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High Court to Hear Argument Tomorrow on Why IRS Obamacare Rule Violates the Affordable Care Act

(King v. Burwell)

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—Cory Andrews, Senior Litigation Counsel, Washington Legal Foundation**

WASHINGTON, DC—Tomorrow, Wednesday, March 4, 2015, at 10 a.m., the U.S. Supreme Court will hear oral argument in the highly contested *King v. Burwell* case, which challenges an Internal Revenue Service (IRS) ruling that grants tax-credit subsidies to those enrolled in federal exchanges under the Affordable Care Act (ACA). Contrary to the statute, the IRS rule makes the tax credit available “regardless of whether the Exchange is established and operated by a State ... or by HHS,” undermining Congress’s decision to give states some control over implementation of the ACA.

In its brief, WLF argues that the IRS’s action exceeds the agency’s authority and must be struck down, as the rule stands in stark contrast with the statutory language of the ACA. WLF’s brief uniquely explains that, even if the ACA’s plain language were ambiguous as to whether federal exchange plans are tax-credit eligible, a canon of statutory interpretation known as “legislative grace” requires all tax credits to be narrowly construed in order to preserve Congress’s unique role as guardian of the public fisc. This longstanding canon eliminates IRS’s discretion and resolves all ambiguity. Hence, no “gap” remains for the IRS to fill—or for the Court to defer to—under *Chevron*.

WLF issued the following statement ahead of argument by Senior Litigation Counsel Cory Andrews:

“The legislative grace canon of statutory construction dictates that the IRS lacks the authority, absent an unambiguous statutory mandate from Congress, to appropriate billions of dollars per year from the U.S. Treasury to subsidize health insurance coverage in some two-thirds of the states. A contrary view would not only permit the IRS to rewrite federal law, but it would also invite federal regulatory agencies to further abuse their administrative power.”

WLF is a national public interest law firm and policy center that regularly litigates to oppose overreaching regulation by federal agencies.