

Questions on plaintiffs unlikely to derail health lawsuit

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Despite questions about four challengers' legal right to bring their lawsuit, the Supreme Court probably will not be deterred from deciding whether millions of people covered by the health care overhaul are eligible for the subsidies that make their insurance affordable.

The court will hear arguments in early March over whether the [health law](#) allows people in states without their own insurance markets to receive federal tax credits that reduce coverage costs. The number of uninsured could rise by 8 million if the subsidies disappear, two independent think tanks have estimated.

The challengers, who live in Virginia, object to being forced to get insurance or pay a penalty. If the subsidies were not available, they would not pay a penalty for failing to be insured because even the cheapest health plan would be too costly, according to sworn statements they filed in 2013.

But the Wall Street Journal reported that two are Vietnam veterans who probably could obtain [health care](#) through the Department of Veterans Affairs, meaning they would not be affected by the subsidies issue. The newspaper and Mother Jones reported that a third plaintiff lived in a motel at the time that her address and age were used to calculate the cost of insurance. She now lives elsewhere in the state.

The fourth is a substitute school teacher in Richmond who said she could not recall how she became involved in the case.

The Competitive Enterprise Institute, an anti-regulatory group, is paying for the legal challenges and recruited the four.

The right to get into court on an issue is known as standing.

"The important thing is there has to be someone in the case who is actually injured by the law," said Tara Grove, a law professor at the College of William and Mary in Williamsburg, Virginia. "That is what determines whether the court has jurisdiction." It takes just one person who has been harmed to keep a lawsuit alive, Grove said.

The Obama administration or the justices could ask lawyers for the challengers to address the questions that have been raised about the four. The Justice Department contended that two would have earned too little to be subject to the penalty, but lower courts rejected that argument. The administration did not challenge the presence of any of the four at the Supreme Court.

The court could raise the topic on its own. But given its decision to take up the health law even in the absence of the usual requirement that lower courts be divided on an issue, several legal experts doubted the plaintiffs' situations would derail the case.

"For a test case, these are not the best people one could put forward. It's hard for them to demonstrate that they've had an actual injury," said Robert Dudley, a professor of government and politics at George Mason University in Fairfax, Virginia.

But the court creates its own rules on whether it can reach a decision in a case, Dudley said. "I can cite the rules, but it's up to the court and the court will often take some very shaky cases because an issue is important. I honestly think this won't affect the court much," he said.

Questions about a party's standing seem to become important at the Supreme Court only when a majority is unwilling to settle an issue or the court is unable to produce five votes for any particular outcome. In 2013, the challenge to California's Proposition 8 same-sex marriage ban foundered on the issue of standing. The result left in place a lower court ruling holding that the ban was constitutional.

Jonathan Adler, a [law professor](#) who helped formulate the challenge to the subsidies, said efforts to sink the case over questions about the plaintiffs fit with the desire of the administration and health law supporters to delay a resolution of this case. Adler said they believe that it becomes harder to undo the tax credits the longer people receive them. "It would surprise me if the information in the affidavits wasn't true and there was suddenly any problem for all the plaintiffs in this case," Adler said.

Supporters of the law said questions about the plaintiffs make a broader point about the case.

"To me, what all this confirms is that people who weren't really affected by the statute are bringing ideologically and politically based claims that will substantially affect millions of other people. This is the use of the courts as a political forum," said Robert Weiner, a former Justice Department official who was deeply involved in the 2012 Supreme Court case that upheld the law.

There's nothing unusual about interest groups on the right and the left driving suits and seeking plaintiffs willing to be the faces of a [court](#) fight, Grove said. "You know courts are influenced to some degree by the facts of the case," she said. "It's just good lawyering to make sure you have clients who are sympathetic."

More information: Filing in health care case: tinyurl.com/ks86nmr

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