

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 crafted 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.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 13, 2004.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I am writing to request a sequential referral of H.R. 2730, the "Occupational Safety and Health Independent Review of OSHA Citations Act of 2003."

H.R. 2730 contains matters that fall within the Committee on the Judiciary's Rule X jurisdiction. The bill amends the judicial review provisions of the Occupational Safety and Health Act. The amendment as currently drafted would require the federal courts of appeals to defer to the decisions of the Occupational Safety and Health Review Commission on all questions of law if those decisions are reasonable. This is an explicit direction to the courts as to how to review cases and would change the standard of review for questions of law that are not subject to normal agency deference under governing court precedents. In short, these provisions fall within the judicial and administrative procedure jurisdiction of the Committee on the Judiciary under rule X(1)(k)(1)&(2) ("The judiciary and judicial proceedings, civil and criminal", "Administrative practice and procedure").

Because of this Committee's strong jurisdictional interest in this legislation, I respectfully request that you sequentially refer this legislation to the Committee on the Judiciary. Thank you for your attention to this matter.

Sincerely,

F. JAMES SENSENBRENNER, JR.,
Chairman.

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

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

I rise in opposition to H.R. 2730. This bill does no more than any of the others before us today to address any critical safety and health needs of American workers.

H.R. 2730 gives the Occupational Safety Review Commission policy-making authority by permitting courts to give deference to the commission with respect to interpretations of OSHA standards. In this way H.R. 2730 weakens the fundamental powers of the Secretary of Labor. Those of us on this side of the aisle maintain that the Secretary of Labor is best able to regulate and enforce safety standards.

We asked the question, and never got any answer, as to whether the current administration supports H.R. 2730 given its stated purpose. Having stated this clear reason for my opposition to the bill, which I urge my colleagues to follow, I would like to turn my attention once more to another urgent safety concern. This pertains to the highly disproportionate death rate of Latino workers in this country.

As I referenced in my opening statement, a recent series of articles by the Associated Press documented the toll this rising death rate is taking in the Latino community. I would like to relate several egregious cases of Latino worker deaths and put a human face on this alarming social problem.

Case number one, Miguel Victor Canales. Miguel Canales was killed 4

years ago while securing shingles to the roof of a new luxury home being built in Arlington, Virginia. Miguel fell off the roof because another employee had failed to install a safety brace. Miguel's stepson was a coworker who witnessed the fatal accident. Miguel's death so traumatized the stepson that he was unable to speak for the following 6 months.

The employer, Octavio Estevez, was an unlicensed subcontractor without workers compensation insurance. Octavio Estevez had routinely failed to pay his employees their rightfully earned wages. After his death, Estevez refused to pay Miguel's prior earned wages to the surviving family members. The employer relies on day laborers and refuses to provide them with any safety equipment or training.

The second case is Joel Bajorques. Joel was a 21-year-old from Guatemala who was killed when he fell off a roofing job in Rockville, Maryland, into a vat of hot tar.

□ 1430

This took place on a commercial project undertaken by a roofing company. Joel died from severe third degree burns over his entire body. As unbelievable as it may seem, Joel's death was ruled to be the result of natural causes.

Joel's surviving parents and siblings in Guatemala had depended upon his wages to help support the entire family. Since Joel's death in 2002, another worker at the same company has been killed in the exact same way.

Case number three: Juan Vasquez, a Guatemalan worker, was killed using a jackhammer during his first day on the job. He was working at a private home in Bethesda, Maryland, when a brick wall collapsed on him. He had not been given even a hard hat. His employer refused to cover any of the funeral expenses or to provide any compensation to his surviving wife and two young sons. As a result, Juan's family had to borrow more than \$6,000 to pay for shipping the body home and burial expenses.

Case number four: Urbano Ramirez was a Mexican farm worker killed by heatstroke while harvesting cucumbers in North Carolina. The exact circumstances of his death are as follows. Urbano felt faint and was told by a foreman to go sit under a tree. Neither he nor any of the other workers had been provided with water. When the foreman had the workers change fields that day, Urbano was left behind and forgotten. His body was not found until 10 days later. Failure to provide workers with water violates an OSHA standard. In the end, the grower was only fined \$1,800 for this OSHA violation that caused the death of Urbano Ramirez.

Let me also review how OSHA is faring in addressing the skyrocketing rate of Latino worker deaths. To date, OSHA has limited its efforts to creating a Spanish language Web page and

distributing Spanish language pamphlets to Mexican consulates. Yet very few vulnerable immigrant workers are likely to be reached in this manner. OSHA's Hispanic Task Force is mainly comprised of regional administration with no prior knowledge of issues confronting Latino workers. In fact, for the past 3 years, the Bush administration's budget has zero-funded the only OSHA program, called Susan Harwood Grants, to provide union and community-based outreach on safety issues to immigrant workers. Members on this side of the aisle successfully opposed these cuts.

Clearly, OSHA needs to step up to the plate on this issue and take serious, concerted steps to address the crisis posed by Latino worker deaths.

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

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

It is probably appropriate to remind everyone that we are on the third of four bills, H.R. 2730. It is about the independence review of OSHA's citations. That really is what we are discussing this hour.

Mr. Speaker, it gives me great pleasure to yield 5 minutes to the gentleman from Indiana (Mr. PENCE), my friend.

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

Mr. PENCE. Mr. Speaker, I rise today with great enthusiasm for the work of my friend and colleague, the gentleman from Georgia (Mr. NORWOOD), in not only the legislation before us this hour, H.R. 2730, but also the companion legislation, which I truly believe will develop, in sum total, better cooperation between OSHA and employers.

I also believe that these reforms and the predictability that they will encourage will improve workplace safety as they enhance business competitiveness and, at the end of the day, more jobs.

In east central Indiana, small business America has one thing on their mind, and that is looking after employees, but doing that in such a way that we can create jobs and opportunities for Hoosiers. This legislation authored by the gentleman from Georgia (Mr. NORWOOD) and passed by the Committee on Education and the Workforce, companion to the other three bills, will be about that.

First, a word on the Occupational Safety and Health Independent Review of OSHA Citations Act; I know it is a long name, but a simple concept. Mr. Speaker, by simply reasserting the proper role of the courts and the proper role of the independent review panel, what we will do today on the floor of the Congress is, we will affirm that the original intent expressed in the act is renewed and encouraged, and this, in and of itself, will result in greater predictability for businesses, small and large.

Beyond that, I come to the floor today with a great passion for this

issue. During the 107th Congress, Mr. Speaker, I served as the chairman of the Committee on Small Business Subcommittee on Regulatory Reform and Oversight; and in hearing after hearing that I chaired I heard of the extraordinary burden that regulatory red tape places on small businesses across America.

A couple of statistics that are informative: For every dollar of direct budget spending devoted to regulatory activity, according to the Office of Management and Budget, the private sector spends \$45 in compliance, and these regulatory burdens are, of course, most harmful for small businesses.

According to the Small Business Administration, firms employing fewer than 20 employees had a regulatory burden in the year 2000 of \$6,975 per employee which is nearly 60 percent higher than the \$4,400 estimated for firms of more than 500 employees. Considering that the U.S. Census Bureau says that small businesses have accounted for 60 to 80 percent of net new jobs in the United States economy over the past decade, this should obviously be a subject of enormous urgency in this Congress, and I commend my colleague for bringing these measures forward to address it.

There has been talk today about an erosion of safety in the workplace. The truth is, though, that under the present administration, according to the U.S. Bureau of Labor Statistics, there has actually been a 1 percent reduction in workplace injuries between 1999 and 2002, and even more happy news, worker fatalities have been reduced by over 500 annually during the present administration.

This administration and this Congress and this majority are committed to workplace safety, to renewing that pact between American business and the American worker and common-sense regulation in Washington, DC, but as H.R. 2730 proposes to do today, along with the companion legislation, we must do that in a way that is consistent with a free market economy, that understands the proper role of the courts and the Congress and of regulatory agencies, as H.R. 2730 confirms.

So this bill is about reaffirming the original intent of Congress, which well we should do. It is about improving worker safety and reducing Federal red tape; but at the end of the day, Mr. Speaker, it is about jobs, and let us make no mistake about that.

As my friend and colleague, the gentleman from Georgia (Mr. NORWOOD), has said on several occasions in the last several days in various venues on Capitol Hill, maybe you are not for this legislation, maybe you do not have small businesses in your district. Well, we do in eastern Indiana, and cutting Federal regulatory red tape is as urgent a business of this Congress as cutting the onerous burden of taxes on small business owners for revitalizing that small-town, small-business economy that makes my district great and makes America great.

I thank the Speaker and I thank the gentleman for yielding the time.

Mr. OWENS. Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey (Mr. PAYNE).

Mr. PAYNE. Mr. Speaker, I certainly rise in opposition to H.R. 2730.

My good friend, the gentleman from Ohio (Mr. BOEHNER), talked about the fact that he would not want a policeman who wrote the ticket to be the jury also, and therefore, it is better to take this out of the hands of the policeman writing the ticket and put it in the hands of the commissioner.

However, I might just tell the gentleman from Ohio (Mr. BOEHNER), I am glad that he does not have much contact, nor do I, with law enforcement, but the only difference is the policeman does not set the speed limit. The policeman does not create the offense. He simply writes the tickets. So, just a small point. I think he had an interesting example, but I do not think it was too legitimate.

But he is a good friend of mine. I will get a chance to talk to him about that analogy of the policeman writing the ticket and being the judge at the same time; therefore, saying it should be in the hands of another commission, not the Secretary.

I rise in opposition to H.R. 2730, a bill that would give the Occupational Safety and Review Commission policy-making authority by allowing courts to give deference to the commission regarding the interpretation of the Occupational Safety and Health Commission standards.

This change would undermine the Department's enforcement function by encouraging challenges to the Secretary's rules and interpretations if it is given to another body. Then it would be open season; every time the Secretary makes a determination, there would be a challenge to it, then put it to the other body which, once again, this commission would be a stalling tactic, simply once again making it more bureaucratic.

It makes government, to me, more cumbersome, not making it lean and mean and effective, as this legislation calls this particular bill, the Efficiency Act. But anyway, this does not make it more efficient in my estimation.

Mr. Speaker, I believe that the Secretary is in a much better position to interpret regulations than the commission. Beyond the obvious fact that the Secretary issued the regulations in the first instance, as noted by the court, it is the Secretary who has broader contact and, consequently, greater expertise with both the regulated community and with the impact of regulations on the community.

Further, viewing the commission's authority as being similar to those of a court fully achieves the purpose of protecting the regulated community from biased interpretation of the Secretary's authority.

Finally, contending that the commission should have both adjudicatory and

rule-making authority, as the majority does, creates unnecessary and unwanted confusion by leaving two agencies responsible for determining policy. For all of these reasons, we conclude that the court's view of the act is more reasoned and more sensible than these changes.

I think that we are adding, in my opinion, more confusion by trying to come up with rulings, and so it is not consistent with the OSHA act's legislative history and does not reflect sensible policy. I cannot understand why it is being offered, and for that reason, I respectfully urge my colleagues to vote against this legislation.

Mr. NORWOOD. Mr. Speaker, I yield myself whatever time I may consume.

Mr. Speaker, H.R. 2730 squarely focuses on the needs to reestablish Congress' intent and the needs to have an effective system of checks and balances on agencies like OSHA when they are given so much latitude to interpret the scope of their own authority.

Mr. Speaker, Congress gave OSHA an unprecedented level of authority to enter the workplace in 1970, and it knew that with this unprecedented level of authority ran the possibilities of abuse, and there are more than a few occasions of that over the last 35 years. As with all matters under American law, there is a fine line between implementing needed protections and over-intrusiveness by a government agency. That is very important stuff.

With this in mind, Congress devised a system of checks simply to keep OSHA within the boundaries of the playing field established by Congress. Let me provide a good example.

Many of my colleagues will recall the front page of the Washington Post on January 4, 2000. The headline in the upper right-hand corner of the Post read, "OSHA Covers At-Home Workers." I use this example not to rub salt in old wounds left over from the Clinton administration, but simply to say that OSHA has a rather checkered past, shall I say, when it comes to interpreting the limits of its authority under the OSH act.

Left to its own devices, OSHA has a history of crossing the line and going out of bounds. I am not making that up. There are examples after examples. While OSHA may think they break the rules for the right reasons, others see these attempts to expand the agency's reach as an intrusive, unauthorized government act.

Funny, but the legislative history behind the OSH act seems to suggest that Congress envisioned these power grabs.

□ 1445

You have to be rather proud of the Congress in 1970. And let me call my colleagues' attention to the visual I will now point to as proof.

This visual clearly indicates how the systems of checks that Congress placed on OSHA was intended to work. What you see is lifted directly from the CONGRESSIONAL RECORD of November 17,

1970. That was the very day that a compromise was struck that removed the threat of a Presidential veto, and it calmed the resistance that had prevented the passage of the OSH Act for years. As Senator Javitz noted at the time, the future of the OSH Act depended on the establishment of OSHRC. Without this system of checks being put in place, the OSH Act might not have passed in 1970, perhaps not at all.

That compromise, without question, structured an independent judicial review agency which, and I quote, "without regard to the Secretary of Labor can find for or against him on the basis of individual complaints." I submit that what Senator Javitz said on the floor of the Senate November 17, 1970, has a direct and clear application to H.R. 2730. That is, under the OSH Act, Congress intended there to be a truly independent review of the disputes between OSHA and employers, and when this dispute centered on OSHA's interpretation of its authority, that OSHRC and not the prosecuting agency, OSHA, was to be the final arbiter.

The review commission is the court. The Labor Department is the prosecutor and the small business owner, generally, is the defendant. And that is quite simply all H.R. 2730 does. In one sentence, this legislation restores the systems of checks and balances that Congress truly did intend 34 years ago. This measure could not be crafted more narrowly to serve a more direct purpose.

Now, my colleagues may not agree with what Congress said in 1970, but the fact remains they did say it. It is only common sense to have an entity that can review unfettered interpretations; and it happens every day, like OSHA's jurisdiction over individual homes. That is why OSHRC was created and why Congress broke with the administrative tradition in 1970.

I want to refer back to the chairman's analogy, because, I say to the gentleman from New Jersey (Mr. PAYNE), I happen to like it. A police officer writing a citation for a speeding violation does not and should not get the chance to serve as an impartial judge or jury. He simply has a biased opinion on the matter. OSHA should not have that right either.

I urge my colleagues to vote "yes" on passage of H.R. 2730 because it restores congressional intent as it re-institutes a system of checks and balances and just may prevent the kinds of interpretations that have drastically, drastically expanded OSHA's reach into the workplace in the past.

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

Mr. OWENS. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, I rise in opposition to H.R. 2730 because instead of working to strengthen OSHA, my Republican colleagues have again presented us with another piece of legislation aimed at weakening it.

For the record, Mr. Speaker, before being elected to the House of Representatives, I spent 20 years as a human resources professional, and I was also a small business owner. I can speak with authority when I say that workers do a better job for their employer if they are protected and if their health and safety is of concern to that employer.

When there is an accident resulting in injury and/or death, workers and their families, I can tell you absolutely, want any resolution to be handled fairly and efficiently and with their best interests in mind. They need to trust in the review. They need to trust in the final decision that results. And the Secretary of Labor is, obviously, the best final authority on how OSHA law is interpreted.

This bill, H.R. 2730, works to undermine the Secretary's authority, giving the commission too much latitude in how law is interpreted. The Secretary of Labor needs an unbiased group of peers to turn to for appeals. And if the commission's authority on the interpretation of the law trumps the Secretary of Labor, what legal basis would the Secretary have to appeal a decision with which he or she disagrees?

The commission's role is to fact find and review the case with the Secretary of Labor as the enforcer. If the commission becomes both the fact finder and the enforcer, the employee cannot be assured protection from bias, bias which undermines the entire appeals process. It is unnecessary, and it is not in the best interest of the employer or the employee.

If the administration were truly interested in helping workers, Mr. Speaker, it would not be focusing on these unnecessary changes in the law, but instead it would be granting workers what they really need. They need an increased minimum wage, they need to know they are protected, their health and their safety at their workplace, and they know that increased penalties for employers that ignore safety regulations would help in that direction.

Mr. Speaker, I urge my colleagues to join me in supporting real worker reforms and voting against H.R. 2730.

Mr. OWENS. Mr. Speaker, may I inquire as to the number of minutes remaining for this debate.

The SPEAKER pro tempore (Mr. REHBERG). The gentleman from New York (Mr. OWENS) has 18 minutes remaining, and the gentleman from Ohio (Mr. BOEHNER) has 15½ minutes remaining.

Mr. OWENS. Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey (Mr. HOLT).

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

Mr. HOLT. Mr. Speaker, I thank my friend from New York for yielding me this time; and I rise in opposition to H.R. 2730 and also in opposition to H.R. 2728, in opposition to H.R. 2729, and in opposition to H.R. 2731, which we will be considering shortly.

Mr. Speaker, H.R. 2730 would grant deference to the commission, not OSHA, in interpreting questions of law. Now, this, as in this collection of the other three bills, only serves to weaken the protection of workers. OSHA really is a proud chapter in American history, and we are pleased that a prominent New Jerseyan, Senator Harrison Williams, had a large role in writing this. There are millions of Americans who have their limbs, their eyesight, even their lives because of OSHA; and they do not even know who they are. This protection is critically important, and we need to keep it strong.

This cluster of bills today, in every instance, weakens the protection for workers. One of the pieces of legislation would grant the employer more time to contest, contest the findings. It does not restore the balance, as the gentleman speaking in support of this bill earlier said. No, it tips the balance. It tips the balance against the worker. It puts workers and the enforcers who protect them at a disadvantage. It would allow the employer more time but would not allow any new advantages for the enforcer or the worker.

H.R. 2729 would create a larger, slower, more cumbersome commission, again reducing the protection to workers. And 2731, the Occupational Safety and Health Small Employer Access to Justice Act, would encourage employers to contest and simply delay. So all four of these reduce protections that are critically important.

H.R. 2730 would divide the power to make and enforce standards from the authority to interpret them; and it would result in two different actors, the Secretary and the commission, being responsible for implementing the act's policy objectives. That is inefficient and undesirable, and it may substantially alter the manner in which the OSH Act is enforced by calling into question the authority and the ability of the Secretary to bring OSHA cases before the courts of appeal. If the commission's interpretations are to be given deference, then on what basis may the Secretary appeal a decision with which the Secretary disagrees?

Mr. Speaker, this bill presents more questions than it answers, and it creates conflicts that will only weaken worker protections. I ask my colleagues to oppose this bill and the other three bills in this family. In this globalized economy, and with the threat of outsourcing and cheap labor overseas, it is a mystery to me why the other side would want to risk reducing American workers' rights, wages, and working conditions.

I rise in opposition to H.R. 2730, the Occupational Safety and Health Independent Review of OSHA Citations Act. This bill specifies that the conclusions of the Occupational Safety and Health Review Commission "with respect to all questions of law shall be given deference if reasonable." The bill requires reviewing courts to grant deference to the Commission, not OSHA, in interpreting questions of law, as long as the commission's interpretation is reasonable.

H.R. 2730 fundamentally weakens the powers of the Secretary of Labor. In 1991, the Supreme Court held unanimously in *Martin v. OSHRC* that the Secretary, not the Commission, should be given deference with regard to interpreting regulations because interpreting the regulation is a necessary adjunct of the Secretary's rulemaking and enforcement powers.

The Secretary of Labor is best able to regulate and enforce safety standards. As the promulgator of any given standard, the Secretary is better positioned to reconstruct the purpose of the standard. As enforcer, the Secretary comes in contact with a much greater number of regulatory problems than the Commission and is more likely to develop expertise in assessing the effect of a particular regulatory interpretation.

Dividing the power to make and enforce standards from the authority to interpret them results in two different actors, the Secretary and the Commission, being responsible for implementing the Act's policy objectives—an inefficient and undesirable result.

The commission is akin to a judicial body, not a regulatory one. Because of the OSH Act's unusual split enforcement structure, the Commission's adjudicatory authority is more aptly compared to that exercised by a court in an agency-review context, than to a unitary agency interpreting the regulations that it had promulgated. Conferring authoritative fact-finding and review powers in the Commission (and ultimately the courts), a body that is wholly independent of the administrative enforcer, ensures employers are protected from prosecutorial bias. H.R. 2730, by granting administrative powers to the Commission, confuses its role.

Finally, H.R. 2730 may substantially alter the manner in which the OSH Act is enforced by calling into question the authority and ability of the Secretary to bring OSHA cases before the courts of appeal. If the Commission's interpretations are to be given deference, then on what basis may the Secretary appeal a decision with which the Secretary disagrees?

Mr. Speaker, this bill presents more questions than it answers and creates conflicts that will only weaken worker protections. I ask my colleagues to oppose this bill. In the globalized economy, with the threat of outsourcing and cheap overseas labor, it is a mystery to me why the Republicans want to risk reducing American workers' rights, wages, and working conditions.

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

Mr. OWENS. Mr. Speaker, I yield 5 minutes to the gentleman from New Jersey (Mr. ANDREWS).

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

Mr. ANDREWS. Mr. Speaker, I thank my friend from New York for yielding me this time and for his leadership in pointing out the flaws in these bills that are on the floor today. It is a thankless and sometimes tedious job, but the gentleman from New York (Mr. OWENS) does it exceedingly well, and we thank him for his hard work.

I rise in opposition to this bill, Mr. Speaker, because I believe it does result in a structure that the Administrative Procedures Act has set in place

that works. And although OSHA is not a perfect agency, it is a functional agency that has done much to protect many, as my friend, the gentleman from New Jersey (Mr. HOLT), just talked about.

The Administrative Procedures Act sets up a balance where when this Congress creates a law and delegates to an administrator in the executive branch the responsibility of enforcing that law, the courts give that administrator significant deference in studying what the law means and how it should be enforced. That is a principle that should apply, and I believe does apply, to OSHA. This bill would create an exception to that principle that I believe is nothing more than a fifth wheel.

The bill purports to set up two centers of decision-making within the Department of Labor, one is the Secretary of Labor herself, and the other is the commission that oversees OSHA. It falsely and artificially divides responsibility for understanding and interpreting OSHA standards on the one hand and then enforcing them on the other hand. This just does not make any sense to me.

When Congress legislates in an area of policy importance, whether it is transportation or health or the environment, we frequently create an executive branch person to oversee the enforcement of that law. We then vest that executive branch person with the responsibility of learning about that substantive area and writing the rules that govern that substantive area. The Administrative Procedures Act requires that the courts give significant deference to the decisions made by that executive branch officer.

This works with the EPA, it works in the financial services industry, it works with respect to transportation, and I believe it works in the field of worker safety.

□ 1500

This bill upsets that balance by directing the courts to give deference in two areas. One area is the Secretary of Labor when it comes to writing the rules, but the other is to the commission when it comes to interpreting the rules.

Putting aside for a minute the confusion over what writing the rules means versus what interpreting the rules means and how the court would have to sort that out, I believe what we will be passing today, should this bill pass, will be a breeder of litigation that would call every standard and every regulation of OSHA into question, very often for the purpose of prolonging the period of time before the regulation is enforced.

The Administrative Procedures Act is, frankly, a work of legal genius in this country. It properly balances the scales among the Congress, the executive branch, and the courts. By creating a fourth scale to be balanced by saying that there are two administrative agencies within the Department of

Labor that must be taken into account, I believe we create a disruption.

This is more than just a theoretical problem. The ultimate result of this bill would be to delay and dilute worker safety standards from being enforced, to delay them because there would be one more litigation hurdle that would have to be jumped over before the law could be enforced, and dilute them because it, frankly, is the nature of things that the longer a process takes, the more compromise there is. Compromise is sometimes a good thing, but when we are compromising an important value like worker safety, it is not a good thing.

I would urge Members to oppose this bill because it defers and dilutes worker safety standards that the workers of this country so strongly need.

I thank the gentleman from New York (Mr. OWENS) for his leadership in fighting against these bills.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from South Carolina (Mr. WILSON), a member of the Committee on Education and the Workforce.

Mr. WILSON of South Carolina. Mr. Speaker, it is an honor for me to be here today to speak on behalf of H.R. 2730, the Occupational Safety and Health Independent Review of OSHA Citations Act. I congratulate the gentleman from Ohio (Mr. BOEHNER) who has taken a lead in assisting in regard to education issues and also worker safety. I also thank the gentleman from Georgia (Mr. NORWOOD), who is chairman of the Subcommittee on Workforce Protections.

Indeed, the particular initiatives and reforms that we are considering today are ones that I think would lead greatly to improving worker safety. The way it would yield for greater worker safety is it would encourage voluntary compliance and proactive activity by small businesses with OSHA.

In the congressional district that I represent, I am grateful that we have large employers such as Blue Cross/Blue Shield, such as the Michelin Tire factory company. We have three different plants in the district I represent. But the real basis of our economy, in working with the Chambers of Commerce and the National Federation of Independent Businesses is the small businesses, and that is who would be helped by the reforms we will be voting on today. These are businesses with 100 employees or less.

In the district that I represent, 99 percent of the businesses have 100 employees or less, and 85 percent of the persons who have employment in jobs are working for these small businesses. That is why it would be so helpful to pass these bills which provide for promotion of workplace safety, and in particular, this specific bill restores the original system of checks and balances intended by Congress when it was enacted as the OSHA law, that it ensure that the commission, which in effect is the court, and not OSHA, which is the

prosecutor, would be the party to interpret the law and provide an independent review of OSHA citations.

This could not come at a better time as the economy is improving, as jobs are improving. With the recent tax cuts we have had, with bonus depreciation to encourage companies to buy new equipment, we also need to have these reforms. I urge Members to support the bill.

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

Mr. Speaker, I mentioned before that I wanted to make an amendment to any one of these four bills because they are all about OSHA, and I thought my amendment was germane. I would like to describe what that amendment would have been.

It is a bill now, H.R. 4270, and it would amend the OSHA Act in three ways. First, it would strengthen sanctions for a worker's death or deaths caused by an employer's willful violations of basic OSHA safety standards. The current sanction is a mere misdemeanor with no more than 6 months in prison and a fine of up to \$10,000. Some jurisdictions seek stiffer penalties for failure to return a library book. My bill would change this penalty to a felony with up to, but no more than, 10 years in prison.

Second, my amendment would increase the penalty for illicitly warning of an OSHA inspection, from up to 6 months imprisonment to up to 2 years.

Third, my amendment would increase the penalty for lying to or misleading OSHA, from up to 6 months imprisonment to no more than 1 year imprisonment. In all instances, fines would be decided upon in the same way judges decide other fines, in accordance with title 18 of the criminal code.

This bill, H.R. 4270, and in the Senate it is S. 1272, sponsored by Senator CORZINE; this bill corrects a glaring oversight in Federal law and policy: the inability to pursue a felony conviction of an employer who willfully causes the death of workers. To quote a New York State supreme court justice, a felony sentence would serve as a warning to other employers; employers who, in pursuit of their own economic interests, care to be cavalier about the lives of others.

When sentencing a man responsible for the collapse of an illegally conducted scaffold that killed five immigrant workers in Manhattan, this same supreme court justice remarked, "The collapse of this scaffold was not a tragic accident; rather, it was a tragic certainty." She went on to say that the case had given her an education as to how "astonishingly ineffectual" the Federal Government has been in protecting the workers' lives.

This judge, Rena Uviller, emphasized that OSHA penalties for willful safety violations that result in worker deaths merely amount to a \$10,000 fine and a misdemeanor sentence of no more than 6 months' imprisonment upon the first conviction. The maximum penalty for

a second-time offender is a \$20,000 and no more than 1 year imprisonment.

In concluding her sentencing, Judge Uviller sent a message to us on this floor today by observing, "Why Congress has adopted such a spineless response to industrial malfeasance is best left to the voters to assess."

Why has Congress adopted such a spineless response to industrial malfeasance, to owners, managers, bosses who willfully violate the regulations and thus cause the death of a worker?

I think this would have been a germane amendment. I am sorry that in the committee it was dismissed. My amendment addresses the needs of workers. Every other one of these four bills focuses on the needs of employers, ways in which you might frustrate the efforts, dilute the efforts of OSHA so that employers and small business owners would benefit greatly while workers suffer more.

I think it is very important that we note that we have failed in a four-bill marathon of more than 4 hours to allow the minority to address any of the interests and concerns of the working families of America. This is a clear indication of exactly where the majority stands with respect to working families.

They have other programs that they offered, one called HOW, H-O-W, Hire Our Workers, which runs counter to the kinds of activities they have conducted over the last 10 years with respect to the dilution of the powers of OSHA and, at the same time, the dilution of the powers of the organization process of unions.

I think it is important to note that the business of today has to be the business of being concerned about workers. It cannot be merely the four bills which seek to make OSHA safer for employers.

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

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

Mr. Speaker, let me just point out, we are talking about H.R. 2730. That is on the review commission and OSHA. That is the subject of this hour's debate and this bill.

I once again remind Members, we are talking about working families, ninety-two percent of the working families who own businesses who have friends work for them. They are the working families that we are talking about.

Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. ISAKSON).

Mr. ISAKSON. Mr. Speaker, I rise to address, in part, what was just spoken of by the minority in terms of the amendment they would like to have proposed and the reasons they would like to have proposed it, because it illustrates the difference in the two sides today.

It would be wrong for any American worker who listens to this debate to think for a minute that if anything happened to them on the work site that they do not have immediate ac-

cess to the criminal courts of this country. They do. That is what makes the United States of America great.

It would also be wrong, I think, to assume that this is an employer versus employee argument. It is not. Go out today in Washington, D.C. to any project, building any building. After you see the sign at the front that shows who is building the building and who the contractor is, the next sign posted will be the safety regulations the employer and the employees are committed to.

Go into a facility in America today, go into UPS, go into Coca-Cola, go onto a construction site, and what do you see, you see safety first. OSHA has done what it was supposed to do, and American employers and employees have done what they are supposed to do.

Are there mistakes? From time to time, there are. Is there a route of grievance? There always is.

The gentleman from Georgia (Mr. NORWOOD) is trying to make that an expedited process where you get a hearing fast, you get a result fast, and the purpose of America can continue. And that is for American business to employ employees who work for a company to make products and services and build buildings. But let no one watching this debate think this is about whether or not someone does not have access to our courts if they are aggrieved. They do, and they do instantaneously.

What this debate is about is the great partnership that exists today in America between the worker and the employer, which is what makes this country great.

I appreciate the diligent work of the chairman of the subcommittee and his effort today to work on behalf of working families and what makes America great, the free enterprise system.

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

Mr. Speaker, frequently I watch debates and the point has been made. Everybody has said what they have to say; it is frequently repeated many times, but we never seem to yield back the time and get to the vote. Mr. Speaker, I think it is time to vote.

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

The SPEAKER pro tempore (Mr. GILLMOR). 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. OWEN. 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 will be postponed.

□ 1515

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. GILLMOR). Pursuant to clause 8 of rule XX, and the Chair's prior announcement, the Chair will now put each question on which further proceedings were postponed earlier today in the following order:

H.R. 2728, by the yeas and nays;

H.R. 2729, by the yeas and nays.

PARLIAMENTARY INQUIRY

Mr. OWENS. Mr. Speaker, point of information.

The SPEAKER pro tempore. The Chair recognizes the gentleman from New York.

Mr. OWENS. Mr. Speaker, there is one remaining bill that we have not discussed.

The SPEAKER pro tempore. The House is going to vote on the first three bills and then vote on the motion to suspend the rules on H.R. 3740.

Mr. OWENS. Are you wiping one bill from the calendar?

Point of inquiry. Will somebody explain what happens to the remaining bill?

The SPEAKER pro tempore. At this point the Chair will put the question on those measures on which a vote has previously been postponed.

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

Mr. OWENS. I yield to the gentleman from Georgia.

Mr. NORWOOD. We are going to have the votes on these three bills, then there are a couple of other votes, and then we go back to the final bill and its debate, and we will vote it.

Mr. OWENS. I thank the gentleman.

The SPEAKER pro tempore. The Chair will put the questions in the following order:

H.R. 2728, by the yeas and nays;

H.R. 2729, by the yeas and nays;

H.R. 2730, by the yeas and nays; and the motion to suspend the rules on H.R. 3740.

The Chair will reduce to 5 minutes the time for electronic votes after the first such vote in this series.

OCCUPATIONAL SAFETY AND HEALTH SMALL BUSINESS DAY IN COURT ACT OF 2004

The SPEAKER pro tempore. The pending business is the question of the passage of the bill, H.R. 2728, on which further proceedings were postponed earlier today.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the passage of the bill on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 251, nays 177, not voting 5, as follows:

[Roll No. 183]

YEAS—251

Aderholt	Gerlach	Osborne
Akin	Gibbons	Ose
Bachus	Gilchrest	Otter
Baker	Gillmor	Oxley
Ballenger	Gingrey	Paul
Barrett (SC)	Gonzalez	Pearce
Bartlett (MD)	Goode	Pence
Barton (TX)	Goodlatte	Peterson (PA)
Bass	Gordon	Petri
Beauprez	Goss	Pickering
Bereuter	Granger	Pitts
Biggert	Graves	Platts
Bilirakis	Green (WI)	Pombo
Bishop (GA)	Greenwood	Porter
Bishop (UT)	Gutknecht	Portman
Blackburn	Hall	Pryce (OH)
Blunt	Harman	Putnam
Boehlert	Harris	Quinn
Boehner	Hart	Radanovich
Bonilla	Hastings (WA)	Rahall
Bonner	Hayes	Ramstad
Bono	Hayworth	Regula
Boozman	Hefley	Rehberg
Boyd	Hensarling	Renzi
Bradley (NH)	Herger	Reynolds
Brady (TX)	Hobson	Rogers (AL)
Brown (SC)	Hoekstra	Rogers (KY)
Brown-Waite,	Hostettler	Rogers (MI)
Ginny	Houghton	Rohrabacher
Burgess	Hulshof	Ros-Lehtinen
Burns	Hunter	Royce
Burr	Hyde	Ryan (WI)
Burton (IN)	Isakson	Ryun (KS)
Buyer	Issa	Sandlin
Calvert	Istook	Saxton
Camp	Jenkins	Schrock
Cannon	John	Sensenbrenner
Cantor	Johnson (CT)	Sessions
Capito	Johnson (IL)	Shadegg
Cardin	Johnson, Sam	Shaw
Carter	Jones (NC)	Shays
Case	Keller	Sherwood
Castle	Kelly	Shimkus
Chabot	Kennedy (MN)	Shuster
Chocola	King (IA)	Simmons
Coble	King (NY)	Simpson
Cole	Kingston	Skeltan
Collins	Kirk	Smith (MI)
Cooper	Kline	Smith (NJ)
Cox	Knollenberg	Smith (TX)
Cramer	Kolbe	Souder
Crane	LaHood	Spratt
Crenshaw	Latham	Stearns
Cubin	LaTourette	Stenholm
Culberson	Lewis (CA)	Sullivan
Cunningham	Lewis (KY)	Sweeney
Davis (FL)	Linder	Tancredo
Davis (TN)	LoBiondo	Tanner
Davis, Jo Ann	Lucas (KY)	Taylor (MS)
Davis, Tom	Lucas (OK)	Taylor (NC)
Deal (GA)	Manzullo	Terry
DeLay	Marshall	Thomas
Diaz-Balart, L.	Matheson	Thornberry
Diaz-Balart, M.	McCotter	Tiahrt
Dooley (CA)	McCrery	Tiberi
Doolittle	McHugh	Toomey
Dreier	McInnis	Turner (OH)
Duncan	McIntyre	Turner (TX)
Dunn	McKeon	Upton
Edwards	Mica	Vitter
Ehlers	Miller (FL)	Walden (OR)
Emerson	Miller (MI)	Walsh
English	Miller, Gary	Wamp
Everett	Moran (KS)	Weldon (FL)
Feeney	Murphy	Weldon (PA)
Ferguson	Musgrave	Weller
Flake	Myrick	Whitfield
Foley	Nethercutt	Wicker
Forbes	Neugebauer	Wilson (NM)
Fossella	Ney	Wilson (SC)
Franks (AZ)	Northup	Wolf
Frelinghuysen	Norwood	Wynn
Galleghy	Nunes	Young (AK)
Garrett (NJ)	Nussle	Young (FL)

NAYS—177

Abercrombie	Bell	Brown, Corrine
Ackerman	Berkley	Capps
Alexander	Berman	Capuano
Allen	Berry	Cardoza
Andrews	Bishop (NY)	Carson (IN)
Baca	Blumenauer	Carson (OK)
Baird	Boswell	Chandler
Baldwin	Boucher	Clay
Ballance	Brady (PA)	Clyburn
Becerra	Brown (OH)	Conyers

Costello	Kilpatrick	Payne
Crowley	Kind	Pelosi
Cummings	Klecicka	Peterson (MN)
Davis (AL)	Kucinich	Pomeroy
Davis (CA)	Lampson	Price (NC)
Davis (IL)	Langevin	Rangel
DeFazio	Lantos	Reyes
DeGette	Larsen (WA)	Rodriguez
Delahunt	Larson (CT)	Ross
DeLauro	Lee	Rothman
Dicks	Levin	Roybal-Allard
Dingell	Lewis (GA)	Ruppersberger
Doggett	Lipinski	Rush
Doyle	Loifgren	Ryan (OH)
Emanuel	Lowe	Sabo
Engel	Lynch	Sanchez, Linda
Eshoo	Majette	T.
Etheridge	Maloney	Sanchez, Loretta
Evans	Markey	Sanders
Farr	Matsui	Schakowsky
Fattah	McCarthy (MO)	Schiff
Filner	McCarthy (NY)	Scott (GA)
Ford	McCollum	Scott (VA)
Frank (MA)	McDermott	Serrano
Frost	McGovern	Sherman
Green (TX)	McNulty	Slaughter
Grijalva	Meehan	Smith (WA)
Gutierrez	Meek (FL)	Snyder
Hastings (FL)	Meeks (NY)	Solis
Hill	Menendez	Stark
Hinchey	Michaud	Strickland
Hinojosa	Millender-	Stupak
McDonald		Tauscher
Holden	Miller (NC)	Thompson (CA)
Holt	Miller, George	Thompson (MS)
Honda	Mollohan	Tierney
Hooley (OR)	Moore	Towns
Hoyer	Moran (VA)	Udall (CO)
Inslie	Murtha	Udall (NM)
Israel	Nadler	Van Hollen
Jackson (IL)	Napolitano	Velazquez
Jackson-Lee	Neal (MA)	Visclosky
(TX)	Oberstar	Waters
Jefferson	Obey	Watson
Johnson, E. B.	Oliver	Watt
Jones (OH)	Ortiz	Waxman
Kanjorski	Owens	Weiner
Kaptur	Pallone	Wexler
Kennedy (RI)	Pascarell	Woolsey
Kildee	Pastor	Wu

NOT VOTING—5

DeMint	Gephardt	Tauzin
Deutsch	Leach	

□ 1542

Mr. VAN HOLLEN and Ms. SLAUGHTER changed their vote from "yea" to "nay."

Messrs. BOEHNER, WYNN, and LOBIONDO changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION EFFICIENCY ACT OF 2004

The SPEAKER pro tempore (Mr. GILLMOR). The pending business is the question of the passage of the bill, H.R. 2729, on which further proceedings were postponed earlier today.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the passage of the bill on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 228, nays 199, not voting 6, as follows:

[Roll No. 184]

YEAS—228

Aderholt	Bachus	Ballenger
Akin	Baker	Barrett (SC)