



# Obamacare Suits Mount as Notre Dame Joins Scrum of Cases

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Hours after the University of Notre Dame filed a religious challenge to the U.S. health-care overhaul in Indiana federal court, a judge in [Washington](#) heard arguments in a lawsuit assailing tax provisions of the statute.

The cases underscore the persistent and diverse nature of legal attacks on the Affordable Care and Patient Protection Act even as the Obama administration struggles to fix bugs in [healthcare.gov](#), the online marketplace for health insurance created by the measure.

Obamacare litigation continues partly because questions about its legitimacy as a piece partisan legislation are unresolved, said Ilya Shapiro, a senior fellow in constitutional studies at the libertarian [Cato Institute](#) in Washington and an opponent of the act. The statute passed Congress without Republican support in either the House or Senate.

It doesn't matter what motivates the plaintiffs bringing those challenges as long as "their legal arguments are sound, because that's what the courts are looking at," Shapiro said.

The suit in Washington, in which a federal judge yesterday heard arguments for an immediate verdict, was brought by seven individuals and businesses from six states. At least three similar complaints have been filed in Oklahoma, [Virginia](#) and Indiana. All challenge some of the federal government's authority to offer tax credits to subsidize health insurance for poor people under Obamacare.

## Catholic Teaching

The complaint Notre Dame filed yesterday, alleging that the law's requirement health plans cover birth control violates Roman Catholic teaching, is a re-filing of a lawsuit dismissed in December on procedural grounds.

The Notre Dame case is among 86 lawsuits attacking Obamacare on religious grounds, according to Erin Mersino, trial counsel at the Thomas More Law Center, of Ann Arbor, [Michigan](#), a Christian-based public interest law firm.

Forty-one of the cases involve primarily Catholic nonprofit groups such as Notre Dame and take issue with the birth control mandate, Mersino said. The other 46 were brought by for-profit entities whose owners argue the contraception provision violates their religious freedom, she said.

The U.S. Supreme Court on Nov. 26 agreed to hear two cases from the for-profit group involving the craft store chain Hobby Lobby Stores Inc., and Conestoga Wood Specialties Corp. They, too, claim an exemption from covering employees' birth control on religious grounds.

## **First Look**

The dispute will be the court's first look at President [Barack Obama](#)'s biggest legislative accomplishment since a majority of the justices upheld the core of the law in 2012.

The court on Dec. 2 declined to hear an appeal by Liberty University, a Virginia school founded by the late evangelical preacher and activist Jerry Falwell, which lost a lower-court case arguing the law's employer mandate exceeded Congress's power over interstate commerce.

The suits by nonprofit religious groups are less advanced in the courts because the Obama administration delayed the birth control mandate for a year as it sought an accommodation with them.

While the religious cases have drawn attention because of their number and high-profile plaintiffs such as Notre Dame and the Archdiocese of Washington, they don't threaten the viability of Obamacare, according to Timothy Jost, a law professor at Washington and Lee University in Lexington, Virginia, and a consumer representative to the National Association of Insurance Commissioners.

## **'Particular Regulation'**

"They're challenges to one particular part of one particular regulation," Jost said. "They're very important cases, but I don't think they mean much for the Affordable Care Act."

The tax cases, involving federal subsidies to people shopping for insurance on government-run marketplaces, or exchanges, present a "significant challenge" to the law because, if successful, they could prevent millions of people from buying coverage, Jost said.

Plaintiffs in those suits argue the language of the health-care legislation allows subsidies only for people using state-run exchanges, not the federal government's.

Thirty-three states, including Ohio, Texas and [Florida](#), declined to set up exchanges.

"No legitimate method of statutory construction would interpret the phrase 'established by the state' in the ACA's subsidy provisions to mean 'established by the state or federal government,'" according to a brief filed by plaintiffs in the case argued yesterday in Washington.

## Congressional Intent

That argument will probably fail because courts look on laws as a whole, not narrow slices of language, and “it’s clear Congress meant for the federal exchanges to be treated the same as the states’ exchanges,” Jost said.

Shapiro, of the Cato Institute, said the tax credit cases could “have legs.”

“There’s a very strong technical argument that the challengers are bringing,” Shapiro said. “It’s not some sort of glitch or scriveners’ error. Congress wanted to incentivize states to create these exchanges.”

At least one other case challenges the Affordable Care Act on the grounds that it violates the Constitution’s origination clause, which requires revenue-raising measures to originate in the House, not the Senate.

U.S. District Judge Beryl Howell in Washington in June rejected that argument as made by Matt Sissel, an Iowa man, concluding the challenged bill originated in the House even if it was completely rewritten by the Senate.

The cases are Notre Dame University v. Sebelius, 3:13-cv-01276, U.S. District Court, North District of [Indiana](#) (South Bend), and Halbig v. Sebelius, 13-cv-00623, U.S District Court, District of Columbia (Washington).