

SCOTUS to Review Subsidy Issue

Article By:

Peter J Marathas, Jr

Stacy H Barrow

On November 7, the U.S. Supreme Court announced it was going to review *King v. Burwell*. At issue in the case is whether Fourth Circuit correctly determined that the IRS did not exceed its authority when it released a rule in 2012 providing that federal subsidies under the Affordable Care Act are available in both state and federally operated exchanges, but rather was simply clarifying the statute by also providing subsidies in federal exchanges.

While the Supreme Court often waits for a true “split in the federal circuits” to review a case, it has the authority, when it deems appropriate, to hear cases that present important national issues. The administration had asked the Supreme Court to wait until further action was taken in the lower courts on the issues, particularly in the *Halbig v. Burwell* case, where the entire Federal Circuit Court for the District of Columbia has agreed to review an earlier ruling by a three-judge panel that the IRS had exceeded its authority. The Administration was hopeful that after the *Halbig* en banc review the full panel would reverse the *Halbig* decision and there would be no split in the circuit (at least for now).

But the Supreme Court has elected not to wait. It will hear *King* in the current term. This means that unless the President and Congress can work together to craft a compromise to affect a fix to the statutes, the Supreme Court will decide whether federal subsidies are available in the 36 federal exchange states.

A Supreme Court decision ruling that the IRS had exceeded its authority by authorizing subsidies in federal exchanges would be disastrous for the Affordable Care Act and the millions of lower paid people who are currently receiving subsidies under federal exchanges. It also would mean that pay-or-play penalties, which are triggered only if subsidies are received by full-time employees, would not apply with respect to individuals residing in those 36 states.

We will provide future updates as they become available.

© 2025 Proskauer Rose LLP.

Source URL: <https://natlawreview.com/article/scotus-to-review-subsidy-issue>