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At Obamacare Oral Argument, High Court Focuses on Interpretive Canon that Precludes Deferring to IRS

(*King v. Burwell*)

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—Cory Andrews, Senior Litigation Counsel, Washington Legal Foundation

WASHINGTON, DC—At oral argument in *King v. Burwell* yesterday, a few justices of the U.S. Supreme Court expressed skepticism at the government’s suggestion the Court could resolve ambiguity in the federal health care law by deferring to the IRS’s own interpretation. They appeared to rely on a traditional canon of statutory construction prominently highlighted in an amicus brief filed by the Washington Legal Foundation (WLF) and its client, Prof. Steven Willis—an expert on federal tax law.

The landmark case concerns whether an IRS rule allowing tax credits to subsidize insurance coverage purchased on federal exchanges established by the Department of Health and Human Services (HHS) violates the Affordable Care Act’s language that appears only to provide subsidies for health insurance purchased on “exchanges established by the state[s].” WLF’s brief explains that a canon of statutory interpretation known as “legislative grace” requires courts to narrowly construe all tax credits in order to preserve Congress’s unique role as guardian of the fisc. This long-standing canon eliminates IRS’s discretion to interpret ambiguity. Hence, a reviewing court must resolve any statutory ambiguity against expanding the tax credit. Applying the canon leaves no “gap” for the IRS to fill—or for the Court to defer to—under the Court’s *Chevron* framework. Thus, the Court must vacate the IRS rule.

Justice Anthony Kennedy—frequently the Court’s swing vote—openly doubted the Court’s ability to defer to the IRS’s interpretation, calling it “a drastic step for us to say that the Department of Internal Revenue and its director can make this call one way or the other when there are, what, billions of dollars of subsidies involved here?...[I]t seems to me our cases say that if the IRS is going to allow deductions using these, that is has to be very, very clear.” Solicitor General Donald Verilli, Jr. replied that the need for statutory clarity in authorizing tax credits is “a false notion.” But, as amply demonstrated in WLF’s brief, the IRS has regularly and repeatedly relied on this canon for more than 60 years to deny taxpayers deductions, credits, and exemptions whenever the tax code is unclear. That may be why Justice Alito, seemingly surprised by the government’s response, wryly noted, “If there are any tax attorneys in the courtroom today, I think probably they wrote down what you just said.”

Following oral argument, WLF issued a statement by Senior Litigation Counsel Cory Andrews:

“Having consistently and successfully urged application of this canon in routine tax disputes with American taxpayers, the IRS should not be allowed to avoid its operation in this case. If the canon applies when hundreds or thousands of dollars are on the line for taxpayers, surely it must apply when billions are at stake for the Treasury.”

WLF is a national public interest law firm and policy center that regularly litigates to oppose overreaching regulation by federal agencies.