Exhibit 15

OPINION

ObamaCare's Next Legal Challenge

The law says subsidies can only go through state-run exchanges.

By SCOTT PRUITT

Dec. 1, 2013 6:38 p.m. ET

Oklahoma City

As millions of Americans see their health-insurance premiums increase, have their coverage dropped as a result of the Affordable Care Act, and are unable to use the federal exchange, Oklahoma has sued the Obama administration. The Sooner State and several others are trying to stop the government from imposing tax penalties on certain states, businesses and individuals in defiance of the law. If these legal challenges are successful, the deficit spending associated with the new health-care law could be reduced by approximately $700 billion over the next decade.

While the president's health law is vast and extraordinarily complex, it is in one respect very simple. Subsidies are only to be made available, and tax penalties for not signing up for health insurance are only to be assessed, in states that create their own health-care exchange. The IRS, however, is attempting to enforce tax penalties in all states—including Oklahoma and the majority of the other states that have declined to create their own exchanges. Citizens and businesses in these states must use the federal exchange instead.

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The distinction is critical, because under the terms of the law it is the availability of government insurance-premium subsidies that triggers the penalties against businesses if they fail to provide their employees with health insurance that the administration deems acceptable. This is a huge problem for the administration, which desperately needs to hand out tax credits and subsidies to the citizenry to quash the swelling backlash against the law.

When Oklahoma first raised this challenge in 2012, many experts predicted that the Sooner State would "go it alone" in pursuing this legal strategy. Not so. In Indiana, the state and 15 school districts have filed a lawsuit against the IRS, the agency that collects the penalties. Business owners (who, like the state of Oklahoma, would be subject to penalties as employers) and individuals in Virginia and the District of Columbia have done the same. In the D.C. lawsuit, the presiding judge recently rejected the Obama administration's attempt to have the case dismissed, as the judge in the Oklahoma case did in August.

Motions for summary judgment will soon be filed in federal district courts, and our court system will determine whether what the administration has called its "improvements" to the ACA—essentially by ignoring some of its provisions—are lawful.

They are not. Congress was exceedingly clear that tax credits and subsidies are available to people whose plans "were enrolled in through an exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act." Even so, the administration argues that Congress intended for all Americans to receive subsidies regardless of whether they enrolled in health-care coverage through a state exchange or a federal exchange. But to arrive at that conclusion you have to ignore the plain language of the law. And nowhere in the law did Congress authorize the IRS to provide the credits or subsidies to those other than citizens who buy their insurance through an exchange established under section 1311 of the ACA—i.e., a state exchange.

Congress specified that credits and subsidies are only to be available in states that set up their own health-insurance exchange for a reason: It could not force states to set up exchanges. Instead, it had to entice them to do so. Oklahoma's lawsuit is about preserving the state's authority to make a policy decision granted to states under the Affordable Care Act. Our governor and policy makers in Oklahoma decided it wasn't in the state's best interest to create a health-care exchange. The IRS, at the administration's bidding, is attempting to take away the benefits of that choice by regulatory action. Such attempts to expand the power of the executive branch should be troubling to all Americans.

While much time has been devoted in Washington to the issue of "defunding" the Affordable Care Act, the success of these lawsuits would have much the same effect. Should the courts decide the IRS is exceeding its authority and isn't allowed to assess the employer penalties in states that have not established their own exchanges, the structure of the ACA will crumble—as one of the primary mechanisms the federal government has employed to force people into the health-insurance market evaporates.

As much as we wish the government were run like a business, the administration cannot "improve" upon legislation passed by Congress by rolling out updates in the manner that Silicon Valley does. That's not permitted under the Constitution: Congress passes laws, the president executes them. Period. That's why Oklahoma and other states are fighting to stop the administration's attempt to "fix" the health-care law through executive fiat.

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