

to chip away at it with bills like this and remove worker safety as an expense that has to be undertaken. This civilized nation was built by workers and the workers deserve to have a fair break. But those that want to reduce us to the level of Third World nations or want to imitate China are going to pursue the kinds of bills that we have before us today.

So I want to just conclude with another section from the report of the AFL-CIO, their annual report on worker safety. I just want to read a few excerpts, which I think are excerpts that are important to educate our Members.

More than 306,706 workers can now say their lives have been saved since the passage of the OSHA Act in 1970. Unfortunately, too many workers remain at risk. On average, 15 workers were fatally injured and more than 12,000 workers were injured or made ill each day of 2003. These statistics do not include deaths from occupational diseases, which claim the lives of an estimated 50,000 to 60,000 workers each year.

According to the Bureau of Labor Statistics, there were 5,559 workplace deaths due to traumatic injuries in 2003, which was a slight increase from the number of deaths in 2002, when 5,534 workplace deaths were reported. Wyoming, of all places, led the country with the highest fatality rate, 13.9 people per 100,000. The lowest State for the fatality rate was 1.5 per 100,000, which was reported in Delaware.

The construction sector had the largest, as I said before, the construction sector had the largest number of fatal work injuries, 1,126 in 2003; followed by transportation and warehousing, which had 805 injuries; and agriculture, forestry, fishing and hunting, which had 707 injuries. Industry sectors with the highest fatality rates were agriculture, forestry, fishing, and hunting, 31.2 per 100,000 in hunting. Mining had 26.9 per 100,000. And transportation and warehousing, 17.5 per 100,000.

So you can see we are not here just to talk in support of the blue States, the urban States, the Rust Belt States; but the rural areas are suffering quite a bit also. The workers there—the rural areas—suffer in terms of the large number of fatalities in the workplace.

Transportation and material-moving occupations had the highest number of fatalities, 1,388, followed by construction and extraction occupations, with 1,033 fatal injuries. The occupations of greatest risk of work-related fatalities based on the number of fatalities per 100,000 employed were logging workers. Their occupation had 131.6 fatalities per 100,000; fishers and related fishing occupations had 115 deaths per 100,000; and aircraft pilots and flight engineers, 97.4 deaths per 100,000 employed.

Very interesting that simple guys out there, fishers and logging workers, are in the same category as aircraft test pilots and flight engineers in terms of deaths and injuries. So our

concern is universal, and the mission of OSHA is important and should not be denigrated or trivialized by this kind of legislation.

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

I do wish my friend, the gentleman from New York (Mr. OWENS), would get the AFL-CIO to send him talking points just on this bill. That is what we have this hour for, to discuss this one bill, where we actually are trying to make OSHA work.

Now, I will go over it again. This is about an agency called OSHA that has a review commission made up of three people. This review commission was written into the law in 1970, written into the law by a Democrat House and Senate that simply said OSHA did not get to be the judge and jury. They do have the right to set the standards. They can write the regulations and enforce the regulations, but they are not to be the final judge and jury. OSHRC is. The review commission is.

Now, what we find is the commission is not working. It does seem to me that some people do not want it to work. I am not sure I know why, but to stay with a bill that is 34 years old and just like it is, thinking it is perfect, when we absolutely know that it is not. For more than two-thirds of its existence, this commission has been paralyzed by frequent vacancies and often been unable to act. Two-thirds of the time in 34 years this commission has been unable to act. For more than half of its existence, it has had two or fewer members. For 20 percent of that time it lacked even a quorum of two.

Now, why does the AFL-CIO or the labor bosses not want this to change? I do not know, but you misread it if you say working families do not want this kind of change. Because most working families in this country are in small business. And tell you the truth, many labor union members also have small businesses with their wives and sometimes themselves as a second job.

You take it on yourself to tell us what the majority party wants. Well, this is simple what we want in this bill: We want a review commission at OSHA that works. It is just that simple. We do not want any more or any less. That is all this bill is about. We believe having five commissioners will help aid that process.

Mr. Speaker, I urge all our Members to just simply come to the floor and remember what this is about. This is a small tweak in a 34-year-old bill that is not working, and it does not help anybody. It does not help workers, and it does not help employers to not pass this little thing to help this agency work.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today to speak in opposition to H.R. 740, a bill to amend the Occupational Safety and Health Act of 1970 by expanding the size of the commission that hears OSHA appeals from three to five members. Supporters of the measure argue that the panel has had difficulty meeting a quorum because of recusals

and vacancies. However, I would argue that the change would allow the current Administration to stack the board with pro-business members.

Many responsible employers are tired of continually being underbid by unscrupulous and reckless operators that refuse to spend anything on protecting workers' lives or promoting public safety. Voting in favor of H.R. 740, could potentially erode a basic respect for human life. We must remember that workers killed on the job are someone's son or daughter, husband or wife, and/or father or mother. Unlike other victims of crime, their lives are often seen as expendable. As a Mexican Consular officer said: "Too many employers don't see these people as human beings." Bereaved family members suffer further upon discovery that federal law denies them justice. If H.R. 740 is allowed to pass, we would be allowing the current Administration to stack the board with pro-business members. I urge my colleagues to oppose the passage of H.R. 740.

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

The SPEAKER pro tempore. All time for debate has expired. Pursuant to House Resolution 351, 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 will be postponed.

OCCUPATIONAL SAFETY AND HEALTH INDEPENDENT REVIEW OF OSHA CITATIONS ACT OF 2005

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 351, I call up the bill (H.R. 741) to amend the Occupational Safety and Health Act of 1970 to provide for judicial deference to conclusions of law determined by the Occupational Safety and Health Review Commission with respect to an order issued by the commission, and ask for its immediate consideration in the House.

The Clerk read title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 351, the bill is considered as having been read for amendment.

The text of H.R. 741 is as follows:

H.R. 741

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 2005".

SEC. 2. JUDICIAL DEFERENCE.

Section 11(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(a)) is amended in the sixth sentence by inserting before the period the following: “, and with respect to such record, the conclusions of the Commission with respect to questions of law that are subject to agency deference under governing court precedent shall be given deference if reasonable”.

The SPEAKER. The amendment in the nature of a substitute printed in the bill is adopted.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 741

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 2005”.

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 at the end the following: “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 in which to revise and extend their remarks on H.R. 741, the bill now under consideration.

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 we will debate today is another narrowly crafted bill that addresses a specific problem we found in the OSHA law.

In 1970, when it created OSHA, Congress also created the Occupational Safety and Health Review 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 the employer on the basis of individual complaints.”

Congress even separated the commission from the Department of Labor. It was truly meant to be independent. The bill before us, the Occupational Safety and Health Independent Review of OSHA Citations Act, restores the original system of checks and balances intended by Congress when it enacted the OSHA law, and ensures that the commission and not OSHA would be

the party who interprets the law and provides an independent review of OSHA citations.

Now, let me try to put this in simpler terms. If you are stopped by a police officer and issued a citation for speeding, would you want the same police officer to be your judge and jury and decide whether you are guilty? Of course you would not. And unfortunately for small businesses today, the law is ambiguous and it is 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 efforts to expand its own authority.

□ 1600

Congress intended there to be a truly independent review of disputes between OSHA and employers, and when a dispute centers on OSHA’s interpretation of its authority, Congress intended the independent review commission, not the prosecuting agency, OSHA, to be the final arbiter. H.R. 741 restores this commonsense system of checks and balances.

Small businesses are the real engine of job growth in this country, and we should be helping them, not hindering their progress. Last week, the Department of Labor reported that more than 3.7 million new jobs have been created since May 2003. We want to make sure that onerous government regulations do not hamstring small businesses’ ability to continue to hire workers and compete in our economy. That is another reason why all of these OSHA reform bills are important.

The measure before us is a narrowly crafted, commonsense bill that address a specific problem in the OSHA law. It passed the House last year and deserves the support of all of our Members.

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

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

I want to make my comments on this bill very briefly. Essentially, H.R. 741 weakens the fundamental policy of the Secretary of Labor while enhancing the powers of the OSHA commission. Such action would create two divided regulators and a great deal of confusion. The Secretary of Labor is best able to regulate and enforce safety standards, and as such, the authority should remain with her. This is just plain common sense. I urge my colleagues to vote “no” on H.R. 741.

We do not need more confusion. More confusion is only a way to trivialize and make OSHA less effective.

Mr. Speaker, I would like to turn my attention to an issue that should be of great concern to all Members of this body in relation to this particular subject, and that is worker deaths and serious injuries. Between 5,000 and 6,000 American workers are killed on the job every year by willful and negligent safety violations on the part of errant employers. I have talked about that already. The surviving family members

killed by corporate wrongdoing deserve much more than just our sympathy, however. They deserve immediate congressional attention and action.

Instead of considering these bills to weaken OSHA, we should be strengthening provisions of the Occupational Safety and Health Act. We should be considering a bill like H.R. 2004, the Protecting America’s Workers Act, which I introduced on April 28 to coincide with Workers’ Memorial Day, a day set aside every year to honor workers killed on the job by safety violations. Joining me as cosponsors of H.R. 2004 are the gentleman from California (Mr. GEORGE MILLER), the gentleman from New Jersey (Mr. ANDREWS), the gentleman from Massachusetts (Mr. LYNCH), the gentlewoman from Connecticut (Ms. DELAURO), the gentleman from Maine (Mr. MICHAUD), the gentlewoman from California (Ms. WOOLSEY), the gentleman from Texas (Mr. GENE GREEN) and the gentlewoman from Ohio (Ms. KAPTUR). The bill will hold those who commit corporate manslaughter accountable at the same time it reinforces critical health and safety protections for workers nationwide.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Ohio (Ms. KAPTUR) to give us an example of the seriousness of the situation.

Ms. KAPTUR. Mr. Speaker, I thank the gentleman for yielding me this opportunity and take great privilege in coming to the floor today to place into the public realm a concern that is deep-seated in the city of Toledo and the State of Ohio which I am so honored to represent.

It in fact deals with corporate manslaughter. I stand today to oppose any weakening of OSHA statutes, and support the Owens bill to strengthen worker safety and protection. For, in fact, if those protections had been in place, the men I am going to tell Members about today would not be dead. Our community would not be in mourning. Their families would not be in mourning.

We have all observed with awe the marvelous photos of construction workers sitting on I-beams swinging above some of our Nation’s major cities. High above New York City is one photo that comes to mind, as we admire the skill and the daring of these Americans who put their lives on the line every single day. These tradespeople indeed build America. I cannot think of a citizen in our country that does not respect their prowess and their skill.

Well, the worst construction accident in the history of the State of Ohio occurred in our city on February 16 of last year. It occurred on a Federal project, a Federal project that I had authorized and that has been being built now for several years. I was so proud when we passed that legislation. I said this is going to be a Federal

project which is going to be built without one death, and we worked for almost 2½ years to sign a safety agreement with each of the trades involved in this project and with the major company and the State of Ohio. It was difficult to bring them all to the table. I said I did not want this to be another Mackinaw. I did not want dead men at the base of another river. Instead, I hoped we would build this project and demonstrate respect for those doing the work.

Well, on February 16, 2004, these four men lost their lives. Several others were seriously injured on this job. Crushed to death on this job were ironworkers Mike Phillips, age 42; Arden Clark, age 47; Mike Moreau, age 30; and Robert Lipinski, Jr., age 44.

I cannot tell Members what it was like to go to the funeral of each of these men. How poignant, how unforgettable to be with those families following an accident I know could have been prevented. But, yes, there were people in this city, people in our capital of Columbus, people in that company who did not care, who simply did not care.

One of the men who lost his life, his nickname was Bubba, Bubba Lipinski, he was such a magnificent man. He weighed about 320 pounds. He was not heavy-set; he was just strong. He was about 6 feet 6. When I walked into the funeral home, his casket was the size of a child's casket, a mountain of a man, crushed to death.

Joe Blaze, the President of the Local Ironworkers observed, "What happened will affect our community for generations." The local paper, The Toledo Blade, reported, "Workers told investigators the crane's rear legs," this is, the crane that fell, "were held up with 14 inches of shims and no anchors in the footers while each front leg had shims in only one of only two anchors." The workers were literally crushed when this million-ton crane moved, and it just could not hold itself. And it fell, crushing them to death in the process.

The question really is, why did it fall? Incredibly, its feet were not tied down. And people knew that. People in the company knew that. There are internal memos that show that they knew that.

But though the accident occurred over a year ago, the State of Ohio, that I view as an accomplice in this willful manslaughter, will not release inspection records. OSHA will not permit its inspector general at the Department of Labor to give us the pre-accident inspection reports. So, who was on site? Who was not on site? Who should have inspected? Who did not?

Moreover, there seems to be an issue of whether the Federal Government had responsibility to inspect a "launching Gantry crane", which is a specialized type of crane, that is, whether OSHA really had responsibility for inspecting launching Gantry cranes as opposed to other types of cranes.

Another major wrinkle, is that this particular crane, and there were two of them, was made in Italy, not the United States. The crane was imported. The men were a little uncomfortable with that. They generally build their own cranes and then build bridges using those cranes. Yet the State of Ohio assured the workers that it was of equal measure to any crane built in the United States. But there seems to be a little stickler in the OSHA regulations that OSHA may not equally regulate foreign imported cranes to the same standards expected of U.S. made cranes. They are not held to the same standard. Hmmm, why would that be?

I tried last month during the markup of the Labor, Health and Human Services appropriations bill to include simple report language in that bill, which is never denied to a member of this House, merely asking the Department of Labor's Occupational Safety and Health Administration to gather all records relating to the inspections that should have been done on the job, or lack thereof, prior to the accident and to provide them to the public record as well as to provide any communications that have occurred with the U.S. Department of Justice related to this accident. This was denied to me as an elected representative of the people of my district. It was denied to me by the Republican majority of this House, by the Republican majority of my committee, and by the Republican leader of the committee that is on the floor today.

I am angry. I am very angry. They do not want any oversight. They want the weaker OSHA regulations. They do not care about these men. They do not care about their families.

I have asked the majority to hold oversight hearings regarding OSHA's action or inaction in this I-280 Federal interstate highway accident. No word yet. No word yet on their willingness to agree for a request for a hearing. Surely the Congress has an oversight responsibility in a matter as serious as this one.

OSHA's Midwest office has ruled there was willful negligence on the job. And for reasons not completely understood, although they ruled willful negligence, they had to change the ruling. The ruling has now been changed. We do not know who changed the ruling. We want to know that. Now it has been termed "unclassified". It has gone from willful negligence, or corporate manslaughter, to unclassified. What does that mean?

It probably means that as the individual court cases move forth locally, somehow civil litigation is going to be affected by a careful dance of words. How absolutely cruel. Cruel. We talk about being pro-life. You are looking at a pro-life Member, and every one of those lives means everything to us. They went to work faithfully. They worked hard. They did magnificent work. I was up on that bridge last winter. It was blasted cold up there and

windy. I represent the Saudi Arabia of wind up there on Lake Erie. They went to work in 32 degrees below zero. It was so cold with that wind factor.

Now guess how much OSHA is able to fine the company, and this is a \$300 million to \$400 million project, how much is OSHA able to fine the company and others responsible for this serious loss, a total of \$70,000 for each lost life. \$70,000 for each lost life? That is travesty. For 4 lost lives, OSHA will impose a fine totalling \$280,000 on a \$300 million-plus project. That equals a fine of .0009% . . . almost embarrassing were it not so wrong. And, the money goes to the U.S. Treasury; it does not even go to the victims' families. What kind of country is this? What kind of shop are we running here?

Well, in my opinion, in cases of such gross negligence and criminal manslaughter, there should be more than civil damages and OSHA fines.

Our chief of police who is a very measured man said these men were murdered. There is criminal wrongdoing here. You know the amazing thing about our law, though this is a \$300-plus million transportation project, I cannot even dedicate a few percentage points to give money to our local county prosecutor to investigate the nature of the negligence get to the bottom of this. The Department of Labor does not allow it. The Department of Transportation does not allow it. How do we find out what happened?

My questions are, where was OSHA? Who was investigating and who was inspecting on site? Where was the State of Ohio Department of Transportation? Where was their inspection? Why did they sign an acceleration agreement with the company—to make work on the project move even faster when the workers were a year and a half ahead of schedule? Who knew those footers were not tied down, both at the front and back ends of the launching Gantry crane? Did OSHA purposely not inspect what is termed a launching Gantry crane? Did OSHA not inspect nor require equal standards on a foreign made crane similar to one that is made in the United States of America?

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Why did I have to jump start the negotiation of a safety agreement before construction started? Why did OSHA not do that? Why did the U.S. Department of Transportation not do that? Why did the State of Ohio not do that? The State of Ohio has got their head in the sand. Those in charge are hiding in Columbus somewhere under the sidewalk. You cannot even find them. Here we have the largest transportation project in Ohio history with criminal manslaughter, and they are all taking the duck.

Why is this Congress undermining what little authority OSHA ever had? What are we doing here? And who are we doing it for? Fru-Con, the major contractor? They have been responsible for five deaths in the last year at two

different project sites. That is quite a record.

We have now been told OSHA has not developed a standard or promulgated a rule stating that foreign-manufactured cranes, like this one, must equal or exceed U.S. safety standards. Who is responsible? On whose hands does the blood of these men lie in this House? On whose hands does it lie? I have a pretty good idea. Recommendations for such a standard were made nearly a year ago but not acted upon. Why not? Why not? Why has this Congress not demanded and implemented as soon as possible these regulations? Or made meeting U.S. standards a condition of eligibility for Federal funding? There is a serious abdication of responsibility here. We were always taught in school, there are sins of commission and there are sins of omission. Both sides of the ledger you are accountable for. Here there is a serious abdication of responsibility by the U.S.—an omission, a purposeful omission. The inept Department of Labor caused the deaths of these men, as well as those in this Congress that would seek to weaken OSHA and gave no value to their lives.

These men died, in my view, because of the apparent willful negligence of our U.S. Department of Labor and the office of safety and health within it that was supposed to be set up to protect their lives as well as their allies here in the Congress who are completely undermining worker safety laws. They have abdicated their responsibility not just as lawmakers but as human beings to their fellow men and women to conduct aggressive oversight. The State of Ohio, as the contractual agent for the federal government, fell asleep on its oversight. The fact there are 4 dead men, and a half dozen injured is grim testament to that.

I have appealed already to our Committee on Education and the Workforce to hold hearings into this tragedy in Ohio. The hearings ought to be held in Ohio. It is my hope that, in spite of the actions being taken today, there might be some accountability, some conscience out there that asks—no, that demands—that this Congress act on behalf of the mothers and the fathers and the wives and the children and every single person in our community that goes under that bridge every day or looks at that construction project, all the people that still lay wreaths at the site, they are numerous, all the prayers, all the offerings, all the memories that are there forever.

I want to say to my colleague from New York, Mr. OWENS you have my strongest support on your bill. I am so sorry that I have to come here to the floor today and speak these words that I know, for the families back home, is so very hard to listen to. But I feel it is my responsibility as the only voice they have got here. I want to say to the ironworkers union, if I can hold my composure, you deserve a lot better than this. You serve us with great dis-

tingtion. We value the lives of your members and the faith that they put in us to protect them. Some of us take this obligation as a sacred obligation. We salute them.

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

My colleague from Toledo clearly laid out what was a tragedy in her community with regard to the four gentlemen who lost their lives in this accident. This accident continues to be under review by OSHA. We hope that OSHA will get to the bottom of what did happen, and, more importantly, who was responsible. I do not think it serves those families, the community or any of us to point fingers and to lay blame without facts. To my knowledge at this point, this particular case is still under investigation. There are still lots of details to be gleaned. And when this picture becomes clearer, we can then take a course of action that in fact may be appropriate. But I am waiting for this review and this investigation to continue.

But the point here is that the bill that we are debating would actually, I think, assist in making the determination about who is guilty, because by making it clear that the review commission should hear these cases and can adjudicate these cases, you can make a determination about who was right and who was wrong by an independent commission, not by OSHA itself.

Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia (Mr. NORWOOD).

Mr. NORWOOD. Mr. Speaker, I would like to start by saying that neither this bill nor the other three weaken OSHA. We designed these bills to help OSHA. Part of the problem is that this 34-year-old bill has been changed by activist judges, it has not been reviewed or looked at in 34 years in any sense, and these simply bring fairness back into the equation. As you can imagine, 34 years ago, we had an OSHA bill that was drawn up by a Democratic House and a Democratic Senate that was very fair, just a little tilted in one direction, and we are trying to undo that tilt just a little bit so finally, finally, maybe we can get OSHA to work with the small business community to benefit the workers.

The Occupational Safety and Health Independent Review of OSHA Citations Act restores congressional intent where the operation of the Occupational Safety and Health Review Commission is concerned. It just puts it back like it was 34 years ago. It got knocked out of whack with activist judges. When the Occupational Safety and Health Act was passed, the only reason it passed was a last-minute compromise to create an independent review commission. If you do not believe me, you do not have to. Go read the testimony. It is exactly what happened in the seventies.

It is clear in the legislative language of the OSH Act that Congress empow-

ered the commission to interpret ambiguities under the act. This, however, has been undermined by legal interpretations that did not consider congressional action at the time. I would think all of us would want them to consider what we in Congress did.

Mr. Speaker, the OSH Act empowers OSHA to inspect and propose citations for violations of safety and health standards. The commission's responsibility is to review contested citations and render judgment. OSHA's responsibility is to make up the rules and enforce the rules. But they should not sit in judgment of their own rules. That can never be fair to anybody. The Congress in 1970 understood that, and we are going to fix that in OSHA sometime very soon. Congress did not intend for OSHA to create the regulations, enforce them, and then turn around and interpret them. I would compare OSHA's role to a prosecutor, and the commission's role to a court. Congress never intended that OSHA should also be the judge and jury. This is the commission's role.

Unfortunately, that position has been undermined by other court cases, cases that did not directly deal with safety and health law, for pity's sake, which suggested that deference should be given to OSHA instead. In my view, this must be corrected, and as long as I am in this town and in this body, I am going to try to correct it.

H.R. 741 simply states that deference shall be given to the reasonable findings of the commission in accordance with the governing court precedents as Congress originally intended. In the 108th Congress, most of us understood this was important: 224 voted for it; 204 against. I know that the union bosses are against anything we do, anything that might possibly help the majority of citizens in this country who are in small business. Lord, they are always against it. But those of you who care about union members, think about them on these votes. Don't worry about the union bosses. They are going to contribute to you, anyway. Think about the workers. They are the folks who would appreciate this kind of legislation.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from Kansas (Mr. TIAHRT).

Mr. TIAHRT. I thank the gentleman from Ohio for yielding me this time, and I appreciate the leadership that he has presented to this Congress on making America more competitive in the world economy.

Mr. Speaker, this week, Congress embarks on an important agenda to make America more competitive in the global marketplace. Over the next several weeks, the House will pass significant legislation as part of the Republican Congress' competitiveness agenda. Globalization is not something we can ignore, nor is it something we can stop. As Thomas Friedman says in his book, *The World is Flat*, globalization is a reality of our world today. How Congress

deals with this reality will determine whether America remains the dominant economic superpower or whether we are relegated to a second-class economy.

America's businesses and workers have the skills and talent to compete and succeed in the global economy when given the opportunity to succeed. Unfortunately, over the past 40 years, Congress has constructed barriers to competitiveness. This institution now has a responsibility to break down these barriers and allow workers and businesses to prosper. This week of the competitiveness agenda is dedicated to eliminating bureaucratic red tape. Over the years, regulation after regulation has been levied upon our businesses, hindering their growth and development. Some of these regulations have proved helpful, but far too often these policies work simply to constrain our businesses from effectively competing and thereby keeping our workers from earning the best wages and benefits. OSHA is an excellent example of a good idea poorly executed that now hinders our businesses and workers.

The gentleman from Georgia (Mr. NORWOOD) has been a leader in the fight to keep American businesses competitive without sacrificing workplace safety and health protections. The four bills that we are considering today will establish basic principles of fairness, reduce regulatory burdens and expedite administrative reviews that will increase business productivity among America's small businesses. I want to thank the gentleman from Georgia for his vision and hard work on all these issues.

In 1971, OSHA was created to ensure a safe and healthy workplace for workers throughout the Nation. However, the bureaucracy has led OSHA to develop an adversarial relationship with our small businesses, defying common sense, good government principles and congressional intent. In order to successfully create a safe work environment, OSHA must be cooperative, not confrontational or punitive. People who own and operate businesses do not want dangerous workplaces or injured workers. They want to do the right thing, and OSHA should be there as a guide and resource, cooperatively working for a safer work environment. Unfortunately, this is simply not what is happening with OSHA.

This is particularly true in the residential construction industry where OSHA seemed to unfairly target small homebuilders in Sedgwick County, Kansas. In June of 2003, I was contacted by a group of homebuilders in Wichita who were frightened by the prospect of having to stop working in order to avoid fines from OSHA. These constituents told me OSHA was planning to fine builders for plastic cups on stairs and for workers' failure to wear earplugs while operating a wet vac. While seemingly minor issues to most of us, these fines, which some in the

community claimed could be as high as \$50,000, would effectively put small businesses out of business.

While OSHA claimed these reports were exaggerated, there is no way I can exaggerate the impact OSHA's hostility and excessive regulation can have on the still-recovering Wichita economy. In the case of these small construction companies, OSHA chose surprise visits, ill-conceived compliance guidelines and an adversarial demeanor to achieve everyone's goal of a safer, more secure workplace. The results were that many small contractors in my area of the country were forced to stop working in order to avoid unfair fines which could have been as high as \$7,000 per infraction, no matter how insignificant. Under this approach, OSHA was doing more to hurt employees than to help them, threatening the ability of the men and women of the residential construction to make a living. That is why I am a strong supporter of the gentleman from Georgia's OSHA reform legislation, including H.R. 741. This is important piece of legislation would establish an independent review of OSHA citations.

The American political structure is based on a system of checks and balances, Federal and State, the executive, legislative and judicial branches. However, OSHA currently acts both as the prosecutor and the judge for the disposition of OSHA citations. Not only is this inherently unfair and inconsistent with our political system, the structure of the Occupational Safety and Health Review Commission does not live up to congressional intent.

As the gentleman from Georgia has eloquently explained, when Congress established the OSHRC, it was designed to be an independent judicial entity to provide proper and nonbiased review and adjudication of OSHA citations.

□ 1630

This independent citation is critically important to the integrity and fairness of OSHA. Restoring this independence will help OSHA and the workers it serves.

I support the competitiveness agenda for America, and I support eliminating bureaucratic red tape, and I support the gentleman from Georgia's (Mr. NORWOOD) OSHA reform legislation.

Mr. BOEHNER. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. PRICE), a member our committee.

Mr. PRICE of Georgia. Mr. Speaker, once again I want to commend the chairman of the committee for his wonderful work in this area and commend the gentleman from Georgia (Mr. NORWOOD) for keeping this issue alive as he has tried to enact these appropriate reforms.

Once again from the opposition we have heard some very interesting stories. But the problem is they do not have anything to do with the bill. I am reminded of the newspaper correction column, that column that is on page 5

or 6 or 10 or 12. We need a correction column right here. The misstatements and the untruths by the opponents would be amusing if this were not so doggone important.

We are not interested in dismantling OSHA. We are interested in improving workers' safety. I rise to support H.R. 741, and I want to once again bring us back to the magnitude of the issues we are talking about. Small business, 99.7 percent of all business is small business; and 75 percent of all new jobs are hired in the small business sector.

Have my colleagues ever been up against Big Brother? Ever been up against Big Brother? OSHA's budget is \$468 million; 2,200 employees; 1,100 inspectors. OSHA is Big Brother. And the analogy has been used here, but what if Big Brother were the prosecutor and the judge and the jury? Unfair? Unfair? You bet. That is the current system. That is the current system under which we are working. OSHA is the prosecutor, it is the judge, and it is the jury. And that was not the intent. That was not the intent. That was not the intent.

H.R. 741 restores the original intent and the original system of checks and balances that was intended by Congress. Read the bill. What does it say? All it says is: "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." That is it. That is all it says. What does it mean? It means that the review committee will be the independent committee and the commission that Congress intended originally. Very simple common sense.

I urge my colleagues to adopt H.R. 741.

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

Mr. Speaker, the critical question is what more important things should we be doing? This commission bill which creates confusion, to our knowledge, is still not sanctioned by the administration or the Secretary of Labor. Why are we putting such great amounts of time and energy into proposing new powers for this commission when there are other more important things that we ought to be addressing?

And the statement by the gentleman from Ohio (Ms. KAPTUR) was all related to what other important things should we be doing. Why can we not have hearings when there is a major accident with four men being killed under the circumstances they were killed in Ohio? Why can we not call in OSHA and demand that there be an expedited investigation? Why are citations allowed to be unclassified? This committee, the Committee on Education and the Workforce, has oversight over the work of the Department of Labor and OSHA. Why can we not get better answers? Why can we not consider my bill, H.R. 2004, the Protecting America's Workers Act, which will call for penalties for corporations who are guilty of the kind of neglect

that led to the deaths of the four workers in Ohio?

Even by conservative estimates, 15 workers in this country will be killed on the job today, July 12. They will be killed due to serious safety lapses on the part of their employers. Why are we wasting our time playing around with the adjustment of a commission when these workers deaths are still going on in America?

I spoke earlier about the fiery explosion some 3 months ago at the BP plant in Texas City that killed 15 workers and injured more than 100 others. This happened three months ago. It is not ancient history. Why has this committee with jurisdiction not examined that explosion more closely here in Washington? I had also previously mentioned the bridge collapse in Toledo, which the gentlewoman from Ohio (Ms. KAPTUR) discussed in greater detail.

Many other cases of worker deaths, equally as tragic and preventable, only make local headlines. They only know about them locally. And they go on in different parts of the country because we are not aware of the seriousness of the situation. The fact is that much of what happens in one area can be prevented from happening in another area if we would just address those serious issues.

Every year in New York City, for example, a number of unprotected construction workers are killed by free-falls from buildings and collapses of faulty scaffolds and concrete walls. Almost 8 months ago in Walnut Creek, California, a gas pipeline explosion killed five workers, and badly injured four others. The list goes on and on.

We welcome this opportunity to get on the record from both the Members of Congress and the American people the fact that these things are continuing—this steady rate of somewhere between 5,700 and 6,000 workers dying each year—and it has been going on too long. Why not address the fact that this is something that can be stopped? We can change the death rate by having a more effective OSHA instead of playing around the edges, as these four bills are doing.

In the words of a New York State Supreme Court justice, these worker deaths in New York were not simply “random accidents” but rather, and I am quoting the judge here, “tragic certainties.” “Tragic certainties.” The workers died as the direct result of some employer’s willful safety violations or serious negligence. What is even more reprehensible is that too often, and in the specific worker death cases I just referred to, the employers responsible for these fatalities are repeat safety offenders.

In a forum I held last year entitled, “Jobs to Die For: Inadequate Enforcement of U.S. Safety Standards,” I heard from the grieving parents of 22-year-old Patrick Walters. Patrick was buried alive on June 14, 2002, working on a sewer pipe in a 10-foot trench. Pat-

rick had spoken before about his fear of being suffocating because he was repeatedly sent down into the trenches without any protective equipment and without a metal trench box. We have a picture of Patrick here. He is the young man at the top tier of the poster to my right.

I mentioned Patrick’s employer before, Moeves Plumbing, with respect to H.R. 739. I did this because Moeves Plumbing is a repeat safety offender. The firm has been the subject of 13 OSHA inspections since 1989. Patrick died only weeks after OSHA had cited Moeves Plumbing for willful trenching violations. When OSHA settled the case of Patrick Walters’ death with Moeves Plumbing, however, they changed the willful violation to an “unclassified” one. Have we heard that before today? Unclassified, just as they did in the case of Ohio. It was not a willful violation, but an unclassified violation. A weak OSHA, a corrupt OSHA changed it to “unclassified.” Without a willful violation, the Solicitor of Labor would not recommend criminal prosecution of Moeves Plumbing. As Patrick’s parents told me last year: “We need to get some stiffer penalties and some muscle behind it, or Moeves’ company is going to kill another child again. They will. It’s only a matter of time.”

Patrick’s parents, who still live in the Cincinnati area, continue to see Moeves employees working inside trenches without any cave-in protections. As Patrick’s father told a reporter in March of 2005, March of this year, about the owner of Moeves Plumbing: “She’s killed two people now, and she’ll probably kill two people again. It’s obvious she’s not listening to what OSHA is telling her.”

Under the current OSHA Act, the maximum penalty any employer can receive for causing the death of a worker, considered a misdemeanor, is 6 months in prison and a \$10,000 fine. Six months in prison and a \$10,000 fine. Unlike surviving relatives of other crime victims, family members of workers killed on the job are left without any victim services or assistance under current law. They even lack a voice in any OSHA investigations of their loved ones’ deaths. They also lack any voice in OSHA’s subsequent negotiations with culpable employees over the downgrading of initial citations and fines tied to the worker fatalities.

By stiffening criminal penalties for those found guilty of blatant safety violations that result in worker deaths, the Protecting America’s Workers Act will make other employers think twice about ignoring basic health and safety rules that risk workers’ lives. H.R. 2004 incorporates in its entirety the provisions of a bill I introduced last year, and that was called the Workplace Wrongful Death Accountability Act. Both bills would make it a felony offense to kill a worker and provide for a term of no more than 10 years in prison. A felony offense to kill a worker, and there will be a term of no more

than 10 years in prison. For a second offense, the maximum term for a culpable employer would be 20 years in prison. Fines would be set in accordance with title 18 of the U.S. Code, which is standard practice for all other criminal matters.

In other legislative matters, everyone agrees that holding people accountable by such means as stiffened penalties serves a critically important deterrent purpose. We are often on this floor talking about the need to not be soft on crime, to come with the hardest possible punishment as a deterrent. Yet I know that there are many on the other side of the aisle who are absolutely allergic to what I am proposing here, the prospect of holding accountable any employer whose willful or grossly negligent safety offenses kill workers. They don’t want to hold accountable any employer whose willful or grossly negligent safety offenses kill workers. The opposition to holding such bad actors accountable does not even waver in instances where a number of workers are killed by the same safety violations over a 5- or 10-year period. The opposition also does not waver no matter how many workers are killed by an employer’s egregious safety offenses.

I am heartened, however, by the fact that yesterday’s “Inside OSHA” reports that Senator ENZI from Wyoming, who chairs the Health, Education, Labor and Pensions Committee, supports stiffening criminal penalties for health and safety violations that kill workers. As I understand it, Senator ENZI and I might differ on the maximum penalty for corporate manslaughter, but we agree on the need to make this a felony offense.

I believe Senator ENZI would prefer to see a maximum prison sentence for a first offense set at 18 months, whereas my bill would set the maximum at 10 years, in accordance with standard criminal law. Senators KENNEDY, CORZINE, and others introduced the Protecting America’s Workers Act on the Senate side; and they agree with setting the maximum penalty for corporate manslaughter at the 10-year mark.

Mr. Speaker, the Protecting America’s Workers Act would also extend OSHA coverage to millions of workers who currently lack the protection of workplace safety and health laws. Among others, these include public employees in a number of States and localities, certain transportation workers such as flight attendants, and a number of Federal workers, as well as those in public/private entities such as the Nuclear Regulatory Commission. Moreover, this act provides stronger protections for any worker who reports safety and health violations of an errant employer.

□ 1645

This bill requires OSHA to investigate any workplace incident that results in the death of a worker or the

hospitalization of two or more workers. At the same time, it gives surviving family members of workers who are killed greater participation rights in OSHA's workplace investigation and penalty negotiation process with the respective employers responsible for these fatalities. Moreover, it prohibits OSHA from downgrading willful citations in worker fatalities, downgrading them to this "unclassified" category. They should not be categorized as "unclassified" ever again.

Last, but not least, this bill that I propose strengthens workplace prevention efforts by requiring employers to cover the costs of personal protective equipment for their employees.

Mr. Speaker, I want to commend the New York Committee on the Safety and Health, NYCOSH, joined by COSH committees in other States, for launching a national campaign against corporate killing. This grassroots campaign will alert workers and the wider public about the importance of ensuring employers do not place profits above basic safety measures at the expense of workers' very health and lives. This is a serious business that this committee ought to be about. This is a serious business that ought to be on the floor today. This grassroots campaign says what Congress should also be saying, that it is important to ensure that employers, that bosses do not place profits above basic safety measures at the expense of workers' health and lives.

Mr. Speaker, the time for the Protecting America's Workers Act is now. Although we have been making progress and making the American workplace safer in prior administrations, that progress has stalled, and we need to act immediately in a serious manner and stop the kinds of adjustments that are taking place in the bills that are on the floor today.

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

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

Mr. Speaker, having been an employer, I realized early on that the greatest asset in my business were the people who work for me. And having worked every job known to man growing up, I know that the people I worked for realized that the greatest asset they had in their business were their workers. When it comes to the protection of workers, I believe that all employers are interested in trying to protect their employees.

Congress, in 1970, passed the OSHA Act, putting in statute a set of laws, rules and regulations about the protection of American workers. And over the last, really the last 7 or 8 years, we have made great progress in reducing workplace accidents, illnesses and deaths, because OSHA, at the prodding of many of us, began to work more cooperatively with employers around the country. I have been to many work sites in my own district where voluntary protection programs have been

instituted and have been signed off by OSHA that allow employers and their employees to work cooperatively in order to have a safer workplace. And the results, the results are pretty clear. If you look at, over the last 5 years, the rate of illness, workplace injuries, and deaths has continued to decline precipitously. We are making real progress. So I would continue to urge OSHA to work with employers and their employees to help create the safer workplace that all of us want.

Now, the bill before us simply says that there ought to be this independent review of the decisions that OSHA makes, that OSHA as the policeman, as the prosecutor, as the judge and the jury, is not fair to American workers or their employers. And we believe that when Congress created OSHA in 1970, they believed, and it is clear in the legislative language and in their intent, that they believed that there would be an independent review commission making these decisions. All we do in this bill is to make clear that it is Congress's intent and that OSHA will, in fact, abide by the law as it was written.

So I would urge my colleagues to support the underlying bill today.

Ms. WOOLSEY. Mr. Speaker, I rise in opposition to H.R. 741. Instead of working to strengthen OSHA standards, my Republican colleagues have presented yet another piece of legislation aimed to weaken it by undermining the clout of the Secretary of Labor.

The Secretary of Labor should be the final authority on how OSHA law is interpreted, and this bill undermines the Secretary's authority . . . giving the Commission too much latitude.

The Secretary of Labor needs an unbiased group of peers during the appeals process. If the Commission's authority on the interpretation of OSHA law trumps the Secretary of Labor, what legal basis would the Secretary have to appeal a decision with which he/she disagrees?

The Commission's role is to fact-find and review while the Secretary of Labor is the enforcer. If the Commission becomes both the fact-finder and the enforcer, the employee cannot be ensured protection from bias. This legislation undermines the entire appeals process. It is unnecessary and not in the best interests of the employer or the employee.

If the administration was really interested in helping workers, it wouldn't be focusing on these unnecessary semantics in the law. But instead, it would be granting workers something they really need, like increased minimum wage or stricter penalties for employers that ignore safety regulations. I urge my colleagues to join me in supporting real worker reforms, not legislation promoting the erosion of worker protections.

Mr. Speaker, the administration's priorities are wrong, and I urge my colleagues to join me in opposing H.R. 741.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today speak in opposition to H.R. 741, a bill to amend the Occupational Safety and Health Act of 1970 by requiring judges in OSHA appeals cases to give more weight to the commission's decisions than to Labor Department regulators. Supporters argue the legislation would codify the intent of the 1970 Oc-

cupational Safety and Health Act (PL 91-596). However, I would argue that the measure would violate a 1991 Supreme Court ruling that gave the Labor Department priority in interpreting OSHA regulations.

Nearly every working man and woman in the Nation comes under OSHA's jurisdiction (with some exceptions such as miners, transportation workers, many public employees, and the self-employed). Users and recipients of OSHA services include: occupational safety and health professionals, the academic community, lawyers, journalists, and personnel of other government entities. To ensure that these individuals are safe and protected on the job, OSHA and its State partners have approximately 2,100 inspectors, including complaint discrimination investigators, engineers, physicians, educators, standards writers, and other technical and support personnel spread over more than 200 offices throughout the country. This staff establishes protective standards, enforces those standards, and reaches out to employers and employees through technical assistance and consultation programs. OSHA has proven that it is committed to doing its job and the Labor Department should continue to have the authority to interpret OSHA regulations.

I urge my colleagues to oppose H.R. 741.

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

The SPEAKER pro tempore (Mr. REHBERG). All time for debate having expired, pursuant to House Resolution 351, 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 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 will be postponed.

OCCUPATIONAL SAFETY AND HEALTH SMALL EMPLOYER ACCESS TO JUSTICE ACT OF 2005

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 351, I call up the bill (H.R. 742) to amend the Occupational Safety and Health Act of 1970 to provide for the award of attorneys' fees and costs to small employers when such employers prevail in litigation prompted by the issuance of a citation 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 text of H.R. 742 is as follows:

H.R. 742

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 Small Employer Access to Justice Act of 2005".