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NASBA RESPONDS TO SUPREME COURT RULING IN FREE ENTERPRISE v. PCAOB

NASHVILLE, Tenn., June 29, 2010 – The U.S. Supreme Court yesterday issued its decision in the case of Free Enterprise Fund v. the Public Company Accounting Oversight Board (PCAOB). The Supreme Court narrowly ruled 5 to 4 that the tenure of PCAOB members is unconstitutional, but held that "Board's existence does not violate the separation of powers." The [National Association of State Boards of Accountancy](#) (NASBA) commends the result of this decision. The opinion, written by Chief Justice Roberts, was apparently one of the last decisions to be released by the Court during this term.

The ruling is a substantial victory for the [PCAOB](#) as well as for NASBA and for State Boards of Accountancy, with whom the PCAOB has established a cooperative public protection relationship. Despite many predictions and fears, no large-scale adjustments from Congress will be necessary and the PCAOB will continue to operate.

The Court's reasoning in the case reflects arguments NASBA advanced in the amicus curiae brief, filed by NASBA on behalf of the PCAOB. NASBA is the world's largest organization of accounting regulators. Having licensed over 600,000 CPAs, NASBA's member boards also enforce accountancy laws, adopt applicable standards in all 55 U.S. jurisdictions, and maintain a strong interest in ensuring that the PCAOB continues its role as partner in public protection.

"With this cloud of uncertainty lifted, the PCAOB can devote more of its attention to independently protecting the public at the federal level, while NASBA's state boards of accountancy continue to do so at the state level," said David A. Costello, CPA, President and CEO of NASBA.

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NASBA's amicus brief focused on the cooperative roles that state boards of accountancy and the PCAOB play in regulating the accounting profession. This role has grown more important in recent years, as financial scandals have shaken the U.S. economy. Historically, NASBA's member boards have safeguarded the accounting profession's standards, ensuring that accountants are well-trained, well-educated, and regulating their conduct to combat fraud and incompetence.

In 2002, the Sarbanes-Oxley Act was passed, creating the PCAOB as a new strategy in regulating accounting firms and auditing practices. The Sarbanes-Oxley Act recognizes the complementary relationship that state boards of accountancy and the PCAOB play in regulating accounting. Under Sarbanes-Oxley, the PCAOB is required to report its investigation findings and refer cases (as appropriate) to NASBA's member boards. Indeed, the Act that was upheld on Monday in pertinent part makes several references to state regulatory authorities.

“Just as the Supreme Court has upheld this independently strong regulatory agency, we likewise are following the recommendations of the U.S. Treasury’s Advisory Committee on the Auditing Profession (ACAP) to effect semi-independent agency status for all state boards of accountancy in order to enhance effective regulation,” stated Billy M. Atkinson, CPA, and NASBA Board Chair.

The question of the PCAOB's constitutionality partly turned on whether it was too independent of the executive branch's supervision. Although the Supreme Court agreed that the power of the President to remove PCAOB members was unconstitutionally restricted, the Court rejected calls to declare the PCAOB unconstitutional or to require Congress to amend Sarbanes-Oxley. Instead, the majority held that the Sarbanes-Oxley Act remains "fully operative as a law." The Court denied the petitioners' request for broad injunctive relief and also rejected three other constitutional challenges that the Free Enterprise Fund had offered against the PCAOB.

A copy of NASBA's amicus brief in the case can be accessed on NASBA's Web site:

www.nasba.org.

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About NASBA

Celebrating 102 years of service, the National Association of State Boards of Accountancy (NASBA) serves as a forum for the nation's state boards of accountancy, which administer the Uniform CPA Examination, license over 600,000 certified public accountants and regulate the practice of public accountancy in the United States. NASBA's mission is to enhance the effectiveness of state boards of accountancy in meeting their regulatory responsibilities. The Association promotes the exchange of information among the accountancy boards, serving the needs of the 55 U.S. jurisdictions.

NASBA is headquartered in Nashville, TN, with a satellite office in New York, NY and a Computer Testing Center in Guam. To learn more about NASBA, visit www.nasba.org.

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