep. Lloyd Doggett
January 2010
Doggett & colleagues “worry that because leaders in their state oppose the health bill, they won’t bother to create an exchange, leaving uninsured state residents with no way to benefit from the new law.”

Julie Rovner
January 2010
“If you’re a state and you don’t set up an Exchange, that means your citizens don’t get their tax credits.”

Jonathan Gruber
January 2012
Clear statutory language = Congressional intent
“This is the last helicopter out of Saigon.”

A “senior White House advisor,” March 3, 2010
Layer 3: The Government's Case
1. **Plain meaning:** “The phrase ‘Exchange established by the State under Section [1311]’ is a term of art that includes an Exchange established for the State by HHS.”

2. **Ambiguity:** At a minimum, the statute is ambiguous, and the IRS’s interpretation is reasonable and should receive *Chevron* deference.
Layer 4: The Government’s Strategy
Layer 5: How Did This Happen?