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Testimony of W. Stephen Cannon

On Behalf of the
Retail Industry Leaders Association

Before the New Jersey State Senate Labor Committee

In Opposition to S-477

Trenton, New Jersey
May 11, 2006



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Chairman Sweeney, and other distinguished committee members, thank you for the opportunity to speak today about the Retail Industry Leaders Association's opposition to S-477.

The Retail Industry Leaders Association ("RILA") represents the largest and fastest-growing companies in the retail industry. Its members operate more than 100,000 places of business, have facilities in all 50 states, and provide millions of jobs to American workers. RILA is governed by a Board of Directors that includes the top leadership in some of the country's most innovative and successful companies, including Best Buy, Target, IKEA, Wal-Mart, Lowe's, Dollar General, PETCO and other retail leaders. Here in New Jersey, RILA members operate hundreds of stores and employ thousands of New Jersey residents.

I am Steve Cannon, a partner in the law firm Constantine Cannon, and am privileged to serve as outside General Counsel to RILA. I am representing RILA today, but also speaking based on my personal experience with these very issues during my 11-year tenure as General Counsel of Circuit City Stores, Inc. In that role, my management responsibilities included compliance with all laws relating to employee health benefits such as the federal Employee Retirement Income Security Act ("ERISA").

1. Healthcare Spending Mandates Fail To Address Escalating Costs, Which Are The Real Reason For The Healthcare Crisis

RILA members want to, and in fact do, provide competitive healthcare benefits to their employees. One reason RILA opposes S-477, however, is because it ignores the most pressing problem in the healthcare system today: ever growing healthcare costs. Simply forcing employers to pay a specific amount for healthcare does nothing to reduce these costs. To the contrary, S-477 merely forces them to spend more for coverage that is already extraordinarily expensive. Furthermore, this bill does virtually nothing to address the needs of the uninsured, and provides no assurance that a single New Jersey resident will gain coverage.

Earlier this year, our Board of Directors unanimously directed RILA to mount legal challenges to similar statutes that have passed the Maryland and Suffolk County, New York legislatures. Not only are these types of statutes unlawful, as I discuss further below, they do nothing to address the real healthcare challenges facing our nation. The primary healthcare challenge involves the skyrocketing cost of healthcare in this country. Bills like S-477 that mandate spending without even addressing the real issue of healthcare costs are focusing on the symptom while ignoring the disease.

Escalating costs of health insurance are putting added pressure on employers providing healthcare benefits for their employees. Faced with double-digit increases in premium costs, employers need the flexibility to design and modify their benefits to respond to the changing conditions and the needs of their employees.

2. Healthcare Spending Mandates Restrict The Freedom Of Businesses To Offer Benefits Tailored To Their Workforce

RILA also believes it is unwise to restrict the flexibility of businesses by dictating how they should structure their health benefit plans or how much should be spent on those benefits. For this reason, as well, RILA members are strongly opposed to state healthcare mandates such as S-477.

The proposed legislation represents a “one-size-fits-all” approach to healthcare coverage that makes no sense for retail businesses. Retailers experience a high degree of turnover and employ a much younger workforce than most industries. In fact, fully one-third of all retail workers are under 24 years of age, as compared with only 14 percent for all industries. Young people frequently decline to participate in employee-sponsored healthcare. As a result, retailers need the freedom to devise health plans that meet the unique demographic characteristics of their workforce. This bill would rob these employers of that freedom.

Moreover, both common sense and economic research shows that the burden of healthcare mandates might very well fall on the employees themselves. Employers will be under pressure to pass the cost of mandated healthcare benefits onto employees. If New Jersey employers face such mandates they may look to cut jobs or move out of the jurisdiction altogether. The end result is that employees could end up footing the bill for these newly mandated benefits. Many of these employees will be forced to confront the bitter irony that legislation designed to provide employer-based healthcare leaves them with neither an employer nor healthcare.

Currently, the New Jersey bill impacts all employers with 1000 or more employees. If enacted, one can easily imagine future attempts to amend the law to include even more businesses. This bill also establishes a mechanism for annual increases to the payment for non-compliance. All of this will create greater confusion and an inability to know precisely what lies ahead for businesses. In sum, S-477 implicitly blames the business community for the state’s healthcare problems by placing the burden of solving these problems on employers.

It is RILA’s position that these health mandates restricts the employers’ ability to be flexible, to respond to market conditions, and to react to the needs of their employees. Therefore, S-477 would significantly complicate and frustrate employers’ efforts to provide healthcare benefits.

3. Healthcare Spending Mandates Are Unlawful

As noted earlier in my testimony, RILA has taken legal action on behalf of our membership in other jurisdictions to challenge healthcare spending mandates similar to S-477.

In February of this year, RILA filed two lawsuits seeking to overturn new spending mandates in Maryland and Suffolk Co., New York. Our cases maintain that both laws violate the federal ERISA statute and arbitrarily single out certain employers for unfair discriminatory mandates, in violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. We are pleased that four important allies have submitted “friend of the court” briefs in support of RILA’s legal challenge to the Maryland law – the Maryland Chamber of Commerce, the United States Chamber of Commerce, the National Federation of Independent Businesses, and the Society of Human Resource Management. RILA is optimistic that its lawsuits will be successful and that the recently enacted statutes will be overturned.

While I do not want to burden you with a detailed legal discussion in this forum, I do want to note RILA’s belief that the federal ERISA statute is central to our nation’s system of voluntary employer-sponsored healthcare. When the U.S. Congress enacted ERISA more than three decades ago, it created a system that encourages employers to offer employee health benefits by permitting them to administer health plans uniformly and efficiently. This is especially important to employers that operate in multiple states, such as RILA’s members. Without such uniformity, these employers would be faced with a hodgepodge of complex and conflicting state regulations that would make providing healthcare benefits administratively cumbersome, more expensive and much less attractive.

The single, national regulatory framework afforded by ERISA gives companies the flexibility they need to meet and respond to the unique requirements of their workforce. Retailers need to be left free to devise health plans that meet the distinctive characteristics of their employees and ERISA gives them that freedom. If we allow ERISA to be eroded by “fair share” spending mandates or other state and local incursions, then we are headed down a dangerous track that could jeopardize employer-sponsored healthcare in this country. ERISA is critical, and it must be defended.

For all of these reasons, RILA opposes passage of S-477.

Mr. Chairman, I very much appreciate this opportunity to testify and want to thank the Committee for its time.