

ObamaCare vs. Small Business

Why the National Federation of Independent Business supports the constitutional challenge to the health-insurance mandate.

By DAN DANNER

For decades small business owners have been telling anyone who would listen that they need health-care reforms that lower costs. But President Obama and his allies in Congress pushed through a law that will dramatically raise health-care costs and increase the overall cost of doing business. What's more, the federal mandate requiring that nearly all U.S. residents carry health insurance by 2014 seriously threatens our basic constitutional rights and individual freedoms.

This is why the National Federation of Independent Business (NFIB), on behalf of small business owners nationwide, has joined the lawsuit with 20 states mounting a constitutional challenge to this devastating new health-care law.

This law is death by a thousand cuts for small business owners. According to the Congressional Budget Office (CBO), the overhaul will cost about \$115 billion more than first projected, bringing the total to more than \$1 trillion. Small businesses will also now have to deal with an onslaught of new taxes and burdensome paperwork.



David Klein

Supporters say the law will significantly help small businesses, focusing on the much-talked about small business tax credit. But the reality is that the tax credit is complex and very limited because firms qualify based on number of employees and average wages. **The credit, which is only available for a maximum of six years, puts small business owners through a series of complicated "tests" to determine if they qualify and how much they will receive. Fewer than one-third of small businesses even pass the first three (of four) tests to qualify:** have 25 employees or less, provide health insurance, and pay 50% of the cost of that insurance.

More importantly, the credit is temporary, but health-care cost increases are permanent. When the credit ends, small businesses will be left paying full price. **They'll also be forced to deal with all sorts of new taxes, fees and mandates buried in this 2,000-page law.**

One of these new taxes is a so-called health insurance fee. It's a massive \$8 billion tax (that escalates to \$14.3 billion by 2018) on insurance companies based on their market share. This tax will be paid almost exclusively by small businesses and individuals because the law specifically excludes self-insured plans, the plans that most big businesses and labor unions offer, from having to pay the tax.

While the health insurance fee was designed to "go after" large health-insurance companies, the reality is that insurers aren't simply going to absorb this new tax; it will be passed on to customers. Specifically, it will be passed on to the plans that 87% of small businesses and individuals buy. A study by the Federal Policy Group published last October found that the amount of taxes passed on to the typical family of four could be \$500 or more per year.

Adding insult to injury, the law also requires all businesses to issue IRS 1099 forms to document every business-to-business transaction of \$600 or more. To someone who's never run a business, this may sound like nothing. But Congress hopes to raise \$17 billion in added tax revenues and fees from this new mandate. That's hardly nothing.

The burden of raising that expected revenue falls again on the backs of small business owners who already suffer under unmanageable federal paperwork burdens. What's worse, this new reporting requirement has absolutely nothing to do with health-care reform. It was included to help pay for the nearly trillion-dollar price tag of the bill. Why should small business owners have to pay for a bill that causes them so much harm? They shouldn't, which is why NFIB is fighting against this law in court.

We also believe the health-care law is unconstitutional. The centerpiece of this law is an individual mandate requiring virtually all Americans to purchase health insurance or pay a fine. We strongly believe that the Commerce Clause of the Constitution does not give Congress the power to force individuals to purchase a private product or face a fine. Requiring individuals to purchase something simply because they are alive is unprecedented. The military draft is the only exception to this, and Congress's authority to enact the draft is provided for in the Constitution, unlike this mandate.

The individual mandate imposes unique burdens on those small business people, including many NFIB members, who are sole proprietors and the least able to afford it. These independent men and women rarely can afford to distinguish between their own "personal" resources and those of their business. The mandate will now force them to spend money on insurance they may not want, rather than using those funds to run and grow their businesses.

If this law is not overturned, then all citizens should be prepared for the long arm of the federal government to reach even further into how we choose to live our lives, spend our money and pursue our own definitions of happiness.

Health-care reform is too important to be based on an unconstitutional mandate. Small businesses need the judicial system—if necessary, the U.S. Supreme Court—to overturn this law to protect them from having to pay for a statute that causes them more harm than good and ultimately infringes on all Americans' personal freedoms.

Mr. Danner is president and CEO of the National Federation of Independent Business (NFIB), a nonprofit, nonpartisan organization that works to promote and protect the rights of small businesses to own, operate and grow their businesses.