Research

Primer: Halbig v. Burwell

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On July 22, 2014 the DC Circuit Court ruled in favor of the Plaintiffs holding that "applying the statute's plain meaning, we find that section 36B unambiguously forecloses the interpretation embodied in the IRS Rule and instead limits the availability of premium tax credits to state-established Exchanges… Thus, although our decision has major consequences, our role is quite limited: deciding whether the IRS rule is a permissible reading of the ACA. Having concluded it is not, we reverse the district court and… vacate the IRS Rule." With this ruling the court confirmed the plain meaning of the ACA and strikes the IRS rule granting subsidies to individuals purchasing insurance in the 36 Exchanges established by the Federal government.

AAF also has a more extensive legal brief comparing the Halbig v. Burwell and King v. Burwell cases available below.

Background

Previously known as Halbig v. Sebelius, Halbig v. Burwell is an administrative law case challenging the Internal Revenue Service's (IRS) interpretation of the Affordable Care Act (ACA). The case centers on the interpretation of the law's language and specifically the phrase "Exchange established by the State under Section 1311." The IRS interprets this phrase to mean "Exchange established by a State under Section 1311, *or* an Exchange established by the Federal government under Section 1321." The correct interpretation of this phrase is important because it is in Section 1401 of the ACA, which is the clause that determines who is eligible to receive subsidies to pay for their insurance. Currently 36 states have declined to establish an Exchange and the people living in those states are purchasing their insurance through an Exchange established by the Secretary of the Department of Health and Human Services (HHS).

In four of those states, Plaintiffs have initiated legal challenges to an IRS rule which ignores

the differentiation between Exchanges established by a State and those established by the Secretary of HHS and provides subsidies in all 51 exchanges (including Washington, DC). With their success the Plaintiffs will have exposed Americans to the full costs of Obamacare and driven 'a stake through the heart of the law.'

This decision will restructure the private health insurance landscape as citizens of those 36 states begin to bear the costs of the law. Governors in those 36 states will have to seriously consider expansion in order to shield individuals in those states from the cost of the Federal reform law; otherwise the law will have to be modified by congress.



Legislative History

Throughout 2009, while the ACA and its predecessors were being debated in Congress, in the House a bill (H.R. 3962) was written that would create a national health care exchange where anyone in the country could purchase health insurance with the help of federal tax subsidies. In the Senate, a complementary bill (S. 1796) was written, but in response to pressure from key Senators concerned about states' rights, this bill provided for the establishment of state-based Exchanges. However, because the federal government does not have the power to force states to enact federal policy (known as commandeering), the federal government had to create a fallback plan in case states decided not to create their own exchange, and find a way to discourage states from relying on this expensive federal fallback plan.

S. 1796 passed the Senate on December 24, 2009, but before the House bill could be voted on in the Senate, Senator Edward Kennedy (D-MA) passed away and was replaced by Senator Scott Brown (R-MA) in a special election. Brown became the 41st Republican Senator and broke the Democrats' filibuster-proof majority. Now the only health care reform bill that could be enacted into law without Republican support was the highly problematic S. 1796, better known as the ACA.

HALBIG

Basis of the Case

The ACA attempts to make health insurance more affordable by granting tax subsidies to certain individuals who purchase their insurance in an "exchange established by the State under Section 1311." Section 1311 states that "Each State shall… establish an American

Health Benefits Exchange," but because the federal government technically does not have the authority to enforce Section 1311, there is a fallback provision. Section 1321 requires the Secretary of HHS to "establish and operate" an Exchange in any state that fails to establish a satisfactory Exchange.

In May 2012 the IRS finalized a rule which provides for tax subsidies to be available to eligible individuals who purchase insurance "through an Exchange established under Section 1311 or 1321" of the ACA. This Rule will have the effect of taxing and spending over $600 billion without, and perhaps contrary to congressional authorization.

The Plaintiffs

The case Halbig v. Burwell has been brought on behalf of two categories of plaintiffs, Employers and Individuals.

Plaintiff Employers– The ACA mandates that certain categories of employers provide insurance for their employees. This mandate is enforced through a tax penalty against the employer that is triggered when one of its employees received subsidies for the purchase of insurance on an Exchange. The plaintiff Employers argue that they should not be penalized in states that have not established Exchanges because the statute does not authorize subsidies in those states, and therefore the tax penalty should never be triggered.

Plaintiff Individuals– Individual plaintiffs, particularly Mr. Klemencic, the first named individual in the suit, are the basis on which standing was acknowledged by the court. The ACA's individual mandate requires that all individuals purchase insurance or else pay a tax penalty, unless no insurance plan is available to them for less than eight percent of their income. According to the Plaintiffs, some individuals who live in a state with a federal Exchange, where subsidies should not be available, would be eligible for this exemption but-for the IRS rule, and are therefore forced to purchase insurance they do not want or else are forced to pay a tax penalty.

Complaint

The IRS rule makes the Plaintiffs liable for tax penalties that are not explicitly authorized by Congress. The Plaintiffs request an injunction on the IRS rule – a legal order for the IRS to stop granting tax subsidies to individuals who purchase insurance on federally established Exchanges.

The Arguments

The case at hand is an administrative and not a constitutional law case. The first step in understanding challenges to administrative rules is to determine whether Congress has directly spoken to the precise question at issue. If it has, the court must apply the law as written.

The Plaintiffs hold that Section 1401 of the ACA (which became Section 36B of the Internal Revenue Code), which grants subsidies to individuals who purchase insurance through "an Exchange established by the State under Section 1311," clearly and unambiguously defines who may receive subsidies and therefore ends the inquiry. The government contends that the mere existence of Exchanges established by the Secretary of HHS under Section 1321 muddies the waters enough to make the statute "ambiguous."

If the court finds that the statute is ambiguous on the issue, the next step is to determine whether the agency's rule is based on any permissible interpretation of the statute. The Plaintiffs argue that even if the law is ambiguous, legislative history, such as floor debates, other proposed health reform bills, and other enacted statutes with similar incentive structures, demonstrate that Congress knew what it was doing when it crafted the language. Congress was creating an incentive for state participation in establishing their own Exchanges, however it grossly overestimated the willingness of all 50 states to comply.

The government, on the other hand, points to the title and general purpose of the statute to try to prove that Congress could not possibly have intended to do what it in fact did; they claim the IRS was merely implementing the statute the way it was intended, rather than how it was literally written.

Case History

On January 15, 2014 a DC District Court judge ruled in favor of the government, despite his concession that the Plaintiffs' literal interpretation of the language is more accurate, because he believed this reading leads to an absurd result contrary to the stated purpose of the statute.

Since that opinion was delivered, the Supreme Court has handed down a number of opinions wherein the Justices appear to take a different approach to statutory interpretation. They declined to re-write a statute to achieve a political agenda. In one case the Court held:

> Were we to recognize the authority claimed by the EPA… we would deal a severe blow to the constitution's separation of powers… The power of executing laws… does

> not include a power to revise clear statutory terms that turn out not to work in practice.

This language may indicate that the Supreme Court may be more inclined to support the Plaintiffs' position than the lower court judge, and describes the precedent which the judges currently ruling on this case may be obligated to follow.

King v. Burwell, a similar case based on the same IRS rule, was also decided on July 22 with an exact opposite ruling, upholding the lower court's dismissal of the plaintiffs' claims in the 4th Circuit. This split in opinions among the circuits will virtually guarantee a grant of certiorari, or an order for the case to be heard by the Supreme Court this fall.

In addition, since the Halbig case was filed, two more related cases have begun moving forward. Pruitt v. Burwell was brought in the Eastern District of Oklahoma, and Indiana v. IRS has been filed in the Southern District of Indiana.