



The Daily Dish

The IRA Is Still the Law of the Land

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The [headline](#) - “Federal judge tosses lobbying group’s lawsuit challenging Medicare drug price negotiations” - was eye-catching. Had a federal jurist really decided that the drug provisions of the Inflation Reduction Act (IRA) were constitutional and legit? This I had to hear.

It turns out that it was not all that dramatic. There are numerous lawsuits challenging various aspects of the IRA; this particular one was filed by the Pharmaceutical Research and Manufacturers of America, the Global Colon Cancer Association, and the National Infusion Center Association (NICA). On the merits, it argued that the IRA’s 1900 percent excise tax violated the Eighth Amendment because it is a “crippling” tax with no purpose other than to force drugmakers to accept the government-dictated price. It also argued that the IRA over-delegated authority to the Department of Health and Human Services (HHS) because it denied pharmaceutical companies and the public input on how Medicare negotiations were to be done (i.e., there was no notice-and-comment rulemaking).

The judge instead focused on technicalities, namely that NICA’s claims did not concern the IRA, but rather the Medicare Act. Since NICA is the only plaintiff that is located in the district, the suit was dismissed in its entirety.

So, the IRA grinds along. The makers of the 10 drugs selected for negotiation have recently received the initial price proposals from the government and the public has no idea what the prices are or by what criteria they will be selected. The lack of transparency is part of the rules that HHS set up without soliciting comments from companies, patients, or the public. (There were so-called “listening sessions” that allowed stakeholders to worry aloud about issues, but there was zero response from HHS.) Is delegating HHS this kind of dictatorial authority really wise?

Moreover, if one of the makers of the 10 drugs choose to reject the HHS price “offer” and

suffers the confiscatory excise tax, will that really be constitutional? We do not yet know. It is often noted that the power to tax is the power to destroy, usually as part of a call for caution in the use of taxation. In this case, the point of taxation is destruction. This is wrong no matter where the courts finally land on the constitutionality question.

The IRA has largely fallen from the headlines but is far from gone. The court decision is a reminder that the legal disputes remain unsettled.