NATIONAL CENTER FOR POLICY ANALYSIS

Litigation Update: the Affordable Care Act

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In the five years since Congress passed and President Barack Obama signed into law the Patient Protection and Affordable Care Act of 2010, the validity of the law has been litigated in federal courts throughout the United States. From infringements on religious liberty to violations of the legislative process, lawsuits challenging the ACA have reflected the dissatisfaction of many with both the substance of the bill and its implementation.

Dallas Headquarters:
14180 Dallas Parkway
Suite 350
Dallas, TX 75254

www.ncpa.org

Washington Office:
600 Pennsylvania Ave., SE
Suite 400
Washington, DC 20003
202.830.0177

Some challenges have fared better than others, and cases continue to wend their way through the court system — including a few that could shake the framework of Obamacare and the expansive executive action that has been a hallmark of ACA implementation.

The Individual Mandate. In the 2012 case of *National Federation of Independent Business v. Sebelius*, the Supreme Court upheld the constitutionality of the Affordable Care Act's mandate that individual Americans purchase health insurance plans with specific features required by the law.[1] Chief Justice John Roberts, who authored the majority opinion, concluded the individual mandate penalty was more properly classified as a "tax" and, thus, was a valid exercise of the federal government's power to tax and spend. At the same time, the Court ruled the law's requirement that the 50 states expand their Medicaid programs to cover all legal U.S. residents with incomes of up to 133 percent of the Federal Poverty Level (FPL) in order to receive any federal Medicaid funds was an unconstitutional attempt by the federal government to coerce the states. As a result, state expansion of Medicaid is optional, and refusing to do so will not affect their federal funding.

But litigation over Obamacare did not stop with *NFIB v. Sebelius*. Legal challenges have emerged dealing with religious liberty, exchange subsidies, the Origination Clause and more.

The Contraceptive Mandate. One of the highest profile cases regarding the ACA concerned the "contraceptive mandate" — the Obamacare provision requiring employers to provide employees with health insurance that includes prescription drug coverage for contraceptives. Many employers, including Catholics and those opposed to abortifacients, object to the requirement.

The Obama administration created a carve-out for religious employers, exempting houses of worship from the contraception requirement entirely and allowing religiously affiliated organizations to shift the costs of contraceptive coverage to their insurers.[2] But a number of employers not

covered by the exemptions who had personal religious objections to the coverage mandate sued the federal government. The most prominent lawsuit to emerge over this issue was *Burwell v. Hobby Lobby Stores, Inc*.[3]

Hobby Lobby is a closely-held, for-profit, family-run corporation with more than 550 craft stores across the United States. Its owners, the Green family, are devout Christians who have sought to operate their company based on religious principles. Because the mandate required Hobby Lobby to provide four drugs and devices it believed induced abortion, Hobby Lobby charged the government with violating its religious liberty.[4] On June 30, 2014, the Supreme Court agreed: As applied to closely-held, for-profit corporations, the contraceptive mandate violates the Religious Freedom Restoration Act, a federal law prohibiting the government from substantially burdening a person's free exercise of religion.[5] The Court found there was an alternative means of providing contraception to employees without burdening Hobby Lobby's religious liberty; for instance, the government could cover the cost of contraception, or Hobby Lobby could be allowed the same accommodation as religiously affiliated employers.

As a result, the government cannot require closely-held corporations with religious objections to provide contraceptives. In August 2014, the Obama administration proposed rules to allow such corporations to apply for the religious accommodation.[6]

The Religious Accommodation. A related, but distinct, case finding its way through the court system is *Little Sisters of the Poor v. Burwell*. The Little Sisters of the Poor is a Catholic organization serving the elderly. The group's 30 homes provide care for the aging and dying in the United States.[7]

The case concerns the carve-out the Obama administration has offered religiously affiliated organizations who oppose contraceptive coverage — the so-called "religious accommodation." If religiously affiliated nonprofit groups objected to the mandate, the administration's solution was to shift the burden of providing contraception to those organizations' insurers — religiously affiliated groups need not pay for coverage directly.[8] To be freed from the obligation to provide contraceptive coverage, organizations like the Little Sisters were required to sign a form certifying their objections to the mandate, thus transferring the obligation to their insurance company.

> *"Twenty-nine lawsuits have challenged the religious accommodation."*

But this accommodation, the Little Sisters claim, does nothing to relieve the law's burden on their conscience; by certifying their objections, the Little Sisters are instructing a third party to provide the contraceptives they find objectionable, forcing their health plans to participate in the government scheme.[9]

The case is one of 29 lawsuits challenging the accommodation and is currently pending in front of the Tenth Circuit Court of Appeals, where oral arguments were heard December 8, 2014.[10] In January 2014, the Supreme Court issued an injunction exempting the Little Sisters from the mandate while their case is pending.[11] A similar case, *Wheaton College v. Burwell,* is being litigated before the Seventh Circuit Court of Appeals. Wheaton College also received an injunction from the Supreme Court.[12]

Because of unfavorable rulings in the courts, the Obama administration rewrote the religious accommodation. On August 22, 2014, the administration issued a new directive, telling religious nonprofits they can certify their objections to the mandate to the federal government rather than to their insurance companies. The government would then contact the nonprofits' insurers and direct them to provide contraceptive coverage.[13]

Response from objectors was less than enthusiastic. Certification of a nonprofit's objections — whether to an insurance company or to the federal government — still triggers the provision of contraceptive services. Opponents of the mandate said that is no different than the original requirement to which they objected.[14]

Federal Exchange Subsidies. A lawsuit that largely remained under the radar until the D.C. Circuit Court of Appeals issued its decision on July 22, 2014, was *Halbig v. Burwell*, a case challenging the Internal Revenue Service's decision to grant subsidies to qualifying enrollees on federally-run health care exchanges.

Currently, all Americans with incomes up to 400 percent of poverty

are considered eligible for subsidies to cover the costs of their health insurance premiums. However, they are eligible only because the Obama administration unilaterally decided to grant subsidies to everyone — the Affordable Care Act does not, in fact, grant subsidies to all enrollees. The text of the law specifically provides that tax credits are available only to the insured who sign up via a health exchange "established by the State" under Section 1311 of the Affordable Care Act.[15] This was not a drafting mistake; subsidies were purposely limited to state-established exchanges as an incentive for states to establish them.[16] A completely different section of Obamacare, Section 1321, discusses federally-established exchanges.[17]

But only 14 states created their own exchanges, forcing the federal government to run the exchanges for the other 36 states. Under the text of the law, individuals in those 36 states are not subsidy-eligible. However, the subsidies are what make Obamacare-compliant insurance plans affordable for many, and the idea of offering unsubsidized insurance in the majority of U.S. states was less than appealing to the Obama administration. As a result, and contrary to the text of the ACA, the IRS decided to interpret the provision to allow enrollees to receive subsidies in its federally-run exchanges.[18]

Was the IRS interpretation legally justifiable? Not according to the D.C. Circuit Court of Appeals, which ruled in *Halbig* that the decision to extend subsidies was invalid and contrary to the plain text of the law.[19] Of the 5 million Americans who enrolled through federally-run exchanges, the majority received subsidies that, on average, reduced their monthly premiums to $82 — 76 percent less than the full cost of the premium.[20] According to the court, these subsidies were invalid.

"The majority of enrollees in federal exchanges received subsidies, reducing their premiums to an average of $82."

Three More Cases. Halbig is just one of several cases challenging the subsidy provision of the Affordable Care Act. On the same day as the *Halbig* decision, the Fourth Circuit Court of Appeals issued a decision in a similar case, *King v. Burwell;* however, the Fourth Circuit upheld the IRS interpretation, finding the subsidies valid.[21] The plaintiffs in the *King* case appealed. In November, the Supreme Court agreed to hear the case.[22] Oral arguments for *King v. Burwell* are scheduled for March 4, 2015.[23]

In September 2014, the U.S. District Court for the Eastern District of Oklahoma — which is part of the Tenth Circuit — issued a ruling in *Pruitt v. Burwell*, finding the subsidies invalid in yet another lawsuit challenging the IRS action.[24] The case is now on expedited appeal before the Tenth Circuit Court of Appeals. Meanwhile, the state of Indiana is also in the midst of litigation over this issue, and oral arguments in *Indiana v. Internal Revenue Service* were heard by another federal court in October 2014.

Real-World Implications. Insurers are well aware of the ongoing litigation. In fact, in response to the judicial threat to subsidies, insurers with plans on HealthCare.gov have reportedly inserted new terms into their contracts with the Centers for Medicare and Medicaid Services this year; the new provisions allow insurers to cancel health plans if federal premium subsides are taken away.[25] Clearly, insurers are less than confident the subsidy scheme is here to stay. The financial implications of such a change are substantial:

- Eighty-six percent of customers on HealthCare.gov had received subsidies by the end of the 2014 enrollment period.[26]
- The federal government runs the insurance exchanges for 36 states. As of October 2014, it was subsidizing health insurance for 5 million Americans in those states.[27]
- A RAND Corporation study determined that eliminating subsidies entirely would send premiums rising by more than 43 percent and drop Obamacare enrollment by 68 percent.[28]

For many families, insurance within the system created by Obamacare is only affordable due to these subsidies. The law's many mandates, coverage requirements and pricing restrictions raise insurance costs — the subsidies, therefore, artificially lower the price of health insurance to the individual. If the Supreme Court strikes down

premium subsidies for Americans in 36 states, the number of uninsured will undoubtedly rise.

Significantly, the individual mandate does not apply to Americans whose insurance premiums cost more than 8 percent of their income.[29] If those individuals lose subsidies and cannot find health insurance below the 8 percent threshold, they are not obligated to carry insurance and will not be subject to the individual mandate penalty. Indeed, consumers would be hard-pressed to find "affordable" insurance without the subsidies. According to an economic model developed by Massachusetts Institute of Technology Professor Jonathan Gruber, without subsidies:[30]

- The average subsidy-eligible American with a bronze health care plan (the lowest coverage level available on the exchanges) would have to pay premiums equivalent to 23 percent of his income.
- Those with silver insurance plans would see their premiums double, costing about 28 percent of income.
- More than 99 percent of Americans otherwise eligible for subsidies would not be able to afford health insurance.

Moreover, the consequences do not stop there — the ruling has additional implications for employers. The ACA penalizes an employer if it fails to offer affordable coverage, but *only* if at least one of its employees receives subsidies from an exchange — receipt of subsidies is what triggers the employer penalty. If employees in 36 states cannot access subsidies, then, under the text of the law, their employers cannot be subject to a penalty for failing to offer insurance. Indeed, the D.C. Court of Appeals noted this consequence in its *Halbig* decision: "[T]he employer mandate's penalties hinge on the availability of credits. If credits were unavailable in states with federal Exchanges, employers there would face no penalties for failing to offer coverage."[31]

> *"Without subsidies, Obamacare insurance would be unaffordable for 99 percent of subsidy-eligible Americans."*

The Origination Clause. The U.S. Constitution requires all revenue-raising measures to originate in the House of Representatives.[32] The provision — known as the Origination Clause — was designed to rein in legislators by giving the voting public control over the taxing power. In *NFIB v. Sebelius,* the Supreme Court made clear that the individual mandate was valid because it was a tax. Taxes, as revenue-raising measures, are subject to the Origination Clause requirement. However, the Affordable Care Act originated in the Senate, not the House. *Sissel v. U.S. Department of Health and Human Services* challenges Obamacare on this basis.[33] However, the plaintiff lost his challenge in the D.C. Circuit Court of Appeals — the same court that struck down the federal subsidies in *Halbig v. Burwell* — on July 29, 2014. The court based its ruling on the fact that the individual mandate was not primarily intended to raise revenue and was, therefore, not subject to the requirement that revenue bills begin in the House of Representatives.[34] On October 6, 2014, the plaintiff filed a petition for a rehearing in front of the full court.[35]

If the *Sissel* decision stands, it is worth recognizing that the individual mandate is apparently a penalty, not a tax, for the purposes of the Origination Clause but a tax, not a penalty, for the purpose of Congress' taxing power. Georgetown University law professor Randy Barnett, along with attorneys Erik Jaffe and Lawrence Joseph, filed an amicus brief in support of the plaintiff's motion for a rehearing, contending the court's approach to the Origination Clause was faulty: "Were the motive or policy goals of a bill the touchstone, no revenue measure would ever be subject to the Origination Clause…No tax is levied to raise money for its own sake, and all monies raised are 'incidental' to other government goals."[36]

Another case challenging the Affordable Care Act for violating the origination clause, *Hotze v. Sebelius*, is also on appeal before the Fifth Circuit Court of Appeals.[37]

Other Cases. This is hardly an exhaustive list of Affordable Care Act-related litigation. By one count, over 100 lawsuits have been filed challenging the law.[38] One case, *Coons v. Lew,* has challenged the ACA's creation of an Independent Payment Advisory Board (IPAB, a panel which makes Medicare budgetary recommendations) as an unconstitutional delegation of congressional authority.[39] In September 2014, the Ninth Circuit

dismissed the plaintiffs' claim on procedural grounds. The plaintiffs have appealed to the Supreme Court.[40] A 2012 Cato Institute study by Diane Cohen and Michael Cannon called IPAB an "anti-constitutional and authoritarian super-legislature."[41] While IPAB makes "recommendations," its recommendations become law unless Congress and the president agree to an alternative proposal or the Senate can garner a three-fifths majority to override the IPAB recommendations.[42]

And in addition to its Origination Clause challenge, *Hotze v. Sebelius* alleges the employer mandate violates the Fifth Amendment's Takings Clause, which prohibits the taking of private property for public use without just compensation.[43] In short, Hotze argues the mandate requires employers, under threat of penalty, to purchase ACA-compliant insurance, transferring their wealth (private property) to private insurance companies and the many individuals, such as those with preexisting conditions, whose costs are subsidized by others' premium payments.[44]

Even the House of Representatives has decided to challenge the administration in the courts, claiming a usurpation of Congress' legislative authority based on the executive branch's delay of the employer mandate and its expenditure of funds without appropriations from Congress.[45] The employer mandate — which requires employers with 50 or more employees to provide health insurance to workers or pay a penalty — was scheduled to begin in 2014, but the Obama administration has delayed its enforcement, effectively amending the law passed by Congress. The lawsuit charges, "The ACA does not delegate…to defendant Treasury Department, or to anyone else or any other Executive Branch entity the authority to legislate such changes to the ACA."[46]

The other charge in the House lawsuit centers on Section 1402 of the Affordable Care Act, which requires health insurers to provide reduced deductibles and copays to low-income enrollees; in return, the government can offset those costs by making direct payments to insurers.[47] Despite the fact that Congress never appropriated funds for those offset payments, the Treasury Department reportedly made $4 billion in offset payments to insurers in 2014, thus triggering the challenge from House lawmakers.[48] Both charges claim violations of Congress' sole power to make law under Article I of the Constitution.

Clearly, the law is a long way from being settled.

> *"Congress has sued the executive branch for usurping its Article I power to make law."*

Conclusion. From the reach of congressional power to the scope of religious freedom, litigation over the Affordable Care Act has spanned judicial doctrines, with plaintiffs of all stripes — nuns, small businessmen, states and corporations — challenging the law's many mandates and requirements that make it one of the most intrusive and far-reaching pieces of legislation in American history.

But the many lawsuits surrounding the Affordable Care Act are a reflection not only of the law's complexity and controversy but also of the unprecedented amount of executive action surrounding the legislation. Some of these lawsuits are as much about executive overreach and the rule of law as they are about substance. The Affordable Care Act has been amended via executive fiat 24 times — from delaying the requirement that employers provide employees with health insurance to allowing insurers to reoffer the plans the law required them to cancel. The administration has blatantly ignored the text of the legislation when necessary.[49] As the *Halbig* and *King* cases demonstrate, many of these changes are significant and have allowed the executive branch to reshape entirely what was passed by Congress.[50] How the courts — and primarily, the Supreme Court — ultimately address the administration's unilateral rewriting of the law will greatly influence executive and agency power, not to mention the public's perception and understanding of laws and lawlessness.

Ann Purvis is a senior research fellow with the National Center for Policy Analysis.

Notes

[1] *National Federation of Independent Business v. Sebelius*, Supreme Court Reporter Volume 132, page 2,566. United States Supreme Court, June 28, 2012. Available at http://www2.bloomberglaw.com/public/desktop/document/Natl_Federation_of_Independent_Business_v_Sebelius_No_Nos_11393_1.

[2] "Administration issues final rules on contraception coverage and religious organizations," Press Release, U.S. Department of Health and Human Services, June 28, 2013. Available at http://www.hhs.gov/news/press/2013pres/06/20130628a.html.

[3] Sam Baker, "Court challenges could tear down major pieces of ObamaCare," *The Hill*, June 2, 2013. Available at http://thehill.com/policy/healthcare/302895-court-challenges-could-tear-down-major-pieces-of-obamacare#ixzz38ENIypUC.

[4] "Burwell v. Hobby Lobby," The Becket Fund for Religious Liberty, available at http://www.becketfund.org/hobbylobby/; and Mary Agnes Carey, "Hobby Lobby Ruling Cuts Into Contraceptive Mandate," NPR.org, June 30, 2014, available at http://www.npr.org/blogs/health/2014/06/30/327065968/hobby-lobby-ruling-cuts-into-contraceptive-mandate.

[5] *Burwell v. Hobby Lobby Stores, Inc.*, Civil Action No. 13-354, United States Supreme Court, June 30, 2014. Available at http://www2.bloomberglaw.com/public/desktop/document/Burwell_v_Hobby_Lobby_Stores_Inc_No_13354_and_13356_US_June_30_20.

[6] Josh Lederman, "New Obama birth control fixes for religious groups," Associated Press, August 22, 2014, available at http://bigstory.ap.org/article/obama-offers-new-accommodations-birth-control; Also see "Women's Preventive Services Coverage and Non-Profit Religious Organizations," Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, available at http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womens-preven-02012013.html.

[7] "Little Sisters of the Poor v. Sebelius," Becket Fund for Religious Liberty. Available at http://www.becketfund.org/littlesisters/.

[8] See "Women's Preventive Services Coverage and Non-Profit Religious Organizations," Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services. Available at http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/womens-preven-02012013.html.

[9] Napp Nazworth, "What the Hobby Lobby Decision Means for the Little Sisters of the Poor," *Christian Post*, July 1, 2014, available at http://www.christianpost.com/news/what-the-hobby-lobby-decision-means-for-the-little-sisters-of-the-poor-122556/; and *Little Sisters of the Poor v. Sebelius*, Complaint, Civil Action No. 1:13-cv-02611, United States District Court of Colorado, September 24, 2013, pages 20-21, available at http://www.becketfund.org/wp-content/uploads/2013/09/Little-Sisters-of-the-Poor-and-Christian-Brothers-v.-Sebelius.pdf

[10] Lyle Denniston, "Analysis: The *Little Sisters* case and EBSA Form 700," SCOTUSblog, January 4, 2014, available at http://www.scotusblog.com/2014/01/analysis-the-little-sisters-case-and-ebsa-form-700/; and Oral Argument Schedule for December 8, 2014, U.S. Court of Appeals for the Tenth Circuit, available at https://www.ca10.uscourts.gov/sites/default/files/calendar/events/Dec_8_2014_cal.pdf.

[11] "U.S. Supreme Court Protects Little Sisters of the Poor," Press Release, Becket Fund for Religious Liberty, January 24, 2014, available athttp://www.becketfund.org/littlesisterswin/; and *Little Sisters of the Poor v. Sebelius*, Order in Pending Case, United States Supreme Court, January 24, 2014, available at http://www.supremecourt.gov/orders/courtorders/012414zr_6jgm.pdf.

[12] *Wheaton College v. Burwell*, Order in Pending Case, United States Supreme Court, July 3, 2014. Available at http://www.supremecourt.gov/opinions/13pdf/13a1284_ap6c.pdf.

[13] "Administration takes steps to ensure women's continued access to contraception coverage, while respecting religious-based objections," Press Release, U.S. Department of Health and Human Services, August 22, 2014. Available at http://www.hhs.gov/news/press/2014pres/08/20140822a.html.

[14] Cathy Lynn Grossman, "Catholic bishops, Becket Fund slam newest HHS contraception mandate rules," *Washington Post*, August 22, 2014.

[15] Title 26, U.S. Code, Section 36B(c)(2)(A)(i).

[16] Philip Klein, "It's time for White House to start sweating over legal challenge to Obamacare subsidies," *Washington Examiner*, March 26,

2014, available at http://www.washingtonexaminer.com/its-time-for-white-house-to-start-sweating-over-legal-challenge-to-obamacare-subsidies/article/2546253; Jonathan Adler and Michael Cannon, "Halbig And King: A Simple Case Of IRS Overreach," *Health Affairs,* May 22, 2014, available at http://healthaffairs.org/blog/2014/05/22/halbig-and-king-a-simple-case-of-irs-overreach/; *Halbig v. Sebelius*, United States District Court for the District of Columbia, Brief of Jonathan H. Adler and Michael F. Cannon as Amici Curiae in Support of the Plaintiffs, available at http://object.cato.org/sites/cato.org/files/pubs/pdf/halbig_-_adler_cannon_amicus_brief.pdf; and Jonathan H. Adler and Michael F. Cannon, "Taxation Without Representation: The Illegal IRS Rule to Expand Tax Credits Under the PPACA," *Health Matrix: Journal of Law-Medicine*, Research Paper No. 2012-27, July 16, 2012, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2106789.

17. Sean Davis, "No, Halbig Did Not Gut Obamacare Because Of A 'Drafting Error,'" *Federalist,* July 23, 2014. Available at http://thefederalist.com/2014/07/23/no-halbig-did-not-gut-obamacare-because-of-a-drafting-error/.

18. Kimberly Strassel, "The ObamaCare-IRS Nexus," *Wall Street Journal*, July 24, 2014. Available at http://online.wsj.com/articles/kim-strassel-the-obamacare-irs-nexus-1406244677.

19. *Halbig v. Burwell*, Civil Action No. 14-5018, United States Court of Appeals for the District of Columbia Circuit, July 22, 2014. Available at http://www.cadc.uscourts.gov/internet/opinions.nsf/10125254d91f8bac85257d1d004e6176/$file/14-5018-1503850.pdf.

20. Brent Kendall and Stephanie Armour, "Appeals Courts Issue Conflicting Rulings on Health-Law Subsidies," *Wall Street Journal*, July 22, 2014. Available at http://online.wsj.com/articles/key-section-of-health-care-law-struck-down-by-appeals-court-1406039685?tesla=y&mg=reno64-wsj

21. *King v. Burwell*, Civil Action No. 14-1158, United States Court of Appeals for the Fourth Circuit, July 22, 2014. Available at http://pdfserver.amlaw.com/nlj/king_usca4_20140722.pdf.

22. Supreme Court order granting certiorari in *King v. Burwell*, November 7, 2014. Available at http://www.supremecourt.gov/orders/courtorders/110714zr_n75o.pdf.

23. See the Supreme Court's October Term 2014 Calendar. Available at http://www.supremecourt.gov/oral_arguments/argument_calendars/MonthlyArgumentCalFeb2015.pdf.

24. Michael F. Cannon, "Pruitt v. Burwell: IRS's Illegal ObamaCare Taxes/Spending Suffer Another Defeat In Federal Court," Forbes.com, September 30, 2014.

25. Sarah Hurtubise, "Insurers Alter Obamacare Contracts Out Of Fear That Subsidies Could Be Struck Down," *Daily Caller*, October 21, 2014, available at http://dailycaller.com/2014/10/21/insurers-alter-obamacare-contracts-out-of-fear-that-subsidies-could-be-struck-down/; and Michael F. Cannon, "Insurers' Demand For A 'Halbig' Contingency Plan Demonstrates Need For Immediate SCOTUS Review," Forbes.com, October 21, 2014, available at http://www.forbes.com/sites/michaelcannon/2014/10/21/insurers-demand-for-a-halbig-contingency-plan-demonstrates-need-for-immediate-scotus-review/.

26. Sarah Hurtubise, "Insurers Alter Obamacare Contracts Out Of Fear That Subsidies Could Be Struck Down," *Daily Caller*, October 21, 2014.

27. Michael F. Cannon, "Insurers' Demand For A 'Halbig' Contingency Plan Demonstrates Need For Immediate SCOTUS Review."

28. Sarah Hurtubise, "Insurers Alter Obamacare Contracts Out Of Fear That Subsidies Could Be Struck Down," *Daily Caller*, October 21, 2014.

29. "Exemptions from the fee for not having health coverage," HealthCare.gov. Available at https://www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/.

30. *Halbig v. Sebelius*, Civil Action No. 14-5018, United States Court of Appeals for the District of Columbia Circuit, Amici Curiae Brief of Economic Scholars in Support of Appellees. Available at http://www.cato.org/sites/cato.org/files/documents/aaron_altman_amicus.pdf.

31. *Halbig v. Burwell*, Civil Action No. 14-5018, United States Court of Appeals for the District of Columbia Circuit, July 22, 2014, page 9. Available at http://www.cadc.uscourts.gov/internet/opinions.nsf/10125254d91f8bac85257d1d004e6176/$file/14-5018-1503850.pdf.

32. U.S. Constitution, Article I, Section 7, Clause 1.

[33] "Tax-raising Affordable Care Act started in wrong house of Congress," Pacific Legal Foundation. Available at http://www.pacificlegal.org/cases/Sissel-3-1374.

[34] *Sissel v. Department of Health and Human Services,* Civil Action No. 13-5202, United States Court of Appeals for the District of Columbia Circuit, July 29, 2014. Available at http://www.cadc.uscourts.gov/internet/opinions.nsf/0DAD4A1E3A868F6385257D24004FA91E/$file/13-5202-1504947.pdf.

[35] "Tax-raising Affordable Care Act started in wrong house of Congress," Pacific Legal Foundation. Available at http://www.pacificlegal.org/cases/Sissel-3-1374.

[36] *Sissel v. United States Department of Health and Human Services*, Case No. 13-502, United States Court of Appeals for the District of Columbia Circuit, Brief of Amici Curiae, page 7. Available at http://www.pacificlegal.org/document.doc?id=1678.

[37] David Yates, "Senators Cruz, Cornyn join challenge to ObamaCare," *Southeast Texas Record*, June 10, 2014. Available at http://setexasrecord.com/news/296796-senators-cruz-cornyn-join-challenge-to-obamacare.

[38] "HHS Mandate Information Central," Becket Fund for Religious Liberty. Available at http://www.becketfund.org/hhsinformationcentral/.

[39] Michael W. Lieberman, "9th Circ. Closes More Doors On ACA Challenges," Law360, October 10, 2014. Available at http://www.crowell.com/files/9th-Circ.-Closes-More-Doors-On-ACA-Challenges.pdf.

[40] "Coons v. Lew (IPAB/Federal Health Care Lawsuit)," Goldwater Institute, May 12, 2014, available at http://goldwaterinstitute.org/article/coons-v-lew-federal-health-care-lawsuit; and "Will U.S. Supreme Court Hear Challenge to Obamacare's Independent Payment Advisory Board?" Press Release, Goldwater Institute, November 5, 2014, available at http://goldwaterinstitute.org/article/will-us-supreme-court-hear-challenge-obamacares-independent-payment-advisory-board.

[41] Diane Cohen and Michael F. Cannon, "The Independent Payment Advisory Board: PPACA's Anti-Constitutional and Authoritarian Super-Legislature," Cato Institute, June 14, 2012. Available at http://object.cato.org/sites/cato.org/files/pubs/pdf/PA700.pdf.

[42] Ibid., pages 8-9.

[43] "Coons v. Lew (IPAB/Federal Health Care Lawsuit)," Goldwater Institute, May 12, 2014, available at http://goldwaterinstitute.org/article/coons-v-lew-federal-health-care-lawsuit; and "5th Circuit asked to revive 'Origination Clause' challenge to Obamacare," Thompson Reuters, May 23, 2014, available at http://blog.thomsonreuters.com/index.php/5th-circuit-asked-to-revive-origination-clause-challenge-to-obamacare/.

[44] *Hotze v. Sebelius,* Complaint, United States District Court for the Southern District of Texas, May 7, 2013, page 2. Available at http://www.larryjoseph.com/_Dockets/Hotze-v-Sebelius/13-01318-SDTx-Compl.pdf.

[45] John Boehner, "We're defending the Constitution," *USA Today*, July 27, 2014, available at http://www.usatoday.com/story/opinion/2014/07/27/president-obama-house-speaker-john-boehner-executive-orders-editorials-debates/13244117/; and *United States House of Representatives v. Burwell*, Complaint, Case No. 14-cv-01967, United States District Court for the District of Columbia, 2014, available at http://www.speaker.gov/sites/speaker.house.gov/files/HouseLitigation.pdf.

[46] *United States House of Representatives v. Burwell*, Complaint, Case No. 14-cv-01967, United States District Court for the District of Columbia, 2014, page 17. Available at http://www.speaker.gov/sites/speaker.house.gov/files/HouseLitigation.pdf.

[47] Patient Protection and Affordable Care Act, Section 1402. Available at http://www.law.cornell.edu/uscode/text/42/18071.

[48] *United States House of Representatives v. Burwell*, Complaint, page 11.

[49] "42 Changes to ObamaCare…So Far," Galen Institute, July 18, 2014. Available at http://www.galen.org/newsletters/changes-to-obamacare-so-far/.

[50] Ibid.