

Dozens of Obamacare lawsuits are still pending

By: Sarah Kliff – June 28, 2013

The Supreme Court decision to uphold the Affordable Care Act is one-year-old today. It does not, however, get a cake. Federal laws do not get birthday parties after surviving a years-long lawsuit; they simply get a ton more lawsuits.

Dozens of legal challenges are still pending that challenge various components of the Affordable Care Act. They are largely at the district court level, meaning it will be a while until we know whether they succeed. On the anniversary of the Supreme Court decision, it's only fitting to review the Obamacare lawsuits that are very much alive.

Challenges to contraceptive coverage.

Perhaps the best known challenges are those to the health-care law's requirement that most employers health plans cover contraceptives for all employees. Some businesses had petitioned for an exemption from this regulation, but the Obama administration did not grant it. So, they turned to the federal court system. Thirty-one private companies have filed lawsuits challenging this part of the law, according to the National Women's Law Center.

Where they stand: Twenty-one companies have received injunctive relief as the court continues to work through a decision the merits of these cases, which typically challenge the contraceptive mandate as a violation of religious freedom. Seven courts, though, have refused requests for injunctions.

Only one district court, located St. Louis, has ruled on the merits of such a challenge. It dismissed the case, which is now on appeal to the Eight Circuit Court.

Hobby Lobby scored a victory Thursday, when an appeals court reversed a lower court's decision against the private company, and ordered the judges to consider an injunction.

Challenges to the premium tax credit.

The Cato Institute's Michael Cannon and Case Western Reserve University's Jonathan Adler have spearheaded the argument behind lawsuits that challenge the constitutionality of delivering premium tax credits through the federally-facilitated exchange. These suits contend that, as written, the law only allows exchanges "established by a state" to administer these subsidies. If the federal government set up the exchange (as it has done in most states), then it would not have the authority to administer a crucial part of the Affordable Care Act.

Where they stand: Two lawsuits have been filed on this issue so far. In *Pruitt v. Sebelius*, Oklahoma Attorney General Scott Pruitt has argued that its unconstitutional to provide premium tax credits to the residents of his state. A separate case, *Halbig v. Sebelius*, makes a similar argument in a D.C. court. The plaintiffs there are represented

by Michael Carvin, the same lawyer who co-argued the Supreme Court case against the health law. Both cases are still at the district court level, with no rulings yet on merits. A challenge to the Independent Payment Advisory Board.

The Independent Payment Advisory Board, or IPAB, allows a 15-person board to recommend cost-cutting changes to the Medicare program. These policy decisions are binding, unless Congress comes up with a way to cut the same level of spending. The Goldwater Institute has challenged that level of federal authority as unconstitutional. In their lawsuit, *Coons v. Geithner*, contends that law denies Congressmen “their legislative power and right to review, debate and vote on the legislative proposals of IPAB like any other legislative proposal.”

Current status: A district court in Arizona dismissed the lawsuit. Plaintiffs have filed an appeal.

KLIFF NOTES: Top health policy reads from around the Web.

Republican Senators want Sebelius to stop fundraising for Enroll America. “A group of 28 Republican senators told HHS Secretary Kathleen Sebelius Thursday to stop helping a nonprofit campaign that is gearing up to enroll Americans for health coverage this fall. The lawmakers said Ms. Sebelius hasn’t provided specific answers about steps she has taken on the nonprofit’s behalf.” *Louise Radnofsky in the Wall Street Journal.*

Will ‘Obamacare’ become invisible? “I used to think that would mean that once implemented, Obamacare would become invisible. That’s not quite right, however. If it works, the Affordable Care Act will become invisible. But as long as Rush Limbaugh has a microphone, the odds are that he — and every Republican politician — will be claiming that every single thing that goes wrong with health care, health insurance, and probably the economy and the environment and your favorite football team having a bad season are all Obamacare’s fault.” *Jonathan Bernstein in the American Prospect.*

What could Obamacare’s NFL ads look like? Buzzfeed has some ideas.

Five ways Obamacare could go wrong. “The administration hopes that the law’s requirement that individuals purchase health insurance or pay a penalty will compel young and healthy Americans to purchase insurance. But in the first year, the penalty will be just \$95 (or a percentage of taxable income). If an insufficient number of young and healthy Americans sign up, it would mean that insurers would have to raise rates, which would then prompt even more young and healthy people to drop coverage, triggering another round of premium hikes.” *Philip Klein in the Washington Examiner.*