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Congress of the United States
U.S. House of Representatives
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515–6315

June 28, 2012

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20502
Via Facsimile: 202.456.1573

Re: National Federation of Independent Business, et al. v. Kathleen Sebelius, Secretary of Health and Human Services, et al.

Dear President Obama:

As the Chairman of the House Committee on Small Business, and following the United States Supreme Court's decision in National Federation of Independent Business, et al. v. Kathleen Sebelius, Secretary of Health and Human Services, et al,[1] I am very concerned about the future of small businesses. I want to reiterate the concerns of thousands of small business owners who have told this Committee in innumerable hearings, forums, roundtables, meetings and emails that the Patient Protection and Affordable Care Act[2] is severely hindering job creation and economic growth.

Small businesses are disproportionately burdened by statutory and regulatory changes. In fact, according to a study commissioned by the Small Business Administration's Office of Advocacy, in 2008, small businesses faced an annual regulatory cost of $10,585 *per employee*, which is 36 percent higher than the regulatory cost facing large firms (emphasis added).[3] While large employers with many employees and customers can spread the cost of compliance over a great number of individuals, small employers are limited in their ability to do so. The cost of complying with the health care law's new and higher taxes and a myriad of regulations is particularly steep for small business owners. This is at the critical time when we are depending on these entrepreneurs to reignite our economy and promote significant job growth.

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[1] U.S. Supreme Court Case No. 11-393, *available at* http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-393.htm.

[2] Pub. L. No. 111-148, 124 Stat. 119 (2010) as amended by as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 109 (2010)

[3] NICOLE V. CRAIN AND W. MARK CRAIN, THE IMPACT OF REGULATORY COSTS ON SMALL FIRMS, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION iv, 3 (Sept. 2010), *available at* http://www.sba.gov/sites/default/files/rs371tot.pdf.

In January, 2011, 130 economists signed a letter to Speaker Boehner, Majority Leader Reid, Minority Leader Pelosi and Minority Leader McConnell urging the repeal and replacement of the law. The letter said the law is "fiscally dangerous," will "add $1 trillion to government spending over the next decade"[4] and "could potentially raise the federal budget deficit by more than $500 billion during the first ten years and by nearly $1.5 trillion in the following decade."[5] As we have seen, projections of such massive increases in federal spending and deficits, along with the law's mandates, penalties and billions in new and higher taxes, has caused small business owners to pull back any plans to hire or expand.

The Committee has held several hearings on the effect of the health care law on small businesses and job creation. Numerous small business owners have testified at these hearings that the law is a financial and administrative burden that will cause them to defer hiring and investment in their companies. For example, at a March 16, 2012 Subcommittee field hearing in Greenwood, Colorado, Mark Rogers, President and Chief Operating Officer of Roaring Fork Restaurants in Castle Rock, CO, said, "The effects of the new law are anti-small business growth, by inadvertently discouraging many franchisees from owning and operating multiple locations, creating a competitive disadvantage for franchisees who do own more than one or two locations and barriers to entrepreneurs who are looking to capitalize on the franchise business model to grow their business and hire more workers. The real irony here is that in the name of expanding health care coverage, Congress and the administration are making it more difficult for workers to enter and eventually be promoted in the workforce at a time when we need job growth."[6]

Other witnesses have echoed Mr. Rogers' statement. John W. Leevers, President of Leevers Supermarkets, Inc. In Franktown, CO, said, "The Affordable Care Act had placed our small business between a rock and a hard place. The 'Shared Responsibility' provision forces us to try and decide between two bad decisions. We can choose to continue the provision of health benefits and be saddled by unsustainable costs resulting from a mandated increase not only in the number of beneficiaries we must cover under our plans, but also the richness of the benefit we must offer. The alternative, discontinuing coverage, is equally problematic, and forces us to ignore time tested justifications for providing benefits that will result in severe employee relations issues. Thus, unless significant changes are made to the Affordable Care Act, it stands to do irreparable damage to many small businesses."[7]

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[4] Letter from 130 economists to John Boehner, Speaker of the House, Harry Reid, Senate Majority Leader, Nancy Pelosi, House Minority Leader, and Mitch McConnell, Senate Minority Leader (January 18, 2011), *available at* http://americanactionforum.org/sites/default/files/Final%20Open%20Letter_Impact%20of%20Healthcare%20Repeal_1182010.pdf.

[5] Letter from 130 economists to John Boehner, Speaker of the House, Harry Reid, Senate Majority Leader, Nancy Pelosi, House Minority Leader, and Mitch McConnell, Senate Minority Leader (January 18, 2011), *available at* http://americanactionforum.org/sites/default/files/Final%20Open%20Letter_Impact%20of%20Healthcare%20Repeal_1182010.pdf.

[6] *The Health Care Reform Law: Its Present and Future Impact on Small Businesses and Job Creation: Hearing Before the House Committee on Small Business Subcommittee on Investigation, Oversight and Regulations,* 112th Cong. ___, 2012 (statement of Mark Rogers, President and Chief Operating Officer, Roaring Fork Restaurants, Castle Rock, CO), *available at* http://smbiz.house.gov/UploadedFiles/Rogers_Testimony.pdf.

[7] *The Health Care Reform Law: Its Present and Future Impact on Small Businesses and Job Creation: Hearing Before the House Committee on Small Business Subcommittee on Investigation, Oversight and Regulations,* 112th Cong. ___, 2012 (statement of John W. Leevers, President Leevers Supermarkets, Inc., Franktown, CO), *available at* http://smbiz.house.gov/UploadedFiles/Leevers_Testimony.pdf.

Similarly, Matt Tynan, Secretary and Treasurer, Tynan's VW and Tynan's Nissan, Aurora, CO, testified that "Instead of trying to do the best by our employees, [the decision on health care] will become a simple math calculation. Is the fine less than providing coverage for our people?"[8] He went on to ask, "How do we fix this problem? The simple solution is a complete repeal of the entire healthcare reform bill, replacing it with an affordable system that preserves consumer choice while not sacrificing quality care."[9]

Other hearings have provided similar testimony. At a July 28, 2011 Subcommittee hearing, Brian Vaughn, Owner & President, Nearly Famous, Inc., Douglas, Georgia, testified that "[O]ur plan has been to expand and open a new store by reinvesting some of our profits back into our business. Sadly though, given the harm the new health care law is going to reek [sic] on our business, as well as the uncertainty and the pain caused by other regulations, I fear that neither of these dreams not my plans to achieve them will be possible. In fact, my worry is that everything I have worked for will be for not [sic] and may be wiped out by this new health care law."[10]

At a February 9, 2011 Committee hearing, Seth Shipley, Owner, Shipley's Diamonds and Fine Jewelry, Hampstead, MD, testified, "I began this business in 1991 in my parent's [sic] basement. I have struggled and sacrificed to make my business what it is today. I received no government loans or subsidies. I believe I have made a positive contribution to the economy in my town, my state, and ultimately, my nation. I have worked hard and been blessed with a small part of the American dream. If this law takes effect next year, I believe that dream will vanish for me and tens of thousands of small business owners across our great nation."[11]

Small business owners have told us through the Committee's interactive web portal, "Open Mic," that the law is an enormous deterrent to hiring and expansion.[12] For example, Hugh Smith of Firelock in Kutztown, PA, said, "The projected costs of the new healthcare plan have made us reluctant to hire part time or full time workers."[13] Patricia Vanderpool of EAP Lifestyle Management in Daphne, AL, said, "[B]ecause of the [law's] cumbersome regulations, we strive to stay under the 50 employee mark. We provide services nationally and globally, and I find it sad to note that it is easier to do business in China than in the USA!"[14] David Mower of NN Wifi, LLC in Kilmarnock, VA, said, "Employment taxes, healthcare mandates and employment reports are a significant dis-incentive to create new positions and hire additional employees."[15] Victor Garcia with Nessa Engineering Experts,

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[8] *The Health Care Reform Law: Its Present and Future Impact on Small Businesses and Job Creation: Hearing Before the House Committee on Small Business Subcommittee on Investigation, Oversight and Regulations,* 112th Cong. ___, 2012 (statement of Matt Tynan, Secretary and Treasurer, Tynan's VW and Tynan's Nissan, Aurora, CO), *available at* http://smbiz.house.gov/UploadedFiles/Tynan_Testimony.pdf.
[9] *Id.*
[10] *Buried in Paperwork: A 1099 Update: Hearing Before the House Committee on Small Business,* 112th Cong. ___, 2012 (statement of Brian Vaughn), *available at* http://smbiz.house.gov/UploadedFiles/Vaughn_Testimony.pdf.
[11] *Buried in Paperwork: A 1099 Update: Hearing Before the House Committee on Small Business,* 112th Cong. ___, 2012 (statement of Seth Shipley, Owner, Shipley's Diamonds and Fine Jewelry, Hampstead, MD), *available at* http://smbiz.house.gov/UploadedFiles/Shipley_Testimony_2_9_11.pdf.
[12] HOUSE COMMITTEE ON SMALL BUSINESS, TWO YEARS LATER: WHAT SMALL BUSINESS OWNERS ARE SAYING ABOUT OBAMACARE,OPEN MIC WEBSITE, March 22, 2012, *available at* http://smallbusiness.house.gov/News/DocumentSingle.aspx?DocumentID=286450.
[13] *Id.*
[14] *Id.*
[15] *Id.*

LLC, Borger, YX, said, "I am concerned of Obamacare forcing me to obtain health insurance which I cannot afford and may eventually cause me to close my business down."[16]

And, as you know, the law's small business health care tax credit offers little help to the majority of small firms, because most fall outside the credit's eligibility requirements. Estimates of the number of eligible employers ranged from 1.4 million to 4 million.[17] However, a recent Government Accountability Office report, which I requested, found that only 170,300 employers claimed the credit in 2010, and of those, only 28,100 were able to claim the full credit.[18]

Finally, despite the Administration's repeated promises that health care costs would fall, a new Administration report[19] projects that for 2011 through 2021, national health spending will grow at an average rate of 5.7% annually, and the Affordable Care Act is projected to add about $478 billion in cumulative health spending.[20] Although we were assured the law would lower premiums, the report predicts heath insurance premiums will increase 4.1 percentage points higher than they would have in the absence of health reform.[21] Equally troubling, by 2021, about fifty cents of every dollar spent on health care is expected to be financed by the government.[22]

With its mandates, new and higher taxes, and thousands of pages of regulations, the health care law is already having a deleterious impact on small businesses, jobs and economic growth. As you might expect, I support full repeal of the law. Moreover, I strongly believe that we must give small businesses relief from the countless other mandates, taxes, laws and regulations that are weighing on them. Only then will our nation's best job creators be able to thrive, offer affordable health insurance, and grow their businesses.

Sincerely,

Sam Graves
Chairman

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[16] *Id.*

[17] GAO, SMALL EMPLOYER HEALTH CARE TAX CREDIT: FACTORS CONTRIBUTING TO LOW USE AND COMPLEXITY 9 (2012), *available at* http://www.gao.gov/products/GAO-12-549.

[18] *Id.*

[19] SEAN P. KEEHAN, GIGI A. CUCKLER, ANDREA M. SISKO, ANDREW J. MADISON, SHEILA D. SMITH, JOSEPH M. LIZONITZ, JOHN A. POISAL AND CHRISTIAN J. WOLFE, OFFICE OF THE ACTUARY, CENTERS FOR MEDICARE AND MEDICAID SERVICES, NATIONAL HEALTH EXPENDITURE PROJECTIONS: ANNUAL GROWTH UNTIL COVERAGE EXPANDS AND ECONOMIC GROWTH ACCELERATES, HEALTH AFFAIRS, *available at* http://content.healthaffairs.org/content/early/2012/06/11/hlthaff.2012.0404.full.

[20] *Id.*

[21] *Id.*

[22] *Id.*