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COUNCIL OF THE CITY OF PHILADELPHIA
COMMITTEE ON PUBLIC HEALTH AND
HUMAN SERVICES

- - -

Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, October 9, 2007
10:15 a.m.

- - -

PRESENT:

COUNCILWOMAN MARIAN B. TASCO, CHAIR
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN W. WILSON GOODE, JR.
COUNCILMAN JAMES F. KENNEY
COUNCILMAN JUAN RAMOS
COUNCILWOMAN BLONDELL REYNOLDS BROWN

BILL 070153 - An ordinance amending Title 6 of
The Philadelphia Code, entitled "Health Code,"
by adding a new section requiring that chain
restaurants obtain and display certain
nutrition information...

- - -

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COUNCILWOMAN TASC0: Good

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morning. I would like to call the

4

Committee on Public Health and Human

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Services to order and note that we do

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have a quorum in the presence of

7

Councilman Goode; the sponsor of the

8

legislation, Councilwoman Blondell

9

Reynolds Brown; Councilman Kenney; and

10

Councilwoman Donna Reed Miller.

11

We will now have the Clerk read

12

the title of the bill.

13

THE CLERK: An ordinance

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amending Title 6 of The Philadelphia

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Code, entitled "Health Code," by adding a

16

new section requiring that chain

17

restaurants obtain and display certain

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nutrition information for food, meal and

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beverage items offered for sale, and by

20

making certain technical changes, all

21

under certain terms and conditions.

22

COUNCILWOMAN TASC0: Thank you.

23

The Chair recognizes

24

Councilwoman Blondell Reynolds Brown for

25

any comments she might want to give, and

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 then we'll open the floor to other
3 Councilmembers before we begin the
4 testimony.

5 COUNCILWOMAN BROWN: Good
6 morning, and let me thank all of you for
7 your interest and your anticipated
8 expertise and perspective on this issue.
9 Let me first attempt to put why we are
10 discussing this in a context.

11 There were a number of triggers
12 for me. I will only speak to two. One
13 of which speaks to the fact that
14 childhood obesity, as reported by the
15 National Institutes of Health and the
16 Center for Disease Control, who recently
17 produced a report, have made it plain and
18 clear that childhood obesity is on the
19 rise. Currently, nationally there are 11
20 million children, or 16 percent, of young
21 people who are obese, and to the extent
22 that government needs to be concerned
23 about that, take a look at that as part
24 of a piece of a bigger puzzle, then we
25 need to do that. Thus, part of the

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 reason for the discussion today.

3 The other trigger is -- and
4 it's factual -- that Americans eat a
5 third of calories from away-from-home
6 foods, twice as many calories as in the
7 1980s. Without clear, easy-to-use
8 nutrition information, it is difficult to
9 make informed choices. Few people would
10 guess that a small chocolate shake at
11 McDonald's has more calories than a Big
12 Mac.

13 Nutrition information is
14 especially needed by the millions of
15 Americans who watch what they eat to
16 manage medical conditions such as high
17 cholesterol, high blood pressure or
18 diabetes. Fewer than half of large chain
19 restaurants provide nutrition information
20 to their customers.

21 And, again, the record needs to
22 be clear that this measure that is up for
23 consideration, discussion and debate is
24 aimed at chain restaurants with ten or
25 more, not your smaller independent

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 restaurants.

3 We spent the summer hearing
4 from a lot of you. We've spent the
5 summer sitting down with heads of chains
6 and actually franchise restaurant owners
7 as well. So there's a lot to be learned
8 on this issue and a good ways to go.

9 The record should also reflect
10 that Philadelphia is not a first in
11 taking a closer look at this issue. More
12 than 19 cities and states across the
13 country see it as something that we need
14 to look at, are examining it, and for
15 sure each one of those cities and states
16 are arriving at different places. Our
17 goal is to come up with the best bill
18 that will meet the muster of this
19 Committee, the support of City Council
20 and yet at the end of the day seeks to
21 provide consumers with informed, factual
22 information about what they're eating.

23 Thank you, Madam Chair.

24 COUNCILWOMAN TASC0: Thank you.

25 Would any other Councilmembers

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 like to make comments?

3 (No response.)

4 COUNCILWOMAN TASC0: There
5 being no comments from other members of
6 the Council -- they will probably do so
7 during the course of the testimony -- we
8 now call on the Administration to come
9 forward and present the testimony. We
10 have testimony here from Dr. Kenneth
11 Smith.

12 DR. SMITH: Can you hear me?

13 COUNCILWOMAN TASC0: Yes.

14 DR. SMITH: Good morning,
15 Chairwoman Tasco and members of the
16 Committee on Public Health and Human
17 Services. I'm Dr. Kenneth Smith,
18 Director of the Division of Chronic
19 Disease Prevention in the Department of
20 Public Health. Thank you for the
21 opportunity to present testimony today on
22 Bill 070153, which would require
23 nutrition information on menu labels in
24 chain restaurants in Philadelphia.

25 Americans are increasingly

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 relying on restaurants to feed themselves
3 and their families. Results from the
4 National Health Interview Survey indicate
5 that the proportion of Americans
6 reporting three or more commercially
7 prepared meals per week increased from 36
8 percent in 1987 to 41 percent in 2000.
9 The average adult now eats out four meals
10 per week, and American adults and
11 children now consume about one-third of
12 their calories from restaurants and other
13 food service establishments.

14 A growing body of scientific
15 evidence links eating out with higher
16 caloric intake, higher body mass index,
17 BMI, weight gain, insulin resistance and
18 obesity in both adults and children.
19 McCrory and colleagues find that the
20 frequency of restaurant food consumption
21 is positively and statistically
22 associated with an increase in body fat
23 among men and women ages 19 to 80.

24 One reason for the strong
25 relationship between the frequency of

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 eating out and obesity is that compared
3 to home-prepared foods, restaurant foods
4 are generally higher in calories and
5 saturated fats and lower in nutrients
6 such as calcium and fiber. Because the
7 average American eats out four meals per
8 week, there is an increasing risk of
9 exceeding one's caloric requirement not
10 just for the day but for the entire week.
11 One order of cheese fries with ranch
12 dressing contains 3,010 calories. A
13 large movie theatre popcorn with butter
14 topping has over 1,600 calories. And a
15 cafe mocha and pastry from a coffee shop
16 provides more than a thousand calories.
17 Given the FDA's recommended limit of
18 2,000 calories daily, these numbers offer
19 food for thought for anyone concerned
20 with counting calories.

21 Few people would guess that a
22 tuna sandwich from a typical deli has 50
23 percent more calories than a roast beef
24 sandwich with mustard, or that a small
25 milkshake has more calories than a

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 fast-food hamburger. And how many of us
3 would know anything about the sodium, fat
4 or carbohydrate content of these items?
5 Unfortunately, most of us tend to lack
6 the informed intuition about nutritional
7 content of prepared foods needed to make
8 healthy choices.

9 Even trained specialists don't
10 always get it right. A New York
11 University study found that even some
12 well-trained nutrition professionals
13 could not accurately estimate the calorie
14 content of typical menu items. When
15 shown a typical fast-food hamburger and
16 onion rings, a sample of dieticians
17 estimated that it would contain only 865
18 calories, when it actually contained
19 1,550 calories. As not even experts in
20 the field of nutrition are consistently
21 able to estimate the caloric intake of
22 restaurant foods, consumers are unlikely
23 to do better.

24 The good news is that when
25 reliable nutrition information is

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 provided, people tend to make choices
3 based on that information, and healthy
4 ones at that. Research from Burton and
5 colleagues show that consumers
6 substantially underestimate the levels of
7 calories, fat, saturated fat and
8 cholesterol found in many less healthy
9 food menus. However, when provided with
10 nutrition information, they were more
11 likely to select healthy foods. These
12 results are consistent with what other
13 researchers have observed when nutrition
14 content became a requirement in packaged
15 foods sold at supermarkets. Most of us
16 have had the experience where we abruptly
17 placed some sinful dessert or junk food
18 item back on the supermarket shelf after
19 looking at the nutrition label.
20 Requiring menu items to list the same
21 information as grocery store items, or at
22 least some of the information, will
23 provide Philadelphians with the
24 opportunity to make healthier choices
25 they are currently unable to make.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 A nationwide survey by a large
3 food service corporation in 2000 found
4 that 83 percent of Americans believe that
5 restaurants should make nutrition
6 information available for all menu items.
7 Almost half of all large chain
8 restaurants already provide such
9 information and would not incur any new
10 costs for analyzing their products.

11 Enforcement of this ordinance
12 will be carried out by the sanitarians in
13 the Department's Environmental Health
14 Services Unit. A review of the
15 Department's current data reveals that
16 there are approximately 520
17 establishments in Philadelphia that meet
18 the ordinance definition of a chain
19 restaurant. It is estimated that the
20 additional time to review an
21 establishment's records during the course
22 of routine sanitation inspections would
23 require less than one quarter of one
24 full-time equivalent, or approximately
25 \$10,000 in personnel costs.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 Because of the serious health
3 consequences related to obesity, there is
4 an urgent need to make practical policy
5 or regulatory decisions now to address
6 the problem. Requiring menu nutrition
7 labeling is a proportionate response to
8 the urgent need to address the epidemic
9 of obesity sweeping Philadelphia and the
10 rest of the nation, and the Department of
11 Public Health fully supports Bill 070153.

12 Thank you for allowing me to
13 present testimony on this important
14 matter. I will now answer your
15 questions.

16 COUNCILWOMAN BROWN: You say
17 that the Department of Environmental
18 Health Services Unit, sanitarians, will
19 be principally responsible for the
20 enforcement of this ordinance?

21 DR. SMITH: Yes.

22 COUNCILWOMAN BROWN: Can you
23 give us a sense of the other type of
24 efforts they are responsible for?

25 DR. SMITH: Currently, they

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 inspect foods for sanitation. There's
3 sort of a whole list of items that they
4 look at, cleanliness, of course they'll
5 be enforcing the trans fat prohibition
6 and things like that. I can get back to
7 you with a full list of the kinds of
8 things that the health inspectors are
9 doing.

10 COUNCILWOMAN BROWN: I'm just
11 curious, are they responsible for -- L&I
12 would be responsible for citing
13 restaurants that are not honoring the no
14 smoking?

15 DR. SMITH: Yes, I believe so.
16 And I can get back to you with additional
17 details.

18 COUNCILWOMAN BROWN: Are you
19 familiar with the technical amendments
20 that have been introduced by the Law
21 Department or expected to be introduced
22 by the Law Department?

23 DR. SMITH: On?

24 COUNCILWOMAN BROWN: This bill.

25 DR. SMITH: No, I'm not.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 COUNCILWOMAN BROWN: Okay.

3 We'll share them with you, then.

4 Thank you, Madam Chair. I'm
5 done.

6 COUNCILWOMAN TASC0: Any other
7 questions?

8 (No response.)

9 COUNCILWOMAN TASC0: Let me ask
10 you a question. Since this piece of
11 legislation is directed towards chain
12 restaurants, what happens in other
13 restaurants for which we have many more
14 than chain restaurants? What about the
15 neighborhood take-out with the steaks and
16 hoagies and the french fries or just the
17 little corner restaurant where a lot of
18 neighborhood people get their food?

19 DR. SMITH: Councilwoman, this
20 legislation only impacts large chain
21 restaurants, those with ten sites or
22 more, and it really does not impact those
23 small corner stores, the hoagie stores,
24 the ones that sell the Philadelphia
25 cheesesteaks. Even though I don't

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 recommend eating one every day, it
3 doesn't affect that.

4 COUNCILWOMAN TASC0: Which is
5 interesting, because you talk about the
6 tuna fish sandwich having more calories
7 than a roast beef sandwich. And I get my
8 tuna fish sandwich from a local
9 restaurant that is not a chain, did not
10 know that and get tuna fish sandwiches
11 every day. So what about that restaurant
12 providing me, who might not go to a chain
13 restaurant to eat, the nutrition
14 information?

15 DR. SMITH: Well, ma'am, I
16 think that you raise a very good point.
17 You see, one of the reasons for
18 legislation like this is that it helps to
19 change the culture. We know that when
20 the FDA required nutrition labeling in
21 grocery store items, people started
22 changing their behavior regarding what
23 kinds of food they eat. They looked at
24 it. And not only that, the food industry
25 started to change the products that they

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 were offering. In fact, what happened
3 when the food industry was required to
4 list trans fat content is that they
5 completely reduced trans fat content in
6 their items.

7 And so I believe that this kind
8 of legislation, even though it may appear
9 to some that it may be a big thing and it
10 may appear to others that it's not
11 enough, I think that it's a proportionate
12 response to what we're dealing with right
13 now, which is the fact that we're seeing
14 children in our healthcare centers with
15 things that we've never seen before,
16 metabolic syndrome, potentially diabetes.
17 I mean, it's really scary, and it's
18 really important for people to understand
19 exactly what they're eating. And, like I
20 said, people have no clue. And I'll bet
21 you if you did go to a large chain
22 restaurant and started looking at the
23 calorie content, it might make you think
24 the next time that you're in one of those
25 smaller stores thinking about a tuna fish

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 sandwich.

3 COUNCILWOMAN TASCO: You also
4 discuss the fact that in order to enforce
5 this, you would use the sanitarians. The
6 last time we had a discussion here in
7 this Council about sanitarians was that
8 we did not have enough of them. Now, we
9 put on them the responsibility for
10 checking take-outs or checking the
11 cleanliness of the restaurants and also
12 whether the restaurants have hot water,
13 and now we're going to have them add this
14 responsibility.

15 Do you have adequate staff to
16 do the follow-through?

17 DR. SMITH: Ma'am,
18 unfortunately, I'm unable to speak to
19 that matter. I was hoping that my
20 colleague, the Acting Director of
21 Environmental Health Services, would be
22 here. So I will have to get back with
23 you on that one.

24 COUNCILWOMAN TASCO: Okay. We
25 would like to have that information in

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 terms of who would -- I'd like to know
3 how many sanitarians have you hired.
4 Last time we had a discussion about
5 sanitarians and the complement of staff
6 in the Health Department, they had not
7 hired the staff needed that we had
8 provided funds for in the Health
9 Department. So, again, who is going to
10 do the enforcement.

11 DR. SMITH: Okay.

12 COUNCILWOMAN TASCO: And I go
13 back to the issue of the restaurants. I
14 would dare say that more young people
15 have access to local neighborhood stores
16 than they do the large chain restaurants.
17 Not that I'm disputing your facts about
18 health issues. I'm just trying to
19 determine if you're going to reach the
20 targeted population that we want to
21 reach, and that's young people. And I'm
22 not saying that all -- most young people
23 are eating french fries from some
24 neighborhood store, like the stores down
25 in my district where they make a lot of

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 money off of these cheesesteaks and
3 hoagies, which are great. I love them,
4 too, but I know not to eat them all the
5 time.

6 So those are my questions right
7 now.

8 Any other questions?

9 (No response.)

10 COUNCILWOMAN TASC0: Thank you
11 very much for your testimony.

12 DR. SMITH: Thank you.

13 COUNCILWOMAN TASC0: Next we
14 have a panel. Cathy Nonas, Director of
15 Physical Activity and Nutrition, New York
16 Department of Health and Mental Hygiene;
17 Dr. John Weidman from The Food Trust; Mia
18 Dell, Esquire, Center for the Science in
19 Public Interest; and Andrea Diamond.

20 Good morning. You can decide
21 who is going first between you. It's up
22 to you.

23 MS. NONAS: Thank you very
24 much. I think I've been elected. Thank
25 you for inviting me here to testify

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 before the City Council in favor of menu
3 labeling, legislation 070153.

4 COUNCILWOMAN TASC0: Would you
5 identify yourself, please.

6 MS. NONAS: I am Cathy Nonas.
7 I'm the Director of Physical Activity and
8 Nutrition Program in the Chronic Disease
9 Prevention Bureau of the New York City
10 Department of Health and Mental Hygiene.

11 And, as you know, we also are
12 very concerned with the meteoric rise of
13 obesity and its associated diseases such
14 as heart disease and, of course, Type 2
15 diabetes, and there's no doubt that this
16 rise in obesity is due to the
17 extraordinary changes in our environment,
18 particularly in the last 50 years, an
19 environment that we now call obesogenic,
20 because it's so easy for people to sit
21 still and to overeat. It's, therefore,
22 incumbent upon all of us and
23 particularly, as you know, we feel that
24 way in the New York City Department of
25 Health and Mental Hygiene, to do

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 something about it. If we can make a
3 change in the environment to promote and
4 preserve the health and safety of our
5 citizens, then, of course, we should do
6 that. And anyone who ever tried to lose
7 weight or maintain their weight can tell
8 you that calories and menu labeling
9 really help.

10 So we are particularly
11 concerned with menu labeling. And it's
12 very difficult for people to count
13 calories. It's even very difficult for
14 me to count calories, and I'm actually a
15 registered dietitian.

16 It's not just the particular
17 foods, but it's also the portions. A
18 bagel today is equal to more than two
19 times the size of a bagel 20 years ago.
20 A 20-ounce bottle of soda is really just
21 one portion for a child and yet 30 years
22 ago it was a third of the size.

23 So if you take that bagel 20
24 years ago versus today or a third of the
25 size of that soda versus the size of a

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 soda today, which, by the way, is a
3 medium size in a fast-food or chain
4 restaurant, then you would find that you
5 would have about a 150 to 200 calorie
6 difference between the two. If you only
7 opted for the smaller size once a week,
8 after a year that would equal two pounds.
9 And if you decided looking on a menu
10 board that you wanted the diet soda
11 instead of spending 250 calories for the
12 medium soda, you would actually save
13 enough calories once per week over the
14 year to save almost four pounds.

15 Today, at least a third of our
16 calories are consumed outside the home,
17 and a large percentage of those calories
18 come from chain and fast-food restaurants
19 that have substantially similar menus,
20 substantially similar portion sizes and
21 can readily add nutrition information.
22 As a matter of fact, many of them do on
23 their websites, or even if you can ask a
24 beleaguered person, maybe they can find
25 at the restaurant some sort of brochure

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 that they have, but for the most part,
3 nutrition labeling in these restaurants
4 is invisible. And we in May of 2007, the
5 New York City Department of Health and
6 Mental Hygiene, actually conducted exit
7 interviews from 11,865 diners from a
8 random sampling of 274 fast-food
9 restaurants like McDonald's and Wendy's
10 and Burger King and Pizza Hut and
11 Kentucky Fried Chicken. Less than eight
12 percent of customers reported seeing any
13 calorie information. Most people only
14 saw it at Subway restaurants, and this
15 percentage was particularly low, less
16 than five percent, among those
17 establishments such as McDonald's,
18 Dunkin' Donuts, Burger King and the Yum
19 brands even though they are the ones that
20 say that they offer nutrition
21 information.

22 So as many of you know, the New
23 York City Board of Health and Mental
24 Hygiene adopted a resolution amending our
25 Health Code by adding a calorie labeling

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 amendment. The rule became effective on
3 July 1st of this year and was challenged
4 in a lawsuit brought by the New York
5 State Restaurant Association. Many of
6 the restaurants that submitted
7 declarations in support of the plaintiff
8 were the same ones that claim to provide
9 extensive nutrition information to
10 customers, the very customers we
11 interviewed who never saw that
12 information.

13 So a month ago a federal judge
14 in the United States District Court held
15 that the Health Code as adopted was
16 preempted because New York City's
17 amendment applied only to restaurants
18 that had voluntarily provided calorie
19 information. So we didn't win the
20 battle, but we won the war, because the
21 federal court clearly affirmed the
22 authority of local governments to mandate
23 that restaurants disclose nutritional
24 information and said, and I quote, "the
25 majority of state or local regulations,

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 those that simply require restaurants to
3 provide nutrition information, therefore
4 are not preempted." New York City is now
5 considering its options. Furthermore,
6 some restaurants like Subways and Auntie
7 Anne's have continued to be in compliance
8 with no reports of negative effects.

9 So what have we learned from
10 our experience? Well, the City Council
11 will doubtless hear, as we did, that
12 consumers don't want this information.
13 But the polls say they do. In many
14 peer-reviewed studies, 62 to 87 percent
15 of people surveyed support menu labeling
16 in restaurants.

17 You'll hear, as we did, that
18 the information won't fit on menu boards.
19 They will. We know. Before the court's
20 ruling, the targeted restaurants had
21 configured their menu boards
22 appropriately.

23 You'll hear that fast-food
24 restaurants say they're providing that
25 information, but, remember, to our almost

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 12,000 exit interviews, they were
3 invisible.

4 You'll hear that calorie
5 labeling won't solve the obesity
6 epidemic. Well, certainly the epidemic
7 is far too complex to be served by one
8 measure alone, but menu labeling can be
9 an important tool and one which is doable
10 now, and we should move forward on it
11 while we're building other interventions.

12 New York City's calorie
13 labeling regulation may have taken some
14 knocks, but we received overwhelming
15 support from across the nation, this
16 nation that has legislation all across it
17 for the same thing as the City Council of
18 Philadelphia does. More than 2,200
19 comments were received from associations
20 like the American Medical Association,
21 Yale University, the American Diabetes
22 Association. This is good legislation.
23 This is right legislation. And it's
24 clear that the Philadelphia City Council
25 is concerned for the health of its

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 constituents, and we applaud you for
3 taking this step. Calorie labeling, menu
4 labeling in chain restaurants, on menu
5 boards and menus, at the point before a
6 food purchase or food order is made,
7 gives consumers an option they need to
8 make an informed decision. Our
9 experience so far in New York City gives
10 us reason to believe that this will be an
11 important and effective tool to help
12 consumers stay healthy.

13 Thank you.

14 COUNCILWOMAN TASC0: Thank you
15 very much.

16 Next?

17 MS. DELL: I'm Mia Dell, the
18 Government Relations Manager at Center
19 for Science in the Public Interest.
20 Thank you for the opportunity to speak
21 with you this morning about this
22 important public health policy.

23 People overwhelmingly want menu
24 labeling. Eighty-three percent of
25 Americans support requiring restaurants

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 to provide nutrition information such as
3 calories, and in similar polls conducted
4 in Connecticut and California, over 80
5 percent of people support requiring chain
6 restaurants to provide nutrition
7 information on menus.

8 Without the Council passing
9 this bill, Philadelphia residents won't
10 have access to information they need to
11 make healthy decisions at chain
12 restaurants in a way that they can use
13 it. To be effective, nutrition
14 information in restaurants must be simple
15 and easy to use. Only by posting
16 calories on menus and menu boards is the
17 information provided at point of
18 decision-making in a format that is easy
19 to understand, easy to find and allows
20 comparisons to be simply made when the
21 customer is actually choosing what to
22 order.

23 Furthermore, providing this
24 information on menus and menu boards
25 creates a standard that consumers can

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 begin to rely on, familiarize themselves
3 with and use whenever they are in
4 restaurants that must comply with this
5 rule. If some restaurants have posters,
6 others brochures, others kiosks,
7 stanchions and tray liners, customers
8 will have trouble tracking down nutrition
9 information even if the restaurant has
10 it.

11 Nutrition information needs to
12 be on the menu, because it's the most
13 effective way to communicate with the
14 customer. Restaurants know that
15 providing information on menus is the
16 most effective way of sharing information
17 with its customers.

18 The New York State Restaurant
19 Association stated recently that menu
20 boards are the most valued space in the
21 restaurants that offer standardized food
22 items, and that's because menu boards are
23 what customers are reading while they are
24 standing in line to place their order and
25 where they get virtually all of their

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 information on what to order, listing of
3 menu items, product descriptions and
4 price.

5 We did a study of McDonald's
6 Provision of Nutrition Information in
7 Washington, DC. Even at McDonald's, the
8 largest chain restaurant in the country
9 and the restaurant with probably the
10 strongest corporate tradition of
11 providing information in its restaurants,
12 we found that nutrition information at
13 the point of decision-making is often
14 difficult to find or completely absent.
15 Only 60 percent of McDonald's outlets
16 provide in-store nutrition information
17 for the majority of their standard menu
18 items, and in most cases, it was
19 necessary to ask two or more employees in
20 order to get a copy of that information.

21 Thank you again for this
22 opportunity, and I'd be happy to answer
23 any questions.

24 COUNCILWOMAN TASC0: Sorry.
25 Thank you very much. We'll ask questions

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 at the end of the panel.

3 Yes?

4 MR. WEIDMAN: Good morning,
5 Councilwoman Tasco and Committee members.
6 My name is John Weidman. I'm the Deputy
7 Executive Director with The Food Trust.
8 We're a Philadelphia-based non-profit
9 with the mission of improving access to
10 affordable and nutritious food, and I'm
11 here today in strong support of
12 Councilwoman Brown's menu labeling
13 legislation which will give Philadelphia
14 consumers the information they need to
15 make healthy food choices.

16 Obesity is a problem we must
17 face boldly in Philadelphia, and here's a
18 couple reasons why: According to the
19 Philadelphia Health Management
20 Corporation, over half of children in our
21 city are overweight. This represents
22 139,000 children. It's a staggering
23 statistic. The health implications for
24 these children are grim and include early
25 onset of diabetes, hypertension, heart

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 disease and a lifespan potentially
3 shorter than their parents. Rates of
4 obesity are also higher among
5 African-American and Latino populations.

6 The good news is the epidemic
7 of childhood obesity is preventable and
8 can be reversed through a combination of
9 improved nutrition, increased physical
10 activity and the creation of a food
11 landscape that encourages healthy eating.
12 Nutritional information on menus in chain
13 restaurants is a key component of
14 creating that healthy food landscape.

15 The Food Trust currently
16 provides nutrition education services in
17 a hundred schools in the region, and
18 reading nutrition labels is an important
19 way for children to learn about healthy
20 eating. In one of our programs, children
21 learn how to identify snacks with lower
22 levels of fat or sugar, and then they go
23 out into their neighborhoods and try to
24 find healthier snacks at local corner
25 stores. In fact, many local corner

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 stores have become so involved with the
3 program that they have joined our effort
4 by labeling healthier snacks on the food
5 shelves.

6 We find that the lessons
7 children learn are often brought home to
8 inform their parents' food-shopping
9 behavior. However, when children go on a
10 trip with their parents to McDonald's or
11 Dunkin' Donuts, it's extremely difficult
12 for them to put what they've learned to
13 use for themselves or their families.

14 Portion size is another thing
15 children learn about in our school
16 nutrition programs. But as we know,
17 restaurants do not follow USDA
18 recommendations for portion sizes. They
19 super size. Americans are being taught
20 by the restaurant industry that bigger
21 portions are a bigger value. Well, not
22 if you value your health. As a result,
23 children eat almost twice as many
24 calories when they eat at a restaurant
25 compared to at home. So, in effect,

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 without having this information in
3 restaurants to inform adult and child
4 consumers the lessons they're learning
5 about portion size, it becomes close to
6 impossible to stick to.

7 It's time for chain restaurants
8 to get on board with behaving responsibly
9 in the midst of an obesity epidemic. The
10 cost to displaying this information are
11 negligible, and we've also seen it work
12 in New York City. By providing this
13 information, the impact would be
14 significant. Consumers might realize
15 that what they thought was a healthy
16 salad was loaded with too much fat and
17 choose something lighter. I recently
18 learned that a slice of carrot cake from
19 the Cheesecake Factory has more than
20 twice as many calories than a hamburger,
21 fries and a Coke at McDonald's. So as
22 we've heard by many today, knowing what
23 is higher or lower in calories is very
24 hard for the average consumer to find
25 out. So in the face of this epidemic,

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 can anyone really argue that arming
3 citizens with this kind of information is
4 not a smart thing to do?

5 Recently, USA Today reported, I
6 think in the last couple weeks, that
7 people in poor neighborhoods are 80
8 percent more likely to be hospitalized
9 for diabetes than their well-off
10 neighbors. Many poor neighborhoods in
11 Philadelphia have few options for
12 purchasing fresh fruits and vegetables,
13 but have plenty of options for fast food.
14 It should come as no surprise that by
15 surrounding low-income residents with
16 chain restaurants serving food that is
17 high in salt and fat, that diet-related
18 diseases would be more prevalent. But
19 many consumers are trying to improve
20 their food choices, and having
21 nutritional information clearly displayed
22 on menus and menu boards will create a
23 supportive environment that will help
24 parents and children make better choices.

25 Passage of this menu labeling

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 bill will not impinge on any
3 Philadelphian's right to indulge in any
4 foods that they want. The freedom to
5 purchase a Triple Cheese Baconater, a Big
6 Gulp Pepsi, an Oreo Dessert Pizza will
7 remain. But for thousands of
8 Philadelphia residents who are concerned
9 about their health and the health of
10 their children, this legislation will
11 give them the information to know how
12 many calories they are consuming so they
13 can enjoy their favorite foods in
14 moderation.

15 In closing, I just want to
16 thank Councilwoman Brown for introducing
17 this important legislation and for this
18 Committee for holding this hearing. Menu
19 labeling is a smart policy that will help
20 reduce obesity and keep Philadelphia on
21 the cutting edge of public health policy.

22 Thank you very much.

23 COUNCILWOMAN TASC0: Thank you.

24 MS. DIAMOND: Madam Chair and
25 Councilmembers, thank you very much for

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 the privilege of being called to testify
3 today in front of you. My name is Andrea
4 Diamond. I am a registered dietitian and
5 Program Director for the Albert J.
6 Stunkard Weight Management Program at the
7 University of Pennsylvania, Penn
8 Behavioral Health.

9 COUNCILWOMAN TASC0: Proceed.

10 MS. DIAMOND: Briefly, by
11 providing this information to the
12 consumer in great support of this
13 legislation, we will educate and inform
14 our consumers the public has a right to
15 make an informed decision as to choices
16 which may have a profound impact on their
17 health. An educated consumer is our best
18 weapon against the epidemic of obesity
19 and heart disease. This ultimately takes
20 not only a personal toll on health for
21 the individual and their family, but has
22 a profound impact on the
23 ever-skyrocketing costs of healthcare, as
24 we've heard presented today, in managing
25 these devastating effects of obesity and

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 heart disease.

3 I bring to you that I am on the
4 front lines working with people looking
5 to lose weight and correct medical ills.
6 One of their greatest concerns -- they
7 are motivated to change their health, and
8 one of their greatest concerns, because
9 many of the people that I do work with
10 eat out far more than once a day, is that
11 as long as they try, they try very hard
12 to make informed decisions and they think
13 they're making informed decisions, but as
14 we've heard today, there is so much
15 hidden information that they are at a
16 great loss to do so, and it has had a
17 profound impact on their health. When
18 they feel that they're going in a certain
19 direction, in fact they haven't made many
20 strides at all.

21 So, again, I support this
22 legislation. I thank you for bringing
23 this important legislation, the
24 opportunity for it, and I welcome any
25 questions. Thank you.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 COUNCILWOMAN TASC0: Thank you.

3 Councilwoman Brown.

4 COUNCILWOMAN BROWN: Thank you,
5 Madam Chair.

6 Ms. Cathy Nonas, for clarity
7 purposes, what is the status of this
8 measure in New York City?

9 MS. NONAS: Well, at the moment
10 we were preempted by the judge, and we're
11 considering our options now.

12 COUNCILWOMAN BROWN: And in the
13 legislation that was introduced in New
14 York City, did it suggest that the
15 information should be on menu or menu
16 boards?

17 MS. NONAS: It did say that it
18 should be on menu boards and menus. It
19 was calorie labeling only. And, again,
20 as I said, we were preempted, the judge
21 said, because we were targeting only
22 those people who are actually at least
23 showing some nutrition information.

24 COUNCILWOMAN BROWN: I see.
25 Besides menu and menu boards, how else

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 might one inform or educate a consumer?

3 MS. NONAS: Well, as the New
4 York City Department of Health, we are
5 consistently educating the consumers. We
6 have three district public offices in
7 some of the most underserved areas: East
8 and Central Harlem, South Bronx,
9 Bushwick, Bedford, Stuyvesant and
10 Brooklyn. And we do tremendous consumer
11 education to try and support healthy
12 alternatives, but as you know, if it's
13 not right there in front of you on a
14 picture of a Baconater that looks so
15 great that you don't realize that it's
16 more than half the calories you need for
17 the day, it's not going to bring it home.

18 COUNCILWOMAN BROWN: Thank you
19 for making the trip.

20 Dr. John Weidman, you say that
21 there are programs in 100 schools. Are
22 any of those participating schools
23 Philadelphia public schools?

24 MR. WEIDMAN: Yes. Most of
25 them are Philadelphia public schools.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 And I should point out, although it does
3 have a nice ring to it, I'm not a doctor.

4 COUNCILWOMAN BROWN: Like me,
5 you'll be one in your next life, right?

6 MR. WEIDMAN: Right. Exactly.

7 COUNCILWOMAN BROWN: Do schools
8 have to qualify? Do they have to submit
9 a proposal? How do they become the lucky
10 100?

11 MR. WEIDMAN: Well, actually,
12 now through the Philadelphia School
13 District's Eat Right Now program, all of
14 the public schools have nutrition
15 programming, and it's a consortium of
16 different organizations who are doing
17 that. So The Food Trust is one of those
18 organizations. I think we have the
19 highest number of schools. But every
20 school has some level of nutrition
21 education programming through the Eat
22 Right Now program.

23 COUNCILWOMAN BROWN: Through
24 the what?

25 MR. WEIDMAN: Eat Right Now.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 That's the School District's program,
3 which is funded by the USDA's Food Stamp
4 Nutrition Education program.

5 COUNCILWOMAN BROWN: I see.

6 Okay. No more questions. I thank you
7 all for your testimony.

8 COUNCILWOMAN TASC0: Questions
9 from any other members?

10 Councilwoman Miller.

11 COUNCILWOMAN MILLER: Hi. Good
12 morning.

13 The judge ruled in New York
14 that you were targeting only, what, the
15 chain restaurants?

16 MS. NONAS: We were targeting
17 those restaurants that had ten or more
18 similar restaurants with standardized
19 portion sizes and standardized menus.

20 COUNCILWOMAN MILLER: Okay.

21 MS. NONAS: And that was not a
22 problem in the judge's --

23 COUNCILWOMAN MILLER: So that's
24 actually what defeated your legislation?

25 MS. NONAS: What defeated our

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 legislation was not our right to mandate
3 nutrition information, but it was the
4 fact that we only targeted those chain
5 restaurants that already offered some
6 nutrition information instead of doing
7 the whole shebang.

8 COUNCILWOMAN MILLER: Okay.
9 All right. Thank you.

10 Thank you, Madam Chair.

11 COUNCILWOMAN TASC0: Could you
12 explain that a little more? It's really
13 not clear. Your legislation only
14 targeted those restaurants who were
15 providing information?

16 MS. NONAS: Well, originally,
17 remember, New York City was really the
18 first to do this, and we've learned a lot
19 since, but what we were trying to do is,
20 we were trying not to create an extra
21 burden, and so we only targeted those
22 restaurants that already proved that they
23 had this nutrition information and needed
24 just to make it more available so that
25 the consumer could actually see it.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 And so --

3 COUNCILWOMAN TASC0: They had
4 it where?

5 MS. NONAS: So that we wanted
6 to put it up on the menu boards and they
7 had it on their websites and they had it
8 in brochures, which, as Mia Dell has just
9 said, is very hard sometimes to find in
10 any store and particularly at the point
11 when you're ordering or when you're
12 purchasing. So what we wanted to do were
13 twofold. We wanted to put the calories
14 on the menu board where people could see
15 it before they ordered it, before they
16 purchased it, so they could have an --
17 they could make an informed decision as
18 to whether they wanted the large Coke,
19 the medium Coke or a Diet Coke. And we
20 weren't trying to stop them from ordering
21 anything; we were just trying to give
22 them that information. And what the
23 Court said was that asking restaurants to
24 display that information in a clear and
25 concise manner was not a problem and it

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 was within our right, but that we had
3 unfairly targeted only a portion of those
4 chains, those ones who put it up. And we
5 actually -- we gave them until March 1st.
6 If they still had it in March 1st, 2007,
7 their nutrition labeling, then they would
8 have to make it apparent. So, for
9 instance, Wendy's pulled their nutrition
10 information off. So we -- and that was
11 the judge's complaint.

12 MS. DELL: Could I add to that?

13 COUNCILWOMAN TASC0: Sure.

14 MS. DELL: It's a little bit
15 confusing, but the bill that regulates
16 and requires packaged food labeling on
17 our food supermarkets was passed in 1990
18 by the Nutrition Labeling Education Act,
19 and that bill specifically exempts
20 restaurants. However, it also says that
21 if a restaurant makes a nutrition claim,
22 then they have to support it in some way
23 that is consistent with FDA rules. So
24 because New York City Board of Health
25 said that all restaurants that were

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 already providing nutrition information
3 in some form had to provide it on the
4 menu, the judge determined that the
5 restaurants were making a nutrition claim
6 and, therefore, they could only -- New
7 York City Board of Health could only
8 require the restaurants to provide it in
9 some way that complied with FDA
10 regulations, and FDA does not require
11 menu labeling. So that's why the judge's
12 decision was so specific to New York City
13 and wouldn't affect the legislation we're
14 discussing here today.

15 COUNCILWOMAN TASCO: Lessons
16 learned. You said you learned some
17 lessons. What are the lessons that you
18 learned?

19 MS. NONAS: Well, first of all,
20 we wouldn't target only those restaurants
21 that were giving nutrition information,
22 but we also learned that it was doable,
23 because every restaurant in those months
24 when they thought they would have to
25 comply had to find ways to restructure

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 their menu boards in order to put
3 calories, in order to put calories not
4 only up on their menu boards but in a
5 size and a font that was commensurate
6 with either the price or the name of the
7 meal so that people could see it.

8 COUNCILWOMAN TASCO: Well, some
9 restaurants list the calorie -- I guess
10 it's the nutrition information on the
11 tray place mats.

12 MS. NONAS: Right. The problem
13 with that is it's after the point of
14 purchase. And we applaud those
15 restaurants that are really trying hard
16 to give their nutrition information to
17 the customer, but it really doesn't help
18 to ask the customer -- to give the
19 customer the calories after they've
20 bought their food and gotten their food,
21 because then what can they do with it?
22 They can only eat less of it, instead of
23 seeing it on a menu board and maybe
24 making a decision to take the small meal
25 as opposed to the large meal or the Diet

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 Coke instead of the regular Coke.

3 COUNCILWOMAN TASC0: What would
4 be the star poster board or poster for
5 this in New York in terms of providing
6 that information? Do you have any one
7 restaurant in New York that has really
8 met your requirements?

9 MS. NONAS: Well, Subways has.
10 Subway had been very health oriented in
11 their advertising to begin with, but they
12 decided to leave those calories up now.
13 So if you go to Subways in New York, you
14 can find the calories up on the board.

15 COUNCILWOMAN TASC0: Is it on
16 the board where they show the sandwiches?

17 MS. NONAS: I have pictures of
18 some of them. Because they don't have to
19 be in compliance. I have pictures of
20 some of them on the menu board with the
21 calories on the menu board and I also
22 have some for Auntie Anne's, the pretzel
23 place, which also kept them up in New
24 York. So those are the two places where
25 you see it.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 COUNCILWOMAN MILLER: And I
3 believe Subways is running a commercial
4 here in Philadelphia that talks about a
5 lower calorie meal.

6 MS. NONAS: Yeah. Yes.

7 COUNCILWOMAN MILLER: I think I
8 saw that.

9 MS. NONAS: They are definitely
10 concerned with that.

11 COUNCILWOMAN TASC0: Okay. Any
12 other questions, comments?

13 Councilman Juan Ramos.

14 COUNCILMAN RAMOS: Thank you,
15 Madam Chair.

16 I'm the author of the trans fat
17 bill in the City of Philadelphia.

18 MS. NONAS: Thank you.

19 COUNCILMAN RAMOS: And what I
20 hear you saying is the experience that we
21 have seen in Philadelphia that I
22 introduced the bill and without -- just
23 maybe with just some media attention, it
24 was like a snowball effect of --
25 Philadelphia, we're into cheesesteaks,

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 right? It turns out that half of our
3 cheesesteak eateries were already trans
4 fat-free before I introduced the bill,
5 and since then, Loews and Wendy's and
6 McDonald's here in Philadelphia and
7 Burger Kings, everyone, the places that
8 sell fritters in our neighborhoods, said,
9 Hey, we stopped using lard back in the
10 '60s and stopped using the trans fat oil.

11 So it seems as though that
12 consumers throughout the country, with
13 menu labeling, with the banning of trans
14 fat, it seems as though that the public
15 seems to be conscious at least that this
16 is the way to go regardless if I like
17 grandmom's recipe or not. Is that what
18 you have seen nationally as well besides
19 New York?

20 MS. NONAS: We have, and
21 obviously there's tremendous legislation
22 all across the country both statewide and
23 citywide to put menu labeling in chain
24 restaurants, and I think that's because
25 an informed consumer has the opportunity

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 to make decisions about health for their
3 children and for themselves that they
4 wouldn't have if they didn't have that
5 information, and that information up
6 until now has just not been easily
7 gotten. And particularly, you know, in
8 our underserved areas, as the doctor over
9 here was saying, that there is tremendous
10 frequency to less expensive fast-food
11 restaurants, and we also have a
12 significant percentage prevalence of
13 obesity and diabetes in these
14 neighborhoods. This information can't
15 necessarily be gotten on the web because
16 they don't necessarily have access to the
17 web. And it is important to put it up
18 there when you're looking at a hamburger.
19 And I applaud Philadelphia for doing
20 this. Just drive it through.

21 COUNCILMAN RAMOS: Thank you.

22 COUNCILWOMAN TASCO: Thank you.

23 Any other comments or
24 questions?

25 (No response.)

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 COUNCILWOMAN TASC0: Thank you
3 very much for coming down. Thank you all
4 for your testimony. We appreciate it
5 very much.

6 We're going to call on this
7 small panel. One of the panelists has a
8 time problem, as we all do, but I'm going
9 to ask Dr. Barbara Gold, Amy Margulies
10 and Sydelle Zove.

11 MS. ZOVE: I have some
12 materials for the Councilmembers. May I
13 approach?

14 COUNCILWOMAN TASC0: We'll have
15 the Sergeant-At-Arms, he'll take it for
16 you.

17 All right. Good morning. You
18 may proceed with your testimony.

19 DR. GOLD: Good morning. I'm
20 the real doctor. My name is Barbara Gold
21 and I'm a pediatrician in general
22 practice in Philadelphia. I have been
23 asked to speak this morning to help the
24 members of City Council understand the
25 importance of the proposed new section of

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 the Health Code that deals with
3 nutritional labeling in chain
4 restaurants. This bill represents a key
5 piece in the effort to combat obesity.

6 I am sure that you are all
7 aware that there is an obesity epidemic
8 in this country, with more than 30
9 percent of children being obese. Primary
10 care doctors are responsible for
11 prevention, and I will explain why having
12 this nutritional information available
13 and visible will help healthcare
14 providers help parents and children to
15 make informed choices before obesity
16 happens. When they are ready to make
17 changes, the information their provider
18 has been telling them to look at will be
19 available.

20 Obesity is a major public
21 health issue, and its sequelae, heart
22 disease, endocrine disease, diabetes and
23 others, mental health problems,
24 orthopedic issues and pulmonary disease,
25 kill and/or incapacitate many more people

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 than the outrageously high violence level
3 in this city. Yet somehow it doesn't
4 generate the same level of outrage and
5 horror as our murder rate.

6 Obesity also contributes to
7 early puberty, with ten-year-olds looking
8 like they are 16 and all the social
9 issues that stem from that.
10 Philadelphians, like most Americans, need
11 to learn or relearn about nutrition and
12 healthy living habits. Our lives are far
13 more sedentary than they were even one or
14 two generations ago. We eat out more,
15 our portion sizes are larger, and the
16 kinds of foods we eat are different. To
17 eat healthy in this environment requires
18 determination and information. This bill
19 will give people access to this important
20 information.

21 I wonder how many of you
22 getting your morning vanilla frappuccino
23 medium size and a muffin at a well-known
24 national chain realize that you are
25 consuming close to 1,000 calories or

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 more, nearly half of your daily caloric
3 need, without any significant nutrition.
4 And after the testimony this morning, you
5 obviously all realize it, since we've
6 heard it several times.

7 As a pediatrician working with
8 families, I am frequently amazed at the
9 large number of meals that are eaten in
10 restaurants by many families. Some
11 statistics say at least one-third of
12 calories are from meals consumed outside
13 the home. Having the nutritional
14 information proposed in this bill will
15 help me and others help families be aware
16 of fat and calorie content. This will
17 help them to see the choices in a much
18 more graphic way.

19 One of our major goals in
20 helping to reeducate people about
21 nutrition is teaching them to recognize
22 what a reasonable portion size is. In
23 pediatrics we often use the rule of the
24 fist, which means that a portion for a
25 child should be about the size of his or

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 her balled fist. Not very large for a
3 two, five or seven-year-old. Yet in a
4 restaurant, even a child's portion is way
5 larger than that, and data shows that
6 when children eat out, they consume
7 almost twice as many calories as they do
8 when they eat at home.

9 The food industry has waged an
10 amazing advertising campaign over the
11 last 20 years or so to drum up demand,
12 sodas, fast foods, et cetera. Those of
13 us who are concerned with good nutrition
14 and public health must now wage a
15 counter-campaign of equal intensity and
16 endurance to redevelop a taste for
17 healthy and nutritional foods. Passage
18 of this bill by the Council would be one
19 very important step in that campaign.

20 Lest you think that it is not
21 possible to change public attitudes and
22 behaviors, let me remind you of the
23 changes in seat belt use and smoking
24 habits that have happened in just the 35
25 years of my professional life. With your

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 help, we can do this for all the people
3 of our city and help them to lead
4 healthier lives.

5 I thank you for your time.

6 COUNCILWOMAN BROWN: Thank you
7 very much. Do we have copies of your
8 testimony?

9 DR. GOLD: I left a couple up
10 there.

11 COUNCILWOMAN BROWN: Okay.
12 Thank you.

13 MS. ZOVE: Good morning, Madam
14 Chairwoman and fellow Councilmembers. My
15 name is Sydelle Zove and I am here
16 representing the Greater Philadelphia
17 Coalition Against Hunger.

18 The Coalition is best known for
19 two initiatives: The annual Walk Against
20 Hunger, which raises funds for the
21 region's 500 food cupboards and soup
22 kitchens, and for its Food Stamp
23 Enrollment Campaign, which, like the menu
24 labeling bill, seeks to help people make
25 better food choices.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 The Food Stamp program is one
3 of our nation's last remaining
4 entitlements. If you meet the income
5 eligibility test, you receive a monthly
6 grant to help pay for your household's
7 food. The dollars come from the United
8 States Department of Agriculture, and in
9 August 2007, the value of food stamps
10 distributed to the 324,000 low-income
11 people enrolled in Philadelphia was more
12 than \$31 million. Multiply that monthly
13 distribution by 12 and it adds up to a
14 lot of food on the tables of hungry
15 families and a lot of food purchases in
16 local grocery stores. But the Coalition
17 knows that thousands more income-eligible
18 households are not receiving food stamps,
19 and through our aggressive enrollment
20 campaign, we are providing program
21 information and online application
22 assistance to those families.

23 So what is the connection
24 between food stamps and menu labeling,
25 you might ask. Information is power, and

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 one of the Coalition's objectives is to
3 deliver accurate information to
4 low-income families about the Food Stamp
5 program. Menu labeling is empowering as
6 well, for it enables consumers to make
7 informed choices. The Food Stamp program
8 puts dollars into families' budgets so
9 that parents can feed their children and
10 improve the nutritional value of food
11 they prepare at home. Menu labeling
12 gives people the knowledge they need to
13 make better decisions about the food they
14 eat at restaurants and fast-food outlets.

15 According to the Center for
16 Disease Control and Prevention, nearly
17 half of all African-American and Latino
18 children born in the year 2000 are
19 expected to become diabetic at some time
20 in their lives. Obesity, diabetes and
21 bad food choices are inextricably linked.
22 At the Coalition Against Hunger, we know
23 that access to fresh, nutritious and
24 affordable food is not always easy, and
25 we know that a food stamp grant, despite

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 averaging \$200 per month for Philadelphia
3 families, will not solve the hunger and
4 obesity problem, but we realize that it
5 is one piece of the puzzle. Such is also
6 true of menu labeling.

7 So let's put the pieces
8 together. The Coalition will continue to
9 enroll families in the Food Stamp
10 program, and we ask that the Committee
11 advance the menu labeling legislation
12 with conviction and the will to convince
13 your peers that the well-being of
14 Philadelphia's families is paramount.

15 Thank you.

16 COUNCILWOMAN TASCO: Thank you
17 very much.

18 MS. MARGULIES: Good morning,
19 Madam Councilwoman and members of the
20 Committee. My name is Amy Margulies.
21 I'm a registered dietician and certified
22 diabetes educator in the Philadelphia
23 area.

24 More than 120 million Americans
25 are either overweight or obese. Among

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 Philadelphians, the prevalence of obesity
3 has increased from 15 percent of both men
4 and women ages 20 to 24 to 33 percent of
5 women and 20 percent of men ages 45 to
6 64. Rates of obesity have been
7 increasing rapidly in all age groups.
8 We've heard a lot this morning about the
9 major increase of childhood obesity.
10 This increase of obesity is having a
11 devastating impact on our nation and our
12 city. Obesity leads to many diseases,
13 including coronary heart disease.
14 Coronary heart disease is a leading cause
15 of death in the United States for men and
16 women. According to the American Heart
17 Association, more than 15 million people
18 have some form of heart disease. A major
19 reason for that is over the last 30
20 years, Americans are spending more and
21 more money on fast food, increasing from
22 \$6 billion to 110 billion, or more than
23 18 fold. In 2004, Americans spent over
24 ten times more eating out than in 1974.
25 We are eating out, ordering in, picking

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 up, whatever you want to call it, more
3 and more every year. So it is no
4 surprise that along with our growing
5 waist lines portion sizes are growing, or
6 you could say along with the growing
7 portion sizes our waist lines are
8 growing.

9 Everything we are serving our
10 food on is getting larger and larger as
11 well. Plate sizes are growing, cup sizes
12 are growing, larger muffins, larger
13 pizzas, super size meals, the list goes
14 on. To the average individual eating
15 out, they are served what they think is
16 their portion of food on a plate, but
17 this portion is often a portion
18 appropriate for five people, not one
19 person. But they think they should eat
20 it all and, as you've heard this morning,
21 have their money's worth since they are
22 eating out and spending this money.

23 As we are getting our money's
24 worth, though, when we eat out, the
25 epidemic of obesity is obviously growing

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 and we are spending much more money
3 treating this epidemic, including heart
4 disease and diabetes.

5 To start with just an extra ten
6 calories per day consumed by an
7 individual, they would gain one pound a
8 year. It may not sound like much, but an
9 extra hundred calories a day will be ten
10 pounds a year, 200 calories per day, 20
11 pounds per day. It's easy to understand
12 how this path of eating out more,
13 therefore eating more, is causing the
14 rapid weight gain and dramatic increase
15 in obesity. Take a small serving of
16 french fries, about two and a half
17 ounces, is about 210 calories. A
18 seven-ounce serving, which is served at
19 most restaurants, is 610 calories. The
20 serving may look like a small size to the
21 consumer because it is served on this
22 enormous plate, so they feel that they
23 are okay to eat the entire portion of
24 french fries.

25 It is in fact that extra

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 calories consumed by the larger portion
3 sizes served are leading to this epidemic
4 of obesity. We need to help the people
5 of Philadelphia consume smaller,
6 healthier portions of food.

7 Since people are eating more
8 meals out than they are eating at home,
9 it seems restaurants would be a great
10 place for consumers to be able to take
11 control of their health. They need to
12 know how many calories, how much salt,
13 how much sugar, how much fat is in their
14 food so they could make a healthier
15 choice when eating out.

16 A healthy menu without labeling
17 does not help a person with diabetes know
18 how many grams of carbohydrate is in
19 their meal. They may estimate 65 grams
20 of carbohydrate are in a meal and take
21 medication accordingly to cover 65 grams.
22 However, they consume this portion and
23 instead it's about 90 grams of
24 carbohydrate. They have an elevated
25 blood sugar that lasts for hours that has

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 a major impact on their health. And this
3 goes on again and again every time they
4 eat out.

5 The health indicators of
6 Healthy Philadelphia 2010 have two major
7 goals. One is to increase the quality
8 and years of life for the people of
9 Philadelphia. Two is to eliminate the
10 disparities in health. To quote
11 Philadelphia's Health Commissioner,
12 Dr. Sal, "Disease management should be a
13 public health function." Our public is
14 eating out. We need to help them make
15 healthier choices. Menu labeling would
16 allow the people of Philadelphia to do so
17 on a daily basis, which would have a huge
18 positive impact on their health.

19 Thank you.

20 COUNCILWOMAN TASCO: Thank you
21 very much.

22 Councilwoman Brown.

23 COUNCILWOMAN BROWN: Good
24 morning, ladies, and I thank you all for
25 your presence and your testimony.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 With the exception of brochures
3 that might be published by special
4 interest groups, where else can consumers
5 get information related to the calories,
6 caloric content, of food that they're
7 eating? Might you know of some other
8 place that hasn't been revealed already?

9 MS. MARGULIES: There's plenty
10 of books out there that have lots of --
11 especially the chain restaurants do have
12 books with a lot of their nutrition
13 information in it, but I think a good
14 point of today was that it's really -- no
15 matter how much they learn and how many
16 books they have sitting at home, when
17 they're about to order, they have to
18 think fast, and without the information
19 right in front of them, they're likely
20 not going to make the best choice.

21 COUNCILWOMAN BROWN: Any other
22 comments to that question?

23 MS. ZOVE: I would just add
24 that just as each of you receive reams
25 and reams of written material comes

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 across your desk, you can't get to it and
3 read it. What do you see? You see and
4 you listen in sound bytes. That's the
5 nature of our culture today. And it's
6 very important, especially for young
7 people, to present information in ways
8 that is easily digestible, if you may,
9 and the best way to do that is to put it
10 on the menu boards.

11 COUNCILWOMAN BROWN: Can you
12 comment further on this program called
13 Healthy Philadelphia that's run by the
14 Philadelphia Health Department?

15 MS. MARGULIES: Yes. It's
16 actually something that I just in doing
17 my research for today that I learned
18 about. So I can find out some more
19 information for you. It seemed to be all
20 over the website for Healthy
21 Philadelphia.

22 COUNCILWOMAN BROWN: Okay.
23 Thank you for your testimony.

24 COUNCILWOMAN TASC0: Thank you
25 very much. I appreciate your testimony.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 Dr. Smith, do you know anything
3 about the Healthy Philadelphia program
4 run by the Health Department?

5 DR. SMITH: I'm sorry. Could
6 you repeat the question, please?

7 COUNCILWOMAN TASC0: Do you
8 know about the Health
9 Department-sponsored Healthy Philadelphia
10 program?

11 DR. SMITH: The Healthy
12 Philadelphia program?

13 COUNCILWOMAN BROWN: Right, as
14 revealed by our last testifier.

15 DR. SMITH: Just the
16 rudimentary sort of elements of it.

17 COUNCILWOMAN BROWN: Okay,
18 then. Thank you.

19 DR. SMITH: Sure.

20 COUNCILWOMAN TASC0: Thank you.

21 The next panel will be Sheila
22 Weiss, Patrick Conway, John Bowie, Miguel
23 Miranda, John Hatib.

24 Good morning. Thank you for
25 coming today to testify.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 Ms. Weiss, are you first?

3 MS. WEISS: Thank you very
4 much. Good morning. My name is Sheila
5 Weiss. I am a registered dietitian and
6 the Director of Nutrition Policy for the
7 National Restaurant Association. I would
8 like to thank the Philadelphia City
9 Council for this opportunity to testify
10 before you regarding Bill No. 070153.

11 Founded in 1919, the National
12 Restaurant Association is the leading
13 business association for the restaurant
14 industry. Together with the National
15 Restaurant Association Educational
16 Foundation, the Association's mission is
17 to represent, educate and promote an
18 industry that is comprised of over
19 935,000 restaurant and food-service
20 outlets. As such, diversity, customer
21 service and high-quality foods are top
22 priorities for the ever-growing
23 restaurant industry.

24 While we represent our nation's
25 restaurants, we are here today on behalf

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 of your local restaurants, many of which
3 are franchisees and small business
4 owners. These are the 10,223 locations
5 that employ 144,045 individuals in the
6 City of Philadelphia.

7 We applaud the Philadelphia
8 City Council in its efforts to address
9 the growing obesity issue affecting
10 Americans. However, while we support
11 restaurants' efforts to provide nutrition
12 information in some form, we do not
13 support Council Bill No. 070153, as
14 introduced, because we strongly oppose
15 any regulation that requires the industry
16 to post such information directly on the
17 menu or menu board.

18 Considering that ordering,
19 preparation and delivery process for
20 restaurant food is uniquely different
21 than purchasing packaged foods in a
22 grocery store, the restaurant industry
23 should be given more flexibility in how
24 we provide such information to our
25 customers. This flexibility will also

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 allow restaurants to provide much more
3 comprehensive nutrition information that
4 addresses a much broader range of dietary
5 concerns.

6 Many restaurants are already
7 providing nutrition information to their
8 customers through the use of kiosks,
9 posters, signs, brochures, tray liners,
10 packaging and customized receipts. Any
11 nutrition labeling initiative should
12 allow restaurants to retain some
13 flexibility in selecting the format that
14 works best for their particular business
15 concept and customer preferences. For
16 some, posting nutrition information on
17 the menu or menu board may work best.
18 For others, an alternative format may be
19 more suitable. The bottom line is that
20 one size does not fit all. If the true
21 goal is to provide consumers with more
22 information, then efforts to restrict
23 that information to menus and menu boards
24 are misguided.

25 Philadelphia's small

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 restaurants and franchisees would be
3 harmed. The average table-service
4 restaurant makes only four cents on the
5 dollar before tax, creating a fine line
6 between success and failure. Three in
7 four eating and drinking place firms have
8 fewer than 20 employees, and 96 percent
9 are single-unit operators. Menu labeling
10 regulations could potentially impose
11 costs of tens of thousands of dollars on
12 these economically vulnerable small
13 businesses by requiring nutritional
14 analysis and reprinting of their entire
15 menu and menu board.

16 The restaurant industry's
17 objective has always been to provide a
18 wide variety of food options to
19 accommodate the needs of diverse
20 consumers. It is important that the
21 Philadelphia City Council examines its
22 role and responsibilities in addressing
23 the public health problem of obesity,
24 with the understanding that our diverse
25 population needs recommendations that are

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 clear and relevant to modern life.

3 Consistent positive messages that promote

4 healthier thinking and life-styles will

5 always be more successful. The

6 restaurant industry believes it can play

7 a valuable role in serving as a point of

8 dissemination for consumer-focused

9 nutrition information in a meaningful

10 way. Our industry has been successful

11 because we have listened to our millions

12 of customers and responded to their

13 needs.

14 We would encourage the City to

15 reconsider this bill and to allow its

16 restaurants to retain some flexibility in

17 selecting the format that works best for

18 their particular business concept and

19 customer preferences. We look forward to

20 cooperating with the Council and

21 providing insight regarding the diverse

22 nature of the restaurant industry and the

23 consumers we serve.

24 Thank you very much again for

25 this opportunity.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 COUNCILWOMAN TASCO:

3 Councilwoman Brown.

4 Oh, I'm sorry. Yes. Next?

5 MR. CONWAY: Thank you and good
6 morning.

7 COUNCILWOMAN TASCO: Good
8 morning.

9 COUNCILWOMAN BROWN: Good
10 morning.

11 MR. CONWAY: Chair Tasco and
12 members of the Committee on Public Health
13 and Human Services and members of
14 Philadelphia City Council, thank you very
15 much for the opportunity to provide
16 testimony this morning on Bill 070153
17 regarding menu labeling. My name is
18 Patrick Conway and I'm speaking this
19 morning on behalf of the Pennsylvania
20 Restaurant Association and also our local
21 chapter, the Philadelphia Delaware Valley
22 Restaurant Association. Our Association
23 represents restaurants all across the
24 Commonwealth, but today we're speaking on
25 behalf of 10,000 restaurant units located

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 in the City of Philadelphia.

3 We recognize and thank

4 Philadelphia City Council for its concern

5 with public health and for its work to

6 address the growing problem of obesity,

7 especially childhood obesity, in

8 Philadelphia and in our neighborhoods.

9 Many Philadelphia restaurants are already

10 providing a good deal of nutrition

11 information to their customers

12 voluntarily, and we support their

13 continued efforts to do so. However, we

14 are opposed to Council Bill 070153

15 because its mandatory menu and menu board

16 labeling requirements would simply be

17 unworkable for restaurants from a

18 practical standpoint.

19 Ordering a meal in a

20 table-service restaurant, you see, is not

21 like buying a packaged item in a grocery

22 store. Restaurant patrons are ordering

23 menu items today exactly as they want,

24 and customizing the order changes the

25 nutritional content of that menu item

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 significantly. For example, consider
3 that one sandwich made from just five
4 items, including bread, meat, cheese,
5 lettuce and tomato, can be ordered 120
6 different ways. With the diversity of
7 restaurant menu offerings, diversity of
8 ingredients and the ordering
9 customization I just talked about, we
10 will never be able to enjoy the same type
11 of continuity that we have with a
12 standard store-bought labeling program.
13 Government-mandated standardized menu
14 labeling is simply unworkable for the
15 restaurant industry.

16 Sheila has covered the economic
17 picture fairly well, but to point out the
18 hardships that this could cause
19 particularly on small businesses in the
20 City that are locally owned and operated
21 by franchisees, we're concerned about
22 tens of thousands of dollars that could
23 come from analyzing nutritional content
24 in reprinting entire menus. So that's
25 another consideration that we'd ask you

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 to take into account.

3 Mandatory nutrition labeling on
4 restaurant menus and menu boards will not
5 solve the growing obesity problem in
6 Philadelphia. A stronger public focus on
7 balance, moderation, physical activity
8 and personal responsibility will be the
9 key to reducing obesity and nurturing
10 healthy life-styles among Philadelphians.

11 In closing, I would like to
12 thank the Chair, the members of the
13 Committee on Public Health and Human
14 Services and the members of Philadelphia
15 City Council for the opportunity to
16 provide testimony on behalf of
17 Philadelphia's restaurants regarding the
18 important topic of menu labeling. We
19 look forward to being a resource for you
20 as we work together on this important
21 issue.

22 Thank you.

23 COUNCILWOMAN TASC0: Thank you.

24 MR. MIRANDA: Good morning.

25 COUNCILWOMAN TASC0: Good

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 morning.

3 MR. MIRANDA: My name is Miguel
4 Miranda. I'm Managing Partner of the
5 Capital Grille here in Philadelphia at
6 the corner of Broad Street and Chestnut
7 Street. For many years I've looked down
8 the street and looked at City Hall, so I
9 feel very honored to be here and actually
10 speak in front of you.

11 I'm obviously here to speak
12 about the menu labeling initiative that's
13 being considered. And although many
14 people don't realize it, Capital Grille
15 is a chain, along with Morton's, The
16 Palm, Ruth's Chris, restaurants of such.
17 We have multiple units around the
18 country. So we also fall under this
19 legislation.

20 As we take a look at it and how
21 it would affect our business and how it
22 would affect the dining experience for
23 our guests, we've taken a look at our
24 menu. And if some of you have dined with
25 us, you'd recognize the fact that our

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 menu does have a pretty good size
3 variety, as well as if you get a steak
4 from time to time, the cuts vary from
5 portion size, as well as the fat content.
6 If you get a porterhouse steak, which
7 obviously is a steak with a bone, the
8 bone size varies from time to time as to
9 how much -- the density of the bone, how
10 much bone is there.

11 So for us to turn around and
12 obviously analyze our menu and give
13 accurate readings for our guests would be
14 extremely difficult to do time in and
15 time out again. And I believe it was
16 earlier testimony saying someone needed
17 medicine, to take a certain amount of
18 medicine to make sure they had the right
19 amount, we would feel that that would be
20 unsafe for us to tell them there's a
21 certain amount of, say, sugar or sodium
22 in that particular steak, and yet it
23 might not be based on the portion size.

24 I know the big consideration to
25 take is also how we cook it. Some items

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 are broiled and they're broiled rare,
3 which obviously changes how much the
4 content is there. If you broil it well
5 done, it changes it drastically. Ajou,
6 no ajou. And then don't even get started
7 on the side dishes, which it gets a
8 little bit different there.

9 Obviously our portion sizes are
10 big. That's what we're known for. A
11 24-ounce porterhouse steak is probably
12 one of the most popular items on the
13 menu. I do recognize obviously it's
14 probably a lot bigger than what is
15 recommended by most doctors. As my
16 doctor tells me on a regular basis, I
17 probably need to cut back myself and get
18 my cholesterol back in check.

19 But as we've tried over the
20 years to actually bring smaller menu
21 items on our menu, a ten-ounce fillet,
22 eight-ounce fillet, still the most
23 popular items are the 24-ounce
24 porterhouse, the 20-ounce Delmonico
25 steak, try as it may be to change that.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 That being said, we do
3 recognize there are some things that we
4 are responsible for as a restaurant and
5 as a community member. We do offer
6 gluten-free diet menu items. We've done
7 our research there, and we have a lot
8 more guests that actually have that issue
9 than anything else basically from celiac
10 disease. So we have that information
11 readily available for them.

12 We can obviously recommend --
13 we have salads available on our menu.
14 Obviously our staff knows if you want a
15 lighter steak, a fillet mignon is
16 probably a better route to go with, which
17 has less fat content than, say, a strip
18 steak, which obviously has a lot more.
19 So we can make those recommendations.

20 Undoubtedly it obviously makes
21 it really tough for us to put it on a
22 menu, which if you take a look at it,
23 it's already pretty good in size and how
24 much more information we can put on this
25 menu, not including the alcohol or the

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 wine program that we have on there as
3 well, will make it somewhat difficult.

4 To me, honestly, as a father of
5 two girls, I applaud what's trying to be
6 done. I think I definitely would need to
7 get a handle on this as a member of the
8 Pennsylvania Restaurant Association as
9 well as the National Restaurant
10 Association. I think I can speak on
11 behalf of most members to say I think we
12 actually want to be part of helping you
13 with this. I'm not sure if this measure
14 is the way to go. I personally, to be
15 honest, will be happy to go to a school
16 and speak on a monthly basis to the
17 school kids on how to order well in a
18 restaurant, what to look for. That to me
19 I think would be a better way of making a
20 change to their education on our behalf,
21 not just from doctors or dieticians, but
22 maybe from the people in the Restaurant
23 Association or restaurant business.

24 So I ask you to please consider
25 the testimony given today and do what's

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 best for the City of Philadelphia. Thank
3 you.

4 COUNCILWOMAN TASCO: Thank you
5 very much.

6 Next?

7 MR. BOWIE: Good morning,
8 Chairwoman Tasco and members of the
9 Committee. I do deeply appreciate the
10 opportunity to speak before you today,
11 and for that, I thank you. For the
12 record, my name is John Bowie and I'm the
13 Division Vice-President for Wendy's
14 International, Inc. I reside at our
15 regional office in Berwyn, Pennsylvania
16 where I lead the operations for
17 approximately 650 corporate and franchise
18 stores in eight states, including all of
19 Pennsylvania and, of course, here in the
20 City of Philadelphia. Today I offer
21 comments in opposition to the proposed
22 menu board labeling mandate.

23 Wendy's does support prominent
24 in-store posting of complete nutrition
25 information for the food that we serve.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 We've provided information for decades,
3 and the way in which we provide it has
4 evolved over time based on technology and
5 other developments and opportunities.
6 We, however, oppose mandates on menu
7 boards. We believe it will confuse
8 consumers. Restaurant menu boards are
9 designed for advertising and marketing.
10 Nutrition information is educational.
11 And just as with the nutrition facts
12 panels on manufactured food, we believe
13 it should be distinct from its
14 advertising.

15 Manufactured food has a
16 dedicated place for nutrition facts. Our
17 customers have a dedicated place for this
18 information on nutrition information
19 posters that are displayed in every
20 store. I have brought a copy of that
21 poster for you to review.

22 Additionally, we're concerned
23 that a local government would seek to
24 regulate food labeling, especially in
25 light of our long tradition of providing

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 the information in a very user-friendly
3 way.

4 Founded in 1969, Wendy's has
5 become one of the world's most successful
6 restaurant chains. However, less than 20
7 percent of our stores are owned by the
8 corporation. The other 80 percent are
9 individually owned and operated often by
10 small business owners. In Philadelphia
11 the majority of Wendy's are owned by
12 local franchisees.

13 Wendy's has long been committed
14 to finding new and better ways to provide
15 nutrition information that our customers
16 want and need. For 30 years Wendy's has
17 provided nutritional information that has
18 exceeded what is currently required and
19 has had no objection to providing the
20 information for our menu items in every
21 single store.

22 In 2006, to better provide this
23 information near the point of sale,
24 Wendy's installed posters with complete
25 nutritional information for all menu

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 items in each one of its stores. These
3 posters include information on calories,
4 fat, cholesterol, sodium, protein,
5 carbohydrates, sugar and fiber, as well
6 as allergen information. Every Wendy's
7 restaurant is audited for and required to
8 have these large nutrition information
9 posters permanently affixed to the inside
10 walls of the restaurant where customers
11 have access to the information. We
12 provide this information not because it's
13 required but because we believe our
14 customers deserve it and it's the right
15 thing to do.

16 Our food, like most restaurant
17 food, is hand-prepared and made to order.
18 Therefore, product variations will occur
19 and portion sizes will vary. Relying on
20 information on a menu board to be precise
21 as if the food were manufactured like
22 grocery store goods does not recognize
23 the differences in the nature of the two
24 types of food, hand-made versus
25 manufactured.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 Wendy's believes this proposal
3 is unfair. It will not apply to the
4 entire industry, and we do not believe it
5 is the best way to educate our customers
6 about the food that we serve. We ask the
7 City to carefully consider what is in the
8 best interest of both the customer and
9 the industry and allow us to continue to
10 provide the information near the point of
11 sale, as we have done for the past 30
12 years.

13 Again, I thank you for the
14 opportunity to speak.

15 COUNCILWOMAN TASC0: Thank you
16 very much.

17 Next?

18 MR. HATIB: Good morning. My
19 name is John Hatib. I would like to say
20 thank you very much.

21 My name is John Hatib. I'm the
22 General Manager for TGI Friday's located
23 at 1776 Ben Franklin Parkway, which is
24 about two blocks from here. I work for
25 Jackmont Hospitality, which is a

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 franchisee of TGI Friday's. Jackmont
3 Hospitality also operates another TGI
4 Friday's located at City Line Avenue,
5 which is on the other side of
6 Philadelphia. We have about 238
7 employees in the two locations.

8 Our organization opposes the
9 menu labeling proposal for several
10 reasons. First, the cost to update our
11 menu and maintain the proposed menus
12 would weaken our already slim margins.
13 Our menu carries over 100 and spans over
14 ten pages. New entrees and menu items
15 are also added to our menu every six to
16 eight weeks, because we have a franchise
17 of TGI Friday's brand. We estimate that
18 the price for printing new menus and
19 reproduction will cost and almost
20 increase in threefold that will also
21 result in decreased profit margins.

22 Second, providing standardized
23 caloric descriptions are increasingly
24 difficult due to customer substitutions
25 and also our customizations. Customers

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 like choices. Customers like to tailor
3 their meal to fit their preferences.

4 It is simply not practical for
5 restaurants or us to generate written
6 menu information to every conceivable
7 customized order. Similarly, variance in
8 recipe and every adherence to measuring
9 of all ingredients during preparation of
10 any meal could jeopardize consistency of
11 our recipes.

12 Third, mandating this type of
13 information would also expose our company
14 to undue liability and litigation.

15 Jackmont Hospitality is a small
16 minority-owned business that prides
17 itself in providing the highest level of
18 quality and service to the community.
19 The proposed menu changes will expose our
20 company to an unthinkable amount of
21 lawsuits that would threaten our ability
22 to survive as a small company in the City
23 of Philadelphia.

24 I also would like to say that I
25 do have about five menus that we have

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 that Council can look at just to give you
3 guys an idea how much it's going to cost
4 us if you decide to pass this bill.

5 I would like to say thank you
6 very much for your time.

7 COUNCILWOMAN TASCO: Thank you
8 very much.

9 Next? That's it? Great.

10 COUNCILWOMAN BROWN: The
11 gentleman from Wendy's, Mr. John Bowie,
12 might we have copies of your testimony?

13 MR. BOWIE: Yes. Copies were
14 placed on the back table, yes.

15 COUNCILWOMAN BROWN: Okay. I
16 overlooked it.

17 Could any one of you, just for
18 our knowledge base, define the difference
19 between a chain and a franchise just to
20 put it on the record. Any one of you.

21 MR. HATIB: TGI Friday's, it's
22 a franchise. Jackmont Hospitality, TGI
23 Friday's.

24 COUNCILWOMAN BROWN: Okay. The
25 difference between --

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 MR. BOWIE: For Wendy's
3 International of our approximate 7,000
4 restaurants, about 20 percent of the
5 restaurants, or 1,400 stores, are company
6 owned and operated. So that they are our
7 restaurants and we operate them with a
8 corporate and field support staff that
9 manages those. The other roughly 5,500
10 restaurants are franchised, and that is
11 an independent business owner has
12 purchased the rights to operate a
13 Wendy's. We provide significant support
14 from a brand, a national level, and then
15 with field support, with auditors,
16 inspectors, and we help them through the
17 various components of the business.

18 COUNCILWOMAN BROWN: And of
19 those independently franchised owners,
20 they decide, because they are that, on
21 whether or not they want to provide menu
22 labeling or do you have nutritional
23 information -- because menu labeling is
24 becoming a four-letter word -- do they
25 provide nutritional information, the 20

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 percent, the 1,400, as well as the 5,500?
3 Do both of those worlds provide
4 nutritional information?

5 MR. BOWIE: Yes. We have very
6 specific requirements for every single
7 franchisee, and they basically -- there
8 should be complete transparency. A
9 company-owned Wendy's restaurant versus a
10 franchise restaurant, you should see no
11 difference. And all of our restaurants
12 are required to have the nutritional
13 poster permanently affixed to the
14 restaurant as close to the point of sale
15 as possible.

16 COUNCILWOMAN BROWN: What
17 triggered Wendy's corporate decision to
18 provide nutritional information?

19 MR. BOWIE: In all honesty,
20 ma'am, we've been providing that for 30
21 years, and it's just something that we
22 felt was the right thing to do. Prior to
23 posters we had nutritional leaflets,
24 handouts, which listed the same
25 information that were available upon

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 request at the pick-up window or maybe in
3 a holder on the wall or available at the
4 counter.

5 COUNCILWOMAN BROWN: I see.
6 And so that that's a segue to the comment
7 or remark or perspective raised by
8 Ms. Weiss wherein you indicate in your
9 testimony that -- you say that you should
10 have flexibility. So give me an example
11 of what that represents and, therefore,
12 would be acceptable to the world where
13 you come from, the National Restaurant
14 Association.

15 MS. WEISS: In terms of
16 flexibility, what I was referring to is
17 an example such as a poster at point of
18 purchase rather than a strict requirement
19 to have that nutrition information on a
20 menu or menu board, giving an
21 establishment the flexibility to provide
22 it in another means, such as a poster.

23 COUNCILWOMAN BROWN: Okay. So
24 then is it fair to say, then -- I don't
25 want to misrepresent you -- you are in

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 favor of nutritional information; the
3 challenge or the request or the appeal is
4 giving me, the restaurant owner, the
5 option on how I choose to deliver that
6 information. Would that be fair to say?

7 MS. WEISS: As an association,
8 we are in support of restaurants who can
9 provide nutrition information. As you
10 heard from this panel, there are some
11 challenges for certain establishments
12 because of variability in menu items or
13 in options offered that it's not always
14 an easy standard approach to provide
15 nutrition information for a menu item.

16 COUNCILWOMAN BROWN: Okay. In
17 your testimony you say, and I quote, "The
18 restaurant industry believes it can play
19 a valuable role in serving as a point of
20 dissemination for consumer-focused
21 information." Such as what? Provide me
22 with an example.

23 MS. WEISS: Some examples would
24 be nutrition information in an
25 alternative way other than a menu. Also

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 providing education to consumers on how
3 to make smarter choices when ordering,
4 asking for a sauce on the side, going for
5 a steamed vegetable instead of a fried
6 vegetable, examples like that.

7 COUNCILWOMAN BROWN: Okay.
8 Thank you very much.

9 COUNCILWOMAN TASCO: Gentleman
10 from Wendy's, those independent
11 franchisees, if this bill were to become
12 law, would you provide them with any
13 assistance to post the information on the
14 menu board or are they responsible for
15 that as individual owners?

16 MR. BOWIE: We provide the
17 information currently through the
18 posters. They would be responsible -- in
19 terms of changing their menu board to
20 accommodate what would be requested under
21 this bill, that would be their financial
22 responsibility to change that menu board.

23 COUNCILWOMAN TASCO: How often
24 are your menu boards changed, a Wendy's
25 menu board?

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 MR. BOWIE: The physical
3 structure of the menu board --

4 COUNCILWOMAN TASC0: I guess
5 the content. How often do you change
6 your menu?

7 MR. BOWIE: I mean, there may
8 be some promotional items added to or
9 taken off the menu board a couple times a
10 year. But that would be a menu strip.
11 Yes. The core menu itself, 95 percent of
12 the menu or greater is a standardized
13 menu.

14 COUNCILWOMAN TASC0: Mr. Hatib,
15 you said that you're an independent
16 chain. You change your menu how often?

17 MR. HATIB: Well, as a
18 franchisee of a brand, we're required to
19 change the menus every six to eight
20 weeks. Friday's as a brand changes their
21 menu. That's based on what the consumer
22 wants us to do.

23 COUNCILWOMAN TASC0: Do you all
24 provide any nutritional information in
25 your restaurants?

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 MR. HATIB: Yes. When people
3 ask questions, we do provide nutritional
4 information.

5 COUNCILWOMAN TASCO: You don't
6 have a poster board near the front of the
7 restaurant where people are waiting to
8 sit? There's no information out front?

9 MR. HATIB: No.

10 COUNCILWOMAN TASCO: Gentleman
11 from Wendy's, you have your information
12 near the point of sale.

13 MR. BOWIE: Yes.

14 COUNCILWOMAN TASCO: Is that
15 before they order? When you come into a
16 restaurant, there's a wall over here and
17 a wall over here. I'm in the middle. Do
18 I have to go to the wall at the end of
19 the counter to get the information?

20 MR. BOWIE: That's a great
21 question. I will tell you that it varies
22 by building type, because we have several
23 different layouts depending on the type
24 of building that we built, but generally,
25 inside the restaurant you're entering

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 into a serpentine and it's a single cue
3 system, and it is generally either on the
4 wall to your right as you enter the
5 serpentine or straight ahead as you're
6 walking towards it before you get to the
7 counter. So, I mean, one could argue
8 it's both before and after you order.
9 But it's readily available near the front
10 counter on either the left wall or the
11 right wall.

12 COUNCILWOMAN TASC0: To
13 Ms. Weiss, now, it seems that this issue
14 is going to be on the agenda for a lot of
15 local governments.

16 MS. WEISS: Yes.

17 COUNCILWOMAN TASC0: And at
18 some point in time it's probably going to
19 become law, maybe everywhere.

20 MS. WEISS: Perhaps.

21 COUNCILWOMAN TASC0: So have
22 you thought about trying to figure out
23 how you work with local government to
24 come up with some solution to this rather
25 than saying we can't do it? The best way

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 is how can we do it.

3 MS. WEISS: We are looking to
4 work with local governments as we can to
5 find ways in which we can help educate
6 the public and find ways in which our
7 restaurants can be flexible in providing
8 information when possible.

9 COUNCILWOMAN TASC0: So now how
10 can Subway do it and other restaurants
11 can't put the nutrition information on
12 their poster board? What's the
13 difference?

14 MS. WEISS: Well, I think --
15 and I can't really speak specifically to
16 their practices, because I don't -- I
17 haven't been working with their marketers
18 and their artists to do the menu boards,
19 but I think as you can see from this
20 panel, a chain restaurant varies and a
21 sandwich shop like Subway may be able to
22 work with their menu to post the
23 nutrition information, while others like
24 the Capital Grille has a very different
25 menu concept or TGI Friday's has a very

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 different menu concept than Subway to be
3 able to provide this information on their
4 menu or menu board. And I think, if I
5 may add, I think that's why we're asking
6 for some flexibility and showing that a
7 one-size-fits-all approach won't be
8 workable for every restaurant concept.

9 COUNCILWOMAN BROWN: Follow-up
10 question. Is Subway a member of the
11 National Restaurant Association?

12 MS. WEISS: Yes.

13 COUNCILWOMAN BROWN: Can you
14 give me a round percentage or guesstimate
15 or range of the number of restaurants
16 that are members of the NRA -- National
17 Restaurant Association?

18 MS. WEISS: Thank you.

19 COUNCILWOMAN BROWN: Delete
20 that.

21 I lost my train of thought.

22 That already are engaged in
23 voluntarily providing nutritional
24 information?

25 MS. WEISS: I can certainly --

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 I don't know off the top of my head. We
3 represent over -- the restaurant industry
4 in the U.S. has over 900,000 restaurant
5 locations. We have over 60,000 member
6 companies, and I can't give you a number
7 right now.

8 COUNCILWOMAN BROWN: It would
9 be helpful if you can get that
10 information back to the Chair.

11 MS. WEISS: Absolutely.

12 COUNCILWOMAN BROWN: And thank
13 you, Wendy's, John Bowie, for the
14 definition of "franchise." Then what's
15 the definition of "chain"? I'm trying to
16 get a handle on is there a difference or
17 are the two synonymous.

18 MS. WEISS: I can also, when I
19 send that other information, give you
20 some information from our research
21 department that clearly defines
22 restaurant chain and franchisee. We do
23 have that information. I don't know it
24 off the top of my head.

25 COUNCILWOMAN BROWN: That would

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 be very, very useful as we go forward.

3 MR. CONWAY: Councilwoman,
4 generally we refer to a chain as multi
5 unit, and then corporate chains may in
6 some cases also have locally owned and
7 operated franchise locations. So it's
8 sort of a mix. But anything that's multi
9 unit we tend to refer to as a chain
10 versus an independent, which may be a
11 single-unit operator of maybe one or two
12 restaurants.

13 COUNCILWOMAN BROWN: I see.

14 COUNCILWOMAN TASC0: Would a
15 Morton's, Ruth's Chris and Capital
16 Grille, are they chains?

17 MR. MIRANDA: Although we at
18 times say we are not. Obviously for us
19 and the restaurant industry usually when
20 you say the word "chain," you might take
21 the connotation to, say, a McDonald's, a
22 fast food, because there's several
23 thousands of them, a Wendy's and whatnot.
24 But for us, technically we are a chain.
25 We're more than several units owned by

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 the same individuals, and we try to have
3 almost identical menu contents in every
4 single store. So, yes, we are a chain
5 and so is Morton's.

6 COUNCILWOMAN BROWN:
7 Mr. Conway, in your testimony you say,
8 and I quote, that "mandatory menu and
9 menu board labeling requirements would be
10 unworkable for most restaurants."

11 So let's break that down. What
12 is workable for some restaurants?

13 MR. CONWAY: That's an
14 excellent question, Councilwoman, and I
15 think you'll find that restaurants are in
16 the hospitality business, so they succeed
17 and stay in business by offering
18 customers the choices that they're
19 seeking, which is why more and more
20 restaurants, going back to John's comment
21 30 years ago with his company, started
22 providing information, and more and more
23 today you find restaurants voluntarily
24 providing the information either on their
25 website or a poster or through whatever

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 mechanism might work for them.

3 But for many restaurants, when
4 I say it's unworkable from a practical
5 standpoint, some restaurants, their menus
6 are changing on a daily basis. They may
7 have -- a different brand of mayonnaise
8 on a sandwich can change the caloric
9 content, for example, or different chefs
10 may put in a different amount of a
11 particular ingredient when making a
12 sauce. So it could be very difficult, if
13 not impossible, for certain types.

14 COUNCILWOMAN BROWN: That's
15 very helpful.

16 COUNCILWOMAN TASCIO: My liver
17 is not on the Capital Grille menu, but I
18 order it. So they don't have it on
19 there, but they will accommodate me when
20 I ask for it.

21 MR. MIRANDA: We'll make it for
22 you.

23 If I may add, if I may add
24 another comment, I guess to the point
25 we're trying to make here with the

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 legislation and really, I guess, so you
3 understand how difficult it would be for
4 a lot of restaurants, not even including
5 the Capital Grille, but you have to
6 consider who else is in this category.
7 It's not just a Morton's where you might
8 think on the outside, Okay, this is a
9 straight-forward steak, how difficult can
10 that possibly be, you're not doing much
11 to it. I give you that much, but if you
12 read in the paper, look at Stephen
13 Starr's organization, at the rate they're
14 growing, within three years Buddakan will
15 be considered a chain. So if you walk
16 into a Buddakan, you're asking for them
17 in the City of Philadelphia to have all
18 of that information. And I know Chef
19 Swiderski very well. His menu changes a
20 lot. And it has been difficult for us to
21 get that information, and on top of
22 which, a lot of the ingredients that we
23 use, especially at a Capital Grille I can
24 say personally I know we use, come from
25 small farms in New England or wherever

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 else we get, say, the porcini mushrooms
3 for our porcini rub Delmonico. It would
4 take for me to turn back around today and
5 say, Okay, I need to find out your
6 information, how are you growing it, what
7 kind of water is being used, what are you
8 fertilizing it with and this, that and
9 the other. It just -- it would trickle
10 down so much further down that it would
11 be almost -- it would affect how we
12 market ourselves, as well as what items
13 we produce. That item itself, which has
14 right around about 15 different
15 ingredients in the rub, would be
16 difficult for us on a consistent basis to
17 give accurate numbers, and eventually
18 we'll probably have to take it off the
19 menu. It is our most popular item, but
20 that reason alone it would require us to
21 take it off the menu. And, like I said
22 earlier, I think it was the testimony
23 that it is vitally important for some
24 individuals to know exactly how much
25 sodium is in there, how much fat content

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 is there, that we would be putting
3 ourselves at risk, legally at risk, to
4 say, Yeah, that's how much is in there.
5 And if something, God forbid, happened to
6 an individual thinking that's how much
7 was in there and it really wasn't, it
8 would be bad for everybody.

9 So that's what we said. I
10 think there's different ways of getting
11 things done, and the blanket "put it on
12 the menu," it would be difficult for a
13 lot of restaurants. And maybe Subway had
14 figured out a way to do it, but I think
15 in their system it is more of a
16 production line type situation. You can
17 kind of see what you got. There's not as
18 much variety as maybe some other
19 restaurants.

20 COUNCILWOMAN TASC0: Mr. Hatib,
21 you also mentioned that the proposed menu
22 changes would expose your company to
23 unthinkable amounts of lawsuits. Could
24 you expand a little further about that?

25 MR. HATIB: Well, what I mean

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 by that, ma'am, is, let's say -- the
3 guest wants what they want, how they want
4 it, when they want it. We give it to
5 them wherever they want, how they want
6 it. If we said a cheeseburger contain
7 this much whatever and somebody come and
8 customize the menu and now -- and we
9 order the customer something different,
10 they could turn around and sue us and
11 say, Look, even though they told us this
12 is what they wanted, whoever is taking
13 care of them wrote it down, took care of
14 their order, went and got it cooked the
15 way they want it, if they left and came
16 back because we posted something, they
17 could come back and say, Look, you said
18 this is what is in the cheeseburger, even
19 though they wanted something different,
20 they could come back and sue us.

21 There is no -- on one hand
22 saying -- do you understand what I'm
23 trying to explain, or no?

24 COUNCILWOMAN TASCO: I
25 understand. Because people change the

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 way they order sometimes at a restaurant.

3 MR. HATIB: Right. People
4 generally do. So let's say you were
5 taking care of my order. I came back and
6 say, Look, I want my cheeseburger cooked
7 this way. You got it down. The chef
8 prepared it the way you want it cooked.
9 You came back later and said, Look, my
10 cheeseburger wasn't the way whatever.
11 For some reason, you can come back and
12 sue us.

13 It's a very fluid and dynamic
14 business. That's the best way I can put
15 it to you, our business. It's like
16 water. You put it here, you never know
17 which way it's going to turn. It's very
18 fluid.

19 COUNCILWOMAN TASC0: Okay.

20 Any other questions?

21 Councilwoman Miller.

22 COUNCILWOMAN MILLER: I just
23 want to make a statement that the menu
24 listing may be the issue, but I think
25 nutritional facts should be present on a

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 menu. Now you see people have on their
3 menus "fat free" or "low calorie."
4 Something needs to happen. I know
5 people -- I have a friend who is a
6 diabetic. Once she found out she was a
7 diabetic, she stopped going out to eat,
8 because she wanted to make sure that she
9 was eating the right food, and didn't
10 really venture back out to eat in
11 restaurants for more than year once she
12 understood the disease, understood a
13 little bit about the calories, the
14 carbohydrates, the sugar content.
15 So I do think it's important.
16 People come to your restaurant by choice.
17 I would think that by choice restaurants
18 would try to figure out a way to inform
19 and help the public understand what they
20 are purchasing, or else they make the
21 choice not to come, like my friend.
22 That's it. I don't think that's too
23 difficult.
24 You talk about the signs. A
25 24-ounce steak at Capital Grille. So if

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 it's a 24-ounce steak, just put whatever
3 up there, whether it's the calories or
4 whatnot. Let people know you could -- I
5 remember years ago someone said that they
6 went to Burger King for burgers because
7 their burgers were grilled rather than
8 fried like another brand. People need to
9 know that. I know Burger King's
10 commercial does say something like that.
11 But I think the public just needs to be
12 informed so they can make choices. And
13 we don't have to know how many calories
14 are in a mushroom that you got from a
15 farmer, a little small farmer. That's,
16 to me, taking it to the extreme.

17 COUNCILWOMAN TASC0: But that's
18 part of the --

19 COUNCILWOMAN MILLER: Or you
20 can put condiments. You could put the
21 condiments up there and just say these
22 condiments have X, Y or Z. And in some
23 of the books, you see that, in the
24 carbohydrate counters, if you want to get
25 that technical. But are we looking to be

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 that technical?

3 MR. MIRANDA: I guess to
4 respond to that, I would say I agree that
5 our guests do probably need the
6 information, especially if they have a
7 disease that they know if they eat the
8 wrong thing may affect them. I think
9 education is a big point of it. I think
10 as an association, definitely myself,
11 we're willing to help in that education
12 in different ways. I think our point
13 being and to make sure I have the
14 legislation correct, you're asking for
15 nutrition information on all items on our
16 menu, and that's where it becomes -- we
17 can't be honest about that number,
18 because that number varies literally from
19 plate to plate.

20 And I guess to piggyback on his
21 information about the lawsuit, this
22 morning when I was drying my daughter's
23 hair, you look at the hair dryer and
24 there's a sign there saying don't use
25 while in the bathtub. People who have

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 common sense just realize you probably
3 shouldn't use an electrical item in a hot
4 tub, but apparently someone probably did
5 at some point, sued and won. You know,
6 we have to live, unfortunately, in a
7 realistic world where people like to sue,
8 and we have to look at our business and
9 say we have to protect it. Everything I
10 do, everything I say, I have to watch out
11 how I do it, make sure we're protecting
12 my business, my interest.

13 So for us to turn around and
14 say our porterhouse has X amount of
15 sodium in there, somebody wants to test
16 it, maybe an advocacy group, and say, You
17 know what, I don't believe that's right,
18 they take it to go, test it and it comes
19 back being false, I have a lawsuit on my
20 hands. And that's the selfish way of
21 looking at it, but I think the more
22 important way to look at it, someone who
23 really needs to know the salt content on
24 there, we can give you a ballpark figure.
25 We can tell you probably -- I will tell

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 you this: I'm not a dietitian, but if I
3 have to worry about salt, probably eating
4 a 24-ounce porterhouse is not the way to
5 go, period. It's a big amount of beef.

6 But there's different ways that
7 we as an organization or restaurants can
8 go into schools, go into clinics and
9 educate. I'd be happy to talk about my
10 menu or I'm sure different restaurants
11 would be happy to talk about their menu.
12 I want more people in my restaurant, so I
13 will talk to anybody about my restaurant.
14 That's something we can do. I just think
15 the menu labeling really won't work on a
16 standard basis.

17 COUNCILWOMAN MILLER: Okay.

18 Thank you.

19 COUNCILWOMAN BROWN: So to
20 summarize, the sentiment of what I think
21 I've heard, two things resonate:
22 flexibility and, quote, willing to help
23 in different ways.

24 Thank you all for your
25 testimony.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 COUNCILWOMAN TASC0: Thank you
3 very much.

4 COUNCILMAN RAMOS: Madam Chair?

5 COUNCILWOMAN TASC0: I'm sorry.
6 Forgive me, please.

7 Please come back.

8 Councilman Ramos. I'm sorry.

9 COUNCILMAN RAMOS: I'll be
10 quick.

11 I know for a fact that those of
12 you that are at the witness table are
13 very much concerned about public health.
14 I know that to be a fact. TGIF earlier
15 this year and Wendy's supported my trans
16 fat bill before we even voted on it. So
17 I want to thank you for being so
18 concerned about public health.

19 I know that the sponsor of this
20 bill, my colleague, Blondell Reynolds
21 Brown, has worked very hard in trying to
22 reach agreements with all the parties
23 involved to make this be a bill that will
24 continue to move Philadelphia in its
25 leadership role and involvement in public

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 health without intruding into personal
3 lives of people, but nevertheless, that
4 we in government have a very significant
5 role in the public health of our
6 citizenry.

7 Are you definitely against all
8 nutritional disclosures in your
9 businesses? And in respect to the
10 association, are you against all of this?
11 Because we can continue to try to
12 accommodate you, but at the end if you're
13 going to be totally against nutritional
14 disclosure, then we're not going to --
15 you put us in a tough spot.

16 Are you totally against
17 nutritional disclosure?

18 MS. WEISS: No.

19 COUNCILMAN RAMOS: What would
20 you accept?

21 MS. WEISS: As I have
22 mentioned, we ask for flexibility in
23 allowing other means rather than just on
24 a menu or menu board.

25 COUNCILMAN RAMOS: Can you

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 explain what you mean by "flexibility"?

3 MS. WEISS: Of course.

4 COUNCILMAN RAMOS: Like give me
5 an example. What would bring you to say,
6 Since we're concerned about public health
7 and we're not against nutritional
8 disclosure in our food products, what
9 would bring you around to being in
10 agreement with us?

11 MS. WEISS: Well, I think
12 speaking right now, I think that asking
13 for flexibility in our restaurants
14 translates into providing nutrition
15 information in other means. Many
16 restaurants throughout the country are
17 providing nutrition information on
18 posters, on brochures, on their websites,
19 in kiosks. There's new technology out
20 there that allows you to put nutrition
21 information on a receipt.

22 Currently, the National
23 Restaurant Association is partnered with
24 an organization called Healthy Dining
25 Finder where we specify four to six menu

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 items that fit a healthy criteria, and we
3 work with restaurants and menus to
4 identify those items.

5 So certainly we support
6 restaurants providing nutrition
7 information in ways that work for them
8 and for their customers, and I think more
9 restaurant companies that are going to
10 speak this morning and this afternoon in
11 a few minutes will talk about those ways
12 in which they're providing nutrition
13 information.

14 COUNCILMAN RAMOS: Would you be
15 against or for menu boards? And menu
16 boards, what I've picked up in some of
17 your testimony, has been that you see a
18 problem with my wife and I going into a
19 restaurant, you give me the menu and that
20 in that menu you have to disclose -- or
21 this is the way I'm interpreting your
22 response to the bill -- that you have to
23 disclose in that menu that I had just
24 opened up as I sat down a page or two
25 that will tell me how many calories and

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 how much fat I have in the 20-ounce steak
3 and so forth. How about if it doesn't
4 necessarily have to be that way? How
5 about if the Mrs. and I walked into TGIF
6 and what I saw was, I got a menu, but you
7 have -- I think you guys call them L&D
8 signs. They're like ticker news signs
9 that you walk in. And I can walk in and
10 while I'm reading to order this 20-ounce
11 steak, I see that it says, I don't know,
12 100 calories, 200 calories and so much
13 fat, but it goes on to the next one.
14 It's going around and around, but it's
15 not on this menu.

16 MS. WEISS: That would be
17 flexible. That would be a flexible
18 alternative. And certainly all of our
19 restaurant concepts are very different,
20 as you've heard this morning, and we are
21 asking -- our opposition here is to a
22 one-size-fits-all approach, and that is
23 where we stand.

24 MR. CONWAY: Councilman -- I'm
25 sorry. Go ahead.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 COUNCILMAN RAMOS: Because
3 these signs are referred to as, I was
4 right, L&D signs. And it says here -- it
5 could say, Welcome to Wendy's. We got a
6 special, big double cheeseburger,
7 whatever. But these things will flash on
8 and off that says 200 calories with a
9 hamburger. It doesn't necessarily -- and
10 I'm just trying to find a way to see if
11 we can get some agreement here. I know
12 that if I -- now I see it and I know the
13 hamburger has got 200 calories, probably
14 more, but if I throw cheese on it, I know
15 it's got more. So I don't know. Maybe
16 with the cheese, I understand if I put
17 cheese on it.

18 But the thing is that these
19 type of signs are signs that you don't
20 then have to have that information on a
21 menu, where I'll sit there and say, Well,
22 this has -- but that I walk into your
23 establishment and you might have these
24 signs at your establishment saying at
25 Miranda's, a porterhouse, 20-ouncer, this

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 is what's there, and it just goes on to
3 the next one, the next one.

4 Will you be in favor of
5 something like that?

6 MR. BOWIE: Councilman,
7 speaking on behalf of Wendy's, that's
8 really --

9 COUNCILMAN RAMOS: And I'm not
10 speaking on behalf of the sponsor of the
11 bill.

12 MR. BOWIE: Understood. That's
13 what with the posters we are trying to
14 achieve, because from a practical
15 standpoint, as you say, one of the
16 hallmarks of our made-to-order system is
17 that there's 256 ways to order a single
18 hamburger. And so what we've tried to
19 achieve through the posters is listing
20 out ingredient components so that you
21 could in fact build it your way, and
22 we've got that on the poster and we also
23 have that on our website. And as
24 technology evolves, I don't know where we
25 will end up, but we've tried to stay as

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 current as possible to get this
3 information in front of our consumers.

4 We're a little unique in that
5 our menu isn't handed to consumers, it is
6 on the wall. So from a practical
7 standpoint, to list every single
8 combination of things that we sell
9 becomes largely impractical for us.

10 COUNCILMAN RAMOS: Even if you
11 use an electronic device such as an L&D
12 or some -- there's probably stuff that's
13 much more advanced than what I have here
14 in front of me. Will you be in favor of
15 that?

16 MR. BOWIE: You know, I'd have
17 to go back to Wendy's and kind of
18 research the technical aspect of it, but,
19 again, allowing for -- in a given combo,
20 you can choose one of eight drinks or one
21 of four sides to go with your sandwich.
22 You may wait ten minutes for that to come
23 across the ticker to get the information
24 that you need.

25 COUNCILMAN RAMOS: So right now

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 you're not in favor of any menu boards
3 that have nutritional disclosure?

4 Because this is in fact -- I would
5 consider it a menu board if you did
6 something like this. So you wouldn't be
7 in favor of this either?

8 MR. BOWIE: On the menu board
9 itself. Our position is that we are
10 pleased to provide all the nutritional
11 information and we think it's most
12 practical to do in another way, and we do
13 that through the posters.

14 COUNCILMAN RAMOS: So you're
15 not in favor of doing it --

16 MR. BOWIE: On the menu board.

17 COUNCILMAN RAMOS: Okay. Thank
18 you.

19 MR. CONWAY: Councilman, may
20 I -- just one comment. Thank you. And
21 your questions are very good ones. I
22 think it's fair to say the industry
23 applauds the intent of the legislation.
24 The concern that I think we have is the
25 standardized approach, the

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 government-mandated standardized menu and
3 menu board labeling, which could be very
4 onerous or unpractical or unworkable for
5 lots of segments within the industry.
6 We'd rather see, from a public policy
7 standpoint, governments encouraging and
8 nurturing the restaurant industry to
9 continue what they're doing a pretty good
10 job of today and are continuing to do
11 more of in response to their customer
12 demands, which is provide through the
13 mechanisms that work for their own
14 business as much information as they can.
15 And it's good for restaurants to provide
16 that sort of information to their
17 customers. They want to do that. We
18 just don't want to be diverting
19 resources, from a public policy
20 standpoint, to a standardized menu
21 labeling program when that restaurant
22 could be using resources to provide that
23 information in a more user-friendly
24 manner that suits their own operation,
25 whether it's the website or posters or

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 some other way of doing that.

3 So we applaud the intent. I
4 think the concern that we have is really
5 the standardized menu labeling and menu
6 board labeling requirements.

7 COUNCILMAN RAMOS: So even
8 hypothetically if we were to say that
9 these electronic signs, these L&D signs,
10 which will be a form of a menu board but
11 it will disclose, again, the calories and
12 the fats on your menu, but up on an
13 electronic board, what I'm saying is, I'm
14 going to go eat at The Palm and I'm going
15 to say, I'm going to splurge tonight, I
16 know. Here it comes up on your
17 electronic display board that this has so
18 much fat, this has that, but it goes on
19 quickly to the next thing, and you're
20 going -- this is just going around for
21 the public to know that these are the
22 nutritional facts of what's on our basic
23 menu at this restaurant.

24 MR. CONWAY: Again, I think to
25 answer your question, look at what suits

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 the restaurant, whether it's The Palm or
3 TGI Friday's. TGI Friday's menu here,
4 for example, states at the bottom "All of
5 our low-fat items have approximately 100
6 fat and 500 calories." So they're doing
7 things that they're able to do on their
8 menu. It may not be practical for them
9 or for the Capital Grille or even The
10 Palm, for that matter. The caloric
11 content on their three-pound lobster
12 could change dramatically depending on
13 how much butter you use when you're
14 eating it.

15 So at what point is it
16 practical or workable? And that's where
17 we say we'd like to see the public sector
18 working with the industry to work
19 together to encourage and nurture more
20 information and providing it in a way
21 that suits the business and allows them
22 to provide that to their customers in the
23 most easy and workable fashion.

24 COUNCILMAN RAMOS: Thank you,
25 Madam Chair.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 Thank you.

3 COUNCILWOMAN TASC0: Thank you
4 very much.

5 Any other questions or
6 comments?

7 (No response.)

8 COUNCILWOMAN TASC0: Thank you
9 very much. We appreciate your taking the
10 time to come over and testify.

11 Now we have Teague Higgins and
12 Perry Shah, Richard Wagner, Nick Fodera,
13 Hank Lieberman and Justin Wilson.

14 COUNCILWOMAN BROWN: For all of
15 those who just testified, please make
16 sure that you have many copies of your
17 testimony so that we have that available
18 to us after the hearing. Thank you.

19 COUNCILWOMAN TASC0: Good
20 afternoon, and thank you so much for
21 coming. Would you please proceed with
22 your testimony.

23 MR. LIEBERMAN: Yes. Thank
24 you. Good morning. I guess it's good
25 afternoon. My name is Hank Lieberman. I

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 am Vice-President of Development for the
3 Rose Group. We are the exclusive
4 franchisee for Applebee's and for Corner
5 Bakery Cafe in Philadelphia. I'm here
6 this morning to urge you to oppose Bill
7 No. 070153 which requires extensive
8 nutrition labeling for companies with ten
9 or more locations nationally.

10 First -- and I believe this
11 question was raised earlier -- it's
12 important to understand the difference
13 between a large chain of restaurants for
14 whom this bill really is intended and a
15 franchisee. Although Applebee's would
16 qualify as a chain under your definition,
17 the reality is that the Applebee's
18 concept really consists of several
19 smaller restaurant owners and operators
20 who are franchisees. A franchisee owns
21 and operates the restaurant. It invests
22 its own capital to build the restaurant.
23 It hires local employees and managers to
24 run the restaurant and is fully
25 responsible for the profits and losses

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 incurred by the restaurant. It pays a
3 royalty to the franchisor for the right
4 to use the name and marketing, but the
5 franchisee owns the business. We are one
6 of those operators.

7 We are a local company with six
8 Applebee's and one Corner Bakery in
9 Philadelphia. We invested well over \$15
10 million to build those six Applebee's,
11 and many are in neighborhoods that needed
12 a nice, clean, affordable restaurant
13 where other so-called national chains
14 wouldn't take the risk. We are the only
15 national casual dining restaurant in Port
16 Richmond, in Fishtown, at 77th and City
17 Line Avenue and Roxborough. We've been
18 in the Northeast for almost 20 years, and
19 last year we invested over three and a
20 half million dollars in the former
21 Bookbinders on 15th Street turning it
22 into what undoubtedly is the nicest
23 Applebee's in the country.

24 Earlier this year we invested a
25 million dollars to double the size of the

Also, you need to recognize, as has been mentioned in the past, the variability in our menu. I should say menus, since an Applebee's has seven different menus, which I've passed out to you all this morning: Kids, Catering, Beverage, Wine to Go, Dessert and, of

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 course, the basic menu. I thought it
3 would be helpful for all of you to see
4 all the menus to appreciate the enormity
5 of the task that this bill would impose
6 on a small company like ours.

7 Not only do we have all of
8 these menus, but our menus vary and
9 change all the time. It's not a standard
10 pre-portioned approach as this bill
11 implies. We make significant changes to
12 our menu at least five times a year. We
13 also specialize orders to fit our guests'
14 preference. This is really an important
15 point. It is not at all unusual to have
16 someone order steak, hold the mashed
17 potatoes, ask for a side of salad
18 instead, ask for dressing on the side,
19 ask for the steak to be cooked a certain
20 way, substitute a side order of broccoli
21 for fries. Also, no one portion size, as
22 a practical matter, is identical to
23 another. These are human beings in the
24 kitchen. One may spread a little more
25 mayonnaise on a bun than someone else in

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 the kitchen. Should we be penalized and
3 potentially subjected to liability from
4 lawsuits by customers who have gotten or
5 who may have gotten a gram or two more
6 carbs from an overly zealous cook trying
7 to make a meal taste good? We are not
8 selling packaged goods where the calorie,
9 fat, carb and sodium content are easily
10 identifiable.

11 We offer dozens of different
12 alcoholic beverages, where these elements
13 simply are not measurable. And I would
14 point out that this law applies to
15 alcoholic beverages as well. How much
16 sodium is in a glass of cabernet? What
17 about a California cabernet versus a
18 French cabernet?

19 Please don't force us to
20 unreasonably clutter seven different
21 menus with hundreds of different bits of
22 information next to each and every item
23 on the menu. In a restaurant where
24 people are interested in eating quickly,
25 especially at lunch, and in the case of

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 Corner Bakery, at breakfast, where
3 everyone wants to get to work on time but
4 still enjoy a good quick breakfast meal,
5 people simply do not want to wait any
6 longer to wade through the sodium and
7 calorie content of their muffins and
8 toast. You will be doing Philadelphians
9 a disservice by creating this totally
10 unworkable and impractical task, and you
11 will be creating a burden on the
12 Philadelphia restaurant community that
13 could have a devastating economic impact
14 on the industry and the entire city.

15 The Rose Group believes in
16 Philadelphia and is very conscious of the
17 interests of Philadelphia consumers.
18 We've demonstrated this time and time
19 again with our development efforts. I'll
20 never forget a day I spent at our
21 Fishtown site when we were building the
22 Applebee's there several years ago. One
23 of the residents of the neighborhood
24 walked up to me that day and said, Sir, I
25 can't thank you enough for building

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 something as nice as this in our
3 neighborhood, we've wanted something like
4 this for many, many years, thank you so
5 much for thinking of us.

6 We are a small company. I'm
7 not sure that we would have built that
8 Fishtown restaurant if these onerous,
9 extremely costly requirements were in
10 place.

11 We've recently acquired the
12 rights to build an additional 25 Corner
13 Bakery Cafes in Philadelphia over the
14 next several years. We had hoped that a
15 good number of those restaurants would be
16 in the City of Philadelphia. Please do
17 what you need to do to assure that takes
18 place. Please do what's right.

19 Thank you very much.

20 COUNCILWOMAN TASC0: Thank you
21 very much for your testimony. I got a
22 spot for you in my district.

23 MR. HIGGINS: Good afternoon,
24 Council. My name is Teague Higgins. I'm
25 an Operations Manager for Dunkin Brands,

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 Incorporated.

3 Dunkin Brands, Incorporated
4 franchises to 20 franchisees in the City
5 of Philadelphia. These 20 small business
6 owners operate a total of 101 locations
7 in the Philadelphia city limits. These
8 franchisees employ an estimated 1,500
9 employees, with a large majority of these
10 employees being residents of the City of
11 Philadelphia. It is estimated that sales
12 and transactions in these 101 stores will
13 exceed 91 million taxable dollars and 29
14 million transactions this year. It is
15 estimated that we serve two to four
16 million Philadelphia residents each year.

17 The Dunkin' Donuts system is
18 totally franchised. We have no
19 company-owned stores. Every Dunkin'
20 Donuts in the country is owned by a small
21 businessman or woman. These folks are
22 not only the life blood of our system,
23 they're the core of this city and this
24 country. This proposal threatens their
25 livelihoods and those of their employees.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 The costs and negative economic impacts
3 of this proposal will be bore by the
4 small business owner, our franchisees.

5 Dunkin Brands is not opposed to
6 disclosing the nutritional content of our
7 products. Dunkin' Donuts has been doing
8 this for many, many years. We have a
9 corporately managed website that has all
10 the information of all our products that
11 are available. For the convenience of
12 our customers, we include this website on
13 all of our cups, bags and all of our
14 packaging. At Dunkin' Donuts we also
15 offer choices for those who are
16 interested in balanced nutrition.
17 Further, we suggest that in a balanced
18 diet of every healthy active person,
19 there is room for that occasional treat.

20 This regulation is aimed at the
21 quick-service restaurant industry whose
22 business model is built on quality,
23 convenience and speed. Our business
24 model is predicated on our speed of
25 service, and our franchisees have a

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 limited time to make their money. And we
3 spend tens of millions of dollars to
4 refine our concepts just to trim a few
5 seconds off of our transactions.

6 Crowding the menu board area and the
7 point-of-sale area will create tremendous
8 confusion and delay for our employees and
9 our customers.

10 Dunkin Brands takes issue with
11 the focus on the menu board. This is
12 sacred, limited real estate in our
13 restaurants. Our consumers are repeat
14 consumers, and very few of our products
15 are purchased or consumed by children.
16 Our adult consumers are in our stores
17 again and again and rely on our speed of
18 service to deliver their products and
19 allow them to continue on with their busy
20 day.

21 There are other opportunities
22 and methods to educate our consumers.
23 The menu board is hardly the only
24 opportunity to make this information
25 available and useful. We want people to

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 study their choices before it is time to
3 order, not when they are at the counter
4 in front of the cash register.

5 Attached I have here on the
6 table here is a sample disclosure of our
7 website. I have a sample disclosure of
8 our single donut. It provides calorie,
9 sodium, cholesterol, carbohydrates, every
10 single thing you need to know about our
11 glazed donut.

12 Attached in there is also a
13 list of our products offered at Dunkin'
14 Donuts, our donuts, beverages,
15 sandwiches, bagels and bakery. We have
16 59 varieties of donuts, fancies,
17 Munchkins and sticks. We have 122
18 varieties or combinations of our coffee,
19 Coolatta, flavored coffee, hot espresso,
20 iced coffee, iced espresso, smoothie, tea
21 and other beverages. We also have 18
22 varieties and combinations of our
23 sandwiches. We have 11 varieties of
24 bagels with eight varieties of cream
25 cheese. We also have 19 varieties of

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 cookies, Danish, muffins and other
3 products. Try to envision this menu
4 board labeling legislation as it applies
5 to that amount of products. You would
6 virtually have to wallpaper an entire
7 store with this information, which would
8 also create quite a bit of confusion.

9 There is a difference between
10 being a regulator and an enlightened
11 regulator, one that cares about the
12 businesses being regulated and tries to
13 understand and balance their needs. Our
14 industry and our brand is attuned to what
15 customers want. Our customers vote each
16 and every day with their dollars.

17 We recently announced that all
18 of our products in the Dunkin' Donuts
19 chain would be trans fat-free. We didn't
20 need regulation to do this. Consumers
21 told us this. We started working on this
22 solution over three years ago. We are
23 introducing better-for-you products all
24 the time. We are willing to work with
25 the City, but as we venture into

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 unchartered waters, we ask that you
3 consider the negative effects on our
4 consumers and our small business owners
5 before implementing this type of
6 legislation.

7 Thank you.

8 COUNCILWOMAN TASCO: Thank you
9 very much for your testimony.
10 Would you proceed?

11 MR. FODERA: Good afternoon,
12 Chairwoman Tasco, Vice-Chair Miller and
13 Committee members of the Public Health
14 and Human Service Committee. Thank you
15 for the opportunity to appear before you
16 today to present testimony. My name is
17 Nick Fodera. I am speaking on behalf of
18 my Auntie Anne's hand-rolled soft pretzel
19 stores located on South Street and at The
20 Gallery in Philadelphia. Auntie Anne's
21 locations provide customers with a
22 variety of soft pretzels, dips and drinks
23 with a commitment to exceeding customers'
24 expectations.

25 I am also speaking on behalf of

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 five of my fellow franchisees who also
3 own and operate Auntie Anne's stores at
4 the 30th Street Station, Cheltenham
5 Square, Franklin Mills, The Shoppes at
6 Penn and the Philadelphia International
7 Airport.

8 With me today is Andrew
9 Weikert, who is Director of Government
10 Affairs at my franchisor's corporate
11 office, based in Lancaster, Pennsylvania.
12 From their headquarters in Lancaster,
13 Auntie Anne's, Incorporated provides
14 business support services to franchisees
15 like myself and approximately 300 others
16 who privately own over 925 stores in 45
17 states and 13 countries. For the support
18 services provided, franchisees like me
19 pay Auntie Anne's, Inc. seven percent of
20 our gross sales and an additional one
21 percent to the Auntie Anne's franchise
22 system's Marketing Fund.

23 I sit before you today
24 respectfully opposing Bill No. 070153,
25 which would require me to provide

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 nutrition information on my Auntie Anne's
3 menu boards.

4 Having said that, I want to
5 commend the intent of this legislation.
6 It is the same intent that prompted
7 Auntie Anne's to provide an even more
8 comprehensive range of nutrition
9 information than is required by this
10 bill, years ago.

11 The Auntie Anne's franchise
12 system, my store included, has long
13 provided comprehensive nutritional
14 information to its customers at the point
15 of sale via tear sheets, just like the
16 ones here. They're also included in your
17 packet.

18 By providing such complete
19 nutrition information at the point of
20 sale, my customers, as well as those
21 customers visiting the stores of my
22 fellow franchisees, have been able to
23 make informed nutrition decisions before
24 they purchase food and beverage items at
25 our stores.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 While myself and the wider
3 Auntie Anne's franchise system continues
4 to place high priority on providing
5 comprehensive nutrition information to
6 our customers right at the point of sale,
7 I have to respectfully tell you that from
8 a purely practical standpoint, providing
9 calorie, carbohydrates, saturated fat,
10 trans fat and sodium information on my
11 menu board as this bill requires, while
12 physically possible, would be extremely
13 burdensome and costly, especially as it
14 relates to my ability to reach new
15 customers who have never tried an Auntie
16 Anne's soft pretzel before.

17 If I may elaborate on that
18 point further, other restaurant chains,
19 some of which are represented in this
20 room, are very fortunate to have revenue
21 streams that support multi-million-dollar
22 marketing and advertising budgets that
23 allow for mass TV, radio and print
24 advertisement. Given the relatively
25 small size of Auntie Anne's franchise

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 system in comparison to other chains and
3 the limited marketing budget our
4 franchise system is able to support as a
5 result, Auntie Anne's simply cannot
6 afford such advertising luxuries. As a
7 result, we are forced to rely very
8 heavily on our in-store marketing, the
9 centerpiece of which is our menu board.

10 On that point, may I draw your
11 attention to the graphic of the Auntie
12 Anne's standard menu board that I
13 provided with my testimony. As you can
14 see, roughly 65 percent of the Auntie
15 Anne's menu board is dedicated to
16 graphical representation of products
17 designed to reach repeat but, more
18 importantly, first-time customers. If
19 you turn the page, you will see that the
20 volume of nutrition content required by
21 Bill No. 070153 would severely limit my
22 ability to use the menu board as an
23 effective marketing tool.

24 I personally have very serious
25 worries about this, as the success of my

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 investments on Philadelphia's South
3 Street and at The Gallery continue to
4 rely heavily on getting new customers and
5 turning them into repeat visitors.

6 To this point, my franchisor,
7 Auntie Anne's, Inc., recently found it
8 very difficult to preserve the marketing
9 value of Auntie Anne's menu boards in New
10 York City where an ordinance enacted by
11 the City's Department of Health required
12 the posting of just calorie information
13 on menu boards, not even the five
14 categories of information required by
15 Philadelphia's bill. Although
16 enforcement of the New York City
17 provision has been postponed, Auntie
18 Anne's, Inc. felt that it was in its
19 franchisees' best interest to comply with
20 the regulation's originally effective
21 date July 1, 2007. Although it was
22 successful in doing so, Auntie Anne's
23 marketing department and graphic
24 designers found it very difficult to
25 present calorie information in a format

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 that preserved the marketing integrity of
3 the menu board. Considering how
4 difficult it was to fit calorie
5 information on Auntie Anne's menu boards
6 in New York City, from a purely practical
7 standpoint, it is very difficult to
8 imagine how we will be able to squeeze
9 the four additional categories of
10 nutrition information onto my menu boards
11 that Philadelphia's menu labeling bill
12 requires.

13 As an aside to this point,
14 please keep in mind that the
15 quick-service restaurant industry is an
16 extremely diverse one. Auntie Anne's
17 only has 25 mostly standardized products.
18 When you look at the example that I
19 provided with my testimony of what our
20 menu board would likely look like under
21 Philadelphia's bill, it's almost
22 difficult to imagine how my competitors,
23 who would have a multitude of customized
24 products, will be able to comply with
25 this bill.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 In addition, when merchandising
3 products on a menu board, it is
4 critically important to provide
5 information to consumers that is clearly
6 easy to read and understand. Providing
7 nutrition information right on the menu
8 board for five categories of nutrition
9 information will be extremely difficult
10 to do without creating confusion for our
11 customers.

12 Related to that, I am very
13 concerned about being able to serve all
14 our customers standing in line before
15 they become impatient and move on. Speed
16 of service is critically important in my
17 business. For example, my location at
18 The Gallery Mall is right near the SEPTA
19 train station. When people are in a
20 hurry, they want to grab that pretzel and
21 move on and take some home, but if they
22 have to look at that menu board and see
23 all these different items, it's going to
24 hold up the line, and there will be those
25 guests that will not be able to wait

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 because they have to catch their train.

3 One person at the front of my
4 customer line trying to decipher fat,
5 calorie and sodium contents for multiple
6 items on the menu board, as well as
7 distinguishing those numbers from price
8 numbers, is bound to become confused and
9 slow my customer line exponentially.
10 Experience provides that customers will
11 leave my store if they are not served in
12 a timely fashion.

13 In closing, let me say that I
14 commend the intent of the legislation.
15 It is the same intent that prompted
16 Auntie Anne's to provide an even more
17 comprehensive range of nutrition
18 information than is required by this
19 bill, years ago. Please understand we
20 are not opposed to providing this
21 information right at the point of sale to
22 our customers. We already do this. This
23 is something we are very happy to
24 continue as we have for years.

25 However, in order to address

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 our very real practical concerns, I am
3 respectfully asking you to oppose this
4 legislation and instead adopt an approach
5 that allows restaurants the flexibility
6 to convey nutrition information to
7 customers in a way that is sensitive to
8 each restaurant concept's unique set of
9 circumstances, such as Auntie Anne's very
10 limited advertising budget, which as a
11 result causes a heavy reliance on our
12 menu board for marketing purposes.

13 Finally, thank you for
14 convening this hearing and allowing me to
15 share my thoughts on this issue. I look
16 forward to working with you on finding a
17 solution that will satisfy the intent of
18 this legislation, as well as the
19 interests of food service chains and the
20 wider public good.

21 Please --

22 COUNCILWOMAN TASC0: Thank you
23 very much. I didn't mean to cut you off.

24 MR. HIGGINS: That's okay.

25 COUNCILWOMAN TASC0: I'm sorry.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 MR. WILSON: Good morning -- or
3 I guess it's afternoon now. Thank you
4 very much for allowing me to testify
5 today. My name is Justin Wilson. I'm a
6 Senior Research Analyst at the non-profit
7 Center for Consumer Freedom. We're
8 devoted to supporting personal
9 responsibility and consumer choice. In
10 that position I spent the last three
11 years studying the costs, causes,
12 potential solutions to the obesity
13 epidemic. After examining literally
14 thousands of studies and writing two
15 books on the issue, I've become convinced
16 that menu labeling will have little to no
17 impact on obesity.

18 First, I recently finished a
19 report called "Big Bodies - Small
20 Choices" that details more than 16
21 factors that contribute to obesity. And
22 while eating is certainly one factor, it
23 is only one among many. Rather, recent
24 research suggests that increased rates in
25 obesity are the result of an

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 uncomfortable number of daily decisions,
3 ranging from how much sleep we are
4 getting at night, the changing nature of
5 the workforce or increased use of
6 prescription drugs.

7 Second, as it's already been
8 cited today, according to the USDA,
9 restaurant food accounts for just
10 one-third of calories consumed in
11 America. And mandatory menu labeling
12 will only impact nineteen percent of the
13 restaurants. Thus, after accounting for
14 other away-from-home food sources,
15 mandatory menu labeling will likely
16 effect less than five percent of an
17 individual's total calories consumed.

18 And those calories, as my book
19 recently kind of -- it was actually being
20 released today, and I'm sorry I don't
21 have a copy. That's only one small
22 proportion of the total obesity equation.

23 Third, numerous clinical trials
24 and observational studies have come to
25 the same conclusion. Providing nutrition

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 information does not influence an
3 individual's caloric intake. To that
4 point, a former Food and Drug
5 Administration Commissioner recently
6 observed that labeling on packaged foods,
7 he said, What we did in making nutrition
8 labeling mandatory did not help obesity.
9 In fact, some people would say it hurt.

10 This is known as what's called
11 the Health Halo. We've had some
12 conversations about Subway, and a study
13 recently that was released that showed
14 that consumers who were eating at Subway
15 have a perception that because they're
16 there and because Subway has pursued a
17 healthier message to their food, they
18 have a tendency to actually consume more
19 calories because they feel less guilt
20 about getting some chips and getting a
21 larger soda, so on and so forth.

22 While some surveys indicate
23 support for menu labeling, a study in the
24 September 2007 edition of the American
25 Journal of Preventative Medicine explains

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 that what consumers say in surveys is
3 much different than what they ultimately
4 order. That researcher wrote, Consumers
5 claim they want healthier choices at
6 restaurants, but purchase more indulgent
7 fare when they eat out.

8 In a 2006 study conducted by
9 researchers at Purdue University, they
10 asked respondents what they'd like to see
11 added to restaurant menus, and only eight
12 percent indicated they wanted calorie
13 information.

14 And, finally, a recent study
15 published in the Journal of the American
16 Dietetic Association determined that
17 pilot data suggests that recent
18 legislation advocating for greater
19 labeling of restaurant food may not be
20 particularly effective in combating the
21 obesity epidemic if people are not
22 looking at existing food labels and are
23 not able to use that information for
24 nutrition planning.

25 Finally, researchers from the

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 University of Vermont write that despite
3 the growing push for such legislation to
4 be developed and, more importantly, the
5 need for research in the area that has
6 been identified, there has been no
7 research demonstrating the impact that
8 food labeling will have on a consumer's
9 behavior with respect to eating out.

10 Finally, fourth, mandating
11 nutrition information without offering a
12 fair and realistic safe harbor for recipe
13 variance opens restaurants to
14 illegitimate cash-grab lawsuits. Unlike
15 packaged food companies, and as we've
16 discussed today, restaurants don't rely
17 on assembly lines to prepare their foods,
18 and as this bill's 20 percent swing is
19 unlikely to fairly account for the
20 variance in meal-to-meal preparation. In
21 some cases, it's hard to add more than 20
22 percent of calories to a plate, but when
23 it comes to saturated fat or sodium, it's
24 one shake or two, one pat or two when it
25 comes to butter. And as I'm sure you're

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 aware, there's a cadre of lawyers,
3 including some from the Center for
4 Science in the Public Interest who
5 testified today, have demonstrated their
6 eagerness to sue restaurants for a
7 variety of dubious legal claims,
8 including failure to post the advertised
9 nutritional content and then meet it.

10 Any responsible policy should
11 require a willful negligence standard, as
12 well as offer a fair and realistic safe
13 harbor against litigation for variance in
14 recipes.

15 If the Council is serious about
16 having an impact on obesity rates,
17 politically expedient solutions that
18 perpetuate an antagonistic relationship
19 with food and at the same time ignore the
20 numerous causes of obesity will surely
21 fail.

22 Instead, I believe that Council
23 should adopt more "carrots," like
24 increasing participation in physical
25 education classes, and less sticks. And

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 challenging the energy expenditure
3 culture among both youth and adults would
4 be a great place to start.

5 Thank you.

6 COUNCILWOMAN TASC0: Thank you
7 very much.

8 MR. WAGNER: Good afternoon,
9 Madam President and members of the City
10 Council. Thank you for the opportunity
11 for me to come and share my concerns with
12 you about this proposal. My name is Rick
13 Wagner and I have committed the past 37
14 years to the restaurant industry and our
15 guest experience. I have brought with me
16 two of my general managers to share their
17 concerns about this ordinance. One is
18 Don Carr. He is the General Manager for
19 15 years in the Roosevelt Boulevard
20 location, and Marshall Lowe, General
21 Manager for Center City, Chestnut Street,
22 Olive Garden. He's been with the company
23 over 15 years also.

24 I have some menus for you. I
25 know it's just a lot of fun looking over

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 menus through lunch and listening to
3 testimony about food.

4 Combined, these restaurants
5 employ about 500 employees and serve
6 about 9,000 meals. Our parent company,
7 Darden Restaurant, also owns and operates
8 Red Lobster and Capital Grille
9 restaurants in the City.

10 I am concerned that this
11 proposal will not improve the obesity
12 problem in the City and it will dilute
13 the effectiveness of the information my
14 restaurants already provide voluntarily
15 to our health-conscious guests. Olive
16 Garden has voluntarily provided
17 nutritional information highlighting our
18 most helpful menu since the 1980s. Our
19 Garden Fare menus are available in all of
20 our restaurants and on our website.
21 These items are low in calories and fat
22 and high in fiber content.

23 We also highlight our menu
24 items that are low in carbohydrates. We
25 have even highlighted a no-sugar-added

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 dessert. We highlight all of our low-fat
3 items on our menu with an Olive Branch
4 symbol to help our guests who are looking
5 for low-fat options so they can find them
6 easily. We also provide tips to our
7 guests on what side dishes to order for
8 their specific dietary needs.

9 Overall, this proposal unfairly
10 targets multi-unit restaurant companies.
11 Public health proposals should apply to
12 all restaurants equally regardless of
13 whether you have one restaurant or a
14 hundred-unit chain. Currently, even
15 though I passed out just one, we have six
16 different menus in our restaurants that
17 we change approximately every six to
18 eight weeks.

19 My guests often customize their
20 orders by substituting ingredients, side
21 dishes and by ordering wheat pasta
22 instead of our standard pasta. Mandating
23 a single set of nutritional disclosures
24 would not provide the majority of our
25 guests with usable information. We

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 choose to highlight our Garden Fare items
3 in part because the dishes were seldom
4 changed by our guests.

5 Instead of mandating
6 nutritional disclosures by chain
7 restaurants, we would ask that the City
8 Council work with the entire restaurant
9 industry and develop a comprehensive
10 approach to combatting obesity. I think
11 this program should include some form of
12 disclosure by restaurants. However,
13 restaurants should be free to have the
14 flexibility to provide information on
15 their most helpful items in a way that
16 caters to their guests. Allowing each
17 restaurant to develop their own
18 disclosure message would allow them to
19 use their knowledge of what the guests
20 want to come up with a more successful
21 program than a bunch of numbers next to a
22 menu listing.

23 Madam President and members of
24 City Council, again, I thank you for the
25 opportunity to speak with you on this

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 very important issue.

3 COUNCILWOMAN TASC0: Thank you
4 so much for your testimony.

5 Councilwoman Brown.

6 COUNCILWOMAN BROWN: I'm
7 sitting here reflecting. Auntie Anne's,
8 what you've shared with us is exactly
9 what is in use now?

10 MR. FODERA: Yes, ma'am. This
11 is the menu board that we use right now.
12 This is the menu board how it would look
13 if the legislation was passed.

14 COUNCILWOMAN BROWN: I see.

15 MR. FODERA: So it's like a
16 before and after.

17 COUNCILWOMAN BROWN: Okay.
18 Thank you for that clarity.

19 COUNCILWOMAN TASC0: Is New
20 York using the "after" menu board in New
21 York? Is that what's being used in New
22 York Auntie Anne's?

23 UNIDENTIFIED SPEAKER: May I?

24 COUNCILWOMAN TASC0: Sure.

25 UNIDENTIFIED SPEAKER: Our New

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 York City menu boards still have the
3 calorie information listed, as had been
4 required by the City's regulation. In
5 New York City we are still using this
6 menu board. Due to the fact that the New
7 York regulation only required calories,
8 our graphic artists and designers were
9 able to make all of that information fit.
10 So, yes, in New York City, we are
11 still -- we are using this menu board as
12 it appears. However, what you see before
13 you now does not have the calories
14 listed, but the New York board would look
15 very similar to this.

16 COUNCILWOMAN BROWN: How long
17 has the tear sheet been in effect, Auntie
18 Anne's?

19 MR. FODERA: We've had tear
20 sheets since probably -- the company is
21 going to be 20 years old in February. So
22 probably 19 years we've had tear sheets
23 or brochures at the front of the counter.

24 COUNCILWOMAN BROWN: So you
25 achieve the goal of the legislation; you

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 just arrive at it in a very different
3 way?

4 MR. FODERA: Yes, ma'am.

5 COUNCILWOMAN BROWN: To the
6 gentleman, the Center for Consumer
7 Freedom, describe what you mean when you
8 say, "Any responsible policy should
9 require a willful negligence standard."
10 Tell us what that means.

11 MR. WILSON: I think that in
12 addition to a safe harbor, that is more
13 realistic. The 20 percent is what was
14 established by the FDA for packaged
15 goods, and there's still plenty of
16 packaged goods that are still swinging
17 within that 20 percent, but when you got
18 different -- we talked about twice as
19 much mayo. I've worked in a kitchen
20 before and I see how it happens,
21 especially with salt and with fat
22 contents, because those are in small
23 portions already.

24 But a willful negligence
25 standard I think is important from a

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 legal perspective. Some of the other
3 legislation that's been proposed has
4 explicitly suggested that the bill can
5 only be enforced by the City and that
6 there's no ability for a private trial
7 lawyer to sue the restaurant. And in
8 addition to that, a willful negligence
9 standard would require proof that the
10 restaurant was knowingly putting lower
11 amounts or higher amounts on its menu
12 rather than just plain negligence, where
13 a cook was being sloppy and was putting
14 an extra dollop of butter in something.
15 And obviously there's certain situations
16 there. If he's being too sloppy, then it
17 should meet that standard, but if it's
18 within the normal operations of the
19 restaurant, I don't think that private
20 trial lawyers should be able to do this.
21 There's a reason why it's supported by
22 trial lawyers across the country and why
23 the folks from the Center for Science in
24 the Public Interest have already filed
25 suits about nutrition content in food.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 So I think if it's going to
3 exist, it should be totally within the
4 domain of the City and there's other --

5 COUNCILWOMAN BROWN: Totally
6 with what?

7 MR. WILSON: In the domain of
8 the City to enforce and not privately. I
9 know the Washington, DC bill has an
10 explicit line that suggests that the
11 intent of this bill is not to encourage
12 private lawsuits.

13 COUNCILWOMAN BROWN: Okay.

14 COUNCILWOMAN TASC0: Do they
15 have regulations in Washington, DC?

16 MR. WILSON: There's a bill in
17 the committee, yes.

18 COUNCILWOMAN BROWN: Do you
19 believe that language that addresses this
20 willful negligence standard goes to the
21 issue raised by the National Restaurant
22 Association, the issue of flexibility?

23 MR. WILSON: I don't believe
24 so. As we've kind of heard, we've heard
25 from every kind of restaurant -- not

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 every kind, because there's many, many
3 more. But flexibility doesn't deal with
4 willful negligence. Willful negligence
5 is merely whether or not there is intent
6 in posting calorie information that was
7 perhaps wrong in comparison to an average
8 sample of the food. I assume that's how
9 it's typically done, is either you use
10 standard nutrition information and can
11 calculate it out, you say, Well, I've got
12 a tablespoon of butter and that's this
13 many calories. And if a restaurant that
14 was willfully posting information that
15 was lower than what they knew was in
16 their food, that would then meet a
17 willful negligence standard.

18 In terms of flexibility, it's a
19 different issue. It's an issue of if
20 you're at Capital Grille where everything
21 is changing and they really don't have
22 the means of doing the necessary testing
23 and so on and so forth and their menu
24 items, frankly, are varying much, much
25 more than, say, a restaurant that has

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 multiple thousands of things.

3 I think the one important thing
4 is, there's lots of restaurants that are
5 in the range of 20 and 30 outlets that
6 don't have the capabilities of some of
7 the larger ones. And that would be
8 important. They're the ones -- and,
9 frankly, all of them, though, do need
10 some level of flexibility to allow
11 themselves to give the information and at
12 the same time make it work within their
13 business model.

14 COUNCILWOMAN BROWN: Gentleman
15 from Olive Garden, Rick Wagner, do you
16 have copies of written testimony for us?

17 MR. WAGNER: Yes. I handed
18 them up.

19 COUNCILWOMAN BROWN: All right.

20 Well, that concludes my
21 questioning. I want to thank you all for
22 me what was informative but, more
23 importantly, instructive testimony on how
24 we proceed down this road. I thank you
25 all.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 COUNCILWOMAN TASC0: Thank you
3 very much for coming. We appreciate your
4 testimony. Quite informative.

5 Next, Pat English from Smith
6 and Wollensky and Thomas Plantulli,
7 Plantulli Restaurants.

8 Good afternoon.

9 MR. PLANTULLI: Good afternoon.
10 I'd like to thank the Council for
11 allowing me a few minutes. I did not
12 bring a prepared statement, but I do have
13 some comments that I'd like to address.

14 First off, my name is Tom
15 Plantulli. I am a franchisee of Burger
16 King. I have two restaurants in the City
17 of Philadelphia. The one being closest
18 to here as at Columbus Boulevard and
19 Tasker. And I'm here just to tell you a
20 little bit about my experience being in
21 the Burger King system for 30-plus years.

22 I have worked for Burger King
23 Corporation for 20 years and then became
24 a franchisee a little over 12 years ago,
25 and I understand the corporate philosophy

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 and I now understand what it's like to be
3 a businessperson, at least operating in
4 the City of Philadelphia and
5 understanding my customers.

6 I bring to you my feeling on
7 this is just my own opinion, and my
8 opinion is this: Nutritional information
9 is very important. I commend the
10 Councilwoman with her endeavor on
11 childhood obesity/obesity in our
12 population today in the demographics, and
13 I think that's something that we all
14 should support. However, I do urge that
15 when we look at a bill of this type, we
16 have to look at the consequences that we
17 are going to have if it is placed on the
18 individual businessperson like myself. I
19 have demographics of little kids up to
20 senior citizens that come in my
21 restaurants. Most of the time the
22 children don't eat things that they
23 should eat. I'm sure of that. However,
24 I leave that up to the responsibility of
25 the adult who is purchasing and I leave

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 it up to -- when you look at childhood
3 obesity, it really starts at home. And
4 from my own position, I have three
5 children. They're not children, I
6 shouldn't say. I have a 25-year-old, a
7 21-year-old, which are girls, and then I
8 also have an 18-year-old. And two of my
9 children -- my daughter goes to
10 University of Pennsylvania right now as a
11 junior. My son is at St. Joe's Prep.
12 And my wife and I, specifically my wife
13 more importantly, has done a great job of
14 explaining that not only do you watch
15 what you eat, but you exercise and you do
16 not overload on too much food. And being
17 a Burger King franchisee, as you can see,
18 I am not overweight. I eat the food.
19 However, I watch what I eat and I also
20 try and exercise. And I think part of
21 childhood obesity really starts with the
22 adult who is watching the child at home
23 and making sure that they understand and
24 they educate them.

25 As a businessperson, I don't

1 10/9/07 - PUBLIC HEALTH - BILL 070153
2 feel that our responsibility should be
3 thrown away. I think our responsibility
4 is there. We have nutritional
5 information packets, of which I've
6 brought some here today. We have -- I
7 think our Chairwoman today mentioned it.
8 We do have displays in our restaurants
9 that advertise our nutritional
10 information as you walk in, similar to
11 Wendy's and similar to a lot of the large
12 chains. However, putting something up on
13 the menu board for every single item, at
14 least in a Burger King restaurant where
15 it's "have it your way," could be just
16 open for game for a lot of consumers that
17 aren't really coming in to eat but
18 they're looking for other things; i.e.,
19 maybe it's a lawsuit. And that would be
20 a concern of mine being only a small
21 operator with two restaurants.

22 However, as far as educating
23 our customers and our children, I have to
24 say that is really being a responsible
25 citizen and we should do that.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 That is all my comments that I
3 have. If there's any questions, I'd be
4 willing to address them.

5 COUNCILWOMAN TASC0: Thank you.
6 Thank you for taking time out to come to
7 testify. We appreciate your comments.

8 MR. PLANTULLI: Thank you very
9 much.

10 COUNCILWOMAN TASC0: You are
11 right, it does begin at home, and
12 enforcement should be at home, too.

13 Is there anyone else here to
14 testify on this bill?

15 (No response.)

16 COUNCILWOMAN TASC0: There
17 being no other individuals who want to
18 testify on this bill, we are going to
19 recess this committee until tomorrow at
20 10:00 a.m., and at that time, we will
21 consider some amendments to the bill. So
22 there will be another hearing on trans
23 fats, but we will take care of the
24 business of this bill at the beginning of
25 that hearing tomorrow at 10:00.

1 10/9/07 - PUBLIC HEALTH - BILL 070153

2 Thank you very much.

3 This meeting is recessed until
4 Wednesday, October the 10th at 10:00 a.m.

5 (Committee on Public Health and
6 Human Services adjourned at 1:00 p.m.)

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