



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149

WASHINGTON, WEDNESDAY, OCTOBER 1, 2003

No. 137

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable ROBERT F. BENNETT, a Senator from the State of Utah.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O God, who holds the wind in Your fist and wraps the ocean in Your cloak, we thank You for defending all who come to You for protection. We ask You to protect our military in its defense of our freedoms. Give our military people Your presence and peace. Lord, fill the God-shaped void that is in each of us that we may live abundantly. Remind us often that before honor is humility. Today, give our Senators the wisdom to meet the challenges of our time. May they not grow weary in their efforts to find common ground. Give them the strengthening joy of Your spirit, that they may have courage for hard times and determination for challenging tasks. We pray this in Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ROBERT F. BENNETT led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 1, 2003.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby

appoint the Honorable ROBERT F. BENNETT, a Senator from the State of Utah, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. BENNETT thereupon assumed the Chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Kentucky is recognized.

SCHEDULE

Mr. MCCONNELL. Mr. President, this morning the Senate will be in a period for morning business until 10:30. Under the agreement reached last night, at 10:30 the Senate will begin consideration of the supplemental appropriation for Iraq and Afghanistan security. The order provides for debate only until 12:30. We expect amendments to be offered during today's session and therefore rollcall votes will occur throughout the day.

Yesterday, after the Appropriations Committee finished its work on the legislation and reported the bill to the full Senate, the two leaders came to the floor to reach the agreement to begin consideration of the bill today. As stated last night in the colloquy, the Senate will consider amendments to the legislation this week. Following the recess, we will resume the bill with the expectation of completing all action by the end of that week.

As we begin the process, the leader is asking for the cooperation of all Members in advance and thanks everyone for their willingness to cooperate to try to push this bill through to completion the week after we return from the recess.

RECOGNITION OF THE ACTING MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, I simply ask that when the Chair announces morning business, the full hour be allocated to both sides evenly divided.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will be a period for the transaction of morning business until the hour of 10:30 with the first half of the time under the control of the Democratic leader or his designee and the second half of the time under the control of the Senator from Texas, Mrs. HUTCHISON, or her designee.

Who yields time?

The Senator from Nevada.

FAIR LABOR STANDARDS ACT OVERTIME RULES

Mr. REID. Mr. President, this is a land of opportunity. Americans know if they are willing to work hard, they can realize their dreams. Hard work built this country and hard work is what has enabled generations of Americans to own a home, make a stronger community, and give their children a good education.

Americans have always been willing to work hard to reach their goals, and we are working longer hours today than ever before. Almost one-third of the labor force regularly works longer than a 40-hour week and 20 percent work longer than 50 hours. Fifty years

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



Printed on recycled paper.

S12213

ago, as part of the Fair Labor Standards Act, we established the principle of overtime pay for those who work more than 40 hours a week. This recognized the value of hard work and rewarded those who worked the hardest. Families who work hard depend upon overtime pay. For the families who do earn overtime, it makes up one-fourth of their total salary.

Having said all this, I cannot understand why the President is proposing to change the rules on overtime pay. His proposal would eliminate overtime wages for 8 million workers—nurses, firefighters, police officers, flight attendants, preschool teachers, cooks, secretaries, and fast-food shift managers. This proposal would amount to a pay cut for these hard-working families. It would also mean fewer jobs because companies would simply force their employees to work longer hours without paying overtime instead of hiring new workers.

In the current economic situation, when millions of Americans are out of work, it does not make sense to do something that will stifle the creation of new jobs. Even for the workers who would still qualify for overtime, this is a bad rule. Why? Because big companies will force the overtime-exempt workers to put in longer hours and cut the hours of those who qualify for overtime.

Mr. KENNEDY. Will the Senator yield on that point?

Mr. REID. I am happy to yield to my friend from Massachusetts.

Mr. KENNEDY. I noticed an editorial in the Washington Post yesterday which pointed out:

Despite a veto threat from President Bush, the House should vote to block the rules. While the overtime regulations need updating, the administration proposal tilts too far in the direction of employers. It ought to be redrawn in a more balanced way. . . . The new rules would give employers far more freedom to disqualify employees.

I think that is what the Senator from Nevada is saying, as I understand it, that those rules that have been drafted by the administration are one-sided. They are going to work to the disadvantage of employees just at a time when we know American workers are working longer and harder than any other industrial nation in the world, as this chart shows, particularly with regard to women who are out there, who have joined the workforce.

This is in 1979. Middle-income mothers worked 55 percent more than they did 20 years ago, 895 hours compared to 1,388 hours. American workers are working longer hours. They are working harder. The mothers of small children are working longer and harder to make ends meet in a difficult economy. Then the administration promotes these regulations, which any fair-minded person would believe are skewed to the disadvantage and unfairness to employees—particularly to nurses, particularly to firefighters, particularly to police, who are the

front-line defense in homeland security.

I am wondering how the Senator from Nevada views this proposal by the administration, in terms of fairness to workers in his own State.

Mr. REID. With the Senator from Massachusetts on the floor, I will respond this way. The Senator from Massachusetts has led the fight for decades on raising the minimum wage. I say to my friend, it seems so unusual, so absurd to me that this administration on the one hand will not let us even have a vote on raising the minimum wage, yet at the same time they are trying to cut overtime from people.

I received a call from a 58-year-old man in Las Vegas, my friend, Sunday night. He said, You know, my diabetes is getting worse. I think I am going to have to go on injections. I have been taking a pill, but I am 58 years old and it is getting worse. He said, The reason I am concerned is I have no health insurance. My wife has health insurance but I have no health insurance.

This man works 60, 70 hours a week. He has two jobs. But both jobs are such that he doesn't qualify for the fringe benefits. The fringe benefits, among other things, are health insurance. So he works two jobs, hard work, he is 58 years old, and he has no health insurance.

I say to my friend, I cannot imagine the mental gyrations this administration has to go through to, on the one hand, prevent people from getting a basic fair minimum wage and, on the other hand, wanting people to work more than 40 hours a week, reversing what has been in effect since the mid-1930s.

I repeat, on the one hand, no raising of the minimum wage, and on the other hand let's have you work longer hours.

I ask my friend from Massachusetts, Can you in any way correlate in your mind how an administration could go forward on this plan? I guess it is a plan.

Mr. KENNEDY. We have been joined by the Senator from Iowa, who has been a leader in the Senate on this issue. Let me just mention one other item in response to the question of the Senator. Not only is it the opposition of the administration to the increase of the minimum wage, which now at the end of this year will have lost all of the gains since the last increase—so the administration is against that—the administration is against the long-term unemployment compensation. These are workers who have been trying to gain work. They have been out looking for jobs. Historically, as we have reviewed this issue with the Senator from Iowa and the Senator from Nevada, when we get the unemployment compensation, we have been responsive to this, for years, in a bipartisan way—except for this administration.

So we are shortchanging the minimum wage worker. We are shortchanging the unemployed. And now the administration comes on top of that, at

a time when we have a disastrous economic policy, we have lost more than 3 million jobs, and it says we are going to take it out on the overtime workers, which in this instance affects the front-line workers, the home guard, so to speak, the ones we are relying on to defend this country—the nurses, the firefighters, and the police.

What in the world is it about hard-working Americans who are working hard to provide for their families that this administration just can't stand?

I see our friend and leader here from Iowa, who has been so involved in this issue. I know he has some important observations as well.

Mr. REID. I yield the floor.

Mr. HARKIN. Will the Senator yield?

Mr. KENNEDY. I am glad to yield the floor.

Mr. HARKIN. I thank the Senator from Massachusetts and our assistant minority leader, the Senator from Nevada, Senator REID, for bringing up this issue today.

Again, more disturbing news has come out this week, I say to the Senator from Massachusetts. He has covered the increase in poverty in this country. More and more people are being left behind and unemployment continues to go up. At that very time, this administration wants to pull the rug out from underneath people who work hard, to take away their overtime protection. That is coming to a head this week, I say to the Senator from Massachusetts, because the House of Representatives, the other body, is going to be appointing conferees to go to conference with us. I understand the motion will be made to instruct the conferees to yield to the Senate position which, as you know, is to deny the administration the funds necessary to carry out these proposed changes in overtime. So I am hopeful the House will again vote right on this and make sure we keep the Senate provisions and deny the administration the ability to go ahead and just yank away the overtime protections for millions of Americans.

Again, I ask the Senator from Massachusetts why is it—I don't know if there is any real answer. Why is it this administration is so intent on keeping the minimum wage as low as it is? Why are they so intent on that? What do they gain by doing that, by denying hard-working Americans an increase in the minimum wage? What does the administration gain for themselves or for this country by taking away the overtime protections for our workers which have been there since 1938? Why would the administration be doing this if we are facing at this time higher rates of unemployment, poverty going up?

I don't know what the Senator's response to that will be, but in my view, this is so ideologically driven. This administration, I think, if it had its way, would take away all overtime protections, take away the minimum wage. They don't even believe in a minimum wage. They wouldn't even have a minimum wage. They would have our

workers compete at the lowest possible level with workers from the Third World countries. It is not enough they are shipping our manufacturing jobs out of this country, they are now shipping into this country labor standards from Third World countries.

Again, I don't know. I thank the Senator from Massachusetts for pointing this out this morning. I think we need to discuss this more.

We are going to be discussing a supplemental appropriations bill on the floor today and for the next few days of \$87 billion. That is for rebuilding Iraq. Some of that is for the military, but with \$21 billion we are going to build sewer and water systems, we are going to build new schools, we are going to rebuild some swampland—there is everything in there to rebuild the economy of Iraq. At the same time this administration wants to keep minimum wages low. They will not help us get the minimum wage up. And they want to take away overtime protection. What kind of fairness is there in that?

Mr. KENNEDY. The Senator has answered his own question. I think it is a pretty clear indication that the administration listens to K Street, which is another way of saying the principal powerful special interests, rather than Main Street, Main Street, where it is happening—whether it is in the rural or urban areas of Iowa, or my own State of Massachusetts.

These are hard-working people at the minimum wage. This issue, the minimum wage, is a women's issue because the majority of people who receive the minimum wage are women. It is a children's issue because more than one-third of the women who receive the minimum wage have children, so it is a family issue. It is a civil rights issue because so many of these men and women are men and women of color. And it is a fairness issue. America and Americans understand fairness. If you work 40 hours a week you should not have to live in poverty. Yet this administration is strongly opposed to this and is using every different parliamentary trick to deny us a vote.

The majority Members of this body favor an increase in the minimum wage, but the administration is strongly against it and we are basically unable to get it. I think the majority favors also extending a hand to those millions of Americans who are unemployed, who have worked hard all their lives and, because of the economic policies, have been put into the lists of the unemployed. They have been out there looking. Increasing numbers of those have been leaving the job market.

We have historically recognized that we would offer a helping hand to those who want to work, who can work and who will work to provide for their families during the slump in the economy, and the administration says no. Beyond all of that, it says we are going to exclude 8 million hard working Americans from possible coverage for overtime.

I speak for all of our people in Massachusetts when I thank the Senator from Iowa for his leadership in the Senate and for the strong vote we got in the Senate. We had a bipartisan vote on that. It is enormously instructive and important for the administration to hear.

I certainly know the administration is working very hard against the position of the Senator from Iowa and in the House of Representatives. But I hope the kind of expression we saw here in the Senate will be followed by the House.

I thank the Senator for all of his good work.

Mr. HARKIN. Mr. President, I thank the Senator from Massachusetts for his kind remarks, but he has been the leader in terms of workers' rights for all of his time in the Senate. I am honored to be able to work with him to make sure we continue to support our working families.

I say to my friend from Massachusetts that the Secretary of Labor just wrote a recent editorial which ran in the Omaha World Herald, which is across the river from Iowa. It is interesting that she wrote my amendment "if enacted, would be a huge setback for U.S. workers from getting overtime pay for the first time."

What she is talking about there is part of this proposal would increase the threshold for guaranteed overtime pay from \$8,060 a year to \$22,100 a year. My amendment does not affect that. What we passed here in the Senate protecting overtime pay does not even remotely affect it. If the Secretary of Labor wants to increase the threshold from \$8,060 a year to \$22,100 a year, what is she waiting for? She can do that tomorrow. She could have done that this spring in the rules and regulations. It is because certain friends of this administration and industries say they wouldn't support it unless we made other changes to take away overtime protection from other workers.

It is true the proposed regulation does increase the threshold. That is fine. Our amendment doesn't touch that. With the other hand they take away overtime pay protection for over 8 million Americans. Then they say they want to simplify the rules. The proposal is far from simple. It is as complex as ever.

The Society for Human Resource Management was quoted in the Chicago Tribune:

It looks like they're just moving from one ambiguity to the next.

These rules and regulations can be simplified and updated without taking away workers' overtime pay protection. Again, don't take my word for it. Here is what industry says from a May 2003 analysis by Hewitt Associates, a global human resources outsourcing and consulting firm, to its clients on their Web site.

They said:

These proposed changes—
by the Secretary of Labor—

—likely will open the door for employers to reclassify a large number of previously non-exempt employees as exempt.

Exempt from overtime pay protection.

The resulting effect on compensation and morale could be detrimental, as employees previously accustomed to earning, in some cases, significant amounts of overtime would suddenly lose that opportunity.

That is not me saying that. That is a May 2003 analysis by Hewitt Associates, a global human resources outsourcing and consulting firm, to their clients which include more than half of the Fortune 500 companies.

There you have it. This is industry driven to take away the overtime pay protection so they can work people longer and not pay them any more.

As I pointed out on the floor previously, and as the Senator from Massachusetts did, this is antiworker and it is antifamily. Many of these people are women. They are already paying for child care. Now they are going to have to work longer and pay more for child care, and they don't get a nickel more for overtime. It is not fair. It is not right.

I hope the House of Representatives will vote strongly to instruct their conferees to adopt the Senate provision. Let us have the administration go back and let us have a fair and reasonable updating of overtime regulations.

Yesterday, on Tuesday, September 30, there was a lead editorial in the Washington Post entitled "Fighting Over Overtime."

It said:

Despite a veto threat from President Bush, the House should vote to block the rules. While the overtime regulations need updating—

We all agree with that.

—the administration proposal tilts too far in the direction of employers. It ought to be redrawn in a more balanced way.

I ask unanimous consent that the article be printed in the RECORD.

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

[From the Washington Post, Sept. 30, 2003]

FIGHTING OVER OVERTIME

For 65 years employees have been entitled to an hour-and-a-half's pay for every extra hour they have worked beyond the standard 40-hour work week. But those protections don't extend to certain white-collar workers—people in executive, administrative and professional positions—and figuring out which employees are covered has become a particularly byzantine area of labor law. The Bush administration has proposed a sweeping rewrite that it says will better protect the most vulnerable workers while giving employers clearer guidance. Labor groups argue that the improved coverage is so limited, and the exceptions so broadly written, that millions of workers would be deprived of eligibility for overtime. The Senate voted this month to prevent the new rules from taking effect, and while the House voted narrowly the other way, it is set for another vote this week. Despite a veto threat from President Bush, the House should vote to block the rules. While the overtime regulations need updating, the administration proposal tilts too far in the direction of employers. It ought to be redrawn in a more balanced way.

Employees who earn less than \$8,060 per year are automatically entitled to overtime. The Department of Labor wants to raise that floor to \$22,100. The increase would provide automatic coverage to 1.3 million workers, the administration says, while labor groups say the number is much smaller. An increase in the minimum level is overdue (it was last raised in 1975), but the amount proposed by Labor—\$5,000 less than would result simply from adjusting for inflation—is too low. The proposed rules would also make it more difficult for employees who earn more than \$65,000 to qualify for overtime pay.

The biggest problem with the changes would be in the middle range of workers who earn between \$22,100 and \$65,000. In this area, the new rules would give employers far more freedom to disqualify employees. For example, employees would be considered exempt "executives" if they managed a department, directed the work of two or more other employees and had their recommendations about hiring, firing or promotion "given particular weight." Thus, a \$23,000-a-year supermarket produce manager could be refused overtime pay. The Labor Department says the changes are merely intended to make the rules easier to apply, not to deprive anyone of overtime. Yet it's hard to see how some of its gauzy new tests are going to promote any less misunderstanding. Administrative workers, for example, are defined as those who hold "a position of responsibility" with the employer, something that is in turn defined as doing "work of substantial importance" or "requiring a high level of skill or training."

Labor Secretary Elaine L. Chao, dismissing the arguments of those who "think employers are out to exploit workers," says that businesses are lobbying for the changes "not because they're getting any particular benefit but because they just want clarity." But employers and their advisers see it differently. Hewitt Associates, a leading human resources consultant, noted that "employees previously accustomed to earning, in some cases, significant amounts of overtime pay would suddenly lose that opportunity." Assessing the rules in a memo to clients, Proskauer Rose, a law firm that represents employers, noted, "Thankfully, virtually all of these changes should ultimately be beneficial to employers." Workers who earn overtime derive a quarter of their income, on average, from overtime pay. They might not be quite so thankful.

Mr. HARKIN. Mr. President, I ask to be recognized on my own time.

The PRESIDING OFFICER (Mr. TALENT). Under the previous order, there are 9 minutes 40 seconds left on the Democratic side.

Mr. HARKIN. I appreciate that. I will not take that much time.

THE CIA LEAK

Mr. HARKIN. Mr. President, I also wanted to again comment on the stories appearing in the media about the leaked information regarding an undercover CIA agent. As we all know by now, a law was broken. It is a Federal crime under the Intelligence Identity Protection Act of 1982 to intentionally disclose information identifying a covert agent by anyone not authorized to receive classified information. Conviction under this crime is punishable by up to 10 years in prison and a fine of \$50,000.

What do we know so far? We know a columnist, Mr. Robert Novak, received

this information. He printed it in his column in the newspaper.

It is interesting that we now find there were other journalists given that information, but they did not write this. They did not print it. That raises questions in itself as to why Mr. Novak went ahead and wrote this.

We know this was put out into the public. We know—at least it has been alleged—that Mr. Novak said he got the information from a "high administration official." The other journalists, I guess, who got this information said the same thing. We don't know whether it is in the White House or where it is. But there are all kinds of rumors and allegations floating around.

Now I see the Justice Department is starting to investigate. Isn't that a sweetheart deal? Attorney General John Ashcroft, appointed by this President, investigating the President. If a situation ever cried out for a special counsel, this is it.

Yet yesterday when the Senator from New York, Senator SCHUMER, wanted to just have a sense-of-the-Senate resolution that a special counsel should be appointed, the other side raised a non-germane objection to this. We will continue to bring up this sense-of-the-Senate resolution. In fact, when we have the opportunity, we will ask to have a vote on whether a special counsel ought to be appointed, someone more independent than Mr. Ashcroft.

There is a piece missing from the puzzle. We know a law was broken. We know Mr. Novak, a journalist, printed in his column that it came from somewhere in the administration. But here is the missing part of the puzzle that no one is writing about. Whoever gave that information to Mr. Novak got that information somewhere. This is classified information. The question is, Did someone in the CIA voluntarily give that information to this individual? If that is the case, we have a real problem in the CIA. If, however, someone in the administration is saying the National Security Council, which has access to this kind of classified information, then gave this information to another individual in the administration, then we have a real problem in the National Security Council of someone deliberately leaking this classified information.

It is not enough just to find out who gave the information to Mr. Novak. We have to find out how that individual got the information in the first place.

Mr. DURBIN. Will the Senator yield? Mr. HARKIN. Let me finish this.

Did that individual have that information given by the CIA? Was it given to him by the National Security Council? How did that individual come by this classified information? That is the missing part of this puzzle.

I yield to my friend.

Mr. DURBIN. I ask the Senator from Iowa, does it not show the depths which have been reached if someone in the White House is prepared to not only discredit but to disclose the iden-

tity of an intelligence agent, perhaps compromising their professional career, maybe endangering their life, in order to settle a political debt?

I ask the Senator from Iowa, who has a memory of this—as I do, as well—this is an echo of an enemies list of Richard Nixon's era where they have decided at any cost they will go after their enemies, even in the commission of a Federal felony, to disclose the identity of Ambassador Wilson's wife.

The Senator from Iowa is correct. It is true that the lengths to which this administration is willing to go to silence its critics harken back to an era that was one of the darkest eras in Presidential politics.

Mr. HARKIN. Again, I thank the Senator from Illinois for his question.

Why was this name leaked to this columnist? It was to somehow discredit her husband. What had her husband done? He told the truth about the lack of any evidence showing Iraq had gone to Niger to obtain basically uranium or yellow cake. He had gone there to investigate, said there was nothing to it. So he told the truth. And now the administration, because a truth did not comport with their imagination about what was going on in Iraq, obviously put Mr. Wilson on their enemies list.

I say to the Senator from Illinois, this really does bring back memories of enemies lists. The administration will go to any length, to the length of breaking a law, to try to discredit anyone who tries to point out the truth about what went on in Iraq.

Mr. DURBIN. If the Senator will continue to yield, this calls for a special prosecutor. Does the Senator from Iowa recall last year when there was a suspected leak of information from the Senate Intelligence Committee, the FBI, under Attorney General Ashcroft, called on every member of the Senate Intelligence Committee to submit to a polygraph—for every Senator to submit to a polygraph? I ask the Senator from Iowa, what is the likelihood that Attorney General Ashcroft is going to ask the highest ranking officials in the White House to submit to a polygraph and then disclose to the public whether or not they have agreed to do so?

Mr. HARKIN. I say to my friend from Illinois, I am not serving on the Intelligence Committee. I had heard and been aware, and now the Senator has validated that fact, the FBI did ask members of the Senate Intelligence Committee to take polygraphs. Again, it is a fair question the Senator asks: Will the FBI ask all senior members of this administration to sit down and take a polygraph test? If they asked Senators, why would they not ask the White House? I don't know. Will they?

Mr. DURBIN. Further questioning the Senator from Iowa, I don't believe in polygraphs. I never recommend them. Most State courts do not recognize the results, I don't think they are accurate. But it was a pressure tactic by the FBI to try to get Senators on the Intelligence Committee to say publicly whether they would submit to a