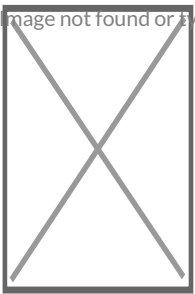


Supreme Court Green-Lights Affordable Care Act Subsidies

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By Lucas D. Bradley, Bouhan Falligant

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A Thursday Supreme Court ruling cleared the way for the continued implementation of the Affordable Care Act (ACA), a.k.a. ObamaCare. In *King v. Burwell*, the Justices were forced to decide whether certain subsidies that are a cornerstone of ObamaCare's statutory scheme were permissible under the text of the law itself. A divided Court held that those subsidies were indeed permissible, largely due to the structure of the law.

The ACA essentially consists of three interlocking reforms. First, it requires all persons to purchase and maintain health insurance. This requirement was at the heart of the 2012 ObamaCare case, *N.F.I.B. v. Sebelius*, in which Chief Justice Roberts held that the government could constitutionally require the purchase of insurance. Second, the ACA provides subsidies to low and middle-income people who otherwise could not afford to purchase insurance. Third, the ACA sets up "exchanges," which are essentially marketplaces where insurers can offer their products and people can buy whichever plan best suits them.

This third requirement was at the heart of the most recent ObamaCare challenge. The law allows states to set up their own exchanges, but if they don't, citizens of that state default to purchasing on the federal exchange. The majority of states did not establish a state exchange—including Georgia.

Here's the problem. The part of the ACA that provides subsidies to people who cannot otherwise afford insurance says that the subsidies are available to plans that are purchased through an "Exchange established by the State." The

petitioners in *King v. Burwell* argued that because of the plain language of the statute, subsidies are not available to any person who has purchased insurance through the federal exchange, because those plans were not purchased through an “Exchange established by the State.” If the Supreme Court agreed with this interpretation, it would have significant consequences for the ACA. Low and middle-income people in the majority of states that did not establish a state exchange would likely be unable to afford the insurance that ObamaCare requires them to purchase, and the law would enter a death spiral.

However, the Court did not agree with the petitioners, holding instead that subsidies were available for plans purchased through either state or federal exchanges. In a 6-3 opinion authored by Chief Justice Roberts, the Court relied on several arguments in holding that all purchasers were eligible for subsidies. The Court noted that the ACA must be read in context and that Congress passed the law in an effort to improve the health care markets and avoid the exact “death spiral” that would result from banning the subsidies. It also noted that invalidating subsidies for participants in federal exchanges would result in far fewer participants in those federal exchanges and that many other portions of the ACA would, therefore, become meaningless. But the core of the Court's argument was that Congress could not possibly have wanted citizens in states without an exchange to be liable for purchasing insurance that they could not pay for. It upheld the government's (and the Obama administration's) reading of the statute.

Justice Scalia vigorously dissented, joined by Justices Thomas and Alito. He argued that the ACA's words have a very plain meaning and that any effort to read another meaning into the statute is “of course quite absurd.” He directly accused the Supreme Court of operating under an overriding principle: “The Affordable Care Act must be saved.” And in perhaps his best line of the day, Justice Scalia described the majority's efforts to save the ACA and noted that “we should start calling this law SCOTUS care.”

For Georgia citizens and businesses, yesterday's decision serves primarily to maintain the status quo. Because Georgia did not establish a state exchange, yesterday's decision could have upended our insurance market if it came out differently. But now, Georgians who have purchased ACA-required insurance over the federal exchange will be eligible for any subsidies they could have received before the ruling. One thing seems clear—whether the ACA is wise policy or not, the courts do not plan to interfere with it. ObamaCare is here to stay—in the nation and in Georgia—unless the political branches act to remove it.

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