For more information visit www.nfib.com/lawsuit

Contact: Cynthia Magnuson 202-314-2036

Backgrounder on NFIB's Lawsuit Challenging the Constitutionality of the Healthcare Law Currently Before the U.S. Supreme Court

The Patient Protection and Affordable Care Act (PPACA) imposes an extraordinary and unprecedented duty on Americans to purchase costly and unwanted health insurance. This individual mandate exceeds the powers given to Congress by the Constitution, therefore threatening the individual liberty of every American.

Accordingly, the National Federation of Independent Business (NFIB) and 26 states have challenged the constitutionality of the healthcare law. Having prevailed in a federal district court, on August 12, 2011, the 11th Circuit U.S. Court of appeals also ruled that the individual mandate is unconstitutional. NFIB was disappointed that the appellate court did not take the extra step and find, not only, that the individual mandate is unconstitutional, but that it cannot be severed from the law. Still, the ruling was a true victory for all Americans.

NFIB's case is now pending before the U.S. Supreme Court. The Court agreed to hear the case on November __, 2011. Oral arguments will be held this spring and a decision will be issued by the Court on or before June 30, 2012.

NFIB's Arguments to the Supreme Court

The case brought by NFIB and the state co-plaintiffs is rooted in the Commerce Clause. A mandate that compels individuals to purchase health insurance is not a permissible regulation of commerce. The government is arguing that the individual mandate regulates the commercial activity of an individual obtaining healthcare without first obtaining health insurance. However, the reality is that the mandate simply forces all uninsured individuals to purchase insurance, regardless of whether an individual actually obtains healthcare, let alone obtains uncompensated care.

1. **The individual mandate is not justified by the Constitution's Commerce Clause, because forcing individuals to buy health insurance is not a regulation of commerce.**

2. **The individual mandate cannot be justified by the Constitution's Necessary and Proper Clause as an avenue for implementing PPACA's regulation of insurers.**

    a. The individual mandate simply serves to counteract the negative effects of the law on insurers—an unconstitutional means to an illegitimate end.

    b. The mandate is not a proper means to execute PPACA—the mandate forces economically disadvantageous contracts on unwilling individuals to subsidize third parties in traditional areas of state regulation.

3. **Forcing all individuals to purchase health insurance is not a permissible means of regulating those uninsured individuals who obtain uncompensated healthcare.**

a. The government claims the mandate is a regulation of the economic activity of obtaining healthcare while uninsured. In reality, the mandate regulates the status of being uninsured, regardless of whether healthcare is obtained.

4. **Forcing individuals to purchase health insurance exceeds Congress' power to tax.**

   a. Both PPACA's text and longstanding legal precedent refute the government's argument that the mandate is a tax. Fining the uninsured for violating the mandate is not a tax, but a regulatory penalty for noncompliance.

   b. Congress explicitly said that the mandate is not a tax.

5. **The individual mandate cannot be severed from PPACA; the entire law must be struck down.**

   a. The mandate is indisputably essential to PPACA. The government itself argues that the mandate is "integral" to PPACA's insurance-industry regulations.

   b. PPACA, or anything resembling its current form, would not have been enacted by Congress without the mandate and its related insurance regulations.

   c. It is impractical and far beyond the judiciary's role to review several hundred sections of PPACA and determine which sections could survive without the mandate.

   d. Ultimately, the mandate is the heart of PPACA and the law cannot survive without it. Therefore, because PPACA is unconstitutional at its core, the entire healthcare law should be declared null and void.

Background

On May 14, 2010, NFIB, the nation's leading small business advocacy organization, joined the multi-state lawsuit challenging the constitutionality of PPACA. 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. On January 31, 2011, the district court ruled that Congress exceeded its authority in enacting the individual mandate and ruled that since the mandate cannot be severed from the law, the entire law must be overturned.

On August 12, the 11th Circuit US Court of Appeals ruled that the individual mandate is unconstitutional because the mandate exceeds Congressional authority. This was the first court of appeals decision striking down the mandate and created a circuit split with the recent Sixth Circuit going the other way. The 207-page opinion was jointly written by Chief Judge Joel Dubina, an appointee of President George H.W. Bush, and Circuit Judge Frank Hull, an appointee of President Bill Clinton, and a major defeat for the Obama Administration.

For more information visit www.nfib.com/lawsuit

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 NFIB joined the lawsuit

The mission of NFIB is to promote and protect the right 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.

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.

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/lawsuit.