

King v. Burwell & Beyond: ACA Litigation Continues

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The Supreme Court's ruling in *King v. Burwell* resolved what may be the last existential legal threat to Obamacare. The case upheld the extension of premium tax credits in states operating under federally created insurance exchanges pursuant to the Affordable Care Act. The statutory language authorizing the credits suggested that they would be available only to participants in state run exchanges. With only 16 states creating such exchanges, as many as 8 million people in 34 states were in jeopardy of losing access to affordable coverage had the challenge been successful. Some experts argued that this might result in the destabilization or collapse of the health insurance markets in those states. However, the Court found the statutory language ambiguous and relied on congressional intent as expressed through the overall structure of the ACA to uphold the credits. While there are several challenges to the ACA working their way through the courts, most either have little chance of success or would not present serious obstacles to the Act's continued implementation. The most serious challenge is a suit by the House of Representatives seeking to stop federal payments to insurance companies of cost sharing subsidies designed to reduce out of pocket costs for lower income participants in state and federal insurance exchanges. The House argues that the administration cannot pay the subsidies without specific appropriations, even though the payments are authorized by the ACA. Administration requests for such appropriations were rebuffed by Congress in 2013 and 2014. The suit faces several obstacles, not the least of which is a challenge to the standing of the House to bring the lawsuit in the first place. But, if successful, the suit could result in premium increases for lower income insureds and would give Republicans in Congress leverage in efforts to force changes to the ACA.

Authored By



Richard Oliver

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