

time in the latter part of June to do that, if at all possible.

Product liability legislation is pending, as well as various appropriations bills, including the legislative branch, foreign ops, and Treasury-Postal Service as they become available.

So we are looking at those three appropriations bills that we would like to be able to finish in the Senate before we go out for the Fourth of July recess.

As all Members know, this is not an exclusive list that the Senate may consider. There are other issues that are pending legislatively and executive matters as they are cleared. For instance, I understand the national missile defense legislation has cleared the Armed Services Committee. That is an issue that we may be able to take up before the Fourth of July period.

Therefore, I encourage all Members to adjust their schedules for a busy month of Senate work. That could very well include some votes on Monday afternoons late and evenings on Friday. But later on this week, probably tomorrow, we will try to give Senators some clear idea of what Mondays and Fridays they should expect to be in session. At a minimum, the Friday that we are scheduled to go out for the Fourth of July recess—that would be Friday, June 27—is clearly one that we will likely have to be in session to complete our work on reconciliation bills.

#### MEASURE READ FOR THE FIRST TIME—H.R. 867

Mr. LOTT. Mr. President, I understand that H.R. 867 has arrived from the House.

I ask for its first reading.

The PRESIDING OFFICER (Mr. DEWINE). The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 867) to promote the adoption of children in foster care.

Mr. LOTT. I now ask for its second reading and will object to my own request in behalf of the other side of the aisle.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### TRIBUTE TO BILL SHIELDS OF THE NATIONAL PARK SERVICE

Mr. KENNEDY. Mr. President, it is privilege to take this opportunity to commend Superintendent Bill Shields for his 32 years of distinguished leadership in the National Park Service. His service has been renowned in many different aspects of the park system, and every region of the country is in his debt.

One of the biggest challenges Bill has faced has been managing national parks in urban settings. In fact, Bill spent the majority of his career in urban park environments, and he has met special needs of these parks with great skill, wisdom, and understanding. As superintendent of Rock Creek Park,

he had jurisdiction over 95 separate local parks which are prized by communities throughout the Washington area. He has skillfully balanced the needs of the parks with the needs of the general public and park neighborhoods. With parks such as Meridian Hill and Montrose and Dumbarton Oaks, he has dealt with many complex issues with diplomacy and exceptional judgment.

Bill Shield's retirement after 32 years with the Park Service will be a great loss. But because of his guidance and leadership, many parks in the Nation, and especially in the Nation's Capital, will be enhanced and preserved for future generations.

#### EXTENSION OF TIME FOR MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that morning business be extended until 2:30 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I have no further requests at this time.

I observe the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from the State of Ohio, I ask unanimous consent that the order for the quorum call be rescinded.

Without objection, it is so ordered.

#### RECESS

The PRESIDING OFFICER. Without objection, the Senate will stand in recess until 2:30 p.m.

There being no objection, the Senate, at 12:48 p.m., recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ROBERTS].

#### FAMILY FRIENDLY WORKPLACE ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 4, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 4) to amend the Fair Labor Standards Act of 1938 to provide to private sector employees the same opportunities for time-and-a-half compensatory time off, bi-weekly work programs, and flexible credit hour programs as Federal employees currently enjoy to help balance the demands and needs of work and family, to clarify the provisions relating to exemptions of certain professionals from the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, and for other purposes.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. ASHCROFT. Mr. President, I am pleased to have the opportunity to stand and speak on behalf of the Family Friendly Workplace Act. It is a way of helping people resolve tensions that

exist between the home place and the workplace. Most American families encounter two basic tensions. One is the tension that is financial, that drives both adults in the family, if there are two adults in the family, into the workplace; certainly if there is only one adult in the family, that one adult has tremendous pressure to be in the workplace. The other pressure which exists for most American families is the social pressure that comes when you have all of the adults in the family in the workplace. You have tension between the workplace and the home place.

How in the world are we going to be able to meet the needs of the home, when people are not at home when they are needed the most—particularly when there are times when their presence is very, very important. For example, when someone is getting an award, or when someone needs to speak to the counselor or with a teacher at school, or when someone needs to go to the doctor. Most families understand that when you have this kind of a need you should have the opportunity to be away from work. If both adults in the family are involved in the workplace it makes it very tough to do.

There are times when certain conditions will justify the use of what is known as family and medical leave. The Family and Medical Leave Act was passed by the U.S. Congress and it allows people to take time off without pay. But I have found in my family, and I am sure most Americans have found as well that when you take your child to the doctor, that is not a time when you can go without pay. That is a time when you actually need all the resources you can get. To put people in the position of having to take a pay cut in order to go see the teacher about a problem at school or to watch the student get an award at school or to be able to take a child to the doctor—to ask a parent to take a pay cut in a setting like that is to make a parent make a choice that we should not be asking a parent to make.

Fortunately, there already exists in this culture a clear model of a system that can work, that works effectively and works very well. It is in the Federal Government. Legally, all Federal employees have the ability to have what is called flexible working arrangements. They can take time off with pay later if they have earned that time off by working more hours earlier. They can arrange their schedule to work a couple hours extra one week and take a couple hours off the next week. As a matter of fact, Federal workers have the ability to take advantage of the scheduling option which allows them to work 45 hours one week, 35 hours the next week. That way they have every other Friday off. Of course, that is really a tremendous boon to people who need to be able to do things during the normal working hours, whether it is to go to the motor vehicle registration place to get the

car plates renewed or to take a child to a doctor or go see a child get an award or confer with a teacher at the high school—those kinds of days that can be scheduled flexibly for Federal employees have worked well to solve problems for Federal employees.

Unfortunately, what is standard operating procedure for people who work for the Federal Government turns out to be outright illegal for people in the private setting. Let me give an example. If you work for a Federal agency and you want to go see your daughter get an award on Monday afternoon next week you can say to the boss this Friday, "I would like to work a couple extra hours and then I can take off early next Monday." Now, your boss can let you work 2 hours this week and you can take the 2 hours off next week, that is fine, you can see your daughter get the award. For a private employer to do that is violating the law. It is against the law for a private employer to be able to cooperate with his or her employee in such a setting.

Now that really shocks most of us to think it is against the law for an employer to help an employee in that respect, but it is the truth. Similarly, if the private employer says if you would really like every other Friday off we will let you work 5 days at 9 hours a day, that would be 45 hours one week, and then the next week you only have to work 35 hours and you can do that by working 4 days, take the fifth day off the second week, that private employer, to pay a person the standard wages for doing that, is in violation of the law. Now you might add, "Gee, this is astounding. That should not be against the law." It is against the law in the private sector. It is not against the law for Federal Government employees.

What is interesting is when you talk to Federal Government employees, they endorse this system overwhelmingly. The General Accounting Office, which is the Office which makes assessments about how well Government is functioning and what works and what does not work—too often they find out what does not work—they made a study of this particular proposal and the way this works in the Federal Government. It was amazing that at a 10-to-1 ratio, Federal Government employees said this is something that really helps, this is something we like. This is something we want. This works. Not only did the employees say it was something that helped, that they wanted, that worked, the employees also were found by the General Accounting Office to be more productive, their morale was higher, and, obviously, those are the kinds of things we would like to extend all across our economy.

Now, private, hourly paid workers in America are deprived of these benefits. It is just that simple. It is against the law. People say, how in the world did we get a law that would make it against the law for an employee and an employer to cooperate in this way?

Well, back in the 1930's on the heel of the Great Depression, when only 2 out of every 12 mothers of school-age children were in the work force, a law was created that set up the Fair Labor Standards Act. This act gave some important protections to American workers. However, it also made these kinds of adjustments, this kind of workplace flexibility illegal. The world is so different now than it was then, it is almost impossible to imagine. Instead of 2 out of 12 mothers of school-age children being in the workplace, it is 9 out of 12 mothers of school-age children being in the workplace. So we flipped the statistics totally but we are still operating with the same approach—not totally operating that way. We changed it for Government workers.

Of course, Government workers are not the only people that have flexible schedules. The people in the boardrooms have flexible schedules. The boss never seems to have trouble with his salary if he takes time off to play golf, let alone to see a child at school. People on salary, the managers and the supervisors—as a matter of fact, the majority of American citizens—have flexible scheduling. It is estimated about 66 million people have flexible scheduling and only 59 million who are the hourly paid working people of America do not have the ability for flexible schedule. It is no wonder that the Pugh Foundation said that 81 percent of the working mothers said, "We need flexible working arrangements for the private sector." Obviously, that would be a great help to them.

It would be a great help, they believed, because they think that is what would help them. When you look at Federal workers who have had this plan—now, for well into the 1970's—the 1980's and the 1990's, they say at a 10 to 1 ratio, "This is the best thing since sliced bread. This is something that is very important to us."

So, we are talking about a proposal which would extend to workers and working families the capacity to harmonize these competing demands between the workplace on the one hand and the home place on the other hand. I might add that I believe we are going to continue to have lots of people working outside the home in America. As a matter of fact, I do not know that America could be very competitive in the world economy if we did not. These two-parent families where both parents are working outside the home and the single-parent family where the only parent is working outside of the home are part of the muscle and fiber of the American economy. We cannot do without them. The truth of the matter is we need to find ways to help them harmonize the competing demands. They need more time and more flexibility.

What is interesting about the Federal system is that it allows you to earn your time off by earning a little bit at one time and taking it off at another time. These flexible working arrange-

ments give workers the ability to take time off without having to take a pay cut. Now the family and medical leave provisions are good, they are fine, they are part of the law right now, but if you take time off under the family and medical leave provisions you lose pay, and when you lose pay that way it is not only not good for you, it is not good for the country.

Let me just talk to you about what happens in the family and medical leave situations where they have taken time off. Now, the family and medical leave Commission stated that the method that hourly employees used to recover lost wages when taking family and medical leave is that 28.1 percent borrowed money. So, families had to go in debt to meet their needs. And 10.4 percent, 1 out of every 10 hourly workers who took time off under family and medical leave had to go on welfare because of the money they lost. 41.9 percent, almost 42 percent, 4 out of every 10 people, deferred paying their bills. Now, most Americans do not like not paying their bills. People would rather have the flexibility of keeping their payments on time and on schedule. It is cheaper when it comes to the interest you are paying, finance charges, and the like. Yet we put people in a situation where 41 percent put off paying their bills, over 10 percent went on welfare, and another nearly 30 percent had to borrow money. I think it is far preferable to be in a situation where we allow people to have the flexibility of taking time off with pay instead of taking time off without pay.

Now, there seems to be some developing consensus about the idea that there should be some capacity for comptime. Comptime is one of the items in this bill. It merely is the right to say to your employer, "I would rather be given some time off with pay later on than be paid for overtime." We know that the law requires that you be paid for overtime at time and a half. This bill would allow a person to say, "I would like to take time and a half off with pay later on, instead of being paid time and a half for the overtime." People are shocked to learn it is against the law now to say I would like to have some time off later on instead of being paid time and a half now—time off with pay later on.

Interestingly enough, the comptime part of this bill only addresses a pretty narrow group of American citizens because the number of people who get regular overtime in our culture is pretty low. As a matter of fact, in the 1996 Current Population Survey, women who work on an hourly basis—and there are 28.9 million women who are paid on an hourly basis in this country—only 4.5 percent of them said they get overtime work in a typical work period. Even if you multiply that by five times, say you get up to 20 percent, you are dealing only with one out of every five women in the work force who would qualify for using comptime as a way of assuaging some of these tensions.

Since this system is a voluntary system for both employers and employees, it is very easy to say that we will just move ourselves beyond comptime—not to say it is not valuable, that it wouldn't be important, that it wouldn't be wonderful to have. But if we give ourselves the capacity for flexible working arrangements, where especially people could schedule over a 2-week period instead of a 1-week period to average out the 40-hour week, indeed, people do have some of these benefits who are not traditionally the recipients of overtime.

Another thing that stuns me is the fact that most of the people who get overtime are men. Overtime typically focuses on industries that are male dominated. There are about two men getting overtime for every woman that is getting overtime. So even if you are talking about the fact that overall, on balance, you might be entitled to a third of all the hourly workers who get some type of regular overtime, or enough of it to make a difference to help compensate meeting the demands of their family and the home place and the workplace, one-third really is really not addressing the problem of what we ought to address. We need to address this problem in a way which is comprehensive.

So having flexible working arrangements for the entire population, and not just focusing the opportunity to assuage attention on those individuals who are regularly recipients of the opportunity for overtime, is very important. That is why the flextime part of this bill is important. If we really want this bill to address the needs of women, of which only 4.5 percent get overtime in any typical workweek, according to the 1996 Current Population Survey, we really ought to make sure that we do more than just have comptime legislation, that we have flextime legislation as well.

President Clinton and many Democrat Senators have voiced support for flextime, the central idea within the Family Friendly Workplace Act. Polls show that the vast majority of Americans favor flexible work schedules. They want legislation that would give them parity with Federal Government workers.

Incidentally, comptime is available to every State local government worker. The Federal law makes it available as well.

People would like to have legislation that would give them the opportunity to choose scheduling options that would help their families.

Penn and Schoen, the President's own pollsters, have reported that 75 percent of America wants the choice of comptime.

Last month's Money magazine published a poll revealing that 64 percent of the public overall, and 68 percent of the women, would occasionally prefer time off in lieu of overtime if they have a choice.

Nothing in this bill would make someone forever choose that it had to

be one way or another. You could maintain the opportunity to have overtime pay most of the time when you had overtime, but you could on occasion say, "I would really prefer to take this time and a half off later than to have the time and a half in pay."

From the remarks we hear from the Democrats, I think they say they want the same thing. I believe they do have an appreciation for the need of workers in this setting.

If this is really the case, if everybody wants flextime, some have specific difficulties with this bill, I hope that Senators would come down and offer amendments. We are at a point where we need to begin to work out, fine tune, and develop a bill which will result in the workers of this country having the benefits which all of us believe they need and want.

According to all the accounts I have heard, people want this bill on both sides of the aisle. The President has been heralding the benefits of flextime for the last 2 years. In his State of the Union Address, as part of his campaign, and as recently as the last several weeks, he spoke very favorably, saying that flexible working arrangements are very important. Mrs. Clinton has made statements on national television over and over again.

Now we have a situation where we have gridlock in the Nation's Capital. I think it is time for us to break that impasse. I think it is time to work out this measure. It is time for individuals who say they have objections to the bill to come to the floor and offer those kinds of compromises that would adjust the bill so as to make it acceptable.

We want a bill. The Democrats have said they want a bill. I think it is time to work together and to work out Senators' concerns here on the Senate floor in the process in which the Senate is best served to undertake, and where the Senate works at its best, it works to the benefit of the American people.

So let's work together and hammer out our concerns on the Senate floor. If Senators dislike specific provisions or language in the bill, I say come down and offer your suggestions, your amendments. Let's make sure that we don't allow this bill to be one which fails to move because none of us is willing to consider change. Let's try to say that since we all want this, let's move it forward, place it before the Senate, and ask the Senate to act in its wisdom on proposals and amendments so that the will of the Senate might work out the will of the people.

This particular opportunity we have is a good one. It is one which I believe can really benefit the working people of this country and will help us as a nation as we move into the next century.

If the studies of the GAO were correct, and 10-to-1 people think that this is a good system when they have had a chance to live under it, and the morale goes up and the productivity goes up,

this is a policy that is a win-win situation and should be extended to all workers. It is a policy change which should be considered high on the agenda of the Senate, not on one party or the other, but high on the agenda of the American people and should, therefore, be high on the agenda of the Senate.

Let's work together. Let's come to the floor. Let's make proposals for amendments. Let's work out our differences so that we can respond to the President, who said he wants to have a measure that addresses this issue, and let's find a way to do it in a way which will benefit the people of this country.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I would like to talk for 5 to 7 minutes just to augment the remarks of my colleague, the Senator from Missouri, who has done yeoman's service on this issue.

Senator ASHCROFT has worked on this issue for probably 6 months now, trying to educate people on the importance of allowing this stress relief valve to be passed into law in America. I commend him for it. What he said was very, very important because, in fact, the question I get asked when I am home and talking about this bill is, "Why is it necessary to have a law? Why can't people go in and ask their boss to take time off on Friday afternoon to see their children's soccer game and make it up on Monday?"

Most people in this country believe that you can do this already. The biggest surprise is that 60 million hourly workers in this country do not have this option. They do not have this option because the U.S. Congress in 1938 passed a law when only 10 percent of the women, the mothers in this country, worked. It said you have a 40-hour workweek, and employers and hourly employees cannot violate the 40-hour workweek unless you pay time and a half for overtime work. Federal employees have the ability to go in and say, "I would like to work 38 hours this week and 42 hours next week." Salaried employees have the same option. But 60 million hourly employees—the ones who need flexibility the most—are not able to do it because of a law passed in 1938 when 10 percent of the mothers in this country worked. Today, two-thirds of the working women in this country have school-age children.

When I talk to my friends who still have school-age children, they say what they need more than anything else is time. They need time more than they need money. They need time with their children more than anything else. The stress of not being able to go to the football game or the soccer game is what hurts them the most.

So why wouldn't we give them the ability to go in and talk to their employer and have the flextime or the comptime that was described so ably

by the Senator from Missouri? Why wouldn't we do that? It is just good, old-fashioned, common horse sense. That is what it is. The people out in the country know that. They can't even believe we are talking about it. Only inside the beltway in Washington, DC, would it be a question that two adults would be able to sit down and say, "I would like to work 38 hours this week and 42 hours next week, or I would love the ability to work 2 extra hours 4 days a week and take Friday off," as Federal employees are able to do. People want the ability to manage their own time without taking a pay cut.

You know when the President talks about flextime, he is talking about nonpaid time. We don't want a person to have to forego the mortgage payment or the car payment. We want people to be able to budget, to know, "This is what I am going to have for spending, this is what I am going to have to spend, this is my budget, and I do not want to give up the 2 hours of pay. But if I can keep on an even keel with my budget and be able to have the flexibility in time, that is what I need most in the world right now."

Mr. President, the Senator from Missouri and the Senator from Texas are going to try to make sure that the 60 million employees in this country who are not now able to sit down with their employer and ask for their flextime or this comptime do, in fact, have that ability. That is what this is about.

The Senator from Missouri came up with the idea that we should finally, once and for all, since 1938, come into the real world. And the real world is that two-thirds of the working women in this country have children in school. They need relief.

So the Senator from Missouri and I are going to try to give it to them by enacting flextime and comptime so people can work their normal hours or have the flexibility to change their hours but keep their salaries constant. And it is always at the option of the employee to say, "I would rather have time or I would rather have money."

That is something that the Senator from Missouri was very careful to make sure in his bill that be protected. That is the right of the employee to say, "No, I do not want time-and-a-half time; I want time-and-a-half money." That should be the right of the employee. But if the employee says, "Oh, thank goodness. What I really want to do is to go to my child's soccer game on Friday afternoon, and now I can go and ask my employer for that time off and make it up next week and not have to worry about the car payment," that is what we are trying to do. That is the simple fact. It is why this bill is necessary. And I commend the Senator from Missouri for working to make this happen.

Why we are having so much trouble getting this bill on the floor for debate is because it is being filibustered on the other side, which I don't under-

stand. I don't know why the unions would be against it. This doesn't interfere with union contracts. If there is a closed shop, a contract shop, a union shop, then this law isn't in effect. The union is able to do the negotiating.

But if there isn't a union, why should Government be in the way of allowing people the ability to have that time with their child at their soccer game or their football game or their Little League Baseball game? Big brother Federal Government should not be in the way, nor should big brother unions be in the way, because this does not affect union contracts. But there are a lot of people in those 60 million hourly employees who do not have a union contract that also are precluded by law from this flexibility. And, Mr. President, we don't think it is right. We want to do something about it.

That is what the Ashcroft bill does for the working people of this country.

I hope that our colleagues on the other side of the aisle will allow us to get this bill on the floor. Stop filibustering it. Stop stonewalling. Let us get this bill on the floor. Let us have the debate. Let us have the amendments. Whatever is appropriate we will work with if we can just get it on the floor. Right now, for the last 4 weeks, 5 weeks, we have just been trying to get the Democrats to agree to let us bring it up. It is being filibustered. The time has come for everybody to stand up and say, OK, I will put my amendments out there. We will vote them up or down. But let us let the working people of America, the 60 million hourly employees, have the same opportunities as Federal employees, State employees, and salaried employees to be able to take off 2 hours on Friday afternoon and make it up on Monday.

That is what this bill is about, and I hope that our colleagues will allow us to debate it and pass it and give this stress relief valve to the working people of America.

Thank you, Mr. President. I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, as we start off today on this issue, I remind our colleagues and friends, there was really no effort on anyone's part to delay the consideration of this legislation. If you go back and review the amount of time we have taken on the legislation, you will find no more than 4 or 6 hours of debate in total on the Senate floor.

We are being faced now with the bill is being brought up this afternoon with a cloture motion. We have already been notified there will be no time tomorrow morning as the Senate will pause to pay tribute to an outstanding Senator, our good friend and colleague, Senator THURMOND, who has had a long record in the Senate. We also know that we will be displaced tomorrow afternoon should the budget report come back before the Senate.

So we are in a situation where this legislation is put in the Chamber, pulled back, put in, pulled back, put in, and then a cloture petition is filed. We had a series of amendments that were offered in the Labor Committee. These amendments have been filed on the floor as well. I will address the purposes of these amendments later. We voted on this bill in the committee, and there was no effort to delay. There were only, I believe, six or eight amendments, and I think there have been just about that number that Senators on this side of the aisle have filed on the legislation. So we should be under no illusion that there is any interest in undue delay on the measure.

Madam President, it is very difficult to disagree with the needs of the parents in the situations described by my good friend and colleague from Texas, Mrs. HUTCHISON, or my friend from Missouri, Senator ASHCROFT. They discuss cases where the parent needs a little extra time for the meeting with the schoolteachers or for the dental appointment or for other kinds of activities. We are all in agreement on the importance of those needs.

But that is not what this bill is all about. That is what the Federal employees protections are all about, which we support, but that is not what this legislation is all about. I will just take a few minutes to review what this bill provides.

I would think reasonable people could say that we should not abolish the 40-hour workweek, which has been in effect for nearly 60 years to protect workers from exploitation—that is why it was put into effect. We all understand the need to look at the new global economy and consider new programs, but I do not think we ought to get away from old values. The old values were that 40 hours of hard work for men and women in this country is enough over the course of the week if workers are going to have any time at all for their families. If employees need to work overtime, they should be compensated at time-and-a-half in order to provide additional income for the family, particularly because they are going to be denied the opportunity to be with that family.

So, if we are going to abolish the 40-hour workweek, I think we need to understand where we are going. That has been a protection for many, many years. If we are going to abolish overtime pay in a 2-week period, as this bill does, I think we ought to be able to discuss that. I think it is fair to review once again who really has the whip hand in deciding whether that worker is going to be able to get time off to participate in that teacher conference or see that school play. Is it the employee? Or can the employer just say, no, you are not going to be able to do that. Then what recourse is available to that employee? You would think that two people sitting down would be able to work out an accommodation so that one person would be able to go to

that teacher conference, but if the employer is able to say, no, you cannot go, how does that benefit the employee? There is virtually no hindrance to that employer simply saying, well, you are just not getting off next week or the week after for that basketball game or for that teacher conference. There is no remedy. If the employee had the decision, then we would be talking about an entirely different bill.

That is not what is before us in S.4. That is not what is before us. That is why I think we ought to be cautious when we talk about ending the 40-hour workweek, when we talk about ending any premium pay for overtime with the flexible credit hours in this legislation, and when we skew the decisionmaking process in favor of the employer rather than the employee. It seems to me that we ought to examine this and try to address it. That is what I want to speak about this afternoon, about the different amendments that have been advanced and which I hope will be included in the bill. Then I hope the legislation will move forward. I would like just to mention those this afternoon to the Senate.

Prior to the recess, the sponsors of S. 4 attempted to invoke cloture, and they failed badly, not by one or two votes but by seven votes. Every Democrat opposed cloture because the provisions of S. 4 are clearly hostile to working men and women. Two courageous Republicans broke with their party and joined with us in opposing cloture. That vote should have sent a strong signal to the Republican leadership that their bill contains provisions which are unacceptable to a great many Senators.

Those 47 Senators who opposed cloture will not allow the advocates of S. 4 to eliminate the 40-hour workweek. Those Senators will not allow the sponsors of S. 4 to impose a pay cut on American workers, and that is what this legislation is really all about. Those Senators will insist upon a comptime bill which is fair to working men and women, one which allows employees—employees—to make the real decisions and choices.

Whether we take 1 more cloture vote or 10 more cloture votes, the result, I believe, will be the same. It should be clear to all Senators that the extreme provisions of S. 4 will never be approved by the Senate and they will never become law.

That is why many of us had hoped by now the advocates of S. 4 would have moved away from their extreme position toward a more moderate, reasonable comptime proposal.

The real debate in the Senate has never been about whether workers needed more flexible schedules. All 100 Senators could concur in that goal. What this debate has been about is how best to provide that flexibility, how to design a system which genuinely empowers workers rather than enhancing the control of their bosses. It is time to turn to the real issues. What are the

standards by which we should evaluate a comptime proposal? I think it would be useful if we could establish fairness as the criterion and then make the decision as to what legislation advances that goal. I believe there are certain basic questions of fairness which should be asked about each of the pending comptime proposals. Does the proposal prevent an employer from discriminating in allocating overtime work between those workers who choose time off and those who choose overtime pay? Will it reduce the pay of employees who are currently working overtime and want to continue to receive overtime pay? Is the proposal designed to ensure that those workers who choose comptime actually get a net increase in time off to spend with their families? Does the plan protect employees who use comptime from any reduction in their health or retirement benefits? Does the legislation contain strong penalties to deter employer misconduct in the operation of the comptime program? Is the value of an employee's accrued comptime protected if the employer should become insolvent?

The answers to these questions will tell us whether a particular version of comptime will truly empower workers. The Republican bill flunks this simple test. S. 4 does not give the workers real choices. It gives the employer the final say on when employees can use their accrued comptime. It will result in a pay cut, and it jeopardizes the health and retirement benefits of many workers. It will not even guarantee that those who use comptime get a net increase in the amount of time off they have to spend with their families. And the Ashcroft bill would abolish the 40-hour workweek, one of the most fundamental principles of American labor law for nearly 60 years.

Fortunately for American working men and women, there is a comptime proposal which passes this fairness test. The Democratic comptime proposal offered by Senator BAUCUS, Senator KERREY, and Senator LANDRIEU guarantees the genuine employee choice, which the Republican bill fails to provide.

The substitute corrects the most serious defects in the Ashcroft bill. It incorporates many of the ideas proposed by the Democratic members of the Labor Committee as amendments during the markup. Unfortunately, each was rejected on a party line vote. Let me highlight the key improvements.

First, the 40-hour week is preserved. This bedrock principle would be eliminated by the Republican bill. The Democratic alternative preserves the 40-hour workweek and ensures that every hourly employee who works more than 40 hours will receive time-and-a-half in either pay or comptime. If the real purpose of comptime legislation is to provide employees with the option of additional time off in lieu of extra pay, it should not reduce the historic standard of compensation for

overtime worked. The Republican bill would result in both lower pay and less time off for workers than the Democratic alternative. It is easy to see which piece of legislation is truly family friendly.

Second, the Democratic proposal makes it illegal for employers to discriminate in allocating overtime work. Employers would have to make overtime work equally available to those employees who want to receive overtime pay and those who want to receive comptime. This is an essential protection for workers who have been receiving overtime pay and need the money. Nearly half of the hourly workers earn \$16,000 a year or less; 80 percent of them earn less than \$28,000. Overtime pay on average constitutes 10 or 15 percent of their annual income. Their families need those dollars to make ends meet. The Republican bill would allow an employer to offer all the overtime work to those employees who choose comptime and none to those who choose extra pay. In many businesses, S. 4 would mean the end of overtime pay. Such discrimination is terribly wrong, yet the Ashcroft bill would allow it. The Democratic alternative makes this discrimination illegal, and it is easy to see which legislation is truly family friendly.

On that point, we offered an amendment in the committee to try to address that issue and it was rejected on a straight party line vote.

(Mrs. HUTCHISON assumed the Chair.)

Mr. KENNEDY. Madam President, thirdly, any creditable proposal to deal with employees' desire for more time off to spend with their families must ensure the employee can take the time when he or she needs it most. A working mother needs a particular day off so she can accompany her child to a school event or doctor's appointment, not a day when it is convenient for her boss. Nothing in the Republican proposal requires the employer to give her the day she requests. He can deny her request and she has no effective recourse. The Democratic alternative provides for real employee choice in using accrued comptime.

If the time off is needed to care for a sick child or other family member, the employee has an absolute right to take the time. When the time is being used for other reasons, the employee can take the time if he or she has given 2 weeks notice and the absence will not cause substantial and grievous injury to the business. The difference between the Democratic and the Republican positions on this crucial issue is dramatic. Under the Democratic plan, employees can take the time when they need the time, and it is easy to see which proposal is truly family friendly.

We saw the resistance of our Republican friends to the very modest amendment of our friend and colleague, Senator MURRAY from the State of Washington, that said let's just have a 24-hour guarantee that a

mother or father who is working would be able to take up to 24 hours to go to a parent-teacher conference or go to a school event—just 24 hours. That was rejected. And why? The reason it was rejected, I believe, is because it provided for the employees' protection.

You can say all you want that this legislation leaves it up to the employee, but the fact is, it does not. If those who support S. 4 say that it does, we have the clarifying language to make sure it does do that. But they resisted that in the markup; they resisted the very reasonable proposal of the Senator from Washington for a 24-hour period over the course of a year. That would have given the discretion to the employee. Republicans resisted it because, under their proposal, the employer is going to be the one who makes that decision. That, I believe, is a very important and significant difference.

Fourth, if employees are really going to be able to increase the amount of time spent with their families, comptime hours must count as hours worked. The way the Ashcroft bill is drafted, if an employee uses earned comptime to take Monday off, she can still be required to work 40 hours during that week. The boss can require her to work on Saturday and not even have it count as overtime.

I want my colleagues to understand that the boss can say, "OK, you can take comptime off on Monday," and then can say, "Well, you will work on Saturday," and not even have it count as overtime pay. That can be 48 hours during that one week. Of course, the bill eliminates the 40-hour workweek in any event, so there are any number of hours that employees can be forced to work. Or, the employer can require the employee to work 10 hours a day Tuesday through Friday and not have it count as overtime. Thus, under the Republican comptime scheme, she would not even gain extra time to be with her child. The hours gained on Monday would be lost by Saturday. There would be no net benefit in time off to the employee. This absurd result is due to the fact that the authors of S. 4 have refused to count hours of comptime as hours worked. That little change, comptime as hours worked, would avoid that. We offered that as an amendment. It was rejected. My Republican colleagues rejected an amendment to give the employees the ability to make the decision about the time off. My colleagues on the other side of the aisle rejected our amendment to count comptime hours when used as hours worked, which would provide that protection from exploitation. That was rejected by the supporters of S. 4. Thus, the employees using the comptime will enjoy no increase in their free time. Our Democratic alternative provides that protection. Again, it is easy to see which proposal is truly family friendly.

The Baucus-Kerrey-Landrieu legislation corrects a number of other flaws

in S. 4 as well. It shows how hollow the promise of the Ashcroft bill really is. This debate has never been about whether employees needed the option of more time off. We all agree, as I mentioned earlier, that they deserve more time to spend with their families. The debate has always been about how to make that opportunity real. It is about how to truly empower workers, not how to give increased control to their bosses. The Democratic alternative achieves the goal of empowering workers; the Republican bill falls dramatically short.

Madam President, with those kinds of alterations or changes, we would have legislation that would be out of here in very short order. It seems to me that if we are going to do what is the stated purpose of this legislation—to give the employees the power to be able to make those decisions, to make sure they are protected in terms of hourly pay—then we need to provide those protections. We need to prevent discrimination against workers where the employer says, "I'm always going to give overtime work to Jimmy here because he always takes the comptime, and I'm not going to give any to Sally because she always takes the overtime and I don't want to pay that out." We just need to provide some protection so we don't have that kind of discrimination.

These are basic elements of protection for employees. Every one of these proposals that I have mentioned provides additional power to the employee. As I understand it, having listened to the debate, giving employees some power is the primary reason at least some say they support this legislation.

I think it is important to emphasize the extent of flexibility in the 40-hour workweek at the present time. If employers—and this is today—genuinely want to provide family friendly arrangements, they can do so under current law. The key is the 40-hour week. Normally, employees work five 8-hour days a week, but more flexible arrangements are possible. Employers can schedule workers for four 10-hour days a week with the 5th day off and pay them the regular hourly rate for each hour. No time-and-a-half is required. They can arrange a work schedule of four 9-hour days plus a 4-hour day on the 5th day so they can have Friday afternoons off, again without paying a dime of overtime. That can be worked out today without a dime of overtime.

Under the current law, some employees can even vary their hours enough to have a 3-day weekend every other week. Once again, the employer does not have to pay a dime of overtime. That flexibility is totally legal under current law.

Employers can also offer genuine flextime. This allows employers to schedule an 8-hour day around core hours of, say, from 10 to 3. Let employees decide whether they want to work from 7 a.m. to 3 p.m. or from 10 a.m. to

6 p.m. This is a very popular option for Federal employees. This, too, costs employers not a penny more. But only a tiny fraction of employers use these or many other flexible arrangements available under the current law. The Bureau of Labor Statistics found that only 10 percent of hourly employees are allowed to use these or other flexible schedules. Only 10 percent. We hear S. 4's proponents say, "Let's give them half the day off on Friday, let's give them more flexibility during the course of the week, let's let them have an extra day off every other week"—all that is possible today, without a dime of overtime. You know something? Only 10 percent of employees are permitted to do that at the present time. Current law offers a host of family friendly flexible schedules, yet virtually no employers provide them.

Madam President, this bill has a different purpose, and that, I suggest, is to cut workers' wages. Employer groups unanimously support it. Obviously, it is not just the small businesses which wish to cut pay and substitute some less expensive benefit instead. I have here, which I will have printed in the RECORD, a letter signed by 9 to 5, National Association of Working Women; American Nurses Association; Business and Professional Women; National Council of Jewish Women; National Women's Law Center; and the Women's Legal Defense Fund. These have been the organizations, during the time I have been in the Senate, that have fought for gender equity, gender fairness, pay equity, non-discrimination against women. They have been the ones who have fought for the increase in the minimum wage, day care programs, expansion of Head Start—the whole range of different family friendly programs. They are on record in each and every one of them. This is their conclusion in reviewing this legislation:

We believe that passage of S. 4, the Family Friendly Workplace Act, fails to offer real flexibility to the working women it purports to help while offering a substantial windfall to employers \* \* \*

Nearly half of the workforce is women and the number of women working multiple jobs has increased more than four fold in the last 20 years. S. 4 would affect hourly workers and most hourly workers are women. The majority of minimum wage workers are women. Many of these women depend on overtime pay. Many of them want more control of their schedules, not less. Without strong protections for workers, the comp time bill will cut women's options and women's pay. For example:

Someone pressured into taking comp time when she really wants or needs overtime pay is taking an involuntary pay cut.

That is the example I used earlier.

Supporters argue S. 4 is voluntary and the employees have a "choice," yet working women, who for decades faced subtle (and not-so-subtle) forms of discrimination, are all too familiar with the potential consequences of not going along with the employers' wishes: isolation, intimidation and even retaliation;

As I mentioned in our earlier debate on this bill, in 1996 more than 170,000



workers received backpay because their employers failed to pay overtime—in violation of Federal law. Those employees received over \$100 million for those violations, in the last year alone. That is what is really happening in the workplace.

Because employees do not control when and if they use their comp time, they are essentially being asked to gamble on the chance that they will be able to take time when it is as valuable to them as overtime pay \* \* \*

Women want flexibility in the workplace, but not at the risk of jeopardizing their overtime pay or the well-established 40-hour work week.

Madam President, I ask unanimous consent to have printed in the RECORD this letter I just referred to.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN NURSES ASSOCIATION,

Washington, DC, May 30, 1997.

Hon. TRENT LOTT,

Hon. TOM DASCHLE,

U.S. Senate, Washington, DC.

DEAR SENATOR LOTT AND SENATOR DASCHLE: The undersigned national organizations represent many of the working women of today. We believe passage of S. 4, the Family Friendly Workplace Act, fails to offer real flexibility to the working women it purports to help while offering a substantial windfall to employees. We urge you to delay consideration until a real solution can be found which truly meets the needs of working women and families.

Nearly half of the workforce is women and the number of women working multiple jobs has increased more than four fold in the last 20 years. S. 4 would affect hourly workers, and most hourly workers are women. The majority of minimum wage workers are women. Many of these women depend on overtime pay. Many of them want more control of their schedules, not less. Without strong protections for workers, the comp time bill will cut women's options and women's pay. For example: someone pressured into taking comp time when she really wants or needs overtime pay is taking an involuntary pay cut; supporters argue that S. 4 is voluntary and the employees have a "choice," yet working women, who have for decades faced subtle (and not-so-subtle) forms of discrimination, are all too familiar with the potential consequences of not going along with the employers' wishes: isolation, intimidation and even retaliation; and because employees do not control when or if they can use their comp time, they are essentially being asked to gamble on the chance that they will be able to take time when it is as valuable to them as overtime pay.

S. 4 must be defeated. Women want flexibility in the workplace, but not at the risk of jeopardizing their overtime pay or the well-established 40 hour work week.

Sincerely,

9 TO 5, NATIONAL  
ASSOCIATION OF WORKING  
WOMEN,  
AMERICAN NURSES  
ASSOCIATION,  
BUSINESS AND  
PROFESSIONAL WOMEN,  
NATIONAL COUNCIL OF  
JEWISH WOMEN,  
NATIONAL WOMEN'S LAW  
CENTER,  
WOMEN'S LEGAL DEFENSE  
FUND.

Mr. KENNEDY. Madam President, this isn't just my own conclusion. The observations made today reflect a wide range of different groups, those groups primarily that have been fighting for the working men and women of this country. The groups opposing this bill include not only the League of Women Voters, but the National Women's Political Caucus, the National Council of Senior Citizens, the National Council of Churches, and the Disability Rights Education and Defense Fund. The list goes on and on, for these reasons: this bill, S. 4, gives the ultimate decision to the employer rather than the employee.

This isn't Federal employees where the employee has the right to take the time off. This is a different arrangement which, under any fair reading, would give the employer the control. Without the protections that I have mentioned, this would be the result.

We have to ask today whether we want to risk abolishing the 40-hour workweek, effectively abolishing overtime pay for workers who are on the lower rungs of the economic ladder. Some 60 percent of those workers earn \$16,000 a year; 65 percent of them have no college education. In so many instances, they are working not just one job but two or three jobs in order to make ends meet. Those are people who are struggling at the bottom rung of the ladder and depend upon the overtime just to get those resources to be able to try to bring up a family. Sure, they would like to spend more time with their family and, sure, they ought to have some opportunity to do that. We support that. But we are going to make sure that when that judgment is made, that that employee is the one who is going to make the judgment, not the employer because they want to see a pay cut for hard-working Americans.

That is basically what the issue is before us in the U.S. Senate. Without these kinds of protections that we have talked about today, that would be the result, a significant pay cut for those that are working on the bottom economic rungs of the ladder. That is wrong. That is unfair.

The measure that has been introduced by the Democrats as a substitute provides protections to deal with those issues. But we have been unable to be able to get acceptance of that proposal. Therefore, we stand in opposition to S. 4.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Madam President, it is with a great deal of enthusiasm that I rise to voice support for S. 4, I think the aptly named "Family Friendly Workplace Act." I think that is exactly what this bill does. It provides some friendliness in the Fair Labor Standards Act for the employees, for the workers in this Nation.

I want to compliment and commend the Senator from Missouri for his lead-

ership on this issue. I know of no one in this body more committed and more dedicated to the American family than the Senator from Missouri. And he demonstrated that I believe in his sponsorship and his championing of this cause and this bill.

This bill will give American workers the flexibility to take paid time off for any reason by simply working those hours in advance, paid time off. I know there are many in this body who have worked hard for family and medical leave. That is unpaid family medical leave. Most in the U.S. Senate voted for the Family and Medical Leave Act, the unpaid Family and Medical Leave Act. Therefore, it puzzles me that so many of those who championed family and medical leave on a voluntary and unpaid basis will now oppose this legislation which will provide workers paid time off for any reason by simply working those hours in advance.

It would make it possible, this bill, for modern families to harmonize the ever-increasing demands of family life and the workplace. Many employers have done their best to try to build some flexibility under the current law. And they have found themselves repeatedly in a virtual straitjacket.

This legislation will provide them that much-needed flexibility to work with and on behalf of those whom it is their best interest to help, their employees, their own workers. This is an issue which has been recognized by those on both sides of the aisle as being crucial to the future of the American family in this country. Mothers need to be able to leave work early to attend parent-teacher conferences or whatever else may be important to the welfare of their families. Fathers need to be able to take off work early to go coach their children's Little League team or some other worthy activity that will benefit their families.

S. 4 amends the Fair Labor Standards Act that applies to private-sector employees. That is those employees currently not eligible for comptime or flexible work programs. The individuals that I am referring to hold hourly positions such as clerical workers, mechanics, other low- or mid-level jobs that provide the backbone of our work force. The very individuals who need flexibility the most are those who currently are denied it under the current law.

The Labor Department recently concluded a report to the Nation and to President Clinton entitled "Working Women Count." Hundreds of thousands of working women were surveyed and the results speak volumes about the priorities of these women in the work force today. The No. 1 issue for these women was how difficult it is to balance work and family obligations.

Their concerns are exactly what S. 4 is designed to address, how to continue meeting their responsibilities at work while also meeting their responsibilities at home to their families.

Why do we need a bill like the Family Friendly Workplace Act? The current laws dealing with the workplace were developed in the 1930's. There are some who feel content. They feel that those 1930 laws, as well-intended as they were, should be set in concrete forever, never amended, never changed except to make periodic changes in the minimum wage.

But the fact is, life in America has changed dramatically in the last 60 years. The structure and the composition of the typical American family has changed dramatically in the last 60 years. And it is time that we reflected those changes in the Fair Labor Standards Act.

In 1940, just 2 years after the passage of the Fair Labor Standards Act, 67 percent of all American families were comprised of a husband that worked outside the home and a wife that did not. More than two-thirds of American families fit that basic model in 1940, just 2 years after the passage of the Fair Labor Standards Act, and only 9 percent of families had two working spouses. Today that is no longer the case. Not only is it no longer the case it is just about the reverse, it is just about the opposite of that.

By 1995, only 17 percent of families had husbands that worked while the wife stayed at home. In 1995, only 17 percent had that kind of classic Ozzie and Harriet household. Only 17 percent fit that model 2 years ago. In addition, almost 70 percent of single women headed families with children.

So again, I point out, Madam President, the Department of Labor's own study revealed that the No. 1 issue women wanted to bring to the President's attention is the difficulty of balancing work and family obligations.

Recent polling data reflects that 81 percent of women support flextime proposals, and 31 percent of women who work full time say the ability to work flexible hours is the single most important policy reform that could be instituted in the workplace to ease this dilemma, this struggle of balancing a family and work pressures, to reduce stress, and to increase productivity.

So, 8 out of 10 women support the concept of this bill championed by Senator ASHCROFT of Missouri. Nearly one out of three put flextime at the very top of the list of workplace reforms that will provide help to the family.

I know I have been talking mostly about how this bill will benefit women in the work force. But it is not just women who feel so strongly about this issue. A poll conducted by Penn & Schoen Associates showed that most Americans prefer options in compensation for working overtime. They want options, they want more flexibility.

In fact, 75 percent favor allowing employees the choice of getting time and a half either in wages or as time off, 75 percent favor that. Madam President, 57 percent would take time off instead of being paid if that option were made available to them. Not by coercion. I

heard that word. Not by pressure. I heard that word. But they voluntarily desire that option and would take it were it made available to them.

Then Money magazine recently conducted a poll which concluded that 64 percent of Americans and 68 percent of women would rather have their overtime in the form of time off rather than cash wages. Madam President, the evidence is overwhelming, the American people want more flexibility in their work schedules.

This bill provides it. The Family Friendly Workplace Act guarantees all Americans the right to have this flexibility. Unfortunately, many misconceptions have been perpetrated about what this bill actually does.

Let me just set the record straight on what I believe are some gross mischaracterizations of this legislation. The single most important thing that the American worker needs to know about the Family Friendly Workplace Act is that its provisions are completely—completely—voluntary.

As I was listening to debate here on the Senate floor I was turning through the bill. It is always helpful to read the bill. I believe the language is very plain and unequivocal:

An employer that provides compensatory time off under paragraph 2 to an employee shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten or coerce any employee.

So the most important thing to remember is that the provisions of this bill are entirely completely voluntary. No employer can force a worker to take time off rather than overtime pay. In fact, S. 4 imposes criminal and civil penalties on employers who attempt to coerce or intimidate their employees into taking time off in lieu of overtime pay. Those penalties are increased. Flexible time can only be initiated at the employee's request. So worker protections would really be greater under this legislation than under current law. And it is, I say again, totally—totally—voluntary.

Another misconception is that workers would only be able to take the time off at the discretion of their employers. S. 4 allows an employee to take time off within a reasonable period after making the request as long as their absence would not unduly disrupt the employer's operations.

This standard has been used since 1985 for Government employees. It has resulted in very few disputes, and most notably has won rave reviews from these Federal workers who have had this option made available to them. They have not seen themselves as the pawns of management. They have not seen themselves abused, but rather they have seen this as an option that they wanted to take advantage of. They have approved of it. It has worked admirably. It has won rave reviews.

It is interesting to note that Federal employees have enjoyed a compensatory time-off option since 1945, and

flexible work schedules since 1978, while private-sector employees must still operate under the rules established almost 60 years ago.

Furthermore, the comptime and flex-time provisions of the bill are completely voluntary and do not affect collective bargaining agreements.

Some would like to portray this bill as a coercive attempt to undermine the unions. Nothing could be further from the truth. S. 4 is a bill that recognizes the importance of one particular union, and that is the union of family, a mother, a father, children, and the relationship that they have to their employer. And this bill will enhance that contractual agreement. It will enhance that union that exists within family. It will put a modicum of flexibility and reasonableness into labor law and into workplace management.

So let me just say, in concluding my remarks, there are two things I think are absolutely essential to remember. No. 1, it is voluntary. I am so tired of hearing the words "pressure" and "intimidation" and "coercion" because the language of this bill is absolutely plain and clear that that is not only not tolerated, it is illegal, whether it is implied or otherwise, and the sanctions and the penalties are actually enhanced over current law.

The second thing that I urge my colleagues to remember is not only is it voluntary, but it is tried and it is proved and has been successful. Federal employees have enjoyed this, and it is high time that we gave the workers of America the same benefits that Federal employees have enjoyed for years. And it is voluntary. You cannot coerce it. It is absolutely and totally voluntary and it has been proven it works. It is time we extend those benefits to others.

This bill takes a giant step in altering the all-too-obvious dilemma American workers presently face in trying to balance family and work responsibilities. I urge my colleagues to put families first and support S. 4.

Madam President, I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I was very interested in the comments that the good Senator was making, saying this is a completely voluntary provision. Let me point this out. If an individual worker says, "Well, if I'm going to work overtime, I want my time and a half. And, therefore, since the system is completely voluntary, I'm not going to sign up for the comptime. I'm not going to sign up for flextime. I'm going to maintain the 40-hour week, and anybody who thinks that this is going to allow discrimination just doesn't understand it because I'm going to be able to maintain my rights."

Well, that is a wonderful rhetorical statement, but it just does not take into account what is happening out in the workplace. Because you have Johnny over here who says, "I'm going to



maintain my rights, I'm not going to let the employer decide when I can take comptime or flextime. I'm going to take the overtime pay after 40 hours a week." The employer says, "OK, if you do that, I'm going to give the work to Bill and Harry over here. So you, Johnny, you're not going to get any overtime work because Bill and Harry are going to take comptime and they're going to take flextime. So you'll never get overtime work as you get today."

That is the reality of the workplace. You can stand up here all day long—and I have heard Senators say, "This is completely voluntary, because if I don't want to participate I don't have to. I'll be protected by the 40-hour week. I'll be able to get my overtime." But that does not reflect what is happening out there in the workplace today.

You have the three workers. He says, "I'm going to stick with the 40-hour week. And I want my overtime pay." The others say, "I'll do the flextime. I will not take the overtime." The flexible credit hour provision provides what they call straight time, which means they will work overtime but they will still get paid the same amount they got for the first 40 hours. That is in the bill. Or the next one says, "I will take that in comptime and I will take that time off next week."

Now, who is the employer going to choose when it comes to awarding overtime work? What the Democrats said is, "OK, if you are going for these programs, we want a provision in there that you will not discriminate against that person who needs the overtime pay." Were the Republicans willing to take that? Absolutely not. Absolutely not. The Republicans claim that workers are going to be able to make a decision on their own, without coercion. But the fact is that they are going to be discriminated against in the workplace because they are not going along. When we tried to remedy that situation with an amendment, the Republicans said no.

Now, I find it difficult to believe that this is really voluntary and it really will not affect those workers who do not want to participate. Of course it will affect those workers. They will have their pay cut because they will never get the overtime work. Those who need the overtime pay the most will never be assigned overtime work again. They will be hurt the worst.

That is why we are trying to bring in that provision, so we will not discriminate. This bill allows that. I think it demonstrates what the bill's real purpose is.

This is, basically, Madam President, about reducing overtime pay. That is the testimony we had before the committee. The National Federation of Independent Business, one of the prime organizations that supports this told our committee that "Small businesses can't afford to pay overtime." That was the National Federation of Inde-

pendent Businesses's explanation of why they support this bill.

Who are the people affected by this legislation? To understand the real-world impact of the bill, you have to look at the workers currently depending on overtime pay to make ends meet. Forty-four percent of those who depend on overtime earn \$16,000 a year or less. More than 80 percent have annual earnings of less than \$28,000 a year. That is, 80 percent of them earn less than \$28,000 a year. A single mom with two children, \$28,000 a year. That is at the top level of those who are working overtime. These are people who need every dollar they can earn just to make ends meet, men and women supporting families.

If this bill passes, many will lose the overtime dollars they need so badly. Employers will give all the work to the employees who agree to take the comptime. There will not be overtime work for those who insist on being paid.

Under the Ashcroft bill, discrimination in awarding overtime work will be perfectly legal. Does anyone honestly believe it will not happen? Does anyone honestly believe if the employer has the choice between paying someone 1½ times or paying someone in flexible credit hours, which is straight time, does anybody believe the employer will not choose the less expensive option?

Mr. ASHCROFT. Will the Senator yield?

Mr. KENNEDY. I am happy to yield to the Senator.

Mr. ASHCROFT. If you mean for the question to be totally rhetorical, I would not. But I believe there are reasons in the bill which indicate that such coercion would not exist. First, I do not think it is automatic that it costs an employer less to have an employee to accept comptime and have to maintain books for the compensatory time and also have the cash available for an employee to be paid the compensatory time at the worker's option.

If you look at the bill on page 15, it says, "Prohibition of Coercion," and it says, "shall not directly or indirectly intimidate, threaten, coerce or attempt to do so," and again on page 39, "an employer shall not directly or indirectly intimidate, threaten, coerce or attempt to do so."

Mr. KENNEDY. If I could, please tell me where coercion is defined in the bill. I would be interested.

Mr. ASHCROFT. Page 40—thank you for asking—definition: "The terms intimidate, threaten or coercion include promising to confer or conferring any benefit, such as an appointment, promotion, or compensation, or affecting or threatening to affect any reprisal such as deprivation of appointment, promotion, or compensation." It seems to me that is exactly what you are talking about.

Mr. KENNEDY. No, it is not. Are you are saying that the definition of coercion includes discrimination in the award of overtime work, or are you

saying that the issue of coercion is different from the issue of discrimination?

Mr. ASHCROFT. No, what I am saying—

Mr. KENNEDY. Do you agree that you can have discrimination without coercion?

Mr. ASHCROFT. Not under the bill.

Mr. KENNEDY. Then why do you not add the word "discrimination"? If you added that this afternoon, that would be real progress. I think there is a difference between coercion and discrimination. Without coercing somebody, I can say I will not give overtime work to that person. That is not coercing that person, as I interpret it. That is discriminating against that person because they will not take comptime or they will not go along with the flexible credit hours, which is straight time. I call that discrimination, not coercion.

Mr. ASHCROFT. Will the Senator yield?

Mr. KENNEDY. Sure.

Mr. ASHCROFT. This defines intimidation, and it says it includes "promising to confer or conferring any benefit such as appointment," which means to appoint the person to do the overtime, or promotion, or compensation, to give a person a benefit, which the overtime is clearly a benefit. That is the whole thrust of your argument.

If you do that, your discrimination qualifies as intimidation under the definition on page 40. But maybe we can clarify this with an amendment. That is one of the reasons I have said I would welcome Members to come to the floor.

Mr. KENNEDY. I would be more than glad to offer that amendment this afternoon to make that clear, and we could accept that this afternoon and move ahead. I would consider that very important.

With all respect to the Senator, I find an important difference in the definitions of coercion and discrimination. If the Senator believes that other parts of the bill's definition of coercion somehow prohibit discrimination, and therefore employers cannot discriminate, perhaps we could clarify that issue by using those words, discrimination. If we could achieve that, we would have made very important progress. I offered an amendment to accomplish precisely this. My amendment made it unlawful for an employer "to qualify the availability of work for which monetary overtime compensation is required upon the request of an employee for acceptance of compensatory time off in lieu of monetary overtime pay." So if you are willing to include those words, I think we would have made some very important progress. That is one of the important improvements that we are trying to achieve.

Mr. ASHCROFT. I am happy to try to work together with our staffs to see if we can meet a mutual understanding of language. It is not my intent to draft a measure that would allow the employer to withhold the benefit of additional

overtime or opportunities from an individual based upon their commitment to take either comp time as opposed to paid time or paid time as opposed to comp time. The decision should be neutral.

Mr. KENNEDY. I appreciate the Senator's position on that. I do feel that has to be spelled out in the legislation because of the types of industries that we have been talking about here, for those individuals working in those industries have been subject to a great deal of exploitation, as the Senator knows—I will not take the time now, because I mentioned it earlier—both in terms of meeting minimum wage standards and also in terms of overtime standards. We are talking about hundreds of thousands of workers every single year.

I certainly appreciate what the Senator says about his desire to make sure that the legislation is not going to lend itself to exploitation. It is my own experience, and I think the experience of many others, particularly those people who are working in those working conditions, that there would be, in too many instances, a contrary result. I am sure there will be many employers who would not abuse this system, but I think we need to provide those kinds of protections. We will welcome the chance to work on this.

I was addressing, Madam President, the overtime provisions. I will not be long. It does reflect the vulnerability of these individuals in the work force. We are talking about these individuals who do not have the protection of any of the unions and are subject to, in too many instances, harsh working conditions.

As I mentioned, the people who will be hurt the most are the most vulnerable workers. Fifty-six percent have only a high school diploma or less. You know how hard it is to get ahead, no matter how hard you work, without more education. Millions who rely on overtime earn only the minimum wage. Sixty percent of them are women. One-third of them are the sole breadwinner in their families, and 2.3 million children rely on parents who earn the minimum wage, parents who hope their children will not get sick because they cannot afford a doctor and cannot afford the health insurance.

Interviews conducted by the Women's Legal Defense Fund demonstrate the sacrifice American women make in support of corporate flexibility, such as a waitress who is involuntarily changed to a night shift despite the fact she has no child care for evening hours. One working mom says, "My life feels I am wearing shoes two sizes too small." Thousands of these workers already work two jobs to make ends meet, and they need to work every hour they can.

Let me give a few examples of these people: 400,000, half of them women, work two jobs in the food service industry; 200,000 are cleaning and building maintenance workers. These are

classic low-wage jobs. These employees really need the money they earn from overtime.

We discussed in our committee how the new economy, Madam President, was creating two categories of workers. The highly educated people are doing well, but those with limited education are struggling, and it is increasingly difficult for them to earn a good living. They depend on overtime. Their jobs are hard, but they perform them with dignity and commitment. They are doing their best to provide for their families. We cannot pass a bill to allow employers to cut the pay those workers receive now.

Madam President, I think if we were to go across the face of this country, we would find that most workers feel they are working longer hours. They are working longer hours than they were 20 years ago, about 200 hours a year more than they were working 20 years ago. Most of them feel they are working longer, they are working harder, and they are not making much progress toward reaching the American dream.

I saw the National Association of Business Economists was talking about poll results that for the first time found that more than half of the American people believe that the future for their children is not going to be as good as their own standard of living. We have always, as a country and a society, believed that future generations were going to have better opportunities for success, and there are a variety of measures that impact the well-being of those workers. Obviously, there are wages, the key element; the education of their children; decent health care; whether they will have any kind of pension system down the road. Of course, very, very few of these workers, ever have any kind of pension. That does not exist for the kind of workers we are talking about here today. The challenges they are facing in terms of inner cities, of rural communities, in terms of safety and security, wondering about the air they breathe, the water they drink, all of those issues are out there. They are facing an extraordinarily challenging time for themselves and for their families, working harder and not getting very far ahead.

Now we are asking them to roll the dice on legislation. Will we offer them legislation that will abolish what protection those workers have under the 40-hour week, and allow employers to tell them they will work 60 hours 1 week and 20 hours the next? Or will we give workers the right to decide whether they want to work longer and maybe get that additional money, maybe not see their children as much, but at the least offer their children a better quality of life? Sixty hours of work in one week—where are workers going to get the day care under such a schedule? Where are they going to be during that week if their child gets sick? How does it help them to work 20 hours the next week?

The key to this legislation is very clear. What is the power of the employee? Is the employee going to be making the judgment, as provided in the Democratic alternative bill, as to when that time can be taken off? Or is it going to be the employer who will choose, as S. 4 provides? The Ashcroft bill says that, when an employee has accrued the comp time and wants to use it, the employee "shall be permitted by the employer of the employee to use it within a reasonable period of time."

Does that mean workers are going to be guaranteed the ability to go to that school meeting next Monday afternoon, or go to the dentist a week from Wednesday, or go to that school play, or go to that athletic event in the middle of next week? It says, "shall be permitted by the employer of the employee to use such time within a reasonable period after making the request, if the use of the time does not unduly disrupt." What is unduly disrupt? The employer says, "I have to get those products out to the market. We can't have you leaving in the middle of next week." That is the end of the story. Is there any opportunity for this employee to say, "Wait a minute; let someone else, a neutral person, make a decision on this?" Absolutely not. The employer makes that judgment. It is stated here.

If the employer makes that judgment that the employee's use of comp time will unduly disrupt, he will give the time off 3 weeks from now rather than the time when that individual wants and needs it. Those are the provisions of the legislation. It does not give the choice to the employee.

That is the dramatic difference between this bill and the bill that has been proposed by the Democrats. The Democratic alternative would provide for the employee to be able to take that time. It would guarantee that workers could take that time if they needed it to take care of a sick child or a family member. That is an absolute right. And when the time is being used for the other reasons; that is, the ball game, the parent-teacher conference, the employee can take the time off if she has given at least 2 weeks notice and the use of the time will not cause grievous injury to the business. That is the difference.

Are we going to risk abolishing the 40-hour week, or are we willing to give the employee greater flexibility to be able to do the kinds of things that have been identified which parents want to do and need to do for their children's upbringing? That is the basic question.

I think we ought to at least be able to consider the Democratic alternative before we obtain cloture. I understand that we would not be able to consider the Democratic alternative prior to cloture.

It is my understanding that we will be having a cloture motion filed this afternoon.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Missouri.

Mr. ASHCROFT. Mr. President, we may or may not be able to have the cloture motion filed this afternoon. But to make a difference in terms of working out some of these measures, I would be pleased to see the cloture motion held over until Tuesday so that the cloture vote could be held until Thursday.

I think it is important for us to get together and work on this measure. It is important for us to understand that we agree that families need more time. I believe we have an agreement that we want workers to have a real choice and a choice that is meaningful to workers.

That is one of the reasons we put the second level of choice into the bill. We allow a worker to choose to say, "I would like to have this as comptime instead of overtime pay." But we put a second choice into the bill that says any time after the worker has said that they want it as comptime and not as pay later, the worker can say, "I change my mind. I will take that as pay." That is to avoid any potential coercion or abuse.

But the idea that an employer might say we are only going to let overtime go to people who will choose compensatory time, or even to say we are only going to let overtime go to employees who are going to choose to be paid because they don't want to mess with the hassle of keeping the overtime—if the employer wants to participate at all, the employer shouldn't be able to intimidate the employee's choice in this matter.

One of the things that I think I would like to point out that the Senator from Massachusetts has raised is that he wants this to be something that helps families. He talks about the need to help families. But the kinds of items that they are proposing that deal only with comp time and don't deal with flexible working arrangements like the Federal employees have or don't deal with anything like the Federal employees have, maybe we will address the needs of at best maybe a third of the employees. I think we are forgetting the data from the 1996 current population survey, which indicated that only 4.5 percent—that is one out of every 25 women—who work by the hour have overtime in a typical workweek. That means, yes, in a typical work period and in a week's time. But say you get four times or five times that 4.5 percent that get it over the course of time so that they would be able to build up some comptime, they are still talking about 20 percent of the women in the culture who are working in those hourly jobs.

If you have 28.8 million women working in hourly jobs and you are only going to help 5 to 6 million of them, we have not done much in this bill. We need to address the problems that inure to the families of all of the workers, not just the ones that get regular overtime. The men are in a little bit

better shape in our culture. They get more of the overtime than the women do. There are about two men getting overtime for every woman getting overtime.

But if we do nothing more than pass the comptime part of this bill, we are going to leave behind too many men and too many women. We need to have flexible working arrangements on a broader level to meet the needs of the families, the families with children, that do not have regular overtime. They get sick. Children in families that do not have regular overtime get awards—they have parent-teacher conferences.

Of course, in one respect it is important to say that, if you have comptime or flextime under this bill, you don't even have to have children to benefit. If you want to go fishing and your boss can agree that it does not unduly disrupt the business' purposes, you can swap the time off, and especially if you schedule to take every other Friday off.

The Senator from Massachusetts talked about the fact that there are certain ways in which flexible benefits can inure under the current situation. He says that only a tiny fraction of the employers provide flexible work schedules. That is because they are unworkable. It is a simple matter of fact.

The flexibility outside of S. 4 is limited to arranging 40 hours of work in a 7-day period. Exchanging hours from week to week is not permitted, even if the employee requests such an arrangement. For example, an employee who wants to work 45 hours in one week in exchange for only working 35 in another in order to attend a child's soccer game or to take the child to a doctor or to go fishing makes the employer agree to pay 5 hours of overtime for the longer workweek. Most employers can't do that.

Sally Larson, a human resource professional at TRW, testified before the Employment and Job Training Subcommittee that her company instituted a program where hourly workers would take every other Friday off. She also stated it took a team of lawyers a year to change over their payroll systems and to make sure that the program complied with Federal law.

Most hourly workers aren't working in settings like that where they work for an employer who can have a team of lawyers that go through that kind of enterprise. Small businesses—or any business, for that matter—should not have to hire a team of lawyers in order to cooperate.

The point is that current law is unworkable. It is obviously not in broad utilization. It doesn't happen. We need something better.

The fact is that the system which we are promoting, the system which we are offering to the American public, is not an untried system. It is a system that has been place in the Federal Government since 1978. Through the last years of the 1970's, all through the dec-

ade of the 1980's, now well through the 1990's, we have had the system in place.

I have been in the Senate now going on 3 years. I have yet to have a single Federal employee come and complain to me about this system. There is no bill pending in the U.S. Congress that would change this system. This is a benefit. It is a clear, unmistakable benefit. It is something that workers use. They subscribed to the flexible working arrangements benefits so aggressively early on that it has provided some difficulty in getting people to work on Friday. It has taken cooperation and some scheduling. But that has happened.

There is much talk about the fact of the suggestion that we are without protections in this bill. But the bill which I have proposed for private industry has many protections which are not included in the bill which relates to the public. What I find amusing is that many of the people who are most aggressive in their opposition to this bill for private industry were sponsors of the bill which does not have the protections for people who work for the Government.

Look at this.

"Workers can be required to participate in compensatory time as a condition of employment." This goes to the comptime bill for State and local workers. "Can be required to participate." Under my bill it is strictly voluntary, and cannot be required.

The very sponsors of the bill which are complaining, saying there is not enough volunteer choice here, cosponsored the bill for State and local employees which allows them to be required to participate as a condition of employment. Under the State and local law, which was sponsored by the same opponents of the bill currently, "management can decide whether a worker must use comp time." Not so. "Workers cannot be coerced into using their comp time. Penalties are doubled for direct or indirect coercion" under our bill.

It is important that people have choice. If someone were to try to coerce a worker into using comptime, the worker would have to do but one thing: Say, "I want the money," because we allow for that second choice. Until you actually use comptime under S. 4, you have the right to cash that time in at any time.

So you want the money? Just say you want the money. This is a structural opportunity. This structural capacity to take the money mitigates against coercion.

"Comptime is paid in cash only when a worker leaves the job." Under Senate 1570, Public Law 99-150, you have to quit if you are a State government employee in order to get your pay in cash. We didn't think that was enough protection. We thought that workers ought to have a different protection than that. "Comptime must be cashed out on the request of the employee," and "must be cashed out at the end of the year."

I just raise these issues as a means of saying that our effort is to make this measure one which will provide a basis upon which people can spend time with their families, can arrange their work schedules, can meet these competing demands of the workplace and the home place. And we have sought to place not only legal inhibitors to coercion in the bill, we have also sought to put structural things in the bill—the right of the worker to cash out, just to say I want the money; I am entitled to it; give me the time-and-a-half, I want to take my money instead of leaving the hours in the bank. That right is there all the time. It never is extinguished.

The only way the right of the worker—there are two ways the right of the worker to get that money out is extinguished. Two ways. The first is if the worker takes time off with pay. You would not expect to take time off with pay and get paid time and a half for overtime. You cannot have your cake and eat it.

The second way you do not have a right to cash out your employment is if you are going to get cashed out at the end of every year. At the end of every year the employer must give out the money. He cannot carry it over as comptime. So if the worker cannot be forced to take it as comptime and at the end of the year the employer must give it out as cash, then the employer does not have any real incentive to try to get people to work without, by saying they will take comptime instead of paying them overtime. A business is going to have to hold the cash ready to pay it out at the end of the year, hold it ready to pay it out at the employee's request, at any time the worker says I have decided I want the money instead of cash.

As I said to the Senator from Massachusetts, Mr. President, I hope we will be able to work to provide further assurance that we do not intend for employers to be able to coerce or intimidate. This is a measure which I think would really affect people where they live. I have been getting lots of letters from people around the country. This one says:

I'm writing this letter in regard to S. 4, the Family Friendly Workplace Act. I ask that you support the bill as I think it would be of great benefit to all the citizens of this country. Time and again parents relate to me—

And this comes from a public school principal—

parents relate to me that they cannot come to school for conferences or other meetings because they have to work. This bill would seem to allow some flexibility in the workplace.

The principal knows the value of parents being able to come and participate in the child's education.

She also goes on to say:

I'm also the child of an elderly parent who needs constant care. Many of my baby boomer friends are in the same situation of caring for parents. A family friendly workplace would relieve some of the worry and frustration of this situation. Thank you for your time.

Here is a letter from a 25-year-old single mother of twin 2-year-old daughters—A 25-year-old single mother of twin 2-year-old daughters. Now, this is the definition of having your hands full.

Recently I heard of your Family Friendly Workplace Act. My employer, located in Carthage, MO, does not allow a flexible work schedule or overtime. My understanding of this act is that I would be able to have flexibility in my work schedule, giving me the opportunity to make up work hours lost because of illness in the family and doctor appointments.

She is right there. The employer would have the option of doing that.

As a 25-year-old single mother of twin 2-year-old daughters, the Family Friendly Workplace Act would be extremely beneficial to my situation.

Listen to her situation.

My children were born with a congenital heart disease and they need to attend check-up appointments on a 3-month basis with a cardiologist. These appointments have to allow a full day since our specialist is in Springfield, MO, and especially because both of my children attend the appointments. Also, since my children have a heart disease, they need special attention if they are ill. As a single mother, it's very difficult to lose any days financially.

Let me read that again.

As a single mother, it is very difficult to lose any days financially.

Let me interrupt this letter for a moment. Now, you might say, well, this woman can take time from Family and Medical Leave. I think she could qualify for the serious medical problems that Family and Medical Leave may cover. But Family and Medical Leave makes you take the time off without pay. So here is this single mother, with twin 2-year-old daughters with congenital heart disease, having to make regular doctor appointments and having to take a pay cut in order to take her kids to the doctor, and she says:

My understanding of this act is that I will be able to have the flexibility in my work schedule giving me the opportunity to make up work hours lost because of illness in the family and doctor appointments.

I can understand her desire to make those things up.

As a single mother—

She goes on to say—

it's very difficult to lose any days financially. The opportunity to make up lost workdays would be incredibly helpful. The Family Friendly Workplace Act would give me the opportunity to take time off from work without the loss of pay because of those days my children are ill or need to attend a doctor's appointment.

Thank you for taking time to read my letter and your consideration of the many working parents who would appreciate such an act. Please go forward with the Family Friendly Workplace Act.

Absent the Family Friendly Workplace Act, people like that have to take family and medical leave, which is time off without pay.

Now, before the current occupant of the Chair came in, I went to the Report of the Commission on Family and Medical Leave. The Commission report

stated in order to make up for the pay cuts that people have to endure because they are not allowed to make up their salaries, they are not allowed to bank flextime and they are not allowed to have banked comptime—here is how they make up for those losses—28 percent have to borrow money; over 10 percent went on welfare when they took family and medical leave; 42 percent put off paying bills.

Do you know what putting off paying your bills does for you? It increases your payments. The interest goes up. You are paying for a longer period of time. And it just occurs to me that we should not put people in the position of having to take a pay cut in order to be a good mom or dad in America. We should have a situation where we can give people the option of working some time in advance and then using that time, or when they have overtime required of them, putting that time in a bank so they can take time and a half off at some later date. It seems to me that makes a lot of sense.

Now, I do not understand how it is that those who oppose this bill say this is a bill for a pay cut. This is not a pay cut. This is a way for you to work time in advance so that when you need to take time off later, you do not have to have a pay cut. You do not have to take Family and Medical Leave time, which is unpaid leave. You can take flextime off or comptime off, or you could just cash in your flextime or comptime and have the money that you had earned earlier there to sustain you when you would be gone.

So the suggestion that this is a bill which provides for pay cuts I think ignores the real facts of life. The real fact of life is that when you have your 25-year-old mother, single mother of twins going to the doctor under Family and Medical Leave, she takes a pay cut. And that pay cut is never restored. But if she had the ability to have flexible working arrangements, that would be a pay cut which she would not have to endure.

I believe we do have a lot of agreement here. We agree that American families need the opportunity for flexible working arrangements. S. 4 provides the potential of flexible working arrangements to all the workers in the culture.

Because the suggestions from the other side only address people who traditionally work overtime, you are only talking about a third of the people in the culture there. I think we ought to find a way to help all Americans balance the needs that they have between their families and the workplace, and we ought to look very carefully at the data from the 1996 Current Population Survey which indicates that only 4.5 percent, 4.5 percent of the private sector working working women report getting regular overtime. Even if you multiply it 4 or 5 times, get it up to 20 percent, get it up to 25 percent, multiply it by seven times or eight times,

get it up to 32 percent, you are still ignoring two-thirds of the individuals in that population.

I think it is time for us to provide a way to accommodate the needs of families that respects all of the families in the United States of America and does so without requiring them to take a pay cut, because, in my judgment, we should not be asking people to take pay cuts. We should be providing people with ways that they can sustain their income and sustain their families in the same situation.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. I listened with great interest to my friend and colleague. I will be glad over the evening to examine further that 4 percent of the workers, if I quote the Senator right, who regularly get overtime and are women. We debated the increase in the minimum wage last year going from \$4.25 an hour up to \$5.15 an hour, and we found out that two-thirds of them were women. I cannot believe that these are not individuals who are working the overtime. Maybe we have a semantic disagreement, but it is difficult for me to believe at this time that only 4 percent of the overtime is being made by women in this country.

Mr. ASHCROFT. Will the Senator yield?

Mr. KENNEDY. I yield for that.

Mr. ASHCROFT. The data which I cite was that only 4.5 percent of the working women reported that they get overtime in a regular work period. That is the data in the Current Population Survey.

Mr. KENNEDY. I have heard that and I will try to review over the evening what we have in terms of those regularly working overtime, how those matters are defined, because it is virtually impossible for me to believe that the majority of the hourly workers are not women in our society. It is just very, very difficult. And that the majority of overtime hours worked is not worked by women.

Now, Mr. President, I am someone who was here strongly in support of the Family and Medical Leave Act. I supported the leadership that was provided by my friend and colleague from Connecticut, Senator DODD, who is the real leader on this issue. When we proposed that legislation, we tried to start out with a limited program that provided pay for people who used family and medical leave. Every other industrialized country in the world provides paid leave. We were absolutely stopped in our tracks by Republican opposition. Now we hear on the floor this afternoon, can you imagine, that someone who uses family and medical leave is going to have to go on welfare to use it. I wish we did provide some financial help when workers use leave for the type of family emergency that the Senator has pointed out. Every other industrialized society provides that kind of reimbursement. But we met total

Republican opposition to that proposal. And American workers do not get paid family and medical leave.

It is difficult for me to understand, with all respect to my colleague, why it is worth more to that worker to work for compensatory time so that they will be able to take the time off, should they be given the chance to use it, in looking after a sick child rather than getting time and a half and putting the money in their pocket and having it in their pocket when that medical emergency happens. It seems to me that ought to be the choice that people would want to have. The Senator is saying, well, we are giving them a new opportunity. They can work and not even put that money in their pocket. I don't find that very convincing.

Mr. President, as the Senator has pointed out, we have mentioned Federal employees a number of times. I will just read the statute governing Federal employees. In this instance, the statute refers to flexible credit hours. In the Federal program, "Credit hours means flexible schedule which are in excess of the employee's basic . . . and which the employee elects to work." The employee elects to work.

In the Senator's bill, it is the employer and the employee who jointly designate hours. That is a big difference. I am all for Federal employees making the decision, but I am not for S. 4, which provides that the time off shall be permitted by the employer instead of the employee. That is what it says. Time off shall be permitted by the employer instead of the employee, for the employee to use within a reasonable period of time after making the request. The example that was given by Senator ASHCROFT is actually protected by the Democratic substitute bill.

In the substitute bill, it provides that if the time off is needed to care for a sick child or other family member, the employee has an absolute right to take the time. Put that in your bill, I say to the Senator; put that in your bill. Put it in this afternoon; put it in right now. We just heard that story. Put it in right now. Put in the other provision on nondiscrimination that you mentioned. Discrimination, is it the same as coercion? Yes, it is; no, it isn't. Put in those words. Put in now just what I read here from my amendment; put that right in. If the time off is needed to care for a sick child or other family member, the employee has an absolute right to take the time. That is not in the Ashcroft bill. That is not in the Ashcroft bill, and he cannot stand up on the floor of the U.S. Senate this afternoon and say it is.

So that parent out there who may be listening to this debate, read what is in the bill. You don't have the guarantee under his bill to use the time for your desperately ill children. You do under the Democratic alternative. It is written right in there. If the time off is needed to care for a sick child or other family member, the employee has an

absolute right to take the time. When the time is being used for other reasons, the employee can take the time if he or she has given 2 weeks advance notice and the absence will not cause grievous injury to the business. The presumption is in favor of the employee. That is not in the Ashcroft bill.

That is the essence of this, after all is said and done, Mr. President. Those are really essential parts: whether we are going to risk abolishing the 40-hour week, and the dangers that will take place without specifying that the employer cannot discriminate against those workers who refuse to play ball with the employer, and that makes the decision primarily a decision to be made by the employer. I think that is really the essence of the difference in our approaches.

I commend my colleagues on our side for studying this issue, for providing the protection for all employees, giving the employee the kind of protections that they need to assure that comp time hours when used will be considered hours worked so they are not going to be shortchanged at the end of the week. These are the kind of protections that exist for Federal employees. That protection was in our amendment. That was rejected. That was rejected by our Republican friends in the markup. We have offered it. We will offer it again. We will have a chance to do that.

Mr. President, I appreciate the chance for this debate and discussion. The conditions affecting working families in this country are enormously important. We have seen the assaults that have been made on the earned-income tax credit.

We have seen the assaults that have been made with regard to increasing the minimum wage.

We have seen assaults made in terms of some of the education programs in the last Congress.

And we have seen the assaults made in terms of the pay that goes to those who work in the construction trades, who average \$28,000 a year, protections in terms of the prevailing wage not being undermined.

These are all working families in this country. It doesn't seem they have too much protection. They have, in many instances, too little. I believe that this proposal will substantially reduce the amount of overtime that is paid to workers who are willing to work hard, play by the rules, and try to make that little extra money to be able to provide for their families.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. Mr. President, first of all, I thank my colleague from Massachusetts for engaging in this debate. I think it is important to do that, to refine what we are talking about, to learn what works and what won't work and learn where we might need to modify what we are doing. I am eager to

have amendments offered by those individuals who want to change this proposal, and I think we will be getting to that very shortly, and I am grateful.

I just point out that he indicated that the situation with the mother of twin 2-year-old daughters would be covered under the Democratic proposal. Her company doesn't provide for overtime. Her company just doesn't ask people to work overtime, and the Democratic proposal simply doesn't address the needs of the vast majority of individuals in the country who don't get overtime. I think we need to do that. There are lots of companies who just don't do it. They can't afford for their labor costs to go up by 50 percent by having overtime, so they hire enough workers, schedule enough people, pay enough benefits.

But this young mother says, "My company doesn't schedule overtime." So the only way for her to have the capacity to develop the ability to serve her daughters without taking a pay cut would be if we had some kind of flexible proposal similar to the one offered in the U.S. Government to Federal employees. It has worked well here. As a matter of fact, 10 to 1 the workers say it is very, very good. The General Accounting Office, which assesses whether things work or don't work in the Federal Government, indicate because people have the kind of flexibility they need, these workers in the Federal Government are more productive and their morale is better. I think that would be the same kind of thing in which private employers would want to engage. They would want to help their workers be more productive, have better morale, and extend to them the same kind of benefits that are available to Federal employees.

You may just say all the various things you want to say about this, but there are a couple key facts. It is totally voluntary, and not only do you have your first choice, but you have your second choice. If you choose to bank some hours and then you choose to cash them in later, you can cash them in. So your first choice is whether or not to put hours in the bank instead of taking the pay. But any time later, before you take the hours off, you can cash them in. That is choice No. 2. This isn't a plan that is just characterized by choice, this is a plan characterized by choice squared. This is two choices, and I believe in this case two choices are better than one because they provide insurance.

Second, it is a plan which would give people an opportunity to take time off without taking a pay cut, and that is something that we need. It is a plan that would deal with all the work force in the country, not just the few who regularly get, or with some frequency get, overtime pay. In my judgment, those are very important components, and I think given the fact there is substantial agreement about the needs—and I don't think anybody will come to

us and really say the needs are focused only on people who get overtime in their work—it is pretty clear that people who don't get overtime, their kids have problems, they have the needs for the parent-teacher conferences, just like other folks, and I think it is time now to work together.

I hope the amendments will begin to be brought to the floor, and we will vote on these amendments. I am not in favor of curtailing the amount of time available to this bill. I think we ought to run this through the series of proposals, and the Senator has been kind enough to mention a number of them, that apparently will be coming forth. Frankly, we are going to be working this evening and into the day tomorrow to try and make sure if there are misunderstandings or clarifications that can be the basis for agreements, that we will provide those. I thank the Chair.

Mr. KENNEDY. Mr. President, before yielding the floor, I thank my colleague for a very positive and constructive approach on this legislation. We certainly want to try and find out what possibilities there are, but he certainly has indicated a willingness to consider different alternatives, and I thank him very much for the interesting debate and for his willingness to try and find common ground. I yield the floor.

Mr. CRAIG. Mr. President, I rise in support of S. 4, the Family Friendly Workplace Act. I was proud to be an original cosponsor of this bill when it was introduced. I commend Senator ASHCROFT, for his leadership as the principal author of the bill, and Chairman JEFFORDS, for guiding it through the Labor and Human Resources Committee.

In a word, this bill is about freedom. Mothers, and fathers and their families, need more freedom in the workplace—more flexibility in balancing the demands of work and family.

What has the Federal Government all too often given them instead?

Rules and regulations that are rigid, arbitrary, and one-size-fits all.

Increasingly over the last 60 years, Federal employment law has reflected the paternalistic attitude of a government that thinks it knows more about work-and-family needs than do the families and workers themselves.

The apologists of the failed regulatory state will argue that freedom is something granted to the people by the Government; and that freedom is a zero-sum game. For instance, you can't give employees more flexibility without creating an entitlement at the expense of the employer.

They will offer amendments to this bill next week, asking us to impose more legal straitjackets on workers and employers. We should reject those amendments and opt, instead, for freedom for our workers and their families.

This bill shows how Government, in its zeal to regulate, has failed our families; and how maintaining basic labor standards, while adding a little dose of

freedom and flexibility, will create a win-win situation for employees and employers.

This bill does not create a right or grant an entitlement. It does not take away from a single worker or employer. It simply removes an obvious example of overkill—of the Government acting as the national nanny. It gives back to workers and their families some of the freedom that was taken away when an earlier Congress went too far in regulating the workplace.

This bill restores employee choice in an area where, for most private sector workers, the Government had taken it away from them. It allows the employee to arrange flexible work schedules to meet important family needs. It allows the employee the choice between one kind of overtime compensation or another. The employee will still receive time-and-a-half compensation for overtime. Only now the employee will have the freedom to negotiate when and how.

The apologists of the regulatory state want to expand Federal control over the lives of workers and their families:

"They want the Federal Government, increasingly, to become the personnel manager for every workplace, and the collective bargaining agent for every worker."

They want the Federal Government to decide a family's priorities for taking time off. But what qualifies Washington, DC, to choose a parent-teacher conference, yes; but the school science fair, no? Dentist appointment, yes; but going to the DMV, no? Some kinds of elder care, yes; versus other kinds, no?

And you have to take a pay cut if you take their Government-approved leave, because the entitlement mandated under the Family and Medical Leave Act is unpaid leave.

They want Congress to say to employers with 25 to 49 workers: In 1993 we thought you were a small business. In 1993 we said you didn't have the economies for scale to afford federally mandated leave. Now we think you're a big business and we want to run your employees' benefit package.

Public employees have the freedom and flexibility that this bill would extend to private sector workers. Flex-time and comp-time have worked for public employees. These arrangements are overwhelmingly popular with the workers who have been eligible for them.

Now is the time to pull back a little on the long arm of big brother. Now is the time to give back some of the workplace freedom that previous Congresses took away.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak for 15 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.



## DISASTER RELIEF

Mr. DORGAN. Mr. President, I was interested in listening to the debate of my colleagues, and this is, indeed, an important issue and it is very important to understand what are the facts, what precisely is being proposed and how exactly will it affect workers in our country. I expect in the coming days that we will hear a great deal more about this, see amendments and have votes. We already had one cloture vote on this issue as the Presiding Officer knows. I came to the floor, however, just to visit a few moments about the disaster relief bill, the supplemental appropriations bill that we will be dealing with this week in Congress.

As my colleagues know, the Congress left for a Memorial Day recess, which was all of last week, without having passed the supplemental appropriations bill or the disaster bill, as we refer to it, because the legislation contains a substantial amount of money to respond to the disasters that occurred in our part of the country; namely, the blizzards and the flooding and the fires that occurred in North and South Dakota and Minnesota.

Mr. President, I spent all of last week in North Dakota. Most Americans, having watched for a couple of weeks the disaster that occurred, especially along the Red River Valley and most especially in Grand Forks, ND, and East Grand Forks, MN, remember the images of the massive flooding that occurred that caused the evacuation of a city of 50,000 people on the North Dakota side of the border and the evacuation of 9,000 people from East Grand Forks on the Minnesota side of the border.

The American people saw this flood that consumed the Red River Valley, a small red river which flows north became a lake 150 miles long by nearly 20 and 30 miles wide in parts of it. Of course, channeling it through the communities of Wahpeton, Fargo, and eventually Grand Forks was successful until it got to Grand Forks, and then the dikes breached and the town of Grand Forks and East Grand Forks became almost totally flooded and both communities were totally evacuated.

In the middle of that evacuation, a fire broke out in downtown Grand Forks and destroyed 11 of the larger buildings in downtown Grand Forks, ND. Firefighters were fighting fire in water that was terribly cold, water up to their chest, standing in the streets, trying to fight fires in nearly three city blocks in downtown Grand Forks, ND.

The story is well known that the folks in Grand Forks and East Grand Forks left town, many of them with only the shirts on their backs. They were housed in aircraft hangars at the Grand Forks Air Force Base, 4,000 people originally sleeping on cots and hangars at the Air Force base, and people all around the region taking families in, living with relatives, doing all the things necessary because they have

lost their homes and had to find somewhere to go.

That occurred weeks ago, and the Congress began working on a disaster relief bill. President Clinton went to Grand Forks and East Grand Forks in the middle of the flooding. I went with President Clinton on that visit. He proposed \$100 million in community development block grants and other substantial aid through FEMA and other Federal agencies. We added to that.

And my colleagues here in the Senate, on a bipartisan basis, constructed a disaster relief bill that was very significant and very important for the recovery of that region. Regrettably, the Congress was not able to agree on the bill and left for the Memorial Day recess.

Among the areas in this legislation that caused some difficulty is an amendment dealing with a Government shutdown issue that has nothing to do with this bill but nonetheless will engender a Presidential veto. The President has already indicated he could not sign a bill even a disaster bill if it included a controversial amendment like this. So, that is where we left it as we left town about a week and a half ago.

I was in Grand Forks, ND, last week. And here is an editorial from the *Minot Daily News* that describes what I saw as well. It talks about the biggest mess in history in North Dakota.

Garbage is almost everywhere—talking about Grand Forks—thousands of piles several feet high—crumbled drywall and brickwork, water-damaged appliances and furniture and anything else that could be hauled out to the curb and beyond. Streets that were once wide enough to accommodate two-way traffic and a row of parked cars are now so narrow as to permit only one vehicle at a time.

What I saw in Grand Forks, which is a very pretty city, was every single street of that community lined with garbage, having been pulled out of all of these homes that were inundated, basements, first floors, and in some cases the entire homes inundated by flood water. And now it is all taken out to the curb as they are starting to try to clean up.

I was down in one part of Grand Forks where I had previously traveled by Coast Guard boat where the homes were totally submerged in water. And our boat was going at the top of the home level on water. I was back there last week, and the water is gone and these homes are totally destroyed—600 of them in this area, 600 homes totally destroyed having been totally under water and the homes were picked up off their foundation and set back. I saw a home sitting on top of a car, a home taken completely off its foundation by the flood water, and then put back down on top of an old Ford car.

But you go up and down the street, and what you saw was carnage, homes completely destroyed. And the folks who lived there are folks who, in many cases, have lived there many years and are now wondering what to do.

There was a man and his wife in their seventies standing in the front yard surveying this home they lived in. And I walked across the street and visited with them a bit and asked, "How long had you lived in this home?" "Forty-three years," they told me. And the woman said, "In 43 years we never even had a drop of water in our basement." And now of course the home is totally destroyed. "What will you do?" I asked her. "We are living in a little recreation vehicle, one of these little travel trailers that has been provided, but we have no idea what we will do next—no idea. No idea where we will live."

They have no idea when their house will be bought out to be part of the flood line, the new floodway that is being created in Grand Forks; they have no idea what will be paid for this house in order to create the floodway. "We don't know what our future is going to be." But interestingly enough, these folks still had that spirit I guess that exists up in the Scandinavian areas of North Dakota.

I put my arm around the shoulders of this wonderful woman and finally said at the end, "How are you doing?" She said, "Oh, pretty good, pretty good." They lost their home of 43 years, but she said she's doing "pretty good". Well, I know they are going through a lot of difficulty, as are most families, thousands and thousands of families in Grand Forks and East Grand Forks.

Alice Hoglo owned a home on Dike Street in East Grand Forks for 56 years. She is now living with relatives waiting to see what is going to happen to her home. And her home is nearly completely destroyed.

And 90-year-old Ann Sticklemeyer, she has said she is now going to be a renter. She has not rented for decades, but of course now she has lost her home and is going to have to find a place to rent. But there is nowhere to rent. There are no homes available to rent, no apartments to rent, nothing available for housing in Grand Forks.

The list goes on, and it is endless of the families and the people who are struggling now to try to figure out: What do you do after the flood has come and gone? Where do we live? What do we do? I mean, when I was there on a boat in downtown Grand Forks surveying the damage in Grand Forks, that was one thing because the water then was so high that you could not possibly walk in it, but now the water is gone and all you have is this wreckage—hundreds and hundreds of homes totally and completely destroyed and families who previously lived in those homes now have nowhere to live. Oh, some are living with relatives, some are 100 miles or 200 miles away living in a motel. Some are living with strangers who invited them in. But they have nowhere to live.

And so the city of Grand Forks and the city of East Grand Forks struggle now to try to figure out, how do you put all this back together? How do you restart a business community that is

shut down? How do you build a new downtown when the new floodway will probably take several critical blocks of your downtown area? How do you do all of that?

Well, you do it with the resources that were in this disaster bill, the hundreds of millions of dollars of community development block grants and other things that will allow people to get back on their feet and allow cities to begin planning to buy out homes in the floodway, to help provide some grants, yes, to homeowners to fix up their homes and to restart their business.

When Congress left without passing the disaster bill, some said it did not matter. But the folks in Grand Forks were very upset. And here is a Grand Forks editorial. Every day the top of their editorial page has this: "8 Days Since Congress Let Us Down." How much longer will it be before Congress gets to work and passes a disaster bill? The next day: "9 Days Since Congress Let Us Down."

Congress is not going to let Grand Forks and East Grand Forks down. These resources are going to be made available. But it is urgent they be made available now. It is urgent that Wednesday, when we go to conference, that we strip out the controversial provisions of this legislation and that we pass the legislation, pass the emergency portion of the legislation, at least, clean and get it to the President for signature so the help can be flowing to people who need it.

Another headline in the Grand Forks Herald, "Along the Dikes Lives are Still on Hold." And it talks about these folks who have no idea what their tomorrow is going to be because the resources that are needed in order to make the buyouts and to develop the new floodways and so on are not available at this point because the legislation has not yet been passed.

I just hope that on Wednesday when the conference committee convenes, that the conference committee and all of the conferees will decide that we ought not in any way impede, delay, or derail the disaster bill. We have not in the past, and we should not now.

I wish the disaster bill had been enacted by Congress before Congress broke for the Memorial Day weekend and the week that we took off. That was not possible regrettably. I think the decision to go home without passing the disaster portion of that bill was a mistake. But those who made that decision apparently felt comfortable with it. I do hope now that this Wednesday when the conference committee reconvenes that it will decide to enact this legislation, do it cleanly, do it without adding additional burdens to it that would engender a Presidential veto, and then make that critically needed relief available to the people who so desperately need it.

While I am on this subject, let me end with one other point. In the Senate, on a bipartisan basis, we have had

enormously helpful support from Senator STEVENS, Senator BYRD, Senator LOTT, Senator DASCHLE, on a bipartisan basis. We have had strong support and unwavering support from virtually all of the subcommittee chairs and the ranking members of the Appropriations Committee. And for that we are most appreciative. We know that we cannot do it alone.

North Dakotans, who were dealt a very severe blow by having nearly 3 years worth of snow fall in 3 months on North Dakota, causing a massive amount of flooding, a 500-year flood on the Red River, and causing the complete evacuation of very large cities, we know that we cannot solve these problems alone. And we are very thankful for the bipartisan support we have had in the Senate to address these issues.

I again urge all of those who come to conference in the middle of this week to join us in and pass this bill and do it cleanly and quickly so that the people of Grand Forks are able to rely on the resources in this legislation.

#### THE OKLAHOMA CITY TRIAL AND THE JUDICIAL SYSTEM

Mr. DORGAN. Mr. President, let me make one additional comment on another matter. I notice the Senator from Idaho is waiting for the floor. I will not be lengthy, but I do want to make a comment on another unrelated issue.

I and the American people have learned this afternoon that the trial in Denver, CO, the Oklahoma City bombing trial, has concluded apparently with a guilty verdict on all counts, having been brought against Timothy McVeigh. There are many in this country, myself included, who from time to time have been critical of the judicial process feeling that in one case or another or in one circumstance or another the judicial system has let us down.

In fact, I think most Americans probably felt that way following the O.J. Simpson trial, that somehow the judicial system did not work quite right, and understand why people feel that way and, as I said, I have from time to time joined them thinking that some things just do not seem right in the judicial system.

But it seems to me that the decision in the Denver courtroom today should say to all of us that the judicial system in this country does work, the message today in that courtroom was a message that seems to me that those who commit heinous acts of terror will be brought to justice in this country. And I wanted to simply say, having heard of this verdict as most Americans have today, that I would credit and compliment the men and women who most Americans will never know who undoubtedly spent a lot of time and energy and effort and hours working on this case, to bring this case to a courtroom that results in a guilty verdict.

I can recall the day that I heard of this bombing. I was walking into a school in Minot, ND, to speak to a convocation at the school, and I have heard the reports of the bulletins on the radio that there had been this bombing at the courthouse in Oklahoma City. And I did not know until later the full consequence of it. But I will never, I suspect, in my lifetime, forget the picture of the fireman cradling the lifeless body of that young child, a victim of that disaster, that heinous act of terror, a disaster, but also obviously a deliberate heinous act committed against innocent civilians. And I felt the same rage I suppose most Americans do and did about that kind of senseless killing.

I hope that the verdict today in that courtroom in Denver is a verdict that says to all those in this country who believe they are above the law, who believe that acts of terror somehow will work, that this country will not countenance terror, this country will hunt down and prosecute vigorously those who commit terror against Americans and against all citizens.

I did want to simply take this moment to say that I suspect that there was an enormous amount of effort and work expended by a lot of folks to bring this trial to a successful conclusion and I, as one Senator, say thank you to the law enforcement community, and thank you to all of those who participated in restoring the faith of the American people in the justice system.

Mr. President, I yield the floor.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me associate myself with the remarks of the Senator from North Dakota who I think said it so well just a few moments ago as it relates to the outcome of the court actions in the Presiding Officer's home State and the city of Denver.

What it says about our society is so very clear, that we gave and we give and we protect the rights of our citizens to speak openly and freely in protest against their Government, to express themselves and their opinions without fear that somehow the heavy hand of Government might sweep down on them, but if they use violence as an expression, a political expression, that then they fall within the act of a terrorist, and if so proven to be such, the kind of action or the kind of verdict that came about in Denver is the consequence.

And that of course is what has marked the civility of our country well over 200 years now. And thank goodness our system still proves, as it apparently has expressed its will in Denver this afternoon, that it does work and it does work effectively.

So I appreciate the remarks of the Senator from North Dakota in making those statements.