

# ERIC FocusOn Call

## *King v. Burwell*

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# Agenda

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- *King v. Burwell*
  - Brief background
  - The majority's decision
  - The dissent
  - Consequences and insights
- *Gobeille v. Liberty Mutual*
  - Question presented
  - Importance of the issue

# King v. Burwell Background

- IRC § 36B makes ACA tax credits available to those enrolled in a health plan “through an Exchange *established by the State under section 1311*”
  - Section 1311 is the principal section of the ACA mandating that each state “shall” establish an Exchange
  - But ACA § 1321 says state may “elect” to establish an Exchange, and if not, “the Secretary [of HHS] shall establish and operate such exchange within the State”
- The issue is whether the IRS exceeded its authority by allowing tax credits where the state itself did not establish the Exchange – namely for coverage purchased on Federally-Facilitated Exchanges (FfEs)

# *King v. Burwell* Background

- Pre-oral argument betting
  - Odds against the government
- Post-oral argument betting
  - Odds slightly favor the government
  - Kennedy seemed to be the key
  - Roberts nearly silent at oral argument
- Post-oral argument developments
  - *New York Times* article showing that language resulted from a drafting error
  - Actual intent vs. actual words

# King v. Burwell Background: The Justices

Conservative-----Center-----Liberal



# *King v. Burwell*: The Majority Opinion

- Chief Justice Roberts is the author
- Lawyerly, matter-of-fact tone
- Learned summary of ACA's policy underpinnings
- No *Chevron* deference
- Outline of statutory ambiguity
  - Language to be seen "in context"
- Resolution of the ambiguity in the government's favor
  - Statutory purposes
  - Statutory structure and the placement of the language
- Final nod to the superficial appeal of King's reading

# ***King v. Burwell*: Dissent**

- Justice Scalia is the author
- Mocking tone, though the majority doesn't take the bait
  - Majority engages in “jiggery-pokery”
  - Majority's arguments are “pure applesauce”
  - Statute better referred to as “SCOTUScare”
- Real disagreement is over a court's role and interpreting text differently than its “natural” meaning
  - Too dangerous for courts to try to discern different intent than existing on face of statute
  - Make Congress fix its mistakes

# *King v. Burwell*: Impact and Insights

- The opinion drafting
  - Differences in majority and dissent tone and style
  - Why reference *Utility Air* so much?
- Why did Chief Justice Roberts write the opinion?
  - Ramification of Roberts-Kennedy alliance
- The business community's amicus briefs mattered
- Vindication for Mitt Romney, but criticism for the IRS and Congress
- *Chevron* cloud: the biggest doctrinal development



# *King v. Burwell*: Impact and Insights

- Oral arguments can give insights, to a point
  - No focus on constitutional “coercion” concern
- Any relationship to the Court’s other year-end decisions?
  - How can Chief Justice Roberts be in the majority here, and then write the dissent he did in *Obergefell*?
- Key takeaways:
  - Major core challenges to the ACA are over, with the Supreme Court indicating it is the ACA’s friend
  - This may be a practical Court, more than an ideological one

# Gobeille

- *Gobeille v. Liberty Mut. Ins. Co.*, No 14-181 (U.S.)
  - Solicitor General recommended against certiorari, but the Court took the case anyway
  - Question presented: “Whether the Second Circuit – in a two-to-one panel decision rejecting the DOL’s position as *amicus* – erred in holding that ERISA preempts Vermont’s health care database law as applied to the third-party administrator for a self-funded ERISA plan”
  - Major preemption guidance or even overhaul is potentially brewing at the Court, plus maybe a *Chevron* ruling too

# About the Presenter

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