

Through the Looking Glass



A CAGW Special Report

YMCAs: From Community Service to Community Disservice

By John W. Middleton
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Citizens Against Government Waste

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement and inefficiency in the federal government.

CAGW was founded in 1984 by J. Peter Grace and nationally-syndicated columnist Jack Anderson to build public support for implementation of the Grace Commission recommendations and other waste-cutting proposals. Since its inception, CAGW has been at the forefront of the fight for efficiency, economy, and accountability in government.

CAGW has more than one million members and supporters nationwide. Since 1986, CAGW has helped save taxpayers more than \$700 billion.

CAGW publishes a quarterly newsletter, *Government WasteWatch*, and produces special reports, monographs, and television documentaries examining government waste and what citizens can do to stop it.

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Executive Summary

Citizens Against Government Waste (CAGW) is issuing the third in its series of reports that identify how certain nonprofit organizations jeopardize tax dollars by violating their missions without being assessed financial penalties and compete unfairly with for-profit companies. The first report focused on nonprofit and for-profit hospitals; the second on government grants to nonprofit organizations. CAGW's latest investigation, "YMCAs: From Community Service to Community Disservice" is a tale of two failures – the failure of some chapters of the Young Men's Christian Association (YMCA) to adhere to their charitable purpose, and the failure of the federal government to enforce tax laws.

When a local YMCA decides to build a state-of-the-art fitness center in affluent communities instead of providing programs for underserved individuals and families, the organization is deserting the very elements of the entire community that it is legally bound to serve. When the federal government, in particular the Internal Revenue Service (IRS), does not impose unrelated business income tax (UBIT) on such YMCAs, it forces hardworking Americans to pay more than their fair share of taxes. These YMCAs are free to compete unfairly with for-profit fitness facilities, taking away customers and driving them into financial distress.

Although some local governments have caught YMCAs in the act of violating their nonprofit mission and forced them to make payments based on their business-related activities, the IRS has failed to compel such YMCAs to pay UBIT. To correct this situation:

- The IRS should clarify its "community accessibility" standard, which simply says that all nonprofit recreational facilities must be made available to either a charitable class or the entire community.
- The IRS should compel YMCAs that do not meet the appropriate standards to pay UBIT;
- The IRS should form a taxpayer compliance review committee to monitor YMCAs and other nonprofit organizations; and,
- The IRS should formalize a procedure for reporting abuse, so small businesses can inform the agency of violations.

When YMCAs build state-of-the-art fitness centers catering to the well-to-do, the result is a lower tax base and the loss of revenue and jobs by for-profit facilities. The IRS must begin to collect UBIT from the noncompliant YMCAs and require that each YMCA facility adhere to its nonprofit mission. Otherwise, YMCAs will continue to flock to affluent residential areas, low-income communities will fail to be served, unfair competition in the fitness market will go unchecked, and hardworking taxpayers will continue to pay more than their fair share of taxes.

I. Introduction

This is a tale of two failures – the failure of some Young Men’s Christian Association (YMCA) chapters to adhere to their legally required purpose, and the failure of the federal government to enforce the tax laws. When a local YMCA decides to build a state-of-the-art fitness center to attract an affluent clientele instead of creating programs for underserved individuals and families, the organization is not fulfilling its tax-exempt mission to serve the entire community and is competing unfairly with for-profit companies. When the federal government, in particular the Internal Revenue Service (IRS), does not impose the unrelated business income tax (UBIT) on such YMCAs, it forces hardworking Americans to pay more than their fair share of taxes. While the IRS enforces UBIT on hospitals and universities that engage in commercial physical fitness businesses, the IRS has not consistently applied these standards to the YMCAs.

Nonprofit organizations have long provided vital services to American society. As such, they are endowed with certain privileges, such as tax exemptions and tax-deductible contributions. However, in order to maintain these privileges, nonprofits must adhere to their missions, provide services that comply with federal and state tax laws, and avoid unfair competition with for-profit companies.

Because taxpayers ultimately subsidize nonprofit organizations, Citizens Against Government Waste (CAGW) has issued a series of reports that identify how some nonprofit operations jeopardize tax dollars by straying outside their missions without being assessed appropriate financial penalties. In April 1998, CAGW issued a report on unfair competition between for-profit and nonprofit hospitals that were basically offering the same services and suggested increased oversight of the nonprofits.¹ Later that year, CAGW issued “Phony Philanthropy,” a study about how government grants often compromise a nonprofit organization’s mission and how some nonprofits violate tax laws by lobbying the government for additional funds.² CAGW’s current battle for accountability in the nonprofit sector targets the lack of enforcement of federal tax laws in relation to unfair competition between some YMCAs and taxpaying health clubs.

Sir George Williams founded the Young Men’s Christian Association (YMCA) in London, England, on June 6, 1844 in response to unhealthy social conditions arising in large cities. The YMCA’s goal was to combat idleness among workers by offering Bible studies and prayer meetings. By 1851, there were 24 YMCAs in Great Britain with a combined membership of more than 2,500, and the first YMCAs were beginning to appear in North America.

The YMCAs have collectively become the largest nonprofit community service organization in the United States, with more than 2,540 facilities and consolidated total

¹ Elizabeth L. Wright, “Are You Getting Your Money’s Worth from Nonprofit Hospitals?” Citizens Against Government Waste, April 29, 1998.

² David E. Williams and Elizabeth L. Wright, “Phony Philanthropy: How Government Grants Are Subverting the Missions of Nonprofit Organizations,” Citizens Against Government Waste, November 17, 1998.

revenue of \$4.2 billion in 2002.³ Its mission is “to put Christian principles into practice through programs to build healthy spirit, mind and body for all.”⁴ Soon after its inception, YMCAs began offer physical fitness activities to serve the local community, particularly low-income individuals.

Because YMCAs are classified as 501(c)(3) nonprofit organizations by the IRS, they receive federal, state, and local tax exemptions. In recent years, however, some YMCAs have gone beyond their tax-exempt mission to build state-of-the-art fitness centers, without providing reduced rates or other opportunities for a substantial segment of the local population. These facilities attract affluent clients and compete directly with private, taxpaying fitness clubs. In such cases, the IRS regulations require nonprofit organizations to pay UBIT, since these activities are unrelated to the organization’s exempt purpose.

In fiscal 2003, Congress earmarked \$6.8 million for YMCAs and YWCAs, earning the nonprofits the dubious distinction of an Oinker Award in CAGW’s *2003 Congressional Pig Book*. In fact, one of the YMCAs highlighted in this report, the McBurney YMCA in New York, received a \$90,000 earmark for facilities construction without going through the proper checks and balances of the budget process.

II. History and Trends of the YMCA

During the Civil War, YMCA membership in the U.S. decreased to one-third its original size. By the late 1800’s, major efforts commenced to rebuild the YMCA movement. “The focus was on saving souls, with saloon and street corner preaching, lists of Christian boarding houses, lectures, libraries and meeting halls.”⁵ In 1866, the New York YMCA adopted a four-part focus: “The improvement of spiritual, mental, social and physical condition of young men,”⁶ which soon spread to other YMCAs around the country.

At this time, most of the employees were volunteers, and most YMCA facilities were rented. By the mid-1880s, YMCAs began to hire full-time help and put up buildings. In these new structures, many YMCAs included gyms, swimming pools, large auditoriums, and bowling alleys. In addition, many YMCAs started to construct dormitory facilities, in which they rented “hotel-like” rooms. With these new spaces, YMCAs greatly expanded the scope of their work, and they began offering exercise classes, overnight camping trips, and summer camps.

From the Great Depression of the 1930s until the 1950s, YMCAs dropped many of their membership barriers, such as excluding women and minorities, and started to expand into the suburbs. By 1975, the YMCAs were experiencing financial troubles, and YMCA

³ U.S. Newswire, “America’s YMCA’s Continue Record Growth in 2002; Despite National Concerns, Public Support for YMCAs Reaches \$700 Million,” (visited September 5, 2003), <<http://releases.usnewswire.com/GetRelease.asp?id=101-08192003>>.

⁴YMCA, (visited August 7, 2003), <<http://www.ymca.net/index.jsp>>.

⁵ YMCA, “A Brief History of the YMCA,” (visited August 7, 2003), <<http://www.ymca.net/about/cont/history.htm>>.

⁶ Ibid.

National General Secretary James Bunting challenged the organization to adapt to the changing times.⁷ Since then, some YMCAs have started to act more like for-profit businesses, and in the process they have violated their nonprofit purpose by failing “to benefit a substantial segment of the local population.”⁸

McBurney YMCA

The McBurney YMCA, the first in New York City, opened its doors in 1869. From 1904 to 2000, the McBurney YMCA offered fitness facilities and single-occupancy residences to the underprivileged in Chelsea.

Though it was once run-down, Chelsea is now a fashionable and rather pricey place to live, chock full of retail stores and fitness clubs. Community Studies of New York, Inc. estimated that the median household income for Chelsea and the surrounding area was \$47,899 in 1997 and that 69 percent of its residents were employed.⁹ In addition, there are 72 health and fitness clubs within one mile from the McBurney YMCA.¹⁰

In December 2002, the McBurney YMCA moved into its new \$29 million facility located at 125 West 14th Street. The new facility occupies 67,000 square feet, but it will not include low-income housing. By shutting down its housing for the indigent and instead providing fitness services to an area already saturated with health clubs, the McBurney YMCA has blatantly abandoned its charitable work in the name of greater profits.

Washington, D.C.

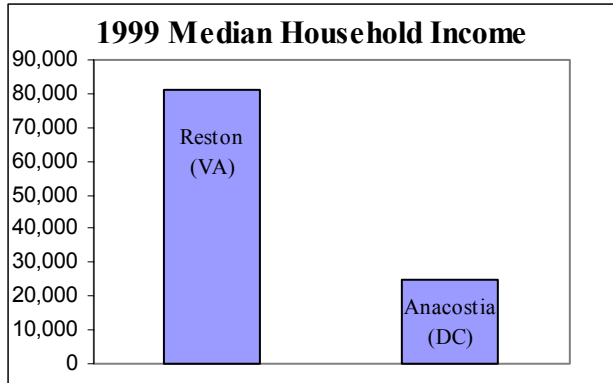
Since the mid-1960s, the YMCA of Metropolitan Washington has transformed itself from a community service organization into an aggressive corporate provider of commercial health clubs downtown and in upscale suburbs. For example, in 1968, the YMCA closed its Eastern Branch facility located on Nichols Avenue in the Anacostia section, which is historically the poorest in the city.

⁷ YMCA, (visited August 7, 2003), <<http://www.westendymca.org/history.html>>.

⁸ Roderick Darling, Marvin Friedlander, and Virginia Richardson, *CPE for FY2000* (“CPE”), (visited August 7, 2003), <<http://www.irs.gov/pub/irs-tege/topica00.pdf>>.

⁹ Community Studies of New York, Inc., “City of Contrast 2000,” Community Studies of New York, (visited August 7, 2003), <<http://www.cityproject.org/profiles/manhattan/district3.html>>.

¹⁰ Yellow Pages Online, (visited August 7, 2003), <<http://yp.yahoo.com>>.

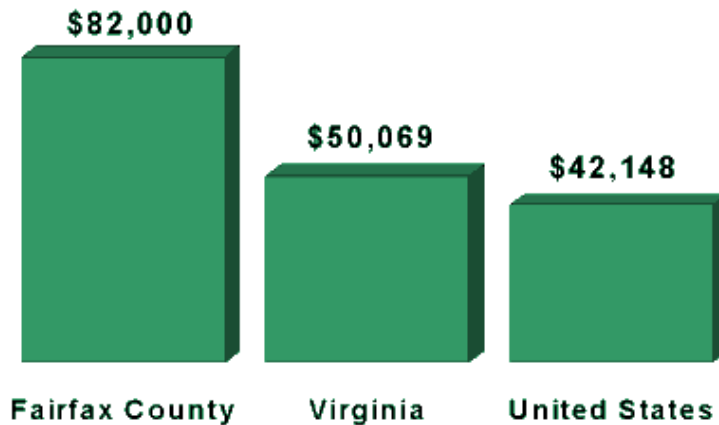


Source: U.S. Census Bureau, 2000 Census.

In 1999, 36 percent of Anacostia’s residents were below the poverty level, and the median household income was \$25,017,¹¹ the lowest of any section in the city. Rather than rebuilding its Anacostia facility, in 2000 the Metropolitan Washington YMCA opened a state-of-the-art 67,000 square foot facility in Reston, Virginia, an affluent suburb of Washington located in Fairfax County, one of the wealthiest counties in the country.

2000 Median Household Income

Fairfax County, Virginia and the United States



Source: 2000 Fairfax-Falls Church Community Assessment and U.S. Census Bureau, Census 2000
 Note: Virginia income is a three-year average for 1998 through 2000.

In 2000, the median household income in Fairfax County was \$82,000, which was 38.9 percent (or \$31,931) more than Virginia’s median household income of \$50,069, and 48.6 percent (or \$39,852) more than the U.S. median income of \$42,148.¹² In June 2003, Reston had five other health club facilities within five miles of the Reston YMCA.

¹¹ U.S. Census Bureau, Census 2000, (visited August 7, 2003), <<http://planning.dc.gov>>.

¹² U.S. Census Bureau, Census 2000, (visited August 7, 2003), <<http://www.co.fairfax.va.us>>.

By flocking to the suburbs to pursue a strong fitness market, the Metropolitan Washington YMCA is acting more like a for-profit business than a charitable organization. Once in the suburbs, such a YMCA attracts clients who are willing to pay for fitness facilities and services, and, as a result, enters into direct competition with taxpaying clubs and fails to serve the community in accordance with its mission and tax-exempt status.

III. Crowding Out Private Business

The physical fitness market has become commercially attractive: total industry revenue for the for profit U.S. health club industry was \$12.2 billion in 2002.¹³ Within this market, there exist two main entities: taxpaying facilities, including health and fitness clubs that have multiple facilities, such as Bally's or Gold's Gym, as well as smaller local operations such as the Barnstable Athletic Club in Hyannis, Massachusetts, and Body Transit in Collegeville, Pennsylvania; and tax-exempt facilities, like the YMCA, hospitals and universities.

As a nonprofit organization, YMCAs are permitted to solicit donations, offering donors a deduction to lower their federal, state, and local income tax liabilities. YMCAs can use donations to subsidize membership fees or lessen financing costs, such as equipment and land acquisition.

Due to their donations and tax exemptions, many YMCAs are able to charge less than their taxpaying counterparts for services such as camps and fitness facilities. The Health Club Trend Report released in July 2001 reported that the average monthly cost for taxpaying clubs was \$34.22, while nonprofits charged an average of \$30.88, a difference of 10.8 percent.¹⁴

More than a third of YMCAs do not offer membership discounts based on income. In addition, YMCAs have more members who pay the full membership rate than go taxpaying clubs (75.6 percent versus 73.8 percent, respectively), which contradicts the YMCAs' assertion that they provide significant scholarship assistance.¹⁵

The lack of income-based membership discounts might be attributed to the financial well-being of the YMCA's clientele. According to the 2003 Fair Competition Annual Report issued by the International Health, Racquet and Sportsclub Association "67 percent of members at tax-exempt facilities have a household income greater than the National Median Household Income of \$42,228,"¹⁶ and 37 percent of these members reported an annual household income of \$75,000 or more.¹⁷

¹³ International Health, Racquet & Sportsclub Association (IHRSA), (visited July 8, 2003), <<http://www.ihrsa.org/pressinfo/industryfacts.html>>.

¹⁴ IHRSA/American Sports Data, Inc., "Health Club Trend Report," July 2001.

¹⁵ Ibid.

¹⁶ Ibid, p. 3.

¹⁷ Ibid.

Taxpaying clubs often suffer losses in membership and revenue when a YMCA opens a fitness facility in the area. For example, in Pennsylvania, when the Phoenixville YMCA opened, the local health club Body Transit in nearby Collegeville lost 10 percent of its members, or \$65,000 a year in revenue. The Murray Hill Health and Racquet Club in New Jersey lost 10 to 15 percent of its revenue due to competition from a less expensive YMCA facility that opened two and a half miles away.

For YMCAs to maintain their tax-exempt status, they must “benefit a substantial segment of the local population.”¹⁸ Yet, “65 percent of current YMCA members indicate that they only utilize the health club services,”¹⁹ and many YMCA facilities cater to the well-to-do. Clearly, something must be done to apply the law.

IV. Cases That Impose Taxes at the State and Local Levels

To create a fair fitness market and to hold YMCAs accountable for income earned that is unrelated to their charitable mission, some state and local governments have forced certain YMCAs to pay sales, property, and income taxes. Many YMCAs have gone to court unsuccessfully to defend their tax exemptions, claiming that providing health and fitness services for children and adults is part of their charitable mission. Here are some examples of these cases.

Young Men’s Christian Association of Columbia-Willamette v. Department of Revenue (1988)

Oregon law provides that to be qualified for a property tax exemption, giving must be present, the property must be actually and exclusively used or occupied for charitable work, and the activity must lessen the burden of government. In 1985, the assessor of Columbia-Willamette County placed all real and personal property of the county’s YMCA on the tax rolls, claiming that it did not meet the qualifications for exemption. The YMCA appealed the decision to the Oregon Department of Revenue (DOR), which granted exemptions to all properties except two locations in downtown Portland. DOR determined that these two facilities did not “advance charitable purposes.”²⁰

The YMCA was not satisfied with the decision of DOR, so it filed suit and appealed the case until it reached the Supreme Court of Oregon. The court found that only 5 percent of members at the two locations received financial assistance in the form of discounted fees. Therefore, the property was not being used solely for charitable work, and because the government did not have a legal duty to provide health and fitness services, those two locations were in no way lessening the burden of government.²¹ Consequently, the Supreme Court upheld DOR’s denial of the YMCA’s tax exemptions at the two Portland locations.

¹⁸ CPE, (visited August 7, 2003), <<http://www.irs.gov/pub/irs-tege/topica00.pdf>>.

¹⁹ IHRSA, “Fair Competition Annual Report 2003,” p. 5.

²⁰ Young Men’s Christian Association of Columbia-Willamette v. Department of Revenue, No. 2717, Oregon Tax Court (1988).

²¹ *Ibid.*

City of Pittsburgh v. Board of Property Assessment (1988)

The Downtown YMCA in Pittsburgh, Pennsylvania, applied for a real estate tax exemption with the Board of Property Assessment Appeals and Review of Allegheny County. The board decided that 86 percent of the facility was exempt and the remaining 14 percent should be taxed.²² The YMCA appealed the case to the Allegheny County Common Pleas Court. Because the YMCA only subsidized a small number of its memberships—the majority of its members were professional types—the Downtown YMCA was found to be in competition with other downtown businesses. As the other charitable work did not sufficiently ease the government’s burdens, the common pleas court ruled that the facility did not function as a “purely public charity” and, thus, did not qualify for tax exemptions.²³

The YMCA then appealed to the Commonwealth Court of Pennsylvania, which determined that the common pleas court was “correct in observing that the Downtown YMCA has assumed a more commercial appearance.”²⁴ The court also ordered the common pleas court to analyze the YMCA’s property to determine if it should pay all, part, or none of its property taxes.²⁵

Olympia Area YMCA v. Department of Revenue, Board of Tax Appeals (1995)

The YMCA sought a property tax exemption for its facility in Thurston County, Washington. This YMCA offered fitness facilities and services to Department of Labor & Industries (L&I) employees and, if space allowed, other state employees. In addition, the YMCA facility was located in the government-owned L&I building. However, the Washington Department of Revenue denied the exemption in 1993 because only L&I employees were using the facilities.²⁶ The YMCA appealed the case to the Board of Tax Appeals, which ruled that “a facility that is used exclusively for health and fitness service does not qualify under the law”²⁷ for a tax exemption.

V. The Enforcement of Federal Tax Law

The IRS has completely failed to enforce the UBIT, as it pertains to YMCAs and their fitness services. This failure has proved costly for both the government and taxpayers and has allowed YMCAs to engage in unfair competition with for-profit facilities.

In 1999, Congress asked the IRS to review and clarify its policies toward tax-exempt organizations and their fitness facilities. The IRS responded by producing a report, known as a CPE, for the Exempt Organizations Continuing Professional Education Technical

²² City of Pittsburgh v. Board of Property Assessment, No. 3067 C.D. 1988, Commonwealth Court of Pennsylvania (1988).

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Olympia Area YMCA v. Department of Revenue, Docket No. 44393, Washington Board of Tax Appeals (1995).

²⁷ *Ibid.*

Instruction Program. This report acknowledged the increasing commerciality of tax-exempt fitness centers and the need for the IRS and tax-exempt organizations “to be aware of the standards that distinguish an exempt fitness center from its commercial counterpart.”²⁸

In the CPE, the IRS addressed UBIT laws as they apply to nonprofit community organizations that offer fitness services. The IRS determined that these services must either benefit the community in general or a charitable class within the community for a nonprofit organization to continue to receive tax exemptions.²⁹

Thus, the necessary “community accessibility” standards are in place for determining whether such facilities are in accordance with their charitable missions.³⁰ The IRS has not applied this standard effectively to the YMCAs.

The IRS must take action to correct this situation. Since the UBIT laws have no legal exception, the IRS should issue guidelines that specifically addresses UBIT compliance as it applies to YMCAs that fail to serve the entire community and engage in unfair competition with for-profit companies.

If a particular YMCA fails to meet the established IRS requirements concerning unrelated business income, it should pay UBIT. Such income is from a regular trade or business that is “not substantially related”³¹ to the organization’s exempt purpose. To remain free from UBIT, a tax-exempt fitness facility must “benefit a significant segment of the local population.”³² This evaluation should be done on a facility-by-facility basis, and what constitutes a significant segment of the population should be clarified because it “remains murky.”³³ It appears the IRS is applying UBIT laws to educational and healthcare organizations. Enforcement of UBIT with regard to YMCAs has been virtually non-existent, so it is imperative that the IRS establish a test to define and more effectively and universally enforce this standard.

It is not enough that organizations be approved initially for tax-exempt status. If tax-exempt organizations become involved in unrelated business ventures, like health clubs focused on affluent adults, they should be taxed. To ensure compliance with UBIT, the IRS should form a taxpayer compliance review committee to monitor YMCAs and other nonprofit organizations. The IRS should also require tax-exempt organizations to provide more specific information on their Form 990s with respect to their fitness activities so that the IRS and the public can more effectively determine whether a fitness facility is serving a significant segment of the local population.

²⁸ CPE, (visited August 7, 2003), <<http://www.irs.gov/pub/irs-tege/topica00.pdf>>.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

The IRS should also formalize a procedure for reporting abuse, so small businesses can inform the agency about unfair competition. The IRS has already proven that it could use some help in oversight of this area, and with more effective Form 990s, small businesses will be in a better position to provide the IRS with needed information.

With its “community accessibility” standard and UBIT, the IRS already has the policies in place to hold YMCAs accountable. The IRS should use the foregoing suggestions to improve its oversight and follow the examples of enforcement by state and local governments that tax YMCAs for non-tax-exempt activities. If YMCAs fail to pay such taxes, they leave a greater burden for other taxpayers.

VI. Conclusion

By offering state-of-the-art fitness facilities that fail to adequately serve low-income individuals and communities and by directly competing with taxpaying health clubs, many YMCAs have abandoned their charitable mission, assumed the role of private businesses, and earned unrelated business income.

The YMCA of the United States claims that its fitness facilities are in compliance with their charitable mission and that YMCAs are not in competition with taxpaying clubs. For example, Fred Hauser, the general director of the Appleton YMCA in Wisconsin said, “What I’m admitting to is we do adult fitness and they do adult fitness. Now if you interpret that as competition, so be it. I don’t.”³⁴ The IRS has the legal responsibility to monitor the YMCA’s activities, to ensure compliance with UBIT laws, and to require each YMCA facility to serve a substantial number of low-income members of the community who could not otherwise afford memberships. Unfortunately for taxpayers, the IRS has failed to ensure that YMCAs comply with their obligations as tax-exempt organizations.

If the IRS does not take action to improve its oversight and YMCAs continue to flock to affluent communities in the pursuit of a wealthier clientele, the local community will not be served, unfair competition in the fitness market will go unchecked, and hardworking taxpayers will continue to pay more than their fair share of taxes.

³⁴ Joanne Zuhl, *Appleton Post-Crescent*, “YMCAs Taken to Court in Battle for Tax-exempt Status Fitness Center Owners Crying Foul for what they Believe is Unfair Competition.” August, 7, 2000.

