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H.R. 1818, THE WORKFORCE HEALTH IMPROVEMENT PROGRAM ACT: HEALTHY EMPLOYEES; HEALTHY BOTTOM LINE

HEARING

BEFORE THE

SUBCOMMITTEE ON TAX, FINANCE AND EXPORTS

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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H.R. 1818, THE WORKFORCE HEALTH IMPROVEMENT PROGRAM ACT: HEALTHY EMPLOYEES; HEALTHY BOTTOM LINE

THURSDAY, JULY 8, 2004

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON TAX, FINANCE & EXPORTS
COMMITTEE ON SMALL BUSINESS
Washington, DC

The Subcommittee met, pursuant to call, at 10:08 a.m. in Room 311, Cannon Office Building, Hon. Pat Toomey presiding.

Present: Representatives Toomey, Chabot, Chocola and Millender-McDonald

Chairman TOOMEY. Good morning, everyone, and welcome. Thank you all for being here today as we discuss H.R. 1818, the Workforce Health Improvement Program Act. I would especially like to thank all of our witnesses who have agreed to testify before the Subcommittee this morning, and who have traveled to be with us today.

I appreciate you being here. We do expect some other members will be arriving as we proceed with this, but I want to respect everybody's time and get started at this point. Let me just say a few things about the idea behind this bill.

You know, it is about a number of things but there are certain fundamental ideas that we all know and they are under the underpinning for this idea. The fact is that exercise and weight management are critical to maintaining a healthy lifestyle. I think we all understand that.

And public health experts unanimously agree that people who maintain active, healthy lifestyles dramatically reduce their risk of contracting a wide variety of chronic diseases.

A physically fit population results in a decrease in health care costs, lower government spending, fewer illnesses, improved worker productivity, and most importantly of all, a better quality of life for the people who choose to remain fit.

Exercise itself is a proven and cost effective method of preventative medicine, and it is an effective way of treating many of the illnesses that many Americans are confronted with today.

Unfortunately, 60 percent of all Americans are still physically inactive, and that contributes significantly to the growth in our Nation's obesity rate to where it is today, near epidemic proportions.

The Centers for Disease Control and Prevention, the Rand Corporation, the Surgeon General, and countless other experts consistently document that obesity, often exacerbated by this lack of physical activity, is in fact the number one health problem in the United States today.

And given the tremendous benefits that exercise provides, it just makes sense to remove the obstacles that keep folks on the couch and not leaving a healthy lifestyle. Currently, about almost 98 percent of health care expenditures are spent on curative measures.

The approach that the WHIP Act takes is that prevention could lead to dramatic reductions in the cost of medical expenses in the U.S., which by the way are estimated to double to $2.6 trillion by the end of this decade.

The Centers for Disease Control and Prevention have concluded that the potential savings in direct medical costs, if all inactive adult Americans engaged in regular exercise, could be as high as $77 billion annually.

By enacting the WHIP Act, we could take a significant step towards encouraging the use of fitness centers, which would lead to a healthier population, which would in-turn decrease health care costs, reduce government spending, and help prevent debilitating illnesses.

Most importantly, it will demonstrate that a better quality of life is attainable even with relatively minor behavioral changes. Not only is this a health improvement bill, but it is also a tax equity bill in my mind.

Under current Federal tax law the value of on-premises athletic facilities that are provided by employers to their employees are not counted as employee income. However, if an employer does not have the resources to build facilities on premises, but instead provides health club services to employees at an off-site facility, the value of that benefit is included as taxable income to the employee.

It strikes me that this is a flagrantly inconsistent and unfair approach. It is especially unfair to employees of small and medium-sized companies, and I see no reason why this should continue.

I think this inequity in fact needs to be corrected, and that is exactly what the WHIP Act does. It simply says that wellness benefits would be excluded and not considered taxable income for the employee.

Another benefit that can be realized through this legislation is the direct effect it will have on the workplace. H.R. 1818 would provide employers with more options when creating compensation packages for recruiting and retention efforts, and as our economy continues to grow, the competition for qualified employees increases. Employers need as many tools as possible to recruit and retain the best possible employees.

This again is especially true for small and medium-sized businesses, which often don't have all the options that large companies have at their disposal. By way of conclusion it is just a simple fact that America is getting heavier, less physically active, and that is very unhealthy.

America is also getting older. As the leading edge of the baby boomer generation is beginning to retire, this is going to force the

American taxpayers to continue to pump very large sums of money into health care in general, and Medicare in particular.

If we enact legislation that would encourage fitness and weight management, not only will Americans tend to lead healthier lifestyles, but we would lower the total cost of curative health tactics, both now and in the future.

The old saying of an ounce of prevention is worth a pound of cure I think is relevant in this case. I am happy to note that there was what I thought was a reasonably favorable article about this idea recently in the Washington Post, specifically referring to this bill that is under consideration.

So it is my hope that we can generate some more interest in this bill and that Congress will consider this most likely as part of a broader tax package. I think this deserves every consideration.

So I am again grateful for the witnesses for coming here today to share your thoughts about the merits of this bill. Having said that, I would be happy to yield to my colleague if he has an opening comment.

And if not, then I will move right on to the witness introduction. The leadoff witness today will be a Mr. John McCarthy. Mr. McCarthy is the Executive Director of the International Health Racket and Sports Club Association.

He earned his undergraduate degree from the University of Notre Dame, and has received Masters degrees in Philosophy, Theology, and Business Administration. Mr. McCarthy has spent his life in and around the sports and fitness arena, beginning with his selection by the New York Knicks in the 1958 NBA draft.

Later, he began—I am a big fan of basketball, and I used to play a lot of basketball, and I just mention this to suggest how little we have in common, because my high school basketball coach took me aside early in my career and said, "you know, Pat, you are small, but you are slow."

And that is when I began to think that an NBA draft was not terribly likely in my case. But to get on with Mr. McCarthy, I am very grateful that he has agreed to testify today, because he has such a great range of experience in fitness.

He began a career as a theology teacher while coaching both basketball and tennis at colleges in Minnesota and Massachusetts. Prior to joining the International Health, Racket, and Sports Club Association, he was the executive director of a regional trade association for sports clubs in New England.

Mr. McCarthy, I thank you for joining us today, and I welcome your testimony. We will have a five minute system. We will have a green light. We will be on for four minutes, and when you are down to one minute remaining, the light will change to a yellow light.

And when five minutes is up, the red light will come on, and if we could all try to stick to that program, we will be able to proceed in an orderly and efficient fashion. So again, welcome, and thank you, and I invite your testimony.

[Chairman Toomey's statement may be found in the appendix.]

STATEMENT OF JOHN MCCARTHY, INTERNATIONAL HEALTH, RACQUET & SPORTSCLUB ASSOCIATION

Mr. McCARTHY. Thank you very much. It is a privilege to be here, and I want to thank also my colleagues who are here. I am from Boston, Massachusetts. I am the Executive Director of the Trade Association for Private Sector Fitness Centers in the United States.

We have 4,500 members that represent an industry that serves almost 40 million Americans as members and another 16 million as patrons. So there is about 60 million Americans who use fitness centers on a regular basis in America.

I think we are all aware that as the Chairman pointed out that we are going through a health care crisis in the United States. The Kaiser Family Foundation recently reported that the family cost of health insurance right now is approaching $9 thousand and is expected to be $15 thousand by 2008.

We are also aware, because the CDC has just told us that obesity is expected to become—that obesity related diseases is expected to become the number one killer in the United States by 2005.

We are also aware as the Chairman pointed out that regular exercise is key, not only to the prevention of obesity, but it is key to the prevention of heart disease, hypertension, Type II diabetes, several forms of cancer, stroke, et cetera.

So we are all aware of how essential regular exercise is to the improvement of the health and productivity of Americans generally. We are also aware thanks to the Society for Human Resource Management that this bill, if passed, would have a huge impact on corporations' willingness to subsidize employee fitness.

The poll that is over there on my right indicates that 67 percent of small business employers said that they would more positively consider subsidizing the fitness of their employees if this bill was passed.

Mr. Chairman, this bill, as you pointed out correctly, is really a technical correction. Big businesses that have on-site corporate fitness centers, those fitness centers, that subsidy are not imputed as taxable income to the employees of those big businesses.

However, small businesses that subsidize the participation in regular exercise of their employees, that subsidy is imputed as taxable income to the employee. So what we are really trying to do is level the playing field between on-site fitness and off-site fitness.

An example of this here is right here in Congress where there is an on-site fitness center for the Members of Congress, and all the 15 thousand young men and women who work here are off-site fitness, they get taxed on their subsidy; whereas, the Members of Congress don't get taxed on their subsidy.

Mr. Chairman, we are very thankful for you developing this bill and proposing this bill, and we hope that you will continue to support it. Thank you very much.

[Mr. McCarthy's statement may be found in the appendix.]

Chairman TOOMEY. Thank you very much. And if—okay. In that case, I will introduce our next witness. The next witness that we have with us today is Mr. Edwin Foulke, a practicing partner at the law firm of Jackson, Lewis, L.L.P.

Mr. Foulke has extensive experience in labor and employment law as evidenced by his 20 years of specializing in this area of the

law. Additionally, in 1990, he was appointed by former President George H. W. Bush to a vacancy on the Occupational Safety and Health Review Commission, later rising to commission chairman.

He also served the current President Bush as a member of the Bush-Cheney transition policy advisory panel for the U.S. Department of Labor. Thank you very much for being with us today, Mr. Foulke, and I welcome your testimony.

STATEMENT OF EDWIN FOULKE, JR., JACKSON LEWIS, LLP.

Mr. FOULKE. Thank you very much, Mr. Chairman. And I feel doubly honored to be here. First, to be honored that you have given me the privilege to be able to testify before this Subcommittee, and second, I am honored to be here to be representing the Society for Human Resource Management.

As you are aware, SHRM, as the acronym is known, is the world's largest association devoted to human resource management, representing more than 185 individual members. The society's mission is both to serve the human resource management professional, but also to advance the HR profession.

You can see how it is advancing it by seeing what are the major issues, and clearly the issue that you are trying to address here today in H.R. 1818 is an important issue to employers across the country and to H.R. professionals across the country, and probably across the world.

And as the earlier speaker alluded to the survey that was done by SHRM, clearly the membership is very, very much interested in this particular benefit for its employees, and they recognize the importance of this.

Now, I am going to kind of come probably from a little bit different standpoint than the rest of the members. You know, I have kind of committed to legal career to focusing in on the health and safety of employees.

And I kind of see where this country is going. You are seeing a lot of problems as employees grow—the workforce that is going to be coming into play here is going to be more and more overweight unfortunately.

The people that came in before; our fathers, and our grandfathers, and our great grandfathers, when they came to work in their teens and twenties. They were in fairly fit condition, but now the workforce that is going to be coming is going to bring a number of associated problems.

You are going to see, first of all, that they are going to become injured much earlier in their work career, and if you look at the statistics previously, persons that got injured more than likely got injured in the later part of their working career, and into their forties and fifties.

We are going to have employees that are going to be coming in that are going to start getting injured in their twenties, and this is going to skyrocket workers comp costs dramatically.

And this is going to be most acutely felt by the small businesses, because any of those types of costs are going to be much more or less likely to be spread out to their customers or anything else. So they are going to be focused on that.

So you are going to see a lot of small businesses dramatically impacted by increases in workers compensation if we don't deal with this problem now. Secondly, you are going to have a workforce that is incoming that is going to have health problems already when they arrive at the work site.

We are already seeing a dramatic rise in Type-I child diabetes, and that is going to also see an increase in Type-II diabetes as people come to work. This is going to dramatically increase health care costs for employers, and it is not going to be just the employees that are coming to work, but it is going to be their families that are going to also have this serious problem.

And that is going to tremendously impact the costs to employers on health care, and one of two things can only occur as a result of that. Either they are going to pass that cost on to the employees, which they unfortunately are not going to be able to afford.

Or secondly, they are going to start reducing their benefits and the amount of health care coverage potentially even eliminating the health care coverage to their employees.

So this is a really critical issue that we really need to get a hold of here. As I see it, H.R. 1818 is going to help employers and employees in a number of different ways. Once as you start getting people more healthier, they are going to have the possibility of them having injuries is going to be greatly diminished.

If people are working, and as an employee starts exercising, their muscle tone is going to be strengthened, and the likelihood of them having back injuries or muscle strains are going to dramatically increase.

And this is right now the number one work related problem in the United States. Also, as you increase the issue of health issues and exercise, you are going to have better muscle tone in your lower extremities, and so you are going to see a decrease possibly in carpal tunnel syndrome and tendinitis. So it will have that benefit.

Secondly, as the workforce becomes more healthier associated with this, you are going to see less injuries and you are going to see less heart disease, less stroke, less stress. I mean, exercise has been demonstrated to have a greater impact on reducing stress in the workplace.

That could have a two toll effect. First of all, stress is a major factor in workplace violence across the country. Now, I have dealt with a lot of issues, and a number of situations where stress has been directed related to where we have had violence in the workplace.

Secondly, I find what is interesting is that there was an article that came up yesterday talking about workplace stress hitting the waistline, and in particular it was a study done out of College Park, Pennsylvania, that talked about how it affecting women, and the more stress on women, the more that they ate, and thus the more weight that they gained.

And it was kind of a continual cycle here, and so hopefully one of the benefits that you are going to see on your bill is this education of stress, and which to me will help eliminate a lot of associated problems in particular due to the incidents of workplace violence, which has been increasing over the last several years.

But overall, and I know that my time is about up, clearly I think the work or the employers here really are interested in having this bill based on the statistics for a number of different reasons. First, one, healthy employees are going to be more productive.

Two, healthier employees are going to experience lower incidence of workplace injuries. Third, employer participation will provide a variety of tools of recruitment and retention valuable there.

So you are going to have a series of things here that are going to be very helpful to employees. This is just clearly one step in dealing with the obesity problem, but is an important first step. And I commend you for championing this issue. Thank you.

[Mr. Foulke's statement may be found in the appendix.]

Chairman TOOMEY. Next we have Mr. John Brinson, president and CEO of Lehigh Valley Racquet and 24/7 Fitness Clubs in and around the greater Lehigh Valley in Pennsylvania. Mr. Brinson earned a Bachelor of Science from the U.S. Military Academy at West Point, and began his military service as an officer in the U.S. Army Airborne Rangers.

Following his service to our country, he spent some time in the insurance field before opening his first fitness club in 1979. He served on the board of many organizations throughout the Lehigh Valley and beyond.

Mr. Brinson is my constituent and I am very happy to see him here. I welcome your testimony, and I look forward to our discussion today. Welcome.

STATEMENT OF JOHN BRINSON, LEHIGH VALLEY RACQUET AND FITNESS CENTERS

Mr. BRINSON. Thank you, Chairman Toomey, and other Committee members. I am honored to be here today. This is a very important Committee. Small Business is the impetus, the driving force behind the economy in the United States. It is small business that drives our free market economy.

I am a member of the National Federal of Independent Business and have been for over 30 years. It is the premier small organization in the country. I am a founding member of John McCarthy's wonderful association, the International Health Racquet and Sports Club Association, and I enjoyed hearing John McCarthy's testimony this morning.

My testimony has been typed and is available to all the Committee members, and rather than just read it, I would like to concentrate on a couple of things that John McCarthy touched on, and also that Ed Foulke touched on.

This program is subsidized fitness benefits for employees, although it is an employee benefit, it is far more than that. It is a benefit for the employer. It is a benefit for the business.

I see it personally. My business has 300 employees, and I see it personally. Those who exercise and those who are fit are more productive. And that is the key to the economic future of the United States; productivity of our workforce.

Employees who are fit show up for work more often than those who are not. They show up on time more often. They show up with

good attitudes. Their morale is good. They can handle stress a lot better as Ed mentioned before.

They have more endurance. They can work longer and harder, and are more productive than non-fit employees. So their output is better. They are more productive. They take fewer sick days. I just looked at my own record of sick days and nationally the number of sick days taken by employees is approximately six sick days per year.

Companies that are supporting fitness, and there are a number of them here, and I will leave the Committee some brochures prepared by John McCarthy's association, and the title of this brochure is the Economic Benefits of Regular Exercise.

These are success stories of businesses that subsidize fitness. They have found that their number of sick days is approximately 2 to 3, rather than 5 or 6, which is the national average.

In my company, our sick days average 1.2 sick days per full-time employees. So there are fewer sick days, meaning better productivity, lower health insurance costs, as has been mentioned already, better retention.

People who have good morale and who are fit, and who are more productive, are happier employees and they tend to stick with their employers longer than those who are not fit. And as has also been mentioned by Ed Foulke and others, it is a very, very good recruiting tool for businesses.

So in summary, we are talking about a benefit for the employees, but we are talking about also—and perhaps even more importantly—a benefit for the employer, and for our economy.

So I commend you, Chairman Toomey, on your sponsorship of this very important legislation, and I hope that your colleagues in the Congress will support it. Thank you for hearing me today.

[Mr. Brinson's statement may be found in the appendix.]

Chairman TOOMEY. Thank you very much for coming here and for your testimony. Next we have Mr. David Fehrmann, Director of Brand Standards and Operating Systems at USA Management here in the D.C. Metro area.

Mr. Fehrmann earned a Bachelor of Science in Business Administration from Southeast Missouri University, and then spent 32 years working for the John Deere Company in a wide array of capacities.

In addition to his work as Director of Brand Standards, and Operating Systems for USA Management, he is also the general manager of the Courtyard by Marriott in Springfield, Virginia. Mr. Fehrmann, I appreciate your time and look forward to your testimony.

STATEMENT OF DAVID FEHRMANN, USA MANAGEMENT, INC.

Mr. FEHRMANN. Thank you, Chairman Toomey. I appreciate being invited to attend today. I am representing small business also and I wanted to tell you just a little bit about USA Management, Incorporated, which is located here in the District on twenty-second street.

We have been headquartered at that location continually since 1946. I am employed by the company as the Director of Brand Standards and Operating Systems, and that does include human resource development.

In small business, many times, as I am sure you are aware, you find yourself wearing multiple hats and I am no different. Our business is as a hospitality company, and it includes restaurants and hotel operations, hotel management company, some office buildings, and we are all located here in the D.C. Metropolitan area, and we employ about 225 people.

We are undergoing an expansion project at the current time, and in three years, we are going to expand into some additional markets. We will have tripled the size of our business, and our employment will escalate from currently 225 to about a thousand people.

I would like to tell you that we are currently offering state-of-the-art health care facilities at our headquarters and in remote locations for our employees, but we are not. We just simply can't afford the cost, and we can neither allocate the expense or the capital in the space to such facilities.

Our CEO, however, is a very health conscious individual, and realizes that there is considerable value in keeping personally fit, and a number of years ago, he contracted with a health club facility in the District, and provided membership to a group of managers and key employees.

About 10 percent of our current full-time employee base is involved in health club activity. The cost of this health club participation is roughly $150 a month per employee, and is borne solely by the company at this time.

The total annual cost is $30 thousand and that is a significant expense to a small family-owned business like ours. Employee usage is monitored, and it is provided on a use it or lose it basis, and most of our employees do participate actively.

Restaurant employees and hotel employees are sometimes staggered by the long hours that they must keep. Many of our key employees will work double-shifts or even around the clock to support our businesses and take care of our customers.

I am sure that is the same that many other small business owners would tell you. It takes people who are willing to work long hours, and people who can wear several hats, and who are successful in the small business atmosphere.

Our owners have recognized that a physically fit business person, or excuse me, a physically fit employee with a neat and trim look is advantageous to our business. We consider healthy and happy employees a valuable asset.

Our company needs to attract high quality employees and we continually seek out the most qualified people that we can find. Besides meeting our job requirements, they tend to be energetic, charismatic, and physically fit.

They are leaders who will attract and surround themselves with others just like themselves. Some of the direct benefits of a regular workout regimen include general improvement in overall health, reduced weight, increased energy levels, and generally a reduced stress level.

I see employees who are completely stressed out by the events of the day happening around them, leave the facility and go for a 45 minute workout, and then return to work absolutely refreshed, energized, and ready to get back to work.

These people produce more, and they work well under pressure, and they present a calm, outward appearance to those around them. They tend to lead by example and I believe that the people who work out regularly are more competitive.

They seem to have increased stamina, and they ultimately perform better in our business. This bill has the advantages of helping us in our business. It is going to level the playing field on tax deductions, and that is something that a small decentralized business like ours needs.

And employees of both large and small business enterprises that work out as part of an employer-sponsored program should not be taxed on that value. Maintaining a healthy lifestyle that includes vigorous exercise and a weight loss program is so important that we should remove any obstacles that would prevent its use.

I told you that we are engaged in expansion projects. I don't foresee health club, or private health club facilities at any of our locations, but I do see expanded health club benefits offered to employees.

We want to continue to reap the benefits of a more physically fit employee base. We must continue to offer competitive wages, competitive health care, and competitive indirect compensation packages to attract the workforce that we need, and a benefit package that includes some form of health club participation is going to be both good for our company, and for the employee.

We are also focused on our largest expense, the cost of providing health care insurance coverage to our employees. We have been staggered by the rapid escalation of health care costs over the last several years.

Those premiums have been increasing well over 10 percent a year, and are expected to continue. We believe that improving the health of the population in general and specifically our employee base, can help reduce these future increases, and we intend to do our share to control the rapidly rising costs of providing medical coverage to our employees.

In conclusion, I just want to say that our business is growing and we will need to recruit a hundred key people in the next several years, and it is going to take a complete employment package, including direct compensation and benefits, to attract the right people.

Health club participation is going to be part of those benefits if we can continue to see the on-job related benefits of health club participation, and also see reduced health care insurance premiums at the same time, we can get a double-impact from the dollars that we spend.

And that is the kind of impact that impresses a small business owner. It is the kind of expense that is easy to justify. Passage of House Bill 1818 , will help small business get there, and I urge you to move it forward. Thank you for inviting me today.

[Mr. Fehrmann's statement may be found in the appendix.]

Chairman TOOMEY. Thank you very much, Mr. Fehrmann. Last, but certainly not least, rounding out our panel is Ms. Karen Silberman. Ms. Silberman is the executive director of the National Coalition for Promoting Physical Activity.

She earned her undergraduate degree in sociology from Overland College in Ohio, and a Masters of Public Affairs, Non-Profit Management, from Indiana University. Ms. Silberman has an impressive resume of work for various nonprofit organizations, including the Coalition for the Homeless, the American Heart Association, Points of Light Foundation, and of course her current role of executive director of the NCPPA.

Ms. Silberman, thank you very much for being with us today, and I look forward to your testimony.

STATEMENT OF KAREN SILBERMAN, NATIONAL COALITION FOR PROMOTING PHYSICAL ACTIVITY

Ms. SILBERMAN. Thank you. The National Coalition for Promoting Physical Activity is a coalition of major health, fitness, and recreation organizations working to advance policies and programs that encourage physical activity.

NCPPA was created in response to the 1996 Surgeon General report on physical activity and health. The American College of Sports Medicine, the American Heart Association, and the American Alliance for Health, Physical Education, and Recreation, and Dance, convened the coalition as a way to advocate and educate Americans on the importance of regular physical activity.

NCPPA has since grown to include a broad cross-section of national and local organizations, including Federal Agencies, corporate partners, trade and professional associations, and national charitable organizations.

Our members are as diverse as the International Health, Racquet, and Sports Club Association, the American Cancer Society, AARP, the YMCA, the National Recreation and Park Association, and the NCAA.

NCPPA's members independently address a host of issues pertaining to physical activity, including health science, education, environment, population-specific outreach, and activity behavior.

By working together and building on existing relationships in the public and private industry sectors, NCPPA is developing new alliances and partnerships to focus and coordinate public education campaigns, policy development, and media education.

Our work is motivated in-part by the alarming rates of obesity, chronic disease, and inactivity in our country. America faces a health crisis of epidemic proportions. Physical inactivity, combined with being overweight, has in less than 30 years made the United States a nation of overweight and out-of-shape individuals.

According to the Centers for Disease Control and Prevention, the incidents of overweight or obesity among adults increased steadily from 47 percent in 1976 to 61 percent in 1999.

Despite proven benefits of physical activity, more than 60 percent of Americans do not get enough physical activity to provide health benefits. And as I like to say, the Surgeon General once said that

physical activity is so important that it should be made an honorary vitamin.

Obesity is a significant risk factor for developing chronic disease, such as diabetes, asthma, and heart disease. Physical inactivity and obesity now rank second after tobacco use as the leading cause of death in the United States.

The newest figures estimate that 400 thousand deaths annually are attributable to poor diet and inactivity. In 2000, the costs associated with physical inactivity, obesity, and related chronic conditions was estimated to be $117 billion.

Moderately intense daily physical activity has long been recognized as an essential ingredient to a healthy life, but increasing physical activity has been engineered out of Anericans' daily lives. We have yet to find the solution.

We know that old problems and initiatives aren't working and the statistics illustrate a deepening problem. What we do know is when physical activity is incorporated into a person's daily life, it is more likely to become a habit and more likely to provide lasting health benefits.

One of the best delivery systems to reach the American adult population is the workplace. When an employer provides for or encourages physical activity among its employees, the benefits can be considerable, including significant health care cost savings, a decrease in absenteeism, competitive advantages in attracting and retaining highly qualified employees, and promoting the business of co-employees.

The WHIP bill is not a cure all, but it is a step in the right direction. It provides the flexibility and incentive to both employers and employees to make physical activity part of their daily routine.

The WHIP bill encourages employers of all types and sizes, whether they have in-house or off-site premises or fit facilities to offer an exercise benefit to their employees.

Most importantly, the WHIP bill levels the playing field between small businesses and large corporations by assuring that small businesses receive the same opportunities to improve their health as those of large corporations.

It is time to make a change and although NCPPA does not believe that we can legislate individual behavior change, we do believe that we can make our physical environment more conducive to being physically active.

The WHIP bill addresses this issue head-on. It makes the environment as tax friendly as possible, and provides the most flexibility to employers to create fitness programs.

It incentivizes those small businesses that want to do the right thing, and eliminates a road block to those small business employees who want to live a more healthful lifestyle.

NCPPA strongly believes in tax incentives as a way to encourage physical activity. Our board of directors recently decided to make this concept our signature issue. The idea is a novel one, linking tax benefits to healthier lifestyles is an innovative way to combat obesity.

Although the Federal Government and the medical community have done a good job of studying and advertising the risks of inac-

tivity, no one has offered real incentives to the average American to change behaviors.

Measures such as the Impact bill and others do not provide the degree of motivation that a tax break and its associated economic benefits would. NCPPA is glad to be taking the lead on the way that we address physical inactivity and related chronic diseases.

We believe that there is broad public support for measures that will make it cheaper for individuals to join fitness centers, pay for preventive health maintenance programs, lose weight, and stay active. We will continue to advocate and educate around these issues, and look forward to working with the Committee on Small Business on these initiatives.[Ms. Silberman's statement may be found in the appendix.]

Chairman TOOMEY. Thank you very much for your testimony. I want to thank you all. I appreciate it very much. I have several questions that I would like to begin with. First of all, I would like to address the issue of just how broadly beneficial this idea could be, and perhaps one way to look at this is to think about what percentage of employers in America today actually have their own fitness facility therefore might not be terribly interested in this bill. I suspect that it is a tiny percentage. Does anybody know? It has got to be a very, very small number. Can anyone hazard an estimate?

Mr. MCCARTHY. My sense is that there is probably several thousand, as many as five thousand corporate fitness centers around the United States, but let me give you, Mr. Chairman, an example.

Federal Express has a magnificent fitness center at its world headquarters in Memphis, Tennessee. However, they have employees all over the United States, and Pepsi Cola is the same way.

The have a magnificent fitness center in Purchase, New York, but 99.5 percent of their employees are elsewhere. So the on-site fitness centers only really cover probably 1 to 2 percent of the total employees in the United States. And the need for off-site fitness centers is inordinate.

Small business has this disadvantage, and have what I would consider an unfair tax treatment and just don't have the opportunity to have the same kind of access to health care.

Chairman TOOMEY. Mr. Brinson, would you like to add to that?

Mr. BRINSON. In the Lehigh Valley, with a population of between 6-to-700 thousand, there is only one corporate fitness center. No other employers except for colleges and universities have fitness centers for their employees.

Also, I wanted to emphasize that the—well, I, by the way engage myself almost full-time in trying to sell corporate fitness memberships, and it is a huge disincentive to have this tax treatment.

Once an employer hears that he has to give a 1099 to his employees for subsidizing their fitness, he is not interested any longer. It is very, very difficult to get employers to subsidize fitness under the current rules.

Chairman TOOMEY. Thank you. Another question that I would like to touch on is that we touched on some things that all know intuitively to be true. I am wondering if there is any empirical

data, and whether you have it with you today, or whether you can refer it to the Committee, such as a correlation between physical fitness and lower incidents of workplace injuries, lower incidents of absenteeism as Mr. Brinson provided with respect to his company, productivity of workers?

Do we have any objective studies that have been done that document this?

Mr. MCCARTHY. Mr. Chairman, we brought to you an entire document on this.

Chairman TOOMEY. On just that.

Mr. MCCARTHY. And that features the documented productivity gains and health care cost gains of companies that do subsidize fitness, and we will leave that with you.

Chairman TOOMEY. Terrific. And without objection, we will include that in the record.

Chairman TOOMEY. I appreciate that. I think that it is just important to be able to back this up with factual objective scientific criteria, and there is plenty there. So let us include that. I appreciate that.

Mr. Fehrmann, a question for you. You know, I think of your company, which many would consider a small business, but certainly a substantial small business, as one that is soon to embark on very significant growth.

And yet you certainly don't have the resources to build your own fitness facility. Do you see that ability anytime soon, or is employing the kind of benefits that we have been talking about the much more likely avenue for your company for the foreseeable future?

Mr. FEHRMANN. Mr. Chairman, I don't believe that we would ever construct the facilities, and own those, and operate them ourself. We are going to be a largely decentralized company, with small workforces scattered over a large area, and I don't think the impact would be there if we were to embark on that ourself.

Rather, I think our course is probably going to be to seek out the providers of health club facilities in each one of the city locations where we establish businesses.

Chairman TOOMEY. And I suspect that is just the case for the overwhelming majority of companies. Well, thank you for that. At this time, I will yield to my friend, the ranking member and the gentle lady from California.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman, and let me just kind of give an overview of what I would have said had I not gone to the Small Business Committee, thinking that is where we were. And so I had to rush over here, and so perhaps I need to check my heartbeat to see just how well it is.

But I do thank you for convening this. I want to thank the witnesses who have come before us today. There is no doubt that fit-

ness and overall health are linked. Many Americans are on a quest to improve their personal health and fitness.

And, in-turn, good health results and a stronger and a healthier, and more energetic workforce. We do understand though that this workforce is growing rapidly to minorities, and given that, your workforce will be looking differently than what it looks today, and over the next decade.

So we look at 70 percent of Americans are sufficiently inactive, and thereby are classified as sedentary, with over 30 percent are considered obese, and then we draw on statistics such as over 60 percent of African-Americans and Hispanic Americans are overweight, and low income minority women prove to have the greatest likelihood of becoming overweight.

We all know this. I am one who really do appreciate and know the value of a productive, healthy workforce. As a former personnel director in both the private and the public sector years ago, I recognize that immensely, because I know that it reduces absenteeism and just a lot of other things.

And while we need to encourage Americans to improve their health status, I introduced—we must also recognize that we cannot as the young lady said, we cannot legislate behavior. We really cannot do that.

Irrespective, I have given sometimes, and this is with my own money, invested in a health club, and have gone few times as what that health club fee asks for. But we cannot do that, and yet when you see your workforce growing more and more, women and minorities, you are going to be faced with some health related problems with them coming on as Mr. Foulke said.

And it is true that you will see that as you have a different type of employee. My question to all of you as I see the majority of our witnesses, Mr. Chairman, are health club related witnesses, and it does not seem to have any small businesses and minority business witnesses here today, who can speak to their problems that they have, ongoing problems, of just trying to stay afloat.

But I would like to ask all of you are your businesses—do any of your businesses have an employment of under 50 employees? Do you have under 50 employees at your different businesses?

Mr. FOULKE. I would say that I represent a lot of small business, mom and pop companies, all the way to Fortune 500. So I have dealt with a lot of different companies, but very small companies, and surprisingly that is the area that I probably deal with most, is small employers.

Ms. MILLENDER-MCDONALD. But, Mr. Foulke, you spoke to the whole notion that before we even engage in health fitness that we need to look at health benefits, because that is the really driving issue here with small businesses. They cannot afford health benefits.

And so my question to you is, how many of you give health benefits to your employees?

Mr. BRINSON. Could I address this? I am active as I mentioned before in selling corporate fitness memberships. I am also a mem-

ber of the NFIB, and I have been involved with small businesses for 30 years.

I do have 300 employees myself, but I am still a small business. We are privately owned. What we see is that the cost of subsidizing fitness really depends on what the employer wants to spend, and it does not have to be large at all.

I tell my corporate prospects that they can contribute whatever they want to. There is no price tag. It could be as high as $150, which apparently David's business is spending to subsidize memberships, or it could be as little as only five or ten dollars a month.

The average fitness club membership I believe in the country averages, depending on what it offers, somewhere between $40 and $50 a month, the average. So if the employer contributes only a little bit, as little as maybe $10 or $12 a month, it provides a tremendous incentive for the employees to pay the balance.

Ms. MILLENDER-MCDONALD. Are we talking about health related benefits, or are you talking about for fitness?

Mr. BRINSON. Fitness benefits, and they are linked as you mentioned before, and fitness and health are linked. If your question has to do with our we providing health insurance benefits, my business does.

I believe that most small businesses do provide some kind of support. We provide 80 percent of the cost of health insurance for our employees.

Ms. MILLENDER-MCDONALD. Anyone else want to weigh in on this?

Mr. MCCARTHY. May I add one point? We have 63 employees, and we provide $350 per year toward a fitness membership anywhere, whether it is a YMCA, a Jewish Community Center, a corporate fitness center.

And we find that almost all of our employees take advantage of it, and as a result our sick days, our productivity, is very much at the very low end of the average.

So we find it enormously valuable, even though we have to submit for every one of those employees a 1099 that shows that that benefit was a taxable benefit.

Ms. MILLENDER-MCDONALD. And I am not arguing the fact that health fitness is not critical to the well-being of anyone. I walk myself or go to the gym, but to bring this into a bill, this is why H.R. 1818 is stuck in the Ways and Means Committee that was introduced last year by the Chairman, is because—and there is no action on it.

And it is because we are looking at how we can have some of the most critical issues facing employees in small businesses like child care services. Do either of you provide child care services?

These are the services that are going to be critically needed for this new workforce that will be coming into gear over the next decade. You will have more women, more mothers, more single parents.

And so those are some of the critical areas that we will need to see in terms of employees having benefits, and benefits that will help them to continue to have the morale that is needed in any employment.

I see that my time is up, Mr. Chairman. I wish you would do like other Committees that I serve on that we just go round-robin, and let us extend these questions, because this is an important issue. But I will wait my turn for the next go-around

Chairman TOOMEY. Well, as you know, I generally do that, and I am more than happy to yield additional time to the ranking member if she would like that. Do you want to pursue that now?

Ms. MILLENDER-MCDONALD. Yes, I would like to just raise a couple of questions. Thank you so much, Mr. Chairman. Mr. McCarthy, what is the average wage for small business employees in your business?

Now, I notice that you have a health club, Health Racquet and Sports Club business. What type of wages are paid to them, and how would this bill, H.R. 1818 level the playing field between your business and any other business with reference to what the content of this bill speaks to?

Mr. MCCARTHY. Well, I am not sure if I am answering your question directly, but the beauty of this bill is that it applies to all fitness centers, whether they be YMCAs, Jewish Community Centers, or community fitness centers.

And so it applies to all employees at all fitness centers, and so we think it provides a benefit, and it is not a mandate for employers or for anybody.

Ms. MILLENDER-MCDONALD. But if I am not mistaken, the employee would buy into this fitness club, or the employer will provide the fee for the employee to go this fitness club. Which one is it?

Mr. MCCARTHY. Well, Mr. Brinson had it exactly right. What typically happens is that the employer provides partial subsidies. So it probably reduces the out-of-pocket costs for the employee from maybe $45 a month to $15 a month, which brings that within the reach of almost every employee.

Ms. MILLENDER-MCDONALD. Well, that might be a little presumptuous on all of our parts to say that, because in looking at a lot of the employees whom I have seen, even $15 is a stretch for them to pay for something that they perceive a luxury, even though they might have Diabetes II.

I mean, it is amazing. There is a culture here that we are talking about and this culture will not dictate employees buying into a health fitness program when they can barely provide the bread and butter on the table.

So that is why I was asking about the wages of those who work in your business as to whether or not they would engage in this fitness program that you would offer, even though you would pay a percentage of that. Mr. Brinson.

Mr. BRINSON. If I could, I am looking at this from both ends. I am a small business owner. By the way, none of our employees earn the minimum wage. All of our employees earn more than the minimum wage.

And then looking at it from the point of view of employers who are trying to get their workforce to be more productive, and to get fit, the amount that they contribute is totally up to them.

I have corporate clients who pay the entire costs of a fitness club membership. So it costs the employees nothing, and the cost is minuscule compared to health insurance. For example, we have a company that is subsidizing memberships for all of its employees, every single one of them.

And these memberships would cost $55 a month, and the company is paying the entire cost. That seems like perhaps a lot of money, and I do hear what you are saying about maybe the employer should take that money instead and provide child care.

Ms. MILLENDER-MCDONALD. Or health care.

Mr. BRINSON. Well, they do. The employers do all across the board support health care, but the cost of subsidizing fitness can be very, very small. It is totally up to the employer.

So I don't see it as a hindrance. I don't see it as taking money away from anything, and I would like to address also the cost to the Internal Revenue Service. Because of the disincentive right now for companies to subsidize fitness, very few companies are subsidizing fitness, and very few 1099s are finding their way to the IRS.

So the cost to the government for H.R. 1818 is minuscule or nothing, because it just is not happening. So I guess what I am saying, Congressman, is that this program will not be a disincentive for employers to do anything else—provide health insurance or provide child care, and all of those other things that are so important.

It will instead make it a very, very simple thing for them to look at. Right now they have to look beyond the pure costs that they may be willing to pay because of the disincentive.

Once they hear the word 1099 for their employees, they are turned off.

Ms. MILLENDER-MCDONALD. I tend to agree more with that in terms of the forms and all that one has to fill out for that. Mr. Foulke, you mentioned that workers' injuries will be much sooner than those of their parents and those who have gone before them in terms of workers.

And I could not agree with you more given the fact that people do not have health insurance, and so the likelihood of their coming to the workforce, well and able to work, is going to be slightly less than those who went before them.

What statistics have you shown where most of your small businesses that have employees under 100 can afford health insurance?

Mr. FOULKE. I don't have any specific statistics here, but I was very happy to hear about your involvement in your previous work as a health care or human resource professional.

And I think you have kind of already realized—and I am going to address one of your concerns that you mentioned a little bit earlier. I think you realize that with respect to where we are as employers, and especially small businesses being competitive, obviously that is the key that we have to have here, because if we are not competitive, there are no jobs and there is no business, especially for the small business, and I appreciate your concern about that.

And I think probably as you have been an HR professional, you are aware with respect to productivity and quality that any gains we are going to get are going to be very minuscule from that, because most businesses have pretty much gone—you know, they have done the Sic Sigma, and they have done Just in Time, and they have done the quality circles, and they have done all these issues.

So that area is pretty much set aside. So the only large area left of expense to employers is in the health care area, or just in the whole area of health and safety if you would like, because the more injuries we have, the less likelihood that we are going to be able to be competitive because the costs are just going to continue to rise.

And with respect to the workforce that is coming in, clearly they are going to be less healthy, and that is kind of what we are talking about here. So the question is where are we going to spend the money.

And I think that is your concern, and to me it seems like that we have got to look at, if we don't spend it on trying to get a healthier workforce, and reducing our health care costs, and reducing our workers compensation costs, then it doesn't matter if we have child care to tell you the truth, because the jobs are just not going to be there unfortunately.

Ms. MILLENDER-MCDONALD. Well, that is very true, and that is very true. Mr. Chairman, I will stop and allow other members to speak and I will come back when the time is appropriate.

Chairman TOOMEY. All right. I will yield to the gentleman from Ohio.

Mr. CHABOT. I thank the Chairman for yielding, and I want to commend him for holding this hearing, and I apologize for being a little late myself. As you are probably aware, many of us here have commitments all over the place, and you get to meetings as you are able to.

But this has been very interesting and I would like very much to look into this legislation, and I have my staffer here, and so whereas my philosophy is that we need to simplify the tax code, and I would like to get rid of the whole thing and come back with something much fairer and flatter, and simpler, until such time as we are able to accomplish that, I think pieces of legislation like this make a lot of sense.

And members of the House and the Senate have access to a gym, and some of us take advantage of it, and too many of us don't. But it seems to me that it makes a lot of sense, a lot more sense to encourage the public to maintain a healthy level of physical fitness and too many obviously don't at the present time.

It seems like some think that it might be better to sue McDonalds, or Burger Chef, or others, but I think rather than do that—and we are looking at legislation to prevent that sort of abuse of the judicial system.

It seems like this type of bill makes an awful lot of sense. A lot of questions have been asked and some prior to my getting here, and are there any issues that any of you on the panel would like to expound upon that you did not have an opportunity to? Yes?

Mr. BRINSON. If I could just briefly, very, very briefly. Fitness centers are very expensive to build and operate. They are very expensive to build and operate, and a company cannot do it unless it is economically feasible for a company to have its own fitness center, unless it has by my estimate about 2,000 employees on-site.

Otherwise, it is just a big waste of money to try to build a fitness center. It is much better for the employer to make a deal with the surrounding fitness clubs and YMCAs, and whatever, to contribute toward memberships for the employees.

And then the employees can pick whatever fitness center they want to go to and pay. Most of them pay half or more than half of the costs themselves, the employees. The best way to reach the most employees is to reach the employees of small business and the best way to do that is to encourage these businesses to subsidize fitness benefits for their employees.

Mr. CHABOT. Thank you. I think the gentleman next to you had a point.

Mr. FEHRMANN. Thank you, sir. Our company is developing plans, compensation packages, for our employees that are competitive, and when the need for child care, or any other benefit is presented in such a way that many of the employers are moving that direction, our company will do that also.

Right now we are focused on some major expenses, and that is the cost of providing health care insurance, and we offer health care insurance to all of our full-time employees. By the way, approximately 50 percent of our employees are of the minority classes.

And 80 percent of those employees actively participate in health care insurance. The cost of that to our company is somewhere between $6 thousand and $8 thousand per employee, and that is a huge expense that is growing quite rapidly.

And we are very supportive of this bill and any activity that would encourage employees to become more physically fit to help control the rapid escalation of that cost.

And so that is what I wanted to speak about and encourage you to do what you can to move this forward, and provide some incentive to the employer to continue to provide the benefit like health club membership so that these employees will take it upon them-

selves to address some of the health problems and help us control these costs.

Ms. MILLENDER-MCDONALD. Would the gentleman yield?

Mr. CHABOT. I would be happy to yield.

Ms. MILLENDER-MCDONALD. Thank you so much. Sir, do you want to say something, Mr. McCarthy, before I just speak to this?

Mr. MCCARTHY. I would like to add one point if I may; that our 63 employees, that the vast majority are women, and we are proud that we have a very diversified employee staff, in terms of all races, ethnic groups, et cetera.

And I can tell you that the minority members, whether they be women or others, are as eager about this particular benefit as anybody else. So I find this benefit that we are talking about to be attractive to all the entire population, and it does not segment in any particular way.

And I think what Mr. Fehrmann said, I am just backing up what he said on that.

Ms. MILLENDER-MCDONALD. And I could not agree with you more.

Mr. CHABOT. Mr. Chairman, my time has expired, but I would like to ask for an additional two minutes so that I can yield to the gentle lady.

Ms. MILLENDER-MCDONALD. My dear friend, I thank you so much, the distinguished gentleman.

Chairman TOOMEY. I will yield an additional two minutes to the gentleman from Ohio.

Mr. CHABOT. Thank you.

Ms. MILLENDER-MCDONALD. Thank you so much, Mr. Chairman. I just wanted to get back to what Mr. Fehrmann said. You are right. We know the cost of health insurance to businesses.

I don't mind at all looking at and have provided, and have introduced legislation for tax incentives and tax credits for businesses that are having difficulty with health insurance. It is skyrocketing, and it is very true.

It is also true that people should invest more into health fitness, but that is a culture that we have got to change here in America, and it is not going to be overnight, and it is not going to be in my opinion through legislation.

It is just going to be through the myriad of advocacy programs that are out there encouraging that. But I just wanted to say that we sympathize with small businesses. This Chairman and I are on the same page in trying to help small businesses as much as we can with the relief that you have in health insurance.

Now, that I can look into full-pledged, in terms of tax incentives. Thank you, Mr. Chairman.

Mr. CHABOT. I yield back.

Chairman TOOMEY. Thank you, and I will begin the second round of questions by yielding to myself five minutes. First, let me say that my take on where this legislation is, it is under the jurisdiction of the Ways and Means Committee obviously because it changes the tax code.

My view on this, and I would think that there are many colleagues in the House that would share this view is that this is simply one of many good ideas. There are many things that I would like to see us do with this tax code.

I would like to eliminate the death tax permanently, and I would like to further lower marginal tax rates, and I would like to dramatically simplify the code. Personally, I have my own, many things that I would like to accomplish.

Most of us in this chamber and in the other body have their ideas. It is my hope because I think that this is a particularly meritorious idea, that it will be included in the mix at some point when we have an opportunity to consider additional tax legislation and that is why I think it is important that it be introduced, and that we grow the number of co-sponsors, and that we have this hearing today, and I am very grateful to all of you for helping this cause.

The other point that I would like to make pursuant to the discussion that we have been having is that I personally do not see this as conflicting with a company's ability to provide other kinds of compensation or benefits.

I think it is worth keeping in mind, for instance, with regard to health care that employers that provide health care to their workers find that their workers are not required to pay tax on that benefit. All we are really asking for is the same treatment for this kind of health care, a preventive kind.

But very much a kind of health care. So in many ways I think this could be construed as a broadening of an existing tax treatment of health care, and an appropriate one at that.

I would like to ask a question to—I think Mr. Brinson had in his written testimony addressed this, and I am wondering if any of you have similar or different opinions.

And that is, is there a way to quantify or estimate any kind of percentage increase or numerical increase in the usage of health care facilities if we were to provide this change in the tax code?

Do we have any guess as to what kind of numbers we would see people actually taking advantage of it?

Mr. BRINSON. If I may, in Northeastern Pennsylvania, we have a very low market penetration by fitness club memberships, about six percent. The national average is about 13 percent.

So we can assume that for the general population the penetration is about six percent. It is my experience with companies that I do business with, and who subsidize fitness benefits, that as many as 20 or 25 percent of the employees participate.

So we are looking at 4 to 5 times more participation simply because the employer is supporting fitness. And by the way, I have heard it said that this H.R. 1818 is an incentive program, but it really is not.

It is removing a disincentive, because what we have right now in the tax code is a disincentive to fitness, a disincentive. So we are not giving anything to anyone here. We are simply asking that there be fair treatment for all, and it is not going to cost the Ways and Means Committee any money.

Because very few employers are doing this, and I am telling you that it is very, very difficult—

Ms. MILLENDER-MCDONALD. Tell that to Mr. Thomas.

Chairman TOOMEY. I have only a minute-and-a-half left in this time round, and so I would like to just if I could switch to another topic, which is the fact that this benefit, to the extent that it is provided to an employee, and deemed to be taxable income at the Federal level, of course many States have an income tax as well.

And are any of you aware of any efforts at the State level to exclude this benefit from the taxable income at the State level? Is there any movement in that direction?

Mr. MCCARTHY. I wish I could speak more specifically, but I am aware that there are some States that are trying to incentivize fitness participation. I can't give you chapter and verse on that, Mr. Chairman.

Chairman TOOMEY. Okay. Does anybody else have any input on the State practices? Okay. Well, obviously the Federal Government has a much higher income tax burden than any of the States, and so the biggest impact by far would be if we made the change, and if States chose to follow suit, so much the better.

But with that, I would be happy to yield five minutes to the ranking member.

Ms. MILLENDER-MCDONALD. Thank you, Mr. Chairman. Ms. Silberman, you stated in your testimony that the NCPAA strongly believes in tax incentives as a way to encourage physical activity. Would the NCPPA support an individual tax refund rather than business tax expenses, as proposed in H.R. 1818?

Ms. SILBERMAN. We advocate on actually a lot of different issues around physical activity, and if it was something that we felt like would encourage people to be physically active, it is something that we would support. This is one of many ways that we want to get people more active.

And one of the things that we work on is making sure that people can be active across the board, and I think we have touched on some of the things here in the hearing in terms of not everybody is going to join either a public or private health club, or YMCA, or JCC.

Some people are just going to walk in their neighborhood. Some employers are going to take advantage of this if they have the money and they want to, and some won't.

But again we feel like we are taking away a barrier, and it is just one more thing that we can do to say to people that this is important. It is important to take care of your health and to practice prevention. This is one way to get that done.

Ms. MILLENDER-MCDONALD. In speaking to a lot of members on this bill, about this bill, they find that this has been a luxury that one should have if one wants it, and this is why perhaps the individual tax credit or incentive would be more of an avenue that they could engage in dialogue on, as opposed to a business tax.

And that is why I brought that forward because you had mentioned that. So it is very encouraging to know that you would consider an individual tax incentive because of your whole notion of physical fitness.

One of the major contributors to the development of chronic diseases in obesity is attributable to poor diets, and we know that. Now, H.R. 1818 addresses just half of that problem. What changes would you like to make in WHIP to improve the diet issue that is not included here?

Ms. SILBERMAN. NCPPA has made a very strategic decision actually not to be involved in the diet fight of things. There is a lot of politics involved around anything having to do with the food, and NCPPA is specifically focused on the physical activities.

As I like to say, there are not any people who are against being physically active, but there certainly are a lot of people who have particular ideas around what good nutrition is. So I would respectfully decline to respond.

Mr. BRINSON. If I may.

Ms. MILLENDER-MCDONALD. Mr. Brinson, yes.

Mr. BRINSON. Thank you, Madam. In the fitness industry, the fitness club industry, most clubs provide nutritional counseling and diet advice for their members. We do. It is included with the membership's free of charge, so that we are addressing the diet and nutrition problems, which are huge as you say.

It is a combination of things and it is not just physical inactivity. It is poor diet and we do address that, and I believe that John McCarthy could attest to the fact that of our 4,500 U.S. members in his association, almost all of these organizations provide free nutritional counseling.

We have two registered dieticians on our staff to help with this. Thank you.

Ms. MILLENDER-MCDONALD. Mr. Brinson, as well as Mr. McCarthy, both of your organizations title or names are—is it Lehigh Valley Racquet and Fitness Centers?

Mr. BRINSON. Yes.

Ms. MILLENDER-MCDONALD. And, Mr. McCarthy, yours is International Health, Racquet and Sports Club Association. Would you not say that that is more geared for an affluent type of person, as opposed to any commoner like in my district, the Watts for heaven's sake?

Mr. BRINSON. Absolutely not. Our members range from very low wage workers all the way to wealthy lawyers. We are trying to get rid of the lawyers.

Ms. MILLENDER-MCDONALD. Be careful now.

Mr. BRINSON. But, no, Madam. You would be surprised that in most fitness clubs, the members of fitness clubs range all over the economic scale, and everyone is welcome. These benefits don't really cost a lot of money.

I mean, you can get a good fitness club membership for less than cable television.

Ms. MILLENDER-MCDONALD. I know that I paid nearly a thousand dollars for fitness programs.

Mr. BRINSON. Well, you may be going to a really upscale club, but there are plenty of just nice average clubs for nice average people. That is what we have.

Ms. MILLENDER-MCDONALD. Mr. McCarthy, why don't you speak to this.

Mr. MCCARTHY. Well, I just concur with Mr. Brinson on this, and the beauty of this industry as many industries, as the restaurant industry, and the hotel industry, is that there really is a facility for every pocketbook.

And we are privileged in this endeavor to be affiliated with the YMCA and with other groups such as the YMCA that basically say that no one will ever be forbidden membership by reason of financial need.

In many, many facilities like Mr. Brinson's, they provide scholarships to people on an as-needed basis.

Ms. MILLENDER-MCDONALD. But the YMCA is a public—

Mr. MCCARTHY. But they are allied with us in this initiative. And they are not exactly public. They are public-private.

Ms. MILLENDER-MCDONALD. Public-private, yes. Mr. Foulke.

Mr. FOULKE. Well, as to the lawyer bashing, but I will leave that for later.

Ms. MILLENDER-MCDONALD. That is right. Take them outside.

Mr. FOULKE. But I would like to address one of the points that you brought up. You were obviously concerned about where the tax credits should go.

Ms. MILLENDER-MCDONALD. Yes.

Mr. FOULKE. And I understand what you are saying with the individual tax credits, but I think the benefit is going to the company, because if you look at insurance companies, they will generally give lower rates for companies that have health fitness benefits that they are providing their employees. Or if they have smoking cessation things. They look at all those areas. I think that this goes to the focus that you really want. You are going to have the best health care that an employer can provide for its employees. If we can reduce the premiums by providing these things, the incentives to the employers, that they provide these fitness programs, then they are going to be able to provide more health care for their employees overall.

Ms. MILLENDER-MCDONALD. And I think that is a valid argument, provided that this would be just for the small businesses, but this will go across the board.

Chairman TOOMEY. Will the gentlelady yield?

Ms. MILLENDER-MCDONALD. Yes, please.

Chairman TOOMEY. I just want to state, unless there is any confusion, just make it very, very clear. What this legislation does is nothing for any employer.

Ms. MILLENDER-MCDONALD. That is correct.

Chairman TOOMEY. This is exclusively for the individual. This bill simply says that if your employer chooses to provide this benefit, you would no longer have to pay personal income tax on the value of that benefit.

So this is entirely about making it more appealing and more viable for individuals to be able to take advantage of what an employer may choose to provide. I just want to make it very clear.

Mr. FOULKE. Well, I think it does provide an incentive for employers.

Chairman TOOMEY. That fact creates an incentive for employers, but there is no tax incentive provided to any employer under this for any corporation large or small under this legislation. That is a fact.

Ms. MILLENDER-MCDONALD. Well, one more question to Mr. Brinson. You did mention and talk about taxes. You mentioned that the loss of tax revenues from H.R. 1818, which there is going to be a tax loss revenue here, unless we looked at this incorrectly,

and I will be happy to go back and look at it, but it would cost the government nothing is what you said.

Now, will you explain that to me how you arrived at that determination given that this is not the determination that we have arrived at?

Mr. BRINSON. Alright. Let me try. Right now the rule is that the employer, if the employer subsidizes the benefit, the employer should be given a 1099. Some organizations, such as John McCarthy's organization, gives 1099s to its employees.

There aren't many companies doing this, and not many companies are subsidizing memberships for their employees because of this disincentive. It is just not happening. So that we are talking about a minuscule—I said minuscule or nothing.

I believe that the increase in productivity will create more productive companies and will pay more in corporate income tax, but you are not going to lose a lot of money or any money at all to speak of because of changing this rule, because employers are not doing what they want to do.

Ms. MILLENDER-MCDONALD. Well, I was just reading here, and the Chairman has kind of peaked my interest again or concerns here. I was reading that this legislation, while it is in the Ways and Means, would amend the Internal Revenue Code to extend non-taxable fringe benefit coverage to qualifying off-premises fitness centers or athletic club services provided for by the employer. Yet he is saying that this bill does not indicate that it is the employer that is—

Chairman TOOMEY. Again, if I could respond, you have correctly described the bill and I would still maintain that there is no change whatsoever in an employer's corporate tax return. For instance, the total tax liability of a company would not be changed by this legislation.

What would change is the fact that the worker who gets this benefit would no longer have to declare this income and pay personal income tax on the value of this benefit. And if anyone disputes this, please join me, but—

Ms. MILLENDER-MCDONALD. And then that would be the loss of the taxes then and the worker's tax assessment.

Chairman TOOMEY. And that is why Mr. Brinson observes that it would be very, very small, because very, very few employees currently have this benefit. Now, you could speculate that many more corporations would choose to participate in such a program, and they would divert some of their pre-tax profits to providing this benefit. So that would then be an expense of the company and diminish their profits, and very slightly diminish the total tax that would be taken in that fashion.

However, as Mr. Brinson observes, that is also extremely modest and increases in productivity at the company and worker performance, and morale, and many other factors would presumably offset that as well.

I want to reiterate that this is directly targeted for individuals and really does not change tax law regarding corporations.

Ms. MILLENDER-MCDONALD. I don't want to prolong this any further, and this has been an absolutely and very provocative, and interesting topic to discuss in the meeting. I thank this Chairman who was so innovative in and of himself bringing these types of things to our Committee. I really do thank him for his leadership.

So, Mr. Brinson, I think we would be here all day with your questions, and so I am going to turn it back over to the Chairman and then you can talk with him.

Chairman TOOMEY. Well, I thank the gentlelady, and I appreciate this discussion. I think it was a thorough examination of the ideas, and the merits of the legislation, and I hope that we have advanced the ball a little bit today, and again I want to thank all the witnesses for coming today, and thank the ranking member as well. The hearing is adjourned.

[Whereupon, at 11:34 a.m., the Subcommittee meeting was adjourned.]

Opening Statement
WHIP Act Hearing
July 8, 2004

Good morning and thank you all for being here today as we discuss H.R. 1818, the "Workforce Health Improvement Program Act." I would especially like to thank all of our witnesses who have agreed to testify before this Subcommittee this morning.

Exercise and weight management are critical to maintaining a healthy lifestyle. Public health experts unanimously agree that people who maintain active healthy lifestyles dramatically reduce their risk of contracting chronic diseases. A physically fit population results in a decrease in health care costs, reduced governmental spending, fewer illnesses, improved worker productivity, and better quality of life.

Exercise is a proven and cost-effective method of preventing and treating many of the illnesses that many Americans are confronted with today. Unfortunately, 60 percent of all Americans are still physically inactive, growing our nation's obesity rate to near epidemic proportions. The Centers for Disease Control and Prevention, The Rand Corporation, the Surgeon General, and countless other experts consistently document that obesity, often exacerbated by lack of physical activity, is the number one health problem in the United States today. Given the tremendous benefits exercise provides, it makes sense to remove the obstacles that keep folks on the couch and not leading a healthy lifestyle.

Currently, approximately 98 percent of health care expenditures are spent on curative tactics. The approach the WHIP Act takes, prevention, could lead to dramatic reductions in the cost of medical expenses in the U.S., which are estimated to double to $2.6 trillion by the end of this decade. The Centers for Disease Control and Prevention has concluded that the potential savings in direct medical costs if all inactive American adults engaged in regular exercise could be as high as $76.6 billion annually.

By enacting the WHIP act we can take a significant step towards encouraging the use of fitness centers, which would lead to a healthier population, which in turn could decrease health care costs, reduce governmental spending, and help prevent debilitating illnesses. Most importantly, it will demonstrate that a better quality of life is attainable with even minor behavioral changes.

Not only is this a health improvement bill, but it is also a tax equity bill. Under current federal tax law, the value of on-premises athletic facilities that are provided by employers are excluded from employee income. However, if an employer does not have the resources to build facilities on premises -- but provides health club services to employees in off-site facilities -- the value of that benefit is included as taxable income to the employee. I believe that this inequity needs to be corrected, and that is just what the WHIP Act does. H.R. 1818 would exclude the wellness benefit from being considered income for employees.

Yet another positive that can be realized through this legislation is the direct effect it will have on the workplace. H.R. 1818 would provide employers with more options when creating compensation packages for recruiting and retention efforts.
As our economy continues to grow, the competition for qualified employees increases, and employers need as many tools as possible to recruit or retain their best employees. This is especially true for small businesses, which often do not have the resources to compete with larger ones.

It is a simple fact that America in getting heavier and less physically active; and it's not healthy. America is also getting older as the leading edge of the baby boomer generation is beginning to retire. This is going to force American taxpayers to continue pump more and more money into the Medicare system. If we enact legislation that would encourage fitness and weight management, not only will Americans lead healthier lifestyles, we would be lowering the total cost of curative health tactics both now and down the road. An ounce of prevention is worth a pound of cure.

Statement of John McCarthy, Executive Director,
International Health, Racquet & Sportsclub Association
before the
U.S. House Small Business Committee's Subcommittee on Tax Finance and Exports
regarding
the Workforce Health Improvement Program Act (WHIP)

July 8, 2004

Mr. Chairman and Members of the Committee

I am pleased to appear before you today on behalf of the International Health Racquet and Sportsclub Association (IHRSA), an organization representing more than 23,000 health and fitness clubs across the United States. IHRSA is proud to represent these clubs, many of which are local small businesses dedicated to serving the adult fitness needs of their nearly 40 million clients.

IHRSA members generated an estimated $14.1 billion in revenue in 2003 and employed approximately 1 million full- and part-time employees across the country. IHRSA commends the Committee for convening this hearing today to examine ways in which the government can begin providing real world incentives to promote exercise and fitness in the workplace.

As I am sure members of this committee are aware, healthcare costs are spiraling out of control for U.S. businesses of all sizes, driven in large part by the unhealthy lifestyles of many Americans. In 2003, a study conducted by the Kaiser Family Foundation found that the cost per employee for family healthcare coverage averaged approximately $9,000. Of this total, employers paid over $6,000. If current increases in premium costs per employee continue to rise at the relatively conservative rate of 10 percent per year, the cost of healthcare per employee will rise to over $14,000 in 2008, with employers assuming more than $10,000 of that cost.

For most employers, and small businesses in particular, this represents a crisis of enormous proportion. Unfortunately, the problem is likely to get nothing but worse if Americans continue to make unhealthy lifestyle choices and live mostly sedentary lives. We are already seeing the ominous signs of this trend toward inactivity in the form of an exponential increase in obesity in the United States over the past two decades.

The Centers for Disease Control and Prevention (CDC) predict that if current trends continue, obesity will become the leading cause of death in America by 2005. Obesity is indirectly

associated with more than 30 medical conditions, and scientific evidence has established a strong direct link between obesity and at least 15 of those conditions.

The cost of treating these chronic diseases accounts for a substantial share of U.S. healthcare costs. According to another CDC study, U.S. obesity-related medical expenditures rose by approximately $75 billion in 2003 and the Department of Health and Human Services further notes that obesity is costing the nation roughly $117 billion per year, or $417 per year per person.

Given the health and obesity crisis we are facing today, IHRSA members strongly believe that it is time for the government to look for new ways to provide real pocketbook incentives to promote exercise and physical activity. The Workforce Health Improvement Program (WHIP) Act (H.R. 1818), which is the subject of today's hearing, does just that, and I want to thank you chairman Toomey for introducing this important piece of legislation.

Current tax law correctly allows employers who provide on-site fitness facilities to deduct the costs of those facilities as regular business expenses, and employees who use the fitness centers are not taxed on the value of that benefit. However, if an employer is small and does not have its own on-site facility, the tax consequences are less favorable. If the employer purchases all or part of an off-site fitness club membership for the employee, the value of that purchase is reported to the employee as taxable income. Clearly, the tax code creates an unleveled playing field for employees working at small businesses.

For a real world example of this inequity, we need look no further than the House of Representatives itself. House employees who presently take advantage of the recently available Gold's Gym benefits package received an unwelcome letter in January -- IRS tax form 1099. That form recorded the value of the Gold's Gym subsidy as taxable income for the staffers that chose to participate in the wellness program, simply because the gym's they are using are off-site. We believe that this unfair tax treatment represents an unnecessary disincentive to promoting fitness in the workplace, one that was not intended by Congress.

In order to correct this inequity, the WHIP Act adjusts the tax laws and removes this disincentive for employers and employees alike. Quite simply, H.R. 1818 affirms the employer's right to deduct the cost of any fitness center subsidy that they provide their employees, while at the same time eliminating the requirement that those employees pay income tax on the value of the subsidy. If passed, WHIP would level the playing field for small and large businesses by making it equally tax friendly for employers of all sizes to offer fitness center benefits to their employees.

WHIP does not impose a mandate on employers to provide fitness center memberships nor does it restrict their choices of using either for profit or not for profit centers to provide the wellness benefit. Instead, the legislation is flexible in its approach, offering businesses a range of options for providing programs to improve the health and fitness of their employees.

In IHRSA's view, the WHIP legislation represents an important first step in providing the real world incentives necessary to promote physical activity in the workplace. It is not a "silver bullet" and we must continue to explore other ways to incentivize exercise. However, passing

WHIP would send a strong signal that the Congress is truly committed to developing new ways to promote healthy lifestyles and is serious about combating the health crisis that we are facing in this country today. I urge all the members of this committee to sign on to support WHIP and to work for its rapid passage in the House of Representatives.

I thank you again Mr. Chairman for inviting me to testify on this important piece of legislation today.

jackson|lewis

Preventive Strategies and Positive Solutions for the Workplace

HOUSE COMMITTEE ON SMALL BUSINESS
Subcommittee on Tax, Finance and Exports

"H.R. 1818, the Workforce Health Improvement Program Act: Healthy Employees - Healthy Bottom Line"

July 8, 2004

Prepared Remarks of Mr. Edwin G. Foulke, Jr., Esq.
Partner, Jackson|Lewis, LLP

Chairman Toomey, Ranking Member Millender-McDonald, and Committee members, I appreciate the opportunity to appear before the Subcommittee today to discuss the beneficial impact of H.R. 1818, the "Workforce Health Improvement Program Act," on employer and employee communities. As a member of the Society for Human Resource Management (SHRM) and former Chairman of the Occupational Safety and Health Review Commission for President George H.W. Bush, I come before you to testify as a human resource professional, an occupational health legal expert, and a consultant specializing in safety and health in the workplace.

As a member of SHRM's National Panel on Employee Health, Safety & Security, I am tasked with providing, for the human resource profession and the SHRM membership, current and emerging practices, advice, and expertise on all aspects of HR as it relates to employee health, safety, and security in the workplace, including all elements surrounding the work environment that expose the organization and/or its employees to risks of any kind. SHRM is the world's largest association devoted to human resource management. Representing more than 185,000 individual members, the Society's mission is both to serve human resource management professionals and to advance the profession. Founded in 1948, SHRM currently has more than 500 affiliated chapters and members in more than 100 countries.

The U.S. adult population is growing heavier at an unprecedented rate. The statistics stagger the mind, revealing a growing national crisis. Employers are not unaffected by these events. Americans don't leave their increasing waistlines at home in the mornings; they bring them to work. And those extra pounds are having serious ramifications relating to health care costs,

productivity, absenteeism, workplace injuries, morale, and potential employee discrimination. As a result, HR professionals find themselves right in the middle of the issue, facing the unenviable challenges of controlling costs, addressing the needs of a ballooning workforce, emphasizing healthy lifestyle options, and sensitizing both the lean and the large to the advantages of overcoming harmful weight-based stereotypes.

According to the Department of Health and Human Services, nearly two-thirds of all adults are either overweight or obese; nearly 14 percent are considered obese, up 61 percent since 1991. Societal costs from obesity's scourge are estimated to be as high as $300 billion. The costs to employers, while smaller, are still enormous: Obesity costs U.S. companies an estimated $12.7 billion annually. On average, health care for obese workers costs 36 percent more than for normal weight workers, and medication costs 77 percent more. Direct costs of obesity include medical insurance, hospitalization, physician visits, outpatient testing/treatment, laboratory, radiology tests, and prescription drugs. Health insurance is responsible for $7.7 billion, followed by life insurance, $1.8 billion, and disability insurance, $800 million. Indirect costs include decreased productivity and increased absenteeism. And according to a study by the Centers for Disease Control, obese employees are twice as likely to be absent 14 or more times per year. Paid sick leave associated with obesity costs employers an estimated $2.4 billion per year.

So what are HR professionals and employers doing to address the health and quality of life for their employees? To their credit, many companies are trying to find a solution to the obesity epidemic. The Department of Health and Human Services estimates that more than 80 percent of worksites with 50 or more employees offer health improvement programs. Companies are also building incentives into health improvement programs that include offers to reduce co-payments when employees participate in health improvement or disease management programs. Studies show that such efforts can effectively reduce employees' weight, improve their health, and reduce the employers' overall operating costs.

Many experts agree the key to healthier lifestyles is to encourage employees to improve their fitness — rather than concentrate on weight loss alone. In fact it may be more important for companies — from a cost-benefit analysis — to focus on prevention and fitness, helping individuals develop healthy lifestyles. This is where Chairman Toomey's bill, H.R. 1818, the "Workforce Health Improvement Program Act" would complement the focus of healthier lifestyle programs sponsored by employers.

The Workforce Health Improvement Program Act takes an important first step in clarifying an employer's right to deduct the cost of subsidizing or providing health club benefits for their employees. But more importantly, from an HR professional's point of view, this legislation would exclude the wellness benefit from being considered income for the employees. More often than not, if employees have to pay taxes on a benefit offered by their employer, employees will "opt-out" or choose not to receive that benefit unless it is paid out as a straight cash benefit. Chairman Toomey's approach would eliminate the disincentive of additional taxes on employees and include an incentive for additional benefits — providing enticements to employees and employers alike.

According to a recent SHRM Weekly Online Survey of 1,800 HR professionals, 67 percent of participants responded that they would consider offering a health club membership as an employee benefit if it were deductible at the employer level and not included in an employee's gross taxable income.

Again, you may ask yourself, why is the employer community so eager to participate in the improvement of the lifestyles of their employees? I have three relatively easy answers for you. One, healthier employees are more productive. Two, healthier employees experience lower incidences of workplace injuries. And, three, employer participation provides a variety of tools for recruiting and retaining valuable and, yes, healthy employees. Congressman Toomey's bill would add a tool to our repertoire of recruitment and retention tools that ultimately help create and sustain a productive and healthy workforce.

EMPLOYEE PRODUCTIVITY

As discussed in the March 2004 issue of *HR Magazine*, obesity is associated with 39 million lost work days, 239 million restricted activity days, 90 million bed days, and 63 million physician visits. And even when they are on the job, a quarter of obese workers under-perform because of infirmities related to their weight. Earlier, I mentioned a couple of statistics that are worth mentioning again: First, that obese employees are twice as likely to be absent 14 or more times per year and, second, that the paid sick leave associated with obesity costs employers an estimated $2.4 billion per year.

In the human resources profession a "high performance work system" is defined as a system or bundle of management and HR practices designed to enhance employees' skills, commitment, and involvement such that employees become a source of sustainable competitive advantage. The successful implementation of a "high performance work system" is especially important in today's competitive global economy as businesses are challenged to operate more efficiently and effectively than ever before. Profit margins and the cost of doing business can increase as each new workplace emerging trend can impact the bottom line.

Business, in general, is experiencing an exponential increase in the cost of total compensation; therefore, it is critical for HR professionals to effectively manage the overall performance and output of their current workforce. If employees could reduce their restricted activity days, bed days, and unscheduled physician visits, then an increase in performance as a result of a simple health-related lifestyle change would follow. This would signify a gigantic step toward improving the health of all American workers and the continued competitiveness of our nation's economy. In simple terms: A healthier workforce means a more productive and competitive workforce.

MINIMIZATION OF WORKPLACE INJURIES

The importance of this bill from a safety and health standpoint must not be underestimated. I would note that over the past several decades, American companies and businesses have done pretty much all they can do in the area of productivity and quality in order to stay competitive in the world marketplace. The only remaining area where large cost savings can be achieved for

American businesses will come from the health and safety area, which will in turn reduce workers' compensation and healthcare costs to all businesses.

This bill will encourage all working Americans to be actively involved in maintaining their health. This will have many positive benefits too numerous to discuss here. However, several of the more important benefits should be noted. First, for those employers and employees who take advantage of this bill's provisions, it is almost guaranteed that their employees will suffer less health-related on-the-job injuries. Specifically, with more frequent exercise, employees will strengthen their muscle tone and as a result will be less susceptible to back injuries and muscle strain. Back strains and muscle injuries are the leading workplace injury. In addition, increased exercise will increase the strength and stamina in the lower extremities, thus reducing the likelihood of musculoskeletal injuries such as carpal tunnel and tendonitis.

Increased exercise will also reduce the risk factors for heart disease including blood pressure and blood cholesterol levels. This will in turn reduce the number of deaths from heart disease and strokes. It will also help employees deal with stress associated with their jobs, which in turn will decrease associated health problems, including heart attacks, strokes, and diabetes, as well as epileptic seizures. Another important by-product of improved circulatory and respiratory improvement will be a more alert workforce, which will help in the areas of productivity and quality while at the same time reducing absenteeism. All of these benefits could have a dramatic impact for employers by providing substantial savings on their health care costs. Furthermore, reducing obesity in the workplace will in turn reduce some psychological disorders such as depression. This in turn could reduce violence in the workplace.

IMPACT ON RECRUITING & RETENTION

The debate regarding obesity's designation as a disease or a lifestyle choice has repercussions beyond health care costs. The way managers and co-workers perceive obesity can have profound effects on recruitment and hiring, discrimination, retention programs, and employee morale. In an effort to effectively and consistently manage the workplace, many employers choose to develop and implement employment policies to address compensation, benefits, and job performance requirements.

The reason for focusing on benefits programs stems from the fact that the size of our labor pool is shrinking, while the demand for qualified employees is increasing. The most common estimate is that during the first decade of the twenty-first century, there will be approximately 105 jobs for every 100 people eligible to work in the job market. As a result HR professionals will be challenged to recruit the best and the brightest to staff their organizations and to do this they will have to design attractive benefits packages. Today, potential employees' benefits demands often exceed the traditional requests of pension and health care coverage, and as a result HR professionals must identify options available to them within the current statutory parameters. H.R. 1818 would enable HR professionals to step outside current benefit restrictions and provide a benefit that directly meets the needs of employees while indirectly impacting the bottom line for organizations.

Healthy and happy employees make loyal and valuable employees, and having available practical benefits such as a fitness center membership as proposed in the Workforce Health Improvement Program Act can provide employers and employees with a real incentive to get active and more physically fit, creating a healthier bottom line for everyone.

Mr. Chairman, Committee members, thank you for the opportunity today to share some of my thoughts and opinions. I look forward to working with you to address this issue and would be more than happy to answer any questions you may have.

TESTIMONY
before
COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
8 July 2004
by
John F. Brinson, CEO
Lehigh Valley Racquet
& 24-7 Fitness Clubs
Lehigh Valley, Pennsylvania

Greetings Mr. Chairman and Honorable members of this important Committee.

I am a small business owner and have been a Member of the NFIB – the National Federation of Independent Business – for over 30 years. My company was a founding member of "IHRSA" – the International Health, Racquet & Sportsclub Association, the premier world-wide association of top-quality fitness clubs.

My company operates four fitness clubs in the Lehigh Valley of Pennsylvania, which has a population of approximately 700,000 people and a great variety of small, medium, and large businesses. We have contractual relationships with several Lehigh Valley Employers, who support fitness programs in our Clubs for their Employees.

Employer support for fitness increases Employee productivity, reduces absenteeism and turnover, improves morale, and lowers health insurance costs. These benefits and more accrue to not just the Employees, but to the Employers as well. Employers benefit as much as Employees.

It is very difficult to convince Employers to support fitness because essential business expenses receive priority, and because the current tax regulations are unfavorable. Employers are extremely reluctant to support any program that could result in tax problems for themselves or their Employees.

H.R. 1818 will remove the tax obstacles and encourage support for fitness. We currently have over 2,000 members whose Memberships are subsidized by their Employers. I estimate that the beneficial effects of H.R. 1818 could easily triple the number of workers whose memberships are supported by their Employers. The Lehigh Valley has approximately 280,000 workers, but fewer than 15,000 belong to health or fitness clubs, by my best estimate. This number could easily be increased by 50,000 to 60,000 – just by making it clear that Employers' cost is deductible as a business expense, and not taxable to Employees.

H.R. 1818 would allow small businesses the same advantages as are currently enjoyed by companies large enough to build and operate their own fitness centers, whose costs are entirely deductible, and whose memberships are not taxable to the Employees. Building and/or operating at fitness centers is an expensive proposition, not financially feasible for companies with fewer than 2,000 Employees. But, most workers are employed by businesses with fewer than 100 Employees. Thus, H.R. 1818 would level the playing field for small business.

What would be the cost to the government in lost tax revenues if H.R. 1818 becomes law? I estimate that it would cost nothing, because very few Employers give their Employees 1099s now. Those that do kill their program. Employees don't understand why they should pay tax for something that helps them stay healthy and productive, so they just opt out, and don't participate.

I'm saying that the IRS is not getting anything now under the current rules, so if the rules are changed, they won't suffer any loss.

On the contrary, H.R. 1818 will be good for Employers and Employees and good for the fitness industry as well. Productivity will increase, meaning more profits and more jobs.

H.R. 1818 is a sure winner for everyone.

Thank you.

John F. Brinson, CEO
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Testimony of David Fehrmann – HB 1818 – July 8, 2004

1. Introduction

I have been invited to attend here today as a representative of small business. I am employed by USA Management, Inc. located at 1217 22nd Street NW. Our founder, Ulysses Auger, and now his descendants, have continually operated their businesses from this location in the District of Columbia. Their first restaurant was opened at this location in 1946 and continues to operate at this location, without interruption, ever since. My name is David Fehrmann. I am employed by the company as Director of Brand Standards and Operating Systems. In small business you often find yourself wearing a variety of hats…doing whatever it takes to get the job done. Today I'll make comments while wearing the Director of Human Resources hat.

USAMgmt is a hospitality company. Our businesses include Blackie's, our flagship restaurant, the Washington Marriott hotel, a Courtyard by Marriott hotel, a hotel management company, two office buildings and some smaller restaurant operations, all in the Washington DC metropolitan area. We currently employ about 225 people and see annual revenues of about $50 million. Our businesses are rapidly expanding into additional markets, and, in 3 years, when the current expansion plans are completed, we will have tripled the size of the business and employment will have advanced to about 1000 people.

2. Current Health Club Participation

I would like to tell you today that we provide state of the art health facilities at our headquarters location. However we can neither afford the cost, nor do we have the physical space, to open such facilities. We operate on a decentralized basis, with employees scattered at operating units across the metro area. There is no way that we would allocate precious revenue producing space to an on-site health club facility. Nor could we allocate precious capital to such a project. All of our available capital dollars are being invested in expansion of the businesses. Our CEO however, is a very health conscious individual and realizes that there is considerable value in keeping personally fit. A number of years ago he contracted with one of the premier health club operations in the DC area and now provides health club memberships to a group of managers and key employees. About 10% of our current full-time employee base is involved. The cost of this health club participation, roughly $150/month/employee, is borne by the company. The total annual cost, about $30,000, is a significant expense to a small family owned business like ours. Employee usage is monitored. It's provided on a use it or lose it basis.

3. Why do we offer Health Club Benefits?

Anyone familiar with the restaurant business knows about the long work day. There is a lot of shopping and preparation that must be performed long before you can open the doors for customers and start serving meals. Closing and then clean up continues until well after midnight. Then there is the hotel business. It's different. It never closes! A hotel demands attention 24 hours a day, 365 days a year. When you open a hotel, it stays open and must be adequately staffed until it ceases to operate. The pace of work and the pressures of the job in these businesses can take its toll on the employees. Many times our managers or other key employees will work double shifts, or even around the clock, if necessary, to take care of our customers.

I'm sure that other small business owners would tell similar stories. It takes people who are willing to work long hours, people who pay particular attention to the detail, people who can wear several hats, and people dedicated to what they do, to work in a small business atmosphere.

Our owners recognize that a physically fit person with a neat and trim look is advantageous to our business. We consider healthy and happy employees a valuable asset. Our company needs to attract high quality key employees who can provide an immediate positive impact on our business. And, we continually seek out the most qualified people we can find when hiring. Besides meeting our job requirements, they tend to be energetic, charismatic and physically fit leaders who will attract and surround themselves with others just like themselves.

Some direct benefits of a regular workout include general improvement in overall health, reduced weight, increased energy levels and a generally reduced stress level. We see employees who are completely stressed by the events of the day, leave for a 45minute workout, and then return to work absolutely refreshed, with a clear mind, energized and ready to get back to work. These people produce more, work well under pressure and present a calm outward appearance. They tend to lead by example. I believe that the people who work out regularly are competitive. They seem to have increased stamina and ultimately perform better in our business.

4. How this legislation will affect our Business

I do not want to dwell on the single issue of the tax advantage to our business if this legislation becomes law. But it's certainly valid and should be mentioned. Small business deserves the tax deduction that House Bill 1818 offers.

- Large multi-national Fortune 500 companies often provide on-site health club facilities and deduct the expenses of providing and operating their private health clubs.
- Why should a small or decentralized business, who seeks out independent suppliers of health facilities for their employees, be denied the same tax benefit?

Our company is engaged in an expansion project. We intend to open additional restaurant and hotel operations over a multi-state area. The expanded work force will be scattered over a three state area. I don't foresee a private health club facility for employee use at any of our facilities. But I do see expanded health club benefits offered to employees at all locations. We want to continue to reap the benefits of a more physically fit employee base. It's as simple as that. We will expand or businesses, and to do so, we need to expand out employee base. We must continue to offer competitive wages, competitive health care, and competitive indirect compensation packages to attract the work force that we need. A benefit package that includes some form of health club participation is good for both the employee and the business.

Our company continues to focus on factors that control one of our largest expenses – the cost of health care insurance coverage for our employees. We are no different that any other business. We have been staggered by the rapid escalation in health care costs over the past several years. Our premiums have been increasing over 10%/year. We believe that improving the health of the population in general, and out employee base specifically, can help reduce future increases in these costs. We intend to do our share to control the rapidly rising cost of providing medical coverage for our employees.

5. Conclusion

In conclusion, our business is growing. We will need to recruit a hundred key people in the next several years and it will take a complete package of direct compensation and benefits to attract the right people for these positions. Health Club participation will be part of those benefits. If we can continue to see the on-job related benefits of health club participation, and also see reduced health care insurance premiums at the same time, we can get a double impact from the dollars that we spend. That's the kind of impact that impresses a small business owner. It's the kind of expense that's easy to justify.

WHIP Testimony – July 8, 2004

Good morning, my name is Karen Silberman and I am the Executive Director of the National Coalition for Promoting Physical Activity. NCPPA is a coalition of major health, fitness and recreation associations working to advance policies and programs that promote physical activity. NCPPA was created in response to the 1996 Surgeon General report on physical activity and health. The American College of Sports Medicine, the American Heart Association and the American Alliance for Health, Physical Education, Recreation and Dance convened the coalition as a way to advocate and educate Americans on the importance of regular physical activity.

NCPPA has since grown to include a broad cross section of national and local organizations, including federal agencies, corporate partners, trade and professional associations and national charitable organizations. Our members are as diverse as IHRSA, American Cancer Society, AARP, the YMCA, National Recreation and Park Association and the NCAA.

NCPPA's members independently address a host of issues pertaining to physical activity including health/science, education, environment, population specific outreach, and activity behavior. By working together and building on existing relationships in the public, private, and industry sectors, NCPPA is developing new alliances and partnerships to focus and coordinate public education campaigns, policy development, and media education.

Our work is motivated in part by the alarming rates of obesity, chronic disease and inactivity in our country. America faces a national health crisis of epidemic proportions. Physical inactivity combined with overweight has in less than 30 years made the United States a nation of overweight and out of shape individuals. According to the CDC, the incidence of overweight or obesity among adults increased steadily from 47% in 1976 to 61% in 1999. Despite proven benefits of physical activity, more than 60% of American adults do not get enough physical activity to provide health benefits.

Obesity is a significant risk factor for developing chronic diseases such as diabetes, asthma and heart disease. Physical inactivity and obesity now rank second after tobacco use as the leading cause of death in the United States. The newest figures estimate that 400,000 deaths annually are attributable to poor diet and inactivity. In 2000, the costs associated with physical inactivity, obesity and related chronic conditions was estimated to be $117 billion. Moderately intense, daily physical activity has long been recognized as an essential ingredient of a healthy life, but increasingly physical activity has been engineered out of American's daily life.

We have yet to find a solution, we know that old programs and initiatives aren't working, the statistics illustrate a deepening problem. What we do know is that when physical activity is incorporated into a person's daily life it is more likely to become a habit and more likely to provide lasting health benefits. One of the best delivery systems to reach the American adult population is the workplace. When an employer provides for or encourages physical activity among its employees, the benefits can be considerable, including: significant health care costs savings, decrease in absenteeism, competitive advantage in attracting and retaining highly qualified employees, and promoting the business as pro-employee.

The WHIP bill is not a cure all, but it is a step in the right direction. It provides the flexibility and incentive to both employers and employees to make physical activity part of their daily routine. The WHIP bill encourages employers of all types and sizes, whether they have "in-house" or "off-premises" fitness facilities, to offer an "exercise benefit" to their employees. Most importantly, the WHIP bill levels the playing field between small businesses and large corporations by assuring that small businesses receive the same opportunities to improve their health as those of large corporations.

It is time to make a change and although NCPPA does not believe we can legislate individual behavior change, we do believe that we can make our physical environment more conductive to physical activity. The WHIP bill addresses this issue head on. It makes the environment as tax friendly as possible and provides the most flexibility to employers to create fitness programs. It incentivizes those small businesses that want to do the right thing and eliminates a roadblock to those small businesses employees who want to live a more healthful lifestyle.

NCPPA strongly believes in tax incentives as a way to encourage physical activity. Our Board of Directors recently decided to make the concept our "signature issue." The idea is a novel one, linking tax benefits to healthier lifestyles is an innovative way to combat obesity. Although the federal government and the medical community have done a good job of studying and advertising the risks of inactivity, no one has offered real incentives for the average American to change behaviors. Measures such as the IMPACT bill and others do not provide the degree of motivation that a tax break and its associated economic benefits would.

NCPPA is glad to be taking the lead on the way we address physical inactivity and related chronic diseases. We believe there is broad public support for measures that will make it cheaper for individuals to join fitness centers, pay for preventative health maintenance programs, lose weight and become more active. We will to continue to advocate and educate around these issues and look forward to working with the Committee on Small Business on these initiatives.

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