Analysis of King v. Burwell Decision
Courtesy of the House Judiciary Committee

Today, in a 6 to 3 decision authored by Chief Justice Roberts, the Supreme Court determined that the Patient Protection and Affordable Care Act (ACA) extends tax-credit subsidies to health insurance coverage purchased through insurance exchanges that are established by the federal government under Section 1321 of the ACA.

Background: Section 36B of the Internal Revenue Code, enacted as part of the ACA, makes tax credits available as a form of subsidy to individuals who purchase health insurance through health care insurance exchanges that are "established by the State under section 1311" of the ACA.[1] On its face, this provision appears only to authorize tax credits for health insurance that is purchased on an exchange established by one of the fifty states or the District of Columbia. However, the Internal Revenue Service interpreted section 36B more broadly to also provide the tax credit subsidy for insurance purchased on an exchange established by the federal government.[2]

This broader reading of the statute has major ramifications. By making tax credits more widely available, this interpretation gives the individual and employer mandates broader effect than they would have if credits were limited to state-established exchanges. Without the subsidy, many people would not be subject to the "individual mandate" to buy insurance and, if credits were unavailable in states with federal exchanges, employers in those states would not face penalties for failing to offer coverage.

The Court's Opinion: The Supreme Court today determined that the phrase "an exchange established by the State" is ambiguous but that when read in the context of the ACA as a whole the phrase encompasses both health insurance exchanges created by the states themselves and those established by the federal government. As a result of the Court's decision, tax credit subsidies for the purchase of health insurance are available to qualified individuals in both states that created their own exchanges and in the states in which the federal government established an exchange.

The Court reached its decision by examining the ramifications of interpreting the phrase "an exchange established the State" to only include exchanges created by states and determining that the results of such an interpretation were so dire that the Congress could not have intended such meaning. The majority opinion acknowledges that "Petitioners' arguments about the plain meaning of Section 36B are strong," but asserts that "while the meaning of the phrase 'an Exchange established by the State under [42 U. S. C. §18031]' may seem plain when viewed in isolation, such a reading turns out to be untenable in light of the statute as a whole." Therefore, the Court determined that "the context and structure of the Act compel[ed] [them] to depart from what would otherwise be the most natural reading of the pertinent statutory phrase" and that "[t]hose credits are necessary for the Federal Exchanges to function like their State Exchange counterparts, and to avoid the type of calamitous result that Congress plainly meant to avoid."

[1] 26 U.S.C. § 36B(c)(2)(A)(i)
[2] *See* 26 C.F.R. § 1.36B-2(a)(1).

In reaching its conclusion, the majority did not defer to the Internal Revenue Service's interpretation of the statute under *Chevron v. Natural Resources Defense Council*; rather, the Court determined that Congress did not intend to allow the agency to determine a question of such deep economic and political significance that is so central to the statutory scheme. What this means for future cases involving agency interpretation of statutes is unclear. As Justice Scalia points out in dissent, the majority seems to be bending over backwards to uphold provisions of the ACA in a manner that is unique to the ACA. However, the Court's avoidance of applying *Chevron* may signal that in the future on significant questions involving billions of dollars of annual spending, Congress will have to expressly assign questions of interpretation to agencies if Congress wishes the *Chevron* framework to apply.

Below are some of the reasons the majority gave for departing from the most natural reading of "an exchange established by the State":

- **There would be no "qualified individuals" to purchase health insurance on exchanges established by the federal government.** "If we give the phrase 'the State that established the Exchange' its most natural meaning, there would be no 'qualified individuals' on Federal Exchanges. But the Act clearly contemplates that there will be qualified individuals on every Exchange. . . . [T]he Act requires all Exchanges to 'make available qualified health plans to qualified individuals'—something an Exchange could not do if there were no such individuals."

- **The ACA instructs the federal government to create exchanges that are equivalent to state exchanges in states that do not create their own exchanges, but if subsidies are not available state and federal exchanges will not be equivalent.** "If a State chooses not to follow the directive in Section 18031 that it establish an Exchange, the Act tells the Secretary to establish 'such Exchange.' And by using the words 'such Exchange,' the Act indicates that State and Federal Exchanges should be the same. But State and Federal Exchanges would differ in a fundamental way if tax credits were available only on State Exchanges—one type of Exchange would help make insurance more affordable by providing billions of dollars to the States' citizens; the other type of Exchange would not."

- **Without subsidies on federal exchanges, death spirals would occur.** "[T]he statutory scheme compels us to reject petitioners' interpretation because it would destabilize the individual insurance market in any State with a Federal Exchange, and likely create the very 'death spirals' that Congress designed the Act to avoid. The combination of no tax credits and an ineffective coverage requirement could well push a State's individual insurance market into a death spiral."

- **The structure of Section 36B itself suggests that tax credits are not limited to State Exchanges.** "Section 36B(a) initially provides that tax credits "shall be allowed" for any "applicable taxpayer." Section 36B(c)(1) then defines an "applicable taxpayer" as someone who (among other things) has a household income between 100 percent and 400 percent of the federal poverty line. Together, these two provisions appear to make anyone in the specified income range eligible to receive a tax credit."

Justice Scalia's dissent: Justice Scalia issued a strongly worded dissent arguing that "the cases [interpreting the ACA] will publish forever the discouraging truth that the Supreme Court of the United States favors some laws over others, and is prepared to do whatever it takes to uphold and assist its favorites." Some of the key points from Justice Scalia's dissent include:

- **Instead of Obamacare the Act should be called SCOTUScare.** "The Act that Congress passed makes tax credits available only on an 'Exchange established by the State.' This Court, however, concludes that this limitation would prevent the rest of the Act from working as well as hoped. So it rewrites the law to make tax credits available everywhere. We should start calling this law SCOTUScare."

- **"Words no longer have meaning if an Exchange that is not established by a State is 'established by the State.'"** "In order to receive any money under §36B, an individual must enroll in an insurance plan through an 'Exchange established by the State.' The Secretary of Health and Human Services is not a State. So an Exchange established by the Secretary is not an Exchange established by the State—which means people who buy health insurance through such an Exchange get no money under §36B."

- **"[T]he overriding principle of the present Court: The Affordable Care Act must be saved."** "Under all the usual rules of interpretation, in short, the Government should lose this case. But normal rules of interpretation seem always to yield to the overriding principle of the present Court: The Affordable Care Act must be saved. . . . Today's opinion changes the usual rules of statutory interpretation for the sake of the Affordable Care Act. That, alas, is not a novelty. In National Federation of Independent Business v. Sebelius, this Court revised major components of the statute in order to save them from unconstitutionality."