



Attorney General Jon Bruning

NEWS RELEASE

FOR IMMEDIATE RELEASE
August 6, 2010, 11:15 a.m.

Contact: Shannon Kingery
402.471.2067

Shannon.kingery@nebraska.gov

AG Bruning: Response to Federal Motion to Dismiss Filed in Health Care Lawsuit

LINCOLN-Attorney General Jon Bruning and 19 other state attorneys general and governors today filed a response to the Department of Justice's motion to dismiss in the lawsuit challenging the constitutionality of the federal health care reform act. Today's filing also includes the National Federation of Independent Business (NFIB) as a co-plaintiff on behalf of its members nationwide, as well as two individual citizens.

"Nebraska's taxpayers cannot carry the burden of this unconstitutional federal mandate," said Bruning. "This suit works to protect the sovereignty of our State and the financial stability of our families."

The lawsuit alleges that the new law infringes upon the constitutional rights of Nebraska's residents and residents of the other states by mandating all persons have qualifying health care insurance or pay a penalty. By imposing such a mandate, the law exceeds the powers of the United States under Article I of the Constitution, including the 'Commerce Clause,' which has never been applied to allow Congress to compel people to buy unwanted goods or services. Additionally, the penalty enforcing the mandate, if a tax at all, constitutes an unlawful direct tax in violation of Article I, sections 2 and 9 of the Constitution.

The lawsuit further claims the health care reform law infringes on the sovereignty of the states and Tenth Amendment to the U.S. Constitution by imposing onerous new operating rules that Nebraska must follow, as well as requiring the state to spend billions of additional dollars. This burden comes at a time when Nebraska faces severe budget cuts to offset shortfalls in an already-strained budget.

The Department of Justice filed a motion to dismiss the case in June, claiming the individual mandate fell under Congress' 'taxing and spending' authority. This argument conflicted directly with comments made by President Obama during the debate on the health care reform bill, including the President's insistence on national television that the insurance mandate was "absolutely not" a tax.

The motion to dismiss claimed the timing of the lawsuit was too early, but the states responded today that resources are already being spent on planning and operational activities they must undertake to meet the federal requirements of the law. The states argued that they have standing to bring the lawsuit because the federal health care law negatively affects state sovereignty and provides additional stress on already lean state budgets.

With approximately 250,000 enrollees, Nebraska's Medicaid program currently consumes more than 22 percent of the State's budget. Under the new law, Nebraska will be forced to vastly broaden its Medicaid eligibility standards to accommodate upwards of 70,000 more enrollees.

The lawsuit was originally filed in federal court in the Northern District of Florida on March 23, minutes after the health care reform act was signed into law by President Obama. The hearing on issues raised by the motion to dismiss will be held on September 14 in Pensacola before Judge Roger Vinson. Earlier this week, a judge in a similar lawsuit in Virginia ruled against the Department of Justice's motion to dismiss, allowing Virginia's lawsuit to move forward.

A copy of response to the motion to dismiss will be available online at <http://www.healthcarelawsuit.us>.