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Darrell Issa (CA-49), Chairman

Impact of President Obama's Health Care Law on Jobs

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Impact of President Obama's Health Care Law on Job Creators

Complying with the requirements of the new law will force entrepreneurs to invest less into growing their businesses. . . .[1] *I see a structure designed to discourage economic growth among small and midsized companies. At a time when our government should be doing everything in its power to encourage job growth and recovery, I see a federal requirement that creates disincentives for higher wages, new hiring and robust employee benefits. This law will direct my business decisions in such a way that forces me to devote more of our capital investment resources toward operating costs rather than growth.*[2]

Gail Johnson, President/CEO, Rainbow Station, Inc.

Let me state this bluntly: this law will cost my company more money than we make.[3]

Scott Womack, President and Owner, Womack Restaurants

[M]y worry is that everything I have worked for will be for not and may be wiped out by this new health care law. At the very least, I will be forced to adjust my number of full time staff and the economic opportunity that accompanies full time employment, in order to avoid the draconian provisions in the law.[4]

Brian Vaughn, Owner and President, Nearly Famous, Inc.

[T]he ironically named Patient Protection and Affordable Care Act presents all American businesses with huge regulatory and economic hurdles that inhibit economic growth. . . .[5] *Apart from the actual burden of this legislation, it has contributed to the sense – which is quite common among our franchisees – that their own government has no idea how businesses operate and no sensitivity whatsoever to the challenges they and their consumers are confronting in these difficult times.*[6]

Andrew Puzder, CEO of CKE Restaurants Inc.

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[1] Gail Johnson, President/CEO, Rainbow Station, Inc., Hearing Testimony for Committee on Education & Workforce Hearing "Impact of the Health Care Law on the Economy, Employers, and the Workforce," February 9, 2011 at 5.

[2] *Id.* at 10.

[3] Scott Womack, President and Owner, Womack Restaurants, on behalf of the US Chamber of Commerce, Hearing Testimony for "Health Care Law's Impact on Jobs, Employers, and the Economy," Ways and Means Committee, January 26, 2011 at 4.

[4] Brian Vaughn, Owner and President, Nearly Famous, Inc., on behalf of the US Chamber of Commerce, Hearing Testimony for "Small Business and PPACA: If They Like Their Coverage, Can They Keep It?," The House Committee on Small Business Subcommittee on Healthcare and Technology, July 28, 2011 at 6.

[5] Andrew Puzder, CEO of CKE Restaurants Inc., Hearing Testimony for "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, July 28, 2011 at 15.

[6] *Id.* at 21.

Two years after the passage of the Patient Protection and Affordable Care Act (PPACA), commonly called "Obamacare", it is clear that then-House Speaker Nancy Pelosi's (D-CA) declaration that we'd "have to pass the bill so you can find out what's in it"[7] was a foreboding prophesy. Just last week, the nonpartisan Congressional Budget Office (CBO) upped the cost of Obamacare to $1.8 trillion over the next decade.[8] CBO now predicts that about 11 million Americans will lose their employer-provided health insurance because of Obamacare,[9] and a McKinsey and Company survey of employers suggests that up to four times as many employees may lose coverage.[10] In direct violation of President Obama's promise not to raise taxes on members of the middle class, Obamacare includes $510 billion in new taxes in just the next decade.[11] But of all Obamacare's faults, perhaps the worst is that Obamacare discourages businesses from growing and hiring more workers.

For our nation's job creators, Obamacare's new taxes and excessive regulations are exacerbating the country's job crisis. The 10,000 pages of regulations already produced through Obamacare—not to mention the thousands of pages still being written—have contributed to significant uncertainty among business owners. According to a Chamber of Commerce survey, 74 percent of small businesses say the President's health care law makes it more difficult to hire additional employees.[12] Obamacare's stifling effect on businesses and job growth will only get worse as the law's large taxes, mandates, and penalties are fully implemented over the next several years. Many of Obamacare's mandates and higher taxes are aimed at businesses and will directly raise costs for businesses and make workers more expensive. CBO estimates that Obamacare will lead to 800,000 fewer Americans working in the economy by the end of the decade.[13] This staff report explains the reasons Obamacare discourages job growth, in large part by highlighting the Congressional testimony given by business owners about the barriers to investment and job growth erected by the President's health care law.

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[7] http://www.youtube.com/watch?v=hV-05TLiiLU

[8] According to CBO estimates, the gross cost of the coverage provisions will be $1.762 trillion between 2012 and 2022. Congressional Budget Office, "Updated Estimates for the Insurance Coverage Provisions of the Affordable Care Act," March 2012 available at http://www.cbo.gov/sites/default/files/cbofiles/attachments/03-13-Coverage%20Estimates.pdf.

[9] Congressional Budget Office, "CBO and JCT's Estimates of the Effects of the Affordable Care Act on the Number of People Obtaining Employment-Based Health Insurance," March 2012 available at http://www.cbo.gov/sites/default/files/cbofiles/attachments/03-15-ACA_and_Insurance.pdf.

[10] Shubham Singhai, Jeris Stueland, and Drew Ungerman, "How US health care reform will affect employee benefits," McKinsey Quarterly, June 2011, available at https://www.mckinseyquarterly.com/Health_Care/Strategy_Analysis/How_US_health_care_reform_will_affect_employee_benefits_2813.

[11] Congressional Budget Office, "Updated Estimates for the Insurance Coverage Provisions of the Affordable Care Act," March 2012 available at http://www.cbo.gov/sites/default/files/cbofiles/attachments/03-13-Coverage%20Estimates.pdf.

[12] United States Chamber of Commerce, "United States Chamber of Commerce Q4 Small Business Study," available at http://www.uschambersmallbusinessnation.com/uploads/Chamber%20Q4_Summary%20Memo_Final%20.pdf.

[13] J. Lester Feder and Kate Nocera, "CBO: Health law to shrink workforce by 800,000," POLITICO PRO, February 10, 2011 available at http://www.politico.com/news/stories/0211/49273.html.

I. Overview of the Health Care Law's Job Killing Provisions

> *We opposed the misnamed Patient Protection and Affordable Care Act because it failed to rein in costs, and instead increased them, while loading job creators with mandates, regulations, new taxes and burdens. . . .*[14] *[T]he anxiety, complexity, disorder, uncertainty and overall peril the new health care law and its array of mandates . . . create obstacles to success and, by doing so, increase[s] the likelihood of failure. These forces combine to make future investments in growing our business less and less attractive.*[15]
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> Brett Parker, Vice Chairman and CFO of Bowlmor Lanes

Prior to its passage, President Obama emphasized that his health care law would increase the number of jobs in the economy by reducing the amount that Americans spend for health care. "Altogether," President Barack Obama said, "our cost-cutting measures would reduce most people's premiums, and bring down our deficit by more than $1 trillion over the next two decades."[16] President Obama argued that his law would decrease what Americans pay for health care, which would leave households with greater income to spend and would increase jobs throughout the rest of the economy.

Unfortunately, nonpartisan experts believe President Obama was wrong; they do not find that the law will reduce the pressure that health care expenses put on businesses, workers, and taxpayers. According to the Centers for Medicare and Medicaid Services (CMS), the PPACA will increase the amount Americans spend on health care.[17] Government actuaries now estimate the growth in the net cost of health insurance will increase by 14 percent in 2014 (the year the main components of the law are implemented) – compared to 3.5 percent if the PPACA had never passed.[18]

The PPACA has two big spending components – a massive Medicaid expansion to all individuals below 133 percent of the federal poverty level[19] and expensive subsidies for individuals below 400 percent of the federal poverty level to purchase government-approved health insurance.[20] In order to finance all this new spending, the PPACA includes a plethora of

[14] Brett Parker, Vice Chairman and CFO, Bowlmor Lanes, Hearing Testimony for Committee on Education & Workforce Hearing "The Pressures of Rising Costs on Employer Provided Health Care," March 10, 2011 at 3.
[15] *Id* at 5.
[16] President Obama's Health Reform Rally Remarks, March 19, 2010 available at http://www.kaiserhealthnews.org/Stories/2010/March/19/obama-virginia-health-reform-remarks-transcript-document.aspx.
[17] Sean P. Keehan et al., "National Health Spending Projections Through 2020: Economic Recovery and Reform Drive Faster Spending Growth," Health Affairs, July 2011.
[18] *Id.*
[19] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152.
[20] *Id.*

new taxes, including an increase in the Medicare payroll tax, a new tax on investment income, a health insurance tax, a tax on medical device manufacturers, a tax on drug manufacturers and importers, and a tax on tanning salons.[21] The PPACA also contains mandates requiring that most people maintain government-approved health insurance[22] and requiring that many employers offer government-approved health insurance to their workers.[23] Individuals and employers who fail to satisfy the mandates are subject to tax penalties. The PPACA's new mandates and taxes increase business costs and raise the price of hiring workers. This will lead employers to hire fewer workers, automate more jobs, transition full-time workers into part-time status, and invest in fewer capital expenditures.

> *The new health care law has wrecked our plans to grow our business and create jobs. We are already taking steps to downsize our team in anticipation of the full weight of the law's burden which will affect me most heavily in 2014. My new focus, unfortunately, is on how to have the leanest workforce possible and, even more dismaying, my worries about the very survival of our business are emblematic of the reactions of millions of small businesses throughout our nation.*[24]
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> Brian Vaughn, Owner and President, Nearly Famous, Inc.

> *Restaurants are unable to raise prices in this economy. Our only alternative is to cut costs. This industry is not one with a lot of fat to cut, either. I believe it is the most competitive industry there is. For us, cutting costs means cutting staff and reducing hours worked, and putting more employees into part time status. The job-crushing effects of PPACA will flow downstream and hurt the many small businesses that serve our company. . . .*[25] *[W]e will be forced to cease new restaurant development and may forfeit the development agreement we invested in. That agreement cost $360,000. This future development would amount to $22,000,000 in construction and development spending, and 260 full time restaurant jobs.*[26]
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> Scott Womack, President and Owner, Womack Restaurants

[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] Brian Vaughn, Owner and President, Nearly Famous, Inc., on behalf of the US Chamber of Commerce, Hearing Testimony for "Small Business and PPACA: If They Like Their Coverage, Can They Keep It?," The House Committee on Small Business Subcommittee on Healthcare and Technology, July 28, 2011 at 6.
[25] Scott Womack, President and Owner, Womack Restaurants, on behalf of the US Chamber of Commerce, Hearing Testimony for "Health Care Law's Impact on Jobs, Employers, and the Economy," Ways and Means Committee, January 26, 2011 at 4.
[26] *Id.*

II. The PPACA's Destructive Employer Mandate Tax Penalty

The PPACA classifies businesses with at least 50 full-time workers as "large," which requires them to offer government-approved health insurance to their workers.[27] This will negatively impact every large business that fails to comply with this employer mandate. Because the PPACA prescribes the terms of acceptable insurance, the law will interfere with the workplace coverage that many businesses already offer to their employees. Despite President Obama's assurance that people who liked their health insurance would be allowed to keep it, many health insurance plans offered prior to the PPACA are already—or will soon be—out of compliance with federal regulations. The Administration has estimated that 49 to 80 percent of small employer plans and 34 to 64 percent of large employer plans will not be grandfathered by the end of 2013.[28] If a plan is not grandfathered, it is vulnerable to every requirement that the Obama Administration believes should be included in employer sponsored health insurance (ESI). One such requirement is the law's essential benefit package, the package of benefits and services that insurers must cover beginning in 2014. Complying with the essential benefits package will raise the price of insurance for many companies.

The IRS slaps a $2,000 tax penalty per full-time worker (exempting the first 30 workers) on every large business that fails to offer health insurance.[29] Economic theory and empirical evidence suggests that the burden of paying this tax will primarily fall on workers in the form of lower wages and fewer jobs, and on consumers in the form of higher prices.[30] Additionally, shareholders will absorb some of the penalty in the form of lower profits. Lower profits mean fewer resources are available for the business to reinvest in the company, expand operations, and hire more workers.

> *The new law took care to provide exceptions only to certain businesses—those employing less than 50 full-time equivalent employees—this creates a disincentive to hire or expand beyond this level. As is the case of my business, it plants the cost of compliance squarely on the backs of small and midsized firms employing more than 50 people. . . .[31] In order*

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[27] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152.

[28] *Federal Register* Vol. 75, p. 34,553. The Administration estimates that the change in the regulation made on November 17 permitting a change in issuer will "result in a small increase in the number of plans retaining their grandfathered status…" *Federal Register* Vol. 75, p. 70,118.

[29] Hinda Chaikind and Chris L. Peterson, "Summary of Potential Employer Penalties Under PPACA (P.L. 111-148)," Congressional Research Service, April 5, 2010 available at http://www.ltgov.ri.gov/smallbusiness/employerprovisions.pdf

[30] Stephen Entin, "Tax Incidence, Tax Burden, and Tax Shifting: Who Really Pays the Tax?," A Report of the Heritage Center for Data Analysis, November 5, 2004 available at http://s3.amazonaws.com/thf_media/2004/pdf/cda04-12.pdf.

[31] Gail Johnson, President/CEO, Rainbow Station, Inc., Hearing Testimony for Committee on Education & Workforce Hearing "Impact of the Health Care Law on the Economy, Employers, and the Workforce," February 9, 2011 at 6.

to comply, small employers will be faced with decisions such as cutting back wages, forgoing new hiring and raising prices for services. These measures will further stunt any economic recovery and curtail future job growth.[32]

Gail Johnson, President/CEO, Rainbow Station, Inc.

It is important to note that the PPACA explicitly makes labor more expensive. It is completely predictable that businesses such as ours will search for ways to take jobs out of our existing restaurants to reduce that expense. . . .[33] *We would undoubtedly increase the number of part time employees; decrease the number of full time employees and attempt to automate positions (such as replacing cashier positions with ordering kiosks). These are not actions we would choose to take. They are actions the PPACA will all but compel us to take. . . .*[34] *Under the PPACA, we would have little choice other than to reduce [capital expenditures], eliminating jobs and endangering the long term prospects of our business.*[35]

Andrew Puzder, CEO of CKE Restaurants Inc.

Businesses that offer health insurance are subject to a penalty of $3,000 for every employee who receives one of the law's health insurance tax subsidies.[36] An employee is eligible for a tax subsidy if his share of premiums for self-only coverage exceeds 9.5 percent of household income.[37] Since businesses will be fined based on the workers' household income, businesses will have an incentive to know all sources of income relative to a particular employee's household. This provision, therefore, has the potential to fundamentally alter the employer-employee relationship. Businesses can also be fined if they offer coverage that has an actuarial value less than 60 percent; that is, if the plan's total reimbursements are less than 60 percent of the total health care costs incurred.[38]

Many retailers have been astounded by the prospect of being penalized for providing coverage that exceeds a factor largely beyond their knowledge or control: an employee's family income.[39]

Neil Trautwein, Vice President, National Retail Federation

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[32] *Id.*
[33] Andrew Puzder, CEO of CKE Restaurants Inc., Hearing Testimony for "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, July 28, 2011 at 22.
[34] *Id.*
[35] *Id.*
[36] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152.
[37] *Id.*
[38] *Id.*
[39] Neil Trautwein, Vice President and Employee Benefits Policy Counsel, National Retail Federation Testimony, Hearing on "Impact of the Health Care Law on the Economy, Employers and the Workforce," Committee on Education and the Workforce, February 9, 2011 at 3.

A well accepted economic theory is that workers are paid according to the additional value they contribute to the business that employs them.[40] Workers are compensated by wages and/or benefits. Since the worker's productivity equals his total compensation, wages must fall or rise more slowly when the cost of benefits rises. According to health economist John Goodman, the PPACA's essential benefit package[41] "translates into a minimum health benefit of $2.28 an hour for full time workers (individual coverage) and $5.89 an hour (family coverage) for fulltime employees. . . . In four years' time, the minimum cost of labor will be a $7.25 cash minimum wage and a $5.89 health minimum wage (family), for a total of $13.14 an hour or about $27,331 a year."[42]

For workers who make more than the minimum cost of labor (including health coverage), the employer can reduce wages to provide the government-approved health insurance. These workers bear the cost of the PPACA's mandates in the form of lower wages. There are many Americans, however, who earn less than $27,331 per year. In fact, one-third of uninsured workers (about five million workers) earn less than $3 above the minimum wage.[43] These workers are at significant risk of losing their jobs or being forced into part-time work because of the PPACA. The reason: employers are not able to reduce workers' wages in order to provide the required health insurance. Workers impacted by this provision will be disproportionately young, female, and minorities.[44] Many of them are just starting out their career and have yet to develop a significant skill set. One of the most devastating impacts of the PPACA, therefore, will be to delay or prevent people from climbing America's economic ladder.

> *As it stands, PPACA will have a substantial negative impact on our industry, on our seasonal employees, and quite possibly our permanent employees as well. From our point of view PPACA is a large expense and an administrative nightmare. It is hard to see any appreciable benefit to anyone working at Morey's Piers, but it is easy to see the negative impact on our ability to provide seasonal jobs and run our business productively.*[45]
>
> Will Morey, President of Morey's Pier

[40] See e.g. Greg Mankiw, "How are wages and productivity related?," Greg Mankiw's Blog, Tuesday, August 29, 2006 available at http://gregmankiw.blogspot.com/2006/08/how-are-wages-and-productivity-related.html.

[41] The Secretary of HHS must issue regulations regarding the establishment of a minimum essential benefits package (EBP). The EBP is the menu of goods and services that must be covered for all insurance plans purchased in the new exchanges and all non-grandfathered plans.

[42] John Goodman, "The $6-an-Hour Health Minimum Wage," National Center for Policy Analysis Health Policy Blog, October 18, 2010 available at http://healthblog.ncpa.org/the-6-an-hour-min-wage/.

[43] Katherine Baicker and Helen Levy, "Employer Health Insurance Mandates and the Risk of Unemployment," Risk Management and Insurance Review, 2008, Vol. 11., No. 1: 109-32.

[44] *Id.*

[45] Will Morey, President of Morey's Pier, Hearing Testimony for "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, July 28, 2011 at 1.

The PPACA's employer mandate tax penalty defines a "full-time" employee as someone who works at least 30 hours per week. Part-time employees count toward the 50-person penalty threshold, but businesses do not owe tax penalties on part-time workers (defined as those who average less than 30 hours per week).[46] For example, a company with 40 full-time workers and 500 part-time workers would only pay a penalty on 10 workers (the 40 full-time workers minus the 30 workers who are statutorily exempt from the penalty). The economic effect of this provision is clear: businesses will have a significant incentive to replace full-time labor with part-time labor to avoid the tax penalty. Although the United States has a stubbornly high national unemployment rate of 8.6 percent, the situation is much worse for blacks, whose unemployment rate is 15.5 percent and for teenagers, whose unemployment rate is 23.7 percent.[47] Unfortunately, these Americans who are already hurting because of the current economic malaise are exactly the ones most likely to be harmed by the PPACA employer penalty.

> *As a result of this change in the definition of a full-time employee, the industry will very closely manage employees' hours to 29 hours or less. In practice, it will mean a larger employee base, working less hours—no more than 25 hours to avoid bumping into the cap—and an increase in labor and training costs, already one of the most significant line item costs for our businesses. For the employees, it will mean the need to get a second and third job to make up for lost hours and, thus, income.*[48]
>
> Larry Schuler, Owner Schu's Grill and Bar and Schuler's Restaurant of Marshall

> *It seems that there is one way for me to avoid paying these fines – I can either get (and stay) under 50 employees, or I can start forcing employees to part-time status, making them independent contractors, outsourcing certain services, and taking similar efforts to negate the fines. . . .*[49] *[T]he health care law may force my hand, as well as that of many other small business people. I do not want to lose anyone on my payroll, but if comes down to laying off a few employees or being saddled with these fines, I won't have a choice.* [50]
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> Phil Kennedy, Owner and President of Comanche Lumber Company Inc.

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[46] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152.

[47] United States Department of Labor, "Employment Situation Summary," December 2, 2011 available at http://www.bls.gov/news.release/empsit.nr0.htm.

[48] Larry Schuler on behalf of the National Restaurant Association, Statement on "True Cost of PPACA: Effects on the Budget and Jobs," Hearing Testimony for Energy & Commerce Committee Hearing "True Cost of PPACA: Effects on the Budget and Jobs," March 30, 2011 at 4.

[49] Phil Kennedy on behalf of the US Chamber of Commerce, Statement on "True Cost of PPACA: Effects on the Budget and Jobs," Hearing Testimony for Energy & Commerce Committee Hearing "True Cost of PPACA: Effects on the Budget and Jobs," March 30, 2011 at 8.

[50] *Id.*

As the costs of the health care law and other burdensome mandates continue to pile up, Bowlmor will be forced to look for other ways to control costs and this may mean reducing our workforce. For example, Bowlmor Lanes currently provides in-person service at the lanes, but we are exploring the possibility of deploying touch screen kiosks that customers could use instead. . . .[51] *To minimize losses sustained due to this mandate, we will have to do whatever it takes to keep employees part-time, not allowing them to work 30 hours a week. We are very unhappy about the effects this will have on our employees – for example, an employee who currently works full-time in our kitchen will be shifted to part-time status with Bowlmor and he/she will likely have to find another part-time position at another restaurant or similar business. While Bowlmor would definitely rather not disrupt our full-time employees like this, we must do so to protect existing jobs.*[52]

Brett Parker, Vice Chairman and CFO of Bowlmor Lanes

One of the sectors most harmed by the PPACA is the staffing industry, which employs nearly three million workers per day and over 11 million workers annually.[53] Staffing firms match workers to jobs, which enables workers to demonstrate and improve their skills and employers to fill workforce needs. Unfortunately, the employer mandate penalty potentially exposes staffing firms to an enormous health care liability because the client company and not the staffing firm control the number of hours the employees work. Since the staffing industry workforce is very transient with a 300 percent turnover rate per year, complying with the PPACA's requirements for each worker is a coming administrative nightmare for staffing firms.[54] The flexibility that staffing firms thrive upon will be challenged by the inflexibility of the PPACA's mandates and regulations. The workers most likely to be hurt are younger less-skilled workers as 41 percent of staffing firm contract workers are under the age of 35.[55] Moreover, by harming the staffing industry, the President's health care law makes the American workforce less dynamic to meet the changing world economy.

Ultimately, the healthcare reform legislation imposes large employer costs and infrastructure on staffing firms because few can qualify as a small business. [My firm] technically has 400 employees – but only 50 are regular full-time staff.

[51] Brett Parker, Vice Chairman and CFO, Bowlmor Lanes, Hearing Testimony for Committee on Education & Workforce Hearing "The Pressures of Rising Costs on Employer Provided Health Care," March 10, 2011 at 6.
[52] *Id.*
[53] Edward A. Lenz, "Health Care Reform for the Flexible Work Force," American Staffing Association Issue Paper, February 25, 2008 available at http://www.americanstaffing.net/legalandgovernment/Issue_papers/Health_Care_Reform_for_the_Flexible_Work_Force.pdf.
[54] *Id.*
[55] U.S. Department of Labor, Bureau of Labor Statistics, "Career Guide to Industries: 2010-2011 Edition" available at http://www.bls.gov/oco/cg/cgs03S9.htm.

Implementing this legislation is ultimately penalizing the service we offer our clients. . . . Healthcare reform will force us to change the strategic direction of our company and eliminate that part of our business because the risk does not justify the return. People that have helped us build a great company and who currently earn above-market salaries will be forced to look for new jobs in a different industry . . . .[56] *That is what keeps me up at night and that is what is important because that is what I am responsible for, making sure we provide a paycheck to those 50 employees as well as the temporary employees we have out on billing on a weekly basis.*[57]
John Uprichard, President and CEO of Find Great People, Intl.

If our client companies have to pay more for the health insurance for the temporary employees it really threatens their global competitiveness and flexibility to adapt to changing market conditions. No matter what I could pass on to them, if anything, it will simply raise the price of doing business with manufacturers in the United States. The last thing we need is another impediment to the recovery of our economy.[58]
Gustav Edward Gauss III, President and CEO of The Action Group, Human Resources Solutions

III. The PPACA's Harmful Taxes

In addition to the employer mandate penalty, the PPACA contains many other taxes that raise costs for businesses. Since businesses will have to devote more resources to paying these federal taxes, fewer resources will be available for re-investing in the company and creating jobs. The PPACA increases the Medicare Part A payroll tax on wages by 0.9 percent (from 1.45 percent to 2.35 percent) for single individuals with income greater than $200,000 and couples with income greater than $250,000.[59] It also imposes a 3.8 percent tax on investment income, including the sale of all forms of real estate and any income generated from sources other than

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[56] John Uprichard, President and CEO of Find Great People, Intl., Hearing Testimony for "Obamacare's Employer Penalty and Its Impact on Temporary Workers," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, October 6, 2011 at 2.
[57] John Uprichard, President and CEO of Find Great People, Intl., Hearing Transcript for "Obamacare's Employer Penalty and Its Impact on Temporary Workers," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, October 6, 2011.
[58] Gustav Gauss, President and CEO of The Action Group, Human Resources Solutions, Hearing Testimony for "Obamacare's Employer Penalty and Its Impact on Temporary Workers," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, October 6, 2011 at 2.
[59] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152.

employment.[60] Since economic theory shows that an activity occurs less often when that activity is taxed, this tax on investment income will reduce investment. Less investment, in turn, will reduce long-term economic growth.

> *Starting in 2013, individuals with incomes over $200,000 will see their Medicare payroll taxes increase. Most privately owned businesses are structured as Sub-S or LLC corporations. The income of the business is passed to the ownership in the form of a schedule "C" or K-1 and the tax is paid at the individual level. This is a tax increase on small business. It raises our regulatory burden and takes away more of my capital that can be used for investment, pay increases or new jobs.[61]*
>
> Michael Fredrich, President MCM Composites, LLC

The PPACA's authors singled out several industries to pay a disproportionate amount of the law's tax bill. The PPACA imposes an annual fee on health insurance providers for fully insured plans, a tax the previous Congress designed to bring in a given amount of revenue each year. This tax, which will amount to nearly $90 billion in revenue by 2020,[62] will be paid by insurers based on their share of total industry revenue.[63] Again, economic theory shows that individuals who are ultimately responsible for paying taxes are often different than the entity on which the tax is directly assessed. The PPACA's health insurance tax will be paid by workers in other industries in the form of higher health insurance premiums, workers in the insurance industry in the form of lower wages, and employers and shareholders in the form of lower profits. The insurance tax could cost the typical family of four with workplace coverage as much as $1,000 a year in higher premiums.[64] According to the NFIB Research Foundation's model, the increase in ESI premiums just from this one tax will reduce private sector employment by 125,000 to 249,000 jobs in 2021, with 59 percent of those losses coming from small businesses.[65]

The PPACA also singled out the manufacturers and importers of branded drugs and medical device manufacturers to bear additional tax burdens to finance the health care overhaul. Like the tax on fully insured plans, the drug tax is based on each individual company's revenue

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[60] *Id.*

[61] Michael Fredrich, President, MCM Composites, Hearing Testimony for Committee on Oversight and Government Reform "Regulatory Impediments to Job Creation," February 10, 2011 at 4.

[62] Douglas W. Elmendorf, Director, Congressional Budget Office, "Letter to the Honorable Nancy Pelosi, Speaker, U.S. House of Representatives," Table 2, March 20, 2010 available at http://www.cbo.gov/ftpdocs/113xx/doc11379/AmendReconProp.pdf.

[63] National Federation of Independent Business, "The Small Business Health Insurance Tax," (January 4, 2012) available at http://www.nfib.com/issues-elections/issues-elections-item?cmsid=51231.

[64] Kenneth J. Kies, Federal Policy Group, "Study on $6.7 billion Annual Insurer Fee," October 15, 2009. Kies's actual figure was $500 a year, but it was based on an early version of the tax that raised only half the amount of the one enacted: $6.1 billion a year versus $12.1 billion a year.

[65] Michael J. Chow, "Effects of the PPACA Health Insurance Premium Tax on Small Businesses and Their Employees," NFIB, November 9, 2011.

share of the total market.[66] The PPACA also creates a 2.3 percent excise tax on medical device manufacturers. Drug manufacturers and medical device manufacturers are among the most successful industries in the United State, and taxing their success to finance new spending in the PPACA will directly destroy good paying American job.

Shortly after the PPACA was signed into law, 90 of the 100 medical device firms attending a conference in Boston stated they would reduce costs, such as labor expenses or research and development costs, because of this new tax.[67] Medical device manufacturer Boston Scientific announced over the summer that it plans to lay off 1,200 to 1,400 Americans, shifting those jobs to China.[68] Stryker Corporation, an orthopedic-device business based in Michigan, announced plans to cut five percent of its workforce over concerns about the medical device tax.[69] CEO Stephen MacMillian stated, "Here we are, one of the greatest industries in the country, and we're staring down on January 1st, 2013 and the addition of a 2.3 percent excise tax, while meanwhile on the other side all the discussion in Washington is about creating jobs."[70]

> *The [medical device] excise tax is based on revenue, not profit, and begins in 2013. This harmful new tax is expected to collectively increase federal taxes on medical device companies by $20 billion through 2019, and will cost Boston Scientific alone more than $100M a year in additional taxes. Such a severe increase in tax liability will undoubtedly force us to cut critical R&D funding and inhibit job creation and retention. . . .*[71] *It will inevitably stifle innovation, destroy jobs, and thwart patient access to breakthrough technologies that have saved and enhanced millions of lives. . . .*[72] *This tax will stifle innovation and cost thousands of high-paying jobs. It will dramatically increase the effective tax rate for medical technology companies – severely reducing financial resources that should be used for R&D, clinical trials and investments in manufacturing. The impact will be especially hard on smaller companies whose innovations are not immediately profitable.*[73]
>
> Denis Johnson, Vice President, Operations Boston Scientific

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[66] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152.

[67] Jay Fitzgerald, "Mass. Device firms see health law as burden: Say tax will force cost cuts," Boston Herald, May 5, 2010, available at http://www.bostonherald.com/jobfind/news/healthcare/view.bg?articleid=1252494.

[68] Robert Weisman, "Boston Scientific to lay off 1,200 plus: Company mum on effect in Mass.," Boston Globe, July 29, 2011 available at http://articles.boston.com/2011-07-29/business/29830200_1_latest-job-cuts-boston-scientific-investments.

[69] MassDevice staff, "Stryker plans to lay off 5% of its workforce ahead of the med-tech tax," Mass Device, November 10, 2011.

[70] *Id.*

[71] Denis Johnson, Hearing Testimony for Education and Workforce Committee Subcommittee on Health, Employment, Labor and Pensions Hearing "The Recent Health Care Law: Consequences for Indiana Families and Workers," June 7, 2011 at 4.

[72] *Id.* at 5.

[73] *Id.*

IV. The PPACA's Regulatory Uncertainty and Compliance Costs

The regulatory power given to federal departments and agencies over the past three years has increased uncertainty for businesses. This heightened degree of uncertainty has produced hesitation among business owners considering expansion and has discouraged entrepreneurs from starting new businesses. The vague grandfathering regulations,[74] which determine the changes businesses can and cannot make to their ESI plan to escape many of the law's mandates, have produced uncertainty about whether current plans will still be acceptable and what changes can be made to plans while retaining grandfathered status.[75] The essential benefit regulations have the significant potential to raise the cost of health insurance. The employer mandate explicitly raises taxes on businesses not in compliance with Washington mandates and implicitly raises the administrative costs on businesses. Moreover, there is uncertainty regarding how seasonal workers will be treated by regulators and whether businesses will be responsible for providing coverage to them. According to the President of the Federal Reserve Bank of Atlanta Dennis Lockhart, one of the main factors impeding hiring is "the lack of clarity about the cost implications of the recent health care legislation. We've frequently heard strong comments to the effect of 'my company won't hire a single additional worker until we know what health insurance costs are going to be.'"[76]

> *The uncertainty of the regulatory process and the many rules that are yet to be clarified and fully defined worry me. . . .*[77] *Regulatory implementation is moving ahead at full-steam and it seems like a new requirement comes to light every day that is even more burdensome than the last.*[78]
>
> Larry Schuler, Owner Schu's Grill and Bar and Schuler's Restaurant of Marshall

> *The impact of this law will cost our company $1,000,000 or more no matter which option we choose. Worse, some of the extra cash cost, if not all, will be classified as a penalty and not tax deductible. We would owe income tax plus the penalty. Today, these estimates are more than the company makes. We would have a cash loss for the year. These forecasts do not even consider the significant additional administrative costs we are incurring and will*

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[74] 14 months ago, in connection with the November 17, 2010 amendment to the July 14, 2010 interim final rule, the Administration stated that the final regulations on grandfathered plans would be issued "in the near future." See John S. Hoff, *Broken Promises: How Obamacare Undercuts Existing Health Insurance*, Heritage Foundation Backgrounder No. 2516 (February 7, 2011) available at http://report.heritage.org/bg2516.

[75] U.S. House Oversight and Government Reform Committee, "Broken Government: How the Administrative State has Broken President Obama's Promise of Regulatory Reform," Staff Report, September 14, 2011 available at http://oversight.house.gov/images/stories/Reports/9.13.11_Broken_Government_Report.pdf.

[76] Dennis P. Lockhart, "Business Feedback on Today's Labor Market," Conference on Employment and the Business Cycle, November 11, 2010.

[77] Larry Schuler on behalf of the National Restaurant Association, Statement on "True Cost of PPACA: Effects on the Budget and Jobs," Hearing Testimony for Energy & Commerce Committee Hearing "True Cost of PPACA: Effects on the Budget and Jobs," March 30, 2011 at 3.

[78] *Id.*

continue to incur managing the program, preparing mandated government reports, and tracking all employee's household dependents and earnings.[79]

Grady Payne, CEO of Conner Industries, Inc.

At Morey's Piers alone, we will make a final decision by this month's end on a job-creating and potential business-building capital investment of approximately $12 million. This is a gigantic commitment for our mid-size family business. Unfortunately, it is now more likely than not that we will postpone this investment. Should we reach this likely decision to postpone or cancel the project, it will be based substantially on uncertainty and lack of confidence (perhaps even fear) for the business climate we might experience as a result of the Federal government's continued poor handling of fiscal matters, unbridled legislative and regulatory initiatives, and the rising threat of unemployment.[80]

Will Morey, President of Morey's Pier

V. The PPACA's Small Business Tax Credit is Counterproductive

To reduce the cost of providing ESI, the PPACA contains a small business health insurance tax credit.[81] The tax credit, however, fails to benefit many small businesses, is only available until 2016, and gradually phases out as a firm's size increases and as average employee wages increase.[82] The credit is available to firms with less than 25 workers and with an average wage less than $50,000. For a firm of 15 workers, the tax credit phases out at an average wage around $41,000. For a firm of 20 workers, the tax credit phases out at an average wage around $32,000. For a firm of 25 workers, the tax credit phases out at an average wage of $25,000. The CBO estimates that only a "relatively small share (about 12 percent) of people with coverage in the small group market would benefit from the credit in 2016."[83]

As it turns out the CBO was actually optimistic about how many people would benefit from the credit. In November 2011, the Treasury Inspector General for Tax Administration released a report showing the extremely low take-up rate of the PPACA's small business tax

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[79] Grady Payne, CEO of CKE Restaurants Inc., Hearing Testimony for "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, July 28, 2011 at 2.

[80] Will Morey, President of Morey's Pier, Questions for the Record from the Hearing "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, August 15, 2011.

[81] PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010, PUB. LAW 111–148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111–152.

[82] Chris L. Peterson and Hinda Chaikind, "Summary of Small Business Health Insurance Tax Credit Under PPACA," Congressional Research Service, April 5, 2010 available at http://www.ncsl.org/documents/health/SBtaxCredits.pdf.

[83] Douglas W. Elmendorf, Director, Congressional Budget Office, letter to Senator Evan Bayh, November 30, 2009 available at http://www.cbo.gov/ftpdocs/107xx/doc10781/11-30-Premiums.pdf.

credit.[84] Only about 228,000 taxpayers claimed the credit in 2010 for a total amount of nearly $280 million.[85] The CBO estimated that taxpayers would claim around $2 billion in tax credits in 2010[86] – more than seven times greater than the amount that was actually claimed. According to the Inspector General, the low take-up rate is explained by the complexity of the credit calculation as well as the seven worksheets that must be completed to claim the credit.[87]

> *Supporters of the law point to the small business tax credit as a benefit for some employers, but that tax credit is entirely inadequate. For a growing company like ours . . . the thresholds are entirely too small to be of any assistance. . . .[88] Encouraging companies to cut back hours or eliminate staff is the wrong message our government should be sending small businesses—particularly during a recession.*[89]
>
> Gail Johnson, President/CEO, Rainbow Station, Inc.

> *I have learned from fellow business owners with much smaller companies that the tax credit is so narrow and so limited that it would provide marginal assistance to a very low percentage of small businesses that are out there. . . .[90] [T]he credit is temporary and, as I referenced earlier, the year over year increases in healthcare costs certainly aren't.*[91]
>
> Joe Olivo, President and Co-owner of Perfect Printing

It is important to note that even if the small business tax credit was universally available to businesses, it would be a bad deal for Americans overall. This is because the small business tax credit would actually increase Americans' total spending on health care by increasing the subsidy for health insurance. Since the tax credit phases out as the average wage increases and as firms size increases, the credit discourages wage and employment growth. Tax reform would be a positive step forward for economic growth, but it should move in the direction of broadening the base, lowering rates, and eliminating loopholes—not on creating new ones.

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[84] Treasury Inspector General for Tax Administration, "Affordable Care Act: Efforts to Implement the Small Business Health Care Tax Credit Were Mostly Successful, but Some Improvements Are Needed," September 19, 2011 available at http://www.treasury.gov/tigta/auditreports/2011reports/201140103fr.pdf.
[85] *Id.*
[86] Douglas W. Elmendorf, Director, Congressional Budget Office, "Letter to the Honorable Nancy Pelosi, Speaker, U.S. House of Representatives," Table 2, March 20, 2010 available at http://www.cbo.gov/ftpdocs/113xx/doc11379/AmendReconProp.pdf.
[87] Treasury Inspector General for Tax Administration, "Affordable Care Act: Efforts to Implement the Small Business Health Care Tax Credit Were Mostly Successful, but Some Improvements Are Needed," September 19, 2011 available at http://www.treasury.gov/tigta/auditreports/2011reports/201140103fr.pdf
[88] Gail Johnson, President/CEO, Rainbow Station, Inc., Hearing Testimony for Committee on Education & Workforce Hearing "Impact of the Health Care Law on the Economy, Employers, and the Workforce," February 9, 2011 at 10.
[89] *Id.*
[90] Joe Olivo, President and Co-Owner, Perfect Printing, Testimony for Hearing "Health Care Law's Impact on Jobs, Employers, and the Economy," Committee Ways and Means Committee, January 26, 2011 at 5.
[91] *Id.*

VI. The PPACA's Costs Are Not Worth It

In response to Democratic questioning about the benefits of the PPACA, Andrew Puzder, CEO of CKE Restaurants, stated that:

> Benefits have costs. The money to pay for those benefits has to come from somewhere. Our business makes a profit. All of that profit is reinvested in the business. When the profit is reduced, you invest less in the business. If the profit is eliminated, you have nothing to invest in the business. If you don't have anything to invest, you can't grow and you can't create jobs. So there is a benefit, and I am not here to argue about that. I just want you to know that there is a cost associated with the benefit, and I think the businesses that are at this table here are telling you in some instances it might put them out of business.[92]

This is arguably among the most important testimony that Congress has heard this year because it is a reminder that all public policies generate both benefits and costs. In order to best serve the American people, Congress must carefully weigh both the benefits and the costs of legislative ideas. The PPACA is not without benefit, as some people gain health insurance at cheaper rates than they would have been able to otherwise. It is becoming increasingly clear, however, that the costs of the PPACA – fewer jobs, lower wages, higher taxes, and reduced consumer choice – will overwhelm these benefits. CBO estimates that 800,000 additional people will have jobs by the end of the decade if PPACA is repealed.[93] Moreover, several employers have asserted to Congress that their workers do not want to see their paychecks reduced in order to pay for insurance benefits that they do not value as highly.

> *The new law prevents me from purchasing a policy that meets the specific health care needs of my workforce. This will continue to drive up our costs each year. My young faculty and staff, thankfully, are healthy adults that do not need wheelchairs, oxygen tents or catheters. I am being compelled to purchase an expensive policy that provides coverage for medical care my workforce does not require.*[94]
>
> Gail Johnson, President/CEO, Rainbow Station, Inc.

> *We offer all of our employees health care coverage inexpensively, and I think of our 17,000 part-time employees, about 6 percent choose to take the health care coverage*

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[92] Andrew Puzder, CEO of CKE Restaurants Inc., Hearing Transcript for "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, July 28, 2011.

[93] J. Lester Feder and Kate Nocera, "CBO: Health law to shrink workforce by 800,000," POLITICO PRO, February 10, 2011 available at http://www.politico.com/news/stories/0211/49273.html.

[94] Gail Johnson, President/CEO, Rainbow Station, Inc., Hearing Testimony for Committee on Education & Workforce Hearing "Impact of the Health Care Law on the Economy, Employers, and the Workforce," February 9, 2011 at 7-8.

over the cash. So it is 94 percent would rather have the job and the compensation.[95]
Andrew Puzder, CEO of CKE Restaurants Inc.

Equity research firm UBS stated that President Obama's health care law is "(a)rguably the biggest impediment to hiring (particulary hiring of less skilled workers)."[96] In order to maximize their economic well-being, businesses will be led by PPACA to downsize when they otherwise would not and to hold back on plans for growth when they otherwise would choose to hire. The predicament that the PPACA creates for employers will be devastating for millions of businesses, workers, and taxpayers. A law that forces employees to take their compensation in the form of expensive health insurance is wrong for American workers. While President Obama may have had good intentions for pushing the PPACA, we now know that its tax and regulatory burden will put hundreds of thousands of Americans out of work. Repealing the PPACA would be the most effective jobs program that the President can ask Congress to consider.

[95] Andrew Puzder, CEO of CKE Restaurants Inc., Hearing Transcript for "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance," Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census and the National Archives, July 28, 2011.
[96] UBS Investment Research, Great Suppression II: Revolt of the Employers," September 19, 2011 available at http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=c968aed0-e358-451b-9f68-c98078f75156.