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Oklahoma Lawsuit Could Effectively Defund ObamaCare

By: Merrill Matthews - July 31, 2013

Republicans are getting ready for another round of efforts to defund ObamaCare. But the better chance of defunding President Obama's first step towards socialized medicine may rest with the great state of Oklahoma. Ironically, almost no one is paying attention, including ObamaCare opponents.

While Congress can refuse to fund some elements of ObamaCare, such as IRS enforcement efforts, federal funding for the most insidious parts was contained in the original legislation. That funding can't be undone without passing legislation in both houses of Congress and getting a presidential signature.

But Oklahoma has filed suit against ObamaCare and the federal government. And if the courts were to decide with the state, it could effectively defund most of ObamaCare in the majority of states. As such, it may be the last, best hope of strangling this turkey before it strangles the health care system.

One of the key components of ObamaCare are the health insurance exchanges, a supposed marketplace for insurance where individuals can shop among various plans available in their state.

The coverage will be expensive, and so ObamaCare includes hundreds of billions of taxpayer dollars in subsidies. These sliding-scale subsidies stop at 400 percent of the federal poverty level, or about \$94,000 for a family of four.

But the legislation also includes a safe harbor: Individuals must have access to "affordable" coverage. If a person has to spend more than 8 percent of his income to get coverage, he is exempted from the mandate. And if a worker is exempted from the mandate to have coverage, his employer is exempted from the \$2,000 penalty (\$3,000 in some cases) for not providing health coverage.

Under the law states are given three exchange options. States could create the exchange, enter a partnership with the federal government, or, if a state does nothing, the federal government will create the exchange and impose it on the state.

The liberals writing the law assumed the vast majority of states would create their own exchange. But just to make sure, they included a "carrot" that clearly says that the federal

subsidies are available ONLY in the state-created exchanges, not in the federal-state partnerships or the federally created exchanges.

However, 34 states have decided not to play the ObamaCare game and opted for a federally created exchange or the partnership, which means the federal subsidies will not be available to millions of middle- and lower-income workers in those states.

And without the subsidies, insurance would become “unaffordable” under ObamaCare for the vast majority of those families. They would thus be exempted from the mandate to have coverage, and their employers would be exempted from the penalty for not providing it.

In other words, the most draconian part of ObamaCare would essentially be defunded. Bingo!

Oklahoma is suing the feds to establish this point.

For their part, administration officials claim that they always thought that the partnerships and federally created exchanges would get the same federal subsidies. But as Michael Cannon of the Cato Institute and Jonathan Adler of Case Western Reserve University have shown, that’s just posturing to cover their bureaucratic behinds.

The Obama administration has signaled that it intends to provide subsidies in the federally created exchanges, regardless of what the law says. As in so many other areas, Obama has no intention of letting the rule of law stand in his way. Which is why Oklahoma and its supporters hope the court rules soon, before the end of the year. Whether Obama would obey a court order to stand down until the issue is resolved is another question.

Even so it still may be the country’s best chance of defunding the law.

What’s not clear is why no states have joined Oklahoma in its legal fight. Some 26 states were part of the lawsuit challenging the constitutionality of the individual mandate to have health insurance. They lost that fight in the Supreme Court, but only because Chief Justice John Roberts went rogue, coming up with a novel and widely scorned theory that the penalty for not having coverage is a tax.

Oklahoma deserves our gratitude. It is still fighting ObamaCare, and using a very solid argument for doing so. If the state is successful, it will largely defund ObamaCare in the states that did not set up their own exchange. Let’s hope the effort to defund ObamaCare at the federal level is successful, but if it isn’t—and it probably can’t be without a Republican Senate and president—defunding it at the state level may be the last, best hope.