



Supreme Court Takes Obamacare Case

By William Todd
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The U.S. Supreme Court agreed in early November to hear a case challenging whether the Affordable Care Act authorizes payment of tax credits through federally-established exchanges.

The case, *King v. Burwell*, could upend the Affordable Care Act, also known as Obamacare, by limiting subsidies only to people who buy health insurance on exchanges established by states, not federal exchanges. It was filed by taxpayers in Virginia arguing that providing illegal tax credits to Virginia residents through the federal exchange in turn imposed taxes on them.

“The Supreme Court’s decision is a rebuke to the Obama administration and its defenders, who dismissed as frivolous the plaintiffs’ efforts to defend their right not to be taxed without congressional authorization,” said Michael Cannon, director of health policy studies at the free-market Cato Institute in a statement. “Since January, the Obama administration has been spending billions of unauthorized federal dollars, and subjecting nearly 60 million Americans to unauthorized taxes... The administration’s actions have not only violated the law and caused massive economic disruption, they have also subverted the democratic process.”

Language of the law

The issue in *King v. Burwell* revolves around to sections of Obamacare concerning exchanges and tax credits used to help subsidize the purchase of individual insurance.

Section 1311 of Obamacare describes the process for a state to create a health care exchange, while Section 1321 requires the federal government to establish an exchange if states do not. Section 1401 provides tax credits for individuals who purchase insurance on “exchanges established by the State under Section 1311.”

Seventeen states including Washington DC have established exchanges, while the remaining states have not.

Because Section 1401 says tax credits are only available through exchanges set up under Section 1311, a plain reading suggests tax credits are not available through federal exchanges set up under Section 1321.

In May 2012 the IRS issued regulations permitting tax credits to be awarded to people purchasing health insurance on federally created exchanges.

IRS acted 'arbitrarily'

The argument by the plaintiffs in *King v. Burwell* is that the IRS acted arbitrarily in issuing those regulations, because Obamacare provides no congressional authority for them.

Key to their position is that traditional, simple rules of statutory construction forbid the IRS from imposing such a dramatic change on the underlying statutory scheme just because the law, as written, may not be workable in practice.

Supporting this argument, Oklahoma Solicitor General Patrick Wyrick explained in a post on SCOTUSBlog, "The phrase 'Exchange established by a state under Section 1311' leaves nothing to the IRS's imagination." Wyrick is counsel in the case *Oklahoma v. Burwell*, another case challenging tax credits made available through federal exchanges.

The case is not expected to be heard until late winter or early spring of 2015, with a ruling likely in June. If the court upholds Obamacare as written, ruling that tax credits are available only through state exchanges, it is likely to set off a political firestorm with Congressional Republicans demanding substantial changes to the law in exchange for a fix providing credits through federal exchanges, while President Obama and his allies put intense pressure on states that haven't established exchanges to do so.