

Providers Await Result on Affordable Care Act Challenge

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Challenging a holding by the Fourth Circuit Court of Appeals before the U.S. Supreme Court in *King v. Burwell*, counsel Michael Carvin argued that the Affordable Care Act does not allow the federal government to issue tax credits to individuals who purchase health insurance on federal exchanges. To the contrary, he argued, it makes tax credits available only for plans "enrolled in through an Exchange established by the State."

During the March 4 oral arguments, Justices Kagan, Ginsburg, and Breyer were concerned about interpreting the Act so narrowly. As Justice Kagan put it, "[W]e are interpreting a statute generally to make it make sense as a whole ... We look at the whole text. We don't look at four words."

Justices Sotomayor and Kennedy further questioned whether the challengers' interpretation would render the Act unconstitutionally coercive. Justice Sotomayor observed that under the challengers' interpretation, the federal government tells the states: "[E]ither create your own Exchange, or we'll send your insurance market into a death spiral."

On behalf of the government, Solicitor General Donald Verrilli argued that the Act must be read in its full context. **The challengers' interpretation, he argued, would create "rump exchanges doomed to fail."** That, he urged, would defeat the Act's purpose, which is to reduce the number of uninsured Americans.

Justice Scalia questioned whether the government's interpretation was an effort to "twist the words" of the Act, and Justice Alito questioned why Congress would have used the words "established by the State" if it intended something else.

Supreme Court watchers are expecting a decision to be issued in late June or early July.