

Affordable Care Act's wording haunting Obama administration

By Jack Kelly

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Two weeks after acknowledging it had no legal authority to do this, the administration announced March 25 it will permit people to sign up for Obamacare after the March 31 deadline set in the law.

“A government of laws, not men,” was how John Adams described what most distinguished the republic the Founding Fathers created from virtually every other government in the history of the world.

“The most sacred of the duties of a government [is] to do equal and impartial justice to all citizens,” said Thomas Jefferson.

It’s been tough sledding for equal protection of the laws these last five years.

The president alters at his whim laws passed by Congress, exempting some, but not others, from Obamacare provisions.

His attorney general won’t prosecute civil rights offenses — if the victims are white.

Pennsylvania’s attorney general won’t prosecute politicians who take bribes — if they are black.

If plaintiffs prevail in lawsuits which got hearings last week in courts in Washington D.C., the scofflaw administration could be reined in.

The Supreme Court heard oral arguments March 25 on a suit by small business owners who say their freedom of religion is violated by the Obamacare provision which requires them to include abortion-inducing drugs in health plans for their employees.

A few blocks away that day, a three judge panel in the U.S. Court of Appeals heard arguments in a suit arguing that only people who sign up for health insurance on state exchanges may get premium subsidies.

Plaintiffs likely will prevail in both cases, court observers think.

“This was a train wreck for the Obama administration,” said CNN legal analyst Jeffrey Toobin after listening to arguments on the Hobby Lobby case in the Supreme Court. “This law looks like it’s going to be struck down. All of the predictions including mine that the justices would not have a problem with this law were wrong.”

The questions they asked indicated Justice Anthony Kennedy, typically the swing voter, and perhaps liberal Justice Steven Breyer will join the four conservatives to overturn the provision.

The Supreme Court hearing garnered the most media attention, but it’s the suit brought by Jacqueline Halbig that could doom Obamacare.

Subsidies will be available to people who purchase health insurance in an exchange “established by the state,” say the words of the Obamacare law. People who sign up on Healthcare.gov, the federal web site, can get subsidies too, the IRS ruled. The IRS has no authority to do that, argue Ms. Halbig, a health care adviser during the Bush administration, and state attorneys general in Oklahoma and Indiana, who’ve filed suit in other courts. The plain meaning of the words of the law is that only those who buy health insurance on state exchanges are eligible for subsidies.

This is a very big deal, because only 16 states have set up exchanges. More than twice as many Americans say they’ve been hurt by Obamacare as say they’ve benefited from it, polls indicate. If Ms. Halbig prevails, the number of beneficiaries will plummet.

That was just a drafting error, the administration argues. Congress intended that people who buy insurance on federal exchanges should get subsidies too.

If that were true, it would be a poor argument, because under the Constitution, only Congress has the power to correct “drafting errors” in the laws it passes.

It isn’t. The eligibility rules for “premium-assistance tax credits” are referenced nine times in the law, noted Michael Cannon of the CATO Institute. Sen. Ben Nelson, D-Neb., insisted on them, the legislative history makes clear.

“By dispensing subsidies through federal exchanges, the IRS will spend tax revenues without congressional authorization,” said columnist George Will. “And by enforcing the employer mandate in states that have only federal exchanges, it will collect taxes without congressional authorization.”

A district court judge ruled against Ms. Halbig, but the appeals court panel seems poised to find in her favor. The administration’s frantic, frequent and illegal alterations of the law may be the last straw for some judges.

The administration is trying to cover up for how poorly the Obamacare law was written, and how badly it’s being administered, said Judge A. Raymond Randolph.

“If the law is just stupid, I don’t think it’s up to the court to save it,” he said.