



News Alert – June 25, 2015

Supreme Court preserves premium subsidies for federal Marketplace consumers

The Supreme Court of the United States (SCOTUS) ensured today that at least 6.7 million consumers in federally-facilitated Marketplaces (FFM) can continue receiving the premium tax credits and cost-sharing subsidies offered by the Affordable Care Act (ACA).

At least four justices voted after last fall's midterm elections to hear the legal challenge that The Competitive Enterprise Institute filed on behalf of four individuals that would be exempt from the ACA's individual mandate but for the subsidies. However, only the court's three most conservative justices ultimately agreed with the challengers' claims that Congress intended to force states to create their own ACA Marketplaces by denying the law's subsidies to the 34 states that defaulted to the FFM.

Associate Justice Anthony Kennedy had warned during oral arguments that the challengers' premise would amount to the type of unconstitutional coercion that the court barred in 2012, when it required that states be allowed to opt-out of the ACA's Medicaid expansion without penalty. Although Kennedy had voted then to strike down the entire ACA, he agreed in this case with Chief Justice John Roberts and the court's liberal justices that the full context of the law showed Congress hardly intended to tell states "either create your own exchange or we'll send your insurance market into a death spiral", but rather sought to make subsidies available to all consumers regardless of where they reside.

The high court's 6-3 decision was the first ruling on this issue that did not follow the political ideology of the judges. Republican-appointed justices on two lower courts had struck down the FFM subsidies, while Democratic-appointed justice on the U.S. Fourth Circuit Court of Appeals similarly concluded that it was "absurd" to conclude that the words "established by the state" in one provision of the ACA limited subsidies only to state-based Marketplaces when reading the ACA "as a whole."

The majority opinion agreed with the Fourth Circuit's decision, while slightly departing from its reasoning. Whereas the Fourth Circuit found that the Internal Revenue Service (IRS) should be given deference to interpret the words "established by the state", the majority insisted that subsidies were so integral to the ACA that Congress would never have left it up to federal agencies to determine who would receive them.

Instead, the majority opinion took pains to point out that the ACA essentially copied the Massachusetts model that broadened coverage via an individual mandate combined with subsidies to ensure affordability, as well as required insurers to offer guaranteed issue coverage with community rating. Given how Congress spelled out how a "death spiral" would result in the market if all of these components did not work together, the majority found it "implausible" that Congress would extend all but the subsidies nationwide, insisting that "Congress passed [the ACA] to improve health insurance markets, not to destroy them."

The dissent by Associate Justice Antonin Scalia insisted that the court should not be in the position of reading Congress' mind and rely instead on the "plain meaning" of the words "established by the state", even if an absurd outcome results. It accused the high court of applying such "interpretive somersaults" only for laws it favors and suggested that "ObamaCare" be renamed "SCOTUSCare" because of the way that it has now twice been reshaped by SCOTUS.

The decision avoids putting ACA-resistant states in the predicament of either creating their own Marketplace or watching premiums in their FFM skyrocket by an average of 255-287 percent without the subsidies (according to estimates from Avalere Health and the Kaiser Family Foundation). Roughly 87 percent of FFM consumers currently receive the subsidies, which averaged \$268 per month in 2014 and reduced monthly premiums by an average of 72 percent (from \$374 to \$105).

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