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4 ``REGULATORY REFORM SERIES #8 - PRIVATE-SECTOR VIEWS OF THE  
5 REGULATORY CLIMATE ONE YEAR AFTER EXECUTIVE ORDER 13563''  
6 THURSDAY, FEBRUARY 16, 2012  
7 House of Representatives,  
8 Subcommittee on Oversight and Investigations  
9 Committee on Energy and Commerce  
10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 10:06 a.m.,  
12 in Room 2322 of the Rayburn House Office Building, Hon. Cliff  
13 Stearns [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Stearns, Terry,  
15 Sullivan, Burgess, Blackburn, Bilbray, Gingrey, Scalise,  
16 Gardner, Griffith, DeGette, Green, and Waxman (ex officio)

17 Staff present: Allison Busbee, Legislative Clerk; Mary  
18 Neumayr, Senior Energy Counsel; Alan Slobodin, Deputy Chief

19 Counsel, Oversight; Sam Spector, Counsel, Oversight; Peter  
20 Spencer, Professional Staff Member, Oversight; Alvin Banks,  
21 Democratic Investigator; Tiffany Benjamin, Democratic  
22 Investigative Counsel; and Brian Cohen, Democratic  
23 Investigations Staff Director and Senior Policy Advisor.

|  
24           Mr. {Stearns.} Good morning, everybody. The  
25 Subcommittee on Oversight and Investigation is in session.

26           My colleagues, we convene the eighth in a series of  
27 subcommittee hearings since last January to address the  
28 Administration's approach to regulatory reform. Today, we  
29 will receive testimony from several private sector witnesses.  
30 No one understands better than they do how the regulatory  
31 climate at present impacts their day-to-day operations and  
32 future business planning, including opportunities for  
33 economic growth and job creation. In fact, according to a  
34 Gallup Poll released yesterday, nearly half of the United  
35 States small business owners who aren't hiring point to  
36 potential healthcare costs and government regulations as the  
37 reason why.

38           FactCheck.org, a project of the Annenberg Public Policy  
39 Center of the University of Pennsylvania, citing numbers  
40 provided to Congress in 2011 by the Office of Information and  
41 Regulatory Affairs, reports that the estimated cost of  
42 federal regulations under Obama from the time he took office  
43 to the end of the 2010 fiscal year, not including regulations  
44 issued by the independent regulatory agencies, was somewhere  
45 between 8 billion and 16.5 billion. Now, during the same  
46 initial stretch under President Bush, the estimated cost of

47 new regulations was between 1.3 billion and 3.4 billion. All  
48 figures have been adjusted for inflation.

49 Now, President Obama's Executive Order 13563, issued  
50 just over 1 year ago, affirmed among other things that  
51 agencies must, must adopt only those regulatory actions whose  
52 benefits justify its costs and are tailored to impose the  
53 least burden on society. It also called on agencies to  
54 review significant regulations already in place. As the  
55 President observed in a January 18, 2011, op-ed in the Wall  
56 Street Journal, ``sometimes, those rules have gotten out of  
57 balance, placing unreasonable burdens on business - burdens  
58 that have stifled innovation and have had a chilling effect  
59 on growth and on jobs.''

60 Yet, while some very outdated rules might be eventually  
61 cut back or simply eliminated, the Obama Administration is  
62 doing very little to counter the ongoing regulatory  
63 juggernaut of the Environmental Protection Agency or address  
64 the thousands of pages of bureaucratic burdens released so  
65 far to implement a massive takeover of healthcare and the  
66 controversial financial reform bill.

67 From industrial giants to small business start-ups, our  
68 Nation's job creators are still sitting on trillions of  
69 dollars in capital, in part because they are concerned with  
70 the number and burden of regulations that are being issued or

71 proposed by the Obama Administration, all of which are adding  
72 uncertainty to the oppressive regulatory environment.

73 For example, the Federal Deposit Insurance Corporation,  
74 in its annual summary of deposits as of June 30, 2011,  
75 confirmed that across the country, deposits shot up 7  
76 percent, or \$8.25 trillion, from 2010 to 2011, outpacing the  
77 2 percent growth that occurred between 2009 and 2010.  
78 However, my colleagues, it is more than excessive and unclear  
79 regulation that the private sector must cope with; it is also  
80 the perception that federal regulators have an unhealthy  
81 suspicion towards the business community and/or are clueless  
82 to the real world impact of their rules.

83 We have before us today several representatives of  
84 American businesses from across the country and they reflect  
85 a wide range of industries. They will confirm that, 1 year  
86 later, we still have a long way to go. They will comment on  
87 how the current regulatory climate is affecting their day-to-  
88 day operations, including plans for expansion, investment,  
89 and hiring.

90 These witnesses include Andrew Puzder, CEO of CKE  
91 Restaurants, Incorporated, which through its subsidiaries,  
92 franchisees and licensees operates several popular fast food  
93 chains, including Carl's Jr. and Hardee's. With more than  
94 3,200 restaurant locations, CKE has created 70,000 jobs,

95 21,000 directly and 49,000 with franchisees. CKE, like many  
96 others today, faces the costly burden imposed by compliance  
97 with a litany of ObamaCare-related rules, as well as other  
98 regulations which simply threaten to disrupt its role as an  
99 engine of economic growth.

100 We will also hear from Kimber Shoop, a senior  
101 environmental attorney with the Oklahoma Gas and Electric  
102 Company; Bob Luoto, President of Cross and Crown,  
103 Incorporated, a logging business he founded, working  
104 primarily in northwestern Oregon; Barbara Walz, Senior Vice  
105 President for Policy and Environmental with Tri-State  
106 Generation and Transmission Association, a wholesale electric  
107 power supplier to Colorado, Nebraska, New Mexico and Wyoming.

108 These witnesses will convey the message that even now,  
109 over 1 year after the President launched his regulatory  
110 reform initiative with great fanfare, their experience with  
111 the federal regulatory state has continued largely unchanged,  
112 with little if any sign of relief. I hope that today's  
113 hearing and our hearing series that cumulatively will occur  
114 will move us one step closer to producing that much-needed  
115 relief for American job creators.

116 And with that, I yield to the ranking member.

117 [The prepared statement of Mr. Stearns follows:]

118 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
119           Ms. {DeGette.} Thank you very much, Mr. Chairman. You  
120 forgot to mention the other two witnesses. I am sure that  
121 was just an oversight on your part. Dr. Mitchell and Mr.  
122 Williams, we are happy to have you also, as well as the rest  
123 of the witnesses.

124           Mr. Chairman, this is now the eighth hearing that we  
125 have had in this Congress on the issue of regulatory reform.  
126 I have got the message. The Republican majority supports  
127 regulatory reform and we have had hours and hours of hearings  
128 on this subject, but yet I haven't really seen anything clear  
129 come out of it except for we all support regulatory reform  
130 where appropriate. Everybody in this room and the  
131 Administration believes we should ensure that regulations are  
132 simple, clear, reasonable, and not overly burdensome on the  
133 industries that they oversee. I am sure every single person  
134 on this panel today agrees with us on that.

135           If the goal of the ongoing series of hearings on  
136 President Obama's regulatory reform to ensure that that was  
137 the case, that regulations be simple, clear, and reasonable,  
138 I would be in complete support of these continued hearings.  
139 However, having now sat through seven of these hearings, it  
140 is clear to me we are not really making any progress; we are  
141 just spinning our wheels. And what we are doing is bringing

142 in panel after panel of witnesses to lodge a litany of  
143 different personal complaints about regulations that might  
144 affect them.

145         Now, this subcommittee, which is one of the great  
146 subcommittees in the U.S. House of Representatives in my  
147 opinion--I have been on it for 15 years--we yield a lot of  
148 authority and responsibility. We have the ability to examine  
149 any issue within the purview of the mighty Energy and  
150 Commerce Committee. In the last Congress, we looked at crib  
151 safety, sought to understand the Deep Water Horizon oil  
152 spill, we tried to determine what led to the unintended  
153 acceleration in Toyotas. We did this in a bipartisan way,  
154 thoughtfully, by identifying real issues, by conducting  
155 research, even having field hearings where appropriate,  
156 talking to relevant parties, and looking at all sides of the  
157 issue.

158         In this Congress, Mr. Chairman, as you will attest, I  
159 have many ideas about ongoing investigations in addition to  
160 regulatory reform that we could undertake. Avian flu, what  
161 is going on with the research? What are we doing as a Nation  
162 to protect and to defend against some kind of a pandemic flu  
163 or other infection? What is the fallout from the Fukushima  
164 Daiichi disaster in Japan and how does that impact the U.S.  
165 nuclear industry? A follow-up on the Deep Water Horizon,

166 what is going on now with drilling in the Gulf and is there  
167 more of it going on and in an environmentally sound way? How  
168 is implementation of the Affordable Care Act coming and what  
169 can we do statutorily to make sure that it is a success for  
170 Americans? And I could go on and on and on.

171       There are many things this subcommittee could be doing.  
172 Eight hearings to talk about the same thing without any  
173 progress seems to me to be kind of a waste of time. And I  
174 say that with all due respect because I also believe that  
175 regulations should be tailored.

176       Now, I would say if we really were going to do oversight  
177 on regulatory reform and the impact of regulations on  
178 businesses, we could have invited a member of the Coalition  
179 of Small Business Organizations that just released a study on  
180 how small businesses feel about regulations. This month, the  
181 American Sustainable Business Council, the Main Street  
182 Alliance, and the Small Business Majority released the  
183 results of a survey of 500 small business owners. Their  
184 survey showed that the issues small business owners care most  
185 about is weak customer demand, not overregulation. They also  
186 found that 86 percent of small business owners believed that  
187 some regulation is necessary in the modern economy. Seventy-  
188 eight percent supported holding health insurance companies  
189 accountable so they can't raise rates unfairly. This is a

190 huge issue for small business and big business alike.

191         Seventy-nine percent of the small businesses thought it  
192 was important to have clean air and water. Sixty-one percent  
193 supported establishing standards to move the country towards  
194 energy efficiency and clean energy. This survey shows what  
195 matters to American businesses and it isn't repealing the  
196 Clean Air Act or denying healthcare to workers. Business  
197 owners care more about getting people into their shops and  
198 buying their products, not doing away with regulations that  
199 ensure the safety and security of their families and their  
200 employees.

201         Regulations, when promulgated in the right way, have  
202 real benefits. They can save lives and keep communities  
203 safe. They can ensure that small businesses aren't unfairly  
204 pushed out of markets. Regulations should be narrowly  
205 tailored and reasonable, but we can't pretend that they don't  
206 provide real and important benefits to the American people.

207         I think we can and should do better. I hope we will  
208 have fact-finding hearings on important topics. And I will  
209 yield back before I start coughing more.

210         [The prepared statement of Ms. DeGette follows:]

211 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
212 Mr. {Stearns.} I thank the gentle lady.

213 I recognize Mr. Sullivan for 2 minutes.

214 Mr. {Sullivan.} Thank you, Chairman Stearns. Thank you  
215 for holding this important hearing to discuss private sector  
216 views of President Obama's Regulatory Initiative issued last  
217 year through Executive Order 13563. It is important that we  
218 hear from the private sector to assess whether President  
219 Obama's executive order is working to ease the day-to-day  
220 regulatory burdens on American companies and to evaluate if  
221 his Regulatory Initiative is creating jobs. Given the fact  
222 that his administration has taken no action to repeal any  
223 expensive regulations this year, I don't think they are off  
224 to a good start.

225 I would like to take a moment to welcome our witnesses  
226 today and make special mention of Mr. Kimber Shoop, the  
227 senior environmental attorney who is with us on behalf of  
228 Oklahoma Gas and Electric Company, a medium- to small-sized  
229 award-winning utility in my State. I am pleased Mr. Shoop  
230 will speak of the challenges faced by OG&E as they try to  
231 navigate the regulatory train wreck of regulations coming  
232 from the Environmental Protection Agency these days. OG&E is  
233 in the regulatory crosshairs of several multibillion dollar  
234 EPA regulations, including Utility MACT, which happens to be

235 the most expensive rule ever imposed on the utilities sector,  
236 the Cross-State Air Pollution rule, and compliance with the  
237 Regional Haze Rule.

238         The Regional Haze Rule is of particular note as Oklahoma  
239 officials presented a plan to EPA for regional haze they  
240 believe is right for our State, and now the EPA is bringing  
241 the heavy hand of the Federal Government to the Oklahoma  
242 ratepayers anyway by largely rejecting our State's  
243 implementation plan in favor of imposing its own federal  
244 implementation plan. This is yet another example of EPA's  
245 overreaching on the States with burdensome regulations  
246 without analyzing its impact on electric reliability or cost.  
247 It is important to note that these regulatory actions by EPA  
248 do not happen in a vacuum; they impact everything from a  
249 company's ability to invest and make capital improvements to  
250 the rates, families, and small businesses paid for  
251 electricity services.

252         As we continue to press for real regulatory reforms, I  
253 am confident that this hearing will help us continue making  
254 the case that the Obama Administration needs to move faster  
255 to reduce the regulatory burdens of American companies.

256         And I yield back.

257         [The prepared statement of Mr. Sullivan follows:]

258 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
259 Mr. {Stearns.} The gentleman yields back.

260 The gentleman from Texas, Dr. Burgess, is recognized for  
261 1 minute.

262 Dr. {Burgess.} Thank you, Mr. Chairman. And I, too,  
263 appreciate the hearing today. I will just state in comment  
264 to the opening statement by the ranking member, I, too, wish  
265 we had had a follow-up hearing on the unintended acceleration  
266 of Toyota vehicles because I think as we found out during  
267 that hearing and that process and getting documents from the  
268 National Highway Traffic Safety Administration that the  
269 problem wasn't unintended acceleration and that actually  
270 could have been put to rest by this committee. So it is a  
271 shame that was never undertaken.

272 But I do appreciate the witnesses being here with us  
273 today. The chairman referenced the Gallup Poll and I think  
274 it is significant that over half of the hiring that is not  
275 happening is occurring because of the Patient Protection  
276 Affordable Care Act. I know that is something we will  
277 continue to explore in this committee and I look forward to  
278 that.

279 So thank you, Mr. Chairman, and I will yield back to  
280 you.

281 [The prepared statement of Dr. Burgess follows:]

282 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
283 Mr. {Stearns.} The gentleman yields back.

284 And the gentlelady from Tennessee, Ms. Blackburn, is  
285 recognized for 1 minute.

286 Mrs. {Blackburn.} Thank you. Welcome to our witnesses.

287 We have referenced Administrator Sunstein and the  
288 actions on Executive Order 13563 and in that, when he came to  
289 us, he testified that the President's executive order ``would  
290 identify rules that have been outmoded, ineffective,  
291 insufficient, or excessively burdensome,'' and the President  
292 wrote in the Wall Street Journal, ``today, I am directing  
293 federal agencies to do more to account for and reduce the  
294 burdens regulations may place on small businesses.'' Well,  
295 unfortunately, what has seemed to come to pass is the  
296 testimony and the writing have not given what we have seen  
297 take place in the marketplace with the increase of  
298 regulations, 4,000 new regulations last year, nearly 80,000  
299 new pages in the Federal Register. The Gallup Poll has been  
300 mentioned. We know that regulation is stifling businesses.

301 We are looking forward to hearing from you and getting  
302 firsthand information of specific examples that this is  
303 prohibiting you from pursuing jobs growth and innovation in  
304 this country.

305 I yield back.

306 [The prepared statement of Mrs. Blackburn follows:]

307 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
308 Mr. {Stearns.} The gentlelady yields back.

309 We have an additional 30 seconds. Anyone wish--if not,  
310 then we recognize Mr. Waxman for 5 minutes.

311 Mr. {Waxman.} Mr. Chairman, this is our eighth hearing  
312 today on regulatory reform, and if today's hearing is  
313 anything like the first seven, we are not going to hear much  
314 about ensuring that regulations are carefully tailored to  
315 meet their need.

316 This hearing is titled ``Regulatory Reform Series 8 -  
317 Private Sector Views of the Regulatory Climate One Year After  
318 the Executive Order'' and what you have are four people who  
319 are going to tell us that they are unhappy, but do they  
320 represent the whole private sector? Are we going to hear a  
321 balanced view of how these regulations are operating? We, at  
322 the request of the Democrats, have two witnesses at the table  
323 who are going to give a different point of view, and the  
324 chairman wasn't even willing to acknowledge them and welcome  
325 them to this hearing. I am very pleased they are here and I  
326 appreciate the chairman giving us some witnesses to give  
327 another point of view.

328 But the point that I am trying to make is this is not a  
329 fact-finding hearing to understand whether we need changes in  
330 the regulatory system; this is a hearing to hear anecdotes

331 from four people from four different industries about their  
332 complaints. And I don't want to diminish or minimize the  
333 genuineness of what they have to say, but this is not a  
334 balance.

335         For example, we are going to hear from fellow  
336 Californian, Mr. Andrew Puzder, who runs Carl's Jr. and  
337 Hardee's restaurant chains, and he is here to tell us that he  
338 doesn't like the inflexible and costly regulations stemming  
339 from the Affordable Care Act, although he glosses over the  
340 flexibility that allowed his company to receive a waiver from  
341 important medical loss ratio regulations. He is also going  
342 to criticize the new menu labeling laws. I am interested in  
343 his criticism, but that law was supported by the National  
344 Restaurant Association. They are in the private sector as  
345 well and they strongly supported these regulations. They  
346 called it a win for both restaurant owners and guests.

347         We also have Kimber Shoop of the Oklahoma Gas and  
348 Electric Company. His company received important benefits  
349 from the Affordable Care Act, collecting almost \$700,000 to  
350 help continue providing affordable healthcare coverage to  
351 their early retirees. But that is not why he is here; he is  
352 here to complain about regulations that he finds troublesome.  
353 Well, what we have is a handpicked group of four people to  
354 give a certain perspective on regulations. And this

355 perspective is the Republican perspective that we have been  
356 hearing over and over and over again. I could call it a rush  
357 to judgment, but it is not even that. It is a statement of a  
358 political point of view. This hearing, as the others we have  
359 held on the subject, have been focused on politics over  
360 policy, more focused on attacking the President than working  
361 with us and him in a bipartisan way to solve America's  
362 problems.

363 I don't have high hopes for this hearing, although I am  
364 pleased that the witnesses are here and pleased that we have  
365 two additional witnesses to give some bit of another point of  
366 view. We can't make decisions by anecdote. We have got to  
367 have data. We have got to have debate. We have got to hear  
368 different points of view as we are urged to make decisions.

369 But I have high hopes for one of our witnesses to clear  
370 up an important matter from a previous committee hearing.  
371 Three years ago, the Energy and Environment Subcommittee held  
372 a hearing on climate change, and at that hearing, Dr. Patrick  
373 Michaels from the Cato Institute testified that widely  
374 accepted scientific data has overestimated global warming and  
375 that regulation enacted in response to that data could have a  
376 ``very counterproductive effect.'' He was the only scientist  
377 to testify that climate change didn't warrant congressional  
378 action. After that hearing, we discovered information that

379 appeared to indicate that Dr. Michaels had made  
380 misrepresentations to the committee concealing some of his  
381 financial support from big energy business. Representative  
382 Welch asked him about it at that time what his financial  
383 relationships were with certain energy companies for the  
384 record. He never directly answered the question.

385         Today, Barbara Walz, the representative of Tri-State,  
386 will be testifying. We sent a letter to her in advance of  
387 this hearing because public documents indicate that Tri-State  
388 funded Dr. Michaels' work to discount the seriousness of  
389 climate change. I am sure that is in the interest of the  
390 company but that might well indicate that he had some kind of  
391 reason to come up with the conclusions he wanted. I think we  
392 need to, in this committee, understand this matter further.  
393 He appeared before our committee, presented himself as an  
394 academic researcher discounting his ties to polluting  
395 industries. I think clarifying this will be very helpful.

396         And that is about the only thing I hope that we may be  
397 from the positive point of view out of this hearing other  
398 than a lot of genuine, heartfelt complaints.

399         Thank you, Mr. Chairman.

400         [The prepared statement of Mr. Waxman follows:]

401         \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
402 Mr. {Stearns.} And I thank the distinguished ranking  
403 member of the Full Committee.

404 I now will move and welcome our witnesses and I will  
405 start to my right. Mr. Williams, we are delighted to have  
406 you here. Howard Williams is the vice president and general  
407 manager of Construction Specialties, Incorporated. We also  
408 have Mark A. Mitchell, who is a doctor and co-chair of the  
409 Environmental Health Task Force, the National Medical  
410 Association. You are welcome. And Mr. Luoto is president of  
411 Cross and Crown, Incorporated. We have Mr. Shoop. Mr.  
412 Sullivan I think introduced him but I will mention again that  
413 he is a senior environmental attorney, Oklahoma Gas and  
414 Electric Company. And we have Barbara Walz and the  
415 distinguished ranking member will introduce her, as well as  
416 Mr. Gardner.

417 Ms. {DeGette.} Well, I am delighted, Mr. Chairman, that  
418 Ms. Walz is here today. I have worked with her and her  
419 company for many years on a lot of issues and we might  
420 disagree today, but we are good friends and it is delightful  
421 to see her. And I will yield to Mr. Gardner who actually her  
422 company is in his district.

423 Mr. {Gardner.} Well, I thank the ranking member for  
424 yielding and welcome Ms. Walz as well to the committee.

425 Thank you very much for your time and to all the witnesses  
426 for being here today. If you fly into Denver from the East  
427 Coast, you fly over my district, which is 32,000 square miles  
428 on the eastern plains of Colorado. It is a very large  
429 district and you have got 44 not-for-profit systems that are  
430 located in your district. And many of them are in my  
431 congressional district and I thank you for the work that you  
432 do to make rural Colorado work.

433 Mr. {Stearns.} And our last witness is Andy Puzder, CEO  
434 of CKE Restaurants. Mr. Waxman is not here. His subtle  
435 criticism--having had been a franchisee of motels and watched  
436 all the regulations come down from the company to me, I had  
437 to spend all the money to implement it as a franchisee, so my  
438 perspective was different than perhaps the Restaurant  
439 Association. I had three or four restaurants, I had five or  
440 six motels, so I found this crushing regulation just put in  
441 perspective having been a franchisee.

442 But with that, Mr. Puzder, we are going to allow you to  
443 start your opening statement. I am sorry. We have to swear  
444 you in.

445 As you know, the testimony you are about to give is  
446 subject to Title XVIII, Section 1001 of the United States  
447 Code. When holding an investigating hearing, this committee  
448 has a practice of taking testimony under oath. Do any of you

449 have any objection to testifying under oath? No? The chair  
450 then advises you that under the rules of the House and the  
451 rules of the committee, you are entitled to be advised by  
452 counsel. Do you desire to be advised by counsel during your  
453 testimony today? In that case, would you please rise and  
454 raise your right hand? I will swear you in.

455 [Witnesses sworn.]

456 Mr. {Stearns.} Now, you may give your 5-minute opening,  
457 Mr. Puzder.

|  
458 ^TESTIMONIES OF ANDY PUZDER, CEO, CKE RESTAURANTS, INC.;  
459 BARBARA WALZ, SENIOR VICE PRESIDENT FOR POLICY AND  
460 ENVIRONMENTAL, TRI-STATE GENERATION AND TRANSMISSION  
461 ASSOCIATION, INC.; KIMBER SHOOP, SENIOR ENVIRONMENTAL  
462 ATTORNEY, OKLAHOMA GAS AND ELECTRIC COMPANY; ROBERT A. LUOTO,  
463 PRESIDENT CROSS AND CROWN, INC.; MARK A. MITCHELL, M.D., CO-  
464 CHAIR, ENVIRONMENTAL HEALTH TASK FORCE, NATIONAL MEDICAL  
465 ASSOCIATION; AND HOWARD WILLIAMS, VICE PRESIDENT AND GENERAL  
466 MANAGER, CONSTRUCTION SPECIALTIES, INC.

|  
467 ^TESTIMONY OF ANDY PUZDER

468 } Mr. {Puzder.} Thank you, Chairman Stearns, Ranking  
469 Member DeGette, and members of the Subcommittee. The Virgin  
470 Islands representative isn't here, so I can safely say that  
471 we have restaurants in every one of your districts, and it is  
472 a pleasure to be here today. I want to thank you for  
473 inviting me to testify before you on our Nation's regulatory  
474 climate. I would also point out that we do have  
475 representatives of the National Restaurant Association and  
476 the National Council of Chain Restaurants here today to hear  
477 the testimony. So while I do speak for myself and not on  
478 behalf of those organizations, they are present.

479           We own 3,250 restaurants in 42 States and 25 foreign  
480 countries under the Carl's Jr. and Hardee's brand names.  
481 With our franchisees, as the chairman mentioned, we employ  
482 about 70,000 people. Our company creates jobs and helps  
483 generate economic prosperity by building new restaurants.  
484 Each new restaurant we construct creates 25 jobs in the  
485 restaurant itself. We invest over \$1 million in the  
486 community where we construct those restaurants. But our job  
487 creation goes way beyond the restaurants. Last year, we  
488 spent \$1.25 billion for job-creating capital projects, media  
489 and advertising, supplier products and services, creating  
490 jobs in concentric circles emanating from our restaurants  
491 throughout our Nation's economy. When our ability to build  
492 new restaurants is impeded, we create few jobs.

493           Our company and its franchisees, all of whom are small  
494 business owners, are facing ever-increasing regulatory  
495 burdens that make it more difficult to open and operate  
496 profitable businesses. I am very concerned that in coming  
497 years we will be unable to create as many jobs as we would  
498 like due to increased expenses caused by various regulatory  
499 statutes and the associated regulations, particularly by laws  
500 such as the Patient Protection and Affordable Care Act.

501           An entrepreneur started our company in 1941 near where  
502 Congressman Waxman grew up, in Southcentral L.A. with \$315 he

503 used to purchase a hot dog cart. Even then, he faced a  
504 couple of regulatory challenges. Today, however, to assist  
505 in opening and operating our restaurants, we have an internal  
506 11-page list of 57 different categories of regulations with  
507 which we must comply to open and operate a simple quick-  
508 service restaurant. This list alone can discourage job-  
509 creating restaurant development. The rapidity with which  
510 legislators and bureaucrats are increasing the number of  
511 regulations with which we must comply adds to the various  
512 challenges our company and our franchisees face.

513       It is my hope to give you an understanding of some of  
514 the challenges we and our small business franchisees face  
515 every day. Two provisions of the PPACA serve to make the  
516 point. I will start with the menu-labeling provision that  
517 requires disclosure of the caloric content of our products on  
518 our menu boards. As a company, we support nutritional  
519 disclosure. As I described in my written testimony, for  
520 years we have had comprehensive, effective, and economical  
521 nutritional disclosure in our restaurants. The information  
522 is also easily accessible online at our website. If our  
523 company and franchise restaurants are forced to replace our  
524 menu board panels, we estimate it will cost approximately  
525 \$1.5 million. To put this in context, that is 33 percent of  
526 the \$4.5 million we invested last year on job-creating new

527 restaurant construction.

528           On an industry-wide basis, the FDA's regulatory analysis  
529 estimated that the initial mean cost of complying with the  
530 menu labeling regulations for chain restaurants would be  
531 \$315.1 million with an estimated ongoing cost of \$44.2  
532 million. Yet, as noted in my written testimony, independent  
533 research done to date demonstrates that caloric menu labeling  
534 has no impact on consumer eating habits. In other words,  
535 this may be a regulation that achieves little or nothing but  
536 will impose large, unnecessary costs, reducing both job  
537 creation and growth. Nutrition disclosure is important but  
538 it can be accomplished effectively and economically. The  
539 current law simply fails in each of these respects.

540           In my written testimony, I suggest a compromise that  
541 would more efficiently and economically achieve the menu  
542 labeling law's objectives. I have a number of letters with  
543 me from Members of the House and the Senate, Republicans and  
544 Democrats, including Representative Gardner, who is with us  
545 today, and Senator Feinstein from my home State, expressing  
546 concern with the impact of the menu labeling law on the  
547 restaurant industry.

548           I hope we can reach some accommodation on this law that  
549 will effectively and economically accomplish the law's  
550 objectives without imposing unnecessary costs and burdens.

551 It can be done and we are willing to put in the time and  
552 effort to do so.

553 Now, to defeat the ACA's mandatory medical coverage  
554 provisions, I am not an expert on healthcare law other than  
555 to know how it impacts our company. I also know there are  
556 people who believe universal health insurance coverage is  
557 beneficial and I am not here to debate that. However, there  
558 is a sacrifice that must be made to gain benefits. The  
559 question is whether the costs are worth the benefits. The  
560 PPACA and associated regulatory framework will eliminate job  
561 creation and opportunity. The best estimate of our  
562 healthcare consultants, Mercer Health and Benefits, LLC, is  
563 that the PPACA will increase our healthcare costs  
564 approximately \$18 million per year should it be implemented  
565 as we currently understand the regulations. That is a 150  
566 percent increase from the \$12 million we spent on healthcare  
567 last year and approximately four times the 4.5 million we  
568 spent on job creating new restaurants.

569 At this point, we do not intend to drop coverage for our  
570 employees, but the money to comply with the PPACA has to come  
571 from somewhere. We use our revenues to pay our bills and  
572 expenses, to pay down our debt, and we reinvest what is left  
573 in our business. This is how we grow and create jobs. There  
574 is no corporate pot of gold we can go to to cover increased

575 healthcare costs. New unit construction could cease if we  
576 have to allocate the monies for that construction to the  
577 PPACA, and building new restaurants is how we create jobs.  
578 We would also have to reduce our capital spending, and  
579 capital spending not only creates jobs but is important to  
580 maintaining and growing our business. We would need to  
581 reduce the number of our full-time employees, increase the  
582 number of our part-time employees. We would need to automate  
583 positions where we could and reduce compensation for the  
584 positions we retain.

585 Mr. {Stearns.} I need you to sum up. You are a little  
586 over.

587 Mr. {Puzder.} Well, I would sum up by saying what the  
588 business community wants is not laissez-faire government. I  
589 understand completely that we need regulations to accomplish  
590 things that the private sector would not accomplish on its  
591 own, and I know that people consider the PPACA a very  
592 important piece of legislation and that nationalized health  
593 insurance is something that people want to pursue. What I am  
594 here to tell you today is, one, on the menu labeling, we can  
595 do it better and more efficiently and accomplish your  
596 objectives more efficiently than they are being accomplished  
597 now. If this is the path that we go down, it will eliminate  
598 job creation. It will reduce job creation and we will have

599 to reduce it at our company.

600 [The prepared statement of Mr. Puzder follows:]

601 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|

602 Mr. {Stearns.} I thank you.

603 Ms. Walz, you are recognized for 5 minutes.

|  
604 ^TESTIMONY OF BARBARA WALZ

605 } Ms. {Walz.} Thank you. Chairman Stearns, Ranking  
606 Member DeGette, and members of the subcommittee, my name is  
607 Barbara Walz and I am the senior vice president for Policy  
608 and Environmental at Tri-State Generation and Transmission  
609 Association. I appreciate the opportunity to testify before  
610 you here today on Tri-State's views of the regulatory  
611 climate.

612 Tri-State is a not-for-profit consumer-owned electric  
613 cooperative based in Westminster, Colorado. Our mission is  
614 to provide reliable, cost-based wholesale electricity to our  
615 44 not-for-profit member systems that serve 1.5 million rural  
616 consumers in Wyoming, Nebraska, New Mexico, and Colorado.  
617 Tri-State generates or purchases power from hydropower,  
618 solar, wind, coal, and natural gas. In 2010, we integrated  
619 50 megawatts of wind and 30 megawatts of solar into our  
620 generation mix. At that time, the solar facility we built  
621 was the largest photovoltaic system in the world. The bulk  
622 of our power needs to come from coal-based power plants in  
623 Wyoming, Colorado, Arizona, and New Mexico. These plants  
624 have become an important part of the communities in which  
625 they reside. For example, the Craig Power Plant in Western

626 Colorado and the coalmines from which the company gets its  
627 coal employs 750 employees and provides 73 million in wages  
628 and benefits.

629         Tri-State's generating facilities all have state-of-the-  
630 art emission controls and yet, even with these advanced  
631 emission controls, we are struggling with regulatory  
632 uncertainty and regulatory stringency from EPA regulations.  
633 Regional Haze the Utility MACT rule, and Coal Ash are three  
634 of the examples of new regulations we are facing. Under the  
635 Regional Haze Program, States are provided the authority to  
636 make decisions about how much visibility improvement is  
637 reasonable and the controls needed to improve visibility.

638         In Colorado, the Air Quality Control Commission  
639 unanimously adopted the State Implementation Plan, or SIP.  
640 This SIP is unique. It has unanimous support from the State,  
641 from environmental groups, and from industry. This SIP has  
642 subsequently been supported by the Democratic governor, the  
643 Republican speaker of the State House, as well as Senators  
644 Mark Udall, Bennet, Ranking Member DeGette, Congressman  
645 Gardner, and the rest of the Colorado House Delegation. Yet  
646 even with this bipartisan and cross-spectrum support, there  
647 is significant uncertainty as to whether EPA will approve  
648 Colorado's SIP. EPA has not been approving surrounding  
649 States' SIPs and instead, they have issued FIPs, or Federal

650 Implementation Plans, that are more stringent. So we are  
651 uncertain as today what our Regional Haze costs will be.

652 Another issue of regulatory uncertainty that we face is  
653 EPA's pending decision on coal ash. Tri-State manages coal  
654 ash in a dry form in accordance with stringent state laws.  
655 Under the Clinton Administration, EPA made a regulatory  
656 determination that Coal Ash is not a hazardous waste, and yet  
657 EPA has recently recanted this determination and has proposed  
658 designating coal ash as hazardous. The comment period for  
659 this rulemaking closed in 2010 but EPA said they won't make a  
660 final decision until 2013. During this reversal of decision  
661 by EPA, 28 States, including Colorado, have sent letters to  
662 EPA stating that programs that they have established under  
663 state law are sufficient to protect public health and the  
664 environment.

665 A second concern that Tri-State has is the manner in  
666 which EPA is stringently interpreting its rulemakings. The  
667 Utility MACT is an example of this stringent approach. Under  
668 this rule, EPA was supposed to develop a standard based on  
669 the performance of existing units, but what they did was  
670 cherry-pick the lowest emissions of pollutants from a variety  
671 of sources from across the country and the standard does not  
672 represent the performance of a single unit in the United  
673 States. Some have referred to this facility as ``Franken-

674 MACT.'' For new coal units, the emission limits in the MACT  
675 Rule are so stringent that technology vendors have told EPA  
676 that they cannot design equipment to meet these stringent  
677 standards. This rule essentially prohibits building new coal  
678 plants in the United States and coal is our lowest-cost  
679 source of energy that Tri-State provides.

680 As a not-for-profit cooperative, any costs associated  
681 with complying with EPA regulations is passed onto the end  
682 users of electricity in the form of higher electricity bills.  
683 Tri-State provides electricity to rural farms, ranches, and  
684 businesses and our service territory includes some of the  
685 poorest counties in the country. These folks cannot afford  
686 these ever-increasing costs.

687 Tri-State urges the committee to exercise continued  
688 oversight over EPA's regulatory activities to help us meet  
689 our mission of providing affordable and reliable electricity.

690 I would like to thank Ranking Member DeGette and  
691 Congressman Gardner for their recent support in both Regional  
692 Haze and Coal Ash issues. Thank you.

693 [The prepared statement of Ms. Walz follows:]

694 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|

695 Mr. {Stearns.} I thank the gentle lady.

696 Mr. Shoop, for 5 minutes we recognize you.

|  
697 ^TESTIMONY OF KIMBER SHOOP

698 } Mr. {Shoop.} My name is Kimber Shoop. I am senior  
699 counsel at Oklahoma Gas and Electric Company. We appreciate  
700 the opportunity to come before you today to provide our view  
701 of the regulatory climate in the aftermath of President  
702 Obama's Executive Order 13563.

703 OG&E serves approximately 790,000 customers in 268  
704 communities in Oklahoma and Western Arkansas. While we are  
705 the largest electric utility in Oklahoma, OG&E is considered  
706 medium- to small-sized investor-owned utility and lacks the  
707 resources possessed by many of the much larger utilities in  
708 the industry. Nonetheless, OG&E's commitment to customers  
709 and its innovative thinking has been duly recognized by  
710 significant industry observers. In 2011, OG&E was named best  
711 in class for customer satisfaction by JD Power and  
712 Associates, and I am also very proud to report that OG&E was  
713 named 2011 utility of the year in North America by Electric  
714 Light and Power Magazine.

715 OG&E has set a goal of reaching the year 2020 without  
716 adding any new fossil fuel generation by focusing on energy  
717 efficiency, demand response, smart grid, renewable wind  
718 power, and building new transmission. The recent suite of

719 EPA rules under the Clean Air Act constitutes a serious  
720 challenge to OG&E's efforts because they effectively force  
721 OG&E to make immediate or very near-term high-stakes choices  
722 regarding its generation fleet.

723         With regard to meeting SO<sub>2</sub> emission limits alone, OG&E  
724 will be forced to choose whether to install scrubber  
725 technology on its coal plants, which could cost over a  
726 billion dollars, or discontinue coal generation from units  
727 that still have much life in them and move closer to a  
728 primarily all natural gas fleet. Each of these options alone  
729 is extremely expensive for OG&E and ultimately our customers.  
730 We determined that either option would lead to the largest  
731 rate increase in our company's history.

732         Other EPA rules are further complicating the decision by  
733 creating new emission limits for NO<sub>x</sub>, acid gases, particulate  
734 matter, and mercury. The President's executive order should  
735 have a welcome, therapeutic impact in improving our ability  
736 to meet in a more reasonable, cost-effective manner  
737 legitimate environmental objectives that Oklahomans and  
738 Americans in general generally desire. But OG&E does not see  
739 EPA successfully balancing the executive order's laudable  
740 objectives of protecting public health and safety and  
741 environmental quality on the one hand with promotion of  
742 economic growth, innovation, competitiveness and job

743 creation.

744           OG&E does not see EPA sufficiently improving its  
745 processes by using the best available science or by truly  
746 being interested in allowing for meaningful public  
747 participation in an open exchange of ideas as called for in  
748 the executive order. OG&E most certainly does not see EPA's  
749 regulatory approach as promoting predictability and reducing  
750 uncertainty, and OG&E does not find that EPA has taken into  
751 sufficient consideration comparative benefits and costs of  
752 its regulations.

753           For example, OG&E worked with various state interests in  
754 the DEQ and Oklahoma to craft a state compliance plan for the  
755 EPA's Regional Haze Rule. This flexible Oklahoma solution  
756 provided optionality to OG&E, minimized the impact on  
757 customers in state economy, and retained increased natural  
758 gas use as an alternative. Most importantly, this solution  
759 met the visibility improvement goals of the Regional Haze  
760 Rule. Unfortunately, the EPA rejected this reasonable  
761 approach and stuck to its rigid position with regards to  
762 scrubbers or conversion to gas within 5 years.

763           OG&E does not view the EPA's rejection of Oklahoma's  
764 regional haze SIP as being consistent with the executive  
765 order's stated goal of achieving environmental results on a  
766 more cost-effective or creative basis. The overlay of

767 regional haze mandates with potentially different technology  
768 demands and unsynchronized compliance schedules for such  
769 items as U-MACT, CSAPR, and the soon-to-be-seen greenhouse  
770 gas regulations magnify our unpredictability problem  
771 significantly.

772         The strict and unpredictable timetables could also  
773 affect the reliability of service for OG&E and the other  
774 members of our regional grid. A mandate to invest over a  
775 billion dollars would make it difficult for OG&E to continue  
776 focusing on things like wind energy, energy efficiency,  
777 demand-side management, and will make it more difficult to  
778 invest in the base-level commitments for maintaining and  
779 operating our business. If we can achieve the same desired  
780 environmental results at a lower cost, which we think is the  
781 President's laudable intention underlying the executive  
782 order, we believe we have an obligation to do so.

783         For us to make intelligent capital investment decisions,  
784 we need to treat all of the new EPA rules holistically to  
785 create a coordinated, rational plan for selecting compliance  
786 strategies from the range of options in a way that makes  
787 sense to our state economies, our ratepayers, and the  
788 environment. We would hope that the result of the hearing  
789 today would be for the subcommittee to work together on a  
790 bipartisan basis to see the objectives of President Obama's

791 executive order become elemental drivers of all that EPA  
792 does.

793 Thank you.

794 [The prepared statement of Mr. Shoop follows:]

795 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|

796 Mr. {Stearns.} I thank the gentleman.

797 Mr. Luoto, welcome, for 5 minutes.

|  
798 ^TESTIMONY OF ROBERT A. LUOTO

799 } Mr. {Luoto.} Chairman Stearns, distinguished members of  
800 the Subcommittee on Oversight and Investigation, my name is  
801 Bob Luoto, and I am a third-generation lifelong professional  
802 logger. My wife Betsy, son Kirk, and I own and operate Cross  
803 and Crown, which is based out of Carlton, Oregon. During my  
804 almost 38 years as a professional logger, I have proudly  
805 served as a president and board member of both the Associated  
806 Oregon Loggers and the American Loggers Council. The  
807 Associated Oregon Loggers has named me Logger of the Year and  
808 my wife Betsy was named Woman of the Year for community and  
809 philanthropic leadership. Currently, I serve as board  
810 chairman for the Sustainable Forestry Initiative.

811 I consider myself very blessed to have the opportunity  
812 to share with you the personal thoughts and the enormous  
813 increasing uncertainty created by our regulatory system.  
814 Despite the stated intent of Executive Order 13563, it is  
815 contributing to the collapse of the professional logging  
816 community in the United States.

817 Our Nation's forest wealth supports, among other things,  
818 an industry critical to both our national economy, as well as  
819 hundreds of rural communities like the one I call home in

820 Western Oregon. The forestry sector in the United States is  
821 the world's largest, supporting almost 1.1 million full-time  
822 jobs and generating over \$108 billion to our national economy  
823 annually.

824 I am so proud of my family's history and business to  
825 contribute to the world's greatest forestry country.  
826 Currently, we employ 40 men and women and have an annual  
827 payroll of almost \$1.5 million, which includes comprehensive  
828 health benefits, retirement 401K, and vacation pay. We have  
829 two trained foresters on staff and all our employees have  
830 been trained in Best Management Practices by the Oregon  
831 Professional Loggers Master Logger Program, which was created  
832 to satisfy the strict environmental standards set by the  
833 Sustainable Forestry Initiative.

834 However, as look closer at the forestry sector, we see  
835 that the most critical component, the men and women who  
836 actually harvest and transport the wood to be used by the  
837 woods products industry may soon be lost forever. From 2001  
838 to 2011, the United States logging workforce has declined  
839 from 73,500 to 48,400, a loss of almost 25,000 or 35 percent.  
840 Further, the logging workforce has lost jobs each and every  
841 year between 2001 and 2011.

842 My home State of Oregon has suffered greatly as well.  
843 From 2001 to 2010 we have also lost 33 percent of our logging

844 jobs. Our company has had to lay off 10 people at the  
845 beginning of 2008 and only recently have we been able to hire  
846 some back. However, we have been having trouble hiring young  
847 men and women, even those from families of professional  
848 loggers because they are choosing not to enter or reenter our  
849 profession in the light of the legitimate concern for the  
850 future of the industry. We see clear proof of this in recent  
851 significant aging of the logging workforce. In 2001, for  
852 instance, the average workforce was 40 years and a half; in  
853 2010, it is 46 years old.

854         When we think of all the causes of the collapse of the  
855 professional loggers in the United States, the one that I  
856 feel tremendously the volatility that is created by the  
857 regulatory system is one of the most significant. You need  
858 to look no further than the tremendous uncertainty created  
859 from our professional logger from the recent 9th Circuit  
860 Court of Appeals decision that invalidated the EPA's  
861 Silvicultural Rule. This rule, which has been in effect for  
862 almost as long as I have been a logger, excludes  
863 silvicultural activities such as construction of logging  
864 roads, logging roads from certain permitting requirements  
865 under the Clean Water Act. The EPA adopted this exclusion  
866 because of professional loggers like me are trained to use  
867 best management practices and otherwise comply with state

868 regulations and the Clean Water Act and prevent water  
869 pollution.

870         Since the construction of logging roads is essential to  
871 most loggers' businesses, many are concerned in what form and  
872 cost of this completely new permitting requirement will be,  
873 as well as how this may otherwise affect us and allow other  
874 people to try to interfere with our businesses. If we can't  
875 build roads, our logging operations will come to a halt and  
876 eliminate not only our company and jobs but the companies  
877 that rely on us for our business.

878         As I read Executive Order 13563, I feel the EPA has been  
879 ordered to quickly resolve the uncertainty created by the  
880 invalidation of the Silvicultural Rule. So Executive Order  
881 13563 states, ``some sectors and industries face a  
882 significant number of regulatory requirements, some of which  
883 may be redundant and consistent or overlapping.'' In light  
884 of this instruction, the EPA should be working with Congress  
885 today to pass the Silvicultural Regulatory Consistency Act,  
886 H.R. 2541, and amend the Clean Water Act to explicitly permit  
887 the long-standing Silvicultural Rule.

888         And I would like to thank Representative Sue Myrick and  
889 Mike Ross, esteemed members of this subcommittee, for their  
890 sponsorship of this Act. Make no mistake, the invalidation  
891 of the Silvicultural Rule is only one of the many sources of

892 regulatory uncertainty facing our professional loggers.  
893 Further sources of regulatory uncertainty could be how the  
894 EPA will treat bioenergy from woody biomass for the purpose  
895 of greenhouse gas emissions. In addition, there is no end in  
896 sight to the litigation of our national forests in our State,  
897 which has had a huge impact on my home State of Oregon.  
898 Oregon is made up over 55 percent National Forest land and we  
899 cannot reasonable even use these to help our lives in our  
900 communities. Many Oregon counties are now facing enormous  
901 budget shortfalls, increased poverty, and related social  
902 problems, and this has taken a toll not only on the  
903 professional loggers and the forestry sector but on all our  
904 most important resource, our children.

905 In conclusion, I would like to make it very clear that I  
906 agree with the core principles of 13563, but in order for  
907 this regulatory system to meet all of these goals, the system  
908 must emphasize long-term certainty. That is very crucial to  
909 this whole thing.

910 On behalf of my wife Betsy, my son Kirk, my daughter  
911 Marisa, my daughter-in-law Jenna, son-in-law Jesse, and my  
912 grandchildren Liam, Finn, Landon, and Lydia, I would like to  
913 thank you for hearing--I got them all in there--

914 Mr. {Stearns.} I think you did.

915 Mr. {Luoto.} --bit of a mouthful--I will take questions

916 later on. Thank you.

917 [The prepared statement of Mr. Luoto follows:]

918 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
919 Mr. {Stearns.} I think you forgot your dog.

920 Mr. {Luoto.} I did. Yeah. But I will get it in there  
921 later.

922 Mr. {Stearns.} Dr. Mitchell, we want to recognize you  
923 and welcome you for your 5 minutes.

|  
924 ^TESTIMONY OF MARK A. MITCHELL, M.D.

925 } Dr. {Mitchell.} Thank you. Good morning, Chairman  
926 Stearns and Ranking Member DeGette and members of the  
927 subcommittee. My name is Dr. Mark Mitchell and I am a public  
928 health physician and I focus on environmental health, and I  
929 am also co-chair of the Environmental Health Task Force of  
930 the National Medical Association, which is representing over  
931 40,000 African American physicians and their patients. I am  
932 here to testify about the need for strong regulation to  
933 protect the public health and the health of workers, as well  
934 as to maintain public confidence in the safety of business  
935 and the abilities of government to protect the U.S.  
936 residents.

937 I was previously the director of the Hartford,  
938 Connecticut, Health Department, and in that capacity, it  
939 became apparent to me that although the public health was  
940 generally improving, there were certain diseases and  
941 conditions that were increasing in frequency. Those  
942 conditions are things such as asthma, cancer, learning  
943 disability, obesity, and diabetes. I also noticed that the  
944 conditions are more likely to be caused by environmental  
945 factors and could lead to a larger part of the American

946 population suffering major disabilities and premature death  
947 if these trends continue. This is even more important in  
948 African American, Latino, and low-income communities where  
949 there are greater hazardous environmental exposures, as well  
950 as greater health disparities. These environmental risk  
951 factors can only be reduced through local, state, national  
952 and international environmental regulations.

953         Although environmental regulation is so important, the  
954 only group that I was hearing from when I was health director  
955 about environmental regulation was the regulated community  
956 complaining about too much regulation when it was apparent to  
957 me that the regulations support business by protecting their  
958 credibility and that there is not enough regulation to  
959 protect environmental health. I want to make sure that when  
960 people walk into a restaurant that they feel safe eating in  
961 that restaurant, that they don't think that they don't expect  
962 that they are going to get sick from eating in that  
963 restaurant for example.

964         When I talked to people in my community, they assumed  
965 that government would automatically have their interest in  
966 mind and would act in the best interest of the public to  
967 protect them. I could see that this was not always the case.  
968 This realization persuaded me to focus my career on  
969 environmental health and environmental justice issues as an

970 advocate for the public. When I talk to other physicians  
971 both within and outside the National Medical Association  
972 about environmental health, they are often very concerned.  
973 They usually recognize the significant morbidity and  
974 mortality that they are seeing in their patients due to  
975 hazardous environmental exposures. And as they learned more  
976 about the environment and about environmental regulations,  
977 they become even more concerned for the health of their  
978 patients.

979 I was previously on a U.S. Food and Drug Administration  
980 advisory panel on blood and blood products, and there I was  
981 surprised at the number of foreign companies that wanted  
982 their products approved by the FDA, even though they were not  
983 looking to sell those products in the United States. This is  
984 because of the FDA's reputation for protecting health. I was  
985 told that they could use their FDA approval as a guarantee to  
986 potential customers that their products are safe and  
987 effective. This is why regulation can be good for business  
988 and good for the public.

989 I am also aware about products such as DES, or  
990 diethylstilbestrol, that were not approved by the FDA and  
991 that went on to cause major disability in other countries  
992 where it was approved. Generations of Americans were  
993 protected by the FDA's prevention of this drug from coming to

994 market and causing this disability. Yes, it is true that  
995 regulations need to be updated from time to time to keep up  
996 with changing needs, including changing products,  
997 technologies, and lifestyles. Ineffective regulations need  
998 to be dropped, effective regulations need to be modified, and  
999 new regulations need to be developed to meet the new  
1000 situation. Changes in regulations take time, often longer  
1001 than 1 year.

1002         Many businesses see the benefits of regulation and do  
1003 not see regulation as overly intrusive on business. I work  
1004 to get health protection regulations, such as chemical policy  
1005 reform, developed on a state and national level. When I  
1006 speak to businesses large and small about regulation, they  
1007 are more often concerned about regulatory certainty and  
1008 predictability than about the burden of meeting regulations.

1009         The question that we were asked to answer as part of  
1010 this panel was about what businesses have seen in the past  
1011 year with regard to the regulatory change, and regulations  
1012 actually take--there is a slow and deliberative process to  
1013 dismantling regulations, which is the same process as  
1014 creating regulations, so I would not expect to see much of a  
1015 change within a 1-year period.

1016         In conclusion, physicians are becoming more and more  
1017 concerned about the effect of environmental exposure on

1018 health. The National Medical Association believes that our  
1019 country needs to have strong health protective regulations on  
1020 the local, state, and federal levels. Strong regulations can  
1021 keep the workforce healthy and productive, as well as to keep  
1022 healthcare cost lower. This is good for business, good for  
1023 the workers, and good for America.

1024 Thank you for the opportunity to speak, Mr. Chairman,  
1025 and I am available to answer questions after the panel is  
1026 finished.

1027 [The prepared statement of Dr. Mitchell follows:]

1028 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1029 Mr. {Stearns.} I thank you, Dr. Mitchell.

1030 Mr. Williams, you are recognized for 5 minutes.

|  
1031 ^TESTIMONY OF HOWARD WILLIAMS

1032 } Mr. {Williams.} Thank you, Chairman Stearns and  
1033 Representative DeGette, especially thank you to the minority  
1034 for courageously inviting an unrepentant conservative  
1035 Republican to testify.

1036 Economic uncertainty is not the primary deterrents to  
1037 growth and development in today's business. I will repeat  
1038 two comments that Representative DeGette made this morning in  
1039 her opening remarks from the Sustainable Business Council.  
1040 Weak demand is business owners' biggest problem. Small  
1041 business owners see regulations as a necessary part of a  
1042 modern economy so long as they are fair and reasonable.

1043 I manage a division of an American-owned small  
1044 multinational corporation. The division that I manage is  
1045 \$110 million per year, 450 people, and we make and develop  
1046 architectural building products. And clearly, these last 3  
1047 years have been the most difficult years and the most  
1048 uncertain years from an economic standpoint. And while we  
1049 are not oblivious to regulation, regulation has not for a  
1050 moment stalled or stopped our capital expenditures, our  
1051 market and new product developments. After a flat year in  
1052 2009, 2010 as well as 2011 rebounded with double-digit year-

1053 over-year growth. And in the construction sector, that  
1054 growth was not mirrored by any other segment within the  
1055 construction sector.

1056 Our rate of annual growth is promising and we in a  
1057 thriving and free market economy recognize it is that  
1058 thriving free market economy that self-regulates demand,  
1059 supply, and price, but it does not uniformly or equitably  
1060 self-regulate health, safety, and the environment.  
1061 Entrepreneurs are free to invest, to win or lose their  
1062 investments, but in the areas of health, safety, and the  
1063 environment, do we have the right to invest what is not  
1064 solely ours to risk? We debate who will pay for the  
1065 healthcare, and again, we are not oblivious as a business to  
1066 where that intersection is rapidly looming. But failing to  
1067 address substantiated causation, we continue to amass an  
1068 environmental and health debt that will be as burdensome to  
1069 the future as our current economic debt is to the present.  
1070 These are debts that only business can pay because only  
1071 business generates capital.

1072 Increasingly, the causes of cancer, diseases such as  
1073 autism, Parkinson's, and other illnesses are being linked to  
1074 chemicals of concern and yet we struggle to reform decades-  
1075 old regulation. In the absence of TSCA reform, business  
1076 costs are rising, not because the federal regulation, but for

1077 lack of it. States are enacting their own chemical  
1078 regulations, businesses are requiring environmental  
1079 declarations revealing chemical makeup of products and  
1080 materials, and businesses are individually investing in  
1081 meeting consumer and business-to-business needs. A federally  
1082 harmonized chemical regulation will set and control the  
1083 health and safety aspects while making business information  
1084 available.

1085         Reduced economic regulation removes uncertainty and  
1086 encourages the free market to invest and grow. With freedom  
1087 comes the responsibility to conduct business in ways that  
1088 create and sustain a durable economy. It is in business'  
1089 self-interest to do that. However, in the areas of health,  
1090 safety, and the natural environment, the invisible hand of  
1091 the free market does not naturally yield to the good of the  
1092 whole.

1093         We conservatives will readily hold up Atlas Shrugged and  
1094 we will point at Washington and say overreaching,  
1095 overreaching, overreaching, but ultimately, the storyline in  
1096 that book is as much about business and creating or  
1097 condemning adverse, self-serving business interests as it is  
1098 the overreach in the government.

1099         We have invested in the research and the capital  
1100 equipment necessary to remove chemicals of concern from our

1101 products. Much of our recent growth is directly attributable  
1102 to that work, to those investments, and to that research.  
1103 Such investment would almost argue against regulation but  
1104 differentiation by regulation is not an acceptable business  
1105 practice. We have no right to gain at the risk of the  
1106 health, safety, and environment of either the present or the  
1107 future. A strong America is strong economically, physically,  
1108 and militarily. Regulations are not generally associated in  
1109 that context, but in the areas of health, safety, and the  
1110 natural environment, two of the three will stand or fall and  
1111 responsible regulation helps to ensure that they stand.

1112 Thank you.

1113 [The prepared statement of Mr. Williams follows:]

1114 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1115           Mr. {Stearns.} I thank you. And I will start with my  
1116 first questions.

1117           Mr. Williams, you actually believe that economic  
1118 uncertainty is totally divorced from regulatory uncertainty?  
1119 Yes or no?

1120           Mr. {Williams.} No.

1121           Mr. {Stearns.} Okay. Because, you know, if you are a  
1122 business and you are operating a Hardee's and you hear there  
1123 is a huge amount of regulation, the first thing you do as an  
1124 owner, operator, or franchisee, you say hold it, I don't want  
1125 to invest anymore capital until I understand what the  
1126 regulatory environment is. And you sort of indicated in your  
1127 opening statement that economic uncertainty is not tied to  
1128 regulatory uncertainty. And so that is just my observation.

1129           Let me go to Mr. Luoto. You have made a very passionate  
1130 opening statement. I was just struck by the fact that you  
1131 said that there was a 33 percent decline in your business and  
1132 obviously you are one of the persons who said when the  
1133 President did his op-ed and he talked about his Executive  
1134 Order 13563, you would say there was a genuine problem out  
1135 there.

1136           Mr. {Luoto.} Yeah, it is obvious in what has happened  
1137 to our industry. We have had litigation National Forest, we

1138 have had litigation now on our Clean Water Act and the EPA  
1139 has by the 9th Circuit. So that has really given us a huge  
1140 uncertainty.

1141 Mr. {Stearns.} Certainly, that impact from EPA, doesn't  
1142 that create an economic uncertainty in your mind?

1143 Mr. {Luoto.} Yes. Yeah. Yeah.

1144 Mr. {Stearns.} Yeah. Ms. Walz, do you feel that the  
1145 impressions you got based upon this Executive Order 13563  
1146 that the President issued this, did he truly understand the  
1147 impacts of the regulatory climate on the private sector,  
1148 including small businesses?

1149 Ms. {Walz.} I am not certain if he understood at that  
1150 time of writing it I guess but I would say I that I have not  
1151 seen any progress--

1152 Mr. {Stearns.} Right.

1153 Ms. {Walz.} --that it has actually accelerated. We are  
1154 seeing more regulation at a faster pace.

1155 Mr. {Stearns.} Mr. Luoto, do you get the impression on  
1156 these regulations in your businesses that these regulations--  
1157 do you feel that they are evaluated in terms of an economic  
1158 impact or are they just not solution-oriented but sort of  
1159 almost adversarial? What is your feeling?

1160 Mr. {Luoto.} You know, they are not solution-orientated  
1161 really because, you know, litigation just stops everything.

1162 So there is no solution other than courts and litigation. So  
1163 when we end up with that, we have no certainty. And to me,  
1164 you know, we have got to have more certainty in our industry.  
1165 That is why we are losing our people, we are losing jobs, and  
1166 in Oregon especially with the National Forest, that has been  
1167 a bone of contention for, you know, 25, 30 years that we have  
1168 been going back and forth on.

1169 Mr. {Stearns.} So bottom line is this regulatory  
1170 climate you have talked about has made it very difficult to  
1171 preserve existing jobs?

1172 Mr. {Luoto.} It has. It is--

1173 Mr. {Stearns.} Yeah. And Ms. Walz, my question to you  
1174 is since this last executive order, do you perceive a net  
1175 improvement in the general regulatory climate facing your  
1176 business or your industry more broadly?

1177 Ms. {Walz.} I do not see a net improvement.  
1178 Regulations are coming out faster and more furiously.

1179 Mr. {Stearns.} Okay. Mr. Puzder, a question for you.  
1180 Do you think the federal or state regulators generally think  
1181 about ways in which they can render old or non-cost-effective  
1182 rules less burdensome? Does that ever occur on their mind?  
1183 Removing them from books before they come out with new  
1184 regulations? That is, do they go backwards and look at what  
1185 is on the books already before they ask for new ones?

1186           Mr. {Puzder.} We certainly haven't seen any evidence of  
1187 that. As I said, we had that 11-page, single-spaced, 57  
1188 categories of regulatory issues we have to comply with when  
1189 we build or operate a fast food restaurant. And that list  
1190 doesn't get shorter; it just seems to get longer.

1191           Mr. {Stearns.} You make it clear that you are not an  
1192 opponent of federal regulations. In fact, you write that ``I  
1193 believe that our country needs government regulations to  
1194 advance a number of social goals which the unfettered market  
1195 will not accomplish on its own.'' What is it, then, in your  
1196 view that causes certain regulations to go bad?

1197           Mr. {Puzder.} I think what happens is when your job is  
1198 to create regulations to enforce a statute that Congress has  
1199 enacted, people do so with great vigor. And I would say the  
1200 vigor over the past few years has been phenomenal. We are  
1201 seeing very, very aggressive regulation where I wish we just  
1202 had a little more communication with the business community.  
1203 And you can't always communicate with the associations that  
1204 represent the businesses because, for example, the National  
1205 Restaurant Association in our case represents a number of  
1206 different kinds of restaurants from Morton's Steakhouse to  
1207 Taco Bell to Carl's Jr. and Hardee's, and the concerns of  
1208 each of those segments is different. So if you don't talk to  
1209 people actually from the businesses--and I realize that there

1210 is maybe some resistance to people coming in here and  
1211 complaining, which is why I tried to complain. I mean but  
1212 there are issues and we think we can actually contribute to  
1213 more sensible, efficient regulations and a regulatory  
1214 structure that will accomplish the goals Congress wants to  
1215 accomplish without damaging the business. You know, don't  
1216 treat us as the enemy. We want to help and we are here to  
1217 help.

1218 Mr. {Stearns.} We had a hearing on ObamaCare and the  
1219 waivers that occur and McDonald's got a waiver, Waffle House  
1220 got a waiver. Did Hardee's apply for a waiver?

1221 Mr. {Puzder.} We got a waiver with respect to what are  
1222 called Mini-Med plans. These are the same things that  
1223 McDonald's and these other--and really everybody had to get  
1224 those because if retailers didn't get those, then part-time  
1225 employees or low-level full-time employees would have had no  
1226 insurance coverage.

1227 Mr. {Stearns.} I guess specifically your restaurants,  
1228 how many employees of the CKE restaurants currently receive  
1229 ObamaCare waivers on the law annual limits requirement?

1230 Mr. {Puzder.} Well, all of the employees--we have  
1231 21,000 company employees. All of the restaurant-level  
1232 employees who do not have a company-covered plan would be  
1233 covered by that waiver. They would have the Mini-Med plan--

1234 Mr. {Stearns.} And if they didn't have that waiver--

1235 Mr. {Puzder.} --and that number is 1,100 currently  
1236 enrolled in those plans.

1237 Mr. {Stearns.} And what would happen if you didn't have  
1238 that waiver? What would happen?

1239 Mr. {Puzder.} Well, the insurance would go away. The  
1240 insurance companies wouldn't issue those policies. They have  
1241 annual caps so there--

1242 Mr. {Stearns.} So wouldn't the law ObamaCare raise the  
1243 cost of healthcare for you?

1244 Mr. {Puzder.} It will raise it by 150 percent is the  
1245 best estimate.

1246 Mr. {Stearns.} So when the waivers run out, you are  
1247 going to face a serious problem?

1248 Mr. {Puzder.} We are going to have to figure out a way  
1249 to deal with a 150 percent increase and a very substantial  
1250 cost.

1251 Mr. {Stearns.} I thank you. My time has expired.

1252 Ms. {DeGette.} Well, let me ask you a question, Mr.  
1253 Puzder. Before the Affordable Healthcare Act was enacted by  
1254 Congress, did you offer health insurance to your employees?

1255 Mr. {Puzder.} We offer health insurance to all of our  
1256 employees. At the lower level it is employee-paid. It is  
1257 the Mini-Med plans--

1258 Ms. {DeGette.} Right, so--

1259 Mr. {Puzder.} --which are, I know, \$38 a month.

1260 Ms. {DeGette.} Yeah, those are like the part-time  
1261 employees and people like that.

1262 Mr. {Puzder.} Part-time and we cover 60 percent--

1263 Ms. {DeGette.} I am sorry. I only have 5 minutes. So  
1264 for your lower-paid employees, what is the average amount  
1265 that they make every year?

1266 Mr. {Puzder.} I do not know what the average amount of  
1267 our lower-level--

1268 Ms. {DeGette.} Well, what is the hourly rate? Do you  
1269 have any idea?

1270 Mr. {Puzder.} I can tell you how many get the minimum  
1271 wage. It is a small percentage--

1272 Ms. {DeGette.} Okay, but they are the lower-paid  
1273 employees. Do you have any idea how much those insurance  
1274 policies were costing for those people?

1275 Mr. {Puzder.} Well, most of them don't get those  
1276 policies.

1277 Ms. {DeGette.} Right. So how did they pay--

1278 Mr. {Puzder.} They go to the emergency room.

1279 Ms. {DeGette.} Yeah, they go to the emergency room.

1280 And there were 37 million Americans like that. So all of us  
1281 were paying for those 37 million Americans, including your

1282 employees, to go the emergency room. That is why we passed  
1283 the bill.

1284 Mr. {Puzder.} That is right.

1285 Ms. {DeGette.} And I want to say that I really admire  
1286 what your company has done with the nutrition information. I  
1287 was looking at that and I think that is--because you did that  
1288 voluntarily, right?

1289 Mr. {Puzder.} Yes.

1290 Ms. {DeGette.} And there is these new regulations that  
1291 are pending right now which would require any fast food  
1292 business over a certain number of employees to post something  
1293 similar to what you guys have been doing for years, right?

1294 Mr. {Puzder.} No.

1295 Ms. {DeGette.} Okay. What is it then?

1296 Mr. {Puzder.} You know what the menu board is when you  
1297 walk in a fast food restaurant?

1298 Ms. {DeGette.} Right, yes.

1299 Mr. {Puzder.} They are requiring that you put the  
1300 caloric--we have to redo all the menu boards--

1301 Ms. {DeGette.} Right.

1302 Mr. {Puzder.} --to put the--

1303 Ms. {DeGette.} No, no, I understand that but--

1304 Mr. {Puzder.} None of this other stuff is required.

1305 Ms. {DeGette.} Right. What I am saying is they are

1306 requiring other people to post the caloric information like  
1307 you have been doing voluntarily in your own way for years.

1308 Mr. {Puzder.} Yes.

1309 Ms. {DeGette.} That is only part of what you have been  
1310 doing. I understand.

1311 Mr. {Puzder.} Right.

1312 Ms. {DeGette.} So did you know that the National  
1313 Restaurant Association actually supports that regulation?  
1314 Because before there was a patchwork of 50 state regulations  
1315 that people had to comply with, yes or no?

1316 Mr. {Puzder.} I guess--

1317 Ms. {DeGette.} Yes or no? Did you know the National  
1318 Restaurant Association supports that?

1319 Mr. {Puzder.} Yes.

1320 Ms. {DeGette.} Okay. I happen to think--and I would be  
1321 happy to work with you--if there is a business like yours  
1322 that is actually doing this plus more, they should be able to  
1323 get a waiver from that regulation. But there is something to  
1324 be said for not making people comply with a patchwork of 50  
1325 state regulations.

1326 Mr. {Puzder.} No, that is absolutely right.

1327 Ms. {DeGette.} Good, thank you.

1328 Mr. {Puzder.} And actually doing this is much cheaper  
1329 than what the law requires so--

1330 Ms. {DeGette.} Right.

1331 Mr. {Puzder.} --restaurants should be--

1332 Ms. {DeGette.} Right, but I think if you are doing a  
1333 good job, you should be able to get a waiver and I comply  
1334 with that.

1335 Now, Ms. Walz, I want to ask you because you and I have  
1336 actually talked about these issues before. With respect to  
1337 these environmental regulations--the Regional Haze, the  
1338 Utility MACT, the Coal Ash, all that--your main problem is  
1339 you want to know what are the rules and how are you going to  
1340 comply with them? And the uncertainty is a big part of what  
1341 your problem is right now, isn't it?

1342 Ms. {Walz.} That is correct.

1343 Ms. {DeGette.} I mean you have applied for the state  
1344 SIP. We all support it. You haven't heard. That gives  
1345 uncertainty, your business, right?

1346 Ms. {Walz.} Yes.

1347 Ms. {DeGette.} And Mr. Shoop, that is part of your  
1348 problem, too, uncertainty in regulation, right? And Mr.  
1349 Luoto, you, too? You don't know what the regulations are  
1350 going to be and that gives you uncertainty in making your  
1351 business plan, right?

1352 Mr. {Luoto.} Yes.

1353 Ms. {DeGette.} And Mr. Williams, when you do your

1354 business plan, you factor in the cost of those regulations to  
1355 doing business, right?

1356 Mr. {Williams.} Yes.

1357 Ms. {DeGette.} Okay. So I want to ask you, Mr. Shoop,  
1358 you don't think that we should get rid of the environmental  
1359 laws, do you?

1360 Mr. {Shoop.} Oh, absolutely not.

1361 Ms. {DeGette.} No. And you don't think so, Ms. Walz,  
1362 do you?

1363 Ms. {Walz.} No, I don't think so.

1364 Ms. {DeGette.} I mean the Clean Air Act, for example,  
1365 that provides a good public benefit, right? And--yes, Ms.  
1366 Walz, I am sorry.

1367 Ms. {Walz.} Yes, it does provide public--

1368 Ms. {DeGette.} And Tri-State has been complying with  
1369 the Clean Air Act for decades.

1370 Ms. {Walz.} Correct.

1371 Ms. {DeGette.} So what you need to have is regulations  
1372 that make sense and that are certain and that are not overly  
1373 burdensome, right?

1374 Ms. {Walz.} Correct.

1375 Ms. {DeGette.} And you feel the same way, right, Mr.  
1376 Shoop?

1377 Mr. {Shoop.} Yes.

1378 Ms. {DeGette.} And Mr. Luoto, I assume you feel the  
1379 same way, too? You don't think we should get rid of the  
1380 Clean Water Act?

1381 Mr. {Luoto.} No.

1382 Ms. {DeGette.} Okay, good. So, see, we can find some  
1383 agreement, Mr. Chairman. I just want to point one thing out  
1384 in my remaining 19 seconds--two things. Number one, the  
1385 President's executive order, which was roughly 1 year ago,  
1386 supplemented and reaffirmed the principles of regulatory  
1387 review established under Executive Order 12866. ``Agencies  
1388 have to propose or adopt regulations only when benefits  
1389 justify costs, impose the least burden on society considering  
1390 the cost of cumulative regulations, maximize net benefits,  
1391 and select inter-regulatory approach, specify performance  
1392 objectives, and identify and assess available alternatives to  
1393 direct regulation.'' Now, you don't disagree with that, do  
1394 you, Mr. Puzder?

1395 Mr. {Puzder.} Not at all.

1396 Ms. {DeGette.} And Ms. Walz? Yes or no? Do you  
1397 disagree with those goals?

1398 Ms. {Walz.} No.

1399 Ms. {DeGette.} Mr. Shoop?

1400 Mr. {Shoop.} No.

1401 Ms. {DeGette.} Mr. Luoto?

1402 Mr. {Luoto.} Agreed goals.

1403 Ms. {DeGette.} Dr. Mitchell?

1404 Dr. {Mitchell.} Yes, I agree.

1405 Ms. {DeGette.} And Mr. Williams?

1406 Mr. {Williams.} I agree.

1407 Ms. {DeGette.} Okay. Just one last thing, Mr.

1408 Chairman. I just want to point out for the record that there  
1409 were fewer regulations issued by executive agencies for the  
1410 first 3 years of this administration than from the first 3  
1411 years of the previous administration. And if there are  
1412 regulations that are giving uncertainty or that are not  
1413 tailored for their specific purpose, we all want to work  
1414 together to fix those regulations. The wholesale elimination  
1415 of the Clean Air Act or the Safe Drinking Water Act or  
1416 environmental regulations or food safety, that is not the way  
1417 to go about this.

1418 And once again, for the eighth time, I hold out my hand  
1419 to say let us work together on this because overly burdensome  
1420 regulations are not in anybody's best interest.

1421 Mr. {Stearns.} I thank the gentlelady and we recognize  
1422 Mr. Terry.

1423 Mr. {Terry.} Thank you. And Ms. Walz, has Tri-State  
1424 complied with the Clean Water Act and the Clean Air Act?

1425 Ms. {Walz.} Yes.

1426 Mr. {Terry.} All right. So what we are talking about  
1427 here in regulations are new proposed regulations, not whether  
1428 or not you have complied with the last?

1429 Ms. {Walz.} That is true.

1430 Mr. {Terry.} And in your testimony you mentioned a  
1431 couple. You mentioned Utili-MACT and Fly Ash. Those  
1432 directly affect your ability to produce energy, correct?

1433 Ms. {Walz.} Correct.

1434 Mr. {Terry.} All right. Are there other like Boiler  
1435 MACT that also impact your business?

1436 Ms. {Walz.} Yes, there is a long list of regulations,  
1437 yes.

1438 Mr. {Terry.} So the issue is despite that there are  
1439 some overall number that is similar to the number of  
1440 regulations issued from one administration to the other, your  
1441 industry is dealing with multiple ones at one time, correct?

1442 Ms. {Walz.} Yes.

1443 Mr. {Terry.} And what happens to the additional costs  
1444 that are incurred to comply with the new rules?

1445 Ms. {Walz.} Those are passed directly on to the end  
1446 users of electricity because we are a not-for-profit entity.

1447 Mr. {Terry.} So those costs are passed on.

1448 Ms. {Walz.} Right.

1449 Mr. {Terry.} Have you at least looked at Utili-MACT?

1450 At least with our utilities in Nebraska, they have to deal  
1451 with CSAPR, Boiler MACT, Fly Ash, and Utili-MACT. The one  
1452 that they think will be the most costly is Utili-MACT. Have  
1453 you been able to determine what the cost per plant to comply  
1454 with Utili-MACT?

1455 Ms. {Walz.} It varies from plant to plant. I would  
1456 say--

1457 Mr. {Terry.} Sure.

1458 Ms. {Walz.} --the most expensive rule we are facing  
1459 right now is Regional Haze.

1460 Mr. {Terry.} Okay.

1461 Ms. {Walz.} However, there is a pancaking of these  
1462 rules and you really look at MACT costs do this, add on what  
1463 Regional Haze costs, add on what the new water effluent  
1464 standards cost, add on what the Coal Ash, add on what the  
1465 Boiler Rule costs, and this is an increasing cost over time.  
1466 Quite honestly, it forces you to look at what point will you  
1467 shut that facility down.

1468 Mr. {Terry.} Is that something that you are actually  
1469 thinking about, that you may have to shut down a facility?

1470 Ms. {Walz.} We are looking at the economics of each of  
1471 these rules and they have a potential, yes, to shut down  
1472 existing plants.

1473 Mr. {Terry.} When combined.

1474 Ms. {Walz.} Correct.

1475 Mr. {Terry.} Getting back to Utili-MACT alone, have you  
1476 been able to, you know, take any plant and say it is going to  
1477 cost x millions of dollars to comply? Omaha Public Power has  
1478 already said for their coal fire plant that really is only 10  
1479 years old, that they are going to have spend over 400  
1480 million. Have you done something similar?

1481 Ms. {Walz.} We have looked at the cost to our existing  
1482 plants. We are already very highly controlled at Tri-State,  
1483 at all of our facilities, so it is not as significant. The  
1484 main issue we have is the fact that we have an air permit to  
1485 build a new plant in Kansas and this rule will stop that. We  
1486 cannot get a technology company to say that, yes, we can  
1487 design and build to those new standards. So essentially it  
1488 will stop--

1489 Mr. {Terry.} So a technology isn't even available to  
1490 build to the new standards?

1491 Ms. {Walz.} It is not available.

1492 Mr. {Terry.} Okay. Well, that is certainty, isn't it?  
1493 You are certain that you can't comply; therefore, you don't  
1494 build it.

1495 Ms. {Walz.} Yes.

1496 Mr. {Terry.} Okay. Well, good. Then we have  
1497 accomplished that.

1498           One last question. And do you feel--and I think we all  
1499 feel that we want clean water, we want clean air. Is there a  
1500 cost-benefit analysis that you feel comfortable that the  
1501 investments to comply or decision to shut down will actually  
1502 increase public health in your area? Have you gotten records  
1503 from the Colorado Department of Health that will show that  
1504 there has been x number of cases of elevated mercury in  
1505 people in an area of one of your coal fire plants, for  
1506 example?

1507           Ms. {Walz.} The cost-benefit analysis that we have seen  
1508 is actually the most recent one, and the rule that was  
1509 finalized today is the Utility MACT Rule. And that cost-  
1510 benefit analysis, really it is a mercury rule. It is a  
1511 hazardous air pollutant rule and that the benefits that EPA  
1512 estimates for mercury reduction is about \$6 million.  
1513 However, they go on to calculate and include economic benefit  
1514 for reduction of particulate matter and estimate that I  
1515 believe the number is 90--

1516           Mr. {Terry.} Okay. I would love to come back and do  
1517 this but I have got to ask Dr. Mitchell.

1518           Did you treat patients?

1519           Dr. {Mitchell.} Yes, I have.

1520           Mr. {Terry.} Do you take a history from them?

1521           Dr. {Mitchell.} Yes, when I--

1522 Mr. {Terry.} When you obtain a history, do you call  
1523 them a complainer?

1524 Dr. {Mitchell.} No, we were asking them--

1525 Mr. {Terry.} Oh, well, then why do you call these four  
1526 people a complainer because they set out some issues that  
1527 affect their business just like a patient would to you?

1528 My time is done.

1529 Ms. {DeGette.} Wait a minute. Let him answer the  
1530 question. I ask unanimous consent to let Dr. Mitchell answer  
1531 the question.

1532 Mr. {Terry.} He answered the question. I asked him if  
1533 he takes a history and whether he calls them a complainer.  
1534 He said no.

1535 Ms. {DeGette.} You asked, why did he complain about the  
1536 other four witnesses? Let him answer the question.

1537 Mr. {Stearns.} I think in all fairness, Dr. Mitchell,  
1538 do you want to take 15 seconds just to--

1539 Dr. {Mitchell.} Yes.

1540 Mr. {Stearns.} Go ahead.

1541 Dr. {Mitchell.} Thank you.

1542 I did not say that the other businesses are complainers  
1543 and obviously there needs to be a balance--

1544 Mr. {Stearns.} Okay.

1545 Dr. {Mitchell.} --and they have issues and--

1546 Mr. {Terry.} All right, now, may I?

1547 Mr. {Stearns.} Okay, 15 seconds.

1548 Mr. {Terry.} Okay, thank you.

1549 But you did state in your opening statement that when  
1550 you were in a position to hear people talk about regulations  
1551 that they were just complaining. Now, I would from that  
1552 statement--

1553 Mr. {Stearns.} Dr. Mitchell, he really has the time so  
1554 I mean you have had your chance to--

1555 Mr. {Terry.} Just to state that your opening statement,  
1556 you said people who--

1557 Mr. {Stearns.} I think--

1558 Mr. {Terry.} --question regulations you viewed as just  
1559 complaining and so--

1560 Mr. {Stearns.} Okay, we are going to conclude this. We  
1561 can go back and forth here for an hour.

1562 And we are going to let Mr. Waxman move on. He will--

1563 Mr. {Waxman.} I ask unanimous consent not that we give  
1564 more time to the gentleman from Nebraska but give time to our  
1565 witnesses, 30 seconds to say what he wants to say.

1566 Mr. {Stearns.} Does anybody object to the unanimous  
1567 consent? Go ahead, 30 seconds.

1568 Dr. {Mitchell.} What I was saying in my opening remarks  
1569 is that the only people I was hearing from about regulations

1570 was the regulated community, that the public thought that the  
1571 government was going to protect them and that they didn't  
1572 need to communicate with government about regulations.

1573 Mr. {Stearns.} Thank you, Dr. Mitchell.

1574 We recognize Mr. Waxman, 5 minutes.

1575 Mr. {Waxman.} Thank you, Mr. Chairman.

1576 Three years ago, Dr. Patrick Michaels testified before  
1577 the Energy and Environment Subcommittee that widely accepted  
1578 scientific data has overestimated global warming and that  
1579 regulation enacted in response to that data could have a very  
1580 counterproductive effect. In the CV he provided the  
1581 committee, he provided what appeared to be a comprehensive  
1582 list of all of his financial support, over \$10,000. After  
1583 the hearing, we learned that Dr. Michaels had omitted  
1584 information about his advocacy group called New Hope, which  
1585 apparently attempts to rebut the prevailing consensus on  
1586 climate change science. Further, Dr. Michaels did not  
1587 disclose financial support he received for New Hope from  
1588 energy sector supporters, including Tri-State Generation and  
1589 Transmission. When Representative Welch, then a member of  
1590 this committee, asked Dr. Michaels to clarify the record, he  
1591 failed to give a clear answer. It is important that we learn  
1592 about his discrepancy and find out if Dr. Michaels was  
1593 misrepresenting himself as an unbiased researcher if in fact

1594 he was receiving significant support from energy companies  
1595 and polluting industries for advocacy work.

1596         On Tuesday, I sent a letter to Ms. Walz asking her to  
1597 come prepared to answer questions about any past or current  
1598 arrangements Tri-State has or had with Dr. Michaels, New  
1599 Hope, and any other affiliated organization. Ms. Walz,  
1600 according to an affidavit Dr. Michaels filed in federal  
1601 court, Tri-State provided Dr. Michaels' advocacy group  
1602 \$50,000 in 2006 to work on climate science issues. That is  
1603 correct, isn't it?

1604         Ms. {Walz.} Congressman Waxman, I received your request  
1605 late Monday in the day. I was in a meeting but needed to  
1606 leave the office quick, but what I did is actually Googled  
1607 Dr. Michaels because I had never heard of him and I wasn't  
1608 quite sure what the relevance to my testimony was here today.

1609         Mr. {Waxman.} Well, my question is about your company.  
1610 I want to know whether Tri-State funded Dr. Michaels, his  
1611 advocacy firm, or affiliated organizations before or after  
1612 2006 to work on climate science issues. Can you detail this  
1613 funding history for the committee?

1614         Ms. {Walz.} Based on the timing of your request, I have  
1615 not had time to research this and bring forward information.

1616         Mr. {Waxman.} Will you get us that information for the  
1617 record?

1618 Ms. {Walz.} We are looking at your request and we will  
1619 bring a response to you as appropriate.

1620 Mr. {Waxman.} Dr. Michaels' affidavit also states that  
1621 Tri-State ``requested that its support of \$50,000 be held  
1622 confidential.'' Do you know why Tri-State requested that its  
1623 funding effort be held confidential?

1624 Ms. {Walz.} I had no personal knowledge of Dr. Michaels  
1625 or any work he had done with Tri-State.

1626 Mr. {Waxman.} Tri-State is an electric cooperative. It  
1627 is not an organization that typically funds climate change  
1628 science research. Is it--

1629 Mr. {Gardner.} Will the gentleman yield?

1630 Mr. {Waxman.} No. I want to pursue my questions.

1631 Mr. {Gardner.} Will the gentleman yield? I would like  
1632 to know why--

1633 Mr. {Waxman.} No, the gentleman's time--I am asking my  
1634 questions.

1635 Mr. {Stearns.} The gentleman has the time. I would  
1636 caution the gentleman that--

1637 Mr. {Waxman.} Mr. Chairman, point of order. My time is  
1638 running out and I don't want to be cautioned and I don't want  
1639 to be interrupted. Ms. Walz--

1640 Mr. {Stearns.} Well, you have the time.

1641 Mr. {Gardner.} I will remember that the next time you

1642 ask somebody to yield.

1643 Mr. {Waxman.} I ask unanimous consent I be given  
1644 additional minutes so I can--

1645 Mr. {Stearns.} No, you go ahead. We will give you an  
1646 extra--

1647 Mr. {Waxman.} Does the gentleman object? Are you the  
1648 one that asked me to yield?

1649 Mr. {Stearns.} The gentleman has the time. Use your  
1650 time as your time is running.

1651 Mr. {Waxman.} Now, Tri-State is an electric  
1652 cooperative. It is not an organization that typically funds  
1653 climate change science research, is it?

1654 Ms. {Walz.} Tri-State funds--

1655 Mr. {Waxman.} Yes or no?

1656 Ms. {Walz.} --R&D for carbon management and carbon  
1657 policies.

1658 Mr. {Waxman.} Are there other climate scientists--well,  
1659 these are things I want you to get to us. Are there other  
1660 climate scientists that Tri-State funds? Can you provide  
1661 information about any such activities for the committee? Ms.  
1662 Walz, \$50,000 is a lot of your members' money. What could  
1663 Tri-State hope to get in return? I want answers to that. I  
1664 think it is pertinent to the integrity of the testimony we  
1665 get before the Congress.

1666           Your members might be surprised to learn that their  
1667 money was used to fund an advocacy firm to downplay the  
1668 significance of climate change. When witnesses come before  
1669 the committee, they should speak honestly and not mislead the  
1670 Congress about their intentions or supporters. Ms. Walz,  
1671 your information will help us to determine whether that was  
1672 accurate or not.

1673           This is not the only incidents of this committee  
1674 receiving questionable testimony. TransCanada recently  
1675 testified that the steel to be used in the Keystone XL  
1676 pipeline would be manufactured at an American steel mill. It  
1677 turns out that is not the case. Given the information, it is  
1678 imperative this committee ensure that it is receiving  
1679 accurate testimony. I think that should be of interest to  
1680 members on both sides of the aisle. A good place to start  
1681 would be to further examine Dr. Michaels' conduct and  
1682 determine if he provided false or misleading information to  
1683 the committee.

1684           And I would like to yield to whoever was asking me to  
1685 yield.

1686           Mr. {Stearns.} Mr. Gardner, do you want to take a  
1687 little opportunity here?

1688           Mr. {Gardner.} I believe the gentleman's time has  
1689 expired.

1690 Mr. {Stearns.} The gentleman's time has expired. We  
1691 recognize Mr. Sullivan for 5 minutes.

1692 Mr. {Sullivan.} Thank you, Mr. Chairman.

1693 I have a question for Mr. Shoop. In your testimony you  
1694 indicated that OG&E's current capitalization is 5.5 billion  
1695 and its annual operating revenue is 3.9 billion and that to  
1696 purchase the scrubbers that EPA's Regional Haze Federal  
1697 Implementation Plan would require would cost an additional 1  
1698 billion or more. Do I understand your testimony correctly in  
1699 saying that you don't want to commit to that 1 billion or  
1700 more for scrubbers because other cheaper alternatives to  
1701 attain the Regional Haze objectives exist and because you  
1702 want to first know whether or not other EPA regulations such  
1703 as Utility MACT are either going to compel the investments in  
1704 scrubbers or other alternatives? And if so, do I understand  
1705 that you are really saying that for a utility your size, it  
1706 is imperative to be able to determine a comprehensive  
1707 strategy for complying with all EPA regulations in order to  
1708 invest efficiently and not wastefully? Do you think that  
1709 EPA's decision to issue a Federal Implementation Plan to  
1710 Oklahoma for Regional Haze is reflective of the executive  
1711 order's directive to adopt the most cost-effective approach  
1712 to attainment of environmental objectives?

1713 Mr. {Shoop.} Well, thank you. And, you know, a billion

1714 dollars for OG&E is a lot of money and that is just the  
1715 capital end of things. There is also annual O&M which is  
1716 going to be north of \$100 million every year to go along with  
1717 those scrubbers. So it is a lot of dollars and we would like  
1718 time to investigate alternatives. We are looking and  
1719 studying dry sorbent injection technology, which is largely  
1720 untested. There are a lot of things that we need to check,  
1721 we need to run tests, and it could be that that is a much  
1722 cheaper alternative than the scrubbers, but we need time to  
1723 test it and the clock is running on not only Regional Haze  
1724 but also these other rules as well.

1725         So I think that the EPA, if they were to combine some of  
1726 these rules instead of keeping them in silos and allow us to  
1727 address them holistically, I think we can achieve compliance  
1728 probably in a much more cost-effective way.

1729         Mr. {Sullivan.} Also in your testimony you mention that  
1730 the EPA decided to include Oklahoma in the Cross-State Air  
1731 Pollution Rule. Based on computer modeling that suggested  
1732 that the Oklahoma utilities emissions were threatening to  
1733 place a county in Michigan in noncompliance with ambient air  
1734 standards, prior to this revelation by EPA, did the Agency  
1735 ever make such a claim of Oklahoma's emission impact with any  
1736 Michigan county?

1737         Mr. {Shoop.} You know, originally, Oklahoma was studied

1738 and it was determined that Oklahoma was impacting Texas. And  
1739 then in the final rule that came out with CSAPR, Oklahoma was  
1740 omitted from that final rule and they came out with a  
1741 supplemental rule and changed their mind and said that  
1742 Oklahoma was now impacting a county in Michigan, which  
1743 currently is in attainment by the way. So we have got  
1744 serious concerns about that model and we have got serious  
1745 concerns about the science behind it. It is just illogical  
1746 to us that we could be impacting that lone county and nothing  
1747 in between. So we really have some serious concerns. We  
1748 filed comments with the EPA on those modeling assumptions and  
1749 we hope that we get some more answers.

1750 Mr. {Sullivan.} It would be funny if it weren't so  
1751 serious, wouldn't it?

1752 Mr. {Shoop.} Yeah.

1753 Mr. {Sullivan.} Thank you.

1754 Mr. {Stearns.} The gentleman yields back the balance of  
1755 his time.

1756 And Dr. Burgess is recognized for 5 minutes.

1757 Dr. {Burgess.} Thank you, Mr. Chairman.

1758 Mr. Puzder, I really appreciate the interactions you had  
1759 with Ms. DeGette about the board being required in the  
1760 restaurants. My pizza restaurant in Lewisville, Texas, a  
1761 Domino's, is generally just walk-in business or carryout or

1762 delivery and they are going to be required to put one of  
1763 these big boards up. As you mentioned, there is some expense  
1764 involved. All of the information is available online. I can  
1765 get the information should I so choose. I generally don't  
1766 but to have it up on the board in the restaurant when, in  
1767 fact, most of it is carryout business or delivery really  
1768 makes no sense. So people should go online and check the  
1769 individual nutritional information, though I promise you I  
1770 have never done it myself.

1771 Dr. Mitchell, I appreciate you being here, appreciate  
1772 what your organization has meant over the years. Mr.  
1773 Chairman, if I could correct my colleague. When we take a  
1774 history, the first paragraph is the HPI, history of present  
1775 illness, correct?

1776 Dr. {Mitchell.} That is correct.

1777 Dr. {Burgess.} And the line preceding that is CC or  
1778 chief complaint. That is we elicit a complaint from a  
1779 patient and then we try to help them unlike lawyers who just  
1780 never try to help anybody. Okay, that being aside--

1781 Dr. {Mitchell.} I will not comment on that.

1782 Dr. {Burgess.} You know, we had Mr. Waxman talk about  
1783 the Truth-in-Testimony and he made a pretty genuine plea for  
1784 that. So let me just ask you on the second page of your  
1785 testimony you talk about diethylstilbestrol.

1786 Dr. {Mitchell.} Yes.

1787 Dr. {Burgess.} I am not sure, though, that what you  
1788 have got in your testimony is entirely accurate because  
1789 diethylstilbestrol was approved by the Food and Drug  
1790 Administration in 1947 for the treatment of habitual  
1791 miscarriage. I am an ob-gyn physician by training. I  
1792 trained in the 1970s so of course we were the recipients of  
1793 the problems visited upon the children of women who had taken  
1794 diethylstilbestrol, and in fact in the 1970s, the Food and  
1795 Drug Administration rescinded its approval for treatment of  
1796 preterm labor. I think it was 1971. Diethylstilbestrol,  
1797 interestingly, persisted in medical practice. In fact, in  
1798 the early '70s up until about 1975 or 1977 was widely used as  
1799 post-coital contraceptives. Now, no one of this committee  
1800 remembers that. We are all familiar with Plan B and the  
1801 attempts to make that go over-the-counter in the market, and  
1802 people ask me how can you oppose this because this is  
1803 something that is helpful for patients and helpful for women?

1804 But I do remember the days when diethylstilbestrol was  
1805 routinely prescribed for that and in fact harmed pregnancies  
1806 that then continued after the regimen of post-coital  
1807 contraception was given. And in fact I don't know that it  
1808 ever worked that effectively. So I would like at some point  
1809 for you--I give you the opportunity to correct your

1810 testimony. I think it is thalidomide to which you refer but  
1811 diethylstilbestrol in fact was approved by the Food and Drug  
1812 Administration actually for several indications over the 50  
1813 years of its existence and may even still be available today  
1814 for prostate cancer. I am not entirely certain about that  
1815 because that was not my field of practice.

1816         Now, you also deal with environmental issues as  
1817 affecting particularly the constituency that you represent,  
1818 the National Medical Association minority populations, low-  
1819 income populations. I share some of your concerns but I got  
1820 to tell you the Environmental Protection Agency, right now  
1821 the number one problem that your asthmatic patients have  
1822 today is because of the Environmental Protection Agency, and  
1823 that is the prevention of the sale of an over-the-counter  
1824 rescue inhaler. Primatene was the common name for that. But  
1825 because of the EPA restrictions on the propellant used in  
1826 Primatene, no one can get it as of January 1. In fact I  
1827 spent New Year's Eve driving around my district not listening  
1828 to constituents but actually trying to buy the last remaining  
1829 copies of Primatene that were available on the shelves  
1830 because it would not be available. Now, Primatene is pretty  
1831 low cost. In fact I learned a lot that night. You can get a  
1832 package of two for \$32 at most Wal-Mart's--or you could. I  
1833 also have a prescription inhaler that has the different

1834 propellant that is now allowed but it is about three or four  
1835 times the cost of what that Primatene inhaler.

1836         So your low-income patients who are asthmatics who might  
1837 have difficulty obtaining their medications for whatever  
1838 reason actually relied upon the use of over-the-counter  
1839 Primatene. And of course some of us who are occasional  
1840 asthmatics who will wake up at two o'clock in the morning,  
1841 oh, my gosh, I got a problem. You know, I am doctor. I can  
1842 write my own prescription so it is not a problem for me, but  
1843 a lot of your patients or a lot of your constituents then are  
1844 required to either suffer through that night trying to use  
1845 the accessory muscles of breathing and being pretty miserable  
1846 or if they are really in trouble they go the emergency room  
1847 and it costs someone \$800 to \$1,500.

1848         I really appreciate Mr. Puzder's comments about, you  
1849 know, things aren't free. And I hear the President talk  
1850 about we are going to have free contraception and free  
1851 screening exams. Someone is going to pay for those. But I  
1852 just wondered if you had a comment about the unavailability  
1853 of the over-the-counter asthma medications and again the  
1854 fault of that being the EPA. And I really want to solicit  
1855 your help with Administrator Jackson and Gina McCarthy, the  
1856 Assistant Administrator who has come to this committee who  
1857 seemed at a loss as to how to deal with this.

1858 Dr. {Mitchell.} Yes. I think that Primatene was pulled  
1859 for a couple of reasons. That was one of them is because of  
1860 propellant; the other is because of concern I think by the  
1861 physicians particularly around cardiac problems with  
1862 Primatene; and a third reason is that they felt that patients  
1863 with asthma should be getting medical attention rather than  
1864 using over-the-counter--

1865 Dr. {Burgess.} Dr. Mitchell, if I may, you are a  
1866 doctor. I mean does everyone always follow your advice to  
1867 the letter? They never did for me. I would like to know  
1868 your secret.

1869 Dr. {Mitchell.} I wish it were true that they did. I  
1870 understand what you are saying and your point is good but the  
1871 issue is that they shouldn't even have to do that. We know  
1872 that ozone increases the amount of asthma attacks. We know  
1873 that particulates increase the amount of asthma attacks--

1874 Dr. {Burgess.} I know my time has expired. I have been  
1875 an asthmatic since the 1950s and I submit to you the  
1876 environmental situation was different in those days. I still  
1877 had the disease.

1878 So Mr. Chairman, with that, let me yield back to the  
1879 committee.

1880 Mr. {Stearns.} The gentleman's time has expired.

1881 Mr. Bilbray from California is recognized for 5 minutes.

1882           Mr. {Bilbray.} Thank you, Mr. Chairman. Mr. Chairman,  
1883 let me apologize to the committee because, you know, this  
1884 sort of just brings me back to the good old days of the '80s  
1885 and I was sitting as a regulator for a county of 3 million  
1886 and we had the fetal alcohol syndrome issue, and the whole  
1887 discussion at that time was that it was a major threat to the  
1888 unborn and that we needed to address it. And the proposal  
1889 came forward that we should require every restaurant to have  
1890 on its menus the warning, every restaurant on its table  
1891 posted, every bar on every table down to the point of  
1892 requiring that every chair in a stadium where alcohol was  
1893 sold had to have on the back of it a warning about fetal  
1894 alcohol syndrome. And the perception was--and Doctor, I will  
1895 bring this up--was that if we did not implement these rules,  
1896 we were going to damn generations to this terrible problem  
1897 and that if we really cared we have to do this. I was just  
1898 in my 30s at that time and sitting as a county supervisor,  
1899 and frankly, I said look, guys, in a bar there is only one  
1900 place anybody reads anything and that is the back of the  
1901 restroom door. And everybody laughed. How many years later,  
1902 where do we put our warnings for fetal alcohol syndrome?  
1903 Does that mean that we don't care about the issue that we  
1904 didn't post it everywhere, anywhere that was originally  
1905 proposed?

1906           And the reason why I bring this up, Mr. Chairman, just  
1907 because you care isn't enough. When we do regulations, we  
1908 have got to not only care but we have got to be smart the way  
1909 we apply it. Wouldn't you agree with that, Dr. Mitchell?

1910           Dr. {Mitchell.} Yes, I would.

1911           Mr. {Bilbray.} Okay. Well, let me give you an example.  
1912 We keep talking about stationary sources here and coming from  
1913 California don't you agree that one of the dirty little  
1914 secrets is that mobile sources are a major contributor to  
1915 ozone and air pollution and greenhouse gas problems?

1916           Dr. {Mitchell.} Ozone, yes, transportation and mobile  
1917 sources are in addition to the stationary sources.

1918           Mr. {Bilbray.} Okay. All the time, Mr. Chairman, that  
1919 we hear about--is there anybody here from a non-attainment  
1920 area? Okay. Now, you know, Doctor, that if you allow one  
1921 industry to pollute under a non-attainment area, that means  
1922 somebody else has to reduce it to stay within the air bubble  
1923 of the attainment area. I keep hearing all this talk of what  
1924 businesses and small businesses have to do, but at the same  
1925 time I am seeing that, this committee who claims and a lot of  
1926 people who claim to care about these air pollution issues  
1927 ignore studies come out of Florida and Kansas that show that  
1928 22 percent of the emissions coming out of mobile sources can  
1929 be tracked to inappropriate traffic control, not by the

1930 private sector that creates the jobs but by the public sector  
1931 that puts up stop signs because yield signs don't work, don't  
1932 want to use roundabouts, don't want to synchronize traffic  
1933 signals.

1934 Now, Doctor, don't you think that it is rather a little  
1935 hypocritical of us to say we care about jobs and we care  
1936 about the environment but we focus almost exclusively on the  
1937 private sector but never look at the public sector's  
1938 responsibility to do more than just mandate on the private  
1939 sector? Don't you think that maybe we ought to spend as much  
1940 time worrying about what is government doing wrong--and I  
1941 will be blunt with you--mandating things like MTB and ethanol  
1942 and some of these other issues, doing the things we have done  
1943 wrong, don't you think it is time that maybe if we really  
1944 care about the environment and public health, government will  
1945 do us--a physician would say heal thyself before you start  
1946 pointing fingers? And I would yield to you to respond to  
1947 that.

1948 Dr. {Mitchell.} Yeah, I mean I think that it is  
1949 important that we look at all the policy and particularly  
1950 obviously you as a Congress have a lot of responsibility for  
1951 that. It is clear that you don't reduce some pollution from  
1952 mobile sources by widening the roads or those types of  
1953 things, that you have got to invest in transit. That seems

1954 to be--

1955 Mr. {Bilbray.} Whoa, let me interrupt. First of all, I  
1956 am sorry. I have done enough environmental assessments to  
1957 know that the no-project options do have environmental  
1958 repercussions, that not widening a road does have  
1959 environmental--so Doctor, when you say that, I ran a transit  
1960 system, too, and I understand the benefit there. But I think  
1961 that too often you have just moved over a line that does not  
1962 reflect the reality of science. And again let me just say  
1963 there is a flip side, too, and I will say this to you. The  
1964 Clean Water Act was brought up by the ranking member and we  
1965 have got the Scripps Institution of Oceanography and the  
1966 National Academy of Science saying that for the Federal  
1967 Government to mandate the secondary mandate in the San Diego  
1968 region would be adverse to the environment, not help the  
1969 environment. And it has taken decades for people to  
1970 understand that. Do you understand that sometimes  
1971 environmental laws actually create problems rather than solve  
1972 them? Would you agree with that, Doctor?

1973 Dr. {Mitchell.} That does occur sometimes, yes.

1974 Mr. {Bilbray.} Because they are not appropriately  
1975 administered. I guess everything down the line here is there  
1976 is an assumption that common sense and practical application  
1977 like putting a warning on the back of a bathroom door rather

1978 than requiring it on the back of every seat in the stadium is  
1979 the kind of thing the American people expect us to do and  
1980 rightfully should do. And all I can say is if we want the  
1981 right to mandate stuff on these people, we not only have a  
1982 legal I think we have a moral obligation to make sure those  
1983 regulations are based in common sense, not just good  
1984 intention.

1985           And I yield back, Mr. Chairman.

1986           Dr. {Burgess.} [Presiding] I thank the gentleman.

1987           The gentleman from Texas, Mr. Green, is recognized for 5  
1988 minutes.

1989           Mr. {Green.} Mr. Chairman, I don't know how to follow  
1990 putting signs on the back of the bathroom door, but I think I  
1991 agree with my colleague because sometimes regulations do have  
1992 a benefit. And I know for lots of businesses regulations  
1993 cost too much and they put pressure on earnings and  
1994 discourage investment and innovation. And when my colleague  
1995 from California asked about a non-attainment area, I  
1996 represent East Harris County and we have 5 refineries and 20-  
1997 plus chemical plants literally in my own district plus other  
1998 ones in a neighboring area. We have refineries, chemical  
1999 plants, and lots of industry support personnel for that  
2000 industry and for the oil and gas industry. Regulations are  
2001 critical for our workers for their safety, health in our

2002 communities who I represent the fence line folks, too. And  
2003 it is true that I don't always agree with the regulations of  
2004 this administration, but I have had problems with past  
2005 administrations, too, whether they were Republican or  
2006 Democrat, on their regulations.

2007         And I know with talking with the constituents that the  
2008 public cares a great deal about benefits that come from good  
2009 regulations and I will give you an example. The Clean Air  
2010 Act, in the Houston Ship Channel, when I was in college in  
2011 the '60s you could actually light the water in the Houston  
2012 Ship Channel. And nowadays, our plants for the last 15 years  
2013 is on their intake of water has been actually getting live  
2014 fish and crabs. We still don't want to eat those crabs and  
2015 fish but they are alive and in 1960 they weren't. And so  
2016 there are benefits.

2017         Now, there is a reason when there are some regulations  
2018 whether Clean Water or Clean Air, and sometimes we have a  
2019 problem. And I know I have disagreements on probably a dozen  
2020 issues with the EPA during this recently in the last year and  
2021 a half or 2 years, but sometimes they are good issues.

2022         Mr. Shoop, you and I have worked and shared a great  
2023 concern over clean air regulations and I have to admit Texas  
2024 is kind of like Oklahoma. We don't have to have an  
2025 interpreter to talk to each other. My only complaint is

2026 Oklahoma takes too many of our football players. But we have  
2027 worked together on a resolution and I value that effort that  
2028 we have done. And that has typically been on a bipartisan  
2029 basis on our committee. And I know how important it is to  
2030 balance regulations with health and safety and our economic  
2031 interest because we would not have those 5 refineries and  
2032 those 20-plus chemical plants providing our job and our tax  
2033 base without some reasonableness to the oversight and the  
2034 regulations.

2035         And I know we are looking at the benefits of regulation  
2036 and also what the President did and I appreciate your  
2037 testimony on Executive Order 13563, but one of the benefits I  
2038 know of your particular company and it has benefitted a lot  
2039 of my companies is the Affordable Care Act. I know the  
2040 Affordable Care Act provided assistance to Oklahoma Gas and  
2041 Electric like it did some of my companies with retiree  
2042 benefits. So that would be an example--I know this may be  
2043 sacrilege in this committee because we tried to repeal it, we  
2044 tried to do everything else with it, but were there benefits  
2045 that Oklahoma Gas and Electric received from the Affordable  
2046 Care Act Early Retirement Reinsurance Program?

2047         Mr. {Shoop.} I am actually not aware of that benefit,  
2048 but if we received it, I am sure it was appreciated. But I  
2049 have no knowledge of that.

2050 Mr. {Green.} Okay. Well, you might check because I  
2051 understand you received about \$700,000 for the program and  
2052 believe me, that helps some of my, you know, constituents in  
2053 our district.

2054 Mr. Williams and Dr. Mitchell, do you have anything to  
2055 add to some of the benefits important on regulations on  
2056 individuals and companies?

2057 Dr. {Mitchell.} Yes. I mean obviously companies rely  
2058 on having a healthy workforce. If the workforce is not  
2059 healthy, then it is going to be very, very costly to the  
2060 companies both in healthcare costs as well as training for  
2061 new employees. And so I think that is it really important  
2062 for business to maintain a healthy workforce.

2063 Mr. {Green.} Mr. Williams, anything to add?

2064 Mr. {Williams.} Yes, I would reiterate that we have  
2065 grown our business, we have hired people, we have invested  
2066 capital because good business sense, market research says  
2067 that that is a good thing to do. We know regulation costs  
2068 money. We know that there is pending regulation that may be  
2069 threatening but that does not stop the opportunity for growth  
2070 and investment. The broad uncertainty of our economy and of  
2071 our debt is the largest inhibitor and the key point that  
2072 gives us cause for concern when we step back and ask  
2073 ourselves the questions associated with return on investment.

2074 Ultimately, it is the business case that allows us to move  
2075 forward and it is that business case that has allowed us to  
2076 continue to grow.

2077 Mr. {Green.} Well, Mr. Chairman, I know I am out of  
2078 time. There is a reason for the regulation. I have, like I  
2079 said, an area that is a heavy industrial. I love to hunt and  
2080 fish; I just don't want to have to do it to support my  
2081 family. I would rather have my folks working at those  
2082 plants. Thank you.

2083 Mr. {Stearns.} The gentleman's time has expired.

2084 Recognize Dr. Gingrey from Georgia for 5 minutes for  
2085 questions.

2086 Dr. {Gingrey.} Mr. Chairman, I thank you.

2087 I want to address my first remarks to Mr. Williams. Mr.  
2088 Williams, I have before me your written testimony but I  
2089 thought I heard you say--you correct me if I am wrong--you  
2090 are unabashed conservative Republican--

2091 Mr. {Williams.} Unrepentant.

2092 Dr. {Gingrey.} Unrepentant conservative Republican?

2093 Mr. {Williams.} Yes, I am.

2094 Dr. {Gingrey.} Does that mean you still consider  
2095 yourself a conservative Republican?

2096 Mr. {Williams.} Absolutely.

2097 Dr. {Gingrey.} Thank you. I thought that is what I

2098 heard you say. A little surprised that the minority staff  
2099 would have your name in their rolodex to call you as a  
2100 minority witness. Can you explain that to us?

2101 Mr. {Williams.} I had the opportunity to testify--we  
2102 had the opportunity to talk at a prior hearing regarding TSCA  
2103 reform and my understanding is that it was on the basis of  
2104 that discussion--

2105 Dr. {Gingrey.} They liked what you had to say at that  
2106 particular time?

2107 Mr. {Williams.} Apparently so.

2108 Dr. {Gingrey.} Apparently so. Yeah. Now, in your  
2109 written testimony--I am looking, Mr. Williams, on the second  
2110 page, back of the first page I guess--and you say,  
2111 ``increasingly, the cause of cancer and diseases such as  
2112 autism, Parkinson's, and other illnesses are being linked to  
2113 chemicals of concern and yet we struggle to reform decades-  
2114 old legislation.'' In regard to autism, can I ask you this?  
2115 Are you thinking of or referring to this controversial issue  
2116 about mercury and the preservatives of childhood vaccines?  
2117 Is that what you are thinking?

2118 Mr. {Williams.} I am not an expert in that area. We  
2119 have done a fair amount of research to try to understand the  
2120 market demand for materials made with safer chemicals, and in  
2121 that research, reading publications by Safer Chemicals and

2122 Healthy Families, by the Autism Association that is a part of  
2123 Safer Chemicals and Healthy Families. It is from that.

2124 Dr. {Gingrey.} Yeah. So in regard to that, about  
2125 struggling to reform legislation, do you have any legislation  
2126 particularly in mind in regard to that entity? Autism and  
2127 mercury and the preservatives, which is my understanding of  
2128 course it has been removed, but what kind of legislation did  
2129 you have in mind in regard to that?

2130 Mr. {Williams.} Regarding the TSCA reform legislation.

2131 Dr. {Gingrey.} Well, I was specifically referring to--

2132 Mr. {Williams.} Autism?

2133 Dr. {Gingrey.} Autism, yeah.

2134 Mr. {Williams.} I have none particularly in mind.

2135 Dr. {Gingrey.} Okay. Well, thank you, Mr. Williams.

2136 Let me--

2137 Dr. {Mitchell.} Can you give me a chance to answer that  
2138 question?

2139 Dr. {Gingrey.} Dr. Mitchell, I am coming right to you.

2140 Dr. {Mitchell.} Okay.

2141 Dr. {Gingrey.} And you can answer that in addition to  
2142 my other questions, but I would like for you to answer my  
2143 other questions first. I am reading your testimony and in  
2144 regard to the issue of diethylstilbestrol, DES--and hold on  
2145 just a second; let me ask the question and then you can

2146 respond--and here is what you say: ``I am also aware about  
2147 products like diethylstilbestrol, or DES, that were not  
2148 approved by the FDA and went on to cause major disabilities  
2149 in other countries where it was approved for use.'' Now,  
2150 that is your statement. And you go on to say that  
2151 ``generations of Americans were protected by FDA's prevention  
2152 of this drug from coming to market in the United States.''   
2153 Doctor, are you aware of the fact--obviously, you are not  
2154 aware of the fact that the FDA first approved DES in this  
2155 country in 1941.

2156 Dr. {Mitchell.} There was an error in my testimony.

2157 Dr. {Gingrey.} There obviously is an error in your  
2158 testimony and, look, we all are subject to making errors and  
2159 I think the chairman, Dr. Burgess, has given you the  
2160 opportunity to revise and extend your testimony, but you  
2161 know, the thing that really bothers me about all this is the  
2162 first paragraph on the second page of your testimony--and you  
2163 say, ``I was previously on a U.S. Food and Drug  
2164 Administration advisory panel.'' You were an advisory expert  
2165 for the FDA and you didn't even know that they had approved  
2166 DES for use in this country in 1941.

2167 Dr. {Mitchell.} I mean thalidomide.

2168 Dr. {Gingrey.} Well, obviously and I can understand. I  
2169 appreciate your answer but it is a little bit disturbing, Mr.

2170 Chairman, when witnesses are called before this committee as  
2171 so-called ``experts'' whether for the majority or the  
2172 minority and, you know, something like that, a mistake like  
2173 that makes me feel that the whole testimony from Dr. Mitchell  
2174 is worthless. And, you know, if the other side wants to talk  
2175 about that and ask Dr. Mitchell to explain in more detail,  
2176 they will have an opportunity to do that.

2177 And I yield back.

2178 Dr. {Burgess.} The gentleman's time has expired.  
2179 Recognize the gentleman from Colorado for 5 minutes for  
2180 purpose of questions.

2181 Mr. {Gardner.} I thank the chairman for the time and I  
2182 thank the witnesses for testifying today. And I would just,  
2183 Mr. Chairman, ask that perhaps we can get some clarification  
2184 from Mr. Waxman that Ms. Walz's testimony wasn't anything but  
2185 truthful. I think it may have come across as he was  
2186 impugning the witness here and I don't believe that that was  
2187 what he was trying to do but I would just like to perhaps get  
2188 that clarification from Mr. Waxman.

2189 And along those same lines of questions, I have served  
2190 on this committee for about a year now, a little over a year  
2191 now and have been to many, many hearings where the issue one  
2192 thing, the issue is jobs, as is the case here the issue is  
2193 regulations, as the issue is here and my colleague will go a

2194 different direction than the purpose of the hearing. In fact  
2195 it is not the first time that a red herring has been used by  
2196 my colleague. In fact so many have been used that perhaps  
2197 they ought to be an endangered species.

2198 But I would like to talk a little bit, Ms. Walz, about  
2199 some of your testimony and specifically the Regional Haze  
2200 issue. In your testimony you note that Colorado's Regional  
2201 Haze SIP has cross-spectrum support and bipartisan support.  
2202 Can you explain this collaborative approach?

2203 Ms. {Walz.} Yes. When we went through the state  
2204 hearing to put the rule in place, the environmental community  
2205 was represented and a number of environmental organizations  
2206 as well as utilities and the State, and we came up with a  
2207 negotiated agreement that all parties agreed to and said this  
2208 is the best way to go; this is good for Colorado; this is  
2209 reasonable progress.

2210 Mr. {Gardner.} And thank you. And I would like to  
2211 submit for the record letters from Governor Hickenlooper and  
2212 Senator Udall, Senator Bennet, as well as the Colorado  
2213 Congressional Delegation, the Speaker of the House in support  
2214 of Colorado's SIP for the record if I could, Mr. Chairman.

2215 Dr. {Burgess.} So ordered.

2216 [The information follows:]

2217 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
2218 Mr. {Gardner.} And would you please explain to me Tri-  
2219 State, what did you agree to do in your SIP?

2220 Ms. {Walz.} We agreed to put on control technologies at  
2221 the Craig Station, to install a selective catalytic reduction  
2222 on one of the units, and then to lower our emissions on the  
2223 other two. Its implementation, it is a \$330 million  
2224 investment in controls.

2225 Mr. {Gardner.} And that investment as you said was, you  
2226 know, you are a not-for-profit operation, so that investment  
2227 will be in turn paid for by your members?

2228 Ms. {Walz.} Correct. That is true.

2229 Mr. {Gardner.} And in your testimony you had stated  
2230 several different things including EPA requirements that may  
2231 require--so talking about the cost of various regulations and  
2232 the EPA has estimated that the benefits of the Utility MACT  
2233 rule is 6 million annually and you had stated that  
2234 unfortunately the cost of compliance is estimated to be \$9  
2235 billion annually. Do you know roughly how much of that will  
2236 be the cost that Tri-State will bear?

2237 Ms. {Walz.} On the Utility MACT side, we are in the  
2238 process of analyzing cost to existing units. We don't have  
2239 those estimates completed, but again the major impact to us  
2240 is on building the new coal unit that we have an air permit

2241 for. It will stop construction of that.

2242 Mr. {Gardner.} And again, that is a plant that will not  
2243 go forward, correct, at this point?

2244 Ms. {Walz.} Correct. Yes, we don't have vendors that  
2245 will give us guarantees that they can meet the new standard,  
2246 and without that, you don't have agencies that will give you  
2247 financing to build. And then you risk building and not being  
2248 able to comply from day one.

2249 Mr. {Gardner.} And what would happen if you had to  
2250 install three SCRs which remove nitrogen oxide at the Tri-  
2251 State Craig facility?

2252 Ms. {Walz.} If we are required to install three SCRs,  
2253 which is a real concern that we have because that is what  
2254 EPA's action is taking in other States, it would be about \$1  
2255 billion.

2256 Mr. {Gardner.} And \$1 billion would be borne by your 44  
2257 member cooperatives?

2258 Ms. {Walz.} Yes, it would.

2259 Mr. {Gardner.} Thank you.

2260 And then, Mr. Puzder, a couple of questions for you on  
2261 restaurants. What kind of nutritional disclosures does the  
2262 company currently provide you mentioned in your testimony?

2263 Mr. {Puzder.} Yeah, we disclose on large posters in the  
2264 restaurants. I have got the list here--serving size,

2265 calories, calories from fat, total fat, saturated fat,  
2266 natural trans fat, artificial trans fat, cholesterol, sodium,  
2267 total carbohydrates, dietary fiber, sugars, and proteins.

2268 And--

2269 Mr. {Gardner.} And I--

2270 Mr. {Puzder.} --it is in a poster that is framed and  
2271 this large in the restaurant.

2272 Mr. {Gardner.} And that is displayed in the restaurant.

2273 And as your testimony and previous questions answered, does  
2274 the government require you to disclose this information?

2275 Mr. {Puzder.} No, we do it in every restaurant we have  
2276 in the United States. We are not required to do it. We did  
2277 it when I was Carl Karcher's lawyer back in the early '90s.  
2278 I mean it is just a tradition of the company.

2279 Mr. {Gardner.} And you are offering healthy menu  
2280 selections as well?

2281 Mr. {Puzder.} We have turkey burgers, we have the  
2282 skinless, all-muscle chicken sandwiches, we have salads, we  
2283 have honey whole wheat buns. We have a lot of health  
2284 products.

2285 Mr. {Gardner.} And the government didn't mandate you to  
2286 do that?

2287 Mr. {Puzder.} No, we have got them and I am very happy  
2288 if people buy them.

2289 Mr. {Gardner.} And then you talked a little bit about  
2290 healthcare and the fact that healthcare cost estimates vary  
2291 so widely. How are you able to even budget for new  
2292 restaurant construction?

2293 Mr. {Puzder.} Well, you really can't. It is one of the  
2294 reasons construction has gone down in the past couple of  
2295 years. As a matter of fact, our franchisees are building  
2296 less restaurants. This will be the first year in the history  
2297 of the company which goes back to 1941 that our franchisees  
2298 outside the United States will build more restaurants than  
2299 our franchisees in the United States. We will do about 41  
2300 restaurants last year inside the United States and about 72  
2301 outside the United States. So it is become a very, very big  
2302 problem. It is the one thing that franchisees always mention  
2303 when I encourage them to build new restaurants, which I do  
2304 regularly.

2305 Mr. {Gardner.} I see my time has expired. Thank you.

2306 Dr. {Burgess.} The gentleman's time has expired. And I  
2307 hope that the exportation of chicken fried steak will add  
2308 favorably to the balance of trade.

2309 Recognize the gentleman from Virginia, 5 minutes for  
2310 questions.

2311 Mr. {Griffith.} Ms. Walz, let me ask you a few  
2312 questions if I might. Do you know what the regulations--you

2313 are a monopoly company so all the price increases get passed  
2314 through--I think you said earlier--to the consumer, is that  
2315 correct?

2316 Ms. {Walz.} I guess I wouldn't describe us as a  
2317 monopoly company.

2318 Mr. {Griffith.} Okay.

2319 Ms. {Walz.} We are a rural electric cooperative and  
2320 provide energy. Our members actually own us. We are a  
2321 wholesale energy provider and they own us and we, by  
2322 multiyear contract, give them energy.

2323 Mr. {Griffith.} Okay. And all these regulations that  
2324 we are looking at that are going to affect your industry that  
2325 you answered questions about earlier, the various types of  
2326 regulations, do you have any idea what that cost increase is  
2327 going to be?

2328 Ms. {Walz.} I don't. We have, again, a lot of  
2329 uncertainty in looking at are we going to have three SCRs or  
2330 are we going to have one SCR? Is the Coal Ash Rule going to  
2331 get finalized in 2013? So again it is that pancake effect of  
2332 each of these rules and the added cost that they each have.

2333 Mr. {Griffith.} If I told you that one of the providers  
2334 in my area, AEP, American Electric Power, had indicated that  
2335 their increased cost on some of these regulations were going  
2336 to be about 10 to 15 percent increase, would that seem to you

2337 to be a reasonable number given that they are heavily  
2338 dependent at this point on coal?

2339 Ms. {Walz.} Yeah, I think that, you know, not knowing  
2340 what their current controls are and where they have to go,  
2341 the number doesn't surprise me.

2342 Mr. {Griffith.} Do you think that your number would be  
2343 somewhere in line with theirs or are you all better  
2344 positioned than AEP?

2345 Ms. {Walz.} We are working on those numbers so I don't  
2346 have a percent increase.

2347 Mr. {Griffith.} I have a rural district as well with  
2348 small cities in it. We have median household income of about  
2349 \$36,000 per year, household income not individual. My  
2350 constituents are very concerned not only about our loss of  
2351 coal jobs because of what has been happening with regulations  
2352 in that industry also affecting your industry, but also we  
2353 are concerned that we have got a lot of folks on fixed  
2354 incomes and a lot of folks who just don't make the kind of  
2355 money that sometimes Washington bureaucrats make and think  
2356 that everybody can afford those kinds of increases. Would  
2357 you state that the area that you serve is more like the  
2358 Washington crowd or more like my district?

2359 Ms. {Walz.} The area we serve is much like your  
2360 district, yes.

2361 Mr. {Griffith.} And so if my constituents are concerned  
2362 about a 10 to 15 percent increase in their electric rate,  
2363 then you believe that perhaps your folks that you serve would  
2364 also be very concerned about significant power increases?

2365 Ms. {Walz.} Yes, they are very concerned.

2366 Mr. {Griffith.} And do you just do homes or do you also  
2367 do businesses in that rural area?

2368 Ms. {Walz.} We do rural businesses as well.

2369 Mr. {Griffith.} And I believe that they use a lot of  
2370 electricity, too?

2371 Ms. {Walz.} They do and it is actually growing in  
2372 States like Wyoming where we have oil and gas development.

2373 Mr. {Griffith.} And if their electric rates go up, do  
2374 you know how that affects their competitiveness in the world  
2375 market?

2376 Ms. {Walz.} It makes it more difficult for them to  
2377 compete in a world market when you don't have similar costs  
2378 and regulations in other countries.

2379 Mr. {Griffith.} And so it would be fair to say, would  
2380 it not, that it actually puts American manufacturers at a  
2381 disadvantage when the regulations make their energy costs  
2382 more than they might need to be otherwise?

2383 Ms. {Walz.} I would agree. American businesses are at  
2384 a disadvantage because of these increasing costs.

2385 Mr. {Griffith.} And AEP has also told me that because  
2386 of reasonable regulations that we had put on some in the past  
2387 that they have already cleaned up about 80 percent of their  
2388 emissions. Would that be similar for your company or have  
2389 you all done even better?

2390 Ms. {Walz.} I would say we started off better. I mean  
2391 we are a fairly young company so as we built our plants we  
2392 put the most advanced technology controls on them at the  
2393 time. We don't have a plant that is uncontrolled. They have  
2394 been controlled since day one.

2395 Mr. {Griffith.} Okay. And so a large part of the  
2396 problem, although we can always do better, but a large part  
2397 of the problem has been resolved since we weren't able to  
2398 catch fish out of the river that the previous gentleman  
2399 stated. Wouldn't that be accurate, that a large part of the  
2400 problem has been resolved with emissions?

2401 Ms. {Walz.} Nationwide?

2402 Mr. {Griffith.} Nationwide, yes, ma'am.

2403 Ms. {Walz.} I would say the standards that are in place  
2404 have been believed to be protective and proven to be  
2405 protective of human health and the environment. They are  
2406 just going the next notch further without valid science in  
2407 many cases.

2408 Mr. {Griffith.} Well, here is the concern we have. To

2409 get to that 80 percent in our area costs about \$6 billion.  
2410 To get to this additional 12 percent represented by some of  
2411 the new regs is going to cost 6 to 8 billion. And wouldn't  
2412 we be better off as a Nation to have a balanced approach  
2413 where we look for innovative ways to do this but also look at  
2414 ways that we don't chase businesses out of the country and  
2415 don't impact the working poor and those living on fixed  
2416 incomes who have retired and living on Social Security?  
2417 Would you agree with that?

2418 Ms. {Walz.} I agree with that.

2419 Mr. {Griffith.} I thank you.

2420 My time is up. I yield back.

2421 Mr. {Stearns.} Time is expired.

2422 Mr. Scalise is recognized for 5 minutes.

2423 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate  
2424 you holding this hearing. I know one of our colleagues on  
2425 the Democratic side called it a waste of time to have this  
2426 hearing. Frankly, I think we need to have more of these  
2427 hearings and, you know, I think it is important when you get  
2428 small business owners to take some of their time away, which  
2429 is hard for you all to do because you are running small  
2430 businesses, to come up here to Congress and share with us the  
2431 concerns that you have and the things that are happening here  
2432 that prevent you from creating jobs. I think that is one of

2433 the most valuable things we can do here so I would strongly  
2434 disagree with the statement that it is a waste of time to do  
2435 this because I know I go throughout my district meeting with  
2436 small businesses of all types and walks of life; I hear the  
2437 common theme from them it seems like every day is it is the  
2438 policies and the regulations and the laws coming out of  
2439 Washington that are their biggest impediment to creating  
2440 jobs.

2441           And so we ought to be not only having hearings but also  
2442 passing legislation as we have in the House passed over 30  
2443 bills to remove some of these regulations that you have been  
2444 sharing with us. And you know, I think we are going to be  
2445 getting other ideas from some of the things you are talking  
2446 about as well as more of the rules that continue to come out  
2447 unfortunately that show us things that we need to do to  
2448 continue to try to allow for job creation out there and stop  
2449 some of the radical stuff that is coming out of Washington.

2450           So I appreciate you first for taking the time out of  
2451 your schedules to come in here and share these stories with  
2452 us because I know I read--the Small Business Administration  
2453 had done a really important report with the impact of  
2454 regulatory costs on small firms, and they released this in  
2455 September 2011.

2456           Mr. {Stearns.} Mr. Scalise, just if you would yield for

2457 one second. Your point is exactly right. I ran a business;  
2458 I barely had time to come to something like this. The fact  
2459 that these folks would take from their business to come here  
2460 to do this is remarkable and it is a tribute to them they  
2461 want to do it. I mean if your businesses collapsed 30  
2462 percent, you really don't have the time like Mr. Luoto is  
2463 coming here. So I think that is an excellent point. Thank  
2464 you.

2465 Mr. {Scalise.} No, I appreciate that, Mr. Chairman,  
2466 because it really is a sacrifice. But again, it gives us the  
2467 real on-the-ground knowledge to know. You know, we read  
2468 these rules and laws and we fight a lot of them up here and  
2469 some people think it is just, you know, because one party  
2470 wants to fight another party. We are fighting for the  
2471 livelihoods of our small businesses back home. And so it is  
2472 valuable for us for you to share these stories because it  
2473 reiterates to us how important it is that we continue to try  
2474 to do this.

2475 But in the SBA report, they actually highlighted and  
2476 went and kind of surveyed and came up with true costs, the  
2477 true cost of regulations on our small businesses. And they  
2478 broke it down per family and the estimate by the Small  
2479 Business Administration is that the regulations and the rules  
2480 coming out of Washington cost the average American family

2481 \$15,586. That is a dramatic cost of all of these  
2482 regulations, and as many of you describe, don't even really  
2483 improve people's health. I know, Mr. Puzder, you talked  
2484 about these regulations coming out of FDA. They make you put  
2485 these things on your board that don't have anything to do  
2486 with improving health and you are doing it on your own  
2487 anyway.

2488         And, you know, I want to follow up with you because I  
2489 have talked to a small business owner who actually owns  
2490 franchises like you discussed and he said he owns a couple of  
2491 McDonald's franchises. And, you know, unlike what some  
2492 people think, these are small businesses; this isn't a large  
2493 national corporation. The person who owns a few franchises  
2494 is running those small businesses separately than the major  
2495 corporation and they are providing healthcare to their  
2496 employees. He said for the first time in his business  
2497 experience--over 40 years he has been in business--first time  
2498 he has ever had to lay anybody off was just last year and it  
2499 was because of the President's healthcare law, that the cost  
2500 of complying just with that law--and there are a whole slew  
2501 of others--but just the cost of complying with the  
2502 President's healthcare law, for the first time ever in 40  
2503 years of running a small business forced him to lay people  
2504 off. And you have talked about some of that, too. If you

2505 can expand on how your experience and how many different  
2506 franchisees do you have? How many people own those small  
2507 businesses that run--

2508 Mr. {Puzder.} We have about 200 franchise entities  
2509 between Carl's Jr. and Hardee's. Some of the restaurants  
2510 make very good money; some of them in the middle; some of  
2511 them are marginally profitable. The marginally profitable  
2512 restaurants will close. The healthcare costs will drive them  
2513 over the edge. We are going to have to reduce hiring, we are  
2514 going to have to take full-time employees and make them part-  
2515 time employees, we are going to have to automate positions.  
2516 You know, I like personal service and these kiosks that they  
2517 have where--the kids are much better at it than I am--they  
2518 can go in and order on the computer screen like an ATM. You  
2519 know, right now they are kind of cost prohibitive but the  
2520 reality is that this medical insurance law becomes effective,  
2521 they may become less cost prohibitive. We may have to put  
2522 those in the store. So we are going to have to make a lot of  
2523 adjustments to try and--

2524 Mr. {Scalise.} Do you have any idea how many jobs that  
2525 would cost just in your experience?

2526 Mr. {Puzder.} You know, we have not tried to quantify  
2527 it. The problem is that the law is very complicated. The  
2528 regulatory framework is currently very uncertain. So even

2529 Mercer Health and Benefits, one of the largest healthcare  
2530 consultants in the world and we have used them for a number  
2531 of years, they have a very difficult time giving us any kind  
2532 of rational estimate of what the cost increase is going to  
2533 be. And the first estimate I got was between 8 million  
2534 increase and 32 million and I think I finally got them to  
2535 settle in on a rational number of about 18. But it is very  
2536 hard to tell where this is going to go so I really can't give  
2537 you a number right now.

2538         Mr. {Scalise.} And literally could lead to their  
2539 closing.

2540         Well, again, I thank all of you for your time and coming  
2541 here and sharing your stories with us. It is really  
2542 important and it shows us what we need to keep fighting to  
2543 do.

2544         Thank you, Mr. Chairman. I yield back the balance of my  
2545 time.

2546         Mr. {Stearns.} The gentleman yields back and we are  
2547 going to do a second round here. And I appreciate the  
2548 witnesses being patient with us as we start the second round.

2549         I am going to show a video here which is Jim Cramer on  
2550 MSNBC yesterday. It is just about a minute, so if I could  
2551 have the video and perhaps just maybe drop the lights a  
2552 little bit. Can everybody see that okay? Yeah, okay. We

2553 can see it. Just can we make sure we hear it?

2554 Ms. {DeGette.} It is our former colleague.

2555 Mr. {Stearns.} We need sound here.

2556 Ms. {DeGette.} You know, it didn't work the last time  
2557 we tried to do it.

2558 Mr. {Stearns.} Has this been tried before? Did it  
2559 work? I am always amazed at how these things don't work  
2560 because it is so easy to get them to work. It is not like it  
2561 is difficult. We will give it another 15 seconds here and  
2562 then we will just go on. No, I think we are okay. We will  
2563 give you another chance. Well, I think the video if we had  
2564 run it would actually show Mr. Cramer going through the  
2565 litany of the problems with ObamaCare, the cost it would  
2566 incur.

2567 And I will start with my questions here and go to  
2568 Puzder. You had mentioned earlier about you had brought  
2569 Mercer in and some of their conclusions based upon the funds  
2570 that are needed required to pay that additional cost and the  
2571 effects on labor and so forth, what do you hear from your  
2572 franchisees with regard to the rising healthcare costs  
2573 attributed to the Affordable Healthcare Act and the impact of  
2574 the expansion on their businesses, the people that are trying  
2575 to make the bottom line?

2576 Mr. {Puzder.} I have had franchisees come and tell me

2577 1) that they are afraid to grow, they are afraid to build  
2578 restaurants. And it PPACA, it is the problems that ethanol  
2579 is creating with respect to food costs, it is NORB. There  
2580 are a lot of things that have them nervous but a major  
2581 concern is always the Patient Protection and Affordable Care  
2582 Act. And some of them are now trying to get out of the  
2583 business because they would just like to get their cash and  
2584 move on and not continue to grow.

2585 Mr. {Stearns.} So in addition to not growing they are  
2586 even scared to invest additional capital right now because  
2587 the uncertainty of what it would mean to them?

2588 Mr. {Puzder.} Absolutely.

2589 Mr. {Stearns.} Is that fair to say? And it would be  
2590 fair to say in the long run these rising health costs are  
2591 going to impact CKE. Does this mean you will have less full-  
2592 time and more part-time? I mean when I ran a restaurant, if  
2593 something like this happened to me I would say oh, gosh, I  
2594 will try and go where I can pay in situations at least I am  
2595 not forced to the regulations.

2596 Mr. {Puzder.} Well, it is really axiomatic in business  
2597 that if a cost goes up, you try and decrease your use--

2598 Mr. {Stearns.} Right.

2599 Mr. {Puzder.} --and in this case it would be labor.

2600 And what a lot of people are talking about is if you have

2601 three 40-hour-a-week employees that work 120 hours, if you  
2602 have four 30-hour-a-week employees, they work 120 hours. So  
2603 there is a lot of talk about reducing labor forces and this  
2604 isn't just CKE; this is in retail, restaurants and retail  
2605 general about reducing the full-time workforce to a part-time  
2606 workforce. Then you avoid the coverage. The problem is that  
2607 you lose productivity so that if everybody goes and takes  
2608 their full-time employees who have loyalty to the company and  
2609 know how to do the job, are more consistent workers, if we  
2610 lost productivity in our workforce, then we lost productivity  
2611 as a Nation. So there are offsetting costs and benefits on  
2612 both sides but it is a very difficult problem. We are  
2613 working very diligently to try and solve it.

2614 Mr. {Stearns.} When you do a projection on this, did  
2615 Mercer come up like a timeline, a projection of cost 2012,  
2616 2014 on '12, '13, '14?

2617 Mr. {Puzder.} Our big concern is 2014, which is when--

2618 Mr. {Stearns.} 2014.

2619 Mr. {Puzder.} --things become implemented. They have  
2620 not given us a projection. Actually, it is hard for them to  
2621 give us a projection for 2014 because--

2622 Mr. {Stearns.} No one knows.

2623 Mr. {Puzder.} --I mean we just don't know. I mean this  
2624 is why I am constantly hammering on them to come up with more

2625 specific guidance and it is very hard to get. Businesses  
2626 invest when they believe they can make a profit. You usually  
2627 look at a 5-year plan, you would like a 20 percent return of  
2628 your money so that in 5 years you get your money back. If  
2629 you don't know what your healthcare costs are, you don't know  
2630 what your energy costs are, you don't know what your labor  
2631 costs are, you don't know where your taxes are going, it is  
2632 very hard to come up with a rational business plan and build  
2633 and grow. And so Democrat, Republican, liberal,  
2634 conservative, House, Senate, I don't care. This is a real  
2635 problem in America. Businesses don't know whether or not  
2636 they can make a profit and therefore they are not growing.

2637 Mr. {Stearns.} You know, I think you mentioned this  
2638 earlier but did Mercer actually say that you would have to  
2639 cut your labor force? Did they go that far?

2640 Mr. {Puzder.} Well, one of the options is to reduce  
2641 full-time labor.

2642 Mr. {Stearns.} Full-time. So that was a strong  
2643 recommendation from Mercer to cut full-time labor.

2644 Mr. {Puzder.} That is one of the alternatives that they  
2645 are analyzing. Again, you know, they gave me an example of a  
2646 company that went to part-time labor, got a \$5 million in  
2647 benefits cost but lost \$30 million in productivity.

2648 Mr. {Stearns.} Yeah.

2649 Mr. {Puzder.} I can't say they have strongly  
2650 recommended it. It is one of the elements and it is a  
2651 balance that we are currently working on.

2652 Mr. {Stearns.} On the whole, your testimony states that  
2653 the ObamaCare is going to apply to all these franchisees and  
2654 yet a lot of these people are not--you have Mercer but a  
2655 franchisee doesn't--do they have benefit of the Mercer study  
2656 or do they have to do their own?

2657 Mr. {Puzder.} No, they will have to analyze their own  
2658 costs because obviously, you know, we have got 21,000  
2659 employees and about 900 restaurants. The next largest  
2660 franchisee has about 300 and most of them have one or two.  
2661 So the way the law impacts restaurants is very, very  
2662 different.

2663 Mr. {Stearns.} So each of these franchisees has to do  
2664 what you are doing with your major consultant. Do you have  
2665 any recommendations for them as a result of the Mercer  
2666 consultant to you?

2667 Mr. {Puzder.} You mean recommendations as to what they  
2668 should do to cover their healthcare costs?

2669 Mr. {Stearns.} Right.

2670 Mr. {Puzder.} At the moment I don't because I don't  
2671 even have a recommendation for what we should do. You know,  
2672 it is just very difficult to figure out at the current time.

2673 Mr. {Stearns.} On that note, I will end my questions  
2674 and recognize the ranking member.

2675 Ms. {DeGette.} Thank you, Mr. Chairman.

2676 I want to clear a couple things up for the record to  
2677 start out with. The first thing I want to clear up is with  
2678 Ms. Walz because I consulted with Mr. Waxman's staff here and  
2679 I just want the record to be really clear. It was not Mr.  
2680 Waxman's intention to in any way disparage you personally.  
2681 He was trying to explore the relationship between this  
2682 consultant and Tri-State. And I just wanted to clarify that  
2683 because one of my colleagues had made that insinuation.

2684 And Dr. Mitchell, I wanted to ask you with the exception  
2685 of the one typo which you are going to correct in your  
2686 testimony, you are under oath. You realize that. This  
2687 committee takes all of its testimony under oath, correct?

2688 Dr. {Mitchell.} Yes, I understand.

2689 Ms. {DeGette.} And that mistake in your testimony, that  
2690 was just simply a mistake; it wasn't intentional, correct?

2691 Dr. {Mitchell.} That is correct. I didn't have very  
2692 much notice and that--

2693 Ms. {DeGette.} Sure. And is the rest of your testimony  
2694 to the best of your knowledge and ability correct?

2695 Dr. {Mitchell.} Yes, it is.

2696 Ms. {DeGette.} Thank you. Now, Dr. Mitchell, I want to

2697 ask you a question about nutritional labeling, particularly  
2698 at these fast food restaurants. I know that you are the head  
2699 of the National Medical Association, which is African  
2700 American physicians I believe, is that right?

2701 Dr. {Mitchell.} No, I co-chair the Environmental Health  
2702 Task Force--

2703 Ms. {DeGette.} You co-chair the Environmental--so I  
2704 know because I am the co-chair of the Congressional Diabetes  
2705 Caucus, which is a bipartisan group. Most members of this  
2706 committee belong to it. Childhood obesity is one of the most  
2707 leading concerns in general, but in particular, among  
2708 communities of color. Has your medical association found  
2709 that to be correct?

2710 Dr. {Mitchell.} Yes, it is one of the priority issues  
2711 that the medical association is looking at.

2712 Ms. {DeGette.} Trying to prevent childhood obesity,  
2713 correct?

2714 Dr. {Mitchell.} Absolutely.

2715 Ms. {DeGette.} And is one of the issues in preventing  
2716 childhood obesity the issue of nutritional labeling of food  
2717 so parents can know what the appropriate nutritional  
2718 composition is and the calories and fat and so on?

2719 Dr. {Mitchell.} Absolutely.

2720 Ms. {DeGette.} And so maybe your association hasn't

2721 taken a position on this, but in terms of you yourself, do  
2722 you think it is a good idea if a parent goes to a fast food  
2723 restaurant with their child, that they are able to have that  
2724 kind of nutritional information available to them in a way  
2725 they can understand it and make an informed choice?

2726 Dr. {Mitchell.} Yes.

2727 Ms. {DeGette.} Okay.

2728 Dr. {Mitchell.} Yes, that is important.

2729 Ms. {DeGette.} Now, Mr. Puzder, I assume that is also  
2730 important to Carl's because that is why you folks have been  
2731 posting this nutritional information for a long time. Is  
2732 that right?

2733 Mr. {Puzder.} I would even add that if you go online on  
2734 our website you can actually make a meal for your children--

2735 Ms. {DeGette.} Right.

2736 Mr. {Puzder.} --and it will tell you all of the caloric  
2737 information.

2738 Ms. {DeGette.} Right. Now--

2739 Mr. {Puzder.} So we are very aggressive in this area.

2740 Ms. {DeGette.} Right. And you know, I appreciate that.

2741 I was telling the chairman the first time they had these  
2742 labeling requirements in New York--New York was one of the  
2743 first States that did it--I went into an establishment with  
2744 my daughter and we were horrified some of the things we

2745 thought were really healthy were not really healthy and other  
2746 things were better for us. I am sure you hear that from  
2747 consumers every day.

2748 Mr. {Puzder.} You know, the big surprise in New York  
2749 was that bagels had the same amount of calories as donuts.

2750 Ms. {DeGette.} Right. Exactly. Salads can have more  
2751 calories than sandwiches. And so unfortunately, though, not  
2752 every fast food business has taken that kind of forward  
2753 action that you have, isn't that right, Mr. Puzder?

2754 Mr. {Puzder.} That is absolutely correct.

2755 Ms. {DeGette.} So I guess what I am kind of getting at  
2756 is there are good reasons for regulations that would require  
2757 nutritional information to be provided to consumers, right?

2758 Mr. {Puzder.} And not only do I agree with that but I  
2759 propose in here that we just change the regulations so it is  
2760 more efficient and more--

2761 Ms. {DeGette.} Right.

2762 Mr. {Puzder.} --economical, not that we get rid of it.

2763 Ms. {DeGette.} And I totally agree with you. As I said  
2764 in my first round of questioning, so it is not that we should  
2765 eliminate those requirements; it is so that we should make  
2766 them reasonable for everybody, right?

2767 Mr. {Puzder.} We can make them cost-effective--

2768 Ms. {DeGette.} Right.

2769 Mr. {Puzder.} --and more consumer-effective.

2770 Ms. {DeGette.} Exactly. So, you know, like I say, it  
2771 is not like the Republicans think we should have sensible  
2772 regulations and the Democrats think we should just over-  
2773 regulate everything; it is finding that sweet spot so to  
2774 speak.

2775 Mr. {Puzder.} And as I said, I have letters here--

2776 Ms. {DeGette.} Yeah.

2777 Mr. {Puzder.} --we have met with--they are Democrats,  
2778 they are Republicans, they are Senators--

2779 Ms. {DeGette.} Right.

2780 Mr. {Puzder.} --they are members of this House--

2781 Ms. {DeGette.} Right. And, you know, I feel the same  
2782 way with Ms. Walz with Tri-State power is we have worked  
2783 together as a delegation trying to figure out how these  
2784 regulations work, isn't that correct, Ms. Walz? Now, Mr.  
2785 Puzder, you are not an expert on the regulatory process other  
2786 than how it affects your business, right?

2787 Mr. {Puzder.} Correct.

2788 Ms. {DeGette.} And so you can't come in and say,  
2789 Congress, you did make some suggestions but you can't give us  
2790 the overall what the healthcare regulations should look like  
2791 or anything like that?

2792 Mr. {Puzder.} I can't and are there even people who

2793 can? I mean it is pretty complicated.

2794 Ms. {DeGette.} Well, I mean you have to look at each  
2795 regulation--

2796 Mr. {Puzder.} That is exactly right.

2797 Ms. {DeGette.} --and see how--I mean you can't paint  
2798 everything with a big brush and say this is good or bad,  
2799 right?

2800 Mr. {Puzder.} Which is why I was a little concerned  
2801 with the comments at the beginning about associations and we  
2802 are going to try and--you know, you do need to hear from us I  
2803 think.

2804 Ms. {DeGette.} Right, but ultimately we have to make  
2805 the decisions.

2806 And the rest of you, Ms. Walz, Mr. Luoto, Mr. Shoop, you  
2807 know about your industries but you can't come in and tell us  
2808 how to make these regulations perfect for everyone, can you,  
2809 Ms. Walz?

2810 Ms. {Walz.} I can't tell you how to make them perfect  
2811 but we have had a lot of suggestions and involvement and  
2812 comments over making recommendations how to improve them.

2813 Ms. {DeGette.} And we appreciate that so much. What  
2814 about you, Mr. Shoop?

2815 Mr. {Shoop.} No, I don't think we can tell you how to  
2816 make them perfect, but we definitely have some ideas on how

2817 to do that.

2818 Ms. {DeGette.} On the ones that affect you?

2819 Mr. {Shoop.} Correct.

2820 Ms. {DeGette.} And Mr. Luoto, same with you, right?

2821 Mr. {Luoto.} Well, you know, regulations are to benefit  
2822 everybody and I think that is one of the things that we need  
2823 to do as business and working with you is to be able to get  
2824 them so they work together.

2825 Ms. {DeGette.} Amen. I think you are right.

2826 Thank you very much, Mr. Chairman.

2827 And thanks again to, you know, to the entire panel for  
2828 being here with us today.

2829 Mr. {Stearns.} And let me just do an editorial comment  
2830 to the ranking lady. I appreciate her reaching out and to  
2831 try in a bipartisan manner to talk about these issues and I  
2832 think that is why I enjoy working with her. And, Ms. Walz, I  
2833 think she aptly pointed out that Mr. Waxman in his opening  
2834 statement was bullying in a direction that normally you just  
2835 ask questions about what is relevant and in this case he  
2836 didn't. But I respect what she just said in which she did  
2837 not mean any harm. In fact, the committee tries to respect  
2838 the witnesses. But I would say to her in all candor is that  
2839 when we have had these eight hearings, we have not heard from  
2840 the administration that economic impact is the number one

2841 thing they are concerned about. It goes into lots of  
2842 different things and so that is why economic impact  
2843 particularly for a business is important. So with that--

2844 Ms. {DeGette.} Well, if the gentleman would yield--

2845 Mr. {Stearns.} Sure, I will yield.

2846 Ms. {DeGette.} --Mr. Williams can talk about economic  
2847 impact and what--

2848 Mr. {Stearns.} Okay.

2849 Ms. {DeGette.} --regulations mean to businesses if you  
2850 would like to have him talk about that.

2851 Mr. {Stearns.} No, we will move on to our next  
2852 question.

2853 Dr. Burgess.

2854 Dr. {Burgess.} I appreciate the chairman for yielding.

2855 Mr. Puzder, I just had a couple of follow-up questions  
2856 because your testimony was so compelling as this hearing  
2857 started out and your testimony about the increased cost that  
2858 your business is going to be experiencing as a result of the  
2859 Affordable Care Act. I thought it might interest you to know  
2860 that I spent the evening before we voted on the Affordable  
2861 Care Act in the Rules Committee and I had a number of  
2862 amendments that I tried to get made in order. One I remember  
2863 best was an amendment to change the title and to remove the  
2864 word Affordable, and you have simply proved the point for me

2865 here today that that would have been an appropriate amendment  
2866 for the Rules Committee to consider and undoubtedly it would  
2867 have sailed through the House of Representatives had it been  
2868 allowed to be voted on.

2869         But here is the deal. I mean all of us who were here  
2870 remember the summer of 2009. We went home to our districts  
2871 in August; we did our normal little sleepy summer town halls  
2872 and our attendance went from a couple dozen people to a  
2873 couple thousand. And people were significantly upset on both  
2874 sides but upset about what they were seeing coming out of the  
2875 then-Democratic-controlled House of Representatives. And I  
2876 will tell the thing that I heard over and over again, the  
2877 themes that came through loud and clear to me during those  
2878 summer town halls was, number one, don't disrupt the entire  
2879 system. If you are going to fix some things that need  
2880 fixing, then fix them, but don't change everything for  
2881 arguably 60 to 65 percent of the population that is satisfied  
2882 with how their medical care is administered.

2883         And then the other thing we heard was if you are going  
2884 to do anything at all, would you please help us with costs?  
2885 Because we are concerned legitimately about the increasing  
2886 costs of health insurance and medical care. So my summation  
2887 is we failed on both fronts.

2888         Now, you are not from inside this Beltway bubble; you

2889 are from outside. Am I correct in that assumption that we  
2890 failed on both charges?

2891 Mr. {Puzder.} It would seem at this point that the law  
2892 does not accomplish those goals. I would have to agree with  
2893 that.

2894 Dr. {Burgess.} Well, I don't know now what we are up to  
2895 on the total number of waivers, but it would just seem to me  
2896 that a law that has required northward of 1,500 waivers in  
2897 order to be successful is by definition not a successful  
2898 piece of legislation.

2899 Mr. {Puzder.} Absent those waivers, a lot of people  
2900 would not have health insurance.

2901 Dr. {Burgess.} That is correct. Now, on the cost side,  
2902 the efforts at cost containment, you know, really were  
2903 nonexistent. I mean if you really wanted to put people in  
2904 charge of the cost of healthcare--I mean I have a health  
2905 savings account; I have had one for 20 years--the reason I  
2906 reference the cheaper inhalers is because I am so tight I  
2907 don't like to pay for those expensive inhalers because I pay  
2908 for everything is out-of-pocket when it comes to my  
2909 prescriptions because I have such a high deductible. When I  
2910 got to the pharmacist and they say paper or plastic, they are  
2911 referring to folding money or a credit card.

2912 So it is important you keep people involved in the cost

2913 of their care. One of the big problems we have in healthcare  
2914 in America right now is that no one knows what their care  
2915 actually costs and most people don't care because we have  
2916 anesthetized them over the years with either third party  
2917 insurance or, in the case of Medicare and Medicaid and SCHIP,  
2918 government-run insurance.

2919 But the ranking member suggested that it was the cost of  
2920 the uninsured going to the emergency rooms that were a cost  
2921 driver. Number one, we haven't fixed that problem so if that  
2922 is a cost driver--if anything, we have made it worse. But on  
2923 the other hand, is that really the cost driver and is it the  
2924 cross-subsidization that your private insurance has to  
2925 provide the Federal Government because the Federal Government  
2926 with Medicare and Medicaid does not pay the cost of rendering  
2927 the service? Is that the cost driver rather than the people  
2928 showing up to the emergency rooms?

2929 Mr. {Puzder.} You know, there are a lot of alternative  
2930 options with respect to fixing the healthcare system and to  
2931 stop the dynamic cost increases that were taking place before  
2932 the PPACA and since. I think I said in my original remarks I  
2933 am not a healthcare law expert. All I can tell you is that  
2934 the way that it has been done, this way, will have a  
2935 devastating impact on the ability of the private sector to  
2936 create jobs because it allocates those costs which are now

2937 spread. They are too high but they are spread across the  
2938 broad base of taxpayers. When you allocate all those costs  
2939 to the private sector, the businesses that you are looking to  
2940 to create jobs, you inhibit if you do not eliminate our  
2941 ability to create jobs, to at least reduce it because  
2942 benefits--and I know a lot of people think the PPACA has  
2943 benefits; I am not here to argue about that--but benefits  
2944 have costs and the cost of this bill will be the ability of  
2945 the private sector to create jobs.

2946 Dr. {Burgess.} I so appreciate you saying that. I get  
2947 so frustrated when I hear the administration say that this is  
2948 going to be free and that is going to be free. You and I  
2949 know when anything has healthcare stamped on its side, it is  
2950 never free. Someone is paying the price somewhere.

2951 I thank the chairman for their recognition. I will  
2952 yield back my time.

2953 Mr. {Stearns.} I thank the gentleman.

2954 Mr. Gardner from Colorado is recognized for 5 minutes.

2955 Mr. {Gardner.} Thank you, Mr. Chairman. And I also  
2956 want to thank Ranking Member DeGette for clarifying for me  
2957 the statements made by Mr. Waxman.

2958 I just wanted to read a little bit of an article from a  
2959 December article in the Denver Post. It was December 30,  
2960 2011, and the title of it is ``Economic Certainty Being

2961 Sought by Small Businesses in Colorado.'" And it was a  
2962 survey of the Colorado/Wyoming members of the National  
2963 Federation of Independent Businesses, 7,500 members, and  
2964 their number one concern is economic certainty. And here is  
2965 the quote from the leader of the NFIB in Colorado/Wyoming is  
2966 ``their message is leave us alone. We know best. If you  
2967 want to create jobs, create economic certainty.'" We also  
2968 heard during one of the opening statements a member of this  
2969 committee who has said that this hearing is perhaps nothing  
2970 more than an airing of pet peeves, that this is pet peeves,  
2971 an issue that affects just these people and they are airing  
2972 their grievances.

2973           And so I guess I would start with that and I would start  
2974 with Mr. Puzder. Do the issues that you address today, are  
2975 these just your concern alone only affecting the businesses  
2976 that you deal with?

2977           Mr. {Puzder.} No, the issues that I raise would either  
2978 affect the entire quick service restaurant industry or retail  
2979 I would say in general if not manufacturing as well in some  
2980 instances.

2981           Mr. {Gardner.} And that is not just a couple hundred  
2982 people; that is not just a couple thousand people. How many  
2983 people would that affect?

2984           Mr. {Puzder.} We are the fifth largest, I believe,

2985 chain in the country and we have 70,000 employees. So you  
2986 can take it from there.

2987 Mr. {Gardner.} Ms. Walz, the same with you. I mean are  
2988 these issues that we talked about today, are they only  
2989 affecting Tri-State or are they affecting others around the  
2990 country?

2991 Ms. {Walz.} They are affecting all utilities across the  
2992 entire country.

2993 Mr. {Gardner.} And you mentioned you had 750 people  
2994 that worked between the coal operation in Craig and the power  
2995 plant in Craig. Those operations would be affected as well,  
2996 as would similar operations around the country?

2997 Ms. {Walz.} That is correct.

2998 Mr. {Gardner.} Mr. Shoop, the same question for you.

2999 Mr. {Shoop.} You know, when we incur a billion dollars  
3000 of cost, those costs are going to go to our customers. We  
3001 have 790,000 customers that are going to see an increase. In  
3002 my written statement I estimated that it would lead to a 23  
3003 percent increase for those residential customers, and then on  
3004 top of that, increases for industrial and small business  
3005 customers. And when we have, like last summer, 50 days of  
3006 over 100 degree weather, it is going to raise people's bills  
3007 significantly.

3008 Mr. {Gardner.} Mr. Luoto?

3009 Mr. {Luoto.} Yeah, the exclusion of the Silvicultural  
3010 Rule for loggers in the United States--there are 48,000  
3011 loggers right now currently--it was almost 70,000. It has  
3012 shrunk down. Obviously it is having a huge effect and the  
3013 uncertainty that we are facing is going to make it even  
3014 worse. You know, we have got to buy equipment; we face  
3015 uncertainty in that. So obviously it is having a huge effect  
3016 on what our industry is doing and it will have a huge effect  
3017 on America as it comes back to getting the housing industry  
3018 going and everything else because the wood will not be  
3019 available.

3020 Mr. {Gardner.} And I think the four businesses here  
3021 that have talked about that I mean really highlight the  
3022 concern that I have throughout this country and the effect  
3023 and impact that regulatory uncertainty, regulations have.  
3024 You know, looking at a report--this report is dated December  
3025 16 of 2011 from the Small Business Administration--the cost  
3026 of federal regulations, \$1.75 trillion; the cost of  
3027 regulatory burdens from new rules proposed or enacted for  
3028 2011, over \$90 billion; major regulations proposed or enacted  
3029 in 2011 as defined in the Executive Order 12866, 750; the  
3030 number of rules repealed in 2011, one, and it was a spilled  
3031 milk rule that the President spoke about at the State of the  
3032 Union address.

3033 Mr. Puzder, in your experience have you seen a  
3034 regulation or rule repealed?

3035 Mr. {Puzder.} Like I said, we have that 11-page  
3036 document with 57 categories and it just gets longer; it  
3037 doesn't get shorter.

3038 Mr. {Gardner.} Ms. Walz?

3039 Ms. {Walz.} We have seen no reductions, just  
3040 significant increase in the number of rules.

3041 Mr. {Gardner.} Mr. Shoop?

3042 Mr. {Shoop.} I do not recall any.

3043 Mr. {Gardner.} Mr. Luoto?

3044 Mr. {Luoto.} I don't see any. I think it is getting  
3045 bigger.

3046 Mr. {Gardner.} And so I think that is the challenge we  
3047 face. And as the members of Colorado small businesses and  
3048 Colorado and Wyoming, 7,500 people have said economic  
3049 certainty is the issue that they are concerned about and the  
3050 costs that that will incur to them.

3051 Ms. Walz, in our remaining time just a couple of  
3052 questions for you. We talked about the Sunflower plant. It  
3053 is the regulatory environment that is currently preventing  
3054 that plant from going forward, correct?

3055 Ms. {Walz.} I think the Utility MACT Rule, yes, we  
3056 referred to the fact that the standards are well below what

3057 vendors can design to--

3058 Mr. {Gardner.} What they can actually design  
3059 technologically available.

3060 Ms. {Walz.} Correct, yes.

3061 Mr. {Gardner.} Does that threaten the Colorado economy?  
3062 Does that threaten the businesses that cooperatives work  
3063 with?

3064 Ms. {Walz.} It threatens our ability to provide  
3065 reliable and affordable energy to our entire service  
3066 territory and Colorado's economy, yes.

3067 Mr. {Gardner.} And then going back to the SIP issue, if  
3068 the EPA does not approve the Regional Haze State  
3069 Implementation Plan that we have worked with bipartisan  
3070 support in Colorado, will that potentially hurt jobs in  
3071 Colorado and the Colorado economy?

3072 Ms. {Walz.} It will. Essentially, each time we have a  
3073 new rule that is layered on top of all the others, the  
3074 existence of the coal industry and our coal plants is  
3075 threatened with each one.

3076 Mr. {Gardner.} Thank you. I yield back.

3077 Mr. {Stearns.} The gentleman yields back.

3078 I am going to have the last word as the chairman here  
3079 and I just want to establish once and for all FactCheck.org--  
3080 it is a project of the Annenberg Public Policy Center of the

3081 University of Pennsylvania--citing numbers provided to  
3082 Congress in 2011 by the Office of Information and Regulatory  
3083 Affairs, reports that the estimated cost of federal  
3084 regulation under Obama from the time he took office to the  
3085 end of the 2010 fiscal year, not including regulation issued  
3086 by the independent regulatory agencies, was somewhere between  
3087 8 billion and 16.5 billion. During the same initial stretch  
3088 under President Bush, the estimated cost of new regulation  
3089 was between 1.3 billion and 3.4 billion. Now, all figures  
3090 are adjusted for inflation.

3091 Now, I have one slide to conclude. Just this year--we  
3092 are talking about regulations for 2012--from this we can see  
3093 that since the President's executive order, economically  
3094 significant rules repealed this year are none. We have cost  
3095 of regulation going up, nothing has been repealed, and hours  
3096 of annual paperwork is increasing. So the conclusion, at  
3097 least from the standpoint from this chairman is, regulations  
3098 are going up, nothing is being repealed. And I thank our  
3099 witnesses today. I thank all of them for coming. I think  
3100 that is--

3101 Ms. {DeGette.} Mr. Chairman, I am sorry to interrupt  
3102 but where did you get the information in that slide?

3103 Mr. {Stearns.} We would be glad to furnish you. I  
3104 think it came from the Center for Republican Conference.

3105 Ms. {DeGette.} Okay. Well, I reserve--

3106 Mr. {Stearns.} Well, you certainly can put in the  
3107 record--

3108 Ms. {DeGette.} --whether it should be put in the  
3109 record.

3110 Mr. {Stearns.} Well, I think we will offer you to offer  
3111 anything you want to change but that is it. And this  
3112 committee is adjourned. Let me just say in conclusion I  
3113 would like to thank all the witnesses but also if any member  
3114 wants to put into the record, they have 10 business days,  
3115 including you, Ms. DeGette, to submit questions for the  
3116 record. And I ask the witnesses to agree to respond promptly  
3117 to the questions. Thank you.

3118 [Whereupon, at 12:45 p.m., the Subcommittee was  
3119 adjourned.]