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WLF Asks High Court to Vacate IRS Rule That Would Grant a Tax Credit Congress Did Not Create

(*King v. Burwell*)

“It is not IRS’s prerogative to disregard statutory limitations on the scope of the Affordable Care Act’s tax credits simply because the agency prefers its own scheme. The interpretive canon of ‘legislative grace’ requires federal courts to construe ambiguous statutory tax-credit language *against* expansion of a credit.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the U.S. Supreme Court to reverse an appeals court ruling that, if upheld, would allow the IRS to appropriate billions of dollars a year without authorization from Congress. The case concerns proper interpretation of the Affordable Care Act (ACA), which provides tax credits to subsidize health insurance purchased on exchanges established by the states. Notwithstanding that express statutory limitation, IRS issued a rule allowing tax credits to subsidize insurance coverage purchased on exchanges established by the Department of Health and Human Services (HHS) too. In a brief filed in *King v. Burwell*, WLF argues that the IRS rule exceeds the agency’s authority and must be struck down.

WLF filed its brief on its own behalf and on behalf of its client, Professor Steven J. Willis of the University of Florida’s Levin College of Law—a nationally recognized expert in federal tax law and policy.

The ACA’s statutory language is plain that the tax credit is available for plans “enrolled in through an Exchange established by the State....” In stark contrast, the IRS rule makes the tax credit available “regardless of whether the Exchange is established and operated by a State ... or by HHS.” The federal government asks the Court to defer to IRS’s broad interpretation of the statute. However, under the Supreme Court’s carefully calibrated *Chevron* framework, agency deference only kicks in if the language of a statute is ambiguous and Congress has delegated authority to an agency to address the issue. Deferring to an IRS interpretation contrary to a statute’s plain language would violate the separation of powers by improperly transferring legislative prerogatives from Congress to the IRS.

Furthermore, as WLF’s brief explains, even if ACA’s plain text were ambiguous as to whether federal exchange plans are tax-credit eligible, a canon of statutory interpretation known as “legislative grace” requires all tax credits to be narrowly construed in order to preserve Congress’ unique role as guardian of the public fisc. This longstanding canon eliminates IRS’s discretion. A reviewing Court must resolve any statutory ambiguity *against* expanding the tax credit before ever considering the agency’s view. Because applying the canon resolves all ambiguity, no “gap” remains for the IRS to fill—or for the Court to defer to—under *Chevron*. Hence, WLF argues, the Court must vacate the invalid IRS rule.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “Congress’ ability to craft legislation is one of its chief means to cabin administrative agency power. It is not IRS’s prerogative to disregard statutory limitations on the scope of ACA’s tax credits simply because the agency prefers its own scheme. The interpretive canon of ‘legislative grace’ requires federal courts to construe any ambiguous tax-credit statutory language *against* expansion of a credit.”

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

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