safe work environment, or into the necessity of receiving just compensation for the work that they perform.

If we as Representatives of working Americans are going to talk about how best to help the working families of this country, we must make it our first priority to insure that they receive fair compensation for their work. H.R. 1 as it is currently written will not insure that workers who depend on overtime pay receive it if they do not wish to receive compensatory time.

Those Wage and Hour violations involved a little more than one-half of 1 percent of all 6.5 million employers in the United States. For the sake of the 170,000 known workers who were affected by criminal overtime policies, we should not act without providing insurance that they will not fall victim again due to anything we might accomplish today.

We should keep in mind the need to insure that employers are barred from denying a request for reasonable time off, that workers do not lose money because compensatory time is not credited for unemployment, pension, or social security. We must have absolute certainty that the most vulnerable to overtime violations—temporary, seasonal, part-time, and construction workers—are protected.

According to the Employer Policy Foundation, an employer-supported think tank in Washington, workers lose approximately $19 billion in overtime each year.

I want to thank and commend the commitment of my colleague from New York on the issue of fair and equal treatment for all of our Nation's workers.

Mr. GOODLING. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. OWENS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. OWENS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 182, noes 237, not voting 13, as follows:

[Roll No. 57]

AYES—182

Abercrombie
Ackerman
Allen
Andrews
Bachus
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Carson
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Cramer
Cummings
Danner
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dellums
Deutsch
Dicks
Dixon
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Fazio
Filner
Flake
Foglietta
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gonzalez
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Horn
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (WI)
Johnson, E. B.
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kleczka
Klink
Kucinich
Lampson
Lantos
Largent
Lazio
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
McCarthy (MO)
McCarthy (NY)
McDade
McDermott
McGovern
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Minge
Mink
Moakley
Moran (VA)
Murtha
Nadler
Neal
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Poshard
Rahall
Reyes
Rivers
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schumer
Scott
Serrano
Sherman
Skaggs
Skelton
Slaughter
Snyder
Stabenow
Stark
Stokes
Stupak
Tauscher
Thompson
Thurman
Tierney
Torres
Towns
Traficant
Turner
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOES—237

Aderholt
Archer
Armey
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Crane
Crapo
Cubin
Cunningham
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kelly
Kim
Kind (WI)
King (NY)
Kingston
Klug
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
LoBiondo
Lucas
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Mica
Miller (FL)
Molinari
Mollohan
Moran (KS)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Rangel
Regula
Riggs
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Schiff
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Shimkus
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Adam
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stenholm
Strickland
Sununu
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—13

Clement
Dingell
English
Gephardt
Gilchrest
Kaptur
Kasich
LaFalce
Matsui
Oberstar
Price (NC)
Spratt
Stump

☐ 1534

Mr. SOLOMON changed his vote from ''aye'' to ''no.''

Mr. VENTO changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. GILCREST. Mr. Chairman, on rollcall No. 57, I was unavoidably detained. Had I been present, I would have voted ''no.''

The CHAIRMAN. The Committee will rise informally to receive a message.

The SPEAKER pro tempore (Mr. LAHOOD) assumed the chair.

The SPEAKER pro tempore. The Chair will receive a message.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Sherman Williams, one of his secretaries.

The SPEAKER pro tempore. The Committee will resume its sitting.

WORKING FAMILIES FLEXIBILITY ACT OF 1997

The Committee resumed its sitting.

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 105–31.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

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

Amendment in the nature of a substitute offered by Mr. MILLER of California:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Paycheck Protection and Family Flexibility Act of 1997''.

SEC. 2. IN GENERAL.

Section 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 207) is amended to add at the end the following:

''(r)(1) An employee may receive, in accordance with this subsection and in lieu of

monetary overtime compensation, compensatory time off at a rate not less than 1½ hours for each hour of employment for which overtime is required by subsection (a).

''(2) An employer may provide compensatory time to an eligible employee under paragraph (1) only—

''(A) pursuant to—

''(i) applicable provisions of a collective bargaining agreement between the employer and the labor organization which has been certified or recognized as the representative of the employees under applicable law, or

''(ii) in the case of employees who are not represented by a collective bargaining agent or other representative designated by the employee, a plan adopted by the employer and provided in writing to the employer's employees which provides employees with a voluntary, informed option to receive compensatory time off for overtime work where there is an express, voluntary written request by an individual employee for compensatory time off in lieu of overtime pay provided to the employer prior to the performance of any overtime assignment;

''(B) if the employee has not earned compensatory time in excess of the applicable limit prescribed by paragraph (4)(A) or in regulations issued by the Secretary pursuant to paragraph (13);

''(C) if the employee is not required as a condition of employment to accept or request compensatory time;

''(D) if the agreement or plan complies with the requirements of this subsection and the regulations issued by the Secretary under paragraph (13), including the availability of compensatory time to similarly situated employees on an equal basis; and

''(E) if, for purposes of a plan established under subparagraph (A)(ii), the employer, in providing compensatory time, does not modify a leave policy so as to reduce any paid or unpaid leave or does not reduce any other type of benefit or compensation an employee would otherwise be entitled to receive.

''(3) An employee may, at any time, withdraw a request for compensatory time made under a plan under paragraph (2)(A)(ii).

''(4)(A) An employee may earn not more than a total of 80 hours of compensatory time in any year or alternative 12-month period designated pursuant to subparagraph (C). The employer shall regularly report to the employee on the number of compensatory hours earned by the employee and the total amount of the employee's earned-and-unused compensatory time, in accordance with regulations issued by the Secretary.

''(B) Upon the request of an employee who has earned compensatory time, the employer shall on the payday of the pay period during which the request is received provide monetary compensation for any such compensatory time at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher.

''(C) Not later than January 31 of each calendar year, each employer shall provide monetary compensation to each employee for any compensatory time earned during the preceding calendar year for which the employee has not already received monetary compensation (either through paid time off or cash payment) at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher. An agreement or plan under paragraph (2) may designate a 12-month period other than the calendar year, in which case such compensation shall be provided not later than 31 days after the end of such 12-month period. An employee may voluntarily, at the employee's own initiative, request in writing that such end-of-year payment of monetary compensation for earned compensatory time be delayed for a period not to exceed 3 months. This subparagraph shall have no effect on the limit on earned compensatory time set forth in subparagraph (A) or in regulations issued by the Secretary pursuant to paragraph (13).

''(5) An employee who has earned compensatory time authorized to be provided under paragraph (1) shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid for unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work or the employee's regular rate at the time such monetary compensation is paid, whichever is higher.

''(6) An employee shall be permitted to use, at the time the employee has requested, any compensatory time earned pursuant to paragraph (1)—

''(A) for any reason which would qualify for leave under section 102(a) of the Family and Medical Leave Act (29 U.S.C. 2612(a)) or any comparable State law; or

''(B) for any other purpose—

''(i) upon notice to the employer at least 2 weeks prior to the date on which the time off is to be used, unless use of the compensatory time at that time will cause substantial and grievous injury to the employer's operations; or

''(ii) upon notice to the employer within the 2 weeks prior to the date on which the time off is to be used unless use of the compensatory time at that time will unduly disrupt the operations of the employer.

''(7) An employee shall not be required by the employer to use any compensatory time earned pursuant to paragraph (1).

''(8) Except where there is a collective bargaining agreement, an employer may modify or terminate a compensatory time plan upon not less than 60 days notice to employees. When a plan is terminated, an employer may not, except as provided in paragraph (4)(C), require that an employee who has earned compensatory time receive monetary compensation in lieu of such time.

''(9) An employer may not pay monetary compensation in lieu of earned compensatory time except as expressly prescribed in this subsection. Any payment owed to an employee under this subsection for unused compensatory time shall be considered unpaid overtime compensation.

''(10) It shall be an unlawful act of discrimination, within the meaning of section 15(a)(3), for an employer—

''(A) to discharge or in any other manner penalize, discriminate against, or otherwise interfere with any employee—

''(i) because such employee may refuse or has refused to request or accept compensatory time off in lieu of overtime pay, or

''(ii) because such employee may request to use or has used compensatory time off in lieu of overtime pay;

''(B) to request, directly or indirectly, that an employee accept compensatory time off in lieu of overtime pay, to require an employee to request or to refuse to request such compensatory time as a condition of employment or as a condition of employment rights or benefits or to qualify the availability of work for which overtime compensation is required upon an employee's request for or acceptance of compensatory time off in lieu of overtime compensation; or

''(C) to deny an employee the right to use or force an employee to use earned compensatory time in violation of this subsection.

''(11) An employer who violates any provision of this subsection shall be liable, in an action brought pursuant to section 16(b) or 16(c), in the amount of overtime compensation that would have been paid for the overtime hours worked or overtime hours that would have been worked, plus such other legal or equitable relief as may be appropriate to effectuate the purpose of this section, as well as an additional equal amount as liquidated damages, costs, and, in the case of an action filed under section 16(b), reasonable attorney's fees. Where an employee has used compensatory time off or received monetary compensation for earned compensatory time for such overtime hours worked, the amount of such time used or monetary compensation paid to the employee shall be offset against the employer's liability under this paragraph.

''(12) For the purpose of protecting overtime compensation wages of employees, the Secretary may by regulation require employers who provide compensatory time to their employees under this subsection to secure a payment bond with a surety satisfactory for protection of the overtime compensation of such employees.

''(13) (A) The Secretary may issue regulations as necessary and appropriate to implement this subsection including regulations implementing recordkeeping requirements and prescribing the content of plans and employee notification.

''(B) The Secretary may issue regulations regarding classes of employees, including all employees in particular occupations or industries, to—

''(i) exempt such employees from the provisions of this subsection,

''(ii) limit the number of compensatory hours that such employees may earn to less than the number provided in paragraph (4)(A), or

''(iii) require employers to provide such employees with monetary compensation for earned compensatory time at more frequent intervals than specified in paragraph (4)(C),

where the Secretary has determined that such regulations are necessary or appropriate to protect vulnerable employees, that a pattern of violations of the Act may exist, or that such regulations are necessary or appropriate to assure that employees receive the compensation due them.

''(C) The Secretary shall issue regulations—

''(i) which bar employers with a pattern or practice of violations of this Act from offering compensatory time under this subsection;

''(ii) prescribing the content of plans described in paragraph (2)(A)(ii) and employee notification, including the provision of information regarding who is eligible for compensatory time and under what circumstances it may be earned and used and information regarding the impact, if any, that choosing compensatory time may have on the eligibility, accrual, and receipt of other compensation and benefits; and

''(iii) requiring employers to keep records in accordance with section 11(c) of compensatory time earned and overtime worked.

''(14) When an employee uses earned compensatory time off, the employee shall be paid for the time off at the employee's regular rate at the time the employee performed the overtime work or at the employee's regular rate when the time off is taken, whichever is higher.

''(15) For purposes of this subsection—

''(A) the terms 'compensatory time' and 'compensatory time off' mean hours during which an employee is not working and for which the employee is compensated at the employee's regular rate in accordance with this subsection;

''(B) the term 'elderly relative' means an individual of at least 60 years of age who is

related by blood or marriage to the employee, including a parent;

''(C) the term 'employee' does not include—

''(i) a part-time, temporary, or seasonal employee;

''(ii) an employee of a public agency;

''(iii) an employee in the garment industry;

''(iv) an employee who is not entitled to take not less than 24 hours of leave during any 12-month period to participate in school activities directly related to the educational advancement of a son or daughter of the employee, accompany such son or daughter to routine medical or dental appointments, and accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services related to such elder's care; or

''(v) an employee exempted by the Secretary under paragraph (13)(B);

''(D) the term 'overtime compensation' shall have the meaning given such term by subsection (o)(7);

(E) the terms 'compensatory time' and 'compensatory time off' mean hours during which an employee is not working and for which the employee is compensated at the employee's regular rate in accordance with this section;

''(F) the term 'part-time, temporary, or seasonal employee' means—

''(i) an employee whose regular workweek for the employer is less than 35 hours per week;

''(ii) an employee who is employed by the employer for a season or other term of less than 12 months or is otherwise treated by the employer as not a permanent employee of the employer; or

''(iii) an employee in the construction industry, in agricultural employment (as defined by section 3(3) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(3)), or in any other industry which the Secretary by regulation has determined is a seasonal industry; and

''(G) the term 'overtime assignment' means an assignment of hours for which overtime compensation is required under subsection (a); and

''(H) the term 'school' means an elementary or secondary school (as such terms are defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)), a Head Start program assisted under the Head Start Act (42 U.S.C. 9831 et seq.), and a child care facility licensed under State law.''.

SEC. 3. CIVIL MONEY PENALTIES.

The second sentence of section 16(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(e)) is amended to read as follows: ''Any person who violates section 7(r) of this Act shall be subject to a civil penalty not to exceed $1,000 for each such violation.''.

SEC. 4. CONSTRUCTION.

Section 18 of the Fair Labor Standards Act of 1938 (29 U.S.C. 218) is amended by designating existing section 18 as subsection (a) and by adding a new subsection (b) to read as follows:

''(b)(1) No provision of section 7(r) or of any order thereunder shall be construed to—

''(A) supersede any provision of any State or local law that provides greater protection to employees who are provided compensatory time off in lieu of paid overtime compensation;

''(B) diminish the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater protection to employees provided compensatory time off in lieu of paid overtime; or

''(C) discourage employers from adopting or retaining compensatory time plans that provide more protection to employees.

''(2) Nothing in this subsection shall be construed to allow employers to provide compensatory time plans to classes of employees who are exempted from subsection 7(r), to allow employers to provide more compensatory time than allowed under subsection 7(r), or to supersede any limitations placed by subsection 7(r), including exemptions and limitations in regulations issued by the Secretary thereunder.''.

SEC. 5. COMMISSION ON WORKPLACE FLEXIBILITY.

(a) ESTABLISHMENT.—There is established a Commission on Workplace Flexibility (hereafter in this section referred to as the ''Commission''). The members of the Commission shall be selected in accordance with the procedures set forth in section 303 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2633) and the compensation and powers of the Commission shall be as prescribed in sections 304 and 305 of that Act (29 U.S.C. 2634, 2635).

(b) DUTIES.—The Commission shall conduct a comprehensive study of the impact of compensatory time on private sector employees, including the impact of the law on average earnings, hours of work, work schedules, flexibility of scheduling work to accommodate family needs, and the ability of vulnerable employees or other employees to obtain the compensation to which they are entitled, and shall make a comparison of the compensatory time offered to public and private employees. A report concerning the findings of the study shall be submitted to the appropriate committees of Congress and to the Secretary of Labor not later than 1 year before the expiration of this title. The report shall include recommendations as to whether the compensatory time provisions of section 7(r) of the Fair Labor Standards Act of 1938 should be modified or extended, including a recommendation as to whether particular classes of employees or industries should be exempted or otherwise given special treatment and whether additional protections should be given. The Commission shall have no obligation to conduct a study and issue a report pursuant to this section if funds are not authorized and appropriated for that purpose.

SEC. 6. EFFECTIVE DATE; SUNSET.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 6 months after the date of the enactment of this Act.

(b) SUNSET.—The provisions of this Act shall expire 4 years after date of the enactment of this Act.

MODIFICATION TO AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MILLER OF CALIFORNIA

Mr. MILLER of California. Mr. Chairman, I ask unanimous consent that my amendment may be modified by the form that I have placed it in at the desk.

The CHAIRMAN. The Clerk will report the modification.

The CLERK read as follows:

Modification to the amendment in the nature of a substitute offered by Mr. MILLER of California:

Amendment No. 5 offered by Mr. Miller of California modified by (1) strike in the matter to be inserted by Section 2, ''(E) The terms 'compensatory time' and 'compensatory time off' mean hours during which an employee is not working and for which the employee is compensated at the employee's regular rate in accordance with this section;'' and redesignate thereafter accordingly; and (2) in section 3 by striking ''The second sentence of section'' and inserting in lieu thereof, ''Section''; and by striking ''to read as follows'' and inserting in lieu thereof ''by adding after the first sentence the following''.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

Mr. GOODLING. Reserving the right to object, Mr. Chairman, I just want to make sure I am correct in assuming this is not the 40-hour work week.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, my understanding is that that is not made in order by the Committee on Rules, and this is the one the gentleman has agreed to.

Mr. GOODLING. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the modification offered by the gentleman from California [Mr. MILLER]?

There was no objection.

The CHAIRMAN. Pursuant to House Resolution 99, the gentleman from California [Mr. MILLER] and a Member opposed will each control 30 minutes.

Who rises in opposition to the amendment?

Does the gentleman from Pennsylvania [Mr. GOODLING] wish to claim time in opposition?

Mr. GOODLING. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. GOODLING] will control the time in opposition.

PARLIAMENTARY INQUIRY

Mr. LAFALCE. Mr. Chairman, I believe there may have been an error in the timing on the last vote. There are a number of us, at least a half-a-dozen or more, who, when we got on the subway, saw a clock that indicated approximately 1 minute-plus seconds left to vote. Had there been the ordinary 17 minutes, it is our collective judgment that there would have been ample time to vote.

Perhaps there is some incongruity between the clock downstairs and the clock here. But if there is any way to reopen that vote, it would be the desire of at least a half-a-dozen-plus Members that that be done; 14 Members.

The CHAIRMAN. The Chair could not entertain that suggestion. The Chair would simply state that the final 2 minutes following the elapse of the clock are determined by the stopwatch. The stopwatch had gone an additional 2 minutes.

Mr. LAFALCE. I thank the Chair.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. MILLER].

Mr. MILLER of California. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, we offer this substitute, many of my colleagues on the Committee on Education and the Workforce, we offer this substitute because we do not believe that the legislation before us meets the test of flexibility, that it meets the test of voluntary, and that it meets the test of

the right of the worker to choose when and how to use the comptime should they decide to opt into that system. We believe that the legislation before us denies that voluntary choice, allows the employer to have too much say, and we believe that it also denies the worker the right to say when they want to use that time.

This is a disagreement between the two sides. It has been a disagreement we have had from the time this bill was heard in committee.

We also offer this substitute for a very important reason for workers of this country. It is constantly suggested that somehow the choice of comptime is a wonderful thing and it is free, you just decide you want to work overtime and instead of getting overtime pay you take comptime.

Let me explain to the Members that this has serious ramifications for workers. The loss of the premium time, the loss of the premium time comes out of your work year sometime later. When you take your comptime, you would be taking it in a work week that you would otherwise be working. You will get reimbursed when you take your comptime at the regular rate, but if you had freely chosen to have overtime you would have had the overtime you worked and the week that you could keep working if you did not have comptime.

What does that mean? That means that there is a potential for somebody earning $10 an hour, 140 hours overtime, according to CRS, up to maybe $2,500, $2,700 a year. At $10 an hour that is a lot of wages in terms of family income. It has an impact on unemployment, because if the premium time is not counted in, if you lose that premium time, you lose the unemployment benefits.

In California it could be $1,800 in unemployment benefits over 26 weeks.

□ 1545

So let us understand this: This is a decision that an employee must make very carefully. This is a decision that the employee must make in a very voluntary fashion. And if in fact the employee does that, then the employee who has earned those hours off, this is not a gift, this is earned by them working long days of overtime, the employee should be free to choose when and how.

They keep comparing it to family medical leave. It is one thing to go in to your employer and say, I have a sick child, a sick parent. We are giving birth to a baby in our family. I need time off. It is another thing to go in to your employer and say, I have a chance to spend 3 additional days with my kids at the lake. The employer looks at his schedule and starts weighing those two competing choices. But you earned this time. You earned this time. You worked late nights. You worked Saturdays and Sundays. Truly, you have got to have that choice.

That is why this substitute is being offered, because the underlying bill, H.R. 1, fails in each and every one of these categories to protect the voluntary nature of the decision, to protect the choice, to protect the flexibility and, most importantly, to protect the wages and the benefits and, even down the road, the level of your Social Security payments for those people who work. If they spend a career in comp time, they will lose a substantial portion of their remuneration of Social Security payments down the road.

So this is not just a delightful little decision that you make willy-nilly. This has consequences for those families. That is why the President drafted his comp bill in the manner in which he did, because this is a decision that must be weighed and workers must be fully informed.

The supporters of H.R. 1 like to suggest that just the standard of ''take it or do not take it'' is enough. It is not enough for the hard-working American families of this country.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes and 30 seconds to the gentleman from Wisconsin [Mr. NEUMANN].

Mr. NEUMANN. Mr. Chairman, I would like to ask the chairman of the subcommittee and the sponsor of the bill on behalf of the folks I represent, particularly union members whom I have heard from, is my understanding correct that nothing under H.R. 1 would change the 40-hour workweek?

Mr. BALLENGER. Mr. Chairman, will the gentleman yield?

Mr. NEUMANN. I yield to the gentleman from North Carolina.

Mr. BALLENGER. Mr. Chairman, the gentleman is correct. I thank him for emphasizing this point.

Mr. NEUMANN. So I am correct, then, that at any time worked, even 1 hour worked over the standard 40 hours, would entitle the employee to time and one-half pay? Am I correct that this is the case under current law and would be the case in the future under this legislation H.R. 1?

Mr. BALLENGER. Mr. Chairman, if the gentleman will continue to yield, the gentleman is correct.

Mr. NEUMANN. Further, Mr. Chairman, would the gentleman confirm my understanding that under H.R. 1, employers could not force the individual employee or union which represents the employee to accept comp time as opposed to cash overtime as a condition of employment?

In other words, if the employee works overtime, is it correct that the employer must pay cash overtime wages if that is what the employee or the employee through his labor union chooses, instead of requiring the employee to take time off through comp time?

Mr. BALLENGER. Mr. Chairman, the gentleman is correct.

Mr. NEUMANN. Mr. Chairman, some union members from my hometown in Janesville, WI, particularly those that work in an automobile manufacturing plant, have expressed concern to me that their employer might require them to bank overtime hours and then use the hours at a specified time by the company, particularly during the 2-week period of time each year when the plant shuts down for model changeover.

My understanding is that under H.R. 1 the use of comp time is voluntary and that by ''voluntary'' means that the employer, whether an automobile manufacturer or some other type of company, would not be able to require that comp time, if chosen by the employee, be taken at a set period such as model changeover; is that correct?

Mr. BALLENGER. The gentleman is correct. Whether the agreement to accept comp time is negotiated by the union or by the individual employee, the use of comp time belongs to the employee who earned it. Neither the employer nor the union may require an employee to use comp time at a certain time.

Mr. NEUMANN. Mr. Chairman, I thank the gentleman for clarifying these important points to me.

Mr. MILLER of California. Mr. Chairman, I yield such time as he may consume to the gentleman from Minnesota [Mr. VENTO].

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

Mr. VENTO. Mr. Chairman, I rise in support of the Miller substitute.

Mr. Chairman, I rise today in support of the Miller substitute and in opposition to this bill before us which weakens the Fair Labor Standards Act. The Miller substitute includes the needed safeguards without the penalties and disadvantages that are inherent in the basic measure before the House today.

For over 50 years, the 40-hour workweek has insured fair treatment and pay for working men and women. There is no need to change this law today—the impact may well undercut workers' rights and benefits. No matter how you package these changes, the bottom line is that workers are at greater risk of being short-changed and pushed to a work schedule in line with the employers' interests, not their own needs.

If this House really were seeking to empower workers, they would place limits on the mandated overtime policy that frustrate family and personal life today.

Court decisions have provided the employer with the power to mandate employees to work overtime beyond their defined 8 hours. This measure would weaken the concept of premium pay for that mandated work and buy workers off on the cheap. In fact, this bill would encourage more overtime employer mandates at a tremendous inconvenience to the employee.

I find it ironic that after all the speeches I have heard from the Republican majority about working together and cooperation with the President since the last election, that one of the first serious pieces of legislation to reach the floor of this Congress is an initiative to strip away the longstanding and hard-fought rights of working men and women in this country which is opposed by the President. The bill before us today is a direct assault on the Fair Labor Standards Act and seriously

erodes the traditional 40-hour workweek in an unbalanced manner—rejecting reasonable safeguards.

H.R. 1, the Working Families Flexibility Act, would allow employers to grant compensatory time to workers instead of overtime pay as long as there is a so-called voluntary mutual agreement or understanding. Although this may seem like a reasonable concept on the surface, but making a careful review and a realistic look at this legislation's predicate points to the harm to workers. Apparently, my colleagues, in support of this measure, intend to rely on the good nature of employers and assume an equal authority between employer and employee since this bill glosses over the facts and absurdly offers little to protect workers from obvious pressure and abuse that could, and would, occur if this measure is implemented. It makes me wonder if the advocates are connected to the real world of work.

The bill before us today is so wholly inadequate that the bottom line is that it comes down as antiworker legislation. The bill does little to stop employers from forcing their workers to accept comptime instead of pay—its anticoercing provision is weak and unenforceable; it does nothing to stop employers from offering overtime work hours only to workers who will choose comptime; it puts burdensome restrictions on the use of comptime by workers; and it does little, if nothing, to prohibit employers from hiring only workers that will accept comptime as a condition of their employment. The legislation therefore is seriously flawed.

Working families in this country are struggling to make ends meet. Many families depend on the additional income of overtime pay to get by. So when these families are forced to voluntarily mutually agree to accept comptime, they go without pay. Comptime does not pay the bills. This will mean a pay cut for many American families.

This legislation is not necessary. Employers can grant time off whenever an employee requests under the current law. This equation in this measure is a fabrication, making a tradeoff which is not needed and can only hurt workers without adequate safeguards. The best safeguard is the current law in which the overtime is paid and the employers are open to grant time off and, in fact, guided by the Family Medical Leave Act recently enacted.

Finally, the claim that this measure is proworking families, stands logic on its head. Would every major employee representative group oppose this measure if it were helpful to workers?

I urge my colleagues to defeat this bill.

Mr. MILLER of California. Mr. Chairman, I yield 2½ minutes to the gentleman from Missouri [Mr. CLAY].

Mr. CLAY. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise to support this substitute, which includes many of the Democratic amendments offered during the committee markup. Had the majority been interested in a true bipartisan, profamily approach to comptime, it would have accepted our amendments. Instead they rejected every proposal designed to improve this bill.

The Miller substitute allows employees a real opportunity to choose in the use of comptime. For example, a worker who needs to spend a few days with a sick parent could use comptime when he needs it, not when it is OK with the boss. A mother who needs a week off during school vacation can count on using her bank comptime and not be subject to the last-minute whim of her employer.

The substitute safeguards employee wages and paid leave. It protects vulnerable employees such as part-time, temporary, and seasonal employees who have very little leverage in objecting to unreasonable management demands.

It protects the comptime of employees by reducing the maximum banked hours to 80. And it allows the Secretary of Labor to require that employers obtain a surety bond so that employee wages are insured against an employer who skips town or goes bankrupt.

The Miller substitute also insures that no employer can offer comptime unless it also offers at least 24 hours of leave for employees to participate in their children's school activities or to help an elderly parent with routine medical appointments.

Finally, Mr. Chairman, the Miller substitute protects employees against flagrant abusive behavior. This substitute gives families a real choice of flexibility in the workplace, and it ensures comptime will not be administered in an arbitrary and capricious manner.

Cynthia Metzler, Acting Secretary of Labor, recently wrote our committee expressing the President's intent to veto H.R. 1. In that letter she outlined the President's objections. First, H.R. 1 fails to provide real worker choice. Second, it fails to protect employees' protection against abuse. And third, it fails to preserve the 40-hour workweek.

Mr. Chairman, if this House is serious about helping employees balance their work and family responsibilities, we should adopt the Miller substitute.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes and 5 seconds to the gentlewoman from Kentucky [Mrs. NORTHUP].

Mrs. NORTHUP. Mr. Chairman, I rise in opposition to the Miller substitute and in support of H.R. 1. While the Miller substitute claims to offer the option of comptime to workers, the truth is it would continue to deny them that option. Under the Miller substitute, huge groups, basically anybody that the Secretary of Labor deems should be excluded, would be prohibited from receiving the benefits of this comptime law.

In addition, the Miller substitute creates such a regulatory maze that no employer would ever offer comptime at such an option. In a time when the American public is calling for smaller government and less regulatory burden, this substitute is a major step backward.

The only real comptime proposal here is H.R. 1. Mr. Chairman, I have six children. As a working mother, I know the challenges of balancing a family and a career. I know what it is like not to be able to attend your daughter's swim meet or your son's soccer game because you have to work. With this bill, an employer could give a mother or father the opportunity to bank comptime. When a child got sick or had a recital or had to go to the dentist, she can take time from that bank and spend that time with her family. If she would rather receive overtime pay, she has that option. If she decides to cash in those hours, her employer would have to pay her within 30 days.

This is not a new idea. The public sector employees have had this opportunity for years, and we need to give it to the private sector employees.

I understand there are some workers that are afraid this will end overtime pay. This simply is not the case. When I explain to constituents what this bill means, they endorse it wholeheartedly. It is too bad that some Members, for political gain, have once again attempted to mislead hard-working Americans using scare tactics and inaccurate information. I believe the public is too smart for this. They support this bill, and they want that flexibility time.

Mr. Chairman, the President himself has talked about the need for flexible work schedules. This bill supplies that.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Chairman, these are tough times for many Americans as they struggle to make ends meet while balancing the challenges of work and a family. Families rightly seek greater flexibility and paycheck protection to meet their obligations at home and on the job. Unfortunately, the Republican comp time bill makes it harder rather than easier for these families.

The Republican bill fails to ensure that employees can use the comp time when they need it, when they need to go to that soccer game, when they need to spend time with their youngsters. Worse, it could take valuable overtime pay out of an employee's pocket. It does not guarantee that employees would not be forced to take comp time instead of overtime pay. It does not guarantee that comp time would be offered to all employees and without any strings attached. And it does not guarantee that employees' comp time would be credited for the purposes of pension or Social Security.

We need to have strong protections for workers who depend on overtime pay. Two-thirds of those who earned overtime pay in 1994 had a total annual family income of less than $40,000 a year and had an average wage of $10 per hour or less.

That is why we need the serious protections that are provided by the Miller substitute amendment. The Miller substitute ensures that employees would choose if and whether to take the comp time rather than overtime pay so that employees would not be forced to give up overtime dollars. It

protects employees vulnerable to overtime abuses. And it ensures, if comp time is offered, that all employees would be given the same terms so that extra hours are not given only to those who are willing to take comp time.

There are a number of amendments considered today, but the Miller substitute can fix the fundamental problems of the Republican comp time bill. I urge my colleagues to vote for the Miller substitute and against the Republican paycheck reduction act.

Mr. GOODLING. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois [Mr. FAWELL], subcommittee chairman.

Mr. FAWELL. Mr. Chairman, I thank the gentleman for yielding time to me.

I oppose the Miller substitute. From my viewpoint, I spent some time reading this arcane piece of legislation last night. But it is some 15 pages of confusion. It is a comp time bill I think in name only. There are many objections, I think, one who reads this carefully would have. I think it is a masterpiece of convoluted regulatory maze. But I am only going to mention two points.

First of all, with regard to the definition of eligible employees, that is to say, those employees who would be eligible for compensatory time off in lieu of overtime, if one gets to page 10 and section 15(c), we will find that there is what I call negative definitions of the employees who would be able to take advantage of this choice about which we have just heard.

It starts out by saying that the term employee does not include, and then it says, part-time, temporary, or seasonal employees. Then you have to jump over to another section for a definition of part-time, temporary, and seasonal employees. But I notice that, for instance, in that definition, anybody in the construction trades is automatically ipso facto determined to be part-time and so nobody in the construction trades, though they might have worked for the same employer for 40 years, would be able to have his compensatory time off choice.

It goes on to say that an employee will not include also anybody in the garment industry. It does not define garment industry, so we are going to have to let the Department of Labor, I guess the secretary will tell us what garment industry is. But if you happen to be classified in the garment industry, then you do not have any choice under this bill either.

□ 1600

Then it goes on to say, and this is really a beautiful, beautiful example of convoluted positioning, it says that an employee has to be one who is entitled to take not less than 24 hours of leave during any 12-month period to participate in school activities directly related to the educational advancement of a son or daughter of the employee, accompany such son or daughter to routine medical or dental appointments, and accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services related to an elder's care.

That is the President's wording in regard to the Family and Medical Leave Act, which, thus far, I do not think has had a hearing anyplace. But basically, as I construe this, what it is saying is that if an individual works for an employer who does not have that kind of leave, and it does not even define whether it is paid leave or unpaid leave, I guess we have to leave that up to the Secretary, too, but, anyway, if an individual is employed in a place of employment like that, they do not have a choice either.

Now, I would submit that that is probably most of America. Because most of America has not even had the chance to adjust, if and when the President's bill in regard to family and medical leave should pass.

It also goes on to say, oh, we have some more negatives we can talk about. And it says that an eligible employee, eligible for compensatory time out, for instance, should not be an employee exempted by the Secretary under (13)(B). That causes one to travel over to (13)(B), and (13)(B) says the Secretary may issue regulations regarding classes of employees, including all employees in particular occupations or industries, and the Secretary can evidently exempt any industry, any occupation from being covered by this act.

So if an individual happens to be in an industry or occupation that the Secretary has found not to be qualified, then they do not have a choice under this legislation either. Basically, there is no choice for much of anybody in this legislation, as I read it.

The other point I thought we should know about is the fact that it is also stated, as I read it here, an employer who violates any provision of this subsection, now we are on page 7, can recover, and I quote, ''Such legal or equitable relief as may be appropriate to effectuate the purpose of this section.''

Do my colleagues know what that means? Compensatory damages or punitive damages unlimited. And, remember, he has also thrown a new discrimination cause of action into this legislation. Which means that if anybody has discriminated on any of these little subtle bases here, that is just an employer, then that employer can be sued for millions of dollars and be able to have put against him a judgment for compensatory and punitive damages.

Anyway, Mr. Chairman, I just thought people might like to know this. This is not a very good piece of legislation.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from California [Mrs. TAUSCHER].

Mrs. TAUSCHER. Mr. Chairman, I rise in support of my neighbor, the gentleman from northern California, Mr. MILLER, and his substitute amendment.

Mr. Chairman, I have worked for 30 years, and the working parents and families in my district are spending less and less time with their families and young children. They are driving too long to the office. Many of them get on airplanes to commute to make a sales call. Many find themselves looking for opportunities for flexibility, and when they hear the rhetoric of H.R. 1, many of them say, aha, perhaps there it is.

The truth is that H.R. 1 appears to be well-intentioned but, in my opinion, it does not offer the kind of flexibility, the kind of voluntary options and the real money that American workers want. The people of my district do not want to be forced into the position of deciding whether the comp time to go to the soccer game is put at a vexing choice of whether they have the money to buy the soccer shoes.

This is about real wages, Mr. Chairman. This is about the opportunity to have people have the opportunity to spend the money that they expect to be earning. Paycheck protection is the fundamental right of all American workers. The opportunity to have pension and Social Security money put forth by an employer is denied by H.R. 1.

I believe that we need to vote for this Miller substitute amendment.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the gentlewoman from Washington [Mrs. SMITH].

Mrs. SMITH of Washington. Mr. Chairman, I rise in opposition to the Miller substitute because it basically removes all the benefits of the bill.

When I started working as a teenager, well, actually at 11, I started realizing real soon that government can get in the way when they kicked me out of the fields because I was too young, even though I needed to work. By the time I was in my 20's, I was running a corporation, helping women, mostly middle class women who had raised their kids, bring it all together.

If I had been a government employee or I had been a government employer, I had the ability to adjust times, but I could not do it as a private employer. So what I had to do was find uncomfortable options that neither one of us liked.

What this bill simply does is it does protect the 40-hour work week. It does not wipe it out. This amendment wipes out the ability to have flex time. The bill does assure protection for employees, but it does what 75 percent of the women in America polled said they wanted, and that is the ability to have more flexibility as they are taking care of their moms, sometimes their dads, their kids, and working. They have the ability to work with an employer and put together a package that works for them.

Why do we believe that we, as a government, are so good that we know how to put together people's personal lives? I do not really believe we do. I believe the protections, especially treble damages, that is pretty scary, are built

into this bill for employers that would think that they should coerce. I think the 40-hour work week is protected.

I am not sure I will support the Senate bill. I think it might weaken the 40-hour work week. But I think, overall, American women will finally have a chance to be heroes, as they are, and be able to do it easier with flex time.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from California [Ms. SANCHEZ].

Ms. SANCHEZ. Mr. Chairman, I rise in support of the substitute offered by my good friend and colleague, the gentleman from California [Mr. MILLER].

The Miller substitute to H.R. 1 is the real Working Families Flexibility Act. The Republican bill is an impostor that will result in paycheck reduction for all working families.

If the other side had been truly interested in helping working families, then we would have created a bipartisan piece of legislation and we would have been proud to present it to the American people. Instead, we have a bill that was drafted behind closed doors and passed along party lines in committee. This is unfortunate because it is an opportunity missed.

I have been an employee for public service, I have been an employee in private business, I have been an employee of a large business, I have owned my own business, and I know that H.R. 1 could have balanced the need of flexible work schedules and the requirements of employers.

In my congressional district there are more than 25,000 people who make less than $15,000 per year. In addition, there are over 52,000 women who work and support their families. These women need the security of knowing that they can depend on overtime pay or use comp time to take care of their children.

While I support the idea of flexible work schedules, and I wanted to support H.R. 1, the bill does not provide sufficient protections for working families. During the markup, the committee could have restored some balance to this bill. I joined my good friends, the gentlewoman from Hawaii [Mrs. MINK], the gentlewoman from California [Ms. WOOLSEY], and the gentleman from Massachusetts [Mr. TIERNEY], in offering a simple amendment that would have helped working families have a real choice and real flexibility, but, unfortunately, our amendment was turned down.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. KNOLLENBERG].

Mr. KNOLLENBERG. Mr. Chairman, I thank the gentleman for yielding me this time to speak about an important issue to all working families.

Mr. Chairman, I rise in strong support of H.R. 1 and in opposition to the amendment of the gentleman from California [Mr. MILLER]. I think it is a poison pill for this bill and it would literally gut this excellent proposal.

Mr. Chairman, we have heard a lot of the distortions about what we are doing here. We have heard this legislation would take money and benefits out of the hands of hard-working individuals; that it would give employers the upper hand; that it would harm our working families, our hard-working families. If that is the case, why is it that President Clinton's pollster is saying that 75 percent of working families favor this bill, H.R. 1?

I think it is because they want the choice to take time off for their families instead of receiving overtime compensation. Currently, most employees have no choice. Government union employees do have this choice, but the rest of us do not. We have to take the pay even if we would rather have the time off.

The bill is for our workers and their families who do not have enough hours in the day to spend together. It is for the mom or dad who wants to go to school to see their child's play, visit their teacher or attend a basketball game. It is for those of us who need to take extra time to go to the doctor or take our children to the doctor. It is for those of us that actually would sacrifice the overtime pay just to take an extra vacation or a few days off to be with our kids or take care of important personal items.

The most important part of this is to remember that this is paid leave that the worker has earned, not unpaid family and medical leave that often goes unused because, frankly, our workers cannot afford to take the time off. Employees can make an intelligent and informed decision about how to best use their overtime. Whether they use comp time or take the pay is a decision they should make, not some Washington bureaucrat.

The choice is simple, Mr. Chairman. Let us give our families and workers the choice they deserve. Support H.R. 1 and oppose the Miller amendment.

Mr. MILLER of California. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. MARTINEZ].

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

Mr. MARTINEZ. Mr. Chairman, I rise in support of the Miller amendment and against H.R. 1. Give people the choice.

Mr. MILLER of California. Mr. Chairman, how much time have we consumed; or how much time is left to both sides?

The CHAIRMAN. The gentleman from California [Mr. MILLER] has 18 minutes remaining, and the gentleman from Pennsylvania [Mr. GOODLING] has 16½ minutes remaining.

Mr. MILLER of California. Mr. Chairman, I yield 1 minute to the gentlewoman from California [Ms. WOOLSEY].

Ms. WOOLSEY. Mr. Chairman, I was a working mother of four children. I also have 20 years of experience as a human resources professional. I know the challenges facing working moms and dads today. I know that for things to work at home, parents need real flexibility in the workplace. H.R. 1 does not help working parents because it does not let the employee choose when to use the comp time they have earned.

The Miller substitute, however, is real comp time. It is real flexibility. It gives employees three ways to use their comp time: automatically, for family emergencies; at the employee's convenience, with 2 weeks notice; and with less than 2 weeks notice when it does not unduly disrupt business.

The Miller substitute stands up for working moms and dads, allowing them the choices they need to perform their most important task: parenting. Let us vote for comp time that really means something. Vote for the Miller substitute.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from New York [Mrs. MCCARTHY].

Mrs. MCCARTHY of New York. Mr. Chairman, I rise in support of the Miller-Clay substitute to H.R. 1.

When I talk with my constituents, they tell me they want Congress to put aside partisan fighting and find commonsense solutions to important issues. On comp time, they tell me they want a bill which provides workers true flexibility and a true choice of when to use it.

I understand this issue firsthand. Before coming to Congress, I was a nurse. I still am a nurse. Comp time would have been very attractive for me, since I put in long hours that kept me away from my family. But I also know that without real choice, there would have been many times when I would have been asked to work, wanted to take time off and been denied it. Instead of flexibility, I would have been left with no overtime pay and a comp time bank from which I could never withdraw.

The fact of the matter is the vast majority of employers will treat their workers right under comp time. But a small number will not, and any law we pass must protect the most vulnerable workers whose bosses will try to abuse the law.

I am proud to be an original cosponsor of the Miller-Clay substitute, because I believe it strikes the right balance between the needs of the employer and the employee. Under the Miller-Clay proposal employees get to decide when to use the comp time they have earned as long as it does not cause substantial or grievous injury to the employer.

More importantly, the Miller-Clay substitute provides sensible protections to employees who choose comp time.

□ 1615

Under this plan comptime counts as hours worked for overtime so employees will not be forced to work long hours later in the week. Employees can be assured that if their business goes bankrupt, the comptime hours they have accumulated will not be lost forever.

Finally, the Miller-Clay substitute gives workers 24 hours of leave to attend a parent-teacher conference or take a sick parent to the doctor. By helping workers who are struggling to make ends meet while caring for their family, the Miller-Clay substitute is truly family oriented.

Mr. Chairman, I urge my colleagues to vote yes.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. BARRETT].

Mr. BARRETT of Nebraska. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in opposition to the substitute and in support of H.R. 1. Under the substitute it occurs to me that the Secretary of Labor would be empowered to deny comptime to basically anyone the Secretary wants. The provision strikes at the very heart of H.R. 1, which is giving freedom to workers and to employers.

The substitute creates a maze of new regulations and penalties. Employers simply will not offer comptime for fear of making some kind of an honest mistake and being taken to the cleaners.

There is only one proposal that meets the needs of workers and employers, and that is H.R. 1. The bill gives workers and employers what they want, the freedom to offer a new benefit, and the freedom to decline or accept it. H.R. 1 should be titled Working Families Freedom and Flexibility Act.

H.R. 1 breaks the barriers that have stopped the private sector from offering a benefit that Americans have been demanding for quite some time. This bill does so without a one-size-fits-all Federal mandate. Employers will be free to listen to their workers and decide whether to offer the benefit. Workers will be free to accept or refuse the benefit. They can use the comptime or they can take the overtime wages. It is entirely up to the employees.

Mr. Chairman, H.R. 1 is a win-win for America. It provides freedom to employers to offer a benefit without another bureaucratic government mandate. It provides freedom for workers to take the time that they have worked and use it to spend with their families or to take their overtime pay.

For nearly 210 years, Congress has passed laws to ensure that the American worker and the business sector have the opportunity to succeed. H.R. 1 continues that fine tradition. I encourage my colleagues to support this landmark legislation to reinvigorate the idea of freedom in the workplace and oppose the substitute.

Mr. MILLER of California. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey [Mr. ANDREWS].

Mr. ANDREWS. Mr. Chairman, I thank my friend from California for yielding time, and I rise in support of his substitute.

Mr. Chairman, it occurs to me that someone listening to this debate today might be awfully confused when they hear virtually everyone on our side say the bill before the House puts the whip in the hands of the employer and takes the choice away from the employee and hears virtually everyone on the other side say exactly the opposite is true. Let me tell my colleagues why I feel so strongly that we are right about this argument. It has to do with the way the underlying bill that we are seeking to amend is drafted.

If we have a situation where an employee who always chooses cash, or has always chosen cash in the past, is denied overtime in the future and an employee who always chooses comptime is given overtime in the future, I think it is a fair conclusion that the other employees in that workplace might get the message that if you choose cash you do not get overtime. But if you choose comptime, you do. That effectively takes the choice away from the employee and puts it in the hands of the employer.

Our friends on the other side no doubt say that is not what the bill says. The bill says that you have to offer the employee the choice. That is true. That is literally what the bill says. But in practice let me tell my colleagues what I believe would happen. The burden of proof would be on the employee to hire a lawyer, go to court and show that the employer intentionally chose to discriminate or deny overtime to the employee who chose cash rather than comptime. The way you have to meet that burden of proof, with all due respect, is impossible. There is a saying in law that he or she who has the burden of proof loses. In this case it would be the employee who would have that burden of proof.

How would you meet the burden of proof? You would have to find a smoking gun. You would have to find a memo or an oral statement from an employer that would say, ''Whatever we do, let's stop offering overtime to people who choose cash rather than comptime.'' Very few employers, first of all, I believe, would coerce their employees. I accept that. But even fewer employers are going to be stupid enough to let such a memo or oral statement be around. Very few people are going to meet this burden of proof.

We then have the assertion that an employee can cash out their comptime on demand. That may be what the written piece of paper says, but that is not the reality, Mr. Chairman, because the same person who is persuaded not to choose cash in the first place is very unlikely to go back to an employer and demand cash in the second place. On paper this sure looks like choice, but in the real world it sure looks like coercion.

The Miller substitute meets those objections. It would truly put the choice in the hand of the employee and not the employer. It would deal with the situation where an employee has accumulated comptime and the employer goes out of business by not permitting that situation to get out of hand and accrue. If you really want worker choice, support the Miller substitute.

Mr. GOODLING. Mr. Chairman, I yield 2½ minutes to the gentleman from Montana [Mr. HILL].

Mr. HILL. I thank the chairman for yielding me time.

Mr. Chairman, I rise to oppose the Miller substitute and to express my strong support for the Working Families Flexibility Act. The Miller substitute would create such a regulatory maze with such heavy penalties that no employer would ever offer comptime. Make no mistake, there is only one comptime bill before us, and that is H.R. 1.

H.R. 1 is very simple. It allows private sector employers to provide comptime in lieu of overtime pay under an agreement with their employees. If an employer chooses to make comptime available, the employees have the option of having their overtime compensated with cash or with paid time off. Employees who prefer to receive cash wages for overtime hours worked would be free to continue to receive cash payment for their overtime.

Mr. Chairman, this legislation does not change the 40-hour workweek for the purposes of calculating overtime. Employees who work more than 40 hours over 7 days would continue to receive overtime at 1½ times their regular pay. If the employer and employee agree on comptime, then the paid time off would be granted at 1½ hours for each hour of overtime worked. This arrangement for comptime must be a mutual agreement between the employer and the employee. It is entirely voluntary on the part of the employee. The legislation also protects employees from being coerced into comptime or overtime.

Mr. Chairman, I owned a small business, about 20 employees, before coming to Congress. My office policy was set up for exactly what this legislation would achieve. If one of my employees wanted to go to a track meet or had a parent-teacher conference during the workday, I simply asked them to make up the time later on. It was a casual, trusting relationship. That was until the Department of Labor told me that it was wrong to provide this kind of flexibility to my employees of balancing their work life with their family life.

But let me give another example, Mr. Chairman. There is an art theater in Montana, in a small town. They perform at night and on weekends. The theater has five employees who sometimes work 20 to 30 hours on the weekend in addition to their regular workweek. They prepare the stage, visit schools, pack and unpack props and other equipment. Currently these employees would willingly give up their time, but they are breaking the law. With a comptime option, Mr. Chairman, the employees could take off their time in subsequent workweeks to make up for their overtime.

Mr. Chairman, there are 50,000 small businesses in Montana. Ninety percent of them employ 50 or fewer employees. It is not the place of the Federal Government to deny those small businesses in Montana the opportunity to provide flexible workplaces.

Mr. MILLER of California. Mr. Chairman, I reserve the balance of my time.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. UPTON].

Mr. UPTON. Mr. Chairman, as a new member of the Committee on Education and the Workforce, I rise in support of H.R. 1 and in opposition to the amendment offered by my colleague from California [Mr. MILLER]. I am a strong supporter of the bill before us, H.R. 1, and was pleased to support it in the committee earlier this month.

Contrary to what my colleagues may hear today, the bill does not affect the 40-hour workweek or existing rights of overtime pay. It also has built-in protections and safeguards to ensure that employees are not coerced into choosing comptime. The base bill allows employees to decide how they want to be paid for their overtime work, either in dollars or comptime.

I once had a job where this policy was in effect, both as an employee as well as a boss, and I know that it works. When I no longer serve in this Congress, I would strongly prefer a job where I could put in a 40-hour week over 4 days and have a Monday or Friday off to spend time with my family, and I would think that that would be a worthwhile and attractive alternative to many of us in this Chamber today.

Today I have heard a lot about being forced to choose one or the other. That does not happen. What we want to do is give workers the opportunity to choose for themselves what they want. The opponents of this legislation have offered lots of amendments, but they have not offered an amendment to take away this benefit from those employees that today have exactly this type of practice in the workplace. My sense is if they did, that those employees that have that opportunity today would raise a real hue and cry against what this Congress would do.

Mr. Chairman, it works. I saw it work. We need to have this work for all employees and that is why I am glad to support this legislation this afternoon.

Mr. MILLER of California. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan [Ms. RIVERS].

Ms. RIVERS. Mr. Chairman, the debate today really is about striking a balance, about finding a way to meet the demands for flexibility that employees all over this country have with our need to protect people from decisions that employers might make to the disadvantage of that employee. We are really talking about income protection here today.

I know that there has been some discussion about the importance of letting individual employees decide and I agree, that is important. We should let individuals decide. But I think that the other side protests a little too much about that, and the speeches we have heard about how demeaning it is to suggest that employees may need some protection really does not look at the issue in a reasonable light.

I know, because for many years my husband and I lived on overtime. My husband is an autoworker. He works in 1 of the 12 automobile plants in my district. He has been an hourly worker for the entire time we have been married. Overtime for many years paid for our Christmas presents. It allowed us to take a summer vacation. It allowed us to make additional payments on our cars. If that income were not available to us, our life and our quality of life would have changed substantially.

Now, the argument is, is that the employee makes all the decisions under this bill. Of course that is not true. The reason that people have been so concerned on our side of the aisle about lower income employees is because the people who most need the money, lowincome employees, are the ones that are most susceptible to the kind of pressure that an employer could put on them. Employers can put that kind of pressure on an employee to choose time off rather than income, or they can pick and choose between employees about who will get the overtime, probably the one who will take time rather than money.

It is important that people realize while compensatory time is valuable, you cannot buy bread with it, and for people who need the income we have to be sure that this bill protects them and protects the money that they need each and every week.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. PAUL].

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

Mr. PAUL. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise today in support of H.R. 1 and in opposition to the Miller amendment. The Miller amendment obviously would negate everything we are trying to do in H.R. 1.

One of my favorite bumper stickers simply says ''Legalize freedom.'' I would like to think that is what we are doing here today, is legalizing freedom to some small degree. The workers in the public sector already have this right to use comp time. There is no reason why the workers in the private sector cannot have this same right as well.

□ 1630

The bedrock of a free society is that of voluntary contracts and it is easy for many of those who oppose this bill to understand that voluntary contracts and voluntary associations in personal and social affairs is something that we have to respect. But there is no reason why we cannot apply this to economic affairs as well. A true free society would permit voluntary contracts and voluntary associations in all areas, and it has not always been this way, as it is today, where social liberty and economic liberty are separate. It has only been in the 20th century that we have divided these two, and there is no reason why we cannot look at liberty in an unified manner. Those individuals who want freedom of choice in personal and social affairs should certainly recognize that those of us that believe in economic freedom ought to have those same choices.

This great division has occurred and has led to a great deal of confusion in this country. Today, we are making this token effort to relegalize in a very small manner this voluntary contract to allow workers to make a freedom of choice on how they would like to use their overtime, taking the money or using it as comptime. There is no reason why we should prohibit this. It is legal in the public sector. There is no reason why we cannot legalize a little bit of freedom for the worker in the private sector as well.

Mr. Chairman, this act partially restores the right of employees to contract with their employers to earn additional paid time off from work in lieu of overtime pay when the employees works longer than 40 hours in a week.

I am pleased to support this bill, as it represents a modest step toward restoring the freedom of contract. Freedom to form employment contracts is simply a branch of the freedom of association, one of the bedrocks of a free society. In fact, another good name for freedom of contract is freedom of economic association.

When persons have the right to associate with whom they choose, they will make the type of agreements that best suit their own unique needs. Any type of Government interference in the freedom of association means people will be forced to adjust their arrangements to satisfy the dictates of Government bureaucrats,

For example, even though workers might rather earn compensatory time so they may have more time to spend with their children and spouses then accept paid overtime, the current law forbids them from making such an arrangement. But Congress has decided all Americans are better off receiving overtime pay rather than compensatory time, even if the worker would prefer compensatory time. After all, Congress knows best.

The Founders of the country were champions of the rights of freedom of association. Under the U.S. Constitution, the Federal Government is forbidden from interfering in the economic or social contracts made by the people. As we all know, the first amendment prohibits Congress from interfering with the freedom of association. There is nothing in the history or thought of the Framers to indicate economic association was not given the exact same level of protection as other forms of association.

In fact, the emphasis placed by this country's Founders on property and contract rights indicates the Founders wanted to protect economic associations from Government interference as much as any other type of associations.

Unfortunately, since the early years of the 20th century, Congress has disregarded the

constitutional prohibition on Federal regulation of freedom of economic association, burdening the American people with a wide range of laws controlling every aspect of the employer-employee relationship. Today, Government presumes to tell employers whom they may hire, fire, how much they must pay, and, most relevant to our debate today, what types of benefits they must offer.

Behind these laws is a view of the function of Government quite different from that of the Founders. The Founders believed Government's powers were limited to protecting the liberties of the individual. By contrast, too many in Congress believe Government must function as parent, making sure citizens don't enter into any contracts of which the national nanny in Washington disapproves.

I note with some irony that many of the same Members who believe the Federal Government must restrict certain economic association claim to champion the right of free association in other instances.

For example, many of the same Members who would zealously defend the right of consenting adults to engage in voluntary sexual behavior free from State interference. Yet they are denying those some individuals the right to negotiate an employment contract that satisfies these unique needs.

Yet the principle in both cases is the same, people should have the right to contract and associate freely with whomever, on whatever terms they choose, they choose without interference from the Central State.

As has been often mentioned in this debate, 75 percent of employees surveyed by the polling firm of Penn & Schoen favored allowing employees to take compensatory time in lieu of overtime. Yet Members of Congress, who not only claim to favor freedom of association but claim to care for the workers, will not allow them the freedom to contract with their employees for compensatory time.

What arrogance and hypocrisy. If employees feel that compensatory time would benefit them, and employers, eager to attract the best employees, are willing to offer compensatory time, what right does Congress have to say "No, you must do it our way?"

Congress has no right to interfere with private, voluntary contracts whether between a husband and wife, a doctor and patient, or an employer or an employee.

Mr. Chairman, it is time to lift the federally imposed burdens on the freedom of association between an employer and employee. As a step in that direction, I will vote for the unamended Working Family Flexibility Act and I call on all my colleagues who support individual liberty and freedom of association to join me in supporting this pro-freedom, pro-worker bill.

Mr. MILLER of California. Mr. Chairman, I reserve the balance of my time.

Mr. GOODLING. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, today I rise in opposition to the Miller substitute and in strong support of the underlying bill, H.R. 1. The Miller substitute has many problems, among them it effectively denies comptime to many American families by setting up classes of ineligible workers, and as my colleague from Illinois, Mr. FAWELL, so ably showed, it makes unlikely an employer would ever offer comptime to employees because of a new maze of Federal regulatory requirements.

As my colleagues know, Mr. Chairman, as I have listened to this debate it has stimulated me to go back and read this bill. This is not rocket science. This bill is only eight pages long. Basically what this bill says is, on page 3, an employer can provide comptime to employees only if, A, the employees union agrees to it, or B, the individual has chosen to receive comptime in lieu of mandatory overtime compensation. And what happens then if an employee decides he does not like it? Well then you move on to the next page, page 5, an employee may withdraw an agreement described in this paragraph at any time. An employee may also request in writing that monetary compensation be provided at any time for all compensatory time accrued that has not been used. And then, Mr. Chairman, what happens if an employer abuses this? Well, then they are subject to the Fair Labor Standards Act of 1938.

Mr. Chairman, this is a very good bill. If my colleagues would listen to one side and the other side, they would wonder who is telling the truth. My suggestion is: Read the eight pages of this bill and vote for H.R. 1 and vote against the Miller substitute.

Mr. MILLER of California. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I want to thank my colleagues who have joined in this debate this afternoon.

There is a very fundamental, a very fundamental difference between these two pieces of legislation. We believe that one of the fundamental differences is about really preserving the truly voluntary choice by the employee, about truly voluntary flexible scheduling by the employee and making sure again that preserving the choice of the employee about when to use his time. We also have a very fundamental difference, and a number of my colleagues from the other side of the aisle spoke to it. We believe that there are people unfortunately in this country who are very vulnerable workers, who work in industries with a long history of running on their workers' pay, on not sending their contributions to the State unemployment board, of not sending the tax contributions to the IRS, of not paying into Social Security. Unfortunately, some of these people may be well intentioned but rather under capitalized, and they constantly are taking what the employee has earned and using that to run their business, and then the employee is left holding the bag. It happens to tens of thousands of employees all of the time in this country. Hundreds of thousands of employees have been denied overtime that they have worked for and that they have earned according to the Department of Labor.

So what are we saying? We are saying in those industries where you have a history of these kinds of activities, the Secretary of Labor ought to be able to say whether or not those employers ought to be able to engage in comptime because let us understand what one does with comptime:

"You agree to work overtime. You agree to work more than 8 hours, more than 40 hours. You agree to work at night. You agree instead of going home at the end of your shift you're going to stay and do some additional work. A lot of that work is real hot and it's real heavy and it's real dangerous, but that's what you agree to do and you've earned that. You should be protected then against the ability of an unscrupulous employer to run on the obligation."

Mr. Chairman, I appreciate that a number of speakers have gotten up and spoken about that provision of this bill, but we do believe, we do believe, that those people ought to in fact be protected. They can exercise the choice, but they ought to know what the choice is about, and if it is in an industry, then the Secretary of Labor ought to try and determine whether or not we ought to put these people's wages, these people's wages at risk in the case of where we have a history of unscrupulous employers.

So there is a fundamental difference about these two pieces of legislation. I would hope, I would hope that those who are truly interested in providing the real choice of comptime versus overtime and real flexibility for families to use it when they need it and can help their families will vote for the Miller substitute.

Mr. Chairman, I yield back the balance of my time with my understanding the gentleman from Pennsylvania will be the last speaker.

Mr. GOODLING. Mr. Chairman, I yield myself the remainder of my time.

The CHAIRMAN. The gentleman from Pennsylvania is recognized for 6 minutes.

Mr. GOODLING. Mr. Chairman, I rise in opposition to this substitute offered by the gentleman from California [Mr. MILLER].

I have to wonder where we have been the last couple years because the last time we had this legislation before the committee in the last session of Congress there were no amendments offered in committee, and there was no substitute offered on the floor. This year there were some amendments offered in committee, and we took some of those and included them in my amendments here on the floor, but only one amendment was offered from the other side. So, as my colleagues know, where have we been all of this time?

I have many objections to the substitute. First of all, I do not question the intention of the substitute, but I do very pointedly say that it positively guts the whole bill, and I can substantiate that by saying, well, there are seven broad areas that we are exempting, and then if that is not enough, we get down to the point where we say, "and the Secretary can exempt anybody else," so we could end up no one

has the opportunity, except again the public sector, which has had that opportunity for a long, long time.

The substitute prohibits comptime for all part-time temporary seasonal employees, all employees in the garment industry, all employees not entitled to take 24 hours of leave per year for family member, for school activities or routine medical care; all employees in the construction industry; all employees in agricultural employment. The part-time prohibition is further defined to prohibit comptime for any employee working less than 35 hours per week, and there is no specific definition of the construction of the garment industry. The agricultural employee, construction and garment prohibitions appear to extend to all the employees even if they could be a secretary that has worked there full-time for 15 years.

Now beyond all of that, all these specific exemptions with respect to the use of compensatory time, the Miller substitute takes what has been a fairly straightforward rule and now makes it so convoluted that I cannot imagine that anybody would understand who is eligible, what is available, and what is not available.

Now we talk over and over again about the protections in the bill, and again I want to repeat, as I have many times today, H.R. 1 says, ''You can use your comptime for any purpose so long as you give reasonable notice and the use does not unduly disrupt the employer's operation.'' These are the exact same tests as in State and local government and similar to that in the Family and Medical Leave Act for medical leave.

The Miller amendment says that if any employee is using comptime for purposes covered by the Family and Medical Leave Act or any comparable State law, they do not have to give any notice, and it does not matter what the impact is on business for any purpose. If they give 2 weeks' notice, they follow one rule; if they do not give 2 weeks' notice, they follow another rule. As I said, it becomes very confusing and convoluted, and then of course there is unlimited punitive compensatory damages to be awarded, far beyond even our civil rights legislation.

So let me just wrap up by saying reject the substitute and listen again. I think we have all agreed now that the 40-hour work week is saved. I think everybody now who has read it agrees to that. We know that it gives private sector employees the same opportunity the public employers have but with more protection then they have. We know that employees are just as good in the private sector as employees are in the public sector, just as bright, just as able to make decisions as anybody in the public sector, and therefore we should give them the same opportunity that we give those in the private sector.

We do not want to say to those in the private sector that because they are in the private sector, somehow or other only the Federal Government can determine whether they should have this opportunity. It is the employee's choice. The employee is completely protected to make that choice. The employee can cash out when they want to cash out. The employee can break the contract that they made if they decide that they do not really want to do that. So it is a win, win, win situation for the employee because we have protected them in this legislation.

So again I ask my colleagues, reject the substitute which guts the entire bill and vote yes on H.R. 1.

One additional comment:

These staffs on both sides have worked day and night, and I certainly want to pay tribute to them for all the work that they have put in. It was not only Members that were working; there were staff members who were working, as I said, day and night.

Mr. MILLER of California. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. Mr. Chairman, I do not know if they got compensatory time or not, or overtime. I hope we were within the law in relationship to our employees.

Mr. Chairman, I yield to the gentleman from California.

Mr. MILLER of California. Mr. Chairman, I know that the gentleman from Missouri [Mr. CLAY] and myself would like to join in commending the staffs. They have worked long and hard on this legislation, and I would also like to thank the chairman of the committee in the spirit of Hershey this year. We had a wonderful opportunity to offer amendments, and we appreciate that opportunity in committee.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in support of this amendment to H.R. 1, the Working Family Flexibility Act offered by the Honorable GEORGE MILLER.

I appreciate the need for the American worker to have the flexibility to choose between overtime pay and compensatory time.

Without this body's action on this issue, many employees in this country have compensatory time as an accomplished fact of their work life. These compensatory time agreements may be provided as a part of binding labor contracts or informal or formal work agreements.

The Fair Labor Standards Act does not require employers to pay overtime based on hours worked in a single day. When an employee who normally works five 8-hour days a week needs to take a few hours off during the week, the employer can let the employee leave work early 1 day and stay late the next without having to pay overtime, so long as the total hours worked for the week is no more than 40.

Employers can also accommodate an employee who needs to take time off 1 week by letting them take the time off without pay. If the employee is concerned about the loss of pay, the employer can authorize the employee to work enough overtime another week to make up the lost time.

The problem with making any changes to the overtime pay requirements is the impact on workers face loss of pay due to employer violations of overtime pay laws.

Complaints under the Fair Labor Standards Act may involve alleged violations of minimum wage, overtime, recordkeeping, and/or child labor requirements. The Wage and Hour Division received nearly 35,000 complaints in fiscal year 1996.

In fiscal year 1996, 13,687 compliance actions disclosed overtime violations. These represent nearly 50 percent of those in which Fair Labor Standards Act monetary—minimum wage or overtime—violations were found.

The Wage and Hour Division last year found just over $100 million in back wages due to overtime violations owing to nearly 170,000 workers.

If there were only well intended employers and well meaning employees their would be no need for rules and regulations to govern the work environment.

I believe that this amendment to H.R. 1 will offer necessary protections to American workers who may not work in the conditions that we could endorse with an open compensatory time bill.

Mr. GOODLING. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as modified, offered by the gentleman from California [Mr. MILLER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GOODLING. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 193, noes 237, not voting 2, as follows:

[Roll No. 58]

AYES—193

Abercrombie	Dingell	Kennedy (RI)
Ackerman	Dixon	Kennelly
Allen	Doggett	Kildee
Andrews	Doyle	Kilpatrick
Baldacci	Edwards	Kind (WI)
Barcia	Engel	Kleczka
Barrett (WI)	English	Klink
Becerra	Eshoo	LaFalce
Bentsen	Etheridge	Lampson
Berman	Evans	Lantos
Bishop	Farr	Lazio
Blagojevich	Fattah	Levin
Blumenauer	Fazio	Lewis (GA)
Bonior	Filner	Lipinski
Borski	Flake	Lofgren
Boswell	Foglietta	Lowey
Boucher	Ford	Luther
Boyd	Frost	Maloney (CT)
Brown (CA)	Furse	Maloney (NY)
Brown (FL)	Gejdenson	Manton
Brown (OH)	Gonzalez	Markey
Capps	Gordon	Martinez
Cardin	Green	Mascara
Carson	Gutierrez	Matsui
Clay	Hall (OH)	McCarthy (MO)
Clayton	Hamilton	McCarthy (NY)
Clement	Harman	McDermott
Clyburn	Hastings (FL)	McGovern
Condit	Hefner	McHale
Conyers	Hilliard	McIntyre
Costello	Hinchey	McNulty
Coyne	Hinojosa	Meehan
Cramer	Holden	Meek
Cummings	Hooley	Menendez
Danner	Hoyer	Millender-McDonald
Davis (FL)	Jackson (IL)	Miller (CA)
Davis (IL)	Jackson-Lee (TX)	Minge
DeFazio	Jefferson	Mink
DeGette	John	Moakley
Delahunt	Johnson (WI)	Mollohan
DeLauro	Johnson, E. B.	Moran (VA)
Dellums	Kanjorski	Morella
Deutsch	Kennedy (MA)	Murtha
Dicks		

Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pickett
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reyes
Rivers
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schumer
Scott
Serrano
Sherman
Skaggs
Skelton
Slaughter
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stokes
Stupak
Tanner
Tauscher
Thompson
Thurman
Tierney
Torres
Towns
Traficant
Turner
Velazquez
Vento
Waters
Watt (NC)
Waxman
Wexler
Weygand
Wise
Woolsey
Wynn
Yates

NOES—237

Aderholt
Archer
Armey
Bachus
Baesler
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Berry
Bilbray
Bilirakis
Bliley
Blunt
Boehlert
Boehner
Bonilla
Bono
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Cook
Cooksey
Cox
Crane
Crapo
Cubin
Cunningham
Davis (VA)
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King (NY)
Kingston
Klug
Knollenberg
Kolbe
Kucinich
LaHood
Largent
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
LoBiondo
Lucas
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McKinney
Metcalf
Mica
Miller (FL)
Molinari
Moran (KS)
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Owens
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Riggs
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Schiff
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Shimkus
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stenholm
Strickland
Stump
Sununu
Talent
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Upton
Visclosky
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)

NOT VOTING—2

Frank (MA)
Kaptur

Messrs. HOUGHTON, RILEY, and SMITH of Texas changed their vote from ''aye'' to ''no.''

Mr. HILLIARD and Mr. KENNEDY of Massachusetts changed their vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute, as modified, was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. KOLBE) having assumed the chair, Mr. COMBEST, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1) to amend the Fair Labor Standards Act of 1938 to provide compensatory time for employees in the private sector, pursuant to House Resolution 99, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. 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 noes appeared to have it.

RECORDED VOTE

Mr. GOODLING. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 222, noes 210, not voting 1, as follows:

[Roll No. 59]

AYES—222

Aderholt
Archer
Armey
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blunt
Boehner
Bonilla
Bono
Boyd
Brady
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Christensen
Coble
Coburn
Collins
Combest
Cook
Cooksey
Cox
Crane
Crapo
Cubin
Cunningham
Davis (VA)
Deal
DeLay
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
Ensign
Everett
Ewing
Fawell
Foley
Forbes
Fowler
Fox
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gingrich
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Greenwood
Gutknecht
Hall (TX)
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hutchinson
Hyde
Inglis
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Livingston
Lucas
Manzullo
McCollum
McCrery
McInnis
McIntosh
McIntyre
McKeon
Mica
Miller (FL)
Minge
Molinari
Moran (KS)
Morella
Myrick
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Oxley
Packard
Pappas
Parker
Paul
Paxon
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Radanovich
Ramstad
Regula
Riggs
Riley
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryun
Salmon
Sanford
Saxton
Scarborough
Schaefer, Dan
Schaffer, Bob
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Solomon
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Talent
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Thune
Tiahrt
Upton
Walsh
Wamp
Watkins
Watts (OK)
Weldon (FL)
Weldon (PA)
White
Whitfield
Wicker
Wolf
Young (FL)

NOES—210

Abercrombie
Ackerman
Allen
Andrews
Bachus
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Bentsen
Berman
Berry
Bishop
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boswell
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Capps
Cardin
Carson
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Cummings
Danner
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doyle
Edwards
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Fazio
Filner
Flake
Foglietta
Forbes
Ford
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gilman
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hefner
Hilliard
Hinchey
Hinojosa
Holden
Hooley
Horn
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (WI)
Johnson, E.B.
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kleczka
Klink
Kucinich
LaFalce

Lampson
Lantos
Levin
Lewis (GA)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney (CT)
Maloney (NY)
Manton
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDade
McDermott
McGovern
McHale
McHugh
McKinney
McNulty
Meehan
Meek
Menendez
Metcalf
Millender-McDonald
Miller (CA)
Mink
Moakley
Mollohan
Moran (VA)
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Poshard
Price (NC)
Quinn
Rahall
Rangel
Reyes
Rivers
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schiff
Schumer
Scott
Serrano
Sherman
Shimkus
Sisisky
Skaggs
Skelton
Slaughter
Smith (NJ)
Smith, Adam
Snyder
Spratt
Stabenow
Stark
Stokes
Strickland
Stupak
Tauscher
Thompson
Thurman
Tierney
Torres
Towns
Traficant
Turner
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weller
Wexler
Weygand
Wise
Woolsey
Wynn
Yates
Young (AK)

NOT VOTING—1

Kaptur

□ 1721

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GOODLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 1, the bill just passed.

The SPEAKER pro tempore (Mr. MCINNIS). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

MASS MAILINGS

(Mr. THOMAS asked and was given permission to address the House for 1 minute.)

Mr. THOMAS. Mr. Speaker, I seek this time to engage the gentleman from Delaware in a colloquy in regard to his amendment on the fiscal year 1997 appropriation bill that discloses the costs of mass mailings.

I yield to the gentleman from Delaware (Mr. CASTLE) for purposes of clarification of his amendment.

Mr. CASTLE. Mr. Speaker, I thank the gentleman from California for yielding to me.

My amendment provides for greater disclosure of franked mass mail costs than is currently provided. It requires that the statement, ''this mass mailing was prepared, published and mailed at taxpayer expense'' be printed on each mass mailing. It requires that on a quarterly basis the total number of pieces and the total cost of such mass mailings sent by each Member of Congress be disclosed to the public.

It also provides for piece and cost comparisons based on the number of addresses that are in each district.

Mr. THOMAS. Mr. Speaker, the gentleman indicated that his amendment included the term ''total cost.'' By total cost, notwithstanding what those words mean, did the gentleman mean to include the associated printing and production costs of mass mailings such as computer time, print costs, paper costs, and ink costs?

Mr. CASTLE. Mr. Speaker, if the gentleman will continue to yield, my primary concern has been the cost of mailing franked mail. I have been a staunch supporter of reducing the franked mail appropriation and am very pleased by the effort that has been made in recent years to rein in these costs, mostly under the gentleman's tutelage.

The cost of mailing franked mail as presently reported does not differentiate between unsolicited mass mail and constituent response mail. Thus watchdog groups which report on how much of a Member's franked mail budget is used are unable to make this distinction, which I believe is an important one.

It is the responsibility and obligation of Members to respond to their constituents, and I think the public supports this use of taxpayer dollars. Unsolicited mass mail falls into a different category. Yet the public has no way of knowing how much Members are spending to mail unsolicited mass mail. This is the issue I was trying to address with my amendment.

The other body's administrative system makes it easy for that body to report its Members' mailing costs and production costs of franked mail. However, given that the House does not yet have a system set up to do this and given that production costs were not the target of my amendment, I believe that Members should not be required to report production costs.

Mr. THOMAS. Mr. Speaker, I thank the gentleman because the House does not yet have a way to capture the printing and production costs. If the purpose of the gentleman's amendment, as stated, is to disclose to the public the mailing costs of mass mailings, that can easily be accomplished.

I thank the gentleman for his clarification as well as for his efforts in reforming the use of the frank.

□ 1730

PROPOSED RESCISSION OF BUDGETARY RESOURCES AFFECTING THE DEPARTMENT OF ENERGY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. 105–57)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Appropriations and ordered to be printed:

To the Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report one proposed rescission of budgetary resources, totaling $10 million.

The proposed rescission affects the Department of Energy.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *March 19, 1997.*

TWENTY-FIFTH ANNUAL REPORT ON ENVIRONMENTAL QUALITY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Resources:

To the Congress of the United States:

I am pleased to transmit to the Congress the Twenty-fifth Annual Report on Environmental Quality.

As a nation, the most important thing we can do as we move into the 21st century is to give all our children the chance to live up to their God-given potential and live out their dreams. In order to do that, we must offer more opportunity and demand more responsibility from all our citizens. We must help young people get the education and training they need, make our streets safer from crime, help Americans succeed at home and at work, protect our environment for generations to come, and ensure that America remains the strongest force for peace and freedom in the world. Most of all, we must come together as one community to meet our challenges.

Our Nation's leaders understood this a quarter-century ago when they launched the modern era of environmental protection with the National Environmental Policy Act. NEPA's authors understood that environmental protection, economic opportunity, and social responsibility are interrelated. NEPA determined that the Federal Government should work in concert with State and local governments and citizens ''to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.''

We've made great progress in 25 years as we've sought to live up to that challenge. As we look forward to the next 25 years of environmental progress, we do so with a renewed determination. Maintaining and enhancing our environment, passing on a clean world to future generations, is a sacred obligation of citizenship. We all have an interest in clean air, pure water, safe