



What the Obamacare and Power Plant Decisions Might Mean for the RFS Rule

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Two recent Supreme Court cases reviewed statutory interpretation by Federal agencies. Given the controversy surrounding EPA’s interpretation of its waiver authority under the RFS, these two Supreme Court decisions provide additional guidance should interested parties choose to take EPA to court over any final rule. This article adds to previous discussions about statutory interpretation and the RFS (*farmdoc daily*, [November 6, 2013](#); [January 16, 2014](#); [June 11, 2015](#)).

Background

In this most recent Supreme Court session, the Court ruled on two matters of statutory interpretation that could have implications for EPA’s interpretation of its statutory waiver authority on the Renewable Fuel Standard (RFS). Both cases, as discussed below, reviewed agency interpretation of specific statutory phrases. The decisions provided different results for each agency, but the Court’s conclusions can provide guidance on the RFS question.

The first decision was on the Affordable Care Act (otherwise known as Obamacare) in the case *King v. Burwell*, 576 U.S., ____ (2015) (slip opinion) (available [here](#) or [here](#)). The case involved an IRS interpretation of the phrase “an Exchange established by the State” with regard to whether individuals qualified for the tax credits. Individuals with income below a certain threshold receive tax credits for purchasing health insurance if they purchased insurance from an exchange. The IRS interpreted this to include State exchanges as well as those established by the Federal government in those States electing not to establish their own exchange (pp. 5-6). Chief Justice John Roberts wrote the majority opinion in the 6 to 3 decision of the Court.

The second opinion involved EPA’s regulation of power plants regarding hazardous air pollution under the Clean Air Act in the case *Michigan v. EPA*, 576 U.S. ____ (2015) (slip opinion) (available [here](#) or [here](#)). This case looked at whether EPA had to consider the costs of its decision to further regulate power plant emissions. The statute required regulation if EPA finds that regulation “is appropriate and necessary.” Justice Antonin Scalia (who strongly dissented in the healthcare case) wrote the majority opinion in the 5 to 4 decision of the Court.

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As discussed previously, EPA has proposed regulations interpreting specific waiver authority in the statute regarding the renewable fuels mandates. The statute permits waiver if EPA finds there is an “inadequate domestic supply.” EPA has interpreted that phrase to include not only the supplies of renewable fuel but also the limits on blending and sales of renewable fuel to the ultimate consumer, which is known as the blend wall. In its simplest form, the blend wall works as follows: renewable fuel such as ethanol is blended into gasoline sold at the retail level; most vehicles use a maximum of 10 percent of blended ethanol in gasoline (although some vehicles can use up to 85 percent ethanol, known as E85). If the U.S. fuel market consumes 140 billion gallons of gasoline in a year then there is essentially a wall for ethanol blending at 14 billion gallons (or 10 percent). Certainly, expanded use of E85 or even lower blends (known as mid-level blends such as 15 percent (E15)) above the 10 percent level would push the blend wall further out.

EPA has included the blend wall in its reading of the term supply. As discussed in previous articles, this interpretation appears to contradict the statute and Congressional intent. Should the matter be litigated in court, EPA’s interpretation of its waiver authority is likely to be a central part of any case. The two Supreme Court decisions discussed herein could impact the arguments and outcome.

Discussion

In the Obamacare decision (*King v. Burwell*), the Court looks to very basic statutory interpretation guidelines or canons. The specific issue involves health care exchanges: the statute provides for tax credits for low-income individuals to purchase health insurance on an “Exchange established by the State.” The statute also provides, however, that should a State elect not to establish an Exchange, the Federal Department of Health and Human Services must “establish and operate *such Exchange* within the State.” (pg. 9, quoting the statute; emphasis in Court opinion). The Court concludes that the Federal exchange is equivalent to a State exchange in the entire statutory scheme, essentially stepping into the place of a State exchange whenever a State elects not to establish one. (pp. 9-10.)

The decision in *King* reinforces the power of Congress in matters of law and regulation. It cautions against too easily presuming Congressional delegation of authority to the Executive branch. This is especially true when “a question of deep economic and political significance that is central to th[e] statutory scheme” is involved. (pg. 8.) The Court reiterates that “had Congress wished to assign that question to an agency, it surely would have done so expressly.” (pg. 8 (internal quotations omitted).) On a fundamental level, “[i]n a democracy, the power to make the law rests with those chosen by the people . . . in every case we must respect the role of the Legislature, and take care not to undo what it has done” and that any “fair reading of legislation demands a fair understanding of the legislative plan.” (pg. 21.)

The judiciary’s job is to “construe statutes, not isolated provisions” of statutes because the meaning of words and phrases “may only become evident when placed in context” and “their place in an overall statutory scheme.” (pp. 8-9 (internal quotations and citations omitted).) Thus, the “broader structure of the Act” should be used “to determine the meaning” of the statutory phrases. (pg. 15.) A “provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.” (pg. 15.) Statutory construction cannot have the effect of negating the stated purpose of the statute because Congress “does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions.” (pg. 20 (citing *Whitman v. American Trucking Assns., Inc.* 531 U.S. 457, 468 (2001) previously discussed in *farmdoc daily* on [January 16, 2014](#)).

The end result in *King* is that the Supreme Court upheld the Administration’s interpretation of the phrase in question because it was implementing Congressional intent for the entire act, rather than upsetting that intent through a single instance of “inartful drafting.” (pg. 14.) The decision cautions against adhering too closely to the exact words in any single provision of a statute, particularly where doing so would harm the statute’s operation. For the RFS, this comes down to the importance of the waiver authority as against the statutory scheme (i.e., the yearly blending mandates). It is also a matter of whether EPA is relying too rigidly on a very specific reading of the statutory phrase and the word supply. Interpreting that phrase will likely require use of statutory context and legislative history.

By comparison, the Supreme Court ruled against an EPA regulation for power plants under the Clean Air Act (which also contains the RFS) in *Michigan v. EPA*. In that case, EPA claimed that the phrase

“appropriate and necessary” did not permit it to consider the costs of seeking to further reduce emissions from power plants. The Supreme Court majority disagreed with EPA’s reading.

The Court’s decision opens by emphasizing that “Federal administrative agencies are required to engage in reasoned decisionmaking” producing an end result “within the scope of its lawful authority.” (pg. 5.) Statutory context is important for interpretation but it cannot be used to distort the statute. Stated another way, an agency’s discretion “does not license interpretive gerrymanders under which an agency keeps parts of statutory context it likes while throwing away parts it does not.” (pg. 9.) This prevents an agency’s attempts to harmonize different provisions of a statute, especially where doing so “overlooks the whole point of having a separate provision . . . treating power plants differently from other stationary sources.” (pg. 11.) The Agency’s “preference for symmetry cannot trump an asymmetrical statute.” (pp. 11-12.)

Looking closer at the role of statutory context, the Court made clear to distinguish between “narrow standards” and those written “more expansively,” such that the “congressional election settles th[e] case.” (pg. 11.) The Court explains that where an authority is expressly provided in narrowly crafted (or more limited) provisions, that authority is presumed to exist in a similar but more “expansive standard” as well. (pp. 10-11.) This expands upon the *Whitman v. American Trucking Assns., Inc.* decision that ruled against EPA’s attempt to import an authority expressly granted in other parts of the statute to change statutory requirements. The power plant decision, then, requires consideration of the scope as between the statutory provisions.

The statutory context for the RFS, including the waiver authority, appears to be the more limited because it applies only to refiners and blenders whereas the other fuel provisions apply more broadly to the ultimate consumer. EPA, however, appears to be using the broad waiver authority in the other fuel provisions to expand its authority under the more limited RFS. Moreover, Congress was clear when delegating the authority to consider the ultimate consumer’s use of the fuel by explicitly providing for it -- that it did not do so in the RFS would appear problematic for EPA. Combining the decisions in *American Trucking* and *Michigan v. EPA* would seem to spell trouble for EPA’s reading of the RFS waiver.

Conclusion

Matters of statutory interpretation are rarely exercises in clarity; they involve wading through the muddy waters of past legislative debates to make sense of words in action. The courts provide only guideposts and signals. The two most recent Supreme Court decisions reinforce that only Congress writes the laws, not an agency. This is a long-running struggle in our system of government. Time and again agencies run into trouble when seeking to expand their authority through a creative reading of statutory words, unless doing so furthers the overall statutory scheme or Congressional purpose. For the RFS, the EPA is clearly expanding its authority to adjust the statutory scheme; it is arguably doing so in a direction that does not align with Congressional intent. Whether it is engaging in “interpretive gerrymanders” to apply symmetry to an “asymmetrical statute” will ultimately be in the critical eyes of the judiciary.

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