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## Obama racking up judicial losses as Supreme Court rules on Obamacare, union dues

By: Ben Wolfgang  
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President Obama suffered two final defeats in the Supreme Court on Monday, capping a 2013-2014 term in which the justices delivered several judicial hits to the White House while taking a firm stand against the unchecked power of the state.

The administration's losses on Obamacare rules and compulsory union dues served as a rebuke on the Supreme Court's final day after months of judicial decisions to rein in big government on issues such as snooping without a warrant, campaign finance restrictions and Mr. Obama's recess appointment powers.

Just as damning was the way the court ruled in some of those cases. Chief Justice John G. Roberts Jr. corralled unanimous votes on privacy and recess appointments — cases that dealt stinging defeats to Mr. Obama, himself a lawyer and former lecturer on constitutional law.

In the more than five years that Mr. Obama has been in office, the court has rejected the government's argument with a 9-0 decision 20 times.

During the eight years each in the administrations of George W. Bush and Bill Clinton, the government lost on unanimous votes 15 times and 23 times, respectively. That puts the Obama administration on pace to greatly exceed recent predecessors in terms of judicial losses.

“The importance of the unanimous cases is that you can't say, ‘Well, there are five Republican appointees on the court and four Democrats.’ These cases where they haven't gotten the votes of either of the two Obama nominees means the arguments being presented by the Justice Department to the court are just out of left field,” said Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute.

Mr. Obama appointed Elena Kagan and Sonia Sotomayor as justices.

Although Monday's decisions were not unanimous, congressional Republicans and other critics of Mr. Obama saw the rulings as evidence that the Roberts court is acting as something of a final line of defense against a president who brags about his use of executive power to bypass Congress and impose his liberal agenda on the American people.

“Today’s decision is a victory for religious freedom and another defeat for an administration that has repeatedly crossed constitutional lines in pursuit of its big government objectives,” said House Speaker John A. Boehner, an Ohio Republican who last week announced that he would sue the president for abuse of executive authority.

It’s unclear how that lawsuit will play out, but the administration’s recent track record in high-profile cases has been poor.

Mr. Obama’s chief constitutional attorney, Solicitor General Donald B. Verrilli, argued and lost the recess appointments case, a challenge to public employee unions, a major campaign finance case and, on Monday, the latest Obamacare challenge in which the court struck down the administration’s effort to require companies to provide free contraceptive coverage.

Last week, the court unanimously rejected the government’s argument that police be allowed to search Americans’ cellphones without warrants. The court also struck down a Massachusetts law establishing a 35-foot no-protest zone around abortion clinics — a case in which the administration filed a brief supporting the statute.

Despite the mounting losses, the White House refused to concede a poor showing.

“I’d hesitate to make a broad assessment like that from this podium,” White House press secretary Josh Earnest told reporters Monday, though he did say the administration strongly disagreed with the high court’s decision in the contraception case.

While Republicans have been eager to take shots at the administration as its legal losses pile up, some judicial analysts say they may be going too far.

Sen. Ted Cruz, Texas Republican, said recently that the 13 unanimous rulings against the administration represent “rejected presidential abuse of power.”

Other than the case involving recess appointments, the decisions have had little to do with executive power.

The court’s decision last week in the Massachusetts case on protests at abortion clinics centered on a state law, not presidential actions, even though the government backed the law.

Republicans still cited the decision as a judicial rebuke of Mr. Obama, saying the president exceeded his constitutional authority.

“I think it’s tempting to take Speaker Boehner’s lawsuit and try to build on that and say there is an abuse of presidential power here, and even the Supreme Court thinks so. But I don’t think those claims are being borne out,” said Stephen Wermiel, a constitutional law professor at American University in Washington. “Some of the losses — it’s silly to attribute them to the administration.”