IMPACT OF OBAMACARE ON JOB CREATORS AND THEIR DECISION TO OFFER HEALTH INSURANCE

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH CARE, DISTRICT OF COLUMBIA, CENSUS AND THE NATIONAL ARCHIVES

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JULY 28, 2011

Serial No. 112–89

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

71–968 PDF WASHINGTON : 2012

For sale by the Superintendent of Documents, U.S. Government Printing Office
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IMPACT OF OBAMACARE ON JOB CREATORS AND THEIR DECISION TO OFFER HEALTH INSURANCE

WEDNESDAY, JULY 28, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HEALTH CARE, DISTRICT OF COLUMBIA, CENSUS AND THE NATIONAL ARCHIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2154, Rayburn House Office Building, Hon. Trey Gowdy (chairman of the subcommittee) presiding.

Present: Representatives Gowdy, Gosar, DesJarlais, Davis, Norton, Clay, Murphy, and Cummings.

Staff present: Brian Blase, professional staff member; Robert Borden, general counsel; Drew Colliatie and Mike Whatley, staff assistants; Adam P. Fromm, director of Member liaison and floor operations; Christopher Hixon, deputy chief counsel, oversight; Sery E. Kim, counsel; Justin LoFranco, press assistant; Jeff Solsby, senior communications advisor; Jaron Bourke, minority director of administration; Yvette Cravins, minority counsel; Ashley Etienne, minority director of communications; Carla Hultberg, minority chief clerk; and Paul Kincaid, minority press secretary.

Mr. GOWDY. Welcome, everyone. I apologize for being late; we had a conference that ran a little longer than normal, discussing some things you may have been reading and hearing about lately.

This is a hearing on the Impact of Obamacare on Job Creators and Their Decision to Offer Insurance.

The committee will come to order. Consistent with the policy of the Oversight Committee, I will read the mission statement. We exist to secure two fundamental principles: first, Americans have a right to know the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

I will now recognize myself for an opening statement. I will recognize the gentleman from Illinois for his opening statement while I am in the process of finding mine.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Before I begin, let me take the opportunity to acknowledge the presence of a dear friend of mine and certainly a friend to all of the people who have been in the House and in the Senate, a former distinguished Member of this body who was also chairman of the Small Business Committee and a Member of the U.S. Senate. Senator Jim Talent is with us and I am pleased to see you, Jim. I must confess that I had two bills that Jim and I co-sponsored that were passed into law, so he represents some of the proudest moments of my tenure here, so I am delighted to see him.

Thank you, Mr. Chairman. For several years I have been a supporter of a national health plan. Good quality, affordable health care should not be a privilege afforded to just a few. The Patient Protection and Affordable Care Act provided a pathway to bring affordable health care for the masses. It balances the needs of businesses and workers with accessibility and affordability. Large and small businesses consistently express their concerns about rising health care costs. The Affordable Care Act addresses this concern with cost containment measures for the employer such as small business tax credits, insurance market reforms, rate reviews, price transparency, and the creation of health marketplace exchanges, just to name a few.

The anticipated reductions on health premiums enabled job creators to hire more workers, increase salaries to maintain their work forces, and to reinvest in new technologies for their business growth. The Center for American Progress estimates that health care reform that reduces premium growth will add 250,000 to 400,000 jobs annually over the next decade.

The Affordable Care Act also addresses the needs of workers. The act eliminates job lock, which discourages workers from seeking new opportunities for fear of losing health coverage. The ACA supports the entrepreneurial spirit of the American work force, as nearly 10 million self-employed Americans have the ability to purchase insurance for their families. Additionally, the act makes health insurance affordable with premium assistance for eligible employees.

Last, a recent Harvard study estimated that one American family filed for bankruptcy every 90 seconds in the aftermath of an illness. Three-quarters of them had health insurance at the time of the precipitating health event. In addition, medical debt burdens families with the inability to pay for other expenses, contributes to credit card debt, and causes people to delay necessary medical care. The Affordable Care Act ensures that these nightmare scenarios will no longer be common.

In my district there are many Medicare and Medicaid recipients that have established community health centers as their medical home. Medicaid beneficiaries that rely on health centers for usual care were 19 percent less likely to use the emergency room at a hospital than other providers for non-emergency and usual care services. Overall, health centers save the health care system between $9.9 billion and $17.6 billion annually. Community health centers provide high quality health care regardless of the ability to pay, and health centers in Illinois have a tremendous impact on our economy and employment.

In 2008, 40 health centers operated over 350 sites, contributed almost $1 billion to the Illinois economy, and directly employed almost 6,000 Illinoisans. Indeed, for every 10 people employed by an Illinois health center, an additional four jobs were created in their surrounding communities. Illinois health centers served over 1.1 million patients, nearly 80 percent of whom had no health insurance, helping them cope with chronic health conditions and general health issues to be able to work and care for their families. Repeal of the health care law would eliminate $11 billion in support for our community health centers over the next 5 years. Funding that would nearly double the number of patients served today and greatly strengthens Illinois's economy.

I know a little bit about health care, given the fact that my congressional district has more than 20 hospitals, 21 to be exact; four medical schools; a large number of community health centers and other outlets. And I can tell you that health care is the lifeblood of our community.

Simply put, the Affordable Health Care Act is indeed progress.

I thank you for this hearing and yield back the balance of my time.

Mr. GOWDY. I thank the gentleman from Illinois.

First I want to thank all of our distinguished witnesses for your patience and for your willingness to lend us your insight and your perspective on what all of us agree is a very important issue.

As we sit here this morning, Washington is debating the relative merits and demerits of deals or plans or solutions, whatever euphemism you want to use, averting the short-term debt crisis. However, our country continues to face long-term fiscal crises, some of which is rooted in the calls that we need substantive reform and return to our founding principles.

Quite simply, government is too big. Out of control spending and over-regulation have threatened America's credit rating and crippled business's ability to create jobs. When asked what the single greatest impediment to job growth is in the United States today, and I hasten to add I come from a State with about 10 percent unemployment and some counties are as much as 20 percent, but when asked what the greatest impediment to job growth is in the United States, the founder of Home Depot simply responded, the U.S. Government. That is a stinging indictment.

Our dire economic situation requires us to take a hard look at every dollar we spend and fundamentally reform programs headed down the wrong path to fiscal insolvency. At the same time, we must be enacting pro-growth policies, paving the way for American companies to grow and expand, creating the jobs that will spark a broader economic resurgence, which brings us to why we are here today.

The current health care law was marketed to the American people as a means to provide high quality, low cost health coverage options to every citizen in the country, while ensuring that those who like their current coverage can keep it. However, time and time again we have discovered examples exposing this political myth.

The uncertainty surrounding the law's broader implementation and the expectation of future taxes have worsened an already dreary economic picture.

While we often hear about the looming debt crisis, we are also in the midst of a job crisis, one that Obamacare has done nothing to ameliorate and, in many instances, has served to exacerbate. From new taxes to increased government mandates and regulations, to picking winners and losers based on arbitrary criteria, the new legislation burdens businesses with confusion and uncertainty, the exact wrong prescription for turning around our floundering economy.

Further, as the full impact of certain sections become more clear, we are uncovering myriad disincentives and hidden taxes embedded within the law that served to negatively impact businesses' bottom line, while CBO estimates the law will reduce the number of jobs by 80,000 by the end of the decade. Finally, instead of allowing employees to keep the coverage they currently have, tax subsidies in Obamacare will cause many employers to drop workplace health coverage, forcing workers to purchase their own insurance, all the while skyrocketing costs and further deepening our Nation's budget deficit.

In a recent survey, McKinsey & Co. found that 30 percent of employers will definitely or probably drop health insurance in 2014, a scenario not contemplated when the initial costs were calculated in a rushed, predominantly hidden, legislative process. Thus, the Federal Government will yet again pick up the tab, an outcome that is simply unacceptable and untenable, given the current fiscal climate.

So we are here today to examine the true impact of Obamacare on you, America's job creators, and whether employees across the country will be dropped from their current coverage based on Obamacare's arcane requirements.

With that, on behalf of all of us, other Members will have 7 days to submit opening statements and extraneous material for the record.

We will introduce our distinguished panel. From my left to right, your right to left, Andrew Puzder is the CEO of CKE Restaurants, which I have a parenthetical that says Hardee's and Carl's Jr. My history could very well be wrong. I think Hardee's may have its origin in the upstate of South Carolina and specifically perhaps in Spartanburg, with Mr. Richardson and Mr. Bradshaw, but if I am wrong on that, as I frequently am. Sir?

Mr. PUZDER. [Remarks made off mic.]

Mr. GOWDY. Okay, good. Well, as usual, I am close, but wrong. [Laughter.]

I hope my wife is listening.

Grady Payne is president of Connor Industries. Welcome.

Mr. Will Morey is the president and CEO of Morey's Piers. Welcome.

Victoria Braden is the president and CEO of Braden Benefit Strategies, Inc. Welcome.

Mr. Brewer is the president of Lockton Benefit Group. Welcome, Mr. Brewer.

Mr. Terry Gardiner is the vice president of Small Business Majority. Welcome.

Consistent with committee rules, all witnesses must be sworn before they testify, so I would ask you to please rise and raise your right hands.

[Witnesses sworn.]

Mr. GOWDY. May the record reflect all witnesses answered in the affirmative.

There should be a series of lights, which mean what they traditionally mean in our culture; green means go, yellow means speed up and try to get under the light, and red means stop.

We will now recognize you for 5 minutes. The yellow light or amber light means you have about a minute left and the red light means stop. So we will begin with Mr. Puzder and go from left to right.

STATEMENTS OF ANDREW PUZDER, CEO, CKE RESTAURANTS; GRADY PAYNE, CONNOR INDUSTRIES, INC.; WILL MOREY, PRESIDENT AND CEO, MOREY'S PIERS; VICTORIA J. BRADEN, PRESIDENT AND CEO, BRADEN BENEFIT STRATEGIES, INC.; MICHAEL J. BREWER, PRESIDENT, LOCKTON BENEFIT GROUP; AND TERRY GARDINER, VICE PRESIDENT, SMALL BUSINESS MAJORITY

STATEMENT OF ANDREW PUZDER

Mr. PUZDER. Chairman Gowdy, Ranking Member Davis, and members of the subcommittee, thank you for inviting me to testify today on the impact of the Patient Protection and Affordable Care Act on job creation. As the chairman noted, my name is Andrew F. Puzder. I am CEO of CKE Restaurants. With me today are Cheryl Soper, our vice president of benefits, in case you have any really difficult questions for me; Louis Fareous, who is our vice president of Government relations; and also my sons, Matt and John.

CKE owns and franchises 3,182 restaurants in 42 States and 23 foreign countries under the Carl's Jr. and Hardee's brand names. With our franchisees in the United States, we employ about 70,000 people. Our company is a job creation machine. We create jobs by building new restaurants. Each restaurant employs about 25 people and we invest over $1 million in the community where we construct the restaurant.

But our job creation goes way beyond our building of restaurants. Last year we spent over $1.25 billion for job creating capital projects, media and advertising, supplier products and services. For example, we spent $1 billion on food and paper products, which gives jobs to everybody from the farmer who plants the seeds or tends the herds to the people that process and manufacture our products to the guy who drives the truck and delivers it to the back door. We spent $175 million on media advertising, employing people in television stations, radio stations, and newspapers. We spent $30 million on repairs and maintenance, employing people that wash the windows, cut the lawn, fix the air conditioner, and slurry the blacktop.

Our franchisees own 70 percent of the restaurant, so they spend, you would assume, about $70 million in addition to that 30. We spent $60 million on capital expenditures; building restaurants, remodeling restaurants, and investing in our infrastructure. The people we employ in these concentric circles that really grow out from our restaurants went to grocery stores, went to the movies, spent their kids to school, bought cars, bought houses; just creating jobs on a very broad basis, which is the way free enterprise system works. And you can see other businesses with concentric circles growing out from them that overlap and really drive the greatest economy the world has ever known.

I am very concerned that in the coming years we will be unable to create as many jobs as we could like due to the increased expenses necessitated by laws such as the PPACA. I will start with the law's menu labeling provision. That requires disclosure of the caloric content of our products on our menu boards.

Now, as a company, we support nutritional disclosure, we have and have for years had comprehensive, effective, and economic nutritional disclosure in our restaurants and broadly available online at our Web site. We estimate that should we have to replace the menu boards in all of our restaurants, the cost would be approximately $1.5 million. That is 17 percent of the $8.8 million we invested last year on job-creating new restaurant construction.

Independent research done to date demonstrates that caloric menu labeling has no impact on consumers' eating habits. In other words, this was a politically correct solution that is ineffective and imposes unnecessary costs on American businesses that could better spend their money and their time creating jobs and economic prosperity. Nutrition disclosure can be accomplished effectively, comprehensively, and economically. The current law simply fails in all three of these respects.

Now on to the ACA's mandatory medical coverage provisions. I am not an expert on health care law other than how it impacts our company. I also know that there are people who believe universal health care coverage is beneficial, and I am not here to debate that. However, there is a sacrifice that must be made to gain that benefit. The question is whether the costs are worth the benefits.

The ACA will eliminate job creation and opportunity. Our best estimate, the ACA will increase our health care costs approximately $18 million per year, should it be implemented, as we currently understand the regulations. That is a 150 percent increase from the $12 million we spent on health care last year and approximately double the $8.8 million we spent on job-creating new restaurants. At this point, we do not intend to drop coverage for our employees, but the money to comply with the ACA must come from somewhere.

We use our revenue to pay our bills and expenses, to pay down our debt, and we reinvest what is left in our business. That is how we create jobs. There is no corporate pot of gold we can go to to cover increased health care costs. New unit construction will cease if we have to allocate the moneys for that construction to the ACA, and building new restaurants is how we create jobs.

We would also have to reduce our other capital spending, and capital spending not only creates jobs, but is important to maintaining and growing our business. We would need to reduce the number of our full-time employees and increase the number of our part-time employees. We would need to automate positions where we could and reduce compensations for the positions that we retain.

As I speak with franchisees and encourage them to build new restaurants, I am constantly met with concern about their economic futures. They are concerned about poorly conceived government regulations as the ACA's menu labeling provision. They are concerned about the ACA's mandatory health care coverage provisions, stifling growth and possibly requiring that they close restaurants that are marginally profitable now, but which would be unprofitable once the ACA comes into effect. The result is stagnation.

The simple fact is that regulations such as those growing out of the ACA do impose costs, and those costs do result in reduced growth, stifling both job creation and prosperity. Prosperity is neither Republican nor Democrat, it is neither liberal nor conservative; it is a bipartisan issue. People are unsure about their futures. American people are suffering because they don't have jobs. American businesses want to create jobs, and we respectfully request that Congress review the ACA to determine which provisions can be administered in a way that reduces costs for the businesses they impact.

We would further request that Congress review the ACA's provisions to determine which provisions, on balance, are detrimental to our Nation's economic prosperity and eliminate such provisions. If done effectively, this review would encourage job creation and prosperity, as well as better government.

Thank you.

[The prepared statement of Mr. Puzder follows:]

Written Testimony of Andrew F. Puzder,
CEO of CKE Restaurants Inc.,
On How the PPACA is Inhibiting Job Creation and Economic Growth

Introduction

The purpose of my testimony is (i) to describe our company and how we create jobs, (ii) to describe our long standing commitment to meaningful nutritional disclosure, (iii) to discuss the ineffectiveness, burdens and unnecessary expense of the Patient Protection and Affordable Care Act's ("PPACA") proposed menu labeling requirements and (iv) to discuss the severe economic burdens the PPACA's mandatory health insurance provisions impose on American businesses. The simple fact is that regulations such as those growing out of the PPACA do impose costs and that those costs do result in reduced growth stifling both job creation and prosperity.

As matters currently stand, the PPACA is creating significant concern in the American business community with respect to the increased costs and regulatory burdens it will undoubtedly impose. These costs and burdens are increasing the risks of new business ventures and discouraging investment. When entrepreneurs and businesses are unable to forecast with reasonable certainty that a venture will return a profit they will not invest, they will not grow and they will not create jobs. The predictable result is an uncertain and jobless recovery.

We respectfully request that Congress review the PPACA's provisions to determine which can be administered in a way that reduces costs for the businesses they impact. We further request that Congress review the PPACA's provisions to determine which provisions fail to accomplish anything productive and eliminate such provisions. If done effectively, this review would encourage job creation and prosperity as well as better government. As we all work to pull our nation out of the current economic malaise, why hurt American businesses if it gives you nothing in return?

Company Description and Job Creation Impact

CKE Restaurants, Inc. is a quick service restaurant company that owns or franchises about 3,200 restaurants in 42 states and 23 foreign countries. We are headquartered in Carpinteria, California with a regional headquarters office in St. Louis, Missouri. Carl N. Karcher, an Ohio native with an 8th grade education, and his wife Margaret, a California native, started our Company in 1941 with a hot dog cart in South Central Los Angeles.

We employ about 21,000 people in the United States. Our domestic franchisees employ approximately an additional 49,000 people. As such, we account for about 70,000 jobs in the United States.

We provide significant employment opportunities for minorities. Domestically, 63% of our Company employees are minorities. We also provide significant employment opportunities for women. Domestically, 62% of our employees are women. We are proud of the Company's diversity.

Our Company owns and operates 895 of our 3,182 restaurants. Our franchisees own and operate the remaining 2,187 restaurants of which 1,915 are in the United States. Our Company-owned restaurants average over $1.2 million in sales per year. Each restaurant employs about 25 people and has one General Manager. Our General Managers are 56% minorities and 66% women. They are 39 years old on average. However, their ages range from 18 to 71. Several of our Executive Vice Presidents and Senior Vice Presidents started as restaurant employees and learned the business as restaurant General Managers.

On average, a General Manager runs a $1.2 million business with 25 employees and significant contact with the public. He or she is in charge of a million-dollar-plus facility, a profit and loss statement and the success or failure of a business. Our Company-owned restaurant General Managers earn an average salary of about $45,000 and can earn a salary of well over $50,000, plus a substantial performance-based bonus and benefits, including health insurance. (For General Managers and above, the Company covers a portion of the cost (60%) of our employees' medical insurance and offers a number of alternative plans with 4 coverage options, ranging from employee to family coverage. Below the General Manager position, the Company offers an employee funded low cost limited medical benefits plan with 3 coverage options, ranging from employee to family coverage).

Our franchisees, who are generally small business owners and entrepreneurs themselves, often started out as General Managers in our restaurants or our competitors' restaurants. We have 224 franchisees nationwide. These franchisees exemplify the entrepreneurial spirit on which we built our Company and they instill that spirit in their over 49,000 employees and managers.

While we directly account for about 70,000 jobs in the United States, our Company's impact on the Nation's employment rate goes well beyond the number of people we directly employ. The hundreds of millions of dollars we spend on capital projects, services and supplies throughout the United States create thousands of jobs and generate broader economic growth.

For example, in the past five and a half years and despite our Nation's economic problems, our Company and franchisees have built 285 new restaurants in the United States. Every time we build a restaurant, we make a substantial investment in the community where that restaurant is located (well over $1 million). We use local contractors on the project and we create, on average, 25 new jobs including a new General Manager position. When we add about 8 new restaurants, we add a District Manager.

We also spend millions of dollars domestically each year all of which enhances our Nation's economic strength. Last year alone, our Company spent approximately $60 million on capital expenditures nationwide. Over the past five years, our Company spent $533 million on capital expenditures. These expenditures represent investments in our business and include new unit construction, remodels, property improvements, and infrastructure improvements. All of these expenditures create jobs and economic growth. Our franchisees' capital expenditures significantly increase these numbers.

In addition to our capital expenditures, last year we spent $30 million on restaurant repairs and maintenance. This would include amounts we pay to small businesses for projects such as landscaping, air conditioning repair, window cleaning, and asphalt and parking lot repairs. Our franchisees' repairs and maintenance expense again significantly increases these numbers.

We also spend millions of dollars on media advertising to television stations, radio stations, newspapers and other media outlets nationally. Last year alone, we spent $175 million. All of these expenditures create jobs and growth.

We support our nation's agricultural community with purchases of domestically produced or packed food and paper products. Last year, our food and paper expense was approximately $1 billion.

We also support numerous charitable organizations throughout the country. For example, this year we raised over $1 million for military families and veterans through our Stars for Troops program. We donated these monies to Homes for our

Troops and USA Cares. Over the past 6 years, our Carl's Jr. and Hardee's, Company and Franchise restaurants raised over $4.1 million through our Pink Star program. We donated these monies to the National Breast Cancer Foundation for regional grants to hospitals in Los Angeles and St. Louis. In California, Carl's Jr. has pledged $1 million to Cottage Hospital in Santa Barbara. In North Carolina, Hardee's donated $1 million to build the Children's Oncology Center at Duke Hospital. In St. Louis, Hardee's has pledged $250,000 to the Rankin Jordan Pediatric Rehabilitation Center.

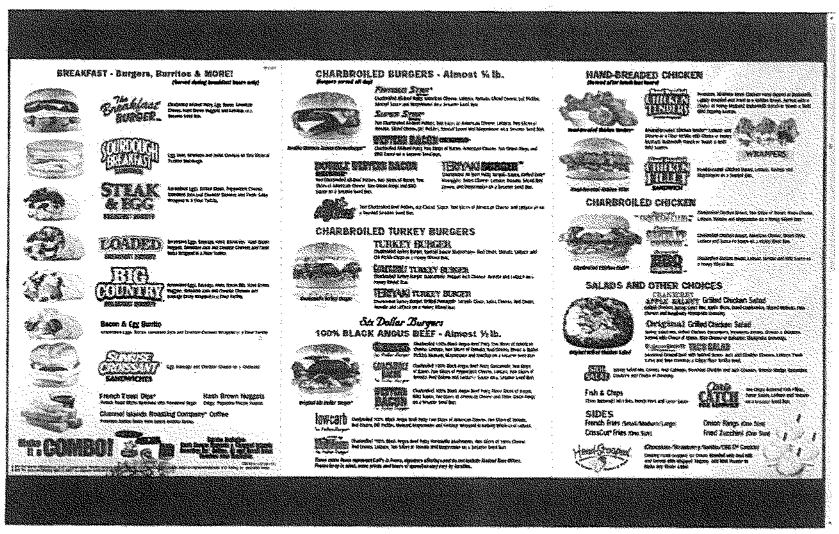
In addition to these examples, our Company and our franchisees support a host of other worthy causes through corporate and individual contributions and our restaurants routinely raise monies or contribute to the support of their communities' schools, civic organizations and sports teams.

In summary, our Company and franchisees employ about 70,000 people nationwide, provide meaningful management positions and experiences for a broad range of people, and expend hundreds of millions of dollars for job creating capital projects, media and to our suppliers. We also pay millions of dollars in taxes and support deserving charitable organizations.

II.

We Have an Historical Commitment to Health Conscious Consumers and Meaningful Disclosure of Nutritional Information

We accomplish the foregoing while providing a variety of low cost, high quality food items at convenient locations for all segments of the economy, from the very poor to the well to do. These products include Black Angus Beef Hamburgers, whole muscle skinless Chicken Breast Sandwiches, Hand Breaded Chicken Tenders and Chicken Sandwiches, Salads, hand scooped Milk Shakes and Malts, and a number of breakfast items, among others. We are dedicated to offering our customers premium quality products and service at a level unparalleled in the quick service segment.



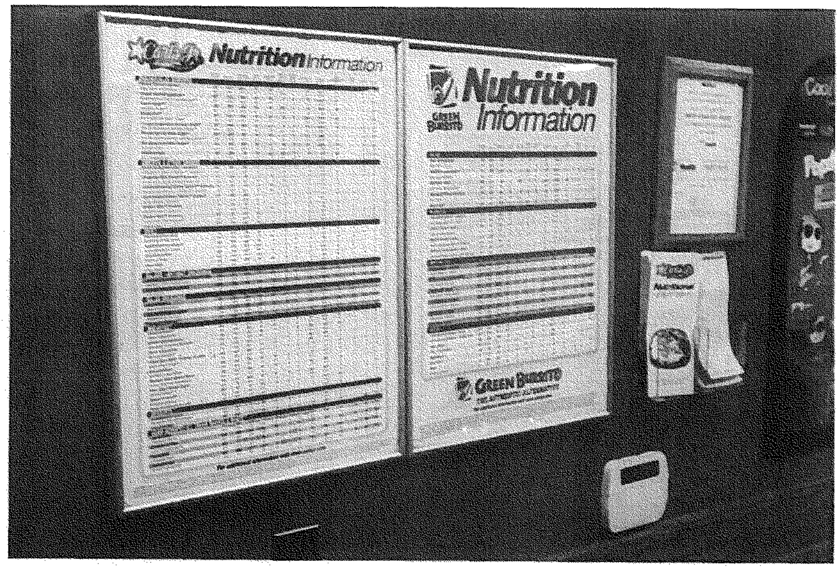
We sell big, juicy delicious hamburgers and French fries, as well as a variety of other products. We are not shy about our menu items. They are all high quality products that provide important nutrients to our customers -- and they taste great. People can eat at our restaurants every day, and maintain a diet of which any physician would thoroughly approve, with no more knowledge or prudence than they would need to eat well at home. Moreover, they can afford to do so. We are very proud that, even in these difficult economic times, our restaurants offer families the opportunity to enjoy a pleasant experience eating out at a restaurant with a friendly atmosphere and well trained staff. Many of our customers are lower income parents who can afford to take their children to breakfast, lunch or dinner at our restaurants – with a menu the whole family can enjoy – who simply would be unable to pay two or three times as much at a higher end restaurant.

It is our job to, and we take pride in, offering great tasting, high quality, healthy products that our customers want to eat. We also believe it is our corporate responsibility to provide consumers full nutritional information about our products. *We have absolutely no objection to disclosing nutritional information to our customers and we have done so for years and prior to any government compulsion.* We believe there should be free choice and individual responsibility with respect to decisions regarding what people choose to eat. We believe the products we sell are healthful and, if consumers want more healthful menu items, we are happy to serve them.

A.

We post the caloric and fat content of our products in our restaurants and have done so for a number of years

A poster such as the one below hangs at eye level in every Carl's Jr. and Hardee's restaurant. Although difficult to read in the photo below, the actual poster in the restaurants is framed, 20 inches tall by 16 inches wide and very legible. It simply cannot be missed by any of our customers interested in the information. *For each of our products it discloses serving size, calories, calories from fat, total fat, saturated fat, natural trans fat, artificial trans fat, cholesterol, sodium, total carbohydrates, dietary fibers, sugars and protein.* We have had the modern versions of these posters in our Carl's Jr. restaurants since 2003 and in our Hardee's restaurants since 2005. Our best recollection is that we originally put nutritional disclosure posters in our Carl's Jr. restaurants in the mid-1990s. In any event, we have done so for many years and before any government entities compelled us to do so. At Carl's Jr. we also make this information available in pamphlet form at the restaurants as you can see to the right of the posters in the photos below. We simply believe such information should be available for consumers who wish to see it.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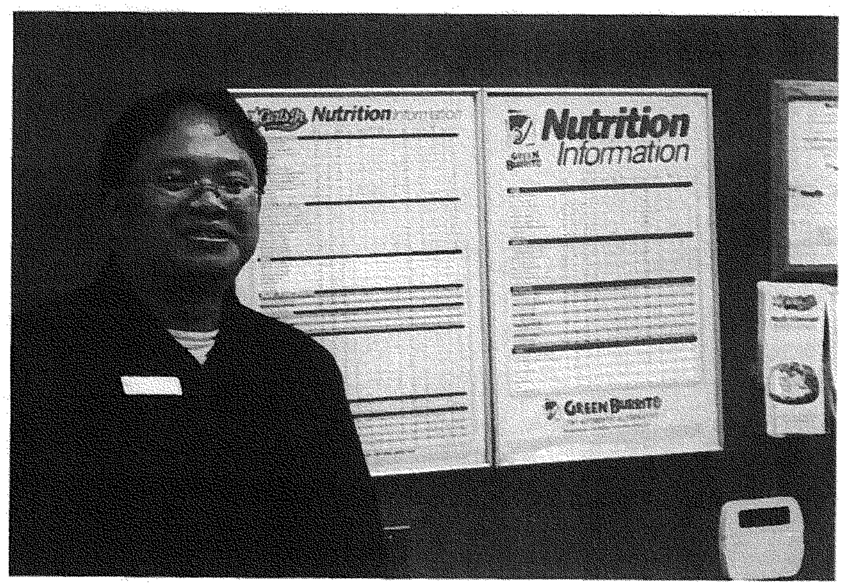
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GREEN BURRITO

Carl's Jr. Nutrition Information

	Serving Size (g)	Calories	Calories From Fat	Total Fat (g)	Saturated Fat (g)	Natural Trans Fat (g)	Artificial Trans Fat (g)	Cholesterol (mg)	Sodium (mg)	Total Carbohydrates (g)	Dietary Fiber (g)	Sugars (g)	Protein (g)
CHARBROILED BURGERS													
Famous Star® with Cheese	229	660	340	39	14	1	0	80	1220	57	3	12	28
Super Star® with Cheese	352	940	520	58	24	1.5	0	145	1480	58	3	12	48
Western Bacon Cheeseburger®	248	760	310	34	14	1	0	80	1500	74	4	15	33
Double Western Bacon Cheeseburger®	330	1000	490	54	24	1.5	0	145	1940	75	4	15	63
Teriyaki Burger™	318	630	250	29	11	0.5	0	85	1030	64	3	19	28
The Big Carl®	324	920	620	68	22	2	0	145	1390	56	3	12	47
The Original Six Dollar Burger®	391	910	470	54	21	2	0	135	2330	62	3	18	45
The Guacamole Bacon Six Dollar Burger®	418	1060	650	72	24	1.5	0	145	2230	55	4	11	49
The Western Bacon Six Dollar Burger®	328	1030	490	55	22	2	0	150	2440	61	4	18	63
The Low Carb Six Dollar Burger®	300	570	390	43	19	2	0	120	1290	6	1	5	39
The Portobello Mushroom Six Dollar Burger™	367	880	470	53	19	1.5	0	110	1790	58	5	10	47
Big Hamburger	216	490	160	18	6	0.5	0	60	1030	55	3	16	25
Kid's Hamburger	202	490	160	18	6	0.5	0	60	1030	57	3	14	25
Kid's Cheeseburger	219	550	210	23	11	1	0	85	1290	58	3	14	28
CHARBROILED TURKEY BURGERS													
Turkey Burger	288	490	200	23	4.5	0	0	60	940	48	3	10	29
Guacamole Turkey Burger	301	490	190	21	6	0	0	45	1120	43	3	9	30
Teriyaki Turkey Burger	300	470	120	14	3	0	0	60	1120	58	3	16	32
CHICKEN & OTHER CHOICES													
Charbroiled Chicken Club™ Sandwich	264	560	250	29	8	0	0	95	1330	45	2	10	38
Charbroiled Santa Fe Chicken™ Sandwich	267	640	320	36	8	0	0	95	1370	48	3	10	32
Charbroiled BBQ Chicken™ Sandwich	239	390	70	7	1.5	0	0	60	990	50	3	13	30
Hand-Breaded Chicken Fillet Sandwich	265	650	220	25	6	0	0	85	1630	68	3	6	33
Kid's Hand-Breaded Chicken Tenders™ (2 pieces)	68	220	110	12	2.5	0	0	45	770	10	1	0	15
Hand-Breaded Chicken Tenders™ (3 pieces)	148	340	170	19	3.5	0	0	75	1150	14	1	1	29
Hand-Breaded Chicken Tenders™ (5 pieces)	246	560	280	31	6	0	0	120	1930	24	2	1	47
Hand-Breaded Chicken Tenders™ (10pc box; 2, 5pc servings)	246	560	280	31	6	0	0	120	1930	24	2	1	47
Hand-Breaded Chicken Tenders™ (15pc box; 3, 5pc servings)	246	560	280	31	6	0	0	120	1930	24	2	1	47
Hand-Breaded Chicken Tenders™ (20pc box; 4, 5pc servings)	246	560	280	31	6	0	0	120	1930	24	2	1	47
Honey Mustard HB Chicken Tender™ Wrapper	118	320	170	18	6	0	0	40	760	22	1	2	16
Buttermilk Ranch HB Chicken Tender™ Wrapper	120	360	210	23	6	0	0	45	850	22	1	1	16
Sweet & Bold BBQ HB Chicken Tender™ Wrapper	124	290	120	13	5	0	0	40	910	28	1	4	16
Spicy Chicken Sandwich	177	480	220	26	6	0	0	35	1370	47	4	5	14
Chicken Stars™ (4 pieces)	61	170	90	10	2	0	0	20	360	12	1	0	8
Chicken Stars™ (6 pieces)	91	260	140	16	3.5	0	0	30	540	18	2	0	12
Chicken Stars™ (9 pieces)	137	390	210	23	5	0	0	45	810	28	3	0	18
Carl's Catch Fish Sandwich®	196	700	330	37	8	0	0	40	1300	73	6	0	21
Fish & Chips	271	710	340	39	6	0	0	25	1410	80	7	0	22
SIDES													
Natural-Cut Fries (Kids)	84	240	110	12	2	0	0	0	490	32	3	0	3
Natural-Cut Fries (Small)	106	310	130	15	2.5	0	0	0	610	40	4	0	3
Natural-Cut Fries (Medium)	130	430	190	21	4	0	0	0	870	56	5	0	5
Natural-Cut Fries (Large)	164	470	210	23	4	0	0	0	950	61	6	0	6
Chili Cheese Fries	320	820	420	48	14	1	0	60	1710	81	6	1	20
CrissCut® Fries	139	450	250	28	6	0	0	0	900	43	4	0	5
Onion Rings	128	530	250	28	4.5	0	0	0	690	61	3	6	8
Fried Zucchini	130	320	190	18	3	0	0	0	810	38	2	7	6
SALADS - WITHOUT DRESSINGS													
Cranberry Apple Walnut Grilled Chicken Salad	390	320	100	11	3.5	0	0	70	860	39	6	17	27
Original Grilled Chicken Salad	411	270	80	9	3	0	0	70	830	23	4	6	25
Green Burrito® Taco Salad	589	890	480	53	16	1	0	80	1780	67	12	6	35
Side Salad	135	120	50	5	1.5	0	0	5	250	13	2	2	4
SALAD DRESSINGS													
House Dressing	57	220	200	22	3.5	0	0	20	440	3	0	2	1
Blue Cheese Dressing	57	320	310	34	7	0	0	20	410	1	0	1	2
Low Fat Balsamic Vinaigrette	57	35	15	1.5	0	0	0	0	480	5	0	3	0
Raspberry Vinaigrette	43	160	110	12	2	0	0	0	150	12	0	11	0
BREAKFAST													
Breakfast Burger™	305	810	380	42	16	1	0	310	1480	68	4	15	39
Sourdough Breakfast Sandwich	200	450	190	21	8	0	0	270	1470	38	1	3	29
Steak & Egg Burrito	311	650	330	36	16	0	0	625	1720	42	3	3	41
Loaded Breakfast Burrito	312	780	430	48	17	0	0	510	1480	51	3	2	35
Big Country® Breakfast Burrito	308	750	400	44	14	0	0	425	1570	58	6	4	30
Bacon & Egg Burrito	210	580	290	32	13	0	0	600	1300	37	1	1	30
Sunrise Croissant®	178	590	390	44	17	0	0	285	810	29	1	4	20
French Toast Dips® - No Syrup (5 pieces)	130	490	190	21	4	0	0	0	570	60	3	18	9
Hash Brown Nuggets	108	350	210	23	4	0	0	0	440	32	3	0	3
Sausage, Egg & Cheese Biscuit	178	570	330	37	16	0	0	245	1350	35	2	3	20
Bacon, Egg & Cheese Biscuit	153	450	240	28	12	0	0	225	1130	37	2	3	17
Ham, Egg & Cheese Biscuit	170	440	210	23	11	0	0	230	1620	38	2	3	20
Monster Biscuit®	247	740	450	50	21	0	0	485	1760	39	2	3	32
Biscuit 'N' Gravy™	228	440	200	22	6	0	0	10	1320	50	2	3	9
Strawberry Biscuit	130	280	120	13	7	0	0	5	750	51	2	24	6
Made From Scratch Biscuit™	98	290	120	13	7	0	0	5	720	37	2	3	6
DESSERTS													
Chocolate Chip Cookie	71	370	170	19	10	0	0	30	350	48	2	27	3
Strawberry Swirl Cheesecake	92	300	140	16	9	0	0	55	230	32	0	21	6
Chocolate Cake	85	300	110	12	3	0	0	35	350	48	1	35	3
HAND-SCOOPED ICE CREAM SHAKES & MALTS™													
Vanilla Shake	397	700	310	34	23	0	0	100	360	86	0	74	14
Chocolate Shake	397	690	310	34	24	0	0	100	310	84	1	69	14
Strawberry Shake	397	690	310	34	23	0	0	100	290	83	0	73	14
OREO® Cookie Shake	397	720	340	38	26	0	0	100	370	79	1	63	15
Vanilla Malt	414	770	310	35	24	0	0	105	300	100	0	88	15
Chocolate Malt	414	760	320	35	24	0	0	105	380	98	1	80	16
Strawberry Malt	414	760	310	35	24	0	0	105	310	97	0	84	15
OREO® Cookie Malt	414	790	350	39	25	0	0	105	420	94	1	74	17

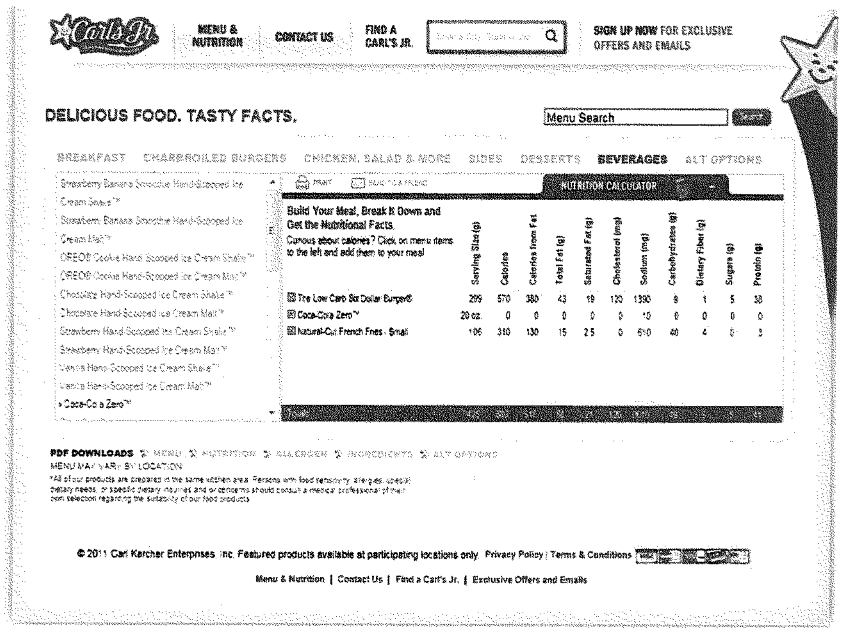
For additional information visit www.carlsjr.com.

B.

On our web site, consumers can check the fat and caloric content of our products and can even create a meal and check the total nutritional information for that meal with our Nutritional Calculator

Most of the examples below are from the Carl's Jr. web site http://www.carlsjr.com/menu. Hardee's has its own web site with the same features. http://www.hardees.com/.

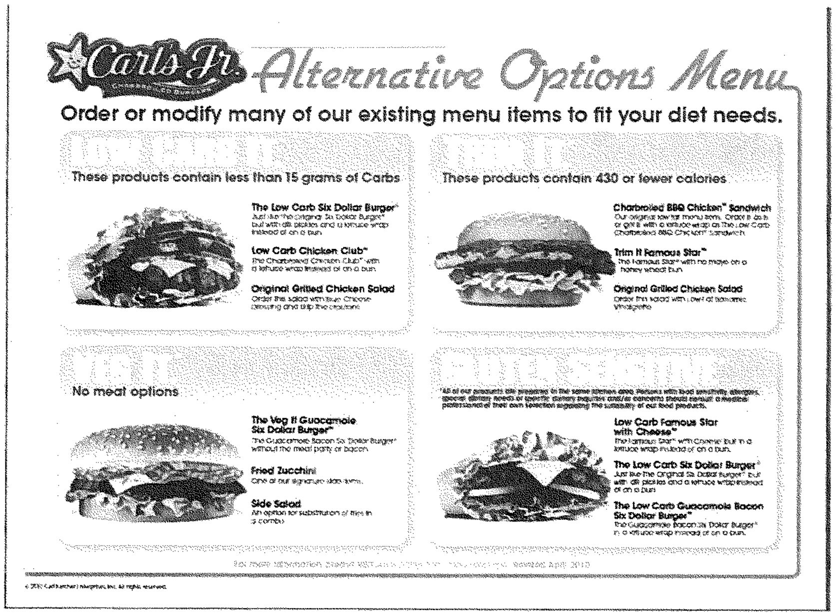
This is an example of how our Nutrition Calculator works from our Carl's Jr. web site. In this example, the consumer selected a Six Dollar Burger low carb style with an order of small fries and a Coke Zero. The nutritional information for the meal appears in the red line entitled "Totals."



C.

We offer low fat, low calorie, low carbohydrate, vegetarian and gluten sensitive products and our web site has an Alternative Options Menu offering a number of items for our consumers.

http://www.carlsjr.com/system/pdf_menus/21/original/CJ_AlternativeOptionsMenu.pdf?1294692189.

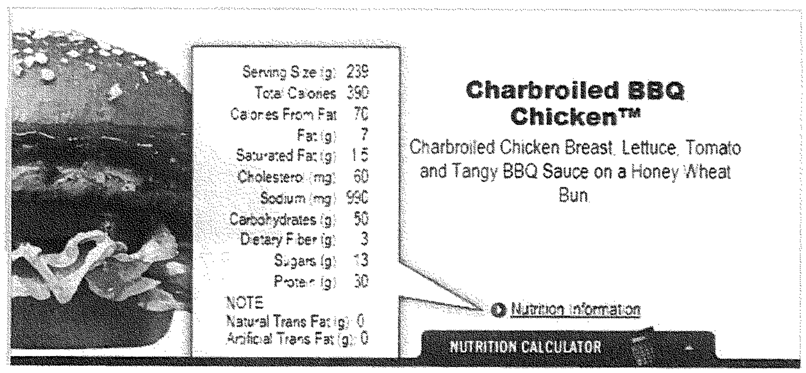


We believe our Alternative Options Menu is unique, particularly with respect to our vegetarian and Gluten Sensitive options.

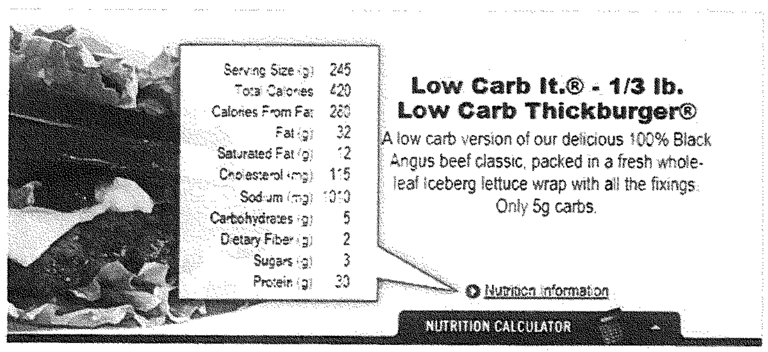
D.

Our traditional menu also offers a number of low fat and low calorie products and has done so for many years.

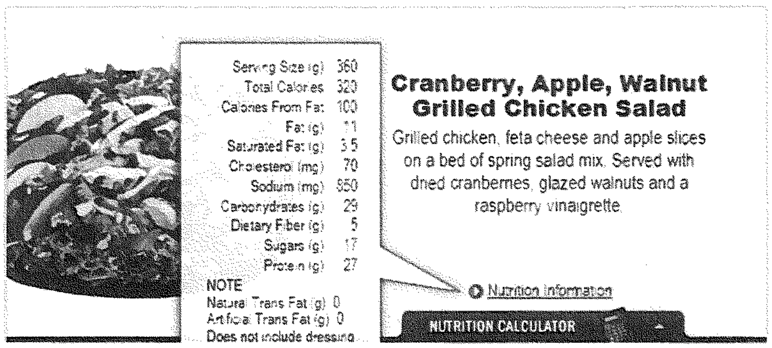
We have a line of whole-muscle, skinless chicken breast products which we char-broil and serve on honey wheat buns. Our Bar-B-Q Chicken Sandwich, for example, has 7 grams of fat. When consumers view our products on our web site, they have the option of getting full nutritional information by clicking on the "Nutritional information" option as in the pictures below.



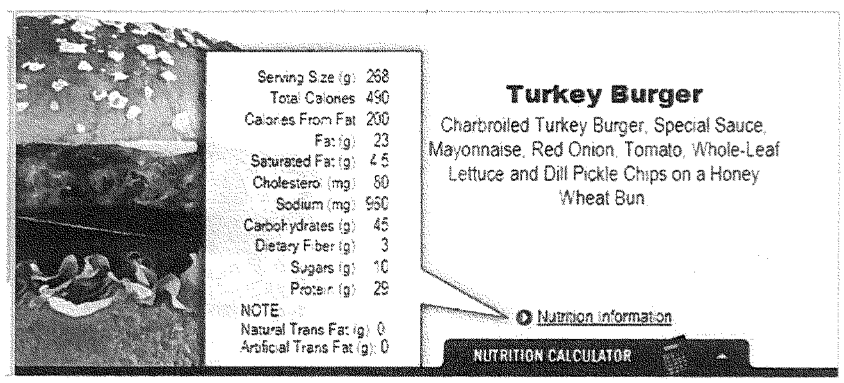
Customers can order any of our products on a honey wheat bun or low carb style as we use whole-leaf lettuce which can serve as the bun. This is the information for a Hardee's Thickburger low carb style.



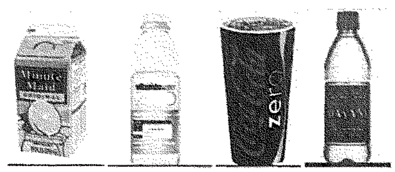
We also have a variety of salads which customers can order with low-fat or non-fat dressings. We have had salads in our restaurants since at least the 1970s.



Beginning this year, we have added a line of Turkey Burgers to our menu all of which are less than 500 calories. In addition, consumers can order any of our burgers with a Turkey Burger patty.



We also have a number of healthful low fat, low calorie beverages including 1% fat milk, orange juice, Vitamin Water Zero, Dasani bottled water, and Coke Zero, among others.



In summary, we have numerous delicious and indulgent products for health conscious consumers and you can easily determine the nutritional information for any of our products in the restaurant or on our web sites. You can eat low fat or low calorie items in our restaurants and we are happy to sell these products. We accomplished all of the forgoing effectively, economically and without government compulsion and without adding confusion to our menu boards.

III.

The Impact of The Patient Protection and Affordable Care Act on Our Ability to Avoid Layoffs, Create Jobs and Continue to Generate Economic Growth

As noted above, we reinvest the great majority of our cash flow in our business and in the economies of the states where we do business. We do so by creating meaningful employment and management level opportunities for a diverse group of people, while reinvesting the vast majority of our cash flow in building new restaurants, remodeling existing restaurants, keeping our existing facilities in good condition, and purchasing various commodities and services.

We accomplish all of this by running each restaurant as a profitable business and keeping our overall general and administrative expenses in check. Our business is relatively simple. We generate cash flow through our restaurants, pay our bills and then reinvest in our business. At the restaurant level, we simply take our revenues (essentially our sales) and reduce them by our food, labor and occupancy expenses. What remains is our restaurant level profit. All of our economic success – all of our ability to stimulate growth and jobs --- stems from our restaurant level profit. Over the past few years, our industry and our Company have managed to grow despite being forced to deal with significant challenges, including declining consumer demand due to a weak economy, rapidly increasing commodity prices and increasing energy costs.

We are also facing the negative impact of certain legislation and proposed regulations. This is true for our Company, our industry and our nation's retail industries in general. While generally well intentioned and having worthy objectives, such legislation and regulation rarely attempts to balance the costs and benefits thereof, and has the potential to add to our costs at a time when we are already facing very significant economic obstacles. We respectfully note that, unless properly structured with input from all sides, even when legislation or regulation intends to achieve something positive – such as menu labeling or universal health care – there is always a tradeoff that may hurt the very people the proposal is intended to benefit.

We know the object of these proposals is not to impair our ability to reinvest in our business or to cause layoffs. Nonetheless, such legislation and regulation could leave us and our franchisees with no choice but to materially reduce our workforce and our capital spending which in turn, increases unemployment and reduces economic growth. We hope that we can work with you to minimize the unintended negative effects of any such legislation and regulation.

In particular, the ironically named **Patient Protection and Affordable Care Act ("PPACA")** presents all American businesses with huge regulatory and economic hurdles that inhibit economic growth. My testimony will focus on the Menu labeling portion of the PPACA (section 4205). It will then discuss the negative impact the PPACA's mandatory health insurance provisions will have on our Company's ability to grow and create jobs.

A.

Menu Labeling

Before discussing specific issues with respect to the PPACA's approach to menu labeling, it is important to re-emphasize that, as a company, we support nutritional disclosure. We believe our actions (as described above) before any requirements were in place clearly demonstrate that. However, we strongly oppose legislative measures which generate significant costs without any benefit and which particularly disadvantage one part of the restaurant industry. We should disclose nutritional information in a cost effective manner that is equitable and avoids giving a competitive advantage to any restaurant sector or interest group. It is in these respects that the PPACA's burdensome and expensive menu labeling provisions fail.

1. Menu Labeling Provisions Have Had and Will Have No Impact on Reducing Obesity. First, while preventing obesity was the rational for enacting the PPACA's menu labeling provisions, the research to date has all but universally disclosed that placing caloric content on menus fails to impact people's eating habits and has no impact on reducing obesity. Below we list a number of studies and articles discussing the impact of menu labeling on eating habits.

Calorie counts don't change most people's dining-out habits, experts say, *Washington Post*, 7/6/11, http://www.washingtonpost.com/local/calorie-counts-dont-change-most-peoples-dining-out-habits-experts-say/2011/06/30/gIQAhAqO1H_story.html

Menu labels don't influence students' food choices, *Reuters*, 7/1/11, http://www.reuters.com/article/2011/07/01/us-menu-labels-idUSTRE7605GO20110701;

Posting point-of-purchase nutrition information in university canteens does not influence meal choice and nutrient intake, *The American Journal of Clinical Nutrition*, 6/15/11, http://www.ajcn.org/content/early/2011/06/15/ajcn.111.013417;

Menu labeling law doesn't register a blip at Taco Time, *Los Angeles Times, 1/14/11,* http://articles.latimes.com/2011/jan/14/news/la-heb-menu-labeling-20110114;

Calorie Disclosures Fail to Weight Whole Enchilada, *Wall Street Journal, 7/8/09,* http://online.wsj.com/article/SB124700756153408321.html;

Calorie Postings Don't Change Habits, Study Finds, *New York Times, 10/6/09,* http://www.nytimes.com/2009/10/06/nyregion/06calories.html?scp=1&sq=menu%20labelling&st=cse;

Study: NYC calorie postings don't change orders, *New York Post, 10/6/09,* http://www.nypost.com/p/news/local/study_nyc_calorie_postings_don_change_0N8ltUiGVwDvIkCa2OFvSN

Fast food doesn't make you fat, *Portfolio Magazine, 6/3/08,* http://www.portfolio.com/views/blogs/odd-numbers/2008/06/03/fast-food-doesnt-make-you-fat?addComment=true;

Too Much Information? ***Why menu labeling laws are bound to fail,*** *Reason Magazine, 6/25/08* http://reason.com/archives/2008/06/25/too-much-information;

Are Restaurants Really Supersizing America? *UC Berkley/Northwestern University Study, 12/30/07,* http://are.berkeley.edu/Papers/anderson08.pdf.

As stated in the July 6, 2011 *Washington Post* article cited above: "Evidence is mounting that calorie labels — promoted by some nutritionists and the restaurant industry to help stem the obesity crisis — do not steer most people to lower-calorie foods. Eating habits rarely change, according to several studies. Perversely, some diners see the labels yet consume more calories than usual. People who use the labels often don't need to. (Meaning: They are thin.)." http://www.washingtonpost.com/local/calorie-counts-dont-change-most-peoples-dining-out-habits-experts-say/2011/06/30/gIQAhAqO1H_story.html

Anecdotally, where we have already been required to add calorie disclosures to our menu boards, we have observed that such disclosure has, at best, a minimal impact on sales. More often, ironically, *consumers appear to believe fast food has more calories than is actually the case and, as a result, may consume higher calorie items once they see the actual caloric content.*

Again, providing nutritional information for consumers is a good idea. As noted above, it is something we are currently doing and have done for many years more effectively than the PPACA requires. However, in addition to being ineffective if not counter-productive, the PPACA's menu labeling provisions are economically burdensome and inequitable, discouraging both growth and job creation.

2. The Relevant Provision. The menu labeling provisions are located in Section 4205 of the PPACA which amends Section 403(q) (5) (a) of the Federal Food, Drug and Cosmetic Act (21 USC 343(q) (5) (A). The relevant provision requires that restaurants with Menu boards "disclose in a clear and conspicuous manner:"

> In a nutrient content disclosure statement adjacent to the name of the standard menu item, so as to be clearly associated with the standard menu item, on the menu board, including a drive-through menu board, the number of calories contained in the standard menu item, as usually prepared and offered for sale . . . .

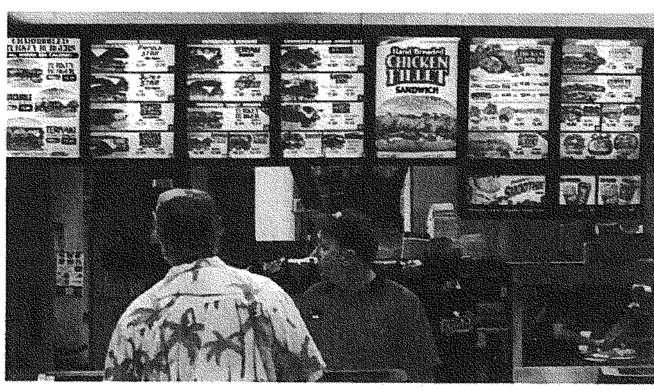
21 USC 343 (q) (5) (H) (II) (aa).

3. Economic Impact. This provision will be very difficult and expensive to implement as we will have to place the information on our menu boards which means cluttering them even more than they are cluttered now and going through the expense of replacing all of our existing menu board s (assuming we are unable to find a more cost effective FDA approved alternative). We estimate that the cost to replace interior and drive-thru menu board panels at Carl's Jr. and Hardee's restaurants will be $1.5 million ($1,473,560). This will be $1.5 million to accomplish something we are already doing less expensively and more effectively than the PPACA requires.

To put this expense in perspective, last year, our company spent $8.8 million on job creating new restaurant development, building 7 new company owned restaurant (this does not include monies the franchisees spent to build franchised restaurants). Company and franchise restaurant development is how we create new jobs. To put this amount in perspective, the $1.5 million in anticipated menu board replacement cost is 17% of the $8.8 million our Company spent to build new Company owned restaurants for all of last year. The amount we would be forced to spend on new menu boards would support the opening of 1 to 1½ new restaurants and the creation of up to 37 jobs in the restaurants and many more jobs outside of the restaurant.

We would obviously prefer to spend these monies building new restaurants and creating jobs rather than providing information we already provide more effectively, more comprehensively and more economically than the PPACA requires. As opposed to just disclosing caloric content, for each of our products, our nutritional information posters disclose serving size, calories, calories from fat, total fat, saturated fat, natural trans fat, artificial trans fat, cholesterol, sodium, total carbohydrates, dietary fibers, sugars and protein. Our nutritional information posters are clearly marked and contain the facts about nutritional content so that customers can walk right up to them and read the information clearly. We firmly believe this is a far more effective communication of the information than lodging it on an already cluttered menu board that has to be read from five to ten feet away.

a. Interior Menu Boards. The walls that currently contain our menu boards are generally ***partial*** walls as we provide a clear view into our kitchens so the public can observe our food preparation process. Just above the line of sight into our kitchens is generally where we place the menu boards. This enhances our food safety and our customers comfort level as they can observe the food being prepared and the cleanliness of the restaurant.



Of course, a simple, equally effective and more economical solution would have been to make the relevant information available prominently on a wall adjacent to the menu board. This would have allowed us to make the required disclosure in an effective manner without the added expense of replacing all of our menu board panels or needlessly cluttering them and rendering them confusing.

b. Drive-Thru Menu Board Labeling. Our drive-thru menu boards are not amenable to menu labeling. They are simply too small and are designed for customer convenience and speed (which are generally the two reasons customers are in the drive thru to begin with). We are generally unable to make them larger as they are already as large as local zoning authorities allow us to make them. If we were allowed to make them larger, they would already be larger.

On June 6th of this year, Senator Roy Blunt (R. Mo.) sent a letter to the Department of Health and Human Services, Food and Drug Administration ("FDA") raising concerns about the drive-thru menu board labeling issue, as part of the FDA's public comment request for its draft Section 4205 menu labeling regulations. The FDA responded stating that it was considering whether the use of "stanchions (such as free standing boards, generally placed next to the drive through menu boards) would enable customers to use calorie information when they are making selections from a drive though menu board . . . ." While this would certainly be helpful, it is difficult to see why having something adjacent to the drive-thru menu board is acceptable but having something adjacent to the interior menu board is unacceptable. We are unable to estimate the added cost of the FDA's stanchions approach as we currently have no idea what the stanchions would look like or where we would place them. As is very typical of sweeping Federal regulation, no consideration is given to how such regulation conflicts with the requirements of literally hundreds of local jurisdictions that impose other constraints to meet other legitimate objectives.

So what it comes down to is this: The federal government has passed a law requiring us to build new signs, or buy new menu boards, and to put on those signs and menu boards information which we already provide even though it is unlikely to change eating habits, at a cost of over a million dollars that we will divert from and be unable to spend on expanding our business and creating jobs.

4. Chains with 20 or More Restaurants. The menu labeling law only applies to chains with 20 or more restaurants. 21 USC 343 (q) (5) (H) (i). In other words, if you own less than 20 restaurants, you are exempt from the law's menu labeling requirements. The purpose of this provision is to protect small businesses from the law's expense and negative business impact. This exemption shows that the authors of the legislation well knew that it would have a negative impact. Apart from that, it is naïve to make this distinction. First, it is simply inequitable to create a different unit cost structure for businesses above an arbitrary size threshold. Second, it is not even consistently applied, as this exemption is inapplicable to franchisees of chains that have more than 20 restaurants even if the individual franchisee owns less than 20 restaurants. In other words, small business operators who are independent get an advantage over franchisees. Our franchisees are also small business operators, and we submit that to the extent small business operators are deserving of special protection, all such operators similarly deserve protection.

Someone could argue that franchisees have the advantage of affiliating with larger chains, but franchisees pay 4% of their revenues for this privilege. As such, they are already at a competitive disadvantage from a profit perspective, but they have made a business decision that the trade off was worthwhile. When making this decision, our franchisees did not contemplate an additional economic disadvantage such as the menu labeling law now creates. Whether one of our franchisees' restaurants is across the street from a "Joe's Burgers" or a "McDonald's" makes very little difference: A competitor is a competitor.

*5. **Conclusion***. While the PPACA's menu labeling provisions may have been well intentioned, they were poorly thought out, will be both burdensome and expensive to implement and give an inequitable advantage to individuals who own less than 20 restaurants unless they are franchisees. We are already providing more nutritional information than the PPACA requires. We believe it is good policy and good business to inform our customers in this way, even though experience has shown that such information does not change eating habits. The PPACA's menu labeling provisions are a perfect example of legislation that accomplishes very little while imposing costs that kill jobs and economic growth. Apart from the actual burden of this legislation, it has contributed to the sense – which is quite common among our franchisees – that their own government has no idea how businesses operate and no sensitivity whatsoever to the challenges they and their consumers are confronting in these difficult times.

B.

Employer Mandates and Health Care Coverage

1. The Overall Impact on Employers and Job Creation. As noted above, our Company creates jobs by building new restaurants and working with our franchisees so they build new restaurants. Our restaurants create jobs both inside the store and also by spending hundreds of millions of dollars locally for job-creating capital projects, media and advertising, and supplier products and services.

Last year, as a company, we spent $11.8 million on health care coverage for our employees (the total cost including employee contributions was $21 million) and $8.8 million building new restaurants. We have been working closely with Mercer Health and Benefits, LLC, our health care consultants, to identify the PPACA's potential financial impact on our company. Mercer estimates that when the PPACA is fully implemented our Company (not including franchisees or any employee contributions) will have an ***additional*** health care costs ranging from $7.3 million all the way to $35.1 million per year with the PPACA's regulations as they are today. ***Mercer's 'best estimate' is an $18 million increase in costs which will put our total Company health care costs at $29.8 million, a 150% increase from what we spent last year.*** That money will have to come from somewhere.

The most likely place is new restaurant construction. ***The $18 million increase in our health care coverage costs would completely consume the $8.8 million we spent on new restaurant construction last year, leaving nothing for growth and job creation.***

Another option to make up the gap between what we currently spend on health care and what we would spend under the PPACA would be to reduce our labor force. It is important to note that the PPACA explicitly makes labor more expensive. It is completely predictable that businesses such as ours will search for ways to take jobs out of our existing restaurants to reduce that expense. This is a basic law of economics that legislators would be well served to consider when crafting this kind of legislation. We would undoubtedly increase the number of part time employees; decrease the number of full time employees and attempt to automate positions (such as replacing cashier positions with ordering kiosks). These are not actions we would choose to take. They are actions the PPACA will all but compel us to take.

Finally, we could make up the gap between our current health care costs and the increased costs under the PPACA by reducing our capital spending on projects such as remodels and infrastructure. Eliminating these capital expenditures would be extremely difficult as they create jobs and are essential to the continuing viability of our business. Under the PPACA, we would have little choice other than to reduce them, eliminating jobs and endangering the long term prospects of our business.

Our franchisees spent more on restaurant development last year as they built 32 new restaurants domestically. They spent more on health care coverage as they own 70% of our domestic restaurants and account for about 49,000 employees (about two and a half times as many employees as our Company). As such, ***the health care cost increase they will have to absorb will be even more significant than our Company's and further reduce new unit construction and job creation.***

When I encourage franchisees to build new restaurants, I often hear about the uncertainties they face in deciding whether to make the investment. They speak of uncertainty with respect to future tax rates, energy, labor and commodity costs among other things. However, they prominently mention the certainty that under the PPACA their health care costs are going to significantly increase. In fact, they express concern that they will be unable to keep their current restaurants open, let alone open new ones.

Ours is obviously not the only industry facing the daunting prospect of massive health care cost increases under the PPACA. The impact of this concern on American businesses is impeding growth and job creation. Businesses that are unable to forecast a profit from a new venture because of increased expense, or uncertainty about expense, will not invest. As noted in a recent analysis by the Heritage Foundation's James Sherk:

> Private-sector job creation initially recovered from the recession at a normal rate, leading to predictions last year of a "Recovery Summer." Since April 2010, however, net private-sector job creation has stalled. Within two months of the passage of Obamacare, the job market stopped improving. This suggests that businesses are not exaggerating when they tell pollsters that the new health care law is holding back hiring. The law significantly raises business costs and creates considerable uncertainty about the future.
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> The fact that improvements in the job market ground to a halt after Congress passed Obamacare does not prove that the health care law caused it—correlation cannot prove causation. However, the fact does lend strong weight to the voices of businesses who say that the law is preventing hiring.

James Sherk, *Recovery Stalled After Obamacare Passed* (Heritage Foundation 7/19/11) http://www.heritage.org/Research/Reports/2011/07/Economic-Recovery-Stalled-After-Obamacare-Passed.

In fact, some businesses that are marginally profitable may close when that profit margin disappears as a result of PPACA's costs. When private sector businesses fail or fail to invest, the economy slows and job creation either stagnates or vanishes. In our case, an $18 million increase in health care costs will significantly reduce our new unit growth and the associated job creation.

2. Specific Cost Drivers

Underlying these overall costs are PPACA's myriad provisions aimed at employer-sponsored health plans. These provisions will have significant impact on the way we determine eligibility for and enroll employees on our health plans, the way we set our premium contributions, the design of our benefit plans, and how we deliver coverage and insure our employees. Administration and coverage of our benefits will change substantially between now and 2014. We are already expending significant time, effort and resources just to figure out how to comply.

a. ***During 2012 and 2013 a number of reporting requirements come into effect,*** including W2 reporting of gross healthcare costs and uniform benefit summaries. The law will reduce the contributions employees can make to their Flexible Spending Accounts, and the law will impose an additional 0.9% Medicare tax for "high income" households (we do not expect that employers will have to collect or report this tax).

b. ***Our biggest challenges come in 2014:***

i. Communication to Employees about the Health Insurance Exchanges in all states in which we currently operate, and numerous other nuances about available state assistance.
ii. Automatic Enrollment of all eligible employees.
iii. The impact of the increased premium costs for all of the new eligible and enrolled employees.

c. ***Selected Unknowns.*** There are many aspects of the PPACA's requirements where the government has yet to issue further guidance. Until the government does so, in a timely and reliable manner, we are unable to plan effectively.

i. Auto Enrollment – no real determination as to when we will be required to comply with this requirement, we are assuming 2014.
ii. Disclosures – there are roughly 16 new disclosures or notice requirements but the government has yet to issue full guidance or guidelines. The government is writing new guidelines with details down to the font size, style and length of the required documents.
iii. Full time vs. Part time –The current known is that anyone over 30 hours will be considered Full Time and eligible for benefits. With further guidance we can better understand the full time equivalent rules and how we are to treat part-time employees. This is important so that we avoid penalties for not providing certain coverage, and so that we know who has to be automatically enrolled in one of our plans.
iv. Our part time employees currently have a Limited Medical Plan (sometimes referred to as a Mini-Med plan). The expectation is that that in 2014 that option will become unavailable due to PPACA's provisions that prohibit annual benefit limits. Currently we are able to provide this benefit plan as we have filed for and obtained a waiver with HHS. We are currently in the process of meeting the September 23, 2011 deadline to obtain the waiver good through January 1, 2014. The waiver only allows us to avoid PPACA's annual

dollar limit provisions – we must comply with all other applicable provisions.

3. ***Conclusion***. The foregoing is intended to provide a summary of the issues the PPACA has created and that we are currently working through. We do anticipate that the PPACA's costs will be very substantial and its regulatory requirements burdensome. We strongly urge you to reconsider the Menu labeling portion of the PPACA. We hope that at some point Members of Congress will set aside politics, and entrenched opinions, and carefully consider whether the benefit of PPACA as a whole is outweighed by the cost.

I want to conclude my testimony on a personal note. Like many people in this country, I come from a working class background. Through hard work and good fortune I was able to improve my position in life, and I am now able to provide opportunities to my children that I did not have. I fully recognize the important role government plays both in helping those who are unable to help themselves, and in providing a legal framework that enables the free market system to operate efficiently and with due regard for important goals like environmental quality and consumer health.

I want government to continue playing that role. But Congress must understand that laws have a real impact on real people who are working in real businesses. We have to keep those businesses profitable and successful or we lose our jobs and endanger our future. That is not an easy task in the best of times. There has been one occasions in the last twenty years when CKE was close to bankruptcy. If our company were in that position now, it is entirely possible that the PPACA alone would force us over the edge.

I am personally at a stage in life where such an outcome would not substantially affect me or my family. But the vast majority of our employees are not in that position. There are millions of people like them in our country whose jobs depend on Congress having sensitivity to the realities of small business that is lacking in the PPACA.

Mr. GOWDY. Thank you, Mr. Puzder.
Mr. Payne.

STATEMENT OF GRADY PAYNE

Mr. PAYNE. Thank you, Chairman Gowdy, Ranking Member Davis, and members of the committee for this opportunity to testify. I am Grady Payne, CEO of Connor Industries, with our headquarters in Fort Worth, Texas. We have plants in Texas, Oklahoma, Mississippi, Tennessee, Georgia, Florida, South Carolina, and Virginia. We supply cut lumber and assembled wood products to manufacturing companies for their shipping and crating needs, as well as logistics and supply chain management services.

Our company was started in 1981 with five people. Tody we are celebrating our 30th anniversary with 450 employees and 11 plants. Over 120 of our people today have been with us over 5 years, and 22 of those over 15. Ours is a commodity business which works off low margins. In each of our markets we compete against companies that have fewer than 50 employees, as well as importing crating companies that we compete against. These companies will not be subject to the penalties imposed under the new law; it will give them an unfair cost advantage over our locations.

According to the SBA, we are a small business, but not so by the Affordable Care Act. We are caught in the no-man's land between assistance and exemptions for smalls and waivers for large corporations and other powerful entities.

We started our medical plan in the 1990's and offered coverage to all employees. Most of our production line employees opted out due to cost. To meet Federal discrimination laws, we were forced to create groups of employees and significantly reduce the number to whom insurance was offered. This remains today. We offer coverage to approximately 140 employees and struggle each year to get 75 percent participation. The company pays approximately 55 percent of the total premium cost.

Ours is a fully insured plan. The new discrimination rules created by the law have the effect of pushing us immediately into a self-insured alternative or face a fine of up to $500,000. The IRS has just delayed enforcement of the new nondiscrimination testing until regulation can be written; however, our plan can be tested and penalized as early as next year. Without changes in these harsh penalties, we may be forced to drop our plan completely, prior to the State-based exchanges even becoming available.

In 2014, we will be faced with an even more difficult choice: Option one is to expand coverage to all our employees and pay the full premium cost. To do this, the additional cost would be approximately $1.5 million over the $750,000 we spend today on premiums. Option two is to expand coverage to all our employees and have employee-contributed cost set at affordable amounts based on the law's affordability rates and each employee's household income. If all employees stayed in the plan, our additional cost under this option would be estimated at over $1 million. Option three is to discontinue all policies and pay a non-tax-deductible penalty of $2,000 for each employee for our 450 employees, plus some portion of a penalty for employee turnover during the year. The cost of this penalty option is well over $1 million and it is not tax deductible.

The impact of this law will cost our company $1 million or more no matter which option we take and, worse, some of the extra costs, if not all of it, may be classified as a penalty and not tax deductible. We would owe income tax plus the penalty. Today, these estimates total more than the company makes.

We have been very blessed to be a profitable company, even in these hard times. We have had to make many sacrifices and pay bonus programs and people. We have no tax loopholes; we are a tax paying company.

We are a company caught in the middle. As the law stands now, our 30-year business is at risk of being legislated out of business. How can this be? Our lives are in this company. We have done a good job for our customers, our employees, and all our families. We understand the goal of getting everyone medical coverage, and we agree that it is a worthy goal, but the massive cost hits us right between the eyes. We are too small to get favorable group rates or self-insured contracts, and too large by statute to be exempt, even though our profit centers are less than 50 employees in each location. There has to be a more equitable way to achieve this goal than to cripple a small business like ours. The ratio of cost to earnings is overwhelming for a company our size.

We have seen bad markets before, though none as bad as this one. Our current capital expansion and business development plans are and will be stopped by this law because expansion and hiring requires cash. The impact of the law robs us of our needed growth capital. Our goals turn from hire and grow to cut and survive.

I thank all of you for your service to our great Nation and for allowing me to plead the case of Connor Industries.

[The prepared statement of Mr. Payne follows:]

Testimony of H. Grady Payne, CEO of Conner Industries, Inc. before the House Committee on Government Oversight and Reform July 28th, 2011

Thank you Chairman Gowdy, Ranking Member Davis, and Members of the Committee for the opportunity to testify today. I am Grady Payne, CEO of Conner Industries. Our headquarters is in Fort Worth, Texas and we currently have plants in Texas, Oklahoma, Mississippi, Tennessee, Georgia, Florida, South Carolina, and Virginia. We supply cut lumber and assembled wood products to manufacturing companies for their shipping and crating needs as well as logistics and supply chain management services.

Our company was started in 1981 with five people and one location. Today, in 2011, we celebrate our thirtieth anniversary, having grown to 450 employees and eleven plant locations. We offer our production-line employees market-competitive wages averaging $10 per hour and as much as $18 per hour for skilled workers and production line supervisors. Over 120 of our people have been employed with Conner for more than five years and twenty-two of those employees have been with us for over fifteen years.

Each of our locations operates in a distinct and self-contained market and each location employs fewer than fifty people. We're an average American business trying to finish each year with a fair profit, a profit that can be plowed back into growing the business and creating opportunities and jobs, as we have historically done.

We are in a commodity business which works off of low margins. Our competition is both local and international. In each of our markets, we compete against companies that have fewer than fifty employees as well as importing crating companies. These companies will not be subject to penalties imposed under the new law. This law will give them an unfair cost advantage over us. In today's highly competitive and global marketplace, companies with cost disadvantages do not survive and jobs are lost. This law places us in a disadvantaged position and should be changed to restore a level playing field for all businesses.

According to the Small Business Administration, a company of our size and in our industry classification is considered a small business, but under the Affordable Care Act, we are not treated as a small business. In fact, we are caught in the no-man's land between assistance and exemptions for small business and preferential treatment and waivers for mega corporations and other powerful entities.

Providing health insurance has always been challenging. When we started our insurance plan in the 1990's, we offered coverage to all employees. Most of our production line employees opted out due to high costs. The insurance companies refused to write coverage unless we could provide 75% or better participation. Because of this, and federal discrimination rules, we were forced to create groups of employees and significantly reduce the number to whom insurance was offered.

This situation has persisted to this day. We offer coverage to approximately 140 employees and struggle each year to get 75% participation. Today, after eligible exclusions, we have 100 participants and are able to meet insurance-carrier thresholds. The company pays approximately 55% of the total premium cost.

Our plan is a fully insured product. We are not comfortable with the open-ended cost potential of a self-insured plan and have been unsuccessful in finding an underwriter to write a plan for our group that is affordable. The new discrimination rules created by the law have the effect of pushing us immediately into a self-insured alternative or face a fine of up to $500,000. Although the IRS has delayed enforcement of the new non-discrimination testing until regulations can be written, our plan could be tested and penalized as early as the 2012/2013 plan year. Without changes to the harsh penalties associated with this testing, we may be forced to drop our plan completely prior to state-based exchanges becoming available.

In 2014 we will be faced with an even more difficult choice:

- Option one is to expand coverage to all of our employees. Our past experience tells us this will not be acceptable to them unless we pay the entire premium cost or close to it. In order to do this, the additional cost would be approximately $1,500,000 over the approximate $750,000 in premiums we currently pay.

- Option two is to expand coverage to all of our employees and have the employee-contribution set at adjustable amounts based on the laws' affordability test of 9.5% of each employee's household income. If all employees stayed in the plan, our additional new cost would be estimated at over $1,000,000. Based on previous experience, we expect that many would opt-out of the plan. For those individuals, we may be charged a non-tax-deductible penalty of $3,000 per employee. For us to know if we owe the penalty, we must ascertain each employee's household income and whether they applied for and received a subsidy in an exchange. How we are going to know this is yet to be determined, it will be an administrative nightmare.

- Option three is to discontinue all policies and pay a non-tax-deductible penalty of $2,000 for each of our 450 employees, less the statutory thirty exemptions, plus some portion of the penalty for employee turnover during the year. At today's employee count, that penalty estimate is over $1,000,000 in new costs to our company and, again, not deductible from taxable income.

The impact of this law will cost our company $1,000,000 or more no matter which option we choose. Worse, some of the extra cash cost, if not all, will be classified as a penalty and not tax deductible. We would owe income tax plus the penalty. Today, these estimates are more than the company makes. We would have a cash loss for the year. These forecasts do not even consider the significant additional administrative costs we are incurring and will continue to incur managing the program, preparing mandated government reports, and tracking all employee's household dependents and earnings.

No doubt, additional computer software and hardware will have to be purchased and maintained for these purposes. In addition, there are other annual fees and costs such as the Health Insurance Tax on fully insured plans and the Comparative Effectiveness Research Fee. None of this adds one penny of productivity or revenue to our business.

We have been very blessed to be a profitable company even in these hard economic times. We have had to make many sacrifices in pay, bonus programs, and people. Our company is a taxpayer. The burden of new and expanding taxes will be catastrophic.

We are a company caught in the middle. As the law stands now, our thirty-year business and the jobs of 450 employees are at risk of being legislated out of existence. How can this be? Our lives are in this company and we have done a good job for our customers, our employees, and all of our families.

We understand the goal of getting everyone health insurance coverage, and we agree that it is a worthy goal. But the massive cost increases hit us right between the eyes. We are too small to get favorable group rates and self-insurance contracts and too large by statute to be exempt even though each of our profit centers employs fewer than fifty employees. The ratio of cost to earnings is overwhelming to us, plus we are put at a competitive disadvantage in our market areas. There has to be a better way to achieve this goal than to cripple a small business like ours.

We're fighters and we will hold on as long as possible. We have seen bad markets before, though none as bad as this one. Our current capital expansion and business development plans are stopped and will continue to be halted by this law because expansion and hiring require cash. The impact of the law robs us of our needed capital for equipment maintenance and fixed assets for continued operations and for business growth. Our goals turn from "hire-and-grow" to "cut-and-survive."

I thank all of you for your service to our great nation and for allowing me to plead the case of Conner Industries and small businesses like ours.

H. Grady Payne
Conner Industries, Inc.

Mr. GOWDY. Thank you, Mr. Payne.

Mr. Morey.

STATEMENT OF WILL MOREY

Mr. MOREY. Yes, sir. Good morning, Chairman Gowdy and Ranking Member Davis. Thank you for the opportunity to speak today on this important matter. My name is Will Morey. I am president of Morey's Piers.

Morey's Piers is a family business that began in 1969. It began with very humble beginnings, a single giant slide on a postage-stamp piece of property along the boardwalk along the sea in Wildwood, New Jersey. It now consists of three piers, two water parks, and 120 rides or attractions.

Our operating season is primarily from Memorial to Labor Day; however, we operate shoulder seasons weekends, starting Easter and concluding on Halloween. We have 110 year-round benefited staff members and we grow to an additional 1,500 seasonal staff members during that time.

I am privileged also to be the Vice Chair of our International Association of Amusement Parks and Attractions, which represents 3,000 fixed site supplier and individual members in the United States, and I will be chairman of that organization in 2013.

By way of perspective on the industry, our total domestic economic impact is approximately $53 billion. We employee 700,000, of which 600,000 are seasonal employees, typically young people in their first jobs, retirees, school teachers, and others supplementing their incomes during the summer months.

Now, there is a tremendous amount of uncertainty related to this bill, from my perspective, but there is one thing that I know at Morey's Piers we can be certain about, and that is the inclusion of seasonal workers and the definition of full-time employee, and the lack of suitable recognition of seasonal employees within our industry will cause severe negative consequences to our business.

Now, I am here to be constructive and I would really like to be a part of the solution, but the fact is, as it stands, the law will have a substantial negative impact to our industry, on our seasonal employees, and our permanent employees as well. From our point of view, the law is a large expense; it is an administrative nightmare. It is hard to see any appreciable benefit to anyone working at Morey's Piers, but it is easy to see the negative impact on our ability to provide jobs and run our business productively.

Now, it is important to note that our industry seasonal workers are hired for short, temporary periods. They have very different set of expectations and responsibilities than full-time employees, and they were clearly an element of the work force that Congress did not pay close attention to in drafting the bill. The law will force businesses like Morey's Piers to provide health insurance to seasonal workers and, as a result, we have the following concerns:

Immediate loss of jobs, including full-time positions due to decreased profitability; negative economic impact on the communities' surrounding attractions such as ours as operating schedules are adjusted and employment is curtailed; and the promotion of a seasonal labor society that schedules employees under 30 hours per week or terminates employment before 90 days. This will happen across the entire country, hurting both seasonal businesses and seasonal employees. And very importantly and close to my heart is the ability to be able to reinvest. Capital is an incredibly important part of the attraction industry, and reinvesting in our businesses is critical to creating growth and future jobs.

Additionally, the administrative and compliance issues are, simply put, extreme. The majority of these workers are employed 5 months or less. By the time the 90-day administrative period passes, they will have insurance for less than 2 months, at most. Many of these seasonal workers get their health care from other sources—parents, university, their primary full-time positions—and will opt out of our coverage. Yet, we still have to do the following: ensure compliance, track work days, track average hours per week, offer the insurance, educate and present the insurance program, auto enroll into the insurance program, get declinations to the program, and maintain records for all of the above.

Consider a work force that swells from 110 to 1,600 employees, with individuals starting and ending their employment every day of the week throughout the season. Just imagine tracking and managing this information. This is unreasonably burdensome and will provide little to no benefit to the seasonal employees.

Now, the bottom line is the inclusion of seasonal workers in the definition of full-time employee will needlessly cause severe negative consequences to businesses like Morey's Piers, to seasonal and full-time employees and to their communities. Ultimately, if this law is to go into effect, it should be amended to properly recognize the real world of seasonal employees and their tremendous importance to our industry and to our national economy.

I would like to conclude just by mentioning that we really want to be a great business. We want to grow. We want to support our community. We want to create as many career opportunities we can. That is what life in America is about. So please don't burden us with a needless compliance and other issues that come along with this bill.

Thank you for your attention and consideration of this important matter.

[The prepared statement of Mr. Morey follows:]

House Committee on Oversight and Government Reform
Subcommittee on Health Care, District of Columbia, Census and the National Archives
"Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance"
Testimony of Will Morey, President of Morey's Piers
July 28, 2011

My name is Will Morey; I am the President of Morey's Piers in Wildwood, NJ. I also serve as the Second Vice Chair of the International Association of Amusement Parks and Attractions (IAAPA), which represents more than 3,000 fixed-site facility, supplier and individual members in the United States and will serve as Chairman in 2013. I thank the subcommittee for inviting me to testify today.

Morey's Piers, located on the boardwalk in the Wildwoods, New Jersey, is a classic seaside amusement park that has been family owned and operated since 1969. We employ approximately 100 full time associates and over 1500 seasonal workers. Voted one of the top three seaside amusement parks in the world by Amusement Today, Morey's Piers is comprised of three amusement piers and two beachfront waterparks that feature over 100 rides and attractions. Convenient to the major population centers of the Northeast, yet a world apart, Morey's Piers combines the pure joy of an amusement park with the sights and sounds of a classic seaside boardwalk.

Morey's Piers' main operating season extends from Memorial Day until Labor Day. We also open on a limited weekends-only basis beginning at Easter and closing on Halloween. Given our operating calendar, we are extremely concerned about the definition of full-time employee in the Patient Protection and Affordable Care Act (PPACA), and how it will be interpreted for seasonal employees/employers. We believe this provision will significantly impact our business, our dedicated staff, our community, and the larger attractions industry.

It should be noted that the total domestic economic impact of the attractions industry is approximately $53.7 billion annually. The industry employs approximately 700,000 workers in the U.S. 600,000 of those are seasonal employees. These temporary employees are often young people in their first jobs, retirees, school teachers, or others who supplement their income during the summer months.

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

While integral to our operations, our industry's seasonal workers are hired for a short, temporary period of time with a very different set of expectations and responsibilities than full-time permanent employees. While a number may develop their status to become full-time permanent employees, for the vast majority, the expectation of both the employee and employer is that the employment situation is temporary and will end when the season ends, or in many cases before the season ends to return to school. Nevertheless, the seasonal workforce opportunities that our industry provides serve an important need in the communities in which we are located. However, if the attractions industry is to continue to provide needed job opportunities, it is essential that the federal government recognize that a seasonal workforce is accompanied by unique administrative and compliance challenges which cannot be ignored in the implementation of PPACA.

When Congress was considering PPACA, IAAPA and many other seasonal industries lobbied for the inclusion of language addressing the unique situation of seasonal employers. During this time, many Members of Congress expressed interest and empathy, but aside from provisions for very small businesses, the needs of seasonal employers were not met in the bill as enacted.

Generally, the amusement industry provides competitive compensation, including health insurance to its full-time, year-round employees. Much of our seasonal workforce is over 65 (and covered by Medicare), under 22 (covered by a parent's insurance plan), or taking a seasonal job to supplement their primary income (receiving benefits from their full-time jobs). But the composition of the workforce changes every year and we cannot predict whether those we hire in the future will have alternative benefits. Trying to ascertain who might need benefits, whether the benefits are "affordable" under the law, and budgeting for this moving target on a year-by-year basis will be very difficult administratively. Providing medical insurance to large numbers of seasonal workers who work very short periods of time and who have various start dates and schedules, will have a detrimental impact on seasonal employers and a questionable benefit for the seasonal employee. A number of the issues we are facing include:

- PPACA may force businesses like mine to provide health insurance to seasonal workers. This would lead to an immediate loss of jobs, including full time positions, due to decreased profitability and reduced attraction investment levels, leading to fewer jobs in the future.

- PPACA may force certain businesses to close as they simply cannot afford to offer and pay for insurance for seasonal workers.

- PPACA will cause the promotion of a "seasonal labor" society where employers will schedule employees under 29 hours/week or terminate employment before 90 days, which will force the seasonal employees to get two or more jobs to work the hours they need to earn a living. This is not exclusive to the attractions industry; it will happen across the entire country, hurting both seasonal businesses and seasonal employees.

- PPACA will also have a negative economic impact on the communities surrounding attractions, as operating schedules are adjusted.

As outlined above, PPACA will needlessly cause job losses, business closures, and rising prices in the marketplace thereby impacting the overall economy. Seasonal workers were clearly an element of the workforce that Congress did not pay close attention to when drafting the health care reform bill. The inclusion of seasonal workers in the definition of "full-time" employee for purposes of the employer responsibility provisions of PPACA will cause severely negative consequences with businesses like mine as the casualties. If Congress fully appreciated the short-term nature of this employment, and the administrative and financial burdens to businesses, I have to believe that the issue would have been approached more thoughtfully.

Additionally, we are creating administrative and compliance issues that are, simply put, a mess:

- The majority of these workers are employed 120 days or less. By the time the 90 administrative time passes, they have less than a month to work. They will have insurance for 4 weeks, and then have the option of going on COBRA.

- The majority of these workers starts at minimum wage and may or may not have other jobs or income. We simply will not be able to determine whether they can afford the employee portion of the health care contribution.

- Many of these seasonal workers get their health care from other sources: parents, university, their primary full-time positions, etc. and will not opt for our healthcare. Yet, we will still have to ensure compliance, track work days, track average hours per week, offer the insurance, educate and present the insurance program, auto enroll into the insurance program, get declinations for the program, keep records of all of the above, etc. This might not seem like a lot but consider a workforce of 1500 seasonal associates, with individuals starting and ending their employment every day of the week, every day of the season. Now imagine tracking this information; this is unreasonably burdensome.

There is a regulatory proposal, put forth jointly by the Department of Labor, Internal Revenue Service, and Treasury that may offer a measure of relief to seasonal businesses. The proposal suggests a "look-back/stability period" that would allow an employer to use up to a year to determine if a person is really a full-time employee. This proposal would allow for increased predictability and planning, would more realistically identify "full-time" employees, and would be much more administratively workable. We could work with this proposal, and, barring full repeal of PPACA or a statutory exemption for employers of seasonal employees, this approach could provide needed relief for the industry.

Seasonal workers who are temporary and hired on a short-term basis are not "full time". Appropriate treatment of employers of seasonal workers need to be taken or seasonal businesses like mine will be severely hurt, forced to decrease both our permanent and seasonal workforce, and be impeded from making important capital reinvestment.

I respectfully urge you to give careful consideration to this issue. It affects not only the attractions industry, but seasonal vacation communities throughout the U.S. (ski or beach resorts, etc). Inclusion of seasonal workers in PPACA will result in nationwide job loss, business closures, and increased prices. Therefore, we implore you to solve this problem.

Thank you for your consideration of this important matter.

Mr. GOWDY. Thank you, Mr. Morey.

Ms. Braden.

STATEMENT OF VICTORIA J. BRADEN

Ms. BRADEN. Thank you. Chairman Gowdy, Ranking Member Davis, thank you for inviting me here today and to testify. My name is Victoria Braden. I am president and CEO of Braden Benefits Strategies. We are truly a small business. My business at this point has three full-time employees and two interns. And we deal with small businesses; that is our client base. We deal with companies that have 20 to 300 employees.

In 2002, I started Braden Benefits Strategies with one employee in the basement of my home. Our business model was to be a resource for small businesses headquartered in Georgia, advising them on employee benefits, specifically group health insurance. My business plan was to expand our small group market base and then to grow a large individual market practice.

In 2008, I moved the company into a building, took the risk, rented a space based on my long-term plan. At the end of our move, I was employing three full-time people, one part-time person, one intern, and myself. In addition, we sold our backroom services to three other health insurance agents, which kept their business viable. I had visions and a business plan to grow to 8 to 10 full-time employees; however, in December 2009, we looked at that and it was time to add our individual health product, which is what we had looked at for our expansion, put in a call center, hired a full-time person, and put an aggressive marketing campaign together.

On March 24th, the day after PPACA passed, I had looked at my business plan before, knowing that it could be coming, and I made sweeping changes to my business. I eliminated our expansion to the individual health market, which I still, to this day, believe was a good decision since individual market will most likely go to the exchange; I terminated that full-time person; I lost revenue from the sales we already had, which accounted for $35,000 annually. And to these other gentlemen that is just a small amount; to me it is a person, it is huge. I also terminated a part-time claims administrator and then I terminated my part-time accountant and outsourced that. The law eliminated my plans to grow and now have turned me into what could possibly be no business at all in 2014.

On top of that, we advise small businesses on their health insurance options, and that has become very expensive. My company has had to go out and educate ourselves on the health insurance. When we get bad information or conflicting information, because the bill is so intensive, we have to hire a lawyer, have to ask the lawyers for the differences, and oftentimes we go between three law firms, again, trying to figure out what it is that the law exactly says and how to advise our clients.

It has also taken a huge financial toll on my business from the value of my business. With my business in 2007, I was looking at a value of $1.2 million, two times my annual revenue, and now I am looking at a business worth of zero. And the reason it is worth zero is because our declining business will then be worth nothing at the end when PPACA goes into effect.

On January 1, 2014, and I think this is probably the basis of why I am here, we expect 22 of our 65 clients to immediately drop their group health insurance. The size of the clients that we service will have no cost to the employer to not have insurance; there will be no penalty and no fine. Of those companies, I expect 769 people to be added to the exchange rules.

Through PPACA, the taxpayer is now subsidizing the cost when that happens, of small business employees' health insurance. Our conservative estimate of 462 will be the first year, and other businesses will leave shortly after that.

We always said the young and the healthy would take this bill and make it worthwhile. It will not, because the young and the healthy will find a way around the bill. We have already seen that through the self-funded small business pieces that are being developed.

I would just ask you to reconsider not only the job loss of the bill, but the cost of the bill both to employers and to the unexpected consequences of what it is going to cost the U.S. Government. Thank you.

[The prepared statement of Ms. Braden follows:]

Testimony – Victoria J. Braden
Committee on Oversight and Government Reform
PPACA – Impact on Job Creators
July 28, 2011

Chairman Gowdy and Ranking Member Davis, thank you for inviting me to testify today. My name is Victoria Braden, President and CEO of Braden Benefits Strategies, Inc. located in Johns Creek, Georgia. Braden Benefits Strategies works with businesses and organizations to help them customize benefits to meet a range of financial needs. We design tactical approaches created specifically for each client and their employees.

On January 1, 2002 I started Braden Benefit Strategies, Inc. with one employee in the basement of my home. Our business model is to be a resource for small businesses headquartered in Georgia advising them on employee benefits, specifically group health insurance.

My business plan was to expand our small group client base and to grow a large individual health insurance practice.

In 2008 I moved my company into a building, and rented space based upon the long term needs projected by my business plan.

At the time of our move I employed 3 fulltime, 1 part-time, 1 intern and myself. In addition, we sold our 'back room services' to 3 other health insurance agents. I fully expected to meet and exceed my business plan, growing the business another 8 to 10 full-time employees.

December 2009 -- I added the individual health insurance call center with a very aggressive business plan. This included adding an additional full-time person and investing in a marketing campaign.

March 2010 – On March 24th, the day after PPACA passed, I made sweeping changes in my business in anticipation of the cost of the new law.

I eliminated our expansion into individual health insurance, and **terminated the full-time person**. The lost revenue from the sales we already had will be $35,000 annually. I also **terminated a part-time** claims administrator. In January 2011, I **terminated the part-time accountant**. In less than a year I went from employing 6.5 people to 3. In addition the law eliminated my growth plans which included another 8 to 10 employees.

Victoria J. Braden
770-447-9843 Office
770-595-5122 Cell

Testimony – Victoria J. Braden
Committee on Oversight and Government Reform
PPACA – Impact on Job Creators
July 28, 2011

Advising small businesses on their health insurance options has become very expensive over the past 2 years. The additional education required by me and my staff just to keep up with PPACA's provisions is an immense undertaking. The different interpretations provided by the health insurance companies requires a great deal of time to sort through. I have had to absorb added legal fees to help our firm interpret the law's complexities beyond available industry information.

Our internal costs have also increased as we work to provide the proper notices PPACA now requires of small businesses, which includes: Grandfathered information to employees; children under age 26 potential insurance coverage; plan maximum notice; just to name a few. The increased time and expense associated with educating our clients and creating model notices for them is significant.

PPACA has also taken a financial toll on the value of my business – in fact my company was valued at $1.2 million in 2007 (2 x annual revenue). Today my business, the business I have worked hard to grow, have invested my savings in and was counting on to provide my retirement, is not a business anyone would consider investing in or buying – it has absolutely no value. Under the current law, my business will cease to exist at the end of 2013 as the services it provides will no longer be necessary to the small business owner. At this time the remaining 2 of my 3 employees will be terminated and I will operate my company as a sole proprietor for 12 to 18 months.

On January 1st, 2014 we expect that 22 of our 65 clients will immediately drop their group health insurance. They will send their employees to the exchange. These employers might offer a small pay increase to cover some of the employee cost. These small businesses include a lumber yard, office supply company, dentist, architectural firm, property management, retail store and a security company.

We believe another 17 companies will eliminate their group health insurance within the first year, after the exchanges have been operating and the initial 'kinks' are worked out.

Because of the size of these companies, there will be no cost to the employer to not offer health care coverage. These companies will not be required to pay the $2,000 or $3,000 fines.

Victoria J. Braden
770-447-9843 Office
770-595-5122 Cell

Through PPACA, the taxpayer is now subsidizing the cost of the small business employee's health insurance. Our conservative estimate is 462 people will lose their coverage when their employer discontinues their current group health insurance.

The real question is – Can we; the taxpayers of the United States afford the subsidy PPACA has created?

We currently have 65 clients.

Of these, 58 have less than 50 employees and the cumulative number of employees is 769. Each client will "do the numbers" and make their own decision whether they should maintain their current health insurance or discontinue coverage. This adds 769 people to the exchange with no off-setting employer contribution.

In addition, most of these employees will be eligible for a subsidy.

Examples:
• A non-profit operating in North Georgia, 39 employees -- 36 will be eligible for credits for the health care Exchange.
• Library systems firm with 41 employees -- 13 will be eligible for Exchange credits
•Petroleum trucking company, 39 employees, as many as 8 could be eligible for Exchange credits depending on other household income.

Is the government, through the exchanges, ready to absorb these costs?

The young and healthy will subsidize the old and ill – this will not be true. Insurance companies and other enterprising Americans are working on programs to provide healthcare for these individuals that will circumvent both the Exchange and the small group community rating requirements also a part of the PPACA legislation.

Insurance carriers are developing small group policies on a self-funded platform. These plans will protect the employer and cover their maximum health care financial obligation. These products are expected to cost less than either the Exchange or the small group community rated pool if a company's employees are healthy, young, and male. These policies will further reduce revenue to the Exchange.

Victoria J. Braden
770-447-9843 Office
770-595-5122 Cell

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In addition to creating an obligation by the Federal government to provide reasonably priced health care, there are also many new laws that I, as a business owner, now have to address.

1. **Full-time has been redefined at 30 hours per week**. Prior to PPACA I was able to determine what would be considered full-time at my company. Generally, in small companies the definition is 40 hours a week. We also see some 35 hour weeks and a few 32 hour weeks. However, I and other small businesses must now adjust who we offer benefits to, based on a full-time employee being a person who works only 30 hours per week.
2. **Minimum wage has been increased for full-time employees**. If I am a larger employer and potentially subjected to the $2,000/$3,000 annual penalty, despite my best efforts, should one of my employees choose to work at a job that pays $10 per hour they now are considered at approximately 185% of the Federal Poverty Level. This person can obtain coverage less expensive on the Exchange and I am fined.
   I have one of four options; increase the person's pay so the cost of my company insurance is considered affordable; ask the person to get married rather than live with their partner so that their combined income will be above the FPL, terminate the person or discontinue my group health insurance.
3. On the Exchange there is expected to be only **2 levels of coverage**; employee and family. If I am a single mother I will now pay the same cost as a family even if it is a family of 8. Because of PPACA, a health insurance carrier can no longer ask about medical conditions of children under the age of 19. Because these companies cannot determine their risk and therefore cannot predict their exposure, they have simply withdrawn from the individual health insurance business for children. This forces me to pay the exchange cost of a family or leave my child or me uninsured.

PPACA is devastating to my business, expensive for me and my clients to administer, and works against our goals of helping businesses to expand, and putting more people back to work.

Thank you for the opportunity to present my story, and my views. I look forward to your questions.

Victoria J. Braden
770-447-9843 Office
770-595-5122 Cell

Mr. GOWDY. Thank you, Ms. Braden.

Mr. Brewer.

STATEMENT OF MICHAEL J. BREWER

Mr. BREWER. Chairman Gowdy, Ranking Member Davis, my name is Mike Brewer. I am president of Lockton Benefit Group of Lockton Companies, LLC in Kansas City. On behalf of Lockton and our clients, I thank you for the opportunity to appear here today.

Lockton is the largest privately held insurance brokerage and consulting firm in the world. Most of our 2,500 employee benefits clients are middle market clients, those with 500 to 2,000 employees. Our professionals are experts on last year's health reform laws provisions affecting employer group health plans. They have been instrumental in educating our clients regarding the law and analyzing its impact on our clients' employee benefits programs and their budget.

In May of this year, we also conducted a survey of our clients, soliciting their views on the costs and other implications of the reform law. We do believe that we are uniquely positioned to articulate the law's effect on employer-based health insurance plans.

Mr. Chairman, the employer community is the single largest employer of health insurance in America. The majority of our clients want to continue to supply health insurance, but they struggle with the cost and the federally imposed complexity of plan administration. Health care reform adds to, rather than mitigates, the cost and complexity of providing employer-sponsored health insurance.

For example, the Federal Government requires 52 separate notices, disclosures, and reports to enrollees in health insurance programs; 19 of these, and that is just so far, were added by health reform. This frustrates our clients immensely. They question why, during a recession, when employers are struggling mightily just to stay afloat, much less supply this valuable fringe benefit, Congress would make the process more expensive, more onerous, and more complicated. They tell us the additional cost, complexity, and uncertainty wrought by the law affects their ability to hire additional workers or even retain current full-time employees.

Clients find it difficult to plan strategically in light of the uncertainty the law brings to their world. One client in our survey summed up the view of many regarding this law, calling it a job killer. Nearly 20 percent of our survey respondents said they will consider terminating their group insurance plan in 2014, and they cite cost and complexity as the main reasons that they will consider doing this.

In our survey, 63 percent of respondents said they were concerned or very concerned about the cost of the law's immediate benefit mandates. Seventy-one percent said they were concerned or very concerned about the cost of implication of the pay-or-play mandate on employers and 60 percent about the cost of automatic enrollment. Our actuarial modeling of over 250 middle market clients validates our clients' concerns. Taken together, the law's immediate benefit mandates, waiting period limits, and auto enrollment requirements, on average, add 6.3 percent to our clients' health insurance costs, on top of current health insurance inflation, and it is more in certain industries.

The employer pay-or-play mandate in 2014 poses additional problems for employers because of the sizable difference between what most employers pay to supply coverage for an employee and the penalty they would pay if they terminated coverage, the vast majority of our clients have a significant financial incentive to exit the group insurance market in 2014. On average, our clients outside the retail, restaurant, and hospitality industries would save 44 percent off their current health care budget by terminating their group plans, leading nearly 20 percent to tell us they would consider doing just that in 2014.

About 80 percent of our clients indicate they don't expect to consider terminating coverage, but the reason they give is the perceived need to provide health insurance to attract and retain clients. We are concerned that the moment they see they don't have to offer competitive health insurance, that 80 percent number could drop significantly. This would result in huge increases in exchange participation and subsidy liability for taxpayers.

Seventeen percent of our survey respondents said they would work to avoid play-or-pay penalties by substituting more part-time employees for full-time workers. Forty-four percent said they would reduce the employer subsidy toward employee coverage and 43 percent they said they would reduce the employer's subsidy toward dependent coverage. That does not bode well for working Americans.

Thank you for the opportunity to appear before you today. In assessing the impact of this legislation, I urge you to place yourselves not only in the shoes of those Americans who need and deserve access to affordable health care coverage, but also in the shoes of the employers who supply valued coverage to 160 million of us. As one of our survey respondents wrote, this plan doesn't fix the health care problems, but shifts the burden to employers to take care of the issue without any type of assistance in covering the increase in cost.

We look forward to answering your questions and working with you to address the issues raised by our employer clients. Thank you.

[The prepared statement of Mr. Brewer follows:]

Chairman Gowdy, Ranking Member Davis, my name is J. Michael Brewer and I am the President of Lockton Benefit Group of Lockton Companies, LLC (Lockton). Lockton is headquartered in Kansas City, Missouri, and is the largest privately-held insurance brokerage and consulting firm in the world. Domestically, Lockton employs 2,300 associates in 24 offices nationwide who serve the insurance risk needs of approximately 9,000 employer clients from coast to coast. Lockton Benefit Group is the employee benefits consulting arm of Lockton Companies, LLC, and provides employee benefits consulting services to approximately 2,500 of those clients.

On behalf of Lockton I thank you for the opportunity to appear here today to share our observations and our clients' views regarding the impact of last year's health reform law on the group health plans they sponsor.

Lockton consults with clients on group medical plans, qualified and nonqualified retirement plans, group life and disability insurance programs, voluntary supplemental benefits, and dental and vision programs. Most of our 2,500 employee benefits clients employ us to assist in the design and administration of their group medical insurance programs.

Most Lockton clients are "middle market" employers, employing between 500 and 2,000 employees, although we also have some small-group and some "jumbo" clients. Our clients include private and governmental employers, and employers across many industry segments, including construction, healthcare, manufacturing, transportation, retail, professional services, local government, and the restaurant/retail/hospitality and amusement park industries.

More than half of Lockton's clients maintain self-insured group health plans. The others purchase group health insurance from licensed insurance companies.

Overview

Mr. Chairman, the employer community is the single largest supplier of health insurance in America. Health insurance is the second most expensive element of employees' compensation, and in our experience the vast majority of employees appreciate, value and like the coverage they have.

The majority of our clients want to continue to supply health insurance, but they struggle mightily with the cost and with the federally-imposed complexity of plan administration. For example, under federal law and regulations today, a simple group health plan is required to supply up to an astonishing 52 separate notices, disclosures and reports to its enrollees and the federal government (many of those more than once). Virtually every aspect of plan administration, from enrollment to benefit summaries to specific eligibility and benefit requirements, to claim processing times and the timing, form and cost of post-employment coverage, are now under federal statutory or regulatory dictates.

Last year's healthcare reform law, the Patient Protection and Affordable Care Act (PPACA), poses significant challenges to our clients. It adds to, rather than subtracts from, the cost of their health insurance coverage, and adds so much more complexity to the process that a full **80 percent** of our clients said, in responding to a recent survey we conducted, that they were concerned or very concerned about the additional administrative complexity created by the PPACA.

This frustrates our clients immensely. They do not understand why, at a time when they struggle to supply this valuable fringe benefit, Congress would make the process more expensive and more complicated, rather than less so. They tell us the additional costs, complexity and uncertainty wrought by the PPACA affect their ability to hire additional workers, or to retain full-time employees.

In what we think is a remarkable demonstration of commitment to their employees, more than 80 percent of our survey respondents said they would like to continue to offer group insurance—primarily to attract and retain the talent they want—and at least today have no plans to consider otherwise when the insurance exchanges open in 2014. Yet nearly 20 percent of our clients said they'll consider terminating their group insurance plans in 2014, and they cite cost and complexity as the main reasons they will consider doing so.

If even half of that 20 percent—if merely 10 percent of our clients and health plan sponsors everywhere terminate coverage in 2014 or shortly thereafter—Congress will have substantially underestimated the number of Americans who will lose group insurance due to the PPACA, and thus will have substantially underestimated the cost of federal subsidies needed in the insurance exchanges, to help these individuals buy health insurance.

More significantly, if the 80 percent of our clients who today say they expect to remain engaged begin to see that they do not have to offer health insurance to attract and retain the talent they want—because their competitor or neighbor is not offering coverage—we are certain to see an even more substantial migration of employers out of the group insurance market.

Lockton's Client Survey and Actuarial Modeling Results

In early 2009 Lockton formed a Health Reform Advisory Practice (HRAP) to shepherd our clients through the challenges posed by healthcare reform. HRAP is a multi-disciplinary consulting team comprised of attorneys, actuaries, data analysts, physicians, health risk managers, technology experts, compensation consultants, and others, all experts in one or more aspects of the federal healthcare reform legislation, the Patient Protection and Affordable Care Act (PPACA).

Our HRAP team has been instrumental in educating our account teams and clients regarding the requirements of the PPACA and assessing the law's impact on our clients' employee benefit programs and budgets. In this regard we are uniquely positioned to describe to you the PPACA's effect on employer-based health insurance plans, particularly in the middle market, and to relay to you the views about the PPACA as expressed to us by our clients.

Very soon after the law's passage in 2010 Lockton's attorneys, actuaries and select senior account managers developed a robust healthcare reform modeling tool that enables our account service teams and clients to model the cost implications of health reform with respect to their healthcare plans. Our account teams have performed hundreds of modeling analyses for our clients, and recently began aggregating those modeling results. We break out the aggregated results by industry (e.g., healthcare, transportation, government, restaurant/retail, etc.).

In addition, in May of this year Lockton conducted a survey of its 2,500 employee benefits clients, regarding the impact upon them of the PPACA. A remarkable 40 percent of our clients responded to the survey. We would like to share the aggregated modeling results, and the results of our survey, with the Subcommittee.

PPACA's Effect on Middle-Market Employers

Our clients have expressed significant concerns about the additional cost the PPACA triggers for their healthcare plans, both with respect to several new (and immediately effective) benefit mandates, and with respect to the "play or pay" mandate upon employers in 2014. They are even more frustrated by the additional administrative complexity the PPACA places on their backs, and are concerned that the additional costs and headaches will limit corporate growth and in some cases cause a loss of full-time employment, or an outright reduction in jobs.

According to the survey, 63 percent of our respondents said they were concerned or very concerned about the cost implications of the PPACA's immediate benefit mandates, 71 percent said they were concerned or very concerned about the cost implication of "play or pay," and 60 percent about the cost implications of automatic enrollment. Their narrative comments underscore the survey responses:

- "This [the PPACA] will inevitably lead to three things: 1) Companies will offshore or near-shore more work. 2) Less companies will offer healthcare (they will just pay the fine instead). 3) Less full time employment will be offered (more part time)."
- "It is a job killer."
- "We operate our business on paper-thin margins and any additional government mandated costs will force us to either close the business or reduce the hours of our full-time employees."
- "The cost to smaller and independent employers will be substantial. It will likely cause a substantially number of employers to cease operation."

Immediate Benefit Mandates

Our actuarial modeling results justify our clients' concerns. The health reform law's immediate benefit mandates (coverage of adult children to age 26, elimination of lifetime dollar maximums, restrictions and ultimate elimination of annual dollar limits, etc.) on average add 2.5 percent to our clients' health insurance costs (on top of current health insurance inflation).

Firms that prior to the PPACA supplied benefits substantially more modest than the new mandates (e.g., firms that offered coverage to dependent children to age 22 and/or imposed $1 million or smaller lifetime maximums) see the largest percentage increases (3.7 percent).

The PPACA's prohibition on waiting periods longer than 90 days, and the requirement for larger firms to automatically enroll full-time employees, trigger additional costs increases.[1]

Our survey respondents' narrative comments again reflect their concerns:

- "Bad for business. The plan will hurt employees in the long run by forcing employers to cancel coverage due to cost increases."
- "What they are planning is only going to penalize the employers and the employees who actually are hard workers and who are trying to make a living for themselves and not relying on the government to take care of them."
- "I do not believe that they [Congress] considered the cost of this plan [the PPACA] to the employer in the short term. I think their only consideration was to the employees that do NOT currently have health coverage. Our rates went up an additional 7 - 9 percent in 2011 because of health reform."
- "This plan [PPACA] doesn't fix the healthcare problems but shifts the burden to employers to take care of the issue without any type of assistance on covering the increase in costs."

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[1] A minority of our clients employ health insurance waiting periods longer than 90 days, but for those that do (on account of high turnover rates) the results are distressing. For example, a construction firm client with a six-month waiting period experiences an additional 3.9 percent cost increase, while another—with a 12-month waiting period—experiences an additional 39.3 percent cost increase. Our transportation firm clients with four-month waiting periods experience an additional 6.4 percent increase.

The PPACA's mandate on larger employers to automatically enroll full-time employees in coverage adds additional costs. On average, it stacks an additional 3.8 percent cost increase atop the increases described above, with our transportation industry clients seeing the largest additional average increase (10 percent). For one client, a large hospital, our actuaries expect the automatic enrollment feature to add more than $1 million annually to the client's health insurance cost.

Note that in assessing the automatic enrollment mandate, we assumed that 75 percent of employees who are eligible for coverage but have not affirmatively enrolled, and who are automatically enrolled by the employer, will opt out of coverage. Note also that these modeling results do not reflect the impact of the automatic enrollment feature on our retail, restaurant, hotel and entertainment industry clients. The modeling results for these clients are described separately because of the unique challenges the PPACA poses to these clients.

- So far, reform has done nothing to reduce costs to employers (and in turn employees). In fact, it has made it significantly more expensive."
- "In an effort to make healthcare more affordable for every American citizen, they [Congress] are actually driving up the costs."
- "Congress needs to be concerned with the REALITY of how businesses are going to be able to pay for all these healthcare decisions. How are HCR [healthcare reform] added costs going to be absorbed by businesses and how many businesses will not be able to?"

"Play or Pay" Mandate

The employer "play or pay" mandate (also known as the employer's "shared responsibility" requirement) poses significant issues for employers. Because the majority of our clients currently spend $8,000 to $12,000 (sometimes more) per employee per year on health insurance, and the PPACA's penalty for offering no insurance is $2,000 (nondeductible) per full-time employee per year, the majority of our clients have a significant financial incentive to exit the group insurance market in 2014 when the insurance exchanges give employees other, federally-subsidized options.

On average, our clients would save 44 percent off their current healthcare budget by terminating their group plans.[2] Where health plans tend to provide more generous coverage, savings are larger (84 percent for our governmental clients, 60 percent for our hospital clients). As a result, 16 percent of our survey respondents said the availability of the insurance exchanges is the most beneficial aspect of the PPACA, because it gives employers the opportunity to exit the group insurance market. Almost 19 percent of our survey respondents said they would consider doing just that in 2014.[3]

The "play or pay" mandate requires employers to offer qualifying and affordable coverage to all its full-time employees and their dependents, or risk penalties of $2,000 or $3,000 per year, per affected full-time employee. Coverage is "affordable" only if it does not require the employee to pay more than 9.5% of his or her household income for it. The PPACA is not entirely clear whether this affordability standard applies to employee-only coverage or to family coverage as well.[4]

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[2] Our restaurant/retail/hospitality/entertainment clients are considered separately because of the unique challenges the PPACA poses to them.

[3] Almost a fourth of our survey respondents (23%) said the aspect of reform they like best is the insurance exchanges because they give the employer an easier exit from providing pre-65 retiree coverage. Because relatively few of our clients offer retiree health coverage, this 23% of respondents represents the vast majority of those who do, portending a mass exodus of employers from the retiree health insurance market in 2014.

[4] The Joint Committee of Taxation's report on the healthcare reform law indicates the affordability standard applies to employee-only coverage, and our modeling tool assumes that this will be the case. However, we have read that the Administration may be contemplating a regulatory interpretation (of the PPACA's play or pay mandate provisions) that would require employers to make dependent coverage "affordable" if elected by the employee. Such a requirement would have a dramatic cost impact on a great many of our clients, as most of our clients currently subsidize a much smaller portion of dependent coverage than they do for employee-only coverage.

Under the PPACA, a "full-time employee" is one who averages at least 30 hours per week. Most of our clients currently require employees to work at least 35 or 36 hours per week to qualify for coverage. As a result of the "affordability" requirement and the requirement to provide an offer of coverage to employees working at least 30 hours per week, many clients expect significant cost increases in 2014. Again, the survey results bear this out.

A full 17 percent of our survey respondents said they would work to avoid "play or pay" penalties by substituting more part-time employees for full-time workers. 44 percent said they will reduce the employer's subsidy toward employee coverage (requiring the employee to pay more) and 43 percent said they will reduce the employer's subsidy toward dependent coverage.

Restaurant/Retail/Hospitality/Entertainment Employers

The modeling results for our clients in the restaurant, retail, hospitality and entertainment (e.g., amusement park) industries are more sobering. Most of these clients do not offer group health coverage to all their full-time employees because they cannot afford to do so. A restaurant chain, for example, will typically offer coverage to its corporate staff and restaurant managers. An amusement park will typically offer coverage to its year-round staff, but not to its extended seasonal workforce.

These employers are caught in a "damned if we do, damned if we don't" bind. On average, to comply with the "play or pay" mandate and offer qualifying and affordable coverage to all full-time employees, the employer's health insurance costs increase 150 percent, an increase they simply cannot absorb.

Maintaining the status quo—offering coverage to some employees, such as corporate staff, but not rank-and-file employees—can trigger excise tax penalties under the health reform law's nondiscrimination rule,[5] and in any event would trigger penalties under the employer "play or pay" mandate.

Ironically, if the employer simply terminates its group plan it still pays 56.6 percent more than it would pay to continue its plan. Although the employer saves a portion of its health insurance expense (it loses the tax deduction on those dollars, and the FICA/FUTA savings on employee pre-tax contributions), it pays a $2,000 per year, nondeductible penalty on each of its full-time employees, even those employees on whose behalf the employer is not otherwise now incurring a health plan expense.

[5] It is possible, depending on how federal regulators flesh out the requirements of the nondiscrimination rule, that these employers will simply have to terminate their existing group coverage. However, the nondiscrimination rule has yet to be interpreted by the regulatory agencies and we intend to continue to urge that as they do so, regulators develop guidance that will minimize disruption to current coverage and provide employers the flexibility they need to provide health benefits to the wide range of employees' needs and circumstances.

These clients, and clients like them who employ a large number of full-time, relatively low paid hourly workers who are not receiving an offer of robust health coverage today, tell us they have but one option: **eliminate large numbers of full-time positions.** By making full-time employees part-time, the employees are removed from the penalty equation.

For some employers, particularly seasonal employers, recent indications from the IRS are encouraging. The Service suggested in May of this year that it may consider allowing employers to average an employee's hours over a "measurement period" of up to 12 months, to determine if the employee qualifies as "full-time." If this methodology is adopted in regulations, it will ease the potential financial implications for seasonal employers.

It appears to do little, however, to ease the financial implications for non-seasonal employers unless they have extremely high turnover rates. For example, our actuaries performed a case study illustrating that with an annual turnover rate of 75 percent and a 12-month look-back "measurement period," an employer with 200 salaried and 800 hourly employees would still suffer more than a 20 percent cost increase (over its current health insurance budget) by terminating group coverage and paying penalties. This is better than the 56 percent increase it would suffer otherwise, but significant nevertheless.

Our survey respondents' comments again reflect their frustration with legislation that they see as compromising their ability to remain profitable in already challenging economic times, much less to expand:

- "We operate our business on paper-thin margins and any additional government mandated costs will force us to either close the business or reduce the hours of our full-time employees."
- "The cost to smaller and independent employers will be substantial. It will likely cause a substantially number of employers to cease operation."
- "Having to provide insurance benefits in our retail operations where high turnover is simply the nature of that business, and will place a significant cost burden on those operations as well."
- "Healthcare reform as written will cripple my industry (restaurant). It is impossible to fund coverage for restaurant workers earning $2.13 in hourly [non-tip] wages. It also will stunt further growth -- franchisees already have indicated that they will not build additional restaurants because they cannot afford to pay [health] insurance. This will result in fewer jobs, which will not help improve our economy."

<u>Administrative Complexity and Burdens</u>

Our survey respondents achieved the greatest consensus in their disdain for the PPACA's additional administrative burdens. Additional, PPACA-imposed administrative duties on plan sponsors include a variety of new notices to employees, additional plan summaries, and new reports to federal authorities, including W-2 reporting of health plan values and detailed reporting to the insurance exchanges. A full 80 percent of our survey respondents said they were concerned or very concerned with the additional administrative burdens.

Their narrative summaries underscore their angst:

- "The reporting requirements are extremely cumbersome and will add administrative burden and cost to our operations."
- "It [the PPACA] has created an excessive amount of additional administrative work; and increased costs are going to make it increasingly difficult for us to provide the same level of benefits -- we will be forced to reduce benefits and/or increase the proportion of cost to the employee."
- "The overhead for a small school district with no HR department is overwhelming. It will eventually drive us to a point where we will consider eliminating healthcare coverage for our employees and let them use the exchanges."

Conclusion

Lockton greatly appreciates the opportunity to appear before you today. In assessing the impact of the health reform legislation, we urge you to place yourselves not only in the shoes of those Americans who need access to affordable insurance, but in the shoes of the employers who supply valued coverage to 160 million of us.

Employers are burdened and frustrated by aspects of the health reform law that add costs and complexity to their health plans, and may lead some of them to eliminate group coverage and full-time jobs. They are bewildered at the cost and other burdens thrust upon them in the midst of an economic recession. The view of many of our clients is summarized by the narrative comment that one of them included in its survey response:

> "The Congress and health reform have created an environment of uncertainty, confusion, inability to forecast cost of medical programs, fear among employees that their employer will cut benefits, and confirmed that Congressional leaders have no sense of what the American people want in healthcare."

Again, we thank the Committee, and welcome the opportunity to work with you to mitigate these burdens on the employer community.

Mr. GOWDY. Thank you, Mr. Brewer.

Mr. Gardiner.

STATEMENT OF TERRY GARDINER

Mr. GARDINER. Good morning, Chairman Gowdy, Ranking Member Davis, and members of the subcommittee. Thank you for the opportunity to testify on the number one problem facing small business, the ever-rising health care cost. I am Terry Gardiner. I am vice president of policy at Small Business Majority.

Small Business Majority is a national nonprofit small business advocacy organization founded and run by small business owners. I myself have spent most of my career, I was kind of shocked to add it up and to think I started my first business 40 years ago as a self-employed commercial fisherman in Alaska, where I grew up. Went on to create a seafood processing company that grew over 22 years, and when I retired, it had 1,000 employees with over $100 million in sales, exporting to 22 countries.

Other members of our senior team at Small Business Majority are also entrepreneurs. And as business owners we are well aware that government policies can take either of two courses, they can help promote job creation and help promote business, and, at the same time, there can be other laws and regulations, in our experience, that can definitely be a burden on business and discourage growth. So we are not unaware of those situations from our own personal experience.

But the problem facing small businesses, those 22 million self-employed out there, one-third of whom don't have coverage, and the nearly 6 million small businesses with under 100 employees, they keep saying that health care costs, ever-rising, are their number one problem. We have done a lot of polling, scientific polls across the country, national and in many, many States between December 2008 and August 2009, 67 percent of respondents said reform was urgently needed to fix the economy. An average of 86 percent of those companies who do not provide coverage said they couldn't afford it. Seventy-two percent of those offering health benefits said they were struggling to do so and cited the cost as the reason they were struggling. So this simply paints a status quo that is unacceptable for small business.

We have also done some economic research that was conducted by MIT economist Jonathan Gruber to look at the scenarios. Our country then and now does face alternatives, we could do nothing about our health care system or we could try to change it so it works better. So we looked at those alternatives.

Doing nothing is a job killer. Gruber's projection showed that over the next decade small employers would pay $2.4 trillion in health care costs, there would be a loss of 178,000 jobs. There would be negative impacts for employees, too; $834 billion in reduced business wages and a reduction in profits. So doing nothing is not a great scenario.

So that moves us to where we are at now, where we have the Affordable Care Act as the law in the country that we are here today discussing, projected by CBO that it would have the benefit of reducing the Federal deficit by $200 million over the next 10 years and $1 trillion over the following decade, which is a positive for all businesses and all citizens. But the point for small businesses is to reduce their cost so that they can keep more money in their bank account, which is what they use as fuel to expand and create jobs.

And there are many provisions in the ACA that are going to help small businesses, many of which do not offer health coverage now, and many self-employed simply can't afford it. So there are new mechanisms here in the ACA; tax credits for small employers. There are health insurance exchanges that will be established in the 50 States. Some States have already moved forward; Massachusetts, Utah. We have exchanges that have been in effect for 15 years in Connecticut and provides a lot of insurance to small groups.

So we know there are problems. You have heard about some of them here today with the ACA. We are not here to say they are perfect, but we think focusing on these and fixing them would be a better course of action than going backward.

Thank you.

[The prepared statement of Mr. Gardiner follows:]

SMALL BUSINESS MAJORITY

STATEMENT FOR THE RECORD

BEFORE HOUSE SUBCOMMITTEE ON HEALTH CARE, DISTRICT OF COLUMBIA, CENSUS AND THE NATIONAL ARCHIVES

ON

HEARING ON IMPACT OF PATIENT PROTECTION AND AFFORDABLE CARE ACT ON JOB CREATORS

JULY 28, 2011

TERRY GARDINER
VICE PRESIDENT, POLICY & STRATEGY
SMALL BUSINESS MAJORITY

This testimony is submitted in support of the small business perspective on the Patient Protection and Affordable Care Act and its impact on small businesses, our nation's chief job creators.

Small Business Majority is a national nonpartisan small business advocacy organization founded and run by small business owners and focused on solving the biggest problems facing small businesses today. We represent the 28 million Americans who are self-employed or own businesses of up to 100 employees. Our organization uses scientific opinion and economic research to understand and represent the interests of small businesses.

The Affordable Care Act will help reduce the cost of insurance and medical care while making coverage affordable, fair and accessible. There is a legitimate role for government in passing laws that address private sector business activity.

That's why passage of the Affordable Care Act was so critical, because small businesses needed relief from the high costs of health insurance. Business owners are pragmatic and bottom-line oriented. Preventing or delaying all regulation that might in some way affect small business would be shortsighted and could actually remove an important tool that can stimulate small business innovation and contain costs. Indeed, our research has shown small business supports government as a facilitator and an arbiter that sets rules of the road.

The effects of legislation on the private sector should be carefully considered as each bill is being debated; not via a blanket one-size-fits-all approach. The first items on small businesses' list of concerns are the need for customers and finding ways to deal with burdensome expenses. In many cases, government can help.

Our research shows that reforming our broken healthcare system has been and still is one of small business owners' top concerns, and that the majority of small employers believe reform is needed to fix the US economy. It also shows that small businesses support key provisions in the law, specifically ones that help them better afford insurance, such as tax credits and insurance exchanges, and those that contain costs. Controlling skyrocketing costs is essential to ensuring small businesses' ability to obtain high-quality, affordable healthcare for themselves, their families and their employees. Our research also shows that absent reform, these costs would continue to escalate, undermining small businesses' success and our economic recovery. The new law goes a long way toward fixing our broken system and stemming these spiraling costs, while helping to create jobs and stimulate the economy.

Our research, which is discussed in more detail below, shows the impact this legislation will have on small businesses and reveals that small businesses support many provisions in the law, especially those that benefit them immediately, such as the small business tax credits. In July 2010, Small Business Majority partnered with Families USA to determine the number of small businesses eligible for a tax credit on their 2010 tax returns, one of the key provisions of the Affordable Care Act.

- We found that more than 4 million small businesses would be eligible to receive a tax credit for the purchase of employee health insurance in 2010. [1]

We also commissioned a national survey of 619 small business owners to determine their views on the tax credits and insurance exchanges, another crucial provision of the Affordable Care Act for small businesses. The survey, which was released on Jan. 4, 2011, found that:

- Both the tax credits and the exchanges, once they take effect, make small business owners more likely to provide healthcare coverage to their employees;
- One-third of employers who don't offer insurance said they would be more likely to do so because of both the small business tax credits and the insurance exchanges;
- 31% of respondents who currently offer insurance said the tax credits and the exchanges will make them more likely to continue providing coverage. [2]

However, the poll also found that the vast majority of small business owners don't know the tax credits or exchanges exist to help them afford coverage.

As Congress holds hearings critical of the Affordable Care Act, it's important to understand the consequences doing nothing would have had on small businesses and our fragile economy.

- Small businesses wouldn't have$4 billion per year in healthcare tax credits and many small business protections, including a ban on denying coverage for preexisting conditions. This provision will provide much-needed help to many

[1] Families USA and Small Business Majority, A Helping Hand for Small Businesses: Health Insurance Tax Credits, July 2010, http://smallbusinessmajority.org/small-business-research/tax-credit-study.php.
[2] Small Business Majority, Opinion Survey: Small Business Owners' Views on Key Provisions of the Patient Protection and Affordable Care Act, Jan. 4, 2011, http://smallbusinessmajority.org/small-business-research/small-business-healthcare-survey.php.

Americans, including the legions of self-employed individuals—many who currently can't get coverage because of this reason;

- Small businesses would have no ability to pool their buying power through state insurance exchanges, and the various cost controls the ACA puts in place would not exist;
- Tough enforcement measures in the law, which are saving billions in Medicare waste, fraud and abuse, would also not exist. This would result in higher taxes for employers and employees to fund Medicare, and higher taxes mean fewer jobs.

These are just some of the disastrous consequences our healthcare system absent of the Affordable Care Act would have on small businesses—consequences that are too severe on our nation's primary job creators. Small businesses create 70% of new jobs in our country. Spending less on health insurance will help them generate larger profits, which will help speed our journey down the road to economic recovery.

My testimony highlights the issues of greatest importance to small businesses in the Affordable Care Act. It explains what we have learned from our scientific research about both the opinions of small employers and the economic impact of reform on small businesses, including the consequences repealing the Act would have on them and the economy overall. The key issues are:

- Healthcare costs are the No. 1 problem facing small businesses;
- The status quo was unacceptable—doing nothing would thwart economic growth and job creation;
- Moving forward: strengthening the law will help small businesses thrive; and
- How the Affordable Care Act is helping small business owners now.

Healthcare Costs are the No. 1 Problem Facing Small Businesses

National surveys of small business owners consistently show that the cost of health insurance is their biggest overall problem. In fact, the crushing costs of healthcare outranked fuel and energy costs and the weak economy for 78% of small business people polled by the Robert Wood Johnson Foundation in 2008.[3]

Small businesses are at a disadvantage in the marketplace largely because our small numbers make rates higher. According to research supported by the Commonwealth Fund, on average we pay 18% more than big businesses for coverage.[4] Small businesses, including the self-employed, need a level playing field to succeed and continue as the job generators for the U.S. economy.

We hear stories every day from small business owners who can't get coverage because they've been sick in the past or the health plans they are offered are outrageously priced. Louise Hardaway, a would-be entrepreneur in the pharmaceutical products industry in

[3] Robert Wood Johnson Foundation, Study shows small business owners support health reform, 2008, http://www.rwjf.org/coverage/product.jsp?id=36558.

[4] J Gabel et al, Generosity and Adjusted Premiums in Job-Based Insurance: Hawaii is Up, Wyoming is Down, *Health Affairs*, May/June 2006, http://content.healthaffairs.org/content/25/3/832.full.

Nashville, had to give up on starting her own business after just a few months because she couldn't get decent coverage—one company quoted her a $13,000 monthly premium.

Many other businesses maintain coverage for employees, but the cost is taking a bigger and bigger chunk out of their operating budgets. It's common to hear about double-digit premium increases each year, eating into profits and sometimes forcing staff reductions. Small business owner Walt Rowen, owner of Susquehanna Glass Co. in Columbia, PA, was quoted a 160% premium increase from his carrier last year, forcing him to find a new plan. These rising bills frequently force business owners to hack away at the insurance benefit to the point where it's little more than catastrophic coverage. That leaves employees with huge out-of-pocket expenses or a share of the premium they can't afford, forcing them to drop coverage. That concerns Larry Pierson, owner of a mail-order bakery in Santa Cruz, California, who says "the tremendous downside to being uninsured can be instant poverty and bankruptcy, and that's not something my employees deserve."

Small business owners want to offer health coverage, and our surveys show that most of them feel they have a responsibility to do so. Small Business Majority conducted surveys of small business owners in 17 states between December 2008 and August 2009.[5] Our key findings included:

- An average of 67% of respondents said reforming healthcare was urgently needed to fix the U.S. economy;
- An average of 86% of small business owners who don't offer health coverage to their employees said they can't afford to provide it, and an average of 72% of those who do offer it said they are struggling to afford it.

It should be noted that respondents to these surveys included an average of 15% more Republicans (39%) than Democrats (24%), while 27% identified as independent.

The exorbitant cost of insurance means that many small businesses are forced to drop coverage altogether. According to the Kaiser Family Foundation, 54% of businesses with fewer than 10 employees don't offer insurance.[6]

This makes small business employees a significant portion of the uninsured population. Of the 45 million Americans without health insurance in 2007, nearly 23 million were small business owners, employees or their dependents, according to Employee Benefit Research Institute estimates.[7] And nearly one-third of the uninsured—13 million people—are employees of firms with less than 100 workers.[8]

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[5] Small Business Majority, State Surveys Highlight Small Business Support for Healthcare Reform, August 2009, http://www.smallbusinessmajority.org/small-business-research/opinion-research.php.
[6] Kaiser Family Foundation/HRET, Employer Health Benefits Annual Survey, 2008, http://ehbs.kff.org/2008.html.
[7] Employee Benefit Research Institute, Sources of Health Insurance and Characteristics of the Uninsured: Analysis of the March 2008 Current Population, http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=3975.
[8] Center for American Progress, What Will Happen to Small Business if Health Care Is Repealed, July 23, 2010, http://www.americanprogress.org/issues/2010/07/small_biz_reform.html.

With staffs of 5, 10 or even 20 people, small businesses are tight-knit organizations. Owners know their employees well and depend on each employee for their businesses' success. They don't want to see their valuable employees wiped out financially by a health problem, or ignore illnesses because they can't afford to go to the doctor.

The Affordable Care Act addresses all these issues and more. Without reform, we will impede our overall economic growth. Small businesses with fewer than 100 employees employ 42% of American workers.[9] Traditionally, small businesses lead the way out of recessions. Continuing to address the healthcare crisis by implementing the Affordable Care Act is essential to our vitality as a nation. A repeal of this landmark legislation would send our primary job creators back into in a broken system that threatens their competitiveness, discourages entrepreneurism and jeopardizes our economic recovery.

The Status Quo was Unacceptable

The shock of failing to move forward with reform would have reverberated throughout the US economy. When you examine what a failure to implement the reforms would mean financially for America's 28 million small businesses, the picture is bleak. In June 2009, Small Business Majority commissioned noted economist and Massachusetts Institute of Technology professor Jonathan Gruber to apply his healthcare economics microsimulation model to the small business sector. He focused on businesses with 100 or fewer employees.[10] Our research showed that without reform:

- Small businesses would pay nearly $2.4 trillion over the next 10 years in healthcare costs for their workers;
- A staggering 178,000 small business jobs, $834 billion in small business wages, and $52.1 in profits would be lost due to these healthcare costs;
- Nearly 1.6 million small business workers would continue to suffer from "job lock," where they are locked in their jobs because they can't find a job with comparable benefits. This represents nearly one in 16 people currently insured by their employers.

In an article he wrote for the Center for American Progress, Gruber again addressed the issue of job lock.[11] He noted that "such a system significantly distorts our labor markets by forcing individuals to stay in jobs that offer health insurance rather than to move to newer and more productive positions where coverage is not available. Millions of U.S. workers are not moving to better jobs or starting new businesses because there is nowhere to turn for insurance coverage should they leave their jobs."

The Affordable Care Act remedies this problem and levels the playing field to support entrepreneurs willing to take a risk and start a new enterprise. Insurance reforms provided in the new law protect these entrepreneurs, and the insurance exchanges

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[9] U.S. Bureau of Census, 2006 County Business Patterns

[10] Small Business Majority, The Economic Impact of Healthcare Reform on Small Businesses, July 2009, http://www.smallbusinessmajority.org/small-business-research/economic-research.php.

[11] J Gruber, Be Careful What You Wish For, Repeal of the Affordable Care Act Would Be Harmful to Society and Costly for Our Country, *American Progress*, Jan 2010, http://www.americanprogress.org/issues/2011/01/aca_repeal.html.

established by the law allow the self-employed and small businesses to pool together for lower premium rates.

The Center for American Progress has also weighed in on what small businesses would lose if the Affordable Care Act were lost. The percentage of small businesses offering coverage has decreased from 68% in 2000 to 59% in 2007; without the ACA, this downward spiral would continue. Since 40% of small employers spend more than 10% of their payroll on healthcare costs, repealing or dismantling the law would cause those already providing insurance to do so at the expense of increased wages. This would result in less profits, business investment and job creation. Additionally, it would mean small businesses would continue to pay on average 18% more for health insurance than large firms. And they won't get the financial relief tax credits and insurance exchanges will provide.[12]

Healthcare reform will also reduce the "hidden tax" associated with health insurance. Repeal would keep this tax in place. The uninsured often delay treating their health problems until they become severe, and public and charity programs pick up a share. However, a portion remains unpaid. To cover the cost of this uncompensated care, health providers charge higher rates when the insured receive care, and these increases get shifted to consumers and small businesses in the form of higher premiums. This creates a "hidden health tax" that inflates the cost of premiums.[13]

Instead of helping us move forward, repealing or dismantling the ACA would send us back to the status quo and ensure that small businesses will be unable to play their historical role as the country's primary job creators. In fact, Harvard professor David Cutler projects repeal would destroy 250,000 to 400,000 jobs annually over the next decade, increase medical spending by $125 billion by the end of this decade and add nearly $2,000 annually to family insurance premiums.[14] His summary of what repeal would do to the country is as dismal as it is succinct: "It would hurt family incomes, jobs, and economic growth."

Moving Forward: Strengthening the Law will Help Small Businesses Thrive

Critics of the new law have wasted no time in attempting to repeal it, yet have offered no pragmatic solutions on how to address the core problem—the excessive cost of health insurance. Instead of attempting to dismantle the law, which goes a long way toward reducing costs throughout the system while increasing choice and competition in the market, opponents should instead spend their energy trying to make provisions they deem weak stronger.

For example, states are responsible for setting up health insurance exchanges by 2014, and as this process continues and state lawmakers deliberate on how to comply with the law, it's critical that all of us give them a framework to make the exchanges work well for small businesses. Constructive suggestions to make the law work its best include:

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[12] Center for American Progress, What Will Happen to Small Business if Health Care is Repealed, 2010, http://www.americanprogress.org/issues/2010/07/small_biz_reform.html.

[13] Kathleen Stoll and Kim Bailey, Hidden Health Tax: Americans Pay a Premium (Washington: Families USA, May 2009).

[14] D Cutler, Repealing Health Care is a Job Killer, Center for American Progress, 2010. http://www.americanprogress.org/issues/2011/01/jobs_health_repeal.html

- Ensuring that the health insurance exchanges are active purchasers of health plans so they can negotiate for the best rates possible;
- Giving states greater authority on rate review so if premium hikes occur, the state can do more than just say the hike is excessive—it can actually prevent it to protect small business owners;
- Encouraging state policymakers to appoint small business owners to exchange boards so the small business perspective is well-represented in all of the board's decision making; and
- Continuing to find ways to cut down on waste, fraud and abuse in the healthcare system. These factors contribute to healthcare costs for everyone, including small business owners, and innovative solutions to this problem help all consumers.

How the Affordable Care Act Is Helping Small Business Owners Now

Our research shows that small business owners are more likely to provide insurance to their employees because of the tax credits and exchanges provided through the new healthcare law. As I mentioned in my introduction, our most recent research includes a national survey of 619 small business owners that was conducted from November 17-22, 2010.[15] We wanted to gauge how entrepreneurs view two critical components of the Affordable Care Act: the small business tax credits—a provision allowing businesses with fewer than 25 employees that have average annual wages under $50,000 to get a tax credit of up to 35% of their health insurance costs beginning in tax year 2010—and health insurance exchanges—online marketplaces where small businesses and individuals can band together to purchase insurance starting in 2014. The survey's key findings include:

- One-third (33%) of employers who don't offer health insurance said they would be more likely to do so because of the small business tax credits;
- 31% of respondents—including 40% of businesses with 3-9 employees—who currently offer insurance said the tax credits will make them more likely to continue providing insurance;
- One-third (33%) of respondents who currently do not offer insurance said the exchange would make them more likely to do so;
- The same is true for those who already offer insurance, with 31% responding that the exchange would make them more likely to do so;
- However, most respondents are not familiar with the exchange or the tax credits; only 31% of respondents are familiar with the exchange and 43% are familiar with the tax credits.

We believe that once the public, and small business owners in particular, become more familiar with the new law, they will understand the financial benefits and cost savings it provides. In fact, a Kaiser Family Foundation study conducted in January 2010 found

[10] Small Business Majority, Opinion Survey: Small Business Owners' Views on Key Provisions of the Patient Protection and Affordable Care Act, Jan. 4, 2011, http://smallbusinessmajority.org/small-business-research/small-business-healthcare-survey.php..

that although the public was divided overall about reform, they became more supportive when told about key provisions. After hearing that tax credits would be available to help small businesses provide coverage to employees, 73% said it made them more supportive, and 63% felt that way after learning that people could no longer be denied coverage because of preexisting conditions.[16]

The huge number of small businesses eligible for a credit on their 2010 tax returns shows how wide-ranging the benefits of the ACA are: Small Business Majority and Families USA's study on the number of small businesses eligible for a tax credit on their 2010 tax returns shows that more than 4 million small businesses are eligible.[17] That equates to 83.7% of all small businesses in the country. Perhaps even more encouraging is that more than 90% of small businesses in 11 states are eligible to receive the tax credits, with nearly 1.2 million small businesses nationally eligible to receive the maximum credit.

A recent RAND Health study also examined the impact of the Affordable Care Act on health insurance coverage for workers at small companies. It found that once the new law takes full effect, the percentage of employers that offer insurance will increase from 57% to 80% for firms with fewer than 50 employees, and from 90% to 98% for firms with 51 to 100 employees.[18] Additionally, a study released Jan. 24, 2011 by the Urban Institute (funded by the Robert Wood Johnson Foundation) also shows the positive benefits of the ACA on America's employers. The study debunks claims that the ACA would erode employer-sponsored coverage by providing incentives for employers to stop offering coverage, or that businesses would face increased costs as a result of reform. To the contrary, the study found that overall employer-sponsored coverage under the ACA would not differ significantly from what coverage would be without reform, but that in fact employer-sponsored insurance premiums will fall noticeably, by nearly 8%, and total spending on healthcare by small businesses will also decrease by nearly 9% because of healthcare exchanges and other provisions of the new law.[19]

Aside from these important provisions, the Affordable Care Act gives small employers the power to keep their plan as long as it was in place before reform was enacted on March 23, 2010. These plans are often referred to as "grandfathered plans."

Small businesses are allowed to keep their grandfathered plans as long as they don't make any significant changes in coverage. If any of the following changes are made, the plan can no longer keep its grandfathered status—which means that all the new consumer protections introduced with reform will apply. These changes include:

- Increasing medical costs to employees;
- Reducing the employer contribution;

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[16] Kaiser Family Foundation, Americans Are Divided About Health Reform Proposals Overall, But the Public, Including Critics, Becomes More Supportive When Told About Key Provisions, Jan. 22, 2010, http://www.kff.org/kaiserpolls/kaiserpolls012210nr.cfm.
[17] Families USA and Small Business Majority, A Helping Hand for Small Businesses: Health Insurance Tax Credits, July 2010, http://smallbusinessmajority.org/small-business-research/tax-credit-study.php.
[18] RAND Corporation, "How Will the Affordable Care Act Affect Employee Health Coverage at Small Businesses?" 2010, http://www.rand.org/pubs/research_briefs/RB9557/index1.html.
[19] Urban Institute, "Employer-Sponsored Insurance Under Health Reform: Reports of Its Demise Are Premature," Jan. 24, 2010, http://www.rwjf.org/coverage/product.jsp?id=71749&cid=XEM_749842.

- Significantly cutting or reducing the plan's benefits; and
- Adding or tightening the annual limit.

This fair, practical approach gives small business owners more flexibility in the wake of healthcare reform, while also including important protections that do impact grandfathered plans. These protections include the extension of dependent coverage to the age of 26, the elimination of lifetime and annual limits, the elimination of preexisting condition exclusions and limits on rescissions.

Additionally, the ACA establishes insurer efficiency standards in the form of the Medical Loss Ratio, or MLR. It requires 80% of premium dollars be spent on care, not administrative overhead and executive compensation, for small group and individual plans. For large groups plans, the standard will be 85%. Ensuring the maximum amount of premium dollars go to pay for healthcare instead of administrative costs, the MLR will help keep premiums down so small businesses can save on healthcare-related expenses and invest in their companies. That means more jobs and greater economic growth. Without the MLR, healthcare reform would lack the teeth needed to lower health insurance premiums and hold insurers accountable for unnecessary overhead costs that have nothing to do with medical care and more to do with poor accounting policies and minimal oversight.

The ACA also includes numerous reforms in Medicare that will reward value of care, not the volume of care. It requires the Department of Health and Human Services (HHS) to adopt value-based purchasing and payment methods for Medicare reimbursements for both physicians and hospitals, and move away from the fee-for-service system that is so costly and inefficient. What's more, cost containment measures made to Medicare will have a ripple effect to other areas of the system, further reducing costs. Harvard professor David Cutler points out the steps the Affordable Care Act takes to cut these costs:

- Payment innovations including greater reimbursement for preventive care services and patient-centered primary care; bundled payments for hospital, physician, and other services provided for a single episode of care; shared savings approaches or capitation payments that reward accountable provider groups that assume responsibility for the continuum of a patient's care; and pay-for-performance incentives for Medicare providers;
- An Independent Payment Advisory Board with the authority to make recommendations that reduce cost growth and improve quality in both the Medicare program and the health system as a whole;
- A new Innovation Center within the Centers for Medicare and Medicaid Services, or CMS, charged with streamlining the testing of demonstration and pilot projects in Medicare and rapidly expanding successful models across the program;
- Profiling medical care providers on the basis of cost and quality and making that data available to consumers and insurance plans, and providing relatively low-quality, high-cost providers with financial incentives to improve their care;
- Increased funding for comparative effectiveness research;

- Increased emphasis on wellness and prevention.[20]

Rather than focusing on dismantling healthcare reform, lawmakers should focus on improving it, especially when it comes to cost containment. While the new law is a good start toward fixing our system and strengthening our economy, we should be bolstering it even more by including additional cost containment provisions. This will bring health inflation down and help businesses create more jobs.

We realize that the Affordable Care Act isn't a perfect law, and like all legislation, will need to be improved over time. However, analysis after analysis shows that the new Affordable Care Act holds significant promise toward empowering small businesses to provide their employees with health insurance, and to be able to do so without breaking the bank.

Conclusion

Healthcare reform is not an ideological issue; it's an economic one. Small business owners know this, which is why they overwhelmingly support reforming our broken system and containing the skyrocketing cost of insurance.

Without the reforms in the ACA, small businesses will once again be mired in a system that drains their coffers and stunts their growth—disabling them from playing their vitally important role as the nation's jobs creators. We hope Congress will spend its time focusing on ways to make implementation of the Affordable Care Act as smooth as possible, and on ways of strengthening the productive partnership the private sector can have with government; instead of trying to dismantle it, fix the parts that need improvement. Our small businesses and our economic recovery depend on it.

[20] David Cutler, Repealing Health Care Is a Job Killer, Center For American Progress, Jan. 7, 2011, http://www.americanprogress.org/issues/2011/01/jobs_health_repeal.html.

Mr. GOWDY. Thank you, Mr. Gardiner.

I will recognize myself for 5 minutes of questions.

I will direct this to the first three witnesses to my left. What should the Federal Government do or stop doing to enable you to create more jobs?

Mr. PUZDER. The Government now is doing a lot to create a high degree of uncertainty in the business community. We are uncertain about what tax rates are going to be; we are very uncertain about health care costs, and the only thing we are certain about is that they are going to go way up. We are uncertain what is going to happen with energy, with the EPA. We are uncertain about unionization with the NLRB. There is a lot of uncertainty out there. When businesses are going to invest and create jobs, they generally want to come up with a 5-year business plan which shows you get a return on your investment at about 20 percent a year, and at the end of 5 years you have gotten a return on your initial investment.

If you can't do a forecast because you don't know your costs, you don't know your expenses, and what you do know you don't like, you are not going to invest. And American businesses are stalled. I think that chart shows it up there. People are not investing because they can't show a profitable return of their investment. And if you think your expenses are going to go way up and you have two choices on what to do with your money, retain it so you can cover your expenses, or invest it to grow and create jobs, you are going to hold on to your cash.

So we are not seeing the kind of investment we should be seeing, and if the Government would just work to create some certainties, some positive certainty for the business community, I think you would see an explosion of job creation.

Mr. GOWDY. Some of us like to say that our tax, regulatory, litigation structures create the uncertainty that stifle job creation. Is that a fair statement; tax, litigation, regulation?

Mr. PUZDER. I think that is a very fair statement.

Mr. GOWDY. Mr. Payne, what employees, what categories of employees are most likely to be adversely impacted by the implementation of Obamacare?

Mr. PAYNE. Well, in our company, it is going to impact all of us; it spreads completely out through the organization. We can't necessarily cut sections out; we are kind of a complete pie. So if you cut part of it down somewhere, you have to equally pull out the support structure that goes with it across the lines. It is going to impact every area that we are involved in.

I agree with everything that was just said. In our case, our plants that we put in are about $1 million investments. We add people less than 50 generally and we pump about $1 million in payroll into those plants on an annual basis. We cannot add any more plants not knowing what the cost structures are going to be going forward. Will we cut people? We are trying to cut people now. So it has an impact on all of us.

Mr. GOWDY. Mr. Morey, the President famously said that if you like your health insurance, you will be able to keep it. With respect to your company, is that statement true?

Mr. MOREY. Back to the comment that was made later about uncertainty, that is one of our great concerns. We would like to offer our private plan essentially to out staff members; they are very important to us, we want to see that they have a great plan and they are well taken care of in that area. But it is unclear to us whether or not that is going to be the case or not. And when we look at things like the burden of the seasonal issue that I have been speaking of and what that means to us in terms of cost and compliance, that endangers our ability to be able to provide the coverage that we are providing now.

Mr. GOWDY. Mr. Gardiner, I only have a little bit of time left, so if I could get just a yes or no response from you on whether or not you support some other initiatives that might—some of our health care woes. Do you support incentivizing health savings accounts?

Mr. GARDINER. I am not sure what you mean by incentivizing.

Mr. GOWDY. Through our tax structure, flexible spending accounts.

Mr. GARDINER. I think they work too.

Mr. GOWDY. Do you support creating the same tax treatment for employees who want to purchase health insurance as the employer has?

Mr. GARDINER. You mean self-employed?

Mr. GOWDY. No, I mean an employee. If they want to purchase health insurance on their own, should they enjoy the same tax benefits as employers?

Mr. GARDINER. Well, this is a particular problem for self-employed now. We have the 1-year provision that needs to be extended that self-employed don't have the same tax.

Mr. GOWDY. I am not talking about self-employees, I am talking about individual employees. Individuals who want to purchase health insurance, should they have the same favorable tax treatment as employers?

Mr. GARDINER. Yes.

Mr. GOWDY. Medical malpractice reform, does your organization support that?

Mr. GARDINER. Yes, and we did during the ACA. We are on record as supporting that.

Mr. GOWDY. Thank you. My time has expired and I will recognize the gentleman from Maryland, the ranking member of the full committee—do we go to Mr. Davis? I will recognize the gentleman from Illinois, ranking member of the subcommittee, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Let me thank our witnesses. I must say that I was seriously impacted by all of your businesses, your courage, your determination, the tenacity, the fact that you have been able to make conscious use of yourselves to build strong businesses and provide opportunities for other people to work.

Mr. Gardiner, can I ask you have you ever had any employees who didn't earn enough money to pay for health insurance?

Mr. GARDINER. Yes.

Mr. DAVIS. Mr. Brewer, have you ever had any employees who didn't earn enough money to pay for health insurance?

Mr. BREWER. Yes, sir.

Mr. DAVIS. Ms. Braden, have you ever had any who didn't earn enough to pay for health insurance?

Ms. BRADEN. No.

Mr. DAVIS. No?

Ms. BRADEN. No.

Mr. DAVIS. Mr. Morey, have you ever hired anybody that didn't make enough money to pay for health insurance? You have?

Mr. Payne, have you ever had any who didn't earn enough?

Mr. PAYNE. I am not sure that I know the answer to that because I don't know what costs would be. But I have people that have turned down insurance before because of cost.

Mr. DAVIS. Mr. Puzder, have you ever hired anyone who didn't have enough money when they got through to pay for health insurance?

Mr. PUZDER. Well, we have a number of part-time employees who may not have enough, but we do offer them a very low mini-med affordable plan. I really can't say that I have ever done any research on that, but we probably have part-time employees who couldn't afford the plan.

Mr. DAVIS. Well, let me ask you this question. Can you think of anything in life more important than being healthy?

Mr. PUZDER. No. Well, your family, belief in God.

Mr. DAVIS. That is a good point, especially belief in God. I happen to be a practicing Christian, and I notice at my church that everybody wants to go to heaven, but nobody wants to die. That sort of reminds me of Frederick Douglas sometime when they were talking about the abolition of slavery, and every time somebody would come up with a way to do it, there would be a reason why it couldn't get done, and he ended up saying that there are those who reminded him of people who might have wanted the rain, but without the thunder and the lightning, or they wanted the crops without plowing up the ground, or they may have even wanted the ocean without the roar of the mighty waters. So it seems to me that there are things that we want to happen, but somehow or another we can't bring ourselves to the point of doing what is necessary.

Do we believe in tax credits? Let me ask. Have any of you ever used tax credits in any facet of your businesses?

Mr. PUZDER. I am sure that whenever they are available we use them.

Mr. DAVIS. And so if tax credits are made available for small businesses to help provide health insurance for employees, that might be one way of helping some of those individuals who had no other way of being insured.

Mr. PUZDER. I think it would, Congressman, but I will tell you that we offer all of our employees health care coverage inexpensively, and I think of our 17,000 part-time employees, about 6 percent choose to take the health care coverage over the cash. So it is 94 percent would rather have the job and the compensation.

Mr. DAVIS. Oh, I would certainly agree. And I guess when you say small business, it would be kind of difficult for one to suggest that your company was a small business, I mean by pretty much any standard.

Mr. PUZDER. But, Congressman, we deal primarily with larger employers, but I fundamentally believe that the same advantages that are available for larger employers ought to be available to smaller employers as well.

Mr. DAVIS. Well, let me ask you do you believe that health care should be a right, and not a privilege?

Mr. PUZDER. That is a difficult question. You know, we have created a system where people don't have to buy health care to get health care. I would certainly like to believe that it is a right. I think that there are fundamentally some better ways that we could go about some of this. And I will tell you that our firm has been historically pro on health reform. It is exactly what you said, it is just the form that that takes.

Mr. DAVIS. Well, see, I think that at the base of the discussion is what we believe in terms of individuals who live in our society.

Ms. Braden, you were about to say something?

Ms. BRADEN. I was. I am the person that actually deals with the small, small businesses I think that you were referring to, and on the tax credit that we have on the floor right now, the $25,000 of income and you could do that, I don't have but a handful of employers out of my group that can actually take advantage of that, and those employers are all nonprofits, so they are taking advantage of it against their FICA taxes. So that piece of it I don't see.

As far as health insurance being a fundamental right, so is being healthy, and people have a responsibility to that, and we are not seeing that in any of our small groups; we are not seeing folks going out and actually working to be healthy, which would then bring down the health insurance costs.

Mr. DAVIS. Well, I think we could debate that a great deal, but my time is up.

Mr. GOWDY. I thank the gentleman from Illinois.

We now recognize the gentleman from Tennessee, Dr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman.

And thank you, panel, for appearing here today. There are so many questions in so many directions I would like to go today, after hearing your testimony, and I don't think I have ever sat through a hearing where the testimony was almost so self-explanatory that a lot of the questions I had to ask have already been answered to some extent.

Mr. Payne, you had laid out three options for your company in terms of health care. When we discuss Obamacare now, sometimes we get chastised for using that term, Obamacare; it is known as the Affordable Health Care Act. After laying out your three options, do you agree that it is affordable?

Mr. PAYNE. It is not affordable to us. The way it is structured, and talking about the credits for small business, we consider ourselves a small business and some of the exemptions for less than 50 employees really hurt us; we don't get those exemptions, yet we are competing against the people that do. So it ought to be more of a level playing field.

But to answer your question, no, it is not affordable. Is the current system good? I won't say that the current system is good, but we are surviving and making a profit and growing and hiring people with the current system, dealing with year-to-year increases in the programs, dealing through the insurance companies. Under the new program it could be that we may not have a business to grow. So it has definitely changed.

Mr. DESJARLAIS. Thank you.

Mr. Gardiner, today the Center for Medicare and Medicaid Services' actuary stated health care costs will double by 2020. Considering President Obama passed Obamacare to reduce health care costs now, will your business be able to cope with these increased health care costs?

Mr. GARDINER. Well, fortunately for me, I have reached that retirement age and don't own a business today.

Mr. DESJARLAIS. But you represent several.

Mr. GARDINER. Yes. And I think that there is more that needs to be done about cost containment. I think that was very evident during the whole debate of the Affordable Care Act. More needs to be done and we have faced these kind of racing costs. If you look at a graph, as I did when I retired and got into health care, these costs have been going up like a rocket for decades.

Mr. DESJARLAIS. Okay, but we as a Congress, I wasn't here at the time, but we then passed massive sweeping health care reform that we didn't ask for, we don't want, and apparently we certainly can't afford. So here we are moving forward with what did then Speaker Pelosi say, we need to pass this bill so we can find out what is in it?

From what I am hearing from this panel up here today, I doubt that anybody sat down with business folks like this and listened to what they have to say before this bill was constructed, and I can tell you as a physician I don't think they sat down with health care professionals either to see whether or not this was feasible.

So now we have this problem. You are sitting here wondering how we are going to continue to employ people in this Nation. The greatest crisis facing our country right now is unemployment and spending, and everything about this bill that I can see is nothing but driving up cost and government spending, and, frankly, government spending is nothing more than taxes. Our government doesn't generate any revenue outside of taxes. So, anyway, I wanted to ask a few more questions.

Mr. Brewer, the CBO has estimated that as many as 12 million employees could be forced into the exchanges. Do you find this number accurate?

Mr. BREWER. No. I think the CBO is made up of smart, hardworking, well-intentioned people. I don't know how much interaction they have with people who have employees and payrolls and have to make these decisions, but I can tell you we dealt with about 3,000 of them last year and the year before that and the year before that. So I think the incentives that we uncovered in our actuarial studies, as well as the information we got as a result of our survey, would suggest to me, I don't know how many renewals CBO did last year, but, as I said, we did about 3,000, and we are coming to a much different conclusion based upon that information.

Mr. DESJARLAIS. Okay. Thank you.

Mr. Puzder, will the health care law lead you to automate more services or replace full-time workers with part-time staff?

Mr. PUZDER. Thank you, Congressman. Absolutely. People who are currently full-time employees we will have to make part-time employees, which means they will have to have two jobs to get a full-time salary. We will automate positions such as the cashier. Right now they have those ordering kiosks like the ATM or what you see at the gas station where you pay with your credit card. We haven't used those because we like the personal touch and they are a little expensive, but once you implement this health care bill, I think those kiosks are going to become much more desirable. So I will be reducing labor force and also automating positions.

Mr. DESJARLAIS. Well, I am out of time, but just quickly, do you believe most of your workers prefer a job or government health insurance?

Mr. PUZDER. Absolutely. And I think the fact that only 6 percent of the 17,000 part-time employees we offer insurance to take it would be a very strong indication that that is true.

Mr. DESJARLAIS. Thank you.

I yield back.

Mr. GOWDY. I thank the gentleman from Tennessee.

The Chair would now recognize the gentleman from Maryland, the ranking member of the full committee, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to thank you for calling this hearing. As I was sitting here listening, I could not help but think about my days as an employer of a small law firm. We provided insurance for our employees and it took away from our profit, but we did it. We did it because we believe that it was the right thing to do. There were only three lawyers, but we had about five clericals and we did it.

Let me also say this. I am not here to chastise anybody about anything, but I take great offense when I hear the word Obamacare. There is no such thing. Members of this Congress voted for this legislation and many of us have very strong feelings about it because we are seeing people in our districts without insurance; we are seeing people literally die, and that is a very serious thing.

So there has to be a balance here, and I appreciate your comments, because I can look at this thing from a small business employer for 20 years, but I can also look at it from the standpoint of a legislator who has seen the results of people who end up in emergency rooms and we are paying a lot more through emergency room care, and we all end up paying for that.

But you said something, Ms. Braden, that I found very intriguing and very interesting, and correct me if I am wrong. You said something to the effect that you saw people that were not, you said, not seeing anyone trying to be healthy. What did you mean by that and how do you know that?

Ms. BRADEN. Because I deal every day with the people inside the companies that I work with. Thank you for asking. If you look at people and healthy, we are not talking health insurance. When you go to the emergency room, you are receiving health care. And we sort of have taken those two subjects and melded them together, and really I think what we need to do is separate them apart.

If you take health insurance, what it does is support people in health care. If people are getting health care, that is one thing; but if they are not taking care of themselves, then they are driving up the cost of health care, which does drive up the cost of insurance.

Mr. CUMMINGS. I guess what I am saying to you is that there are a lot of people who, first of all, part of the Affordable Care Act, one of the driving forces was to keep people well, and another thing that we were trying to do was to try to drive down the cost that these insurance companies were charging for these policies. It is a hard thing to control.

Ms. BRADEN. Well, in insurance it is really easy. It is premium paid in, claims paid out. So if you want to control health care costs, you have to control claims paid out. I mean, insurance isn't hard, it is a pass-through. The reason we have insurance was to make deals with doctors and hospitals at a reduced cost so that every individual company didn't have to go do those negotiations.

Mr. CUMMINGS. I understand. But did you realize that when we were going through this there were insurance companies literally out in California went up on their rates 30 percent? Thirty percent.

Ms. BRADEN. When I looked at some of those policies, because we heard about BlueCross BlueShield out there, and I called some of my folks out there that I work with, there was one policy that they said 59 percent. Well, that was five people on it and the policy was very rich and had been constructed over 20 years ago.

Mr. CUMMINGS. Well, that is one, but I am just saying, well, I don't want to get caught up in this, but what I am trying to say to you is there is one thing, when we talk to health care insurance people, it is not as simple as you are making it sound, in and out. That sounds nice, and if that were true, that would be nice, but part of the Affordable Health Care Act was to try to say to these companies that were spending, say, for example, insurance companies spending 35 percent on overhead, 40 percent on overhead, that they had to control that and they had to put more into medicine.

Another part of the Health Care Act was to try to address this thing of preexisting conditions. You know, there are people who, and God forbid it happen to any of you all, you get a scare with cancer, and if you have a gap in your insurance right now, you will never get insurance. I have had people in my family in that situation. If they had $100,000 to pay for insurance they couldn't get it.

So I think we have to be careful when we are looking at this because there are parts of the bill that you might like and there are other parts that you might not like, but I think, again, we have to be careful, well, again, we are trying to bring down the costs so that people will stay well, because we are going to pay one way or another.

I realize I have run out of time, but thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Maryland.

The Chair would now recognize the distinguished gentleman from Arizona, Dr. Gosar.

Mr. GOSAR. Thank you, Mr. Chairman.

I am a health care provider, I am a dentist, and I am a small businessman, so there is theory and then there is application. So a lot of things look great on paper, and I know every single one of you hear it in your board meetings every day. But then there comes the reality of how does it actually be implicated.

Mr. Gardiner, I know you cite a model, you show that the small businesses actually benefit from government takeover health care. I prefer that term because I can tell you, and back that up, that that is what it is. However, the model assumes much smaller growth in health care costs, an assumption both the CBO and CMS have rejected as being highly implausible. And I think we have seen a lot of that discussion and looking back at equations and numbers making that.

Instead of relying on an academic model, and with faulty assumptions, how many businesses are you aware of that are enthusiastic about this health care plan?

Mr. GARDINER. Many. And we could have some of them call you or write you, if you would like.

Mr. GOSAR. Oh, I would love to. Can you pull off a couple off the top of your head?

Mr. GARDINER. Yes. I think some of them are cited in my written testimony. I am just thinking of one right here in the greater metro area, Mike Ray, with the Hobby Shop. He has come on his own and testified.

Mr. GOSAR. How about something in Arizona? I don't like examples in the Beltway. How about something out in Arizona?

Mr. GARDINER. I don't have one off the top of my head in Arizona.

Mr. GOSAR. Mr. Brewer, do you think that you are real happy with the assumptions based off what I just asked Mr. Gardiner?

Mr. BREWER. You mean the CBO assumptions?

Mr. GOSAR. Yes.

Mr. BREWER. No, not at all.

Mr. GOSAR. Is it going to create jobs?

Mr. BREWER. No. Everything that we see indicates the incentive to a cattle drive to the exchanges.

Mr. GOSAR. Oh, I like that. Now, I am going to skip you for just a second because I am coming back to you, okay?

Mr. Morey, how about you?

Mr. MOREY. I do not see the opportunity for job creation out of this bill, no.

Mr. GOSAR. How about you, Mr. Payne?

Mr. PAYNE. None.

Mr. GOSAR. How about you, Mr. Puzder?

Mr. PUZDER. It is a job killer, it is not a job creator.

Mr. GOSAR. So my colleague on the other side talked about the administrative costs. Mr. Puzder, tell me where the administrative costs many times are linked, is it in less government regulations or more?

Mr. PUZDER. Less government regulation will drive down administrative costs.

Mr. GOSAR. Thank you.

Mr. Payne.

Mr. PAYNE. Same thing. Regulation costs a lot of money.

Mr. GOSAR. Mr. Morey.

Mr. MOREY. I would echo those comments.

Mr. GOSAR. How about you, Mr. Brewer?

Mr. BREWER. Certainly.

Mr. GOSAR. I am not being disrespectful, because I have something special for you. [Laughter.]

Mr. Gardiner.

Mr. GARDINER. Less is more.

Mr. GOSAR. Okay. I love that.

So my colleagues on our side have been talking about, or the opposite side, have been telling us that the Republicans have been never proposing any jobs, and what we are really trying to do is get to the core matter of it. We are not trying to put a band aid on it, we are trying to streamline the red tape.

Mr. Brewer, you made the comment of a cattle call. Okay?

Mr. BREWER. Cattle drive.

Mr. GOSAR. Cattle drive? Cattle call.

Mr. BREWER. They are different things. [Laughter.]

I am a Texas boy.

Mr. GOSAR. I am from Wyoming, so you use one to get to the other.

Mr. BREWER. Yes.

Mr. GOSAR. So, Ms. Braden, you made some wonderful comments, and that is there is a responsibility. I am a believer we need reform, but not the reform I saw. Okay? Because you hit it, and that is there is personal accountability, personal responsibility. And I do believe there was a little company in Iowa that actually had a concept like this, if I am not mistaken, and what they basically did is they invested in the employee. And they said, listen, we are going to make you see your family doctor, and that preventative service, whatever they come up with, we are going to give you time during that workday to be able to do that, but you have to stay on that preventative model.

And if I am not mistaken, then they made another caveat. They said that as long as you stay on that caveat, we will pay 100 percent of your claims. They said if you fall off, you are going to pay 25 percent co; fall off again it is 50 percent co; fall off a third time, it is 75 percent co; and so forth and so on. And guess what?

Ms. BRADEN. Everybody went to the doctor.

Mr. GOSAR. Everybody went to the doctor. And guess what? You died with that company. What a job creation that was. Because what happened is you had investment from the patient and the employer and the health care benefit, all the way across the board, minimizing the red tape. So thank you very much for making sure that we understood that we are not here about job stymieing, we are here about building jobs and reducing red tape.

Thank you.

Mr. GOWDY. I thank the gentleman from Arizona.

The Chair would now recognize the distinguished gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

And let me, too, welcome two of my friends, former colleague and friend, the former Senator Jim Talent from my home State of Missouri. Thank you for being here. As well as my friend, Mr. Puzder, who runs a significant operation out in Missouri. Thank you for your testimony today.

Let me start out by saying that the Patient Protection and Affordable Care Act is the law of the land, and it is a good law, and, like any law, it could be improved. However, my colleagues on the other side of the aisle are not interested in honestly examining the positive and negative aspect of the law, and I think they are just interested in repealing it; it is scoring a political victory over President Obama.

This health care reform law is good for Americans, it is good for businesses, and especially small businesses. And it is very good for young businesses, which are actually the ones that create the most jobs. And I am so glad to hear the phrase job creation; first time I have heard it in over 6 months in this committee.

Some have raised concerns that businesses won't be able to afford compliance with the ACA. Ninety-eight percent of employers will be exempt from the insurance mandate, and 95 percent of the businesses that are not exempt already offer health insurance to their employees. This misleading premise of this particular hearing is that the ACA hurts so-called job creators.

Let me start with Mr. Gardiner. Thanks to the ACA, starting this year, consumers will receive more value for their premium dollar because insurance companies will be required to spend 80 to 85 percent of premium dollars on medical care and health care quality improvement, rather than on administrative costs. If they don't, the insurance companies will be required to provide a rebate to their customers starting in 2012. This provision is known as the medical loss ratio.

Mr. Gardiner, do you believe that the combination of the medical loss ratio requirements and the shop exchanges will make it easier for employers to offer quality affordable health insurance to their employees?

Mr. GARDINER. In terms of the MLR, we have looked at the data. There are a lot of States before the ACA passed and currently were under those rates in those States already, and the world didn't come to an end. So we just see it as this means it is feasible for insurance companies in other States to do it, and the 22 million self-employed who buy insurance today in the individual market are certainly going to be protected, the 4.8 million companies that have under 10 employees, who are paying a lot more for insurance than other businesses that have more than 10 employees, are going to benefit from this too because they are in the small group market.

And we think the exchanges are really the critical part for putting small businesses on a level playing field; they don't have the option to really be self-insured if you are 10, 20 employees, 50, where the bulk of small businesses are. And these exchanges can work and they have been proven to work, and we think that is going to be the driving force for making it more available and more affordable for small business.

Mr. CLAY. Thank you so much for that response.

Mr. Puzder, I have heard your concerns about providing the nutritional information for the products that you sell. Other than that requirement, do you think that this law will help shave cost on health care for your employees? And when I say shave costs, will it help reduce the cost of prescription medicine? Will it make the delivery of health care more efficient for your employees?

Mr. PUZDER. I don't believe that it will. As I said early on, I am not a health care expert. I can tell you how it impacts our company from a financial perspective, but right now, I went into our restaurants when the health care debate was going on and I said to some of the employees, why do so few of you buy this insurance that we offer that is so inexpensive, and the response was, Mr. Puzder, we get it for free at the emergency room. So I don't know how much better they are going to do than free.

Mr. CLAY. Well, that is why we are trying to connect people with health care providers and to cut down the cost of people showing up at the emergency room for a cold.

Mr. PUZDER. I agree with that. I think that the employee is not going to be positively impacted, but there should be something done to cut those emergency room costs. You have a very good point there.

Mr. CLAY. Thank you.

I yield back.

Mr. GOWDY. I thank the gentleman from Missouri.

With the indulgence of our panel and my colleagues on both sides, we would like to have a second round, which we sometimes refer to as a lightening round. My colleagues do not need to feel the need to take their full 5 minutes if they don't want to, but I will start with the distinguished gentleman from Tennessee, Dr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman, and thank you, Mr. Clay, for shortening the term to HCA or Health Care Act, and dropping the Affordable. That is a little easier for me to pallet. But you mentioned that this bill was brought about and it is the law of the land, and you are glad to hear us mention job creation; and I think we are all here today talking about the detriments to job creation, and I think that point has been very strongly made.

In terms of the last question on shaving cost, I worry more, as a physician, about shaving quality because we are trying to increase the number of people into a health care market with really no means to pay for it. But that is not entirely true because our friends on the other side of the aisle believe that Obamacare's taxes, which includes the employer mandate tax penalty, an increase in the Medicare Part A tax, a new tax on investment income, a new tax on health insurance providers, a new tax on drug manufacturers, and a new tax on medical device manufacturers are paid by firms out of their massive profit buckets. Moreover, they believe taxes only impact the top 2 percent of taxpayers.

Based on your experience, is this a fair portrait of reality? And I will just open that to whoever would like to grab it.

Mr. BREWER. No, it is not. There is no way you add all those taxes in and reduce the cost to health care, period.

Mr. PUZDER. Mr. Cummings had mentioned how his firm had been profitable, Congressman Cummings, how his firm had been profitable and they gave those profits into paying for insurance. I think part of what we are all saying here is we can take those profits and put them into insurance, but if we do that we can't invest them to grow our businesses and create jobs.

So we are not really in conflict on that, but you can't—like I said, there is no corporate pot of gold to go to to pay for this stuff; we have to take it from someplace, and it is going to come from growth and job creation.

Mr. DESJARLAIS. So again, as you stated, it is a job killer.

Mr. PUZDER. A job killer.

Mr. DESJARLAIS. Does the rest of the panel, for the most part, agree with that?

Mr. GARDINER. I think part of the solution of getting more dollars in the system is that everyone, as has been talked about here, every citizen has to be responsible, and I think that is why there was an individual mandate put in. You can't have a bunch of people who don't pay, but yet can show up and get coverage and doing what people are talking about here. So I don't think anybody has ever looked at this and said that you could have a sustainable health care system and not have everybody in the system and everybody paying their fair share.

Mr. DESJARLAIS. So basically forced health care?

Mr. GARDINER. I don't think you can have a system with freebies. It doesn't work.

Mr. DESJARLAIS. There has always been a big debate about exactly who was uninsured in this country. Now, I heard numbers early on that there was 30 million uninsured. We have asked people to define who those 30 million were; apparently up to half may have been here illegally and not eligible for health care, perhaps half of the remaining 15 million are folks that would qualify for Medicare but just haven't signed up, and then the other half are some of the workers that are young and bulletproof and just opt not to have health insurance.

So, in essence, this new law of the land that was imposed upon people against their will, and clearly the majority of people in this country still do not want this, is what we are stuck with at this point, and I think that is why we are having hearings to show the detriment of this health care law and what it is going to do to impact the economy and yet not really resolve the health care problem. It was a poorly conceived, it was passed in the middle of the night, and people maybe have forgotten about how that occurred, but let's get back to some more questions.

Mr. Puzder, did Hardee's need a government mandate to add salads to its menu?

Mr. PUZDER. No. Actually, at Carl's Jr. we have had salads since the 1970's; used to have salad bars.

Mr. DESJARLAIS. A government mandate to add turkey burgers?

Mr. PUZDER. No, not at all. They tested well and sold well.

Mr. DESJARLAIS. Okay. So you have managed to do things to help keep people healthy without government mandates.

Mr. PUZDER. We love it if people buy healthy products; we are happy to sell them.

Mr. DESJARLAIS. Right. So now Federal mandates of sign changes to help people understand what it is they are buying, do you think that is going to impact their habits or do people just kind of do what they want?

Mr. PUZDER. No, I don't think it is other than—well, there have been a number of studies on this, and I have included in my written testimony that show that, in fact, that has no impact on people's eating habits. In fact, anecdotally, we have noticed, in some of the restaurants where there is already menu labeling required, people think that fast food has more calories than it does, and they actually end up ordering higher calorie products once they see what the caloric content actually is. So it has been a very interesting experiment so far that clearly hasn't worked.

Mr. DESJARLAIS. My time is up. I yield back.

Mr. GOWDY. I thank the gentleman from Tennessee, would now recognize the gentleman from Illinois, the ranking member of the subcommittee, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman. I was thinking, when you walk into my home, my wife has a sign that says, welcome to the Davis Household, and then it says, Please know that the opinion of the husband is not necessarily that of management. [Laughter.]

And I am so pleased that opinions don't necessarily manage what we do all of the time. I am amazed at some of the things that I hear. Job killer? If you create an opportunity for more than 30 million people in this country to have health insurance and go to the doctor on a regular basis, and stay out of the emergency rooms of hospitals, and to live longer, the only business that I could see that gets hurt by this is the undertaker. And he doesn't get hurt too much because eventually he is going to get you anyway; I mean, it takes a little bit longer.

Could someone please share with me how creating opportunity for 30 million people, over 30 million to get decent health care that creates the need over the next 10 or 15 years for 150,000 additional doctors, more than 250,000 nurses, could someone tell me how that kills jobs?

Mr. PUZDER. I think I can, Congressman. Let's just assume that there is this benefit as you have outlaid it, and I don't know if it is a health care benefit or a health insurance benefit, because I think the law requires health insurance; they already get health care.

But let's just talk about the health insurance benefit. Benefits have costs. The money to pay for those benefits has to come from somewhere. Our business makes a profit. All of that profit is reinvested in the business. When the profit is reduced, you invest less in the business. If the profit is eliminated, you have nothing to invest in the business. If you don't have anything to invest, you can't grow and you can't create jobs.

So there is a benefit, and I am not here to argue about that. I just want you to know that there is a cost associated with the benefit, and I think the businesses that are at this table here are telling you in some instances it might put them out of business.

Mr. DAVIS. But if I am dead because I couldn't get health care, can I come to your business?

Mr. BREWER. No, but there will be somebody to replace him. Congressman, your passion is evident and commendable, and your conviction is commendable, but he is right. Anything you do that erodes profits in an organization, impedes their ability to create jobs. And right alongside the cost implications of the Affordable Care Act are the administrative complexities that makes it easier for an employer just to throw up their hands and say, heck, I am out; let's send these folks to the exchanges and then they can be subsidized by the taxpayers.

I am all for everybody having health care. I totally agree with you on that. I think we disagree fundamentally on how you get there.

Mr. DAVIS. But, see, I think that the realities are if you even just deal with the question of fairness, if you ask a bird is it fair for birds to eat worms, and you turn around and ask the worm the same question, chances are you are going to get a different answer. So if you ask the thousands of employees in my congressional district who provide health care for people all over the world if somehow or another their ability to provide these services will drive down jobs or take away jobs, they would probably disagree vehemently.

Mr. BREWER. I am sorry, that is not what our survey results tell us.

Mr. DAVIS. They would disagree. Well, ask the 21 hospital administrators in my congressional district if they would agree.

Mr. GARDINER. Congressman Davis, there is another impact aspect of job creation, and that relates to job lock, and job lock has two impacts: one, employees at a company who don't want to leave because they go somewhere else, maybe they wouldn't have health coverage and it is very vital for they and their family members; the other is who is going to start those new companies.

And those are people in the work force working at a job, and they go through this same system, and the harder it is for them to see their way to go out and launch in the first step, to be a self-employed person, to found a company, and they can't get benefits for them and their family and they are a responsible person, they are going to stick with their job.

So it is more complicated than just surveying existing companies. There is a whole bunch of other factors about who starts businesses and how they grow at the bottom.

Mr. DAVIS. Thank you very much, Mr. Chairman. I certainly agree in terms of our health delivery system, we have much more of a sickness care system than we do a health care system, so I would certainly agree with you, Ms. Braden, on that point, and I yield back.

Mr. GOWDY. I thank the gentleman from Illinois.

The Chair would now recognize the gentleman from Arizona, Dr. Gosar.

Mr. GOSAR. My colleague, Mr. Davis, really brings it forthright. First of all, life isn't fair, never has, never will be. If you are a business, you should never complain about a profit. That is what you should do; that is what has to happen in order to create jobs and to have the ability to employ more.

The other thing that we have to look at is when government impedes itself or impugns itself into any type of parts of our life, to the degradation of that industry, we see it flounder. Give you a good example. You don't have to look very far with government intrusion in health care to look at the Native Americans. Boy, there is a great unemployment rate there, 60 percent at the Navajo Nation, 75 percent in the Apache reservation, all because of dictations by government.

And why do I bring that up? Well, because this program is based on a flawed system that flawed it from the very get-go, as it demanded that you had to go to the emergency room; you couldn't turn anybody away. You couldn't even ask the questions where are you from, how do you look. You couldn't turn them away.

So what we have done is we have restricted care, and medicine did that. I am happy to say I am from dentistry. We never went down that road. And the reason I say that is that today, for every dollar spent in dentistry, 50 percent comes out of the patient's pocket. So they have risk. They find value. That is why you see lots of dentists. Of course, we are not doing so good right now because we don't have a good economy, but there is something inherently right about that.

So I kind of want to continue that by saying in 2014 employers who employ at least 50 person full-time employees will face a penalty for failing to provide minimum essential coverage. How is this going to affect businesses specifically in respect to hiring? Mr. Brewer.

Mr. BREWER. Well, people who have 49 employees are going to keep 49. I think there is a fair number of our survey respondents that suggested that they would go to more part-time employees so they wouldn't have to offer coverage. There is no way that helps in their hiring practice.

Mr. GOSAR. So what we are doing is we are cost-shifting again; we are making it go back to the government so that the government is going to have to streamline them, just like they did in the Medicare roles, where what we did is we look at the equations and we take away certain benefits so that we set them on Medicaid. This whole system is based on a flawed system; it doesn't work anywhere along the line for job creation.

Ms. Braden.

Ms. BRADEN. If you really look at what the cost of health care is to an employer, there is not one employer sitting here that can tell you that it costs less than $3,000, which is the fine, per year. Every one of us pays, on an individual basis, pays more than $3,000 for our health care for our employees per year. So now we have a fine that is less than what we are currently paying. It doesn't take a rocket scientist to figure out what we are going to do.

Mr. GOSAR. And let me ask you the next thing. You talked about the administrative costs. A lot of that administrative cost, is it not true, that it has to do with tort?

Ms. BRADEN. Yes.

Mr. GOSAR. And did you see anything in this bill, any one of you, do you see anything about tort reform in this bill? In fact, it was refused. I wonder why. I guess I am a dentist, not an attorney. That is where the American people need to stand up and businesses need to stand up.

Mr. Morey, how do you see this is going to affect those people, those businesses that are under 50 jobs?

Mr. MOREY. I see it very much the same way. I would like to mention that the issue of tort reform, to me, is gigantic.

Mr. GOSAR. Paramount, right?

Mr. MOREY. I would like it to go beyond medical, into general tort reform, if possible, from our business perspective as well. But ultimately we want to employ people; we want to provide them great coverage. We just don't want mandates shoved down our throat in how to do it. And ultimately I think that the free enterprise system does a pretty good job. The marketplace does a pretty good job of attracting; the better employers attract better staff members. The marketplace does work.

Mr. GOSAR. Mr. Puzder, you really drive my attention because equations. You know, when you are in business, you are looking at all the parameters and what possibly could do. Have you run all the numbers? Are you comfortable with all the numbers based upon this bill and how it is going to impugn job creation?

Mr. PUZDER. No, Congressman. In fact, we hired an expert in this area, Mercer. They are one of the national experts on health care costs, and while their best estimate is that our health care costs will increase $18 million, which is that 150 percent, the range runs from $7.3 million to $35.1 million. Now, I have to tell you in any other aspect of my business, if one of the people who works for me came to me with an estimate that ran from $7 to $35 million, I would tell them to go back and sharpen their pencils. But nobody can figure it out.

Mr. GOSAR. One last question, just a quick indulgence.

If you have a program in your business that is failing, what do you do?

Mr. PUZDER. Terminate it, replace it, try and figure out what the next best thing is.

Mr. GOSAR. That is exactly what this law is, and it should be terminated. We should have the guts to say that. Thank you.

Mr. GOWDY. I thank the gentleman from Arizona and would now recognize the ranking member of the full committee, the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. Thank you very much.

I want to just reference something that Dr. Gosar said, and I was meeting with staff and I may have missed it, so correct me if I am wrong, that he was glad that dentists can turn away people, unlike emergency rooms; dental care people pay 50 percent, an average of calls, and they have some skin in the game. Is that accurate? I will yield to the gentleman.

Mr. GOSAR. Did I say that?

Mr. CUMMINGS. I am just asking you what did you say about it is okay?

Mr. GOSAR. [Remarks made off mic.]

Mr. CUMMINGS. I just wanted to say that I spend a phenomenal amount of my time working on my case called the Deamonte Driver case. This was a 12-year-old boy who had a tooth infection, he was on Medicaid, and he couldn't find a dentist because he was being turned away. Twelve years old. And this was 3 years ago. So because a dentist would not accept him, and this was in Maryland, my State, the infection from an $80 tooth decay problem, it would cost $80 to treat it, he died. Twelve years old. Because a dentist turned him away. And they spent $250,000 trying to save his life at the end.

So, I guess with regard to dental care and care, period, I just say that our country is better than that. We are better than that.

And I understand, believe me, to all of you, I understand what you are saying. I understand it is hard being in business. For you all who have your own businesses, a lot of people don't realize what you go through. They don't realize all the folks you have to deal with; the IRS, you have to deal with making sure the lights are on, you have to make sure, if you have grass, you have to make sure the grass is cut, everything. You have to pay for every toothpick, every pen, every pencil; you have to make sure employees are okay; you have to deal with absenteeism. You have to deal with all kinds of stuff.

But at the same time I think that we have to also balance that. If we are talking about our people, people, of course, are who make our businesses go, and if they are not healthy, that is a problem. That is a real big problem. And there are those who may not see health care as a right, I still happen to think so, but I do believe that when we get to a point where we feel that it is okay to, if I am a skilled lawyer and somebody comes in to me and they have a problem, but that is a little different because I am not talking about life and death. That is different.

But if I have a skill and like the doctors in my State, not in Arizona, but in my State, who turned this little boy away, and I am talking about a whole lot of them turned him away, and you die at 12, I don't know how many of you have children, but if you have a child who dies at 12, you don't forget it. So what we have done is spent a lot of time, I spend a phenomenal amount of my time trying to make sure that that never happens to another child in our State again. As a matter of fact, because of Diamonte Driver, we have now been able to take Maryland from one of the worst States with regard to having dentists work with kids on Medicaid to one of the top, I think it is even number one or number two, in a matter of 2 or 3 years.

So the reason why I mention that is because my staff had mentioned to me, like I said, I was with a staff member, that that statement was made, and maybe I misunderstood it or misquoted it, I am sorry I didn't hear it, but I just want to make it clear that there is something that I think should always be above profit, and that is life, health and safety; and I think that is what the Affordable Care Act was about and is about. And as somebody said a little bit earlier, no, it is not perfect, but a lot of its imperfections were because of people trying to satisfy both sides of the aisle to get a decent bill, and it did not come out perfect. It is not a product, it is a project; that means it can ever get better.

So, with that, I yield back.

Mr. GOWDY. I thank the gentleman from Maryland.

My father is a physician. The only two things that kept me from following in his footsteps were math and science. If it weren't for those two, I might have become one as well. And I was sitting here while Mr. Cummings was talking, who is one of the most eloquent Members of Congress and somebody that I have a lot of personal affection for. I remember always being the last ones to leave church because folks wanted to ask my dad questions. I remember holidays being interrupted.

But the thing I remember the very most are the people who would call at night and say my kid has been sick all day, can you come see him tonight? That is frustrating, when somebody has been sick all day, why you didn't take advantage of the office hours? Why you waited until the evening. And my mom would say why don't you charge more? And he never would do it.

So my question to you all is what is the role of personal responsibility in our health care system? Do we incentivize the right conduct? And we have all these different models from what we have now to what is perceived as radical, which is decoupling health insurance from employment. It is perceived as radical, but that is the way we existed.

Up until 1944 we didn't get our health insurance from our employer; we got it ourselves. I am not smart enough to know the difference between a right and a privilege; I just know this: personal responsibility has to be part of the equation or we are not going to make it as a Republic.

So I would ask you this, in conclusion, and I will let you go from left to right, give you all the last word, although we only have about 3 minutes, so apportion it accordingly. What is the role of personal responsibility and how can our country better incentivize the right conduct and penalize the wrong conduct in our health care system?

Mr. PUZDER. When you said right to left, does that mean you are starting with me? That was your right or my right?

Mr. GOWDY. Your right to left, my left to right. I always like to start on the right.

Mr. PUZDER. Okay, I guess it is me. I think private enterprise and State governments are the best place to make determinations as to health care. I think there are many things that the Federal Government could do that would contribute to a better health care system. I don't know if health care is a right or not, Congressman, but I know it is the law. I know an emergency room cannot turn you away. What we are talking about here is health insurance, not health care. Health care people get now. This is why they don't take up our offer on health insurance when we offer to pay even 60 percent. They are getting health care. This is about health insurance and how you allocate those costs. The way they are allocated now, they will destroy our ability to create jobs and prosper.

That doesn't mean that profits will go down, but profits are what we reinvest to grow. And if we can't reinvest to grow, we can't create jobs and we can't create prosperity, which is what American business has done for over 200 years.

Mr. GOWDY. Mr. Payne.

Mr. PAYNE. I agree with that completely. I think there is some personal responsibility that has to go into the medical cost. I agree with the skin in the game program. Years ago, programs that I was in, you had to pay for the coverage, turn it in and get reimbursed. Well, I understand people may not have money to pay to start with. In our districts, every plant that I have I have gone around and checked, our people get medical coverage, it is there. Our property taxes, everything is paying for it already. I haven't had a single complaint of a person in our organization that comes back to us and says, hey, we have an employer or somebody in their family that has a serious problem; we don't have that problem at all.

It is not a question of whether people have the right to have the insurance or the coverage. Everybody wants that for them, there is no question. It is where does the cost lie. In our company, it is throwing all the cost to the employer to pay these new expenses, and where does that cash come from? It is a big burden on companies in the middle, on all companies, I suspect, but certainly on our company it is a burden that is bigger than we have. That is the problem.

Mr. GOWDY. I have 45 seconds left to split between four of you.

Mr. MOREY. Yes. We provide $100 incentive for folks to go get a physical. That is cover-to-cover in the program. We provide a smoking cessation program that is for both the staff member and for their spouse. These are the kind of things we do to try to help people help themselves. That is where I think much of that responsibility lies and that is on the individual person.

Ms. BRADEN. When I look at it, it can go so much farther, and we all have a story, and I respect that, because I have them just in my practice alone, with people that were offered health care and health insurance, and didn't take it. That is a private decision. What exactly is our responsibility and does the government regulate it? I am not sure. I think if these guys really looked at their businesses, they would say that the reason they offer the wellness that they do is because they know it improves their work force and they get more out of it.

If we really wanted to look at health care, we would start with dentistry and we would say, if you don't have your teeth cleaned twice a year, you are not entitled to basic and major dental, because everything starts in the mouth. So we are looking at health care and we are looking at wellness and we are looking at health insurance, three different things.

Mr. GOWDY. Mr. Brewer.

Mr. BREWER. One of the things that ACA did get right was increasing the opportunity for employers to incent people to well behavior. We have a pretty sophisticated practice in our firm of helping clients design programs that incent people to live healthier lifestyles and make better lifestyle decisions. So in this morass of things that we don't like in ACA, certainly that aspect of it was welcome.

Mr. GARDINER. I think there are three things I will mention. One is I think you have to have an individual mandate so everybody pays their fair share and gets coverage. I think employees need to know the total cost of insurance, including what the employers are paying. Most of the time they don't realize how much it really costs.

And we have seen in all our surveys and meetings with small businesses, where 42 percent of Americans work, that small businesses would like wellness and prevention programs that fit small business, and they don't have access. We hope that it changes; run by States can do this. And I agree that dentistry has some good models. I know I don't have to pay any copay if I get in there, and I think that is a good incentive and it has been proven to work.

Mr. GOSAR [presiding]. Well, on behalf of the chairman, I would like to thank you very much for your indulgence for two rounds, and thank you so very, very much. Thank you.

Our meeting is adjourned.

[Whereupon, at 12:03 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

Questions for Grady Payne
CEO
Conner Industries, Inc.

Rep. Gosar
Committee on Oversight and Government Reform
Health Care, District of Columbia, Census and the National Archives

Hearing on "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance"

1. Based upon your company's experience, does the health care law reduce the likelihood that people can climb the socioeconomic ladder by making it harder for workers to get their foot in the door?

The Health Care Law has a negative impact on both employment and company expansion for our company, Conner Industries. The law forces new cost on the company for insurance, federal penalties, new fees and significant administrative cost for compliance and mandated reports. These significant added costs reduce capital required for company expansion and growth. Without expansion and growth there are no new jobs and no need for new manager positions or promotions, and thus a decreased opportunity for a good employee to move up the ladder of job responsibilities and increased pay levels. In our industry these significant new costs cannot be pushed into our product sale prices as we compete directly with companies producing similar products offshore and importing into the US as well as companies under fifty employees for whom the new mandates and penalties of the Affordable Care Act (Obamacare) do not apply. For Conner Industries these new cash costs are estimated at $1,000,000 per year or more and for our small business, especially in these economic times, this cost absorbs our entire earnings.

2. Based upon your experience and your discussions with other business leaders, can you comment on the current climate for job creation? Is there a sense of fear and uncertainty in the business community pertaining to the role of the federal government? In your experience as a business owner, what conditions are necessary for job creation?

What we are seeing in our company and the broad manufacturing customer base we serve is a slow improvement in order files. Business activity is very erratic; some strong weeks followed by slow weeks. Optimism is followed by doubt. In this environment we and others are reluctant to add people and expand or add production lines or explore new market areas. The return on the investment and cash flow to recover cost and make debt payments are too uncertain. Added to this uncertainty is the confusion coming from all levels of government including federal and local government agencies dealing out more costly regulations, requirements and new fees. Obamacare is the most visible new law to hit businesses. The cost of this law alone can and will eliminate company profits for many small businesses like ours. Executive time today is spent on how to manage and pay for this bill and there is no room to consider true job creation projects we currently have on the table. We do not know if there will be cash to implement the project start ups.

There is constant fear, uncertainty and a complete lack of trust in the federal government today. Talk of balancing budgets and reducing deficits by the same administration that, in Obamacare, has signed what will be the largest entitlement program since Social Security and Medicare, is absurd. The current projected cost of this law alone can cripple our small business and this is just the start. With federal involvement the cost will go steadily up from here, all the while adding additional administrative burdens on small businesses. This is in addition to the added regulatory involvement of federal agencies in other areas of our operations. Just more bureaucrats creating bureaucratic jobs for writing bureaucratic reports to justify themselves and their existence. All businesses will suffer, but small and medium companies like ours with 450 people/families will be and are hit the hardest.

Job creation comes from people with vision and hard work ethics. People driven to make a product or service to improve the markets they compete in. Creativity and individual ingenuity are the traits necessary and money and capital are essential tools to accomplish the goal, grow the business, and hire and train the people to fulfill the mission. Any distractions and obstacles put in this path slows and can stop the progress. Excessive government oversight through unnecessary rules, regulations, and mandated reports, plus fees, permits, and even penalties distract and drain a company's earnings and capital. Earnings and capital are needed to create the product, hire the people, and make the profits to pay the income tax required to provide the revenue necessary to do the truly important government functions. We do not need federal government agencies, which in many cases have very little accountability to taxpayers, with oversight powers on business that are too often abused.

3. How would you structure a health insurance benefits plan for your employees to encourage company loyalty and employee longevity while also ensuring a viable business with qualified workers? Is it a cafeteria plan? Is it a flexible range of choices, like members of Congress enjoy? Please explain as best as you can.

Health decisions and health insurance is and should be an individual decision and an individual responsibility. It is very personal and people elect to use medical services in their own individual ways. Many may go to the doctor for head colds and sore throats, others may use over the counter drugs and experience to treat the problem. Is it fair for the responsible health consumer to pay for the "abuser"? These examples could go on and on. In many ways certain segments of our society have gotten into a habit of overusing doctors for many things due to the market insurance policies that have evolved over time. Many people that have not had full coverage policies over the years have handled their medical needs often times without expensive doctor visits, tests and procedures. Their usage of the system comes only with necessary preventive care and treatment for a major illness or accident.

If this country decides that the federal government can force individuals to buy insurance then the cost must be based on individuals being responsible and paying their own costs. The coverage offered must be tailored to individual needs, from more expensive full coverage with lower deductibles to lower cost catastrophic hospitalization plans with deductibles allowing individuals to self insure themselves. State run exchanges that provide large risk pools may have a useful place in such a system. Limited subsidies could be part of the program for a very select "in need" group. Subsidies under the new law for families with household income up to $88,000 seem excessive and will unnecessarily burden the entire system.

With individual choice employees select the cost level and coverage combination they are comfortable with. They then adjust their personal lifestyle and wage demands consistent with their own choices. The employers then compete with wages to attract and retain the best people that want to work. Individuals will make decisions on jobs based on pay offered in the market and employers will pay as required to get good people. Employers will ultimately pay the insurance premium through wages, but it will be market driven with little employer administrative cost. Companies with a business model that can offer and pay employee insurance can provide group plans through the exchanges or just opt to pay the employees premiums.

Employees in these cases stay with the companies that are the best to work for. They would not be locked in because of insurance needs. Companies could focus more on work safety, work place efficiencies, retirement programs and various other benefit programs that accommodate the employee and the employer. A flexible range of choices will give employees options that fit their families and life styles.

Questions for Will Morey
President and CEO
Morey's Piers

Rep. Gosar
Committee on Oversight and Government Reform
Health Care, District of Columbia, Census and the National Archives

Hearing on "Impact of Obamacare on Job Creators and Their Decision to Offer Health Insurance"

1. **Based upon your experience and your discussions with other business leaders, can you comment on the current climate for job creation? Is there a sense of fear and uncertainty in the business community pertaining to the role of the federal government? In your experience as a business owner, what conditions are necessary for job creation?**

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

   For job creation to be a serious probability, our business, like most businesses must know that there will be a stable federal economic policy that will prevent "flavor of the month" changes to tax code, the imposition of yet-unknown mandates on businesses for health care requirements, clarity that businesses will not face an additional onslaught of burdensome legislative and regulatory initiatives, and that there is a real plan to deal with the realities and adverse consequences of the country's gigantic deficit spending and resulting fiscal situation.

2. **How would you structure a health insurance benefits plan for your employees to encourage company loyalty and employee longevity while also ensuring a viable business with qualified workers? Is it a cafeteria plan? Is it a flexible range of choices, like members of Congress enjoy? Please explain as best you can.**

There are two areas that are co-dependent in answering this question. The first is *benefits offered* and the other is *cost.* It is virtually impossible to discuss one without the other. Both are dependent on internal resources as well as external resource limitations and mandates.

We can address the internal issues but we are in most cases handcuffed in dealing with limited options externally. Therein is the problem. How do you design a benefit program with the ever changing, unstable, unsustainable external environment? The country has thrived on free market system. This is not the case as it relates to health care. Competitive forces can level the playing field between businesses and within an industry. Without the ability to utilize interstate or national markets pricing of the few underwriters in this market is very expensive. Additionally, the state has mandated coverage without the consideration of need or choice. Adding significantly to the cost is the need for defensive medicine to counteract the cost for litigation and very outrageous settlements. A significant cost forthcoming will come from mandated requirements that add nothing to controlling health costs. For example reporting individual health care costs for each employee is expensive and only serves to provide the government with data that is available through the insurance companies. We need less regulation, not more, so that dollars can be put to better use in providing affordable health cost.

Our company and our employees know that health care is expensive and there is a shared responsibility in balancing the benefits that are affordable for both. We are a privately owned company. All owners and all of the employees are afforded the same benefit program to include cost sharing. There are no class differences in either area. We believe in this philosophy. There is a responsibility by management to provide the best coverage with a close eye to affordability. It provides us little benefit to minimize the company cost at the expense of the employees. We must be able to provide superior benefits at reasonable cost for both.

We do like our employees to have choices. Individual and family circumstances are all different. Thus choices are important to meet everyone's needs. The costlier health care costs, the less choices we can provide. We currently provide health, prescriptions, dental and eye care plans. Within these employees can chose direct access to providers or HMO plans where the primary care physician makes the choices. Each year we have had to increasingly limit choices because of increased cost.

When we consider coverage in calculating cost, we strive to insure that when there is a major health issue such as cancer, heart conditions, serious hospitalizations and accidents, they are well covered so that the individual and families do not have to worry about what it costs but can have available the best coverage to make the most appropriate health care decisions.

Yes, we are concerned about out of pocket dollars such as co-pays, deductibles, contributions by employees to the health premiums. We must balance all of these issues in making health care affordable while knowing there is a limitation as to what both the company and employee can pay and still be in business with employees.
The Section 125 programs have been very helpful to our employees in the choices they make. Programs like pre-tax premium contributions, flexible spending accounts, and health savings accounts give us tools that are invaluable in controlling individual's costs. Limiting the use of these by reducing the dollar limits available or taking them away only makes health care decisions much more difficult.

The new health care law has not accomplished anything in controlling the ever double digit increase in health costs. Can we as a company afford a health care plan going forward is a real worry. In order for our company to provide the best options for our employees and allow individual choices to fit individual/family needs we need our government to work on less costly regulations and mandates. Secondly, allow open competition for carriers across all state boundaries and provide total reform that will eliminate frivolous claims, huge settlements and, most importantly, the need for doctors order very costly unnecessary testing in the practice of defensive medicine.

By far most employers understand the need to provide cost effective, competitive health care. The recent health care law puts all companies in the penalty box without addressing the real issue of cost containment. We need the ability to offer choices to our employees - not more restrictions that limit free choice. Targeted legislative enforcement against the few egregious offenders would be a better approach rather than placing all companies as offenders.

SMALL BUSINESS MAJORITY

August 15, 2011

Honorable Paul Gosar
Vice-Chairman
Subcommittee on Health Care, District of Columbia,
Census and the National Archives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Gosar:

I am in receipt of your letter dated August 2, 2011, attaching "questions for the hearing record," following my appearance at the hearing held July 28, 2011 before the Subcommittee on Health Care, District of Columbia, Census and the National Archives.

I very much appreciated the opportunity to appear before the subcommittee to express the views of Small Business Majority ("SBM") on the Patient Protection & Affordable Care Act.

There was no discussion at the hearing of any follow-up questions to be answered in writing by SBM concerning our membership or funding; nor was any Member given permission to submit such follow-up questions to SBM; nor are we aware of any inquiry authorized by the Subcommittee or the full Committee concerning those issues.

For these reasons, we respectfully decline to respond to the questions you submitted.

I have enclosed a copy of my July 28 testimony that addresses the matters under consideration by the subcommittee. The testimony includes relevant information about SBM as well as the bases for the information and conclusions set forth in my testimony.

Sincerely,

Terry Gardiner

Terry Gardiner
Vice-President, Policy & Strategy

encl.

cc: Michael Bebeau, Assistant Clerk, Committee on Oversight and Government Reform
Yvette Cravins, Counsel, Committee on Oversight and Government Reform, Minority Staff

1820 Jefferson Place, N.W. • Washington, DC 20036 (202) 547-0117 www.smallbusinessmajority.org

Associated Builders and Contractors, Inc.

July 27, 2011

The Honorable Trey Gowdy
Chairman
Health Care, District of Columbia, Census and the National Archives Subcommittee
Oversight and Government Reform Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Danny Davis
Ranking Member
Health Care, District of Columbia, Census and the National Archives Subcommittee
Oversight and Government Reform Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Gowdy and Ranking Member Davis:

On behalf of Associated Builders and Contractors (ABC), a national association with 75 chapters representing more than 23,000 merit shop construction and construction-related firms with nearly two million employees, I am writing in regard to the subcommittee hearing titled, "Impact of Obamacare on Job Creators and their Decision to Offer Health Insurance."

Providing quality health care benefits is a top priority for ABC and its member companies. Throughout the health care reform debate, ABC advocated for policies that reduce the cost of health care for employers and their employees. ABC called on Congress to advance common-sense proposals that would address the skyrocketing cost of health insurance, especially for employer-sponsored plans and the rapidly rising number of uninsured Americans. ABC believes true reform should provide greater choice and affordability and allow private insurers to compete for business.

Unfortunately, the massive and complex health care law, known as the Patient Protection and Affordable Care Act, does not effectively address any of those issues. Costs have not been lowered and costly new mandates and taxes have been imposed on an important but struggling sector of the economy: small businesses. Small business owners have watched insurance premiums increase or have had their plans discontinued, forcing some to purchase more expensive policies or drop their coverage.

Additionally, ABC has expressed concerns about the regulatory burdens imposed by the massive health care law. The outcomes of many of the health care-related federal rulemakings are currently unclear, creating an environment of uncertainty in our industry that makes it difficult for firms to adequately plan for the future.

ABC urges Congress to move forward with legislative proposals that will provide employers and their employees with health care solutions that are both practical and affordable. ABC supports the following initiatives:

- ✓ **Allowing Americans to buy insurance across state lines.** This would be particularly helpful to those who work in the construction industry, as the unique nature of construction work demands that benefits be portable.
- ✓ **A tax deduction for the self-employed and for employers.** ABC supports raising the self-employed health care deduction to 100 percent and maintaining the tax deductibility of health insurance premiums for all employers.
- ✓ **Small Business Health Plans (SBHPs).** SBHPs give small businesses the power to pool together to offer health care at lower prices—something many corporations and labor unions already are permitted to do.

- ✓ **Health Savings Accounts (HSAs).** HSAs are tax-free savings accounts for medical expenses that allow more small business owners to obtain affordable health coverage for themselves and their employees. ABC supports expanding access to high-deductible health plans and HSAs, as well as increasing HSA contribution limits.

- ✓ **Flexible Spending Accounts (FSA).** FSAs, or "cafeteria plans," allow employees to set aside money (pre-tax) each year to be used for medical expenses such as co-pays, deductibles and services not covered under their base insurance plan. If an employee does not use all of the money contributed to his or her FSA by the end of the plan year, the remaining amount is forfeited to the employer. This limitation should be changed to allow workers to take control of their health care costs and plan for the future.

- ✓ **Health IT.** ABC supports advancing the widespread adoption of health information technology. Technology holds the promise of improving the quality of patient care, enhancing access to care, reducing medical errors and reducing health care costs.

- ✓ **Medical malpractice reform.** Unnecessary and frivolous lawsuits contribute to the increasing cost of insurance. Enacting tort reform will dramatically decrease the cost of health insurance for the American public.

ABC appreciates your attention to this important matter and looks forward to working with you on common-sense health care initiatives.

Sincerely,

Corinne M. S

Corinne M. Stevens
Senior Director, Legislative Affairs