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Affordable Care Act (Obamacare) Beats Challenges

We are living in interesting times. Most of us do not ordinarily follow the day to day rulings of the Supreme Court. Last month, however, the Supreme Court made two controversial back to back rulings that got the attention of many Americans who do not normally follow the Court. These included the June 26, 2015, 5-4 decision granting same-sex couples the right to marry and the June 25, 2015, 6-

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3 ruling, where the Court rejected the Affordable Care Act's challengers. These were historic cases and both will impact the delivery of healthcare in the US.

The same-sex ruling, known as the Obergefell v. Hodges decision made it legal for same-sex couples to marry. This will no doubt affect the way employers offer health insurance to employees. The exact impact is yet to be seen, but some employers may, for example, drop domestic partnership benefits instead requiring same-sex to marry before being eligible for group health. Time will tell how the logistics and technical compliance of this ruling will play out with employers. At a minimum, this ruling eases the burden on many large employers allowing them to treat their employees uniformly regardless of where they live and their sexual orientation.

The Affordable Care Act Ruling, better known as the King v. Burwell ruling may be slightly less controversial than the Obergefell ruling but this ruling has an overreaching effect on the delivery of US healthcare. Readers may recall that this is the second Supreme Court ruling favoring the Affordable Care Act. On March 23, 2010, President Obama signed the Affordable Care Act ("ACA"). The law put in place comprehensive health insurance reforms that rolled out over several years beginning in 2010. The most significant of the rules included requiring that 85% of premiums collected by insurance companies be spent on health care services, providing tax credits to make it easier for certain individuals to pay for health insurance, establishing the health insurance marketplace (or insurance exchanges), requiring large employers to provide health insurance to employees and

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requiring individuals to purchase health insurance (or pay a tax).

Soon after the ACA was passed, twenty six states filed lawsuits challenging the ACA's requirement that individuals purchase health insurance or pay a penalty tax. In 2011, the individual mandate portion of the law was declared unconstitutional but the rest of the law remained intact. The Supreme Court agreed to hear the case and in 2012 declared that the "penalty" imposed for not having health insurance was a valid exercise of Congressional power to tax and the individual mandate prevailed.

The next major challenge to the ACA was the King v. Burwell case. In this case, it was argued that premium tax credits under the ACA were only available in states that *operated their own insurance exchanges*. The ACA required each state to set up an Exchange (or marketplace) where insurance would be sold. For the most part, this meant that web sites would be set up so citizens could "easily" compare the costs and benefits offered by competing health insurance plans. States had several options in complying with this requirement. They could create their own exchange or use the exchange created by the federal government (i.e., www.healthcare.gov – the well-known website that was initially marred by serious technological problems which were eventually resolved).

In general, in the King v. Burwell case, it was argued that the ACA language required states to *establish their own exchanges* in order for tax credits to be issued. The language in the law said that tax credits "shall be allowed" only if the taxpayer has enrolled in an insurance plan through "an

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Exchange established by the State". The King position was one of semantics arguing that since the Federal Exchange was not established by the States, individuals residing in a state using the Federal Exchange would not be eligible to receive federal tax credits (or subsidies) to help pay for their health insurance. Since only 16 states (and the District of Columbia) had set up their own Exchanges and the other 34 states were using the Federal Exchange, this case could have severely impacted the ACA if the Court was to rule that individuals residing in states using the Federal Exchange did not qualify for government in-

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subsidies. Fortunately, the ACA was authored by Chief Justice Roberts, so tax credits are available to individuals who utilize both state run and federal health insurance Exchanges. This is because the phrase "established by the State" is ambiguous and the Court must look to the structure of the Act to determine the meaning of that phrase. The Court ruled that the ACA is considered to be available to all qual-

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In the opinion, Justice Roberts wrote, "Congress passed the Affordable Care Act to improve health insurance markets, not destroy them". This ruling and the 2012 Supreme Court ruling have dealt blows to Obamacare foes and show that our current Supreme Court, which tends to lean slightly to the right of moderate, has not been willing to change the ACA law.

Had the Supreme Court ruled against the ACA, an estimated 6.4 million Americans in at least 34 states would have lost their subsidies most

certainly making coverage unaffordable for them. Like it or not, it appears that the ACA is here to stay unless congressional Republicans muster the capital to change the law through legislation or figure out how to beat it in the Courts.

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