With the narrowing definition of ''Willful Violations,'' we will make it easier for employers to avoid responsibility after disregarding a safety standard requirement. This bill would allow companies to receive filing extensions even if they lost track of a citation due to their own negligence.

Why should any worker be forced to suffer in unhealthy conditions or even worse, lose their life, because of inefficiencies within a company's system or blatant lies to avoid penalties?

That's why I support real workplace reform not favors to business like H.R. 2728 provides. I support strengthening worker protections and forcing employers to face real consequences when their poor safety standards cause a wrongful death.

You cannot put a price tag on life, and injury, and we can all agree every workers' life is more precious than a profit. That's why I encourage my colleagues to join me in opposing this H.R. 2728.

Mr. HOLT. Mr. Speaker, I rise in opposition to H.R. 2728. The bill amends the section 10(a) and (b) of the Occupational Safety and Health Act to provide that an employer who has failed to contest a citation and proposed penalty (section 10(a)) or has failed to contest a notification of failure to correct a violation (section 10(b)) in a timely manner (within 15 working days of receiving the notice) may still contest the citation (or failure to correct notice) if the failure to contest in a timely manner was due to a ''mistake, inadvertence, surprise, or excusable neglect.''

The bill's authors have used the title ''Occupational Safety and Health Small Business Day in Court Act.'' Once again, they have provided that you can name a bill anything you want, regardless of what it actually does. That is why it is critical to look at what is in the bill and not just the title—it covers more than just small businesses. In fact, H.R. 2728 applies equally to all employers regardless of size. However, because small businesses often get more sympathy, the bill's authors used the title to mischaracterize the substance of the legislation.

One of the principal purposes of the OSH Act is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions'' and to encourage the prompt abatement of safety and health hazards. The timeframes in the OSH Act are intended to ensure that hazards are redressed in a timely manner.

H.R. 2728 creates an exemption to the act's timeframes on the basis of one case. The bill seeks to overturn the 2002 decision of the Second Circuit in Chao v. Russell P. Le Frois Builder, Inc. However, to date no other circuit has ruled similarly and Le Frois Builders is in direct conflict with a Third Circuit decision. Indeed, it is the position of the Occupational Safety and Review Commission that it may grant an excusable neglect waiver in any circuit except the second.

The bill amends subsection 10(a) and (b) to afford an excusable neglect remedy to an employer who fails to contest an OSHA citation in a timely manner or who fails to timely challenge an allegation that he or she has failed to correct a hazard within the abatement period. Not surprisingly, H.R. 2728 does not amend subsection 10(c), which affords workers the right to challenge the abatement period.

Mr. Speaker, I ask my colleagues to oppose a bill that has been given a deceptive title. This legislation will not help small business but instead will hurt employees. What we really should be passing is legislation that will empower small business by increasing funding for education and training programs to help workers gain the job skills that small business is looking for and that will help America remain competitive.

Mr. BOEHNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. TERRY). All time for debate has expired.

Pursuant to House Resolution 645, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OWENS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION EFFICIENCY ACT OF 2004

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 645, I call up the bill (H.R. 2729) to amend the Occupational Safety and Health Act of 1970 to provide for greater efficiency at the Occupational Safety and Health Review Commission, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 645, the bill is considered read for amendment.

The text of H.R. 2729 is as follows:

H.R. 2729

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Review Commission Efficiency Act of 2003''.

SEC. 2. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(a) AMENDMENTS.—Section 12 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 661) is amended as follows:

(1) In subsection (a), by striking the word ''three'' and inserting in lieu thereof, the word ''five;'' and inserting before the word ''training'' the word ''legal''.

(2) In subsection (b) by striking all after the words ''except that'' and inserting in lieu thereof, ''the President may extend the term of a member to allow a continuation in service at the pleasure of the President after the expiration of that member's term until a successor nominated by the President has been confirmed to serve. Any vacancy caused by the death, resignation, or removal of a member before the expiration of a term, for which he or she was appointed shall be filled only for the remainder of such expired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(3) Subsection (f) is amended to read as follows:

''(f) The Chairman of the Commission is authorized to delegate to any panel of three or more members any or all of the powers of the Commission. For the purpose of carrying out its functions under this chapter, 3 members of the Commission shall constitute a quorum, except that 2 members shall constitute a quorum for any sub-panel designated by the Chairman under this subsection.''.

(b) NEW POSITIONS.—Of the two vacancies for membership on the Commission created by this section, one shall be filled by the President for a term expiring on April 27, 2006, and the other shall be filled by the President for a term expiring on April 27, 2008.

The SPEAKER pro tempore. Pursuant to House Resolution 645, the amendment printed in the bill, modified by the amendment printed in part A of House Report 108–497 is adopted.

The text of H.R. 2729, as amended, as modified, is as follows:

H.R. 2729

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Review Commission Efficiency Act of 2004''.

SEC. 2. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

(a) AMENDMENTS.—Section 12 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 661) is amended as follows:

(1) In subsection (a), by striking the word ''three'' and inserting in lieu thereof, the word ''five'' and by inserting the word ''legal'' before the word ''training''.

(2) In subsection (b) by striking all after the words ''except that'' and inserting in lieu thereof: ''the President may extend the term of a member for no more than 365 consecutive days to allow a continuation in service at the pleasure of the President after the expiration of that member's term until a successor nominated by the President has been confirmed to serve. Any vacancy caused by the death, resignation, or removal of a member before the expiration of a term, for which he or she was appointed shall be filled only for the remainder of such expired term. A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.''.

(3) In subsection (f), by striking ''two'' the first place it appears and inserting ''three''.

(b) NEW POSITIONS.—Of the two vacancies for membership on the Commission created by this section, one shall be filled by the President for a term expiring on April 27, 2006, and the other shall be filled by the President for a term expiring on April 27, 2008.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. BOEHNER) and the gentleman from New York (Mr. OWENS) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

GENERAL LEAVE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2729.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the second bill we will debate today is another narrowly crafted bill that addresses a specific problem which we find in the OSHA law.

The Occupational Safety and Health Review Commission Efficiency Act, H.R. 2729, increases the membership of the Occupational Safety and Health Review Commission from three to five members to ensure that cases are heard in a timely fashion.

Because a quorum of two out of the current three commissioners is needed for timely decision-making, the commission has in the past been unable to act simply because a quorum was not present. There are a number of reasons for this. The appointment process is sometimes controversial, leading to vacancies, and sometimes commissioners must recuse themselves from consideration of cases, meaning a situation is created where even if there is only one seat open, there is often no working quorum.

For some 20 percent of its history, the commission has been unable to gain a working quorum, and as a result is simply unable to function despite being otherwise fully staffed. Increasing the membership to five commissioners will ensure that cases are reviewed in a more timely fashion, improving the current system of judicial inactivity that only results in government waste.

In short, it will allow the commission to complete the job it was created to do by reducing case backlogs that are as much as 8 years old.

The commission's sister agency, the Federal Mine Safety and Health Review Commission, has five panelists, and we found it has worked well in reviewing cases more efficiently.

□ 1330

Lastly, the bill permits incumbent members whose terms have expired to stay on until a replacement can be confirmed by the Senate. Most vacancies occur during these turnovers.

We want small businesses hiring more workers and contributing to our economy, not facing years of OSHA-related litigation that they cannot resolve simply because the commission has an endless backlog of cases. This bill simply ensures that OSHA cases are resolved in a timely and efficient manner, a goal that I think we all support.

Employers who make good-faith efforts to comply with OSHA standards deserve to be treated fairly and have their day in court. This measure will help ensure that they receive that opportunity.

Nearly every employer today recognizes that improving workplace safety is good for business and it is good for workers. Employers face relentless competition both at home and abroad and they must compete in the face of high taxes, rising health insurance premiums and burdensome government regulations. All of these OSHA reform bills are designed to improve worker safety and enhance the competitiveness of small businesses that are the real engine of job growth in this country.

The U.S. economy is improving. More and more employers are hiring workers every month. Earlier this month, the Labor Department reported that over the last 8 months, 1.1 million net new jobs were created, 625,000 in just the last 2 months. But we want to make sure that government regulations, and especially onerous government regulations, do not stand in the way of small businesses hiring more workers and getting our economy back on its feet.

This bill is narrowly crafted and addresses a specific problem in the OSHA law. I believe it deserves our Members' support and would ask our Members and encourage them to support it today.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, I yield myself such time as I may consume.

First, I would like to comment on voluntary compliance. It has been mentioned here several times. Voluntary compliance programs are usually directed at large employers, not small. This is not where the deaths are occurring. In construction, half of all deaths occur among small firms in construction, many with fewer than 10 workers. Big corporations have understood for some time now that it is to their advantage to have a workplace that is safe, with maximum benefits and working conditions. And big corporations are seldom guilty of willful violations; it is the small employers. I must say that an attempt has been made here to make it appear that small employers have some special virtues, but small employers can be demons often.

I recall my father working in a mill where the straw boss, they called him, told the workers if they would go to the toilet, which was pretty much in the middle of the floor anyhow, a cubicle that you could see the feet and it was open at the top, if you go to the toilet and he does not smell anything, come on out.

I can recall working at a restaurant when I was in college where the employer, the owner of this small business, felt he had a right to pat any woman on the behind regularly, and they were too afraid to complain because they wanted to keep their jobs.

You might say that those were extreme conditions, that is all over; that happened when you were in college many years ago. But in New York we have sweatshops which are as bad as any sweatshops the city has ever known in the 1930s, the 1920s or any other time. It is just that the people in the sweatshops now happen to be Asians mostly, Asian workers who are being exploited.

There is no great virtue in small businesses automatically. Yes, the majority comply, but there are too many who still do not comply, too many who, as I said before, are interested only in squeezing the maximum profits from the situation; and their biggest cost is the labor cost, labor cost in terms of wages, labor cost in terms of conditions that must be established by law for workers.

We refuse to discuss the minimum wage on this floor. We refuse to discuss it in the context of a bill to increase the minimum wage. But today if we are going to talk about workers and worker safety, I think we ought to point out that it is the workers who are making the least amount of money whose safety is jeopardized most. They are the vulnerable ones in conditions that nobody else wants to work in, immigrant workers who take the lowest pay and working conditions where no one else will work.

This is the second quarter of a four-quarter marathon, as I said before. I have heard it called the More Injuries and More Death Marathon Act. It is a covert approach to what the majority Republicans tried when they first took power in 1995. This is covert. This is guerilla warfare, one might say, undermining OSHA from the back, undermining OSHA with sweet words.

Back on June 14, 1995, we had the first taste of what the majority Republicans really wanted to do about OSHA. The gentleman from North Carolina (Mr. BALLENGER) introduced H.R. 1834, and that was a massive overhaul of OSHA to weaken the law and favor law-breaking employers. If you were to go back and retrieve that bill, you could see that most of it was put there in one bill, and it was a frontal assault. It had the same objectives that today's assault has.

There have been 14 of these significant bills introduced since the 104th Congress, I think half of which have been introduced by the gentleman from North Carolina (Mr. BALLENGER) which are significant in terms of looking at the record of how OSHA has been under attack. Since this House went under the leadership of the Republicans, OSHA has been the target, it has been an obsession, and none of these bills are in favor of increasing any measures to protect workers.

We cannot review and view these bills today in the context of just one bill at a time or even the four bills. The four bills have to be reviewed in the context of the overall policy of the Republican majority toward working families, the overall assault against working families.

We have to have this in context. We have to look at the figure of the 6,000 Americans per year. That figure has been there for some time, averaging about 6,000 per year who die every year on the job.

The little display up front is an example of a centerpiece for a quilt we want to make as a memorial to these workers. We do not want either party to forget what is happening to working

families in this country. In many respects, the failure to increase the minimum wage is one of them, but certainly with respect to health and safety, we must do more to make it known and to put it on the front burner in the minds of Americans as evidence of what is happening in the workplace.

This is not unrelated to other developments like outsourcing, a major development which goes after workers at higher levels, technicians, computer people, scientists, engineers. Their salaries and their working conditions are such that they are found to be offensive and not producing ample profits, so their jobs are going to be taken away completely and contracted out to other nations.

There are a large number of businesses that cannot be contracted out and most of them are small businesses. Construction is one. We can never take construction overseas; that has to happen here. The construction industry, in particular, needs the protection of people who want to weaken OSHA. The construction industry, in particular, is a culprit in employing and exploiting workers at the very bottom.

We must keep this package in context. We must understand that the covert warfare taking place here, what I call the poisoning of OSHA, the slow draining of power from OSHA, is accelerated by these seemingly harmless four bills. The Labor Secretary in this administration is openly hostile to labor and to working families. We have a situation where traditionally the Department of Labor has always been considered the advocate for working families and for workers, but this particular Department of Labor, this Secretary, is just the opposite and this administration has no place for labor to have their grievances aired. So we bring them here today at this time and take advantage of the fact that there is at least time to discuss conditions under which people work.

The policy of denigration, intimidation and oppression of the workforce is a policy which yields high productivity. That high productivity has already been achieved, but they want to go beyond that and get higher levels of exploitation and squeeze more from workers to increase the profits. As I said before, all small business owners are not model Americans. They do not seek to protect and take care of their workers in the best possible way.

We are going to have a monument. This is going to be part of an overall quilt which gives you the number of workers per State, gives you the number each year, since 1993 to the present. Like the Vietnam Wall memorial, it dramatically brings home in an individual way the fact that life is sacred. The lives of workers are as sacred as the lives of anyone else.

I said before, we are losing more workers per day than we are losing on the battlefields of Iraq. I do not want the Iraq battlefield casualties to increase. We would like the casualties in both places to decrease. But the life of a worker who is killed in a situation which has willful violations and the death is totally unnecessary, that life must be given more concern by both parties here in this House.

Workers and their families are under attack. We must come to their defense. One way to defend them is to recognize these four bills for what they are worth. They are the very destructive poisoning of the effectiveness of OSHA.

Mr. Speaker, I submit for printing in the CONGRESSIONAL RECORD the opinions and the statements by four groups: The AFL-CIO, the UAW, the Teamsters and the National COSH Network. These groups oppose this bill. I submit for the RECORD their statements in opposition.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Washington, DC, May 14, 2004.

DEAR REPRESENTATIVE: I am writing to express the strong opposition of the AFL–CIO to H.R. 2728, H.R. 2729, H.R. 2730 and H.R. 2731, four bills that would erode worker protections under the Occupational Safety and Health Act. These bills, which are scheduled for a floor vote the week of May 17, 2004, would change established law and procedures to benefit employers and stifle OSHA enforcement. They would do nothing to enhance workers' safety and health protection, while weakening the OSH Act.

H.R. 2731, Occupational Safety and Health Small Employer Access to Justice Act—This bill requires taxpayers to pay the legal costs of small employers (defined as employers with 100 or fewer employees and up to $7 million net worth) who prevail in any administrative or enforcement case brought by OSHA or any challenge to an OSHA standard brought by the small employer against OSHA, regardless of whether the action was substantially justified.

Under the Equal Access to Justice Act, small businesses are already able to recover litigation costs where the government position was not substantially justified. There is no reason to expand these provisions and create new and broader rules for purposes of the OSH Act. The bill will drain resources away from an agency that has perpetually struggled to do its job with the limited resources available to it. If enacted into law, H.R. 2731 would have a chilling effect on both OSHA enforcement and OSHA standard setting, because attorneys' fees would be available to prevailing employers in both types of actions. OSHA would be hesitant to cite small employers for violations of the OSH Act unless there is absolute certainty that the enforcement action will be upheld in its entirety. No rational public policy would be furthered by discouraging OSHA from issuing citations that are substantially justified, but as to which the government ultimately is unable to carry its burden of proof of every issue. Rather, the inevitable result of such a rule, which would penalize the government every time it loses, would be to chill the issuance of meritorious citations in close cases on behalf of employees exposed to unsafe working conditions. Similarly, unless OSHA is certain that a standard will not be challenged (which they are routinely for any number of reasons), it would be very reluctant to development and issue rules any hazard no matter how grave the threat of the hazard to workers. This bill would further weaken OSHA enforcement efforts and standard setting to the detriment of American workers.

Establishments with fewer than 100 employees make up 97.7 percent of all private sector establishments. These businesses have a higher rate of fatal occupational injury than do establishments with 100 or more workers. Hampering OSHA's enforcement ability in these small establishments would be devastating to workers, resulting in even higher rates of worker fatalities, injury and illness.

Also significant is the fact that under H.R. 2731, employers will be able to recover partial attorneys fees if they partially prevail in an OSHA proceeding. So, for example, the notorious Eric Ho, who exposed his employees to asbestos and made them work at night behind locked gates without providing them any sort of respirators or training, would be able to recover attorneys fees under this bill, because the OSHA Review Commission dismissed two of Ho's corporations as defendants and dismissed 10 of 11 willful violations of OSHA's respirator and training standards. Secretary of Labor v. Ho, Nos. 98–1645 & 98–1646 (OSHRC, Sept. 29, 2003).

OSHA needs more, not fewer, resources available to deal with employers like Eric Ho and to enforce the OSH Act's protections. H.R. 2731 should be rejected.

H.R. 2730. Occupational Safety and Health Independent Review of OSHA Citations Act—This bill would work a radical change in the implementation and enforcement of the OSH Act, and would undermine the Secretary of Labor's authority to interpret and enforce the law. The bill would overturn a 1991 Supreme Court decision and say that deference should be given to the OSHA Review Commission, and not the Secretary of Labor, in interpreting OSHA standards. The AFL-CIO vigorously opposes this bill and urges its defeat.

In Martin v. OSHRC (CF & I Steel Corp.), 499 U.S. 144 (1991), the Supreme Court made clear that the Secretary of Labor, and not the Review Commission, should be given deference when interpreting OSHA standards and regulations. In the Court's view, the Secretary of Labor should receive deference because Congress, when enacting the OSH Act, designated the Secretary as the policymaking official, and gave the Secretary the authority and responsibility to implement and enforce the law. Thus, because the Secretary of Labor is the person who adopts standards and brings enforcement actions against employers, she has a much broader and deeper understanding of OSHA's rules as compared to the Review Commission, which sees only a small fraction of OSHA's enforcement cases.

Policymaking, and interpretation of OSHA policies, should stay with the Secretary. The Commission should not be able to undo by fiat the Secretary's reasonable interpretations of her rules. H.R. 2730 should be rejected.

H.R. 2729. Occupational Safety and Health Review Commission Efficiency Act—H.R. 2729 expands the number of members on the OSHA Review Commission from three to five, and mandates that all members have legal training. Another provision, removed during the Committee markup on May 5, 2004, authorized the Chairman of the Commission to delegate to any panel of three or more members any or all powers of the Commission and allowed two members to constitute a quorum on such sub-panels.

The Review Commission has operated with three Commissioners since it was first formed in 1970. There is no need to expand the Commission beyond its current membership, and no need to exclude individuals with relevant training, but not legal training, from eligibility for these positions. Moreover, it is no coincidence that Republican members are pushing to expand the number

of seats on the Commission at a time when a Republican president would fill the seats.

Proponents say the bill is needed to address the problem of the Commission at times lacking a quorum to do business. But with the removal of the provision on subpanels during the Committee markup, it is difficult to see how H.R. 2729 would solve the quorum problem. Three Commissioners would still be required to have a working quorum. There is no reason to think that the Commission will be able to retain three active Commissioners any better than it has been able to retain two.

H.R. 2729 is a solution in search of a problem. It should be defeated.

H.R. 2728, Occupational Safety and Health Small Business Day in Court Act—This bill would excuse employers from the fifteen-day deadline for contesting OSHA citations and ''failure to abate'' notices if they can show ''mistake, inadvertence, surprise, or excusable neglect'' as the reason. The bill's practical effect would be to make numerous excuses into legal reasons for missing the fifteen-day deadline by which employers currently must respond to OSHA citations. This action will only encourage more litigation. The idea of the fifteen-day requirement is to give all parties a reasonable timeframe in which to take action, and to ensure that the case is moved along as quickly as possible so the cited hazards will be corrected in as timely a manner as possible.

It is also important to note that the bill excuses employers from missing their 15-day deadline but does not extent these same provisions to employees or their representatives who challenge the period for abatement in a citation. The one-sided nature of this legislation shows that it is about benefiting employers, not protecting employees.

Proponents of the bill have pointed to one court case as justification for this legislation. In fact, the Commission has a longstanding practice of reviewing any missed deadlines on a case-by-case basis. H.R. 2728 is another solution in search of a problem, and it should be defeated.

As demonstrated above, these bills undermine the intent of the Congress when it enacted the OSHAct more than 30 years ago. Generally speaking, these policies and procedures have been serving workers well for over 30 years. American workers deserve a safe and healthy workplace and the full protection the OSHAct can offer. These bills would surely diminish the protections provided to workers by the OSHAct. For these reasons, the AFL–CIO opposes these four bills, and we strongly urge you to vote against each of them.

Sincerely,

WILLIAM SAMUEL,
Director,
Department of Legislation.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, DC, May 17, 2004.

DEAR REPRESENTATIVE: This week the House is scheduled to take up four bills to amend the Occupational Safety and Health Act of 1970. The UAW opposes each of these anti-worker bills and urges you to vote against them.

The first three bills relate to the Occupational Safety and Health Review Commission (Commission or OSHRC). In considering these bills, the UAW urges you to bear in mind that OSHRC functions as an intermediate appeal for employers, between decisions of the Occupational Safety and Health Administration (OSHA) and the U.S. Courts of Appeal. During the time a case is on appeal to OSHRC, employers do not have to pay any assessed penalties, nor do they have to abate the violations for which they were cited. Thus, procedural delays at OSHRC serve only to postpone justice and to delay the correction of workplace safety and health violations.

H.R. 2728, despite being mislabeled the ''Occupational Safety and Health Small Business Day in Court Act,'' is not limited to small businesses. Instead, it would effectively eliminate the statutory time period within which all employers—not just small employers—must contest an OSHA citation or assessment before it becomes a final order of the Commission. Under the statute, an employer contests by simply mailing a letter to the OSHA office. Therefore, contestation is not burdensome, and the statutory time period should be retained.

Moreover, the federal courts already provide relief, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, for employers who can show that their failure to meet filing deadlines was due to mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or misconduct by an adverse party, so long as the employer can show the existence of a meritorious defense. There is a body of established case law pursuant to Rule 60(b) that would be subject to wasteful relitigation if H.R. 2728 were enacted.

H.R. 2729, the ''Occupational Safety and Health Review Commission Efficiency Act,'' would expand the number of OSHRC commissioners to five from three and authorize subpanels of three members to exercise all of the powers of the Commission. It would also authorize commissioners to hold their position at the expiration of their six-year term, until a successor has been nominated by the President and confirmed by the Senate. Finally, it would add a new requirement that Commissioners must have legal training.

The UAW submits that the only good to come from adding two commissioners to OSHRC would be the creation of two more jobs to an economy that has lost over two million jobs since January 2004. Otherwise, it is wasteful and unnecessary to expand OSHRC, which has been composed of three members since it was established in 1970.

Indeed, the UAW believes that Congress should give consideration to abolishing all of the OSHRC commissioners' positions, allowing appeals to go directly from the decision of the Commission's Administrative Law Judges to the Courts of Appeals, as is done with Social Security Administration appeals.

We object to the legal training requirement because it would work against persons with workplace health and safety expertise. And we object to the provision allowing commissioners to retain their position after the expiration of their term because it deprives the Senate of its Constitutional advice and consent role.

H.R. 2730, the ''Occupational Safety and Health Independent Review of OSHA Citations Act,'' would overturn a 1991 Supreme Court decision holding that OSHRC's Interpretation of a health or safety standard may not be substituted for the interpretation of the Secretary of Labor. The bill explicitly provides, ''The conclusions of the Commission with respect to all questions of law shall be given deference if reasonable.'' Because it is for all practical purposes only employers who appeal cases to OSHRC, there is never an instance when the Commission would be expanding workers' right by substituting its interpretation for the Secretary's. In other words, H.R. 2730 would give unprecedented and unwarranted authority to the OSHRC to take away workers' workplace health and safety.

The fourth bill, H.R. 2731, the ''Occupational Safety and Health Small Business Day in Court Act,'' would permit small employers to collect attorney fees and court costs when they contest OSHA citations and prevail in litigation with OSHA. This bill would reverse the time-honored rule of American jurisprudence that requires litigants to bear their own costs and fees. There is no need for such legislation because the Equal Access to Justice Act adequately protects parties from administrative overreaching by compensating them in cases where the government is not ''substantially justified'' in bringing a law enforcement action, or under other ''special circumstances.''

For the foregoing reasons, the UAW strongly urges you to oppose H.R. 2728, H.R. 2729, H.R. 2730, and H.R. 2731. Thank you for considering our views on these important issues.

Sincerely,

ALAN REUTHER,
Legislative Director.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Washington, DC, May 14, 2004.

DEAR REPRESENTATIVE: On behalf of the more than 1.4 million members of the International Brotherhood of Teamsters, I am writing to express our strong opposition to four bills that would amend the Occupational Safety and Health Act: H.R. 2728, H.R. 2729, H.R. 2730, and H.R. 2731. These bills do nothing to enhance safety and health protections for workers. Rather they would change established law and procedures to benefit employers (at the expense of workers), and they would make OSHA enforcement more difficult. Instead of weakening the intent of the OSH Act, Congress should take steps to strengthen safety and health protections for workers, and improve enforcement.

H.R. 2728, the Occupational Safety and Health Small Business Day in Court Act, seeks to excuse employers who miss the current fifteen-day timeframe to contest citations and failure to abate notices. We believe this proposal does noting more than create ''artificial'' legal reasons for failing to respond in a timely fashion. It is an about face from ensuring that an OSHA case is moved along as expeditiously as possible to ensure that workplace hazards are addresses in as timely a manner as possible, thus improving worker safety and health. The current practice of a case-by-case review is the most appropriate way to ensure that hazards are addressed as quickly as possible and to reinforce the importance of workplace safety.

H.R. 2729, the Occupational Safety and Health Review Commission Efficiency Act, would require that the number of commission members be increased from three to five, that all members be attorneys, and that members be able to serve until a successor is confirmed. We see no justification, or need, for these changes—unless one wishes to tilt the ''playing field'' against workers. First, the level of enforcement does not warrant five commissioners. Further, increasing the number of commissioners would enable the Administration to stack the review commission with pro-business appointees. There is no reason to limit the pool of talented people for consideration. Further, the current system helps ensure that all parties work together to select qualified people to serve, and to do so in a timely manner.

H.R. 2730, the Occupational Safety and Health Independent Review of OSHA Citations Act, would, we believe, turn the OSH Act on its ear, by giving deference to the commission. Presently, the Secretary of Labor is given deference as the official responsible for enforcing the OSH Act. The bill would take away the authority held by the Secretary in bringing cases to the Court of

Appeals and the Supreme Court, an important avenue of redress to protect workers from dangerous and unhealthy workplaces.

Finally, we oppose H.R. 2731, the Occupational Safety and Health Small Employer Access to Justice Act, which would require that OSHA (i.e. the taxpayer) pay the legal costs when it loses a case against a small business that prevails in administrative or judicial proceedings, regardless of whether the government's position was substantially justified. We view this as another effort to impede OSHA's and the Department's efforts to enforce the law and provide an avenue for workers to seek redress.

We see no justification for such an arbitrary departure from the current practice of each party paying for its own litigation costs for only one class of public prosecutions. We know of no other agency, charged by statute to enforce the law, which is impeded from fulfilling its responsibility with respect to a meritorious complaint because it cannot guarantee the outcome.

In effect, H.R. 2371 says that unless the agency is absolutely certain that it can prevail—that it is absolutely certain that its enforcement action will not be challenged, will be upheld, or no modification will occur in terms of action—it will be penalized (budgetarily) for fulfilling its statutory obligation to protect the safety and health of all workers (union and non-union) and to provide an avenue for redress.

Furthermore, H.R. 2371 would effectively gut OSHA's statutory authority to promulgate safety and health standards. Unless certain that a standard will not be challenged (and many routinely are for a number of reasons), OSHA would not dare (or be extremely reluctant, at best) to begin a rulemaking on any hazard no matter how serious. We believe that H.R. 2371 is tantamount to a stealth repeal of OSHA's statutory authority to issue workplace safety and health standards.

Each of these bills will undermine, subtly in some instances and egregiously in the case of H.R. 2371, workplace protections and the protection that the OSH Act was designed to provide workers. We urge you to stand up for the safety and health of working men and women, and reject each of these bills.

Sincerely,

MICHAEL E. MATHIS,
Director,
Government Affairs Department.

RESOLUTION IN SUPPORT OF THE NATIONAL CAMPAIGN TO STOP CORPORATE KILLERS

Whereas, approximately 170,000 workers have been killed on the job since 1982; and

Whereas, many of these workers were killed due to reckless disregard for worker safety on the part of the employer; and

Whereas, the Occupational Safety and Health Administration (OSHA) has the authority under the Occupational Safety and Health Act to refer such cases of employer misconduct to the U.S. Department of Justice for criminal prosecution; and

Whereas, only 81 out of 170,000 workplace deaths since 1982 have resulted in convictions, only 16 of which involved jail time; and

Whereas, the Occupational Safety and Health Act defines an employer's reckless disregard for safety resulting in the death of a worker as a misdemeanor, punishable by only a maximum of six months in jail; and

Whereas, legislation has been introduced into the U.S. Congress increasing criminal penalties for reckless disregard for safety resulting in the death of a worker: therefore be it

Resolved, That we, the _____, support the national Campaign to Stop Corporate Killers with the following goals:

1. To pass federal legislation increasing criminal penalties for willful violations of OSHA standards leading to worker death;
2. To urge OSHA to refer such cases for prosecution;
3. To urge increased civil fines for serious violations of OSHA standards; and
4. To urge local District Attorneys to prosecute employers whose actions result in workers' deaths to the fullest extent possible under state and local criminal law.

I also submit for printing in the RECORD as a reminder the 14 bills that have been proposed by the Republican majority since the 104th Congress to the present, 14 bills related to OSHA, which I think will verify the fact that these four bills today are part of a larger effort, a larger assault. Despite the fact that they look small, they are very devastating in terms of the effectiveness of OSHA.

108TH CONGRESS

April 3, 2003—Norwood—H.R. 1583—Makes it more difficult to prove willful OSHA violations, increases Commission from 3 to 5 members, awards attorneys' fees to small employers who prevail in proceedings, creates new factors to consider in penalty assessment (with an eye to reducing penalties)

107TH CONGRESS

June 19, 2001—Petri—H.R. 2235—Authorizes Secretary to create voluntary protection program.

106TH CONGRESS

April 15, 1999—Ballenger—H.R. 1434—Allows employers, notwithstanding NLRA Section 8a2, to meet with employees directly to discuss, review, etc. safety and health issues.

May 27, 1999—Goodling—H.R. 1987—Allows employers to recover attorneys fees and costs if they prevail in proceedings brought by OSHA. Ballenger also reintroduced his string of 105th Congress bills during the 106th (see below).

105TH CONGRESS

November 7, 1997—Ballenger—H.R. 2864—Encourages ''voluntary'' compliance for employers.

November 7, 1997—Ballenger—H.R. 2869—Changes law so that records of audits and inspection done by and for the employer need not be disclosed to OSHA inspectors.

November 7, 1997—Ballenger—H.R. 2871—Requiers Secretary to create advisory panel of experts each time she wants to create a new rule, advisory panel to review all scientific, economic data.

November 7, 1997—Ballenger—H.R. 2873—Requires Secretary to provide individualized assessment of risks to workers and costs to employers for industry to which a rule is to be applied.

November 7, 1997—Ballenger—H.R. 2875—Changes language dealing with ''alternative methods of protection.''

November 7, 1997—Ballenger—H.R. 2877—Forbids Secretary from establishing any performance methods for subordinates based on number of inspections conducted, citations issued, or penalties assessed.

November 7, 1997—Ballenger—H.R. 2879—Hold that employer may not be liable for a violation if workers were not actually exposed to the violation or if the employer did not create the conditions that cause the violation.

November 7, 1997—Ballenger—H.R. 2881—Allows Secretary to waive up to 100 percent of penalty on small businesses which correct their violation within the period of abatement or up to 100 percent of penalty to the extent that employer uses money that would have been paid as penalty for correcting the violation.

September 8, 1997—H. Amdt. 326 to H.R. 2264—Norwood—Seeks to transfer $11.2 million from OSHA to fund the Individuals with Disability Education Act.

104TH CONGRESS

June 14, 1995—Ballenger—H.R. 1834—Massive overhaul of OSHA to weaken the law and favor lawbreaking employers.

Mr. Speaker, I reserve the balance of my time.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in case any Members just came in in the last few minutes or little while or are watching on the monitor, let me remind us what we are doing. This particular hour we are giving consideration to H.R. 2729, the Occupational Safety and Health Review Commission Efficiency Act. That is what we are discussing. That is what is under debate and that is what we are going to vote on.

Mr. Speaker, in the report on H.R. 2729, the Committee on Education and the Workforce observed that once Congress has created a government agency, it must continue to monitor the government agency for its performance on behalf of the taxpayers. Surely nobody can disagree with that. When the performance of that agency is found to be unsatisfactory, Congress must seek to identify the reasons for this failure and then make the needed corrections. It is that simple. That is all this bill is about.

We are trying to make the needed corrections on behalf of the taxpayer. That is what this is about, regardless of what we previously have heard.

Mr. Speaker, we are all tasked with performing this oversight that Congress has mandated since the inception of the OSHA law. That process describes what H.R. 2729 seeks to accomplish in a narrow, surgically targeted measure. In correcting clearly identified problems, this measure will improve the agency's performance, increase efficiency and eliminate unnecessary government waste. Who can disagree with that?

Let me use this visual aid behind me to explain why it will do that. I am sure the blue and pink areas are seen prominently by all. These shaded areas represent the time periods when the agency specifically created by Congress to hear all disputes between OSHA and employers have not been able to meet. The shaded areas are an indication of a time when the review commission at OSHA was nonfunctional. It did not work. They were getting paid, of course, but it did not work.

This is since 1970. Half of the time since 1970 the review agency did nothing. That is not good for anybody, especially the American taxpayer, but more importantly, the worker or the employer.

□ 1345

They found it impossible or at least very difficult to perform the functions that the Congress said to them this is their job, this is what they must do.

This agency, the Occupational Safety and Health Review Commission, or OSHRC, was created by Congress for one single purpose; and, incidentally, had it not been created, there never would have been an OSHA Act. It would never have passed in 1970 had it not been for at the last minute OSHRC being put in.

Their job is hearing disputes between OSHA and the regulated community. They are the court. OSHA is the plaintiff. The small business person is the defendant. They are supposed to be totally independent of the Labor Department. To serve this important purpose, OSHRC, by statute, was given three members, or judges. Two members constituted a working quorum. That is, without an agreement between two judges on all issues of law, no decision can be issued. Without this agreement, OSHRC cannot perform its congressional mandate, and the review commission established by Congress is instead forced to shut down or come to a stalemate where waste and efficiency rule the day. Guess who gets to pay? The same old folks, the taxpayers.

Here is the problem. Stalemate and waste have been the rule over the history of this agency since 1970 rather than the exception. I am telling the Members they have been out of business half the time since 1970. As the visual I pointed to earlier, this one indicates the time of trouble highlighted by the shaded areas seems to overrun this timeline and it seems to signal a problem. And as one witness testified, these legal stalemates produce cases as long as 8 years old that sit on a court docket. That is not what Congress intended and it is not fair to anybody, 8 years of stalemate and waste.

Now we are trying to remedy that. It may be hard for Members to tell we are trying to remedy that with some of the demagoguery, but that is all we are trying to remedy. A simple remedy can be found by looking at OSHRC's sister agency, the Federal Mine Safety and Health Review Commission. There, Congress placed five members on their review panel; and since the mine safety law was passed 7 years after the OSHA Act, most believe this represents a lesson learned. With five commissioners, are they doing better than OSHA is with three? It is not hard. And the answer is, yes, they are.

A second remedial step is necessary to maximize efficiency, however; and H.R. 2729 accomplishes this by enabling the President to use what we call a ''hold-over'' provision to improve effectiveness and efficiency, which is what the taxpayers want, what we all should want. Simply stated, this provision would permit the President to ask incumbent members of OSHRC whose terms have expired to remain seated, listen to this now, remain seated no longer than 365 days, until the Senate can confirm a replacement. That lets this agency keep working.

Lastly, because the case is decided that OSHRC go on appeal directly to a United States court of appeals, we have inserted the word ''legal'' before the word ''training'' and subsection 12(a) of the OSHA Act. This directs the President to select qualified candidates, but it in no way prevents the appointments of individuals who are nonlawyers to serve on OSHRC because there is a threefold criteria for selections. It includes training, that is one of them; it includes education; and it includes experience.

Mr. Speaker, H.R. 2729 represents a very narrow change to the current law. It will have positive and sweeping consequences in terms of improving the performance and the efficiency of OSHRC while eliminating unnecessary government waste. Who can be against that?

I urge the passage of this bill. And I conclude by saying that the demagoguery earlier that says that this bill should be called More Injury and Death Marathon Act is shameful, it is embarrassing, and it is out of line.

Mr. Speaker, I reserve the balance of my time.

Mr. OWENS. Mr. Speaker, I ask unanimous consent that the gentleman from New Jersey (Mr. PAYNE), my colleague on the Workforce Protections Subcommittee, be allowed to control the balance of my time.

The SPEAKER pro tempore (Mr. TERRY). Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. PAYNE. Mr. Speaker, I yield myself such time as I may consume.

(Mr. PAYNE asked and was given permission to revise and extend his remarks.)

Mr. PAYNE. Mr. Speaker, I rise in opposition to H.R. 2729, the second quarter of the four terrible bills before us, which amends section 12 of the Occupational Safety and Health Act of 1970 to expand the Occupational Safety and Health Review Commission from three members to five members. They tell me that logically they are having a difficult time moving forward with three members; so, therefore, let us make it larger and we can move faster. That is a pretty good analogy. It is kind of the first time that larger is better. I always heard that they said lean and mean, that is where our government should be, cut down, reduce, get people out of our government.

So here we have kind of a, once again, making things convenient. There we go again. So as I look at these bills, H.R. 2728, H.R. 2729, H.R. 2730, H.R. 2731, they all go into the same sort of stealth kind of quiet killing. And I remember we talked now H.R. 1 was the top bill in our committee, Leave No Child Behind, education, our current President was going to be the educational President, he wanted to be known as. However, 4, 5, 6, 7 years ago, the Republican Party was out to eliminate the Department of Education. When Secretary Bennett took his job, he said, My job is to eliminate this Department, we do not need a Department of Education; I hope that I can dismantle it, when education now becomes a number one issue.

So I have problems trying to figure them out because one day it is there and the next day it is over here. This bill is just similar to that. This bill appears to require that commission members have legal training and provides that the President may extend the term of a member until the Senate has confirmed a successor, and that is pretty good because they can simply put up someone they know will not get confirmed and they can keep hold-overs forever. The commission has functioned with three members since its establishment in 1970.

The authors of the Occupational Safety and Health Act did not feel that there was sufficient work to justify five members and experience does not demonstrate otherwise. That is the reason, in their judgment, they decided to have three members to this commission rather than five. The majority states: ''While there are similarities between the mission of the Mine Safety and Health Administration and the Occupational Safety and Health Administration, there is one significant difference: the composition of the adjudicative commission tasked with adjudicating disputes between employers and the agency,'' that it is a difference.

It is true that the Mine Safety and Health Review Commission has five members, while the Occupational Safety and Health Review Commission has only three. However, it is also true that the Mine Safety and Health Review Commission has broader responsibilities, including responsibility for resolving whistleblowing complaints, than does the Occupational Safety and Health Review Commission. There is a difference in what they do and in their jurisdiction.

The majority wants to expand the size of the Occupational Safety and Health Review Commission to make it commensurate with the Mine Safety and Health Review Commission, but is unwilling to give the Occupational Safety and Health Review Commission commensurate duties. In other words, they use that as the model, but do not give it the same power.

Mr. Speaker, I believe also that the addition of the word ''legal'' as a modifier to training is also problematic. As a matter of fact, to me it is nonsensical. The Occupational Safety and Health Act requires that the President consider currently the ''training, education, and experience'' of potential review commission nominees. If enacted, H.R. 2729 would require the President to consider the ''legal'' training, education, and experience of potential nominees. Why is this necessary for its inclusion? It has been functioning well up to now.

The majority states that ''the requirement that training be legal in character will not prevent the selection of any other qualified individual

whose experience and/or education is of a nature to qualify him or her for service,'' that it is not necessary; however, it is put in. And the question is, Why?

In other words, the addition of the word ''legal'' does not restrict the President to only appointing those with legal training. The President may still appoint individuals exclusively on the basis of their experience or education even if they do not have legal training. The effect then of adding the word ''legal'' as a modifier of ''training'' is only to limit the kind of training that the President may consider. This, of course, makes no sense whatsoever.

Current law, which does not preclude the President from considering legal training or even legal education among other types of training or education, seems preferable to H.R. 2729, which arbitrarily links the kind of training the President may consider.

Health and safety experts who may not have legal training, but may nevertheless be very knowledgeable about the Occupational Safety and Health Act, and agency and commission procedures may be unfairly and unwisely excluded from consideration for the position of the commission since people would question that it must be important if the term legal now is put into the bill, and, therefore, they would not put it in and therefore ignore it. I think that it has taken a wrong turn. I do not think it is necessary.

I believe that the commission and workers' health and safety would suffer from such an arbitrary exclusion of nonlawyer talent and expertise.

Another point brought up by the movers of this bill is that this bill, in my opinion, does not improve the efficiency of the commission as the proponents said it does because there is an argument that if there is one vacancy, then there is no decision because there is a tie. My fellow colleagues on the other side have recommended we add two people. Now what happens if one person is still absent? One and one is a tie if we only have two. With five, two and two is a tie if one is vacant. So if one is vacant under three, I am still trying to see what the difference is if there is one vacant under five.

One difference is that taxpayers certainly would have to be paying more money because we would have more people to tend with, we would have more folks, and we are once again making bigger government. We are just expanding, which, once again, confuses me because I have always been told that the other side wanted to reduce the size of government.

So I would just like to certainly urge the defeat of this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

I want to sincerely and honestly thank the gentleman from New Jersey (Mr. PAYNE) for staying on the subject matter. We are indeed dealing with this bill. He and I may not agree, but at least we are having a discussion about the bill, and there may be just a couple of things that I want to make sure we have clear.

□ 1400

The gentleman indicated that should the President make an appointment, that that could be forever. That is simply not true. It is 365 days. The bill clearly states that. If the President makes an appointment, it is for 365 days, not forever.

Secondly, the word ''legal,'' that is an interesting thing. I tended to not want to do that too. I understand that. But the problem is, OSHRC is an adjudicative agency, and appeals from OSHRC go straight to the U.S. Court of Appeals. That strongly indicates, perhaps, some need for legal training, and this training could be a very useful tool for a member of this commission in light of the role that they play before it goes to the Court of Appeals.

Secondly, I am very concerned that the courts have been giving deference to the plaintiff. The plaintiff in this case is OSHA. The court should be the review commission. The courts have been giving deference to the plaintiff, rather than the court, and perhaps this will stop some of this.

In terms of efficiency and going from three members to five and the gentleman's indication that he is really against growing government, Congress has a very difficult time saying, you know, this is not working. We need to do something about this. This agency is not efficient. This agency is not getting done what Congress asked it to do.

I pointed out earlier that this agency has almost been out of work half of the time since 1970. What could possibly be done to make it much more inefficient than that? For some 20 percent of the agency's history, it has not had a statutory working quorum in place, and despite otherwise fully staffed people in the agency, they could not act. That is wasteful and that is inefficient.

Will five do better than three? Let us pray, is all I can tell you. It certainly has worked better for MSHA, and we hope that it will for OSHRC.

Mr. Speaker, I reserve the balance of my time.

Mr. PAYNE. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY), the ranking member of the Subcommittee on Education Reform of the Committee on Education and the Workforce.

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I rise in opposition to H.R. 2729 because our workers deserve to know that their interests will be represented on the Occupational Safety and Health Review Commission and they need to know this will be an unbiased judgment.

But first, let me be clear that these four bills we are talking about now are not a worry to any of us up here when we are looking at the employers who actually take care of their workers, the employers who know that workers have families and they are very concerned when they put their policies for safety and health in place. They are concerned about these families. They are concerned about these workers.

But those are not our worries. Our worry is about the employer that does not do that.

This legislation, I believe, will threaten one of the only hopes a family has for justice when a loved one is harmed at work. By increasing the membership of the commission from three to five, the administration could play politics with the commission with anti-employee-safety employees and requiring quorums for a meeting, which could delay a decision indefinitely, ultimately making good decision-making almost impossible through the inefficiency of gathering a group. If you cannot gather a group of three, how will you gather a group of five?

Since Bush took office, it has been clear that he intends to use OSHA to protect big business rather than worker safety. First, he signed legislation overturning workplace safety rules to prevent ergonomic standards. Then he advocated budget cuts for job safety agencies such as OSHA and NIOSH. He went even further by suspending 23 important job safety regulations.

The list goes on and on, and it is my opinion that this legislation is just another way for the anti-OSHA weakening that the administration is hoping for.

Employees need to know they are considered to be as important as business interests. They deserve to know that they matter as much as the bottom line.

Mr. Speaker, this legislation is not what workers need or what workers want. They want to know that their voice will be represented on the commission; they want to know that their grievances will be taken seriously and handled efficiently, and for that very reason, I urge my colleagues to oppose H.R. 2729.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I need to remind everybody that this hour is devoted to H.R. 2729, that it is about the Occupational Safety and Health Review Commission Efficiency Act. That is exactly what we are talking about.

I want to remind everyone that a President, a President of either party, is going to appoint somebody to the commission that they agree with. That makes sense, whether it be President Clinton or President Bush. But all of these confirmations have to be confirmed in the Senate, so there is a check and a balance on it no matter which party is in the White House.

The comment earlier about President Bush is more concerned about big business than worker safety , I would simply say this bill is about small business. It has not got anything to do with

big business. It is about helping small business.

To simply say, well, this is not what workers want, is very presumptive. There are 92 percent of the population out there that are working families who own businesses, who work every day, and they do want some relief in the regulatory element, particularly, particularly, when the setup at OSHA is so unfair and the deck is stacked against them.

So I will tell you that a lot of small businesses and a lot of working families do want this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. PAYNE. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. ANDREWS), the ranking member on the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce, who does an outstanding job in that capacity.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I thank my friend from New Jersey for his generous compliment and for yielding me time.

Mr. Speaker, I very much appreciate the motives of my friend from Georgia who brought this legislation to the floor. I know he does everything he does out of goodness of spirit and intention, and my remarks are not meant to be critical of his intention. I do oppose his bill, however, for three important reasons.

The first is the bill is reminiscent, to me, of American history from the 1930s, when President Franklin Roosevelt was unhappy with some of the results he was getting from the U.S. Supreme Court, so he decided to try to change the number of people on the U.S. Supreme Court. The history books called this a ''court-packing'' scheme.

I have to wonder if what this legislation is really about is about changing some of the results on this commission by changing the number of commissioners. I have heard the concerns about quorums. I think that is something that is a problem that could be cited in a number of different Federal agencies.

I would say to my friends on the other side, Mr. Speaker, if you want to change the substance of what the commission is doing, then change the statute. Bring it to this floor and let us have an open and fair debate. But changing the number of commissioners, I think is an inappropriate way to do that.

The second concern that I have about the emphasis, as my friend, the gentleman from New Jersey (Mr. PAYNE) talked about, on people with legal training serving on this commission, I actually think that the President of either party ought to have the broadest discretion to determine what is a suitable background for service on this commission.

I would raise a question as to this point. Since many people who are active in the labor movement do not have a legal background, I only have to wonder if one of the ideas behind this provision is to make it more difficult for a President to appoint a labor leader to this commission, which would be unfortunate.

The third reason I oppose this, frankly, goes to the relatively narrow nature of this bill at a time when there are so many other major problems the country is facing. The country is embroiled in a very serious policy problem. I know a lot of tomorrow is going to be devoted to that debate. I am not sure we are going to have enough time for all of the Members to come to this floor and express their concerns about what is happening in the Middle East to our country right now.

There are 45 million Americans without health insurance. We had a bill on the floor last week that purported to speak to that. There are a lot of other ideas we could be debating on this floor that we are not.

Hundreds of thousands of Americans have seen their unemployment insurance expire in the last few months, and we have yet to see brought to the floor a bill that would give us a chance to debate and vote on the extension of unemployment benefits.

I think when there are such immense questions facing the country, to be taking up the time of the House on the very narrow question of whether there should be five members on this commission or three is an unfortunate allocation of time.

Mr. Speaker, I would urge opposition to the bill.

Mr. NORWOOD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first, I would like to say to the gentleman from New Jersey (Mr. ANDREWS) that I have great admiration for him, that I always listen to him very carefully, and when he speaks, it is usually well thought out and there is some wisdom behind it. I appreciate that.

I do not necessarily agree with his remarks, but I am thankful he stayed on the subject, generally speaking, of the bill that is before us. I suppose actually we could sit down and probably have some long nights of discussion as to whether there should be three members, four members, five members. But both of us know that the commission is simply not working.

My suggestion is to vote for this bill and let us give a chance for something else to work, particularly when we know that the commission is working pretty well over at MSHA.

I do not know anything sinister about the appointments by the President. It is pretty simple. Frankly, what we need to do is have this commission operate. You cannot operate if it is going to take 8 years producing its findings, and that happens occasionally simply because there is no one there that can get confirmed in the Senate. We need to give Democrat or Republican Presidents an opportunity to put somebody in.

Mr. ANDREWS. Mr. Speaker, will the gentleman yield?

Mr. NORWOOD. I yield to the gentleman from New Jersey.

Mr. ANDREWS. Mr. Speaker, I appreciate the gentleman's kind remarks. I did want to make one follow-up point about the legal requirement to be appointed.

My understanding is that to be a commissioner on the Securities and Exchange Commission, which certainly involves tremendous issues of adjudication, you do not need to have, necessarily, a legal background to do that. I would just ask the gentleman to reconsider that important point, that directing any President to appoint a person only with a legal background here, I think, is a serious mistake that we did not make on the Securities and Exchange Commission.

Mr. NORWOOD. Mr. Speaker, reclaiming my time, as the gentleman knows, the legal training simply is not the only criteria. There are other criteria, such as education and experience, and I do not necessarily think that it has to be a lawyer.

Speaking of the AFL–CIO, they have as many lawyers in this town as anybody in Washington. I am not worried about them not getting somebody on the commission.

We have probably said enough. It is time to vote.

Mr. Speaker, I reserve the balance of my time.

Mr. PAYNE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would indicate that the gentleman, putting this ''legal'' terminology in here, I hear him passionately argue this bill and bring his points up. If the new appointing authorities would look at him, he would probably not be one who would be considered because he is medical and not legal. I think that he would probably serve well on that commission, but his legislation would probably discriminate against him.

Mr. Speaker, I yield 2½ minutes to the gentleman from Texas (Mr. HINOJOSA)

Mr. HINOJOSA. Mr. Speaker, I rise in opposition to H.R. 2729 and the other OSHA bills under consideration today.

Let us not fool ourselves. Today, we are considering legislation that will weaken the enforcement of our Occupational Safety and Health laws. The bills before us will delay the abatement of unsafe working conditions, weaken the Secretary of Labor's authority to regulate workplace safety and discourage the filing of complaints for unsafe working conditions.

□ 1415

A safe working environment should be the right of every worker. Sadly, in the United States of America, the world's lone superpower, the wealthiest Nation on the planet, it is not. The

workplace is particularly dangerous for the Hispanic workers.

The Associated Press recently reported that Mexican-born workers are more likely to die on the job than any other group, and the disparity is increasing. Mexican migrants take the most dangerous jobs. Many of them are afforded no safety equipment and no training. They are killed in the fields, or they fall from construction sites.

Listen to these staggering statistics. Mexican workers represent one in 24 workers in the United States and are victims of one in 14 workplace deaths.

Training and workplace safety must be a part of our workforce development. Employers must be held accountable for meeting basic occupational health and safety standards. No one should lose a husband, a wife, a mother, a father, a son or a daughter because of a lack of training or safety equipment. Workers are not disposable. Yet when OSHA fails to seek criminal prosecution for 93 percent of the companies that have willfully and flagrantly violated workplace safety laws at the cost of workers' lives, that is the message that is sent.

We have a responsibility to send a different message. Our workers are a firm's most valuable resource, and that should be our bottom line. Unfortunately, today we will not send this message. Today some of the majority in the House will vote to weaken workplace safety without a thought or concern for those whose lives are at risk. I urge my colleagues to oppose H.R. 2729. In fact, it seems to me we should oppose all four OSHA bills.

Mr. BOEHNER. Mr. Speaker, I reserve the balance of my time.

Mr. PAYNE. Mr. Speaker, I yield the balance of my time to the gentleman from New York (Mr. OWENS), the ranking member of the Subcommittee on Workforce Protections, who has done an outstanding job for working people.

Mr. OWENS. Mr. Speaker, I rise to close for the opposition on H.R. 2729.

As I stated at the outset, neither H.R. 2729 nor any other of these four bills before us addresses the important health and safety concerns of American working men and women. In essence, H.R. 2729 gives us the worst of both worlds, a bigger government bureaucracy designed to accomplish less on behalf of the American worker. Moreover, this bill would mandate legal training as a qualification for appointment to the commission. This diminishes what ought to be a primary qualification as a commissioner and that is expertise in the field of occupational safety and health.

Having stated these clear reasons for opposition to this bill, which I urge my colleagues to follow, I would like to turn my attention once more to the urgent concern about the safety of American workers. That concern is over the protection of workers' lives on the job. At present, OSHA does little more than slap the wrists of employers that are egregious safety offenders. As the New York Times noted in its compelling series on worker deaths, OSHA has a 20-year track record of failing to seek criminal prosecution in a staggering 93 percent of cases they investigated where willful and flagrant safety violations by employers killed workers.

And after you institute this proposal for H.R. 2729, it is just one more little reason why they would have less vigor in prosecuting anybody.

Congress has an important role to play in holding both OSHA and unscrupulous employers accountable. One problem is that under the current statute, OSHA can only issue a misdemeanor penalty for an employer who has willfully caused the death of a worker. A misdemeanor has no deterrent value whatsoever. If you harass a wild burro on Federal lands, you face a stiffer penalty than if you kill an American worker. What signal does this send to a small number of unscrupulous employers who actually build up a history of willfully causing worker deaths? Are we saying to these wrongdoers, do not worry about protecting the lives of your workers because Congress cares more about wild burros than about the men and women in your employ? Pestering a wild burro in a national park can send you to prison for an entire year, but killing a worker only lands you there for 6 months.

More importantly, what signal does that send to grieving family members who are left behind? You cannot receive any justice because Congress does not have a fundamental respect for the lives of your loved ones.

Along with Senator JON CORZINE, I have introduced a bill to make killing a worker a felony offense. I tried to get this bill included in one of these four bills because it is germane, in my opinion; but it was ruled out of order. Rather than a radical departure from current law, this bill is just a moderate adjustment that is long overdue. H.R. 4270 and S. 1272 correct a glaring oversight in Federal policy, and I will describe it in more detail later on.

Mr. BOEHNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, the bill before us, H.R. 2729, makes two very small changes in the OSHA law. One, it says that the OSHA Occupational Safety and Health Review Commission panel be expanded from three to five members. We have gone through the various reasons why that is important. We believe that having virtually 8 years without a quorum and these cases languishing there for some time are really unfair to the employers and to the agency. And by expanding the commission from three to five members, we believe we will speed up the efficiency of that review commission.

The second issue in the bill outlines the type of background of people who belong on this review commission. These are commonsense bills that we believe will help worker safety, help improve the cooperation between OSHA and the employer community. Again, commonsense bills that deserve our support.

Mr. HOLT. Mr. Speaker, I rise in opposition to H.R. 2729, the Occupational Safety and Health Review Commission Efficiency Act. The bill expands the size of the Occupational Safety and Health Review Commission, which hears disputes between OSHA and employers, from three to five members, and permits the President to extend the term of a commission member until the Senate confirms a successor.

This is a transparent effort to stack the Commission with two new members appointed by the Bush administration. There has been no demonstrated need to increase the Commission from three to five members. The Commission has had three members since it was established in 1970.

Proponents of this bill argue that the Mine Safety and Health Review Commission has five members. The responsibilities of the Occupational Safety and Health Review Commission responsibilities, however, are not as broad as those of the Mine Safety and Health Review Commission. For example, unlike the mine safety panel, the Occupational Safety and Health Act Commission does not have the responsibility to resolve whistle-blower complaints.

Further, since the bill does not change the statutory definition that two members constitute a quorum, expanding the membership to five would mean that a minority of the commission would constitute a quorum—allowing the two members appointed by the Bush administration to make unilateral decisions.

Finally, the bill permits members to continue to serve until a new member is confirmed, which may result in an individual serving for years without being subject to reappointment and confirmation, encourages filibusters, and diminishes the incentive to develop consensus between labor and management and Republicans and Democrats with regard to Commission appointments.

Mr. Speaker, for all these reasons I must ask my colleagues to oppose this bill. I hope that in the future the majority leadership will help America's workers with legislation that will increase the minimum wage and protecting overtime rights and not undermine those protections.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. REHBERG). All time for debate has expired.

Pursuant to House Resolution 645, the previous question is ordered on the bill, as amended.

The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read a third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PAYNE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion are postponed.

OCCUPATIONAL SAFETY AND HEALTH INDEPENDENT REVIEW OF OSHA CITATIONS ACT OF 2004

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 645, I call up the bill (H.R. 2730) to amend the Occupational Safety and Health Act of 1970 to provide for an independent review of citations issued by the Occupational Safety and Health Administration, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 645, the bill is considered read for amendment.

The text of H.R. 2730 is as follows:

H.R. 2730

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Independent Review of OSHA Citations Act of 2003''.

SEC. 2. INDEPENDENT REVIEW.

Section 11(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660) is amended by adding the following at the end thereof: ''The conclusions of the Commission with respect to all questions of law shall be given deference if reasonable.''.

The SPEAKER pro tempore: Pursuant to House Resolution 645, the amendment printed in the bill, modified by the amendment printed in part B of House Report 108–497, is adopted.

The text of H.R. 2730, as amended, as modified, is as follows:

H.R. 2730

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Independent Review of OSHA Citations Act of 2004''.

SEC. 2. INDEPENDENT REVIEW.

Section 11(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660) is amended by adding the following at the end thereof: ''The conclusions of the Commission with respect to all questions of law that are subject to agency deference under governing court precedent shall be given deference if reasonable.''.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. BOEHNER) and the gentleman from New York (Mr. OWENS) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

GENERAL LEAVE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2730.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the third bill that we will debate today in this series of four is another narrowly craft bill that addresses a specific problem that we found in the OSHA law. The Occupational Safety and Health Independent Review of OSHA Citations Act restores independent review of OSHA citations by clarifying that the Occupational Safety and Health Review Commission is an independent judicial entity given deference by courts that review OSHA issues.

In 1970 when they created OSHA, Congress also created this commission to independently review all OSHA citations. The commission was intended to hold OSHA in check and ensure that it did not abuse its authority. Congress passed the OSHA law only after being assured that judicial review would be conducted by ''an autonomous independent commission which, without regard to the Secretary, can find for or against him on the basis of individual complaint.''

Congress even separated the commission in the Department of Labor. It was truly meant to be independent. The bill before us restores the original system of checks and balances intended by Congress when it enacted the OSHA law and ensures that the commission, in other words, the court, and not OSHA or, in other words, the prosecutor, would be the party who interprets the law and provides an independent review of OSHA citations.

Now, let me put this in simpler terms for everybody. If you are stopped by a police officer and you are issued a citation for speeding, would you want the same officer who gave you the ticket to be your judge and jury and decide whether you are guilty or not? Well, of course you would not. And, unfortunately, for small businesses today the law is ambiguous and vague.

Since 1970 the separation of power between OSHA and the review commission has become increasingly clouded because of legal interpretations mostly argued by OSHA in an effort to expand its own authority. Congress intended there to be a truly independent review of the disputes between OSHA and employers; and when this dispute centers on OSHA's interpretations of its authority, Congress intended the independent review commission, not the prosecuting agency, OSHA, to be the final arbiter.

H.R. 2730 restores this commonsense system of checks and balances. Employers are facing enough competition in the workplace. They are facing high taxes, rising health care costs, burdensome government regulations. All of these bills that we have brought to the floor today are intended to help small businesses that are the engine of economic growth in America be all that they can be and to survive in this very difficult economic climate. I would encourage my colleagues today to support this measure.

It is another commonsense bill that would help increase the amount of worker safety and health safety that we see in the workplace each day.

Mr. Speaker, I include the following letters for the RECORD:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 17, 2004.

Hon. JOHN BOEHNER,
Chairman, Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR CHAIRMAN BOEHNER: On May 13, 2004, the Committee on the Judiciary received a sequential referral of H.R. 2730, the ''Occupational Safety and Health Independent Review of OSHA Citations Act of 2003'' through May 17, 2004. In recognition of the desire to expedite floor consideration of H.R. 2730, the Committee on the Judiciary hereby waives further consideration of the bill with the following understanding.

I believe the bill as introduced might have been read to change the standard of appeals court review of Occupational Health and Safety Review Commission decisions, a matter that would fall with the Rule X jurisdiction of the Committee on the Judiciary. I understand, however, that the intent of the drafters was simply to make the policy choice that courts should, in exercising normal agency deference under established precedent, defer to the Commission rather than the Occupational Safety and Health Administration itself—not to change the standard of review. I understand that you are willing, during floor consideration of H.R. 2730, to add the following language to the bill: Insert after ''all questions of law'' the following: ''that are subject to agency deference under governing court precedent'' and that you will offer an amendment to do so. With that understanding, I will not seek to extend the sequential referral of the bill for a further period of time.

The Committee on the Judiciary takes this action with the understanding that the Committee's jurisdiction over these provisions is in no way diminished or altered. I would appreciate your including this letter and your response in the Congressional Record during its consideration on the House floor.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

COMMITTEE ON EDUCATION AND THE WORKFORCE, HOUSE OF REPRESENTATIVES,
Washington, DC, May 17, 2004.

Hon. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, Rayburn HOB, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: Thank you for your letter regarding our mutual understanding of the intent and purpose of H.R. 2730, the Occupational Safety and Health Independent Review of OSHA Citations Act of 2004 and process for considering this bill. I agree that our intent was simply to make the policy choice that courts should, in exercising normal agency deference under established precedent, defer to the Commission rather than the Occupational Safety and Health Administration itself—not to change the standard of review. Had the language of the reported bill been clear on this point, the Committee on the Judiciary would have had no jurisdictional interest in the bill. I have submitted an amendment to the Committee on Rules that would make the change as outlined in your letter to me, which clarifies the bill and which I have requested be made part of the rule.

With this understanding, I agree that these actions in no way diminish or alter the jurisdictional interest of the Committee on the Judiciary. I will include our exchange of letters in the Congressional Record during the bill's consideration on the House floor.

Sincerely,

JOHN A. BOEHNER,
Chairman.