

AG Pruitt revises health-care suit, aims to block Affordable Care Act taxes, subsidies

By Wayne Greene

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Oklahoma Attorney General Scott Pruitt asked a federal judge Wednesday to block the Affordable Care Act's individual mandate in the state and prevent the federal government from collecting the law's taxes or distributing its subsidies here.

The filing in federal court in the Eastern District of Oklahoma in Muskogee substantially revises Pruitt's 2011 lawsuit in the wake of a June U.S. Supreme Court ruling that found the law to be substantially constitutional.

Although the new filing continues to argue that the Oklahoma Constitution legally prohibits an individual mandate to buy health insurance, it also brings forward a new argument - that IRS rules to implement the law can't be applied in the state because of the law's own language.

"Oklahoma is in a unique position with the only active lawsuit against the Affordable Care Act to hold the federal government accountable in how it implements the law," Pruitt said. "Now that the Supreme Court has deemed the ACA a tax, and therefore constitutional, the federal government must follow the law and proper procedures, and that is not being done."

The law is designed to distribute subsidies - technically advance tax credits - through health insurance exchanges. If an employee of a company that has at least 50 workers buys insurance through an exchange and gets one of those tax credit subsidies, the employer can be taxed up to \$2,000 for each full-time worker he has on his payroll.

But Pruitt's argument points out that the Affordable Care Act says the subsidies can only be distributed through a state health insurance exchange, and Oklahoma has decided not to establish an exchange.

Although the law allows the federal government to establish an exchange in states that don't build their own, Pruitt argues that federal exchanges are substantially different from state exchanges, so neither the subsidies nor the taxes are valid in Oklahoma.

Timothy Jost, a medical law expert at Washington and Lee University, said Pruitt's argument will have technical and substantive problems.

When Virginia tried to challenge the individual mandate, its case was killed in federal court because the state wasn't affected by the law - it didn't have standing to raise the issue, Jost said. Appellate courts didn't overturn that finding, and Oklahoma's case suffers from the same defect, he said.

Further, a federal law that blocks tax challenges before the levying of the tax also would work against Oklahoma's argument, he said. The Affordable Care Act taxes wouldn't be assessed until 2014 or 2015.

Beyond that, Jost said, the meat of the state's argument won't stand up to legal scrutiny.

State and federal exchanges are the same within the law, and the state won't be able to kill the subsidies or the tax simply by refusing to establish an exchange, he said.

A greater political question, Jost said, is why the attorney general of Oklahoma is trying to deny Oklahomans potentially valuable tax credits.

"These guys are Republicans. They're supposed to not like taxes, but they're saying Oklahomans should give up a tax benefit worth millions of dollars just because politically they don't like what the government's doing here," he said. "It seems to me they're doing a grave disservice to their clients."

But another health law expert, Michael Cannon of the Cato Institute, argued that Oklahoma's new challenge to the Affordable Care Act will stand up to technical and legal examination. Cannon was one of the two Cato Institute scholars who first proposed the legal tactic used in Oklahoma's filing.

Although bringing in a company and or an individual who would be impacted by the tax might help the state's arguments, Oklahoma has standing as an employer, Cannon said.

Beyond legal technicalities, he said Oklahoma's core argument is an important one.

By allowing states not to create their own exchanges, the law essentially gives the state's the right to opt out of the taxes, and the IRS can't change that with a rule, Cannon said.

"The IRS does not have the authority to impose this tax on Oklahoma employers," he said.