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Still Room for Improvement: SCOTUS ruling intensifies budget battle over Affordable Care Act

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Thursday's 6-3 Supreme Court decision upholding subsidies for federal insurance exchanges has both sides of the so-called Obamacare issue becoming more entrenched in Congress, setting the field for yet another budget battle that could shut down the government come October.

The opinion in *King v. Burwell*, penned by Chief Justice John Roberts, addresses a challenge to an IRS rule giving the subsidies, in the form of tax credits, to qualifying individuals enrolled in federal exchanges, as well as to those participating in state exchanges.

Recognizing the tax credits as one of the key reforms of the Affordable Care Act (ACA), Roberts said, "Whether those credits are available on federal exchanges is thus a question of deep 'economic and political significance' that is central to this statutory scheme."

However, in what could be seen as a word of warning to the administration, the court refused to give deference to the IRS' interpretation of the tax credit provision, noting that Congress did not expressly give the agency that authority. "It is especially unlikely that Congress would have delegated this decision to the IRS, which has no expertise in crafting health insurance policy of this sort," Roberts wrote.

Instead, the court upheld the subsidies by putting the ambiguous language of the statute in context and "with a view to [its] place in the overall statutory scheme," Roberts said. In that light, he added, the court was compelled to reject the petitioners' challenge, as it would destabilize the insurance market in states with a federal exchange.

Community and industry groups welcomed the court's decision. The ruling "is positive news for millions of Americans who will continue to have access to affordable prescription drugs," said Edith Rosato, CEO of the Academy of Managed Care Pharmacy. "There's no denying that this decision has averted significant disruption to the health care marketplace."

The Biotechnology Innovation Organization (BIO) also applauded the decision. "Access to treatments and cures is a critical priority for the U.S. health care system.... Many patients struggle to gain or even keep such access, in part due to discriminatory policies employed by many within the health insurance industry," BIO said.

Had the court ruled otherwise, 6.4 million Americans would have lost subsidies worth \$1.7 billion per month, resulting in an average premium increase of 287%, according to the Kaiser Family Foundation.

While the trade groups were happy with the court's decision, they recognized a need to improve the ACA. The AMCP said it "would now like to see Congress explore solutions that could make the ACA and the entire U.S. health care system work even better."

Health and Human Services (HHS) Secretary Sylvia Burwell shared those sentiments. "The Affordable Care Act is part of the fabric of America," she said on a media call Thursday. Now that the Supreme Court has upheld the law twice, she said it is time to come together to build on the programs the ACA has created, to spend health care dollars in a better way and to put patients at the center of their care.

Digging in

That may be easier said than done. The Supreme Court's ruling is only encouraging entrenchment in Washington where the ACA is at the center of the HHS budget and other legislative proposals.

Shortly after the court released its opinion, House Ways and Means Committee Chairman Paul Ryan (R-Wis.) said the ruling "does not change the fact that Obamacare is a fundamentally flawed law" and vowed that his committee would continue to work toward a patient-centered alternative to replace the ACA, which Congress passed in 2010 along party lines.

The Republican majority in both the House and Senate are advancing HHS spending bills that would restrict, if not curtail, funding for many of the health care reform measures included in the ACA. Such language is sure to draw a presidential veto if Senate Democrats don't make good on their threat to hold up all spending legislation, even if it means a government shutdown.

Because of the entrenchment, bipartisan efforts to improve parts of the ACA have evoked battle cries. When the House debated H.R. 1190 this week to repeal the unpopular Independent Payment Advisory Board created by the ACA as a way to slow the growth of Medicare costs, Rep. Sander Levin (D-Mich.) said the real purpose of the bill was to repeal the ACA.

He claimed it would be the 59th vote to repeal or undermine Obamacare. In that number, he included the House vote on H.R. 160, which would repeal the medical device tax that helps fund the reforms.

President Barack Obama also viewed both bills as attacks on the ACA and threatened to veto them if they crossed his desk. Despite that threat, the House passed both pieces of legislation, with 11 Democrats voting to repeal IPAB and 46 voting to repeal the device tax. Other Democrats indicated they would have voted for H.R. 1190 had it not included a damaging offset.

Not from Mount Sinai

The bipartisan support shows that not every Democrat sees the ACA as sacrosanct. And not every Republican is dedicated to its repeal. Rep. Linda Sanchez (D-Calif.), who originally co-sponsored the IPAB repeal but voted against it because of the pay-for, said she was proud of the ACA, but "no bill is perfect." Repealing IPAB would strengthen the ACA, she added.

Last week during a House subcommittee markup of the Labor-HHS-Education spending bill, Rep. Nita Lowey (D-N.Y.) observed that no bill "comes down from Mount Sinai," referring to the ACA. "I think we can all agree there are many ways we can approve it," she said, adding that to do that, Congress will need to work together.

Rep. Tom Cole (R-Okla.), the chairman of the subcommittee, agreed. While several deep and sharp ideological differences exist in some areas, he recognized there also are some commonalities. Those are the health care reforms Congress should tackle, he said without going into specifics.

Being a pragmatist, Cole acknowledged that it's unlikely Obamacare would be repealed "while someone with the name of Obama is the president."

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