Protecting Small Business from the Effects of Obamacare: Opportunities after *King v. Burwell*

Statement for the Record

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"King v. Burwell Supreme Court Case and Congressional Action that can be taken to Protect Small Businesses and Their Employees"

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Chairman Vitter and members of the committee, thank you for the opportunity to submit written comments about the challenges small businesses face from Obamacare and choices that Congress must make after the Supreme Court rules in the *King v. Burwell* case. I am John R. Graham, a senior fellow at the National Center for Policy Analysis. We are a nonprofit, nonpartisan public policy research organization dedicated to developing and promoting private alternatives to government regulation and control, solving problems by relying on the strength of the competitive, entrepreneurial private sector.

A number of independent sources confirm that Obamacare is harming small businesses. According to a paper published by the American Action Forum last September, the increased burden of regulations and rising health insurance premiums have reduced pay in firms with 20 to 99 workers by at least $22.6 billion annually, and has led to 350,000 job losses. Employees who kept their jobs have seen a decrease of pay of just under $1,000 annually.

Relief for the smallest businesses alone is not helpful because it makes it more expensive to grow. Although businesses with fewer than 50 employees are exempt from the employer mandate to offer their workers so-called "affordable" government-approved policies, this only imposes a high marginal cost of hiring a 50th worker.

Morgan Stanley found that rates in the small group market have jumped 11 percent last year. Many other surveys of employers conducted since the Affordable Care Act was passed have discovered similar findings, as reviewed by my NCPA colleague, Devon Herrick, last June. Since then, more damning evidence has come out.

For example, the New York Fed August 2014 survey of businesses in that state reported 20 percent of employers expected to increase the proportion of part-time workers due to Obamacare, versus only five percent who expected to go the other way. About 22 percent planned to cut wages and benefits, versus only six percent who planned to increase them. With respect to benefits, 68 percent (two thirds) of business leaders planned to cut the range of services covered or size and breadth of their provider networks. Customers will also pay: 25 percent (one quarter) of business leaders admitted that they will raise prices because of Obamacare, versus only two percent who say they will cut prices.

The Administration has implicitly accepted the case that the employer mandate harms businesses by delaying it twice, until January 1 2016 for businesses with 50 to 99 employees. In other words, we have not yet seen the worst of Obamacare hit small businesses.

Perhaps more insidious is the way Obamacare punishes workers who want to work longer hours. Obamacare tax credits phase out as household income increases. The harmful effect on workers' willingness to earn more money is reflected in the Congressional Budget Office's conclusion that Obamacare would reduce employment by 1.5 percent in 2017 and 2.0 percent in 2024 (amounting to 2 million to 2.5 million jobs). As the CBO summarized its conclusion: "Also, the ACA's subsidies effectively boost the income of recipients, which will lead some of them to decide they can work less and still maintain or improve their standard of living." Economist Casey Mulligan has shown that increasing hours will actually ***reduce*** take-home pay for millions of workers (*Side Effects: The Economic Consequences of the Health Reform*, JMJ Economics, 2014). This obviously hurts small businesses' ability to grow.

Further, even if small business do not buy health insurance from Obamacare exchanges, they will have to pay for them. The federal government has no more authority to make grants to states to establish and operate exchanges. These exchanges are expensive to operate. So, states will have to raise taxes to pay for their exchanges. Some states are taxing health insurance premiums, while others are looking to other sources.

Fortunately, an opportunity to mitigate this problem may be at hand. This summer, the Supreme Court will decide *King v. Burwell*, a case through which the plaintiffs seek to stop the Administration from paying tax credits to health insurers operating in 36 states with federally facilitated exchanges. This would cause premiums in those states to increase dramatically. Although the employer mandate would also be permanently relieved in those states as a result of a decision for the plaintiffs, their residents and businesses would still be paying federal taxes that funded tax credits in other states. This outcome would be unfair and politically untenable.

Thus, there is an opportunity to amend the Affordable Care Act to minimize its harm to small businesses. Obviously, it cannot repeal the entire ACA, because President Obama must sign any amendment this summer.

Amendments that would specifically help small businesses are:

- Complete elimination of the employer mandate nationwide.
- Restorimg insurance regulation to the states by eliminating the Secretary of Health and Human Services' power to define "Essential Health Benefits" and other Obamacare regulations such as Minimum Loss Ratio for health insurers (which reduce the number of insurers competing).
- The most important regulation to eliminate is the age band of 3:1. Section 1201 of Obamacare gives the Secretary the power to dictate this, which means an insurer cannot charge a 64-year old more than three times as much as a 19-year old. A more accurate age band would be about 5:1. This artificially increases the premiums of young people, making it more expensive to hire them.
- Flatten Obamacare's tax credits as much as possible to reduce the marginal income tax "cliffs" that harm the incentive to work.
- Eliminate the mandate for individuals to buy health insurance through an exchange in order to have their premium reduced by a tax credit. This will allow state governments to get out of the health insurance exchange business and eliminate the risk that small businesses will be taxed to finance their operations.

Thank you for the opportunity to submit these written comments.