

**Scharf-Norton Center for Constitutional Litigation at the
GOLDWATER INSTITUTE**

Clint Bolick (Arizona Bar No. 021684)
Diane S. Cohen (Arizona Bar No. 027791)
Nicholas C. Dranias (Arizona Bar No. 330033)
Christina M. Kohn (Arizona Bar No. 027983)
500 E. Coronado Rd., Phoenix, AZ 85004
(602) 462-5000
CBolick@GoldwaterInstitute.org
DCohen@GoldwaterInstitute.org
NDranias@GoldwaterInstitute.org
CKohn@GoldwaterInstitute.org
Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

NICK COONS, et al.,)	
)	No. 2:10-cv-1714-GMS
Plaintiffs,)	
v.)	Plaintiffs' L.R.Civ. 56.1
)	Statement of Material Facts
)	In Support of Plaintiffs' Motion
TIMOTHY GEITHNER, et al.,)	for Summary Judgment in Part
)	
Defendants.)	

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, and Local Rule of Civil Procedure 56.1, Plaintiffs submit their Statement of Material Facts in support of their Motion for Summary Judgment in Part, on their Second Amended Complaint, which challenges the constitutionality of the "Patient Protection and Affordable Health Care Act" (PPACA or the Act), Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) ("HCERA").

Plaintiff Nick Coons

1. Plaintiff Nick Coons is 32 years old and is a citizen of the United States and a resident of Tempe, Arizona, located in Maricopa County. Exhibit 1, Declaration of Nick Coons, ¶¶ 1-2.

2. Coons does not currently have private health insurance, and purchasing health insurance at this time or in the foreseeable future does not serve his personal, philosophical, economic, or medical priorities. Coons is a self-employed small business owner, and does not offer health insurance to himself or employees through his business. Exhibit 1, ¶ 3.

3. Coons wishes to spend his financial resources for at least the next ten years on growing his small business, not on purchasing medical insurance, so that he can create the wealth he needs to enjoy his life to the fullest in his later years. At some time in the future, he may wish to purchase health insurance, but only that which provides catastrophic coverage with at least a \$5,000 deductible. Exhibit 1, ¶ 4.

4. Coons has a greater incentive to maintain his health without insurance than he would have with insurance. He believes that retaining freedom of choice over whether to purchase insurance helps him maintain a healthy lifestyle. Exhibit 1, ¶ 5.

5. Coons is not a religious conscientious objector to the Act; a member of a health care ministry; a member of an Indian tribe; incarcerated; a veteran; or eligible for Medicaid or Medicare. Coons does not otherwise qualify for exemption or waiver from the Individual Mandate. Exhibit 1, ¶ 7.

6. PPACA forces Coons to purchase insurance with specified “minimum essential coverage,” which exceeds coverage that he needs and requires him to pay for services he may

1 never use. The Act compels him to expend his personal funds against his will, contrary to his
2 moral and philosophical objections, and despite his rational judgment not to engage in such a
3 commercial transaction. Exhibit 1, ¶ 8.
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5 7. The Act will force Coons to divert resources from his business and reorder his
6 economic circumstances by requiring him either to obtain government-approved insurance, or to
7 violate the law by refusing to purchase insurance and as a result, pay monetary penalties.
8 Exhibit 1, ¶ 9.
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10 8. The Act unduly burdens and places a substantial obstacle in Coons' path of
11 exercising his right to medical autonomy by forcing him to apply limited financial resources to
12 obtaining a health care plan he does not desire, displacing and reducing the health care
13 treatments and patient-doctor relationships he can afford to choose, or violate the law and pay a
14 penalty. Exhibit 1, ¶ 10.
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17 9. Coons intends to exercise his rights protected by the Arizona Constitution's Health
18 Care Freedom Act in deciding whether to participate in any health care system, and he will
19 purchase medical services according to his wants and needs. Exhibit 1, ¶ 11.
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21 10. The Act forces Coons to Disclose his personal health information to third parties,
22 including millions of non-physician intermediaries employed by health insurers, rather than
23 directly with the medical provider of his choice. Exhibit 1, ¶ 10.
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25 **Plaintiff Eric Novack, M.D.**

26 11. Eric Novack, M.D., is a citizen of the United States, residing in Glendale, Arizona.
27 Exhibit 2, Declaration of Eric Novack, M.D., ¶ 2.
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1 12. Dr. Novack is an orthopaedic surgeon who has served as a managing partner of his
2 surgery practice located in Glendale, Arizona, since 2007. Approximately 20% of the practice's
3 patients and approximately 12.5% of his patients are Medicare patients. Exhibit 2, ¶ 3.

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5 13. The costs for the services Dr. Novack and his practice provide to Medicare patients
6 are reimbursed by the federal government. The process is a "fee for service" system where his
7 practice submits bills electronically to the government and gets reimbursed directly from the
8 government, through its payment processing vendor via an electronic funds transfer. Exhibit 2,
9 ¶ 4.

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12 14. Dr. Novack and the members of his practice will be adversely affected by the
13 manner in which IPAB is empowered to set reimbursement rates. Exhibit 2, ¶ 5.

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15 15. As of April 2011, the government has granted waivers from minimum-coverage
16 compliance with PPACA to more 1,400 health insurance plans covering 3.2 million people.
17 Group Ex. 3, U.S. Department of Health and Human Services, Centers for Medicare and
18 Medicaid Services, *available at* [http://cciio.cms.gov/resources/files/approved_applications_](http://cciio.cms.gov/resources/files/approved_applications_for_waiver.html)
19 [for_waiver.html](http://cciio.cms.gov/resources/files/approved_applications_for_waiver.html) (last visited June 20, 2011); *see also*, U.S. Dep't of Health & Human Servs.,
20 List of Approved Applications for Waiver of the Annual Limits Requirements, Jan. 26, 2011,
21 *available at* http://www.hhs.gov/ociio/regulations/approved_applications_for_waiver.html.

22
23 16. As of June 17, 2011, four states were granted waivers from PPACA's annual dollar
24 limit requirements. Group Ex. 3, U.S. Department of Health and Human Services, Centers for
25 Medicare and Medicaid Services, *available at* [http://cciio.cms.gov/resources/files/state_06172](http://cciio.cms.gov/resources/files/state_06172011_g.pdf)
26 [011_g.pdf](http://cciio.cms.gov/resources/files/state_06172011_g.pdf) (last visited June 20, 2011); *see also* U.S. Dep't of Health & Human Servs., List of
27
28

1 Approved Applications for Waiver of the Annual Limits Requirements, Jan. 26, 2011, *available*
2 *at* http://www.hhs.gov/ociio/regulations/approved_applications_for_waiver.html.
3

4 **JUNE 20, 2011**

5 **RESPECTFULLY SUBMITTED,**

6 s/Diane Cohen

7 Clint Bolick (Arizona Bar No. 021684)

8 Diane S. Cohen (Arizona Bar No. 027791)

9 Nicholas C. Dranias (Arizona Bar No. 330033)

Christina M. Kohn (Arizona Bar No. 027983)

10 GOLDWATER INSTITUTE

500 E. Coronado Rd.

11 Phoenix, AZ 85004

12 P: (602) 462-5000

13 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I, Diane Cohen, an attorney, hereby certify that on June 20, 2011, I electronically filed Plaintiffs' Rule 56 and L.R. Civ. 56 Statement of Material Facts with the Clerk of the Court for the United States District Court, District of Arizona by using the CM/ECF system.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the District Court's CM/ECF system.

s/ Diane S. Cohen