Yet another Obamacare lawsuit fails

By Steve Benen
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There are some lawsuits pending against the Affordable Care Act – most notably involving the provisions related to contraception access – but they tend to deal with peripheral issues. The core question about the law's constitutionality was resolved two years ago by the U.S. Supreme Court.

But there's one lawsuit still pending, which argues that there's one out-of-context phrase in the law that's so problematic, it should derail the entire federal health care system. It gets a little complicated, but the ultimate point of the suit is to say consumers in state exchanges aren't eligible for subsidies, which in turn would make coverage unaffordable for most of the country.

So far, this odd approach hasn't gone especially well for ACA opponents. Brian Beutler reports that a federal court "has looked at this argument, and concluded that it's total nonsense," and though it's just one court, the outcome is "actually pretty embarrassing for the challengers." In a case like this, courts use a two-step test to determine whether a federal agency is faithfully administering a statute. First, they examine the text of the statute to determine whether there's any ambiguity. If there's no ambiguity, then the government must do what the law clearly states. If the text *is* ambiguous, though, judges must determine whether the agency's interpretation is plausible.

Obamacare opponents would have won if the judge in question – a Clinton appointee – had vouched for their interpretation of the statue, *or* had found the text ambiguous, but declared the IRS' reading impermissible.

But neither of those things happened. Instead, the judge didn't just rule that all exchanges qualify for subsidies, but that in full context there's no statutory ambiguity to begin with. The challenge is based on a bogus, opportunistic characterization of the law.

The ruling is online here (pdf).

Even congressional Republicans had high hopes for this lawsuit, but really, they should've known better.

For background, Alec MacGillis had a good piece recently summarizing the dispute.
The skinny: Several plaintiffs around the country are challenging the law in various federal district courts on the grounds laid out in 2011 by Case Western University law professor Jonathan Adler and Cato Institute health policy analyst Michael Cannon, an avowed Obamacare foe who came to the court hearing after testifying against the law on Capitol Hill, where committee Chairman Darrell Issa declared envy over the fact that this magazine had named Cannon, not Issa, "Obamacare's single most relentless antagonist."

Adler and Cannon argue that the law is being carried out at odds with its text: The section decreeing that people will get federal subsidies to help them pay for individual insurance plans says that the subsidies are available for those buying plans on new exchanges established by the states—and makes no explicit provision for subsidies for those buying plans in states where the state governments left the creation of the exchange up to the federal government. The government and other defenders of the law counter that any confusion in the wording was inadvertent and that the rest of the law makes abundantly plain that the subsidies were intended to go to people buying plans in the exchanges regardless of whether they were established by the states or Washington.

Or as Adam Serwer put it, the lawsuit "is like arguing a typo in your passport invalidates your citizenship."