



## Study: States Believed Obamacare Restricts Subsidies Even Before Lawsuits

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Several states' decisions on whether to build their own Obamacare exchange as encouraged by the Obama administration came down to the question of whether subsidies would be available on federally-run health-care websites, according to a study from the American Action Forum.

The debate comes back to three highly-controversial lawsuits being battled out in federal courts across the country. Each lawsuit – *Halbig*, *King*, and *Pruitt* – has a unique situation and legal position, but each is based on the premise that the text of the Affordable Care Act gives federal premium subsidies only to customers in state-run exchanges.

Now that the government's been doling out subsidies for ten months, courts are finally getting their say. But some states have already been operating under this assumption since they decided to build their exchange, according to [AAF research](#) that supports the lawsuits.

Idaho was one of the only Republican-controlled states to opt to build its own exchanges — and the availability of subsidies played a key role in state officials' debate over the issue.

“There has been much talk about that idea that federal subsidies would not be available in a federal exchange,” the Idaho Health Insurance Exchange Working Group wrote in its final report before Gov. Butch Otter made the call to create a state exchange. The state also questioned whether subsidies would be available if they opted to build a partnership exchange with the federal government.

Other states took the question of federal exchange subsidies in another route: the employer mandate, which was only legally activated by the availability of premium subsidies.

“While Idaho legislators may have been goaded into establishing an Exchange by the language limiting subsidies to state-based Exchanges, other states were taking their analysis one step further,” AAF analyst Brittany La Couture argues. “Not establishing an Exchange would deprive

the state of federal subsidies; if there are no subsidies, there is no way to trigger the employer mandate penalty.”

This is the basis for the third lawsuit against federal exchange subsidies, *Pruitt v. Burwell*. Oklahoma is suing the federal government for imposing subsidies — and the employer mandate — when it believes the ACA doesn’t allow for it. A federal district court [ruled in Pruitt’s favor](#) earlier this week, and an appeal will likely bring the case before a federal circuit court.

And in Indiana, Governor-elect Mike Pence wrote a letter to then-Gov. Mitch Daniels making an identical argument about subsidies and the employer mandate, according to AAF. Indiana ended up going with the federal exchange, although officials had originally planned to build their own.

That said, the legal brains behind this interpretation of Obamacare’s subsidies, the Cato Institute’s Michael Cannon and Case Western School of Law’s Jonathan Adler, traveled the country in 2012 presenting their research to state governments considering whether to build an exchange or leave it to the feds. In any case, however, some state legislators were evidently convinced.

That could have an important effect in the three ongoing cases. In the *Halbig* case, D.C. circuit Judge Edwards questioned how states could have missed this vital provision. *Halbig* attorneys pointed to eleven Texas Democratic congressmen who bought the argument in 2010 and urged for a national exchange; AAF’s research presents even more cases where states which believed subsidies were restricted.

*Halbig* supporters have latched onto another silver bullet, however. While state officials were likely thoroughly confused by Obamacare’s passage and technicalities and Congress blatantly admitted that it didn’t know what was in the bill it passed, one of Obamacare’s chief architects made the *Halbig* case himself several years before the lawsuits were filed.

Jonathan Gruber, an MIT economist hired by the administration to construct the basis of the health-care law, not only admitted on video several times that subsidies go only to state exchanges, but explained that the restrictions were an attempt to convince states to get on board.

[Gruber’s comments](#), discovered by bloggers Morgan Richmond and John Sexton, indicate that even Obamacare’s author believed at one point that the letter of the law restricts subsidies — and that this is what the law was intended to do.

Gruber, who has signed onto legal briefs in defense of the Obama administration in this case, called his comments a “[speak-o](#).” He now vehemently opposes the idea that subsidies should be doled out to the federal exchange.

Whatever each court decides, it’s clear that some states acted in accordance with *Halbig*’s interpretation of subsidies. The Supreme Court may decide as soon as next week whether or not to take up the case itself.