

# King v. Burwell

Timothy Stoltzfus Jost  
Washington and Lee University  
School of Law

# What is case about?

- Brought by four plaintiffs who claim they are forced to buy health insurance or pay a penalty because tax credits are available in Virginia through a federally facilitated exchange.
- Case is in fact brought by Competitive Enterprise Institute.
- Plaintiffs claim that the IRS rule allowing federally facilitated exchanges to grant tax credits is invalid because tax credits can only be granted by an “Exchange established by the State.”

## Lower court decisions

- Both district court and Fourth Circuit upheld IRS rule.
- Case decided on basis of Chevron doctrine:
  - If Congress has unambiguously expressed its intent, courts should give effect to that intent
  - If a statute is silent or ambiguous, courts should defer to agency's interpretation.

## District Court

- Judge Spencer held that Congress had unambiguously authorized FFEs to grant tax credits.
  - Other sections of the ACA show that Congress meant for FFEs to grant tax credits.
  - “Exchange established by the State” language is used in other sections where Congress did not mean to refer only to state-operated exchanges.
- But judge would also defer to IRS.

# Fourth Circuit

- Found statute ambiguous.
- Deferred to IRS.
- But Judge Davis, concurring, found statute unambiguous for IRS.

# Supreme Court

- Granted certiorari
  - No division among circuits, but case important and division possible.
- Around 20 amicus briefs for plaintiffs, over 30 for government.
  - States on both sides, but 7 for plaintiffs, 23 for government.
  - Insurers and providers for government.

# Oral Argument

- Ginsburg, Breyer, Sotomayor, and Kagan for government,
- Alito and Scalia (and probably Thomas) for plaintiffs,
- Roberts quiet,
- Kennedy concerned about constitutional issues.

# Ruling

- For plaintiffs if Court finds statute unambiguously supports plaintiffs,
- For IRS if Court looks at whole statute and finds it unambiguously supports IRS rule,
- For IRS if Court finds statute ambiguous,
- Possibly for IRS if Court attempts to avoid constitutional issue,
- Court could delay effect of ruling, but unlikely.