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## NFIB'S INVOLVEMENT IN THE HEALTHCARE LAWSUIT

### **Background:**

On May 14, 2010 the National Federation of Independent Business, the nation's leading small business advocacy organization, joined the multi-state lawsuit challenging the constitutionality of the Patient Protection and Affordable Care Act. The suit was filed on behalf of NFIB by the NFIB Small Business Legal Center in U.S. District Court for the Northern District of Florida Pensacola Division Case No.: 3:10-cv-91-RV/EMT.

On October 14, 2010 Judge Roger Vinson ruled that NFIB and the states had standing to sue the government in this case. Oral arguments on the merits of the lawsuit were held Dec. 16, and we expect a ruling from Judge Vinson in early 2011.

### **Participating States:**

Florida, South Carolina, Nebraska, Texas, Utah, Louisiana, Alabama, Colorado, Michigan, Pennsylvania, Washington, Idaho, South Dakota, Indiana, North Dakota, Mississippi, Nevada, Arizona, Georgia, Alaska, Ohio, Wisconsin, Maine, Iowa, Wyoming and Kansas

### **Why did NFIB join the lawsuit?**

The mission of NFIB is to promote and protect the rights of small business owners to own, operate and grow their business. The healthcare law directly undermines this core value and NFIB is determined to fight against it, for its members, small business owners nationwide and for future generations of entrepreneurs.

NFIB doesn't consider the Constitution an inconvenience. Increasing healthcare coverage for more Americans is a laudable goal, and one that NFIB supports, but expanding coverage by chipping away at the freedoms afforded to individuals and small business owners in the U.S. Constitution is unacceptable. The individual and employer mandates, onslaught of new taxes, and onerous paperwork requirements in this unconstitutional law will devastate small businesses. NFIB joined this case to repeal the healthcare law so that small businesses are protected from these negative provisions that threaten their viability.

### **Legal claims:**

There are a number of legal claims in the lawsuit, however, NFIB is primarily concerned about the unconstitutionality of the individual mandate. NFIB strongly believes that Congress lacks the authority to force Americans to purchase a private product, such as health insurance, or face paying a penalty.

- *The commerce clause of the U.S. Constitution does not give Congress authority to regulate inactivity.* Requiring every individual to purchase health insurance or pay a penalty is an unprecedented and unconstitutional act of Congress. **This is the first time the government is telling individuals they have to do something simply because they are alive. The military's draft is the only exception to this.** If the individual mandate is upheld, there would be little, if any, limits on what the federal government could require individuals and businesses to do.
- Because the healthcare law is built upon an unconstitutional mandate, NFIB is asking the court to rule that the entire law should be invalidated and the government should be stopped from enforcing this unconstitutional law.

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### Healthcare Facts and Small Business

- Small firms represent 99.7 percent of all employer firms. (SBA)
- Small business produces roughly half of the private Gross Domestic Product (GDP) and creates, on average, about two-thirds of net new jobs annually. (SBA)
- Since 1999 health insurance premiums for small firms have increased by 113 percent. (Kaiser Family Foundation, 2007)
- The nation's smallest firms pay an average of 18 percent more in health insurance premiums for the same benefits than those in the largest firms. (Commonwealth Fund)
- Fewer than half (45 percent) of the smallest firms in the U.S. with three to nine workers offer health benefits to their employees. (Kaiser Family Foundation, 2007)
- About 30 million employees receive their health insurance through a small employer. (EBRI - Data Book, Table 27.4, 2009)
- 3.8 million small business owners who are self-employed are uninsured and will likely have to buy health insurance under the individual mandate. (EBRI, 2009)

### Three Unaffordable Provisions in the Healthcare Law

- 1. Tax Credit:** Often cited as a cure-all for small businesses, the small business tax credit will do little to make purchasing insurance more affordable for small firms. A tax credit that is poorly structured is not going to provide sustainable and long-term relief from high healthcare costs. Fewer than 1.8 million small businesses will qualify for the health insurance tax credit (1.8 million small businesses offer health insurance and pay more than 50 percent of their employees insurance costs). The average payroll limit will likely exclude a significant number of the 1.8 million small businesses from qualifying for the tax credit, especially in certain industries because it doesn't account for those businesses that have average payrolls over \$50,000 and therefore will not qualify for the credit.
- 2. New 1099 Reporting Requirement:** The so-called "corporate reporting" requirement will place a new and enormous tax-filing burden on all small business owners. The cost of complying with the new filing requirements will increase the cost of doing business and falls disproportionately on small business owners.
- 3. Health Insurance Fee:** Messaged as a "health insurance fee," this tax is actually a tax on small business. The new tax, which doesn't expire, is structured as an annual fee on insurers. One thing health insurers (and the CBO) have made clear: new taxes on them mean new costs passed on to customers. Small businesses will be paying for this new tax.

### About NFIB's Small Business Legal Center:

The NFIB Small Business Legal Center is a 501(c)(3) public interest law firm established to be the voice for small businesses in the nation's courts and the legal resource for small business nationwide.

For more information visit [www.nfib.com/hclawsuit](http://www.nfib.com/hclawsuit).

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