Today's opinion in *King v. Burwell* is a victory for common sense, not to mention for the millions of people who get subsidies under the Affordable Care Act to pay for health insurance. In determining that the subsidies for health insurance extend not only to states that established their own exchanges but also to individuals served by the federal exchange, the Court relied on the overall structure of the statute. It also used language from one of last term's environmental cases — *Utility Air Regulatory Group (UARG) v. EPA* — to support its reasoning. I can't resist pointing out that I previously predicted that the Scalia reasoning bolstered the government's position that the structure of the Affordable Care Act meant that the subsidies should be upheld.

Here's an explanation from my earlier post about how the two cases relate to each other:

> Both [*King v. Burwell*] and *UARG* involve agency interpretations of statutory language. In *Burwell,* the IRS had to decide whether language that seemingly limits tax credits for buying health insurance only to residents of states that established their own exchanges should be interpreted to extend to residents of states that do not have their own exchanges but are instead covered by an exchange set up by the federal government. Opponents of the ACA filed suit against the IRS's determination that the overall context of the ACA supported extending the tax credits to insurance buyers in all states, not just those covered by a state exchange, even when the plain language of the statute seemed to suggest otherwise. In *UARG*, EPA had to determine how to apply permitting provisions of the Clean Act to greenhouse gas emitters. The provisions, known as the Prevention of Significant Deterioration (PSD) provisions, require permits for the construction of "major emitting facilities" that emit "air pollutants" if they emit 250 tons or more per year of any "air pollutant". The problem for EPA is that, although the 250 ton per year limit makes sense in the context of conventional pollutants like lead, ozone and carbon monoxide, it makes less sense for GHGs, which are emitted at much higher levels. Staying absolutely true to the statutory language would potentially sweep thousands of small companies and apartment buildings into EPA's permitting system. EPA decided instead first to go after big emitters of GHGs that already had to get permits because they also emitted other air pollutants, then to go after big emitters of GHGs that were not otherwise required to get permits, (those emitting more than 100,000 tons per year) and to gradually phase in smaller sources even though the plain language of the statute says that new facilities are those emitting 250 tons per year or more of any air pollutant. EPA called this rule the "Tailoring rule."

In both *Burwell* and *UARG*, agencies had to make sense of language in the statute that seemingly undermined the overall purpose and structure of the Acts they were interpreting. The legal question in both cases was whether the agencies' attempts to interpret language that is inconsistent with the overall statute should be upheld. Interestingly, in both cases the Court found that the agency interpretation is not entitled to deference under its seminal case *Chevron v. NRDC*. In *Burwell*, the Court said that the question of whether tax subsidies are available to residents of states without their own exchanges is simply too big a question to delegate to an agency. So the Court itself determined that the interpretation that residents of federal exchanges are covered is a permissible reading of the statute. That is a big and interesting move that will occupy administrative law scholars for some time to come. In *UARG,* the Court found that the Clean Air Act is *unambiguous* in exempting new small sources from greenhouse gas regulation despite language seemingly to the contrary. Thus EPA was right to focus on large sources but couldn't later extend its regulatory reach to smaller sources.

Both cases relied heavily in their reasoning on the context of the statutes. Here's Scalia's reasoning in UARG in interpreting the words "air pollutant" under the Clean Air Act to exclude small sources of greenhouse gas emissions:

> But we, and EPA, must do our best, bearing in mind the "'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" FDA v. Brown & Williamson Tobacco Corp., 529 U. S. 120, 133 (2000). As we reiterated the same day we decided Massachusetts, the presumption of consistent usage "'readily yields' " to context, and a statutory term—even one defined in the statute—"may take on distinct characters from association with distinct statutory objects calling for different implementation strategies."

Here's what I said about the Scalia quote in my earlier post :

> In other words, context matters. Words can mean different things depending upon the context in which they are used. The words must be read "with a view to their place in the overall statutory scheme." That is language that, in my opinion, is extremely supportive of the Administration's view that the tax subsidies contained in the ACA should be extended to all consumers, not just those to

> covered under state exchanges.

Justice Roberts relied on precisely this passage in upholding the subsidies provision of the Affordable Care Act:

> [W]e "must do our best, bearing in mind the fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Util- ity Air Regulatory Group, 573 U. S., at ___ (slip op., at 15) (internal quotation marks omitted). After reading Section 36B along with other related provisions in the Act, we cannot conclude that the phrase "an Exchange established by the State under [Section 18031]" is unambiguous.

Very happy he did so. It's a good day in the Supreme Court when the Chief uses Scalia's words against him.