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Attorneys React To Supreme Court's ACA Save

Law360, New York (June 25, 2015, 10:13 PM ET) -- The U.S. Supreme Court on Thursday ruled that consumer subsidies can continue flowing through all of the Affordable Care Act's health insurance marketplaces, protecting tax credits distributed to nearly 6.5 million consumers on 34 federally established exchanges. Here, attorneys tell Law360 why the decision is significant.

Ericka L. Adler, Roetzel & Andress LPA

"The King v. Burwell decision is a victory for [President Barack] Obama, but the Supreme Court stretched the legal language of the act to reach its conclusions. The court also made it clear that its decision was influenced by awareness of the politics involved and the impact that a different outcome would have for the country, acknowledging that disallowing subsidies to those enrolled in federal exchanges would destabilize the individual insurance market in any state with a federal exchange and 'likely create the very "death spirals" that Congress designed the act to avoid.' The court's decision clearly reflects what it believes to be the best outcome for the country, but does not present a strong legal analysis. Many critics will be unhappy with the court's position for this reason alone."

Patrick Allen, Womble Carlyle Sandridge & Rice LLP

"The Supreme Court decision is a big win for the Obama administration and upholds that the Affordable Care Act allows federal tax credits to be issued to low- and middle-income individuals who purchase health insurance through a federally run exchange. Since penalties to employers for not providing minimum essential coverage to a required percentage of full-time employees and for not providing minimum value or affordable coverage only apply if an employee receives a tax credit for purchasing health insurance under an exchange, this decision effectively upholds the penalty provisions of the employer mandate. Thus, it is business as usual for employers."

Eric Altholz, Verrill Dana LLP

"The decision resolves a regrettable ambiguity in a key provision of the law in a way that makes sense in light of the overall goals and framework of the ACA, and it preserves the status quo for millions of individuals who obtained health insurance through a federally facilitated state exchange. The only thing that will change as a result of the decision is the battle field for future attacks on Obamacare. Now that the court has upheld most of the core elements of the law, any meaningful challenges will have to come from Congress."

Andy Anderson, Morgan Lewis & Bockius LLP

“Although the reverberations of the King v. Burwell decision will echo through the upcoming presidential election cycle, into the halls of Congress, and in ongoing litigation challenging other parts of the ACA, the ACA, as we know it today, will remain in place in its current form for the foreseeable future — so employers should be certain that they are continuing to plan for and react to the numerous and detailed ACA requirements. These include the following: Determining their ACA full-time employee population — including whether contingent workers or independent contractors may be deemed to be common-law employees for ACA purposes. Analyzing whether all ACA full-time employees and their dependents are being offered affordable ACA-compliant coverage at the right time. Preparing for the exceedingly complicated 2015 ACA employer Shared Responsibility and individual mandate reporting due in early 2016 on Forms 1095-B and 1095-C and the associated transmittal forms. Capturing ACA health plan design changes in plan documents, SPDs, open enrollment material, and required notices to respond to participant needs, lawsuits, and growing federal agency audits. Paying the PCORI fee in July. Conducting the necessary plan design analysis and preparing for any changes necessary to avoid the Cadillac Tax in 2018.”

Bruce D. Armon, Saul Ewing LLP

“The court’s decision in King v. Burwell provides a sense of stability for hospitals, physicians and insurers — and over 6 million individuals who receive health insurance in the 34 states that use the federal exchange. In noting that ‘Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them,’ the court took an expansive analysis of the law’s ‘interlocking reforms’ and the ‘death spiral’ that could result if participants in a federal exchange could not receive tax credits similar to their counterparts in a state exchange program. I expect reform efforts across the health care delivery system will continue.”

Radha Bachman, Carlton Fields Jorden Burt

“While there will be no more constitutional challenges of ACA as a whole — this is probably the beginning of implementation challenges involving statutory interpretation."

Thomas Barker, Foley Hoag LLP

“Chief Justice [John] Roberts reinforced his respect for the concept of separation of powers that is the strength of our Constitution. Today’s decision, along with the 2012 NFIB v. Sebelius decision, makes clear that the Chief Justice believes that the Supreme Court should be reticent to have the court usurp the role of the political branches of government. Although the Chief Justice made clear his view that the enactment of the Affordable Care Act was an opaque, haphazard process, he also stressed that it is the political branches of government — and not the federal courts — that must address the fallout of that flawed process.”

John L. Barlament, Quarles & Brady LLP

"For employers, it is 'business as usual.' Employers should continue to focus on complying with the Affordable Care Act. One interesting question is whether the decision paves the way for legislative tweaks to the ACA. In the past, President Obama has stated that he is open to changes which improve the law. Republicans have tried to make unilateral changes. Neither side can make significant changes alone. Will the decision provide enough political cover so the parties can make helpful changes? There is hope that both sides can find room to compromise and improve the ACA."

Boris Bershteyn, Skadden Arps Slate Meagher & Flom LLP, authored an amicus brief in the case

"Today's decision in King v. Burwell will facilitate the implementation of the Affordable Care Act and thereby improve access to high-quality health care in the United States."

Martin Bienstock, Weisbrod Matteis & Copley PLLC

“The most notable effect of King v. Burwell is what the court did not do: it did not apply a strict textualist approach to the Affordable Care Act to potentially create a ‘death spiral’ in certain insurance markets. As Colin Powell once said, ‘you break it, you own it.’ By declining to apply strict textualism, the court avoided taking ‘ownership’ of the health insurance marketplace. It also avoided the criticism that would have attached to the textualist methodology by which it would achieved that result. Paradoxically, by rejecting strict textualism, the court might have helped preserve it.”

Angela Bohmann, Stinson Leonard Street

“We represent employers operating in states with state exchanges and in states using the federal exchange. A decision eliminating subsidies on the federal exchange would have had a more immediate impact on employers in states using the federal exchange. Ultimately, however, if subsidies were eliminated in the federal exchange, the difficulties of maintaining the insurance market in the 34 states using the federal exchange may have undermined coverage in the remaining states, possibly causing the collapse of the insurance market throughout the country. For employers operating nationally, it is helpful to have one standard for determining subsidy eligibility and 4980H ‘pay or play’ penalties.”

Lowell Brown, Arent Fox LLP

“Health care lawyers are justifiably happy for our industry, because many of the individuals our provider clients serve would be unable to afford health insurance without the tax credits in question. Even so, we all nod in agreement with the majority’s understated criticism that the ACA ‘contains more than a few examples of inartful drafting.’ Unless the politics surrounding the Act become less polarized, those drafting problems will endure, and the road to interpretation and implementation will remain very bumpy for years to come.”

Paula A. Calimafde, Paley Rothman

"The big news about today’s decision is that it did not wreak havoc in states that rely on federally run exchanges. The court looked to the full purpose and text of the statute to resolve the ambiguity in the subsidy provision, declining to adopt the Fourth Circuit’s conclusion that this was a ‘statutory gap’ left for the IRS to interpret. This should foreclose any chance that the provision could be changed by a contrary administrative interpretation from a Republican-led IRS. However, if Republicans win it all in 2017, there is still a chance the ACA will be replaced."

Thomas M. Christina, Ogletree Deakins Nash Smoak & Stewart PC

“The primary significance of the decision is that it interprets the statute to provide for premium assistance tax credits in every state where [Health and Human Services] has established an exchange, rather than merely upholding the IRS regulation that permits the allowance of premium assistance tax credits in states where HHS’ exchange operates.”

Timothy Collins, Duane Morris LLP

“As Justice [Antonin] Scalia’s dissenting opinion notes, the majority appears to abandon all normal rules of statutory interpretation in order to preserve what it views as Congress’ plan with respect to the passage of the ACA. While there will be a strong debate as to strength of the majority opinion, from a

practical perspective for employers subject to the ACA the opinion serves to maintain the status quo. Large employers who are subject to the employer mandate will remain subject to that mandate — regardless of whether the exchange in the employer's state is run by the state or federal government. In addition, any hope that employers had with respect to having the ACA overturned in the courts appears to be gone — the ACA was upheld from a constitutional perspective in 2012 and now has been upheld again with respect to a provision whose removal would have been destabilizing."

R. Pepper Crutcher Jr., Balch & Bingham LLP

"The ACA has been a headline story for five years, in part because of its 'employer mandate' that large employers provide good coverage to substantially all full-time employees or pay heavy taxes to offset government costs of covering them. But within minutes of this morning's SCOTUS opinion we began getting questions reflecting fundamental misconceptions. Our answers to two: State and local government employers are covered and most will be 'large' due to aggregation rules; It's too late to 'get small' for 2015 [because] you're 'large' in 2015 based on 2014 employment but your taxes will be based on 2015 employment."

Kirk Davis, Akerman LLP

"The country's highest court has reached a practical decision for the realities of the health care system and removed a major source of uncertainty for U.S. business including insurance companies, health care providers, employers and employees. The court looked at the practical ramifications of striking down the landmark law. Strict construction of the law may have required that, but reality dictated against it. The decision delivers a stable health care system benefiting all constituencies. The impact on insurance market regulations, the coverage mandate, and tax credits will bring greater strength for the country."

Pia Dean, Holland & Hart LLP

"On Wednesday, the Supreme Court denied the most recent challenge to the Affordable Care Act and upheld its continued operation. The dispute in King v. Burwell surrounds the ACA's wording that federal tax subsidies are only available to those purchasing coverage from an exchange 'established by the state,' as opposed to federally created exchanges. Because 27 states have federally created exchanges, the denial of subsidies would make insurance unaffordable for approximately 6 million people and posed a threat to the law's viability. Writing for the majority, 6-3, Chief Justice Roberts found that despite ambiguity, the law's broader context reveals Congress's intent to provide subsidies for people purchasing from any exchange and that any other interpretation would create a 'death spiral' for state insurance plans. The court held that it was 'implausible that Congress meant the Act to operate in this manner.' The court's decision upholds the ACA's continued operation and will ultimately keep insurance premiums from rising and enrollment from dropping."

Bill Dillon, Buchanan Ingersoll & Rooney PC

"Today, the Supreme Court decided King v. Burwell, 6-3, with Justice Roberts authoring. At issue was whether four words in the 'inartfully drafted' ACA — 'established by the State' — limited tax credits only to state run exchanges. Petitioners argued the statute was clear. Because cutting off the tax credits would practically kill the act's insurance mandate and create a 'death spiral,' the court took a broad view and upheld the subsidies. Estimates leading up to the decision suggested between 8 and 11 million people may lose insurance. Instead, the practical effect of the opinion: business as usual."

Melinda Dutton, Manatt Phelps & Phillips LLP

“This was a common sense decision based on the clear intent of Congress to provide tax subsidies to people throughout the country. It preserves health security for consumers, and gives states the freedom to move forward without the risk of market disruption. Over time, states that have deferred to the federal government on insurance markets regulation are likely to reassert their oversight role by adopting or strengthening state-based exchanges or active partnerships with the federal government. States may also look to partner with the federal government on delivery system reform and other ACA initiatives, as well as reconsider Medicaid expansion.”

Steven Engel, Dechert LLP

"The court privileged the act's structure and purpose over its plain meaning. Given the stakes, the outcome is not entirely surprising. However, the court's ruling thatChevron deference would not apply to the ambiguous statute reflects a retreat from deference that could have broader implications for administrative law."

Eric Fader, Day Pitney LLP

“Almost 6.5 million people have purchased insurance on federally operated exchanges thus far. Had the court invalidated subsidies for these purchases based on the ambiguous language, quick Congressional action — by no means guaranteed — would likely have been necessary to avoid (in the court’s words) ‘destabiliz[ing] the individual insurance market in any state with a federal exchange,’ because the ACA’s goal of making insurance affordable for all is highly dependent on the availability of subsidies.”

Linda Fleming, Carlton Fields Jorden Burt

"This victory for the government is also a victory for the residents of the 34 states that have relied on the federal exchanges, including Florida. As a result, about 1.3 million Floridians will be able to maintain their health insurance policies at a reasonable cost. The health care industry can return its focus to providing high quality care to the residents of Florida and the 33 other states."

Bruce Fried, Dentons

“The court's decision in King v. Burwell is likely the last substantial court challenge to the ACA. While some in Congress may press the effort to repeal the law, it is now likely that there will be a more pragmatic effort to address those issues in the ACA that need refinement or technical revisions. For the millions of consumers who would have lost subsidies, the uncertainty around this issue has been resolved. For the health care industry, it is increasingly clear that the ACA provides the structure that will frame health care policy and economics for the foreseeable future.”

Steve Friedman, Littler Mendelson PC

“Given today’s King v. Burwell Supreme Court decision to uphold the Affordable Care Act subsidies, employers must continue on the road to ACA compliance. Had the court ruled that subsidies could not be provided to individuals in states in which the federal government and not the state established the exchange, employer obligations under the ACA would have been significantly curtailed. This is because many penalties which may be assessed against employers under the ACA are contingent upon employees receiving subsidies in connection with coverage procured from an exchange. With the court’s decision today, there is no bar to ACA penalties being assessed.”

Thomas Geroulo, Weber Gallagher Simpson Stapleton Fires & Newby LLP

“Regardless of political beliefs and registrations, this decision confirms the viability of the ACA as an American reality. In so doing, it further embeds the notion that the ACA is a viable mechanism in which to prove that future medical damages, in all types of cases, must be reevaluated since insurance will remain mandated, affordable and cannot be denied on the basis of pre-existing conditions. With these tenets in place, injured plaintiffs and their attorneys must take very seriously the defense bar’s position that the ACA undermines classic notions of future medical damages and the collateral source rule.”

Stuart Gerson, Epstein Becker Green

“The case is much more important as a statutory interpretation and administrative law case than it is as a health care case. In sum, the subsidies were upheld as to economically eligible persons in all states, whether their exchanges are state or federal exchanges. The court held that the term ‘State’ in the provision at issue was, in context, ambiguous. It declined Chevron deference but held that in the total context of the statute and what Congress was trying to establish, the whole ACA scheme would collapse if the subsidies/tax credits were not available. It’s an important win for the administration and for health insurers and their customers because the decision in King won’t, in itself, require rate increases and open season can go forward without a hitch. Context wins over text.”

Ankur Goel, McDermott Will & Emery LLP

“Today’s ruling emphatically endorsed the idea that the Affordable Care Act needed to be read in a way that its different pieces would work together. The court was clearly concerned about the practical impact of its ruling — and the possibility of a death spiral in the insurance markets in states that did not establish exchanges. This decision removes one of the last major obstacles to the Affordable Care Act, and is resulting in widespread sighs of relief — as a contrary ruling would have been hugely disruptive.”

Michael J. Gottlieb, Boies Schiller & Flexner LLP

“The Chief Justice’s opinion today is a significant victory for millions of Americans who have obtained health insurance as a result of the subsidies provided by the Affordable Care Act, as well as for the insurance industry, which benefits substantially from those subsidies. It is also a huge win for the Obama administration and its Solicitor General, Don Verrilli, who has successfully defended the president’s signature legislative achievement from two successive constitutional challenges in the Supreme Court. The decision may also help to dispel the misconception that the Supreme Court decides all of its notable cases along ‘political’ lines — this is the second time that the Chief Justice, appointed by President George W. Bush, has voted to reject constitutional challenges to Obamacare.”

Eric Grant, Hicks Thomas LLP

“Today’s decision is significant in two respects. One, in the short term, legal challenges to the Affordable Care Act are over. It is clear now that the courts will not save us from the act; only Congress and a new president have that power. Two, in the long term, the decision undermines one of the bedrocks of the rule of law — the precept that, for good or for ill, the courts should give effect to what Congress actually said in a statute, not to what Congress should have said, or what Congress or the president wished it had said.”

Doug Hallward-Driemeier, Ropes & Gray LLP

“Today’s opinion in King v. Burwell upholds the status quo in health insurance exchanges — leaving subsidies in place everywhere and allowing the ACA to continue uninterrupted. It is an open question whether, now that the ACA and its subsidies are here to stay, more states will take up its Medicaid expansion or shift how their exchanges operate. Going forward, the decision may be cited more for its

approach to statutory interpretation, two aspects of which jump out. First is the six-Justice majority's reliance on structure, context, and overall purpose rather than the meaning of an isolated phrase. While the majority did not cite traditional legislative history fare, such as committee reports or floor statements, it did rely heavily on the 'purposes' of Congress, such as to avoid a destabilizing 'death spiral' in the individual insurance market. A second notable feature is the opinion's rejection of Chevron deference to administrative interpretation, notwithstanding acknowledged ambiguity in the statute. Justice Scalia's dissent portends an extended debate on proper principles for statutory construction."

Jolie Havens, Vorys Sater Seymour and Pease LLP

"Health care remains a deeply complex, emotional and divisive issue facing our country. The Supreme Court's decision — upholding subsidies in the 34 states utilizing the federal marketplace — will be applauded and criticized for 'saving' the ACA yet again. Underlying the decision is the philosophical view that affordable health coverage should be available to Americans in all states. Query whether full implementation of the ACA has been truly inevitable all along or whether the court's decision might have been different in years past, well before the opposite decision had the power to jeopardize coverage for 6.4 million Americans."

Bill Horton, Jones Walker LLP

"The Supreme Court reached the correct decision in King v. Burwell. Acknowledging the reality that the Affordable Care Act has a lot of drafting weaknesses, the majority carefully construed the statutory language in context, giving effect to Congress's clear intent to expand access to care for previously uninsured Americans. Further, it did so without expanding the Chevron doctrine of deferring to agency interpretations of statutes. In a perfect world, Congress would have done its drafting job better, and this issue would never have been before the courts, but the Supreme Court majority did a good, nuanced job of finding a way to enforce the intent of the ACA without doing excessive damage to established rules of statutory construction."

Hamish Hume, Boies Schiller & Flexner LLP

"The court's decision recognizes the 'inartful drafting' in the ACA, but held that in resolving ambiguities in the drafting, the court should look to the overall 'context and structure' of the act and its general purpose, and not focus solely on the language of one isolated provision or narrow doctrines of statutory construction. It reflects another victory for President Obama's signature legislative achievement, and the 6-3 decision also reflects another example of Chief Justice Roberts' effort to create [a] less politically divided Supreme Court."

Susan Huntington, Day Pitney LLP

"Clearly the Supreme Court's decision in King v. Burwell is a win for the almost 6.5 million Americans enrolled in the federal exchanges. Almost as significant, it is an important save for the health care providers in the 34 states with federal exchanges who might otherwise be providing uncompensated care to millions of Americans who chose to drop their exchange coverage in the absence of the ACA's premium tax credits and cost-sharing reductions. This impact would have been particularly harsh in view of the consistent cuts in Medicare and Medicaid payments to providers."

Daniel Jarcho, Alston & Bird LLP

"King v. Burwell turns on a core question of administrative law: which interpretive rules a court should follow when it interprets a statute's text. The court did not follow the ordinary rules for interpreting an ambiguous statute. If it had, it would have deferred to the interpretation adopted by the federal agency

that administers the statute, in this case the IRS. Instead, the Supreme Court refused to defer to the IRS and construed ambiguous statutory language directly. The court's refusal to defer to the agency was unusual, but the court ended up with the same result as if it had deferred — upholding the Obama administration's regulation. The court's refusal to defer is primarily significant for future cases involving judicial interpretations of other statutes. In those cases, the message is clear: courts will not always defer to the pertinent agency when construing an ambiguous statute."

B. David Joffe, Bradley Arant Boult Cummings LLP

"In this much-anticipated decision, the court has upheld the validity of tax credits under the ACA that are available to individuals in states that have federal exchanges. Citing the principal reforms of the ACA — guaranteed issue and community rating requirements, a coverage mandate, and tax credits — the court dismissed the challenge to the law based on the literal wording of the statute. Employers must now continue to prepare for the ACA mandate by identifying and tracking full-time employees, offering and providing required coverage (subject to the transition relief), reporting coverage information to the IRS, and preparing for the Cadillac tax."

James Kennedy III, Carlton Fields Jorden Burt

"Today, the Supreme Court refused to create a Red State v. Blue State coverage gap. The court said that if it accepted the arguments of the petitioners, 'it would destabilize the individual insurance market and … likely create the very death spiral that Congress designed the Act to avoid.' This ruling makes clear the intent of Congress to make tax credits available to all. The opinion is written with purpose and conviction to give life to the Affordable Care Act."

Barry L. Klein, Blank Rome LLP

"Much was at stake for employers in King. Employers are potentially subject to a 'shared responsibility' excise tax if any full-time employee purchases insurance on an exchange with a premium tax subsidy. A ruling against the nationwide premium tax subsidy regime would mean that those employers who only have employees residing in states that have not created an exchange would have no liability for the excise tax — and less incentive to offer coverage — because those employees literally would not have been eligible for premium tax subsidies. Therefore, for better or for worse, the shared responsibility excise tax regime also survives."

Edward Leeds, Ballard Spahr LLP

"In a 6-3 decision, the U.S. Supreme Court ruled that tax subsidies are available to individuals who enroll in health insurance exchanges under the Affordable Care Act that are administered by the federal government as well as those operated by individual states. As a result, individuals who have enrolled for exchange coverage in every state may continue to qualify for the subsidies designed to make that coverage affordable. Given that the federal government administers exchanges in 34 states, the decision prevents what would, at a minimum, have been a significant disruption to the implementation of the Affordable Care Act."

Lori Maring, Fisher & Phillips LLP

"What is the message for employers from today's decision in King v. Burwell? It's time to get serious about the ACA. The Supreme Court struck down the strongest judicial challenge to the ACA to date and with legislative changes extremely unlikely, employers need to invest time and resources in ensuring compliance with the ACA's many employer obligations. In addition to the pay or play penalty, the ACA

imposes significant reporting requirements beginning in 2015. Employers waiting to invest in ACA compliance to see how the Supreme Court ruled are likely unprepared and at risk for penalties."

Merritt E. McAlister, King & Spalding LLP

"The Supreme Court's decision is a complete victory for the Obama administration. Most important is how it won: The court essentially held that the statute, as a whole, unambiguously makes subsidies available to those who purchase insurance through a federal exchange. That means future administrations will not be able to unravel the ACA by changing the IRS regulation that extends those subsidies. The court showed a great deal of sensitivity to the context and scheme of the legislation, which it exalts above an isolated reading of a key provision that supported the challengers' position. Absent legislative repeal, the ACA is here to stay."

Virginia E. McGarrity, Robinson & Cole LLP

"The court's 6-3 ruling in King v. Burwell puts to rest one of the more serious threats to the Affordable Care Act. The impact of the ruling is clear — federal subsidies will continue to be provided to the more than 6 million insured who reside in states that have chosen not to set up their own insurance marketplaces. Although other ACA litigation continues to work its way through the courts, this ruling has likely established some permanency for the Affordable Care Act. Whether or not that permanency will last beyond the 2016 election remains to be seen."

John McGowan, BakerHostetler

"To health care attorneys, the Supreme Court decision in King v. Burwell comes as a relief. For tax practitioners, the decision has broader — and potentially disturbing — implications. Burwell means the Treasury Department (and any other agency that takes the time to promulgate regulations) has wide-ranging discretion to decide what a particular law 'says,' even when the statute on its face seems to say something else. In Burwell, the majority ruled that a statute's broader context can be considered by regulation-writers when it comes to rule-making. As a result, federal agencies now seem to have a new 'work around' tool: the ability to look beyond Chevron deference and engage in a form of statutory alchemy so long as the statute's purpose can justify it."

Alan Meisel, University of Pittsburgh School of Law

"More than 5 million Americans can breathe a sigh of relief today as the nation's highest court has prevented a potentially chaotic situation that might have had ripple effects through our society for years to come. Given the level of congressional gridlock in the last few years, it is difficult to predict just how this congress would have reacted to federal subsidies being ruled impermissible, but, fortunately, we've avoided that. Let's hope that this is the last shot fired in the war against the Affordable Care Act."

Joy Napier-Joyce, Jackson Lewis PC

"The decision today in King vs. Burwell was not entirely unexpected, but means employers must continue the difficult task of determining who is considered a 'full-time' employee, analyzing the penalty risk for those who are not offered minimum essential, affordable, minimum value coverage and preparing for complicated IRS reporting requirements. With the latest challenge to the act settled, we are hopeful that means that additional guidance will be forthcoming that will assist employers in their good faith attempts to comply with all aspects of the act."

James R. Napoli, Seyfarth Shaw LLP

"The Supreme Court's ruling today in King means full steam ahead for employers implementing ACA compliant strategies. Significantly, the ruling has an additional benefit for some industries inasmuch as the court interpreted the statute's provisions themselves as permitting subsidies through federally facilitated exchanges as opposed to ruling on the IRS' interpretation of the statute. That means, effectively, that it would take an act of Congress to modify the subsidy provisions of the ACA, which in turn means that a future administration could not effectively revise the availability of subsidies through federally facilitated exchanges by way of regulation. This is good news for the health insurance and pharmaceutical industries, for example, because more subsidies means more individuals purchasing coverage which means more customers."

Susan Nash, McDermott Will & Emery LLP

"Today, in a 6-3 decision written by Chief Justice Roberts, the Supreme Court ruled in King v. Burwell that subsidies used to purchase health insurance in the 36 states on the federally facilitated marketplace are legal, thus avoiding the 'death spiral.' This ruling means business as usual for employers, the Health Care Marketplace is the new normal and employers are back to focusing on the applicable Affordable Care Act compliance initiatives, including, the Employer Shared Responsibility rules, the ACA 1094 and 1095 reporting rules, the 2018 Cadillac Tax, and ongoing design decisions for their medical plans."

Mark Nielsen, Groom Law Group

"The decision avoids chaos in the marketplace. If it had gone the other way, approximately 7 million people would have lost subsidies that were promised when they bought coverage — and insurers stood to lose billions of dollars in subsidies owed for the remainder of this year. Loss of the subsidies would cause a big drop in young and healthy people buying coverage, which, in turn, would force insurers to significantly raise premiums — exactly the 'death spiral' that the ACA was designed to avoid. Additionally, the ACA's employer mandate would not have been applicable to employers in the 34 states with federal exchanges. So the King decision will help stabilize the insurance market, and ensure uniform implementation of the employer mandate."

Peter Pavarini, Squire Patton Boggs

"Having survived two major challenges, the ACA represents the path forward. Now, we need to roll up our sleeves and get to work fixing the problems that still vex our health care system."

Kirk A. Pelikan, Michael Best & Friedrich LLP

"Certainly the decision keeps the employer mandate in place in the 36 states that did not adopt exchanges. However, the decision also signals a departure from certain standards of statutory construction. Effectively, the court has said that while plain meaning should control the interpretation of a statute, it will ignore natural reading of language where the content and structure of the act compel it to do so. Chief Justice Roberts attempts to rein this result back in the last section of his decision, but the effects will, we think, be far-reaching."

Erik Peters, Verrill Dana LLP

"At first glance, whatever your politics, the court's interpretation of the statute as a whole, rather than focusing on a poorly drafted clause, appears to be correct. Additionally, John Roberts, a conservative Republican appointed by President Bush has now twice saved Obamacare from what would have been crushing defeats in front of the court"

Robert Projansky, Proskauer Rose LLP

“The implications of the King decision are significant in the sense that a contrary decision would have had a significant impact on the implementation of ACA, placing pressure on states and the federal government to consider further action. However, standing alone, the implications are minimal. For the time being, the ACA will move forward, individuals throughout the country will remain eligible for premium assistance and employers will remain subject to the employer mandate. Of course, if anyone thinks that the political or legal debate surrounding various aspects of ACA is over, that is, in Justice Scalia’s words, ‘pure Applesauce.’”

Michael L. Rice, Simon, Ray & Winikka LLP

“Today’s ruling essentially keeps everything in place, so it doesn't matter whether individuals obtained coverage through the federal or state exchanges. Had the subsidies for Obamacare coverage obtained through federal exchanges been found illegal, as was argued, then we would have faced an entirely different situation. Experts predicted that a lot of healthy people would have opted out of Obamacare if the subsidies weren’t available, and without that money many others would lose the coverage they have now because they simply couldn’t afford it. If you’re covered under Obamacare or will be signing up in the future, then this was a great ruling.”

R. Barrett Richards, Bell Nunnally & Martin LLP

“The court acknowledged that an ‘economic death spiral’ would be the result if the Affordable Care Act is construed to prevent payment of subsidies to citizens of states that did not create their own exchanges. Based on the Supreme Court statutory construction precedents cited, the majority’s position and that of the dissent are equally strong. However, the majority chose to ‘respect the role of the Legislature and take care not to undo what it has done.’ That decision will enable residents of every state to receive the subsidies contemplated by the act, whatever the nature of the state’s exchange.”

Mark Rust, Barnes & Thornburg LLP

"A variety of health care interests are breathing a sigh of relief — as well as some politicians. Insurers selling individual policies in 34 states will have relatively more stable and predictable pricing, even if those prices may rise for other reasons; hospitals will not lose new customers; and makers of drugs and devices dependent on third-party financing will continue to see business grow. Importantly, lawmakers who have opposed the ACA and might have felt pressure to respond to constituents who lost subsidies will get some breathing room to regroup without the immediate need to take action.”

Amy E. Sanders, Bass Berry & Sims PLC

“The Affordable Care Act is safe — until the White House changes hands, at least. The road to complete implementation is lengthy, but we now know that road is the one contemplated by the statute. We aren’t being forced down a detour. The certainty afforded by the King v. Burwell decision is, arguably, its most important feature. As the issue worked its way through the courts, unanswered questions slowed health reform momentum. The court’s decision precludes similar insecurity through its finding that Congress did not intend to delegate the question of tax credit availability to the IRS. The court avoided Chevron analysis and stopped a future administration from changing the result through regulation.”

Kate Saracene, Nixon Peabody LLP

“It appears that the court worked very hard to find a way to interpret the act in a way that is consistent with the former. While the court’s decision focuses only on the impact petitioner’s view would have on

the individual insurance market and coverage mandate, if the decision had gone the other way, it also would have crippled the act's employer shared responsibility provisions. Because the employer penalties are triggered only if full-time employees receive federal subsidies on an exchange, the loss of subsidies on the federal exchanges would have effectively limited the employer mandate to those states with a state-run exchange."

Vanessa A. Scott, Sutherland Asbill & Brennan LLP

"The decision means that the 6 million Americans across the U.S. who currently receive tax credits through the federal exchange to help reduce the cost of health care coverage will continue to receive those subsidies. For employers, the decision means that the employer mandate to provide coverage to full-time employees under Internal Revenue Code section 4980H remains intact, and employers will still be subject to tax penalties if any of their employees receive federal tax subsidies to purchase coverage on an exchange, whether that exchange is run by the federal government or by a state."

Pratik Shah, Akin Gump Strauss Hauer & Feld LLP

"It is hard to remove the technical statutory interpretation issue in this case from the charged nature of the Affordable Care Act. But the court's decision is quite consistent with the reasoning and result, if not the precise line-up of Justices, in its decision earlier this term in Yates v. United States, i.e., whether a fish is a 'tangible object' within the meaning of a destruction-of-evidence provision in the Sarbanes-Oxley Act. Although a fish literally, of course, is a 'tangible object,' the court — in a 5-4 decision notably joined by the Chief Justice — found that the context of the statute, read as a whole, did not permit that interpretation. Read together, the two decisions show a court engaged in a more holistic form of statutory interpretation."

Rachel Cutler Shim, Reed Smith LLP

"The Supreme Court has affirmed the decision of the Fourth Circuit in King v. Burwell. The court held that the language of the ACA was not clear and instead they had to review the intent of Congress as demonstrated by the act's content and structure. The court held Congress could not have intended for two major provisions of the ACA, the tax credits and coverage requirements, to be defunct if states declined to establish an exchange or marketplace, so the intent must have been to allow for subsidies under the federal marketplace. What this means for employers is that the employer mandates, otherwise known as assessable payments or shared responsibility payment requirements, will remain in place unchanged. Employers will also still be required to satisfy the reporting requirements of Code Section 6055 and 6056 by providing employees with Forms 1095-C at the beginning of next year. Employers can also rest assured that their health insurers will not experience the upheaval that would have been associated with an opposite decision. While undoubtedly many employers were hoping that King v. Burwell would remove the employer mandate and reporting requirements, employers are now required to stay the course and continue moving forward with implementation of the Act."

Patricia A. Shlonksy, Ulmer & Berne LLP

"Justice Robert's decision in Burwell today is a laudable example of rational, respectful and compassionate judicial decision making. The decision's rational approach to statutory interpretation, viewing the statute as a whole and refusing to analyze each part in isolation, provides a roadmap for future judicial interpretation. Justice Robert's appreciation of the role of the judiciary, 'to say what the law is,' and respect for the role of the Legislature, to 'take care not to undo what it has done,' reflects an element of humility sorely lacking from the dissent. Taxpayers now have comfort that affordable health insurance will remain available."

Paul Smith, Jenner & Block LLP

"It's great to see the court doing its job of responsible statutory interpretation rather than providing a wooden reading it knew was not intended and would have caused untold harm. It's especially great to see the Chief Justice leading the way. Although Chief Justice Roberts remains a staunch conservative in many ways, he has now drawn a clear line between his more pragmatic conservatism and the rigid approach of Justices Scalia, Alito and Thomas. As followers of the court will recall, we saw a somewhat similar evolution of his former mentor and boss Chief Justice [William] Rehnquist."

Charlie Stevens, Michael Best & Friedrich LLP

"Justice Roberts admitted in his majority opinion that the ACA 'contains more than a few examples of inartful drafting,' and that 'the Act does not reflect the type of care and deliberation that one might expect of such significant legislation.' In his dissent, Justice Scalia spoke more plainly indicating, the 'Court tries to palm off the pertinent statutory phrase as "inartful drafting." [citation omitted.] This Court, however, has no free-floating power to rescue Congress from its drafting errors.' And further, 'the more unnatural the proposed interpretation of a law, the more compelling the contextual evidence must be to show that it is correct. Today's interpretation is not merely unnatural; it is unheard of.'"

Erin Sweeney, Miller & Chevalier Chtd.

"'Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them,' Chief Justice Roberts wrote in the Supreme Court's 6-3 decision upholding the government's position. Roberts used sweeping and dramatic language throughout the opinion, referring to the premium tax credit issue as 'a question of deep "economic and political significance"' and as one of those 'extraordinary cases' where the court will not presume that Congress delegated its interpretive authority to a federal agency. After noting that the statute contains 'interlocking reforms' that are 'closely intertwined,' Roberts concluded that '[w]e cannot interpret federal statutes to negate their own stated purposes.'"

David S. Szabo, Locke Lord LLP

"The court pointed out the success of Massachusetts' health care reform law and noted three essential elements of health care reform: guaranteed issue, community rating and premium support for low income purchasers. The court found that any interpretation of the act that eliminated one of the elements would run afoul of the intent of Congress. Significantly, the court did not defer to the IRS in interpreting the law, but made its own determination, making it much less likely that a future administration could eliminate the subsidies unless that Act is amended or repealed by Congress."

Nancy E. Taylor, Greenberg Traurig LLP

"Based on this decision, the insurance marketplace in all 50 States and the District of Columbia can be stabilized. In the decision, Chief Justice Roberts acknowledged that the Affordable Care Act adopts a 'series of reforms designed to expand coverage.' These reforms include barring insurers from underwriting individuals with preexisting conditions and guaranteeing the availability of coverage; requiring all individual obtain health insurance coverage; and third, gives subsidies to those individuals who can't afford to buy insurance. With the decision in this case clear, states and the federal government can move forward on continued efforts to expand health insurance coverage."

Sharde Thomas, Liebert Cassidy Whitmore

“The Supreme Court’s landmark decision in King v. Burwell upholding subsidies in states with federal exchanges not only removed one of the last major hurdles facing implementation of the Affordable Care Act, but also raises the potential that employers will be hit with penalties under the employer mandate. Employers may be subject to penalties if employees receive a subsidy through an exchange. Therefore, if the court determined that states with federal exchanges could not provide subsidies, it would have eliminated a major avenue through which employees could trigger liability for employers.”

Jeffrey H. Tour, Steptoe & Johnson PLLC

“Putting aside the political firestorm that has already started by the court’s decision in King v. Burwell, the principal impact of the ruling is that the status quo will continue unabated. It is hard to define with any precision what the status quo means in practical terms, since there continue to be many questions surrounding the new reporting requirements, the coverage of certain classes of employees under the various rules, the potential impact on rank and file employees of the looming ‘Cadillac Tax,’ and many others questions. Still, in light of what might have occurred if the subsidies had disappeared for individuals in the federal exchange, the turbulent and uncertain waters we have been navigating to date might appear as a sea of tranquility.”

Ralph Tyler, Venable LLP

“The court’s structural understanding of the act doomed the challengers’ effort to kill subsidies for the millions of persons in the 34 states that did not establish health insurance exchanges, but, instead, relied upon the federal exchange. As the Chief Justice observed, the consequences of the challengers’ position was that in these 34 ‘federal exchange states’ subsidies would be altogether unavailable and the mandatory coverage requirement ‘would not apply in a meaningful way.’ Absent subsides, persons of lower incomes would be effectively exempt from the coverage requirement and, in any event, they would be financially unable to afford health insurance.”

Lawrence Vernaglia, Foley & Lardner LLP

"King v. Burwell was one more test of whether the Affordable Care Act would be able to stay and deliver on the promises that Congress and the president had in mind when they negotiated it, and today it passed the test. The ACA lives to fight another day, and will continue to provide patients with access to health care anywhere in the country, regardless of where they live and regardless of how that state chose to implement changes. However, the system has to change to make sure patients continue to receive insurance at affordable premiums."

David M. Walsh, Chamblee Ryan Kershaw & Anderson PC

“The court took a very practical approach in defining the legislative intent of the ACA. At the societal level, the court’s ruling should result in even more of the previously uninsured population obtaining and keeping health insurance, in turn providing physicians and hospitals with a greater expectation that they will be paid for at least some portion of their work. Armed with health insurance, people should be more inclined and able to seek out treatment, particularly for regular preventive health care, which should result in less catastrophic complications and lower overall costs.”

Stephen Warch, Nilan Johnson Lewis

“Today's Supreme Court decision is an important affirmation of the Affordable Care Act, and stands as a clear signal that legal challenges to the ACA have run their course. Had the court decided that subsidies are not available for policies purchased through federally established exchanges, one of the basic underpinnings of the ACA would have been frustrated, which would have led to significant regional

imbalance in terms of access to coverage and a sharp impact on premiums. The decision will potentially provide political cover to leaders in states that have thus far resisted embracing the ACA, and allow the act's intended impact to be fully tested over time. And as the ACA and the availability of coverage through the exchanges becomes more and more the norm, it will become far more difficult for its opponents to maintain the mantra of repeal. This may finally be the catalyst for the country moving beyond the debate about whether we should have the ACA and toward engagement by both political parties about how we can improve it."

Robert Weiner, Arnold & Porter LLP

"Opponents of the Affordable Care Act filed the first lawsuit against the act seven minutes after the president signed it. Even after the Supreme Court upheld the constitutionality of the act, the litigation continued. Except for those first seven minutes, the opponents of the act have embroiled it in litigation seeking to reverse their loss in the legislature. Today, by a vote of 6-3, the court made clear that these efforts should stop. In an opinion written by the Chief Justice, the court stated that 'in every case we must respect the role of the Legislature, and take care not to undo what it has done. . . .Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter.' This ruling ends one more challenge to the ACA, but others continue. Will the ACA opponents get the message to stop importing partisan battles into the courts? We can hope."

David A Whaley, Dinsmore & Shohl LLP

"In announcing the conclusion that the text of the ACA provides for subsidies in both state and federally facilitated exchanges, the court foreclosed the ability of this conclusion to be overturned by later regulatory action. Instead, Justice Roberts' opinion effectively announces that Congress is the venue to seek modifications to the ACA — not the courts. Thus, any future modification to the operation of the 'sticks and carrots' methodology adopted by the ACA rests with the legislative branch of the federal government."

Kim Wilcoxon, Thompson Hine LLP

"King v. Burwell may not seem like a significant decision because it does not require change or create uncertainty. However, its significance becomes apparent when you consider what might have happened if the Supreme Court had ruled the other way. The ACA is a web of interconnected threads, and eliminating subsidies for a significant portion of Americans could have unraveled the act. This decision allows governments, insurance companies, employers and individuals to continue to build on the steps they've already taken to respond to the ACA. Their efforts thus far have not gone to waste."

Lisa Zarlenga, Steptoe & Johnson LLP

"The Supreme Court appropriately considered the statute as a whole and Congressional intent in interpreting the statutory language. Nonetheless, while the court upheld the IRS' statutory interpretation, it did not give Chevron deference to the IRS' regulations implementing the premium tax credit. The court's opinion thus averts a crisis requiring Congress to step in and prevent a death spiral but it sets a precedent for judicial intervention on all cases addressing the interpretation of the premium tax credit."

Stacey Zill, Michelman & Robinson LLP

"With today's ruling in King v. Burwell, Obamacare survived another challenge. The Supreme Court attempted to avoid the possibility that millions of Americans would be left without health insurance and

the resulting crippling effect on the health care marketplace. Despite the law's express language — 'established by the state' — the court ruled the intent was to allow for tax credits and other government assistance regardless of participation in a federal or state exchange, both being interpreted as falling within the law's challenged language. This ruling is also significant because it will likely give Democrats traction in approaching elections."

--Editing by Emily Kokoll.
