



## Zoeller defends Indiana's challenge to Obamacare subsidies

By Maureen Groppe  
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WASHINGTON – Indiana's challenge to premium subsidies under the Affordable Care Act is "not about Obamacare," Attorney General Greg Zoeller said Thursday, but rather a defense of state sovereignty.

"It's really about the question of federalism, and what is left of federalism if the federal government has the ability to regulate states under their taxing authority," Zoeller said at a forum held by the libertarian Cato Institute to discuss Indiana's lawsuit and three similar challenges to the law.

The challengers contend that the federal tax credits received by most people who bought insurance this year on the new health exchanges should be available only in states that are running their own exchanges. Indiana and about two-thirds of all states deferred to the federal government.

The Supreme Court could announce as early as Monday if it will hear the challenge that is farthest along — one out of Virginia.

Indiana is still waiting to see if its suit will advance.

U.S. District Judge William T. Lawrence heard oral arguments in October but has not issued his decision.

If the challenges are successful, the insurance markets for those who don't get coverage through an employer or through a government program like Medicare would implode in the states that are not running their own exchanges, said Robert Laszewski, a former insurance executive who is an industry consultant.

That's because not enough people would be able to afford insurance in those states to make the markets work.

"The impact would be just devastating," he said.

More than 100,000 Hoosiers get their insurance through the exchange, and that could double next year.

Zoeller said after the forum that he is not trying to stop all the subsidies in Indiana, just those that would go to any employees of the state, or of the 39 school districts that are part of the challenge.

Although the state and the schools already provide health insurance to full-time employees, their definition of full-time is different than the federal law's definition. School corporations have cut the hours of bus drivers, teachers' aides and others who haven't been getting insurance to make sure they don't work enough hours — 30 a week — to qualify for health care under the law.

By challenging the subsidies, Zoeller is trying to prevent the state and the schools from getting penalized if they don't provide insurance for someone who works, for example, 35 hours a week. That's because the penalties are triggered if a worker, lacking insurance, uses a subsidy to buy individual insurance through the exchange.

"If anybody really thinks that I don't want people in Indiana to get a federal subsidy to buy insurance, they're wrong," Zoeller said.

But if successful, the suits would end the subsidies in most states - and people who lost coverage would be upset. Laszewski said the challengers should be asking themselves, "If we win, then what?"

"The politics of this, if this goes through, are devastating," he said.

Tom Miller, a health care expert at the American Enterprise Institute, said opponents would have to prove that they can provide a better system.

"Some bluffs would be called," he said.

Michael Cannon, director of health policy studies at the Cato Institute and one of the architects of the challenges, said the plaintiffs aren't suing to stop the Affordable Care Act, but to keep it from being incorrectly administered.

"There will be people who desperately need these subsidies who will lose these subsidies," he said. "But if those subsidies are not authorized by statute, should those people continue to get those subsidies?"

The part of the law establishing the formula for calculating the tax credits refers to insurance purchased "through an exchange established by the state."

But the law also said that if a state chose not to run an exchange, the federal government would step in.

The legal argument hinges on whether the overall meaning of the law is clear on whether subsidies are available in both federally run and state-run exchanges. Or, if the law is ambiguous, how much leeway the courts should give the administration to interpret the law.

The challenge to the subsidies that originated in Virginia is to be discussed by the Supreme Court when the justices meet privately Friday to consider pending appeals. A three-judge panel of the 4th U.S. Circuit Court of Appeals unanimously ruled against the challenge in July.

If the court takes no action Monday, when it announces cases it will take up or reject, it could mean that the justices are waiting for the U.S. Court of Appeals for the D.C. Circuit to rehear a different case in December.

A three-judge panel of the appeals court ruled 2-1 in favor of those challengers in July, but the Obama administration successfully asked the full court to reconsider.

If the full court rejects the challenge, that would make it less likely that the Supreme Court would take the case now because there would no longer be a split opinion in the appeals courts.

A federal district judge in Oklahoma ruled against the subsidies in September, but that challenge by Oklahoma's attorney general has not been taken up yet by an appeals court.

The Supreme Court could wait until January to decide whether to accept the case and still have time to issue a decision this term.