

U.S. HOUSE OF REPRESENTATIVES

Committee on Government Reform

**Testimony of Bruce Silverglade
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**HEARINGS ON
THE ROLE OF THE GOVERNMENT IN COMBATING OBESITY**

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**Rayburn House Office Building
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Good morning. I am Bruce Silverglade, Director of Legal Affairs of the Center for Science in the Public Interest (CSPI). CSPI is a non-profit consumer advocacy organization focusing primarily on nutrition, food safety, alcohol problems, and matters related to maintaining integrity in scientific research. We are supported primarily by more than 750,000 members in the U.S. and Canada who subscribe to our publication, *Nutrition Action Healthletter*, one of the leading consumer publications in North America devoted to diet and health issues. *Nutrition Action Healthletter* carries no advertising and we accept no funding from government or industry.

I would like to thank the Committee for the opportunity to testify at these hearings. There is no question that obesity is a serious risk factor in the development of heart disease, cancer, and diabetes – the leading causes of death in the United States. Moreover, growing obesity rates and the appearance of so-called “adult onset diabetes” among American *children* is particularly alarming and indicates that the obesity epidemic is a time bomb that has begun to explode among America’s youth. On behalf of our members nationwide, I commend the Committee for scheduling hearings to examine what government can do to help prevent this completely avoidable, public health disaster.

The Committee has asked me to address four specific questions. I will discuss each in turn.

Q. What is your view of government’s role in shaping health policy, especially on the subject of controlling weight?

A. Federal, state, and local public health agencies have a major role in ensuring that the food industry provides consumers with a healthy “food environment” at the supermarket, in schools, at the workplace, and in other public settings.

Presently, consumers face a hostile food environment:

- Fast food outlets across America heavily promote high-fat, high-sugar, and high-salt foods and beverages.
- Vending machines in schools, hospitals, airports, and other public places offer mostly high-fat, high-sugar, and high-salt snack foods and soft drinks.
- Food companies fill the airwaves, magazines, Internet sites, and other communication media with more than \$7 *billion* worth of marketing messages aimed at kids, mostly for high-fat, high-sugar, and high-salt foods. These expenditures overwhelm the meager \$4-5 *million* spent by the U.S. government on its campaign to persuade consumers to eat at least 5 servings of fruits and vegetables a day.
- To add insult to injury, the Federal Trade Commission (FTC) has developed extensive legal and economic rationales for why it should not regulate advertising of less healthful foods to children.¹
- The Food and Drug Administration (FDA) has adopted a program to permit food companies to make health claims based on tenuous scientific evidence that are bound to further confuse and mislead health conscience consumers seeking to

improve their diets. The program has been challenged by CSPI and Public Citizen in Federal District Court.²

- Congress requires that full fat whole milk be offered in schools participating in the National School Lunch Program. Congress has also passed legislation ensuring that the beef, pork, and dairy industries can operate advertising and promotional campaigns designed to increase consumption of these products (many of which are high in fat) through programs administered by the U.S. Department of Agriculture (USDA).

In such a food environment, it is no wonder that more than 60% of adults are overweight or obese and that childhood obesity is growing at alarming rates. Obesity is not merely a matter of personal responsibility. Obesity rates have climbed greatly in the last 10-20 years. Did all of these Americans suddenly become irresponsible in the last two decades? That would be quite a social phenomenon to say the least! No, Americans have not suddenly and inexplicably become irresponsible on a societal level; what has occurred is in part a result of how foods are marketed, especially to children; the proliferation of less healthful processed foods that are marketed often in huge single-serve portions; and the huge amount of money spent by the food industry on the promotion of such products.

While individuals are ultimately responsible for what they put in their mouths, the World Health Organization (WHO), the world's leading public health agency, in its Global Strategy on Diet, Physical, Activity, and Health,³ has stated that it is government's role to "make the healthy choice the easy choice." The WHO's Global Strategy builds on similar recommendations made by U.S. public health experts. Unfortunately, we are living in a food environment where the healthy choice is not the easy choice.

Q. How can the Federal government better address the dietary needs of a population that increasingly struggles to manage its weight?

A. As recommended by the WHO, the U.S. should take steps to:

- "Form alliances for the broad dissemination of appropriate and effective messages about healthy diet and physical activity. Nutrition and physical activity education and acquisition of media literacy, starting in primary school, are important to promote healthier diets and to counter food fads and misleading dietary advice." At a minimum, the government should be spending \$200-\$300 million per year promoting healthier diets.
- Recognize that "food advertising affects food choices and influence dietary habits. Food and beverage advertisements should not exploit children's inexperience or credulity. Messages that encourage unhealthy dietary practices or physical inactivity should be discouraged and positive health messages should be encouraged." To implement that recommendation, Congress should hold hearings

on ways to protect children, reduce the prevalence of advertising of less healthful foods, and increase advertising of more healthful foods.

- Ensure that health claim “messages must not mislead the public about nutritional benefits or risks.” In response to this recommendation, the FDA should rescind its policy of permitting so-called “qualified” health claims for foods based on tenuous scientific evidence.
- “[E]xamine food and agriculture policies for potential health effects on the food supply.” The WHO noted that agricultural production often has a great effect on national diets and that “governments can influence agricultural production through many policy measures.” In response the USDA, for example, should develop policies to reduce the average saturated fat content of beef, pork, and dairy products.
- “Adopt policies that support healthy diets at school and limit the availability of products high in salt, sugar, and fats.”⁴ Congress should prohibit schools from selling less healthful foods that compete with and undermine school lunch and breakfast programs.
- “[C]onsider additional measures to ensure the reduction of the salt content of processed foods, the use of hydrogenated oils, and the sugar content of beverages and snacks.” To respond to this WHO recommendation, the FDA should act on petitions to ban the use of partially hydrogenated oils and to require “added sugars” to be listed on “Nutrition Facts” labels.
- Recognize that “prices influence consumption choices [and that] public policies can influence prices through taxation, subsidies, or direct pricing in ways that encourage healthy eating and life long physical activity.” The WHO noted that some countries successfully use “fiscal measures, including taxes, to influence the availability of, access to, and consumption of various foods.” Here, the government could pay incentives to farmers, levy taxes on fats and sugars, and provide funding for low-income consumers to purchase fruits and vegetables.

Q. Should the government advocate certain dietary goals for all Americans? Or, should the government serve only as a nutrition information provider?

- A. The government must take a proactive role, and not merely act as a passive information provider. As the WHO stated, it is government’s responsibility to make the healthy choice the easy choice. I am not advocating that government regulate what consumers eat (although in many ways it already does just that). But government must regulate trade practices that create a hostile food environment and remedy the gross information imbalance that leads many consumers, especially children, to adopt a less healthful diet. At

times, the government needs to restrict the promotion of foods that pose unnecessary risks to consumers.

The sensible recommendations from the WHO are fully consistent with policies recommend by U.S. public health experts. Steps here in the U.S should be taken immediately by Congress, the FDA, the FTC, and the USDA, as well as state and local agencies to see that such recommendations are implemented.

Unfortunately many government agencies, including the FTC, the FDA, and the USDA, have policies that are inconsistent with the recommendations of the WHO. It would be scandalous if the U.S. government ignored other WHO recommendations on matters like SARS, Tuberculosis, or the transmission of HIV/AIDS infections. Yet, diet-related diseases claim more lives that all of these other illnesses combined. It is thus incumbent that Congress and the Administration act with all deliberate speed and take immediate steps to see that the WHO's recommendations, and those of U.S. public health experts, are implemented.

Q. What statutory or policy changes are needed to help consumers make healthier lifestyle decisions?

A. Bold policy initiatives are needed to solve this gargantuan problem. As former Surgeon General Satcher stated, "I have no objection to small steps -- I really think there also need to be big steps."⁵ The Bush Administration, however, has responded with its "Small Steps" program. This program includes recommendations to consumers to drink diet soda instead of regular soda, to work around the house, to ask their doctor about taking a multi-vitamin, to run when running errands, and to drink lite beer.⁶ Such steps do not pass the laugh test amongst public health professionals.

There are a number of bills pending in Congress that would help implement portions of the WHO's recommendations:

1) Congress and the Administration should enact S. 2108 and H.R. 3444, the Menu Education and Labeling Act. This legislation would require limited nutrition labeling in restaurants that serve standardized menu items. The bills are in line with WHO findings that "Consumers require accurate, standardized and comprehensive information on the content of food items in order to make healthy choices."⁷

While nutrition labeling has been required on almost all processed foods since 1994, such information does not generally appear on standardized restaurant menus. The absence of such information on menus is alarming in light of the fact that, according to the FDA, Americans spend about ½ of their food budgets on meals eaten away from home, consume 1/3 of their calories from such foods, and

that such foods are typically higher in calories and saturated fat, and lower in healthful nutrients, compared to home prepared meals.

2) Congress should give the USDA the authority to implement nutrition standards for foods sold in vending machines, a la carte cafeteria lines, and school stores anywhere on the school campus, throughout the school day, in schools that participate in the National School Lunch or Breakfast Programs. S. 1392, sponsored by Senator Harkin, and H.R. 2987 sponsored by Congresswoman Woolsey would address these matters.

3) Congress should increase funding for the Division of Nutrition and Physical Activity at the Centers for Disease Control (CDC). For FY 2004, the budget is \$45 million which allows CDC to fund programs in only 28 states. We recommend that Congress appropriate \$75 million for FY 2005 as a step toward enabling the CDC to conduct such programs in all 50 states. Congress should also strengthen nutrition education in schools by expanding USDA's Team Nutrition Program to add state-level funding and nutrition education coordinators.

The CDC should also be funded to sponsor national media-based programs to promote healthy eating and physical activity, like the CDC's VERB campaign. Such campaigns are needed to balance the billions spent by the food industry to persuade children to eat high-fat, high-sugar foods. Secretary Tommy Thompson's request to the major TV networks to donate free air time to run public service announcements produced by the Department of Health and Human Services simply can not remedy the information imbalance where a single company like McDonalds spends more than \$1 billion to market products that the WHO has concluded play a major role in the obesity epidemic. Moreover, the Bush Administration has recommended defunding the CDC's VERB campaign. Congress should instead restore it to its original funding level of \$125 million.

4) Congress should direct the FTC to work with the National Academy of Sciences to set nutrition standards for the types of foods that should not be marketed to children. The Food Standards Authority of the United Kingdom is working on just such a program. The Canadian province of Quebec has prohibited all children's advertising since 1980 and has the lowest childhood obesity rate in all of Canada (although other factors may be at play as well). In contrast, self-regulation in this area, undertaken by the Council of Better Business Bureaus' Children's Advertising Review Unit and favored by the FTC, has been a dismal failure.

5) Congress should provide \$10 million to the FDA's Office of Nutritional Products, Labeling, and Dietary Supplements for anti-obesity related work. This division of FDA is responsible for food labeling, nutrition research, serving size revision on nutrition labels, and other key functions needed to operate an anti-obesity program. Unfortunately, it has lost about half of its headquarters staff (excluding those devoted to dietary supplement issues) over the last 10 years.

6) The Administration and Congress are doing little to support such efforts. In fact, just recently, the Senate Agriculture Committee rejected Senator Harkin's attempts to improve foods in schools and the Congress included provisions to help ensure that high fat whole and 2% milk are sold through the school lunch program. Moreover, the FTC is pursuing a course of intentional inaction by generating detailed legal and economic analyses as to why it should not take actions of the type recommended by the WHO, as well as the American Psychological Association and other U.S. experts. In addition, while some FDA initiatives in the area have provided useful debates, the agency has not taken any mandatory actions to protect consumers beyond adding *trans* fatty acids to the Nutrition Facts label and has actually embarked on a program favored by the food industry to loosen the regulation of health claims lacking scientific validity.

No one public health measure, by itself, can end the obesity epidemic. But, a coordinated program recommended by the WHO and many other U.S. public health experts is our best chance at mitigating the obesity epidemic now raging among adults. Further, the Administration and the Congress must change course to avoid the time bomb that has begun to explode among American children that will lead to astronomical health care costs, personal misery, and a general decline in our national strength. The blueprint for action is clear and the time to act is now.

I would like to thank the Committee for this opportunity to testify and I would be happy to answer any questions.

¹ J. Howard Beals, III, “Competition, Advertising, and Health Claims: Legal and Practical Limits on Advertising Regulation” (Remarks before the George Mason Law Review 2004 Symposium on Antitrust and Consumer Protection, March 2, 2004).

² Center for Science in the Public Interest and Public Citizen Health Research Group vs. FDA, 03-1962 (D.C. Circ. 2004).

³ *Global Strategy on Diet, Physical Activity and Health*, Geneva, World Health Organization, 2004 (document WHA57.17).

⁴ *Global Strategy on Diet, Physical Activity and Health*, Geneva, World Health Organization, 2004 (document WHA57.17 pp. 47-47, 49).

⁵ Daniel Yee, *Can small steps cut the fat? Some experts say yes, others want ‘big steps’* (Associated Press), March 10, 2004. <http://www.ajc.com/health/content/health/0304/10fightfat.html>.

⁶ United States Department of Health and Human Services, http://www.smallstep.gov/sm_steps/sm_steps_index.html

⁷ *Global Strategy on Diet, Physical Activity and Health*, Geneva, World Health Organization, 2004 (document WHA57.17, pp. 46).