Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Woolsey
Wu
Wynn

NOT VOTING—18

Andrews
Berman
Brown, Corrine
DeMint
Deutsch
Forbes
Franks (AZ)
Istook
Leach
Oberstar
Peterson (PA)
Rangel
Shays
Smith (MI)
Tauzin
Towns
Wexler
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BASS) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1214

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

UNDOCUMENTED ALIEN EMERGENCY MEDICAL ASSISTANCE AMENDMENTS OF 2004

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 3722.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. BARTON) that the House suspend the rules and pass the bill, H.R. 3722, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 88, nays 331, not voting 14, as follows:

[Roll No. 182]

YEAS—88

Aderholt
Akin
Bachus
Barrett (SC)
Bass
Bereuter
Bishop (UT)
Blackburn
Boozman
Boucher
Bradley (NH)
Burton (IN)
Buyer
Carter
Coble
Collins
Cox
Culberson
Cunningham
Deal (GA)
Doolittle
Duncan
Everett
Feeney
Franks (AZ)
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gingrey
Goode
Goodlatte
Gutknecht
Hall
Hayes
Hayworth
Hefley
Hoekstra
Hostettler
Hulshof
Hunter
Isakson
Jenkins
Johnson, Sam
Jones (NC)
Keller
Kelly
King (IA)
Kingston
Kline
Manzullo
McCotter
McCrery
Mica
Miller (FL)
Miller, Gary
Musgrave
Myrick
Norwood
Otter
Paul
Pence
Pitts
Platts
Radanovich
Ramstad
Rehberg
Rogers (AL)
Rohrabacher
Royce
Schrock
Sensenbrenner
Shimkus
Shuster
Simpson
Smith (TX)
Stearns
Sullivan
Tancredo
Taylor (MS)
Taylor (NC)
Toomey
Vitter
Wamp
Weldon (FL)
Whitfield
Wicker
Wilson (SC)

NAYS—331

Abercrombie
Ackerman
Alexander
Allen
Baca
Baird
Baker
Baldwin
Ballance
Ballenger
Bartlett (MD)
Barton (TX)
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boswell
Boyd
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Cole
Conyers
Cooper
Costello
Cramer
Crane
Crenshaw
Crowley
Cubin
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Dreier
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Filner
Flake
Foley
Ford
Fossella
Frank (MA)
Frelinghuysen
Frost
Gephardt
Gilchrest
Gillmor
Gonzalez
Gordon
Goss
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hensarling
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Hyde
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (NY)
Kirk
Kleczka
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (MI)
Miller (NC)
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Obey
Olver
Ortiz
Osborne
Ose
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Rahall
Regula
Renzi
Reyes
Reynolds
Rodriguez
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sessions
Shadegg
Shaw
Sherman
Sherwood
Simmons
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stenholm
Strickland
Stupak
Sweeney
Tanner
Tauscher
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Waters
Watson
Watt
Waxman
Weiner
Weldon (PA)
Weller
Wilson (NM)
Wolf
Woolsey
Wu
Wynn
Young (FL)

NOT VOTING—14

Andrews
Brown, Corrine
DeMint
Deutsch
Forbes
Herger
Istook
Leach
Oberstar
Rangel
Shays
Tauzin
Wexler
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BASS) (during the vote). There are 2 minutes remaining in this vote.

□ 1224

Mrs. JOHNSON of Connecticut, Mr. FOSSELLA, and Mr. BURNS changed their vote from ''yea'' to ''nay.''

Messrs. WHITFIELD, TAYLOR of North Carolina, and TANCREDO changed their vote from ''nay'' to ''yea.''

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANAATION

Ms. CORRINE BROWN of Florida. Mr. Speaker, on rollcall Nos. 180, 181, and 182, I was unavoidably detained and unable to make the vote.

Had I been present, I would have voted: "No" on No. 180, joint rule for consideration of H.R. 2728, 2729, 2730, 2731; "No" on No. 181, tabling Miller motion to instruct conferees on overtime; "No" on No. 182, H.R. 3722, Undocumented Alien Emergency Assistance Amendments of 2004.

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

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 645, I call up the bill (H.R. 2728) to amend the Occupational Safety and Health Act of 1970 to provide for adjudicative flexibility with regard to an employer filing of a notice of contest following the issuance of a citation by the Occupational Safety and Health Administration, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

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

The text of H.R. 2728 is as follows:

H.R. 2728

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Small Business Day in Court Act of 2003''.

SEC. 2. CONTESTING CITATIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT.

(a) CITATION.—The second sentence of section 10(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 659(a)) is amended by inserting ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)'' after ''assessment of penalty''.

(b) FAILURE TO CORRECT.—The second sentence of section 10(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 659(b)) is amended by inserting ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)'' after ''assessment of penalty''.

The SPEAKER pro tempore. Pursuant to House Resolution 645, the amendment printed in the bill is adopted.

The text of H.R. 2728, as amended, is as follows:

H.R. 2728

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Small Business Day in Court Act of *2004*''.

SEC. 2. CONTESTING CITATIONS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT.

(a) CITATION.—The second sentence of section 10(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 659(a)) is amended by inserting ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)'' after ''assessment of penalty''.

(b) FAILURE TO CORRECT.—The second sentence of section 10(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 659(b)) is amended by inserting ''(unless such failure results from mistake, inadvertence, surprise, or excusable neglect)'' after ''assessment of penalty''.

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

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

GENERAL LEAVE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2728.

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

There was no objection.

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

Mr. Speaker, today we will debate four important bills that make modest reforms to the Occupational Safety and Health Act. These measures ensure that small business owners who make good-faith efforts to comply with health and safety laws are dealt with fairly and equitably by the Occupational Safety and Health Administration.

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

The U.S. economy is improving and more and more employers are hiring workers each month. Earlier this month, the Labor Department reported that 1.1 million new jobs had been created over the last 8 months, including 625,000 in the last 2 months alone. Eight consecutive months of positive job growth show that the Republican plan for economic prosperity is working. But we want to make sure onerous government regulations do not hamstring the ability of small businesses to continue to hire new workers and to compete in our economy. That is why these bills are important.

Mr. Speaker, since the Republicans won control of Congress 10 years ago, we have undertaken considerable efforts to make bureaucracy more responsive and more accountable to workers and taxpayers. Let me just give you a few examples.

We stopped unwarranted and invasive OSHA regulations proposed by the Clinton administration that would have held employers liable for the safety of their employees who work from home.

We stopped one of the most overreaching attempts at regulation in our Nation's history by repealing an irresponsible and unworkable ergonomics regulation that would have cost employers billions of dollars and killed millions of jobs.

We have dealt with the problem of costly unfunded mandates by ensuring that Congress does not pass expensive legislation and then pass the buck to State and local governments.

This decade of progress on regulatory reform should give Americans confidence that Congress is making positive steps every year to improve government accountability. Today, we take one more positive step, to improve workplace safety, I think a goal that we all share.

OSHA under the Bush administration has made significant efforts to supplement traditional enforcement programs with cooperative partnerships between the agency and employers across the country. I am pleased to report these voluntary programs have proven successful in reducing workplace injuries and illnesses. In fact, workplace injuries and illnesses have declined significantly during the Bush administration.

If we look at these facts on this chart, I think we will see that over the last 3 years, injuries in the workplace have, in fact, declined significantly to their lowest point in history, to a rate of just 5.3 injuries or illnesses per 100 workers. I think that is significant progress.

Moving on to the next chart, we can see that workplace fatalities have made similar declines, again to the lowest amount in history. In fact, the 6.6 percent reduction in workplace fatalities in 2002 is the single largest annual decline ever.

Why have we made such significant progress? It is because under this administration, OSHA and employers have started to work together more cooperatively and more proactively to solve workplace safety problems before injuries and fatalities occur. A GAO report released on March 30 said voluntary partnerships between OSHA and employers ''have considerably reduced their rates of injury and illness and have fostered better working relationships with OSHA, improved productivity and decreased worker compensation costs.''

Now, we strongly support OSHA targeting bad actors that defy the law and compromise the safety of their workers, but we also need to recognize that most employers are good actors who work hard to address job safety concerns. No employer wants to deal with unnecessary OSHA-related litigation and escalating attorneys' fees that result. Most employers want to comply with the law, and the offer of assistance from OSHA is enough to provide the incentive they need to make the investment. Employers will use these resources because safety pays.

Employers in America know that their number one asset is their employees, and every employer, I know, wants to do everything to protect the health and welfare of their employees.

The reform measures we will consider today are proposals that, while fairly modest in substance, are important to small business owners who struggle every day to comply with complex OSHA laws and provide a safe working environment for their workers while facing increasing competitiveness from the worldwide economy. Employers who make good-faith efforts to comply with OSHA standards deserve to be treated fairly and have their day in court, and these common-sense bills will help ensure that they receive that opportunity.

The first reform bill on tap today, the Occupational Safety and Health Small Business Day in Court, gives the Occupational Safety and Health Review Commission additional flexibility to make exceptions to the arbitrary 15-day deadline for employers to file responses to OSHA citations when a small business misses the deadline either by a mistake or for good reason. This change ensures that appropriate disputes are resolved based on merit, rather than legal technicalities. I think it is a common-sense proposal and deserves every Member's support.

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

Mr. OWENS. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. GEORGE MILLER), the ranking member of the Committee on Education and the Workforce, for an opening statement.

□ 1230

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman from New York (Mr. OWENS) for yielding me time and for all of his involvement over many years on the issues affecting OSHA and the workplace safety of American workers.

The Occupational Safety and Health Act has substantially improved the safety of the American workplace to the benefit of the American worker. Far fewer workers are killed or injured today than was the case before the law was enacted. Despite this progress, too many Americans continue to be sick or injured or killed in workplace accidents that could have been or should have been avoided. Fifteen Americans were killed and more than 12,800 were injured each day in 2002. This does not include the 50,000 and 60,000 deaths that occur every year as a result of occupational diseases.

None of the bills before this committee today will do anything to improve the occupational safety or health of Americans. H.R. 2728 unnecessarily and indefinitely delays the abatement of safety and health hazards in compliance with the Occupational Safety and Health Administration citations.

H.R. 2729 unnecessarily expands the size of the Occupational Safety and Health Review Commission, and H.R. 2730 weakens the fundamental responsibilities of the Secretary of Labor. It contorts the law and confuses the enforcement responsibilities of both the Secretary and the review commission.

H.R. 2731 significantly diminishes the protections of Occupational Safety and Health by discouraging OSHA from even enforcing the Occupational Health and Safety Act and punishing tax payers unless the agency, like Perry Mason, can win every case. That is not going to happen. These bills do no good, and some of them do substantial harm. The House should not waste time considering them. If the House truly wants to address the economic needs of the American people, why not spend time on legislation raising the subpoverty minimum wage or extending unemployment benefits to the 90,000 workers a month who are losing that benefit because of the inaction of Congress or stopping the Labor Department from issuing overtime regulations that will cost middle-class workers critical amounts of their income?

Why do we not spend our time on those bills instead of this meaningless and political agenda?

Rather than hurting workers, we should be raising the minimum wage. The minimum wage has not been increased since 1997, and the real value of the minimum wage is approaching all-time historic lows. It is worth noting that the Republican Congress has increased Members' salaries six times since the minimum wage was last increased. It is time for Congress to do for others what we have repeatedly done for ourselves. Instead, we are considering bad bills to undermine worker safety and health. If we cannot do good for workers, we should at least avoid doing them harm.

We should not be encouraging employers to litigate OSHA complaints instead of correcting health and safety hazards; but two of the bills, H.R. 2728 and H.R. 2731 have exactly that effect. Tax payers should not be paying the legal expenses of employers who endanger their workers, but, again, that is what H.R. 2731 requires. It is nonsense to contend that the Occupational Safety and Health Review Commission knows better what the Secretary of Labor intended than the Secretary herself, but that is not exactly the premise that underlies H.R. 2730.

Finally, our Republican colleagues argue that we should expand the size of the commission with no commensurate expansion in its responsibilities. In effect, the taxpayers should go on the hook to put two more lawyers to work for no good reason. This is the effect of H.R. 2729. This is bad legislation. It is unfortunate that we have spent time considering these bills when there is so much we could be doing to help workers and their families in this country. Let us not compound the error by foisting these bills on the other body.

Mr. BOEHNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Georgia (Mr. NORWOOD), the chairman of the Subcommittee on Workforce Protections of the Committee on Education and the Workforce.

Mr. NORWOOD. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, so we do not get confused, this hour is devoted to H.R. 2728, not all four bills, The Occupational Safety and Health Small Business Day in Court.

My good friend from California (Mr. GEORGE MILLER) speaks as a gentleman who really truly never has been in small business and it is pretty clear to me does not have any small businesses in his district because this is very important; and, in fact, nobody must be unemployed there because that is what this is all about. Small employers ought to be devoting more of their time and attention, in my opinion, to creating the new jobs our Nation needs and much less time on dealing with government lawyers that are intent on manipulating legal technicalities. That is precisely and that is all what H.R. 2728 does. That is what we are trying to accomplish here. Nothing more, nothing less. It is not complex. It is an 11-word bill.

The measure adds only 11 words, Mr. Speaker, to the OSHA act, but those 11 words will add fairness. And I know this body is interested in fairness and in removing potential injustice which has happened before because these 11 words are not in the OSHA act. Here is why.

In almost every other court of this Nation, in almost every other court of this Nation a party that acts in good faith but nonetheless misses a deadline that results in a legal default can ask the court to have the case heard on the legal merits. Why not OSHA? That is a good idea. That is a fair idea because we are after justice here.

The principle of justice is as old as our common law, and it was crafted to add equity and fairness to the justice system. Why is this not a good idea? We are adding equity and fairness to the justice system that almost every other court in the land can use. Yet we cannot use it with OSHA.

Simply stated, everyone should have a right to be heard on the merits of their case before being penalized by their own government. Legal technicalities should not be allowed to get in the way, hear this, as a general rule. Legal technicalities should not be allowed to get in the way as a general rule. Do we say that an employer should respond in 15 days? Sure, that is appropriate. And, actually, employers want to because they do not like this citation hanging over their heads. They want it to move too. But occasionally an honest mistake happens. Can you deal with that in all the other courts in this country? Yes. Can you deal with it when you are dealing with OSHA? No. Why not? Why is this so terrible to put a little fairness and justice into the system?

Right now, regrettably, there is doubt over whether the Occupational Safety and Health Review Commission, or OSHRC, the agency specifically created by Congress to hear each legal dispute between an employer and OSHA, has the statutory authority to grant this type of just relief. And by the way, just for those who do not remember their history, there would be no OSHA act passed by Republicans, signed by a Republican President, had not a review commission been put in the bill. It was a very, very simple reason. Parties who sit in judgment should not be the Labor Department as the plaintiff. It ought to be independent people on the review commission looking at what OSHA says is a violation and what the small businessman says, no, this is not a violation.

This agency was created by Congress and allowed OSHA to pass in 1970 to hear each legal dispute between the employer and OSHA. It has the statutory authority to grant this just type of relief. Well, it is not clear, we do not think, so we were not sure they do. While most every other court in the Nation can do what is right, employers facing OSHA standards can be victimized by legal technicalities that would deprive them of the right to be heard and to hear the merits of their case. That is dead wrong. I do not care whose side of this you are on. All H.R. 2728 does is conclusively give OSHRC the authority to make sure that our laws are fairly administered. Who can be against that? We want fair administration of our laws. What is going on now is not necessarily fair in some cases. And using 11 words, that is all this bill is, we have done this as narrowly, Mr. Speaker, as we possibly could have. We have used legal terminology that is time tested and proven to ensure just results without possible abuse.

This is because we use identical terminology to that used in the Federal Rules of Civil Procedure that is known as rule 60(b), a rule that has a very long

history of use in nearly every other court of the Nation. Why in the world is it wrong to have that rule take effect when you are dealing with cases with OSHA?

I have a feeling about that, but we will not go there. Under this measure, results will only change when the totality of the circumstances concerning a missed deadline, totality of the circumstances concerning a missed deadline indicates that an employer acted in good faith but nevertheless missed a deadline because of a mistake, an inadvertence or an acceptable excuse. This is reasonable. This is to be judged by OSHRC. This is to be judged by independent reviewers. This measure therefore removes a legal trap that has led to unfair results in the past.

Mr. Speaker, H.R. 2728 simply provides a day in court to parties who believe that they are without legal fault. It is nothing more than that. It is not a lot of what we have heard already. It is simply that it provides a day in court to parties who believe they are without legal fault. Nothing more.

I urge my colleagues to vote for passage of this bill. I frankly cannot imagine why every Member of this Congress would not vote for this bill, because every Member of this Congress has a lot of hard-working small business people in their communities that need this very simple, basic protection. About 92 percent of America is made up of the florists with three employees and the butcher with two. They have no way on Earth to take on the Federal Government. Let us just put a little fairness in the OSHA Act with 11 words that do not hurt anybody, but helps the people in your district.

Mr. OWENS. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan (Mr. KILDEE).

Mr. KILDEE. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in opposition to H.R. 2728 and also refer to the other three bills, H.R. 2729, 2730, and 2731.

Mr. Speaker, OSHA came into being to protect the worker and give that protection with the force of the Federal Government because in so many instances the employer was not protecting these workers. These bills individually and collectively will weaken that protection.

I can recall the days before OSHA, the lack of protection, the lack of sometimes even a concern among many employers about the safety of their workers. My father was almost killed in plant because he was being pulled into the machine and was unable to control his own machine. He could not control the power for their own machine. And he had to keep shouting down the line to turn off the power. And that is how things were before OSHA.

In my State about 8 or 9 years ago, a young lady trying to pull herself out of poverty took a job in a small plant. She was working on a press. She put her hands in to remove the product and the press came down. It did not amputate her hands. It obliterated, disintegrated her hands. Failure to abate can lead to such tragedies. And there was certainly failure to abate in that plant. Most of the workers knew that that machine had difficulties; but she was allowed to work on that machine which destroyed, obliterated, disintegrated her hands.

We have so many values in our life but she, in talking to us, held out her arms and was telling the great loss she had suffered. This is what we have to be concerned about.

□ 1245

''Among my losses,'' she said, ''I will never be able to pet my kitten again.'' These are real people. This was a woman who sought a job at very low wages and had her hands destroyed. Let us think of those people. Give them some relief.

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

I think all of us in the Chamber and all of my colleagues understand that OSHA has been a good agency and very good law that helps to protect the health and safety of American workers. No employer and, certainly, none of us in the Congress want to see workers placed in a position where their health or safety is questioned.

As I said before, I think employers, by and large, across the country understand that their greatest asset, their greatest value in their business is the value of the good men and women who work for them.

Certainly, what we are doing today in no way denigrates OSHA. As a matter of fact, I would argue that it will enhance OSHA's ability to work with employers in a voluntary way to increase the health and safety of American workers.

The underlying bill that we have before us is real simple. It says that the arbitrary 15-day response time to an OSHA citation can be reviewed by the Review Commission and make a decision about whether the company needed more time, whether there was a mistake made and the deadline was missed. That is all it does. It does not denigrate the law in any way, shape or form. I believe it creates more voluntary cooperation between the employer community with OSHA.

Mr. Speaker, I am pleased to yield as much time as he may consume to the gentleman from North Carolina (Mr. BALLENGER), one of our senior colleagues on the Committee on Education and the Workforce.

Mr. BALLENGER. Mr. Speaker, I would like to thank the gentleman for yielding me the time.

For the edification of the people that are watching, I may be the only Member of this body who has enjoyed the possible penalties of that lovely group called ''OSHA.''

Mr. Speaker, I want to take a moment to refresh everyone's memory. As the former chairman of the Subcommittee on Workforce Protections, I cannot help but remember the testimony that our committee took from small business owners several years ago.

I recall very clearly what we heard, that despite a genuine desire to provide workers with a safe work environment, OSHA seemed more interested in confrontation than problem solving. For years, OSHA acted more like a policeman handing out fines and penalties for every little infraction of the law than an agency that would be willing to help employers improve worker health and safety.

Actually, surprisingly, and I do not want to put my friend from Georgia down, but the pay increases for OSHA worker inspectors were based on the number of fines that they turned in. We used to say that is why, going through south Georgia, you have to watch out. Sorry about that. Anyhow, that is how they got their pay increases.

That is why we worked to refocus OSHA, making it more of a partner with business. The idea was simple, if an employer in good faith wants to bring a workplace into compliance, let us do everything we can within the law to assist.

I am proud to stand here today and say that the simple reforms that we enacted a few years ago helped to bring balance to OSHA. Businesses, especially small businesses, are now able to receive the expert advice they need to comply with OSHA standards, without the fear and adversarial temper often associated with OSHA inspections.

In fact, in a recent GAO study, it seemed to point out that voluntary compliance programs have reduced workplace injuries, improved worker productivity, lowered worker compensation costs, and provided other intangible benefits. When OSHA partners with business and helps them comply, everyone benefits.

The four bills we have before us today are built on our original reforms. Compliance is what is really desired, and it is all that really counts.

These are common-sense bills that would help give small businesses more equitable treatment in dealing with OSHA, while letting employers know that the government is truly interested in helping to achieve a safer and healthier workplace. These bills take small, yet significant, steps in bringing about change to the way OSHA operates.

I want to thank the gentleman from Georgia (Mr. NORWOOD) for his hard work on these four important bills that will benefit both employers and employees alike, and I urge my colleagues to support these bills.

H.R. 2728, it is the Small Business Day in Court that gives relief on time to react to charges. Let me give my colleagues an example. On an inspection in my plant, there were seven changes that OSHA said needed to be made. Six were made in less than 1

week, and the last one took an unknown length of time. We did not know how long it would be, and it was to repair a platform that was 20 feet in the air. It took more than a month, but luckily, OSHA allowed us the extra time, not limited to 15 days. All this was done without penalty, and our partnership with OSHA made my plant a safer place to work.

I would ask all of the people to vote in favor of H.R. 2728.

Mr. OWENS. Mr. Speaker, may I inquire as to the amount of time left?

The SPEAKER pro tempore (Mr. TERRY). The gentleman from New York (Mr. OWENS) has 23 minutes remaining.

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

Mr. Speaker, I rise in strong opposition to this particular bill, H.R. 2728, and the other three bills to be considered in succession, H.R. 2729, H.R. 2730 and H.R. 2731. As I said earlier in the debate on the rule, this package I would label as a ''more injuries and more deaths package.'' This package I would label as ''a spoon feeding of poison'' to OSHA.

If we compare OSHA to a giant elephant, as has just been boasted by a couple of Members, they knock the elephant to its knees immediately by repealing the ergonomic standards, and now they want to slowly kill the elephant with spoonsful of poison.

Deliberately, it is made to appear these are trivial bills, common-sense bills, they have no real value; but why are they on the floor? I think they are significant only if we take this within the context of what the majority party has been trying to do with OSHA since it took control of the House, if we take it in the context of how the protection of owners and businessmen is the obsession of the majority party. We never get any bills from them which seek to protect workers.

There are quite a number, 14, of significant bills that have been offered since the 104th Congress, starting with the gentleman that just spoke before. The gentleman from North Carolina (Mr. BALLENGER) has offered more than anyone else, and each one of those bills seeks to, in some way, weaken OSHA and to favor law-breaking employers.

These bills will do nothing to strengthen the occupational safety and health standards for American workers. Rather, they will do quite the reverse, by undermining, sometimes suddenly and other times blatantly, the overall effectiveness of the Occupational Safety and Health Administration.

I would like to remind my colleagues on the other side of the aisle that Congress passed the Occupational Safety and Health Act in 1970 to assure ''every working man and woman in the United States safe and healthful work conditions.'' I believe that bears repeating.

OSHA's founding and fundamental purpose, as spelled out in the statute, is to ensure that each and every individual working in the United States carries out his or her work in safe and healthy circumstances.

The bill was not written to overburden business. It has never overburdened business. Every attempt has been made to bend over backwards to limit the burden on business and no attempt is made to protect workers.

This is the yardstick by which we must measure the likely outcomes of each of the bills before us today. Let us briefly review such outcomes.

H.R. 2728: By extending the customary 15-day period for an employer to appeal an OSHA citation, this bill would encourage litigation, and litigation is on the side of the employer not the employee. It would delay the correction or the abatement of whatever hazards have occurred in the workplace related to that citation. As such, it can only place workers at greater risk of unsafe and unhealthy working conditions, which runs expressly counter to the purpose of the OSHA Act originally.

H.R. 2729, and I want to talk about all these bills in context first before I deal specifically with each one: By expanding the size of the Occupational Safety and Health Review Commission from three to five members, this bill simply creates a bigger bureaucracy in search of a mission. Moreover, the bill adds legal training as a qualification for appointment to the commission. It makes OSHA less effective, not more effective.

It diminishes the chances that candidates considered for selection will have the requisite expertise in occupational safety and health. They have got to have legal expertise but they do not have to have expertise and experience directly in relation to occupational safety and health. That expertise is critical to further the assurance of safe conditions for America's working men and women.

H.R. 2730: By extending deference to the Occupational Safety and Health Review Commission over the Secretary of Labor, this bill contorts and confuses enforcement responsibilities of both the Secretary and the Review Commission. Such confusion will only hinder efforts to fulfill the statutory guarantee of safe and healthy conditions for all workers in this country.

It seems like a small matter, but it is another spoonful of poison which, in the end, can be very effective in killing the elephant.

H.R. 2731: By requiring OSHA to pay attorney fees for any employer with 100 or fewer workers and a net worth of under $7 million, that prevails, even partially, upon appeal, this bill would have a chilling effect on OSHA enforcement efforts. It would almost freeze those efforts. Given that worker death rates are much higher in such firms in comparison to those with more than 100 workers, this bill would encourage litigation and seriously jeopardize progress towards improving the safety and health conditions of American workers.

Moreover, the bill would freeze safety enforcement efforts in the lion's share of private companies in light of the fact that more than 97 percent of all private employers have fewer than 100 employees on the payroll.

I might add that the practice now is for larger employers who are subject to other kinds of regulations and other OSHA standards often to subcontract to small employers and avoid being regulated in the proper way for health and safety.

These bills run counter to the real interests of working Americans, and I urge my colleagues to oppose it. As the senior Democrat on the Subcommittee on Workforce Protections, I have heard firsthand from workers around the country about very real and pressing safety and health concerns many face on the job on a daily basis. If neglected or unaddressed, these risks can have severe, and even fatal, consequences.

H.R. 2731: Requiring OSHA to pay attorney fees for any employer with 100 or fewer workers is one of those bills that certainly would create a situation where the likelihood is that less regulation would take place and more workers would be at risk.

In a May 12th forum, which we entitled ''A Job to Die For: Inadequate Enforcement of U.S. Safety Standards,'' I heard from witnesses on the front lines of an epidemic with fatal consequences. Worldwide, this epidemic is deadlier than war. From Brazil to Bangladesh, it claims 6,000 lives a day, which means four lives a minute. In this country, it claims 6,000 lives a year, which computes to one life every 90 minutes.

This epidemic takes a devastating toll on American families and communities. I think my colleagues can see from the arithmetic, we lose more workers per day from deaths in the workplace than we are losing in Iraq. I think that later on we are going to talk about how this phenomenon must be brought to the attention of the American people, starting with the Members of this body in both parties.

This is not a trivial discussion today. This is not a discussion to be quickly passed over. It is at the core of an effort to make the workplace safe and to create better conditions for working, and better respect for working families.

Working families are expected to produce the soldiers that go off to fight our wars. Ninety percent of those in Iraq are from working families, but yet we have an attempt to oppress working families with many measures. We will not even consider a minimum wage increase. We are constantly trying to change workplace safety conditions through these various measures for those members of our society who also shoulder the burden when it is time to go off and fight for the country and defend the country.

□ 1300

I am referring to wrongful deaths in the workplace when I talk about the

6,000 lives lost in this country per year. Individual worker deaths are not random, isolated events. Rather, they are often tragic certainties that are almost always preventable. Unlike a disease that is triggered by a mysterious or elusive virus, this outbreak is caused by the willful and reckless safety violations of certain employers. Let me repeat, the willful and reckless safety violations of certain employers.

Much has been said about the fact that most employers care about their employees. And that may be true, but there is a large, large percentage that care only about the profits, and they are constantly squeezing the workers and jeopardizing the safety and health of workers in an attempt to increase their profits. Such business owners pursue profits and their own economic interests at the expense of basic safety practices, and all too often this comes at the actual expense of workers' lives.

We have learned that for Latino workers the risk of workplace fatalities keeps rising. They right now happen to be the most vulnerable. Recent immigrants are forced to take the dirtiest and most dangerous jobs. As highlighted in the recent investigative series by the Associated Press, immigrant workers born in Mexico are now 80 percent more likely to be killed on the job than their U.S.-born peers. This is almost three times greater than the disproportionate risk of workplace fatalities for the rest of the population. Even by conservative estimates, a Mexican worker is killed on the job every day in this country.

The Federal Government is astonishingly ineffectual at combating this epidemic of wrongful deaths, both with respect to immigrant workers born in Mexico and all other workers. The current administration is replacing standard OSHA inspections with voluntary compliance programs that ignore the work sites where deaths are most likely to occur.

And much is being made by the majority party of volunteering and trusting employers. The OSHA was developed by legislation because it was clear that employers could not be trusted to safeguard the health and safety of workers. The current administration is replacing standard OSHA inspections with voluntary compliance that ignores the work sites where deaths are most likely to occur. You can find that the majority of American employers do care about their employees and safety, but that minority is the problem; and they are not being properly scrutinized.

Moreover, OSHA has increased the percentage of its budget dedicated to voluntary efforts by 8 percent. These discussions and negotiations of voluntary efforts have run off with the slight increases that have been made in the OSHA budget while they have reduced the funds devoted to safety enforcement by 6 percent.

At the same time, the U.S. continues to lag behind other Western nations in preventing workplace deaths. A construction worker in the U.S. is four times more likely to be killed on the job than a worker in Belgium. In comparison with their British counterparts, American construction workers are twice as likely to be killed on the work site.

These are critical health and safety issues we should be addressing today as opposed to the four bills that would further undermine OSHA's effectiveness in protecting American workers. We have the most productive workers in the world. We ought to appreciate that and try to protect those workers, not squeeze them more, not make them sweat more, and not endanger their lives more.

I urge my colleagues to vote against H.R. 2728, H.R. 2729, H.R. 2730 and H.R. 2731.

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

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Virginia (Mr. SCHROCK).

Mr. SCHROCK. Mr. Speaker, I rise in support of all the commonsense reforms to the OSHA enforcement process. Mr. Speaker, I serve as chairman of the Subcommittee on Regulatory Reform and Oversight of the House Committee on Small Business. Believe me, I hear regularly from small businesses about the horror stories with OSHA enforcement.

The Department of Labor and OSHA suggest their first mission is to provide compliance assistance and not play ''gotcha'' with businesses they oversee. OSHA needs to educate our businessmen and women about what they should be doing before they show up and slap them with a fine. In a system where our agencies promulgate over 4,000 rules a year, we cannot expect small businesses to know how to comply unless we help them.

In 1996, Congress passed the Small Business Regulatory Enforcement Fairness Act requiring agencies to develop small business policies to reduce or waive civil penalties for first-time violators. We want our regulators to help businesses come into compliance.

I have been reviewing enforcement statistics as a result of some of the hearings I have held. The Department of Labor had 143,000 enforcement actions against businesses last year, 45 percent of them against small businesses. I have also looked at the numbers in OSHA. It had 24,000 enforcement actions, half of which were against small businesses. We need to restore fairness to the OSHA adjudication system.

Unfortunately, the present system stacks the deck against businesses, particularly small ones, so unfairly that many people settle even frivolous OSHA complaints rather than challenge them. OSHA paperwork requires over 100 million hours a year to comply with. That is 100 million hours that our citizens and small business men and women could be spending with their families or helping to grow their businesses. That does not even include the amount of time a small business has to spend if it is fighting what it believes to be an unfair OSHA fine.

Mr. Speaker, it is time for us to restore fairness and balance to this process. It is time for us to give small businesses the tools to fully exercise their rights in this process. It is time for us to get out of the way of the businesses that are creating jobs in this economy, providing health care to their workers, and giving back to their communities. Mr. Speaker, it is time for us to pass this legislation.

I urge my colleagues to support this package of commonsense OSHA reform bills; and I urge my colleagues to support the bill we are now considering, H.R. 2728, which will give the Occupational Safety and Health Review Commission the flexibility to make exceptions to arbitrary deadlines for employers to file responses to OSHA citations when a small business misses the deadline by mistake or, frankly, for a darned good reason.

Mr. OWENS. Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, today is a very sad day in the history of the workers of the United States. The Republican Party is bringing out here onto the floor of Congress an all-out assault on the protection of the rights of people who work in the fields of our country, in the factories of our country, in the offices of our country. What they are saying is that they are going to try to tie the hands of OSHA to protect the rights of workers to be living and working in safe and healthy environments.

And how do they do it? Well, the way they do it is they make it possible for there to be a wholesale delay in the implementation of improvements in health and safety protections in the workplace. They make it very difficult for the Secretary of Labor to exercise the authority of that agency to move in and to protect our workers. And they make it almost impossible to even bring a case unless the agency is 100 percent sure it is going to win the case. As a result, the hands of this agency are going to be tied by the Republican legislation out here on the floor.

GOP. It used to stand for Grand Old Party. Now it stands for ''gut OSHA protections'' for ordinary workers in our country. And it is all part of a pattern. The same thing happened with overtime pay. With overtime pay they want to make it very difficult for workers to be able to collect that bonus that helps their families across our country.

GOP. It used to stand for Grand Old Party. Now it stands for ''gut overtime pay, ''or ''gut OSHA protections.''

And on the minimum wage, you know, Harry Truman used to say about the Republican Party, ''Oh, the Republican Party believes in the minimum

wage. The lower the minimum, the better.'' And here we are, year after year trying to improve the lot of working people by giving them that increase that they need in the minimum wage; and, like OSHA, and like overtime pay, it is all part of a deliberate assault upon the working men and women in our country, in their workplace, for their families, that makes it difficult to protect them.

And when it comes to unemployment benefits as well, they also stand in the way of helping those families have the protections when they need it with unemployment benefits.

So it is all part of a pattern. And, today, on the House floor, with four separate bills all aimed at a different part of OSHA, they continue this assault upon the progress that was made to improve the lives of working people in the workplace.

I remember when I was a boy, my father used to walk around without one of his fingers that he lost in an accident in the workplace. And I think of how far we have come in terms of the protections which we give to families, because so many thousands, hundreds of thousands, millions of workers were just constantly subjected to the risk of being injured in ways that would forever alter their lives, and because of OSHA that has changed.

But when the Republicans control the House, the Senate, the Presidency, and the Supreme Court, you can see this lingering resentment of the laws which were put on the books to protect these ordinary people, these laws which they voted against when they were originally proposed. And what we are seeing here today is that continuing assault to turn into a relic an agency which has so dramatically changed the lives of ordinary people.

Oppose each and every one of these Republican assaults upon the working men and women in our country.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Georgia (Mr. NORWOOD), the chairman of the Subcommittee on Workforce Protections.

Mr. NORWOOD. Mr. Speaker, I always welcome one of the members from our Committee on Energy and Commerce to join us. I know on the Committee on Energy and Commerce we have a lot of political dialogue, but we try not to posture on the Committee on Education and the Workforce and just stay on policy. And that certainly was a lot of posturing the gentleman did very well with that, but a lot of it is just simply not true.

Let me remind the body what we are doing this hour. We are dealing with one bill, H.R. 2728, that helps working families in this country. I know it is confusing for some people, but working families also include small business owners and their employees, which make up about 92 percent of the working families.

Now, this little piece of legislation helps those working families, and I have yet to hear a good explanation why that did not include the 92 percent. Everybody wants to talk about the 8 percent that happen to be unionized. What about those that are not?

This is not very difficult legislation. We are giving the rights to 92 percent of the working families in this country that every court, almost every court in the Nation gives. Who said 15 days was right? Who made that up? It is arbitrary. It could have been 8; it could have been 16. All we are saying is occasionally a small business owner needs to have his case relooked at by the review commission and given his right and day in court.

Mr. OWENS. Mr. Speaker, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I want to take a moment of personal privilege to thank the gentleman from New York (Mr. OWENS) for the work that he has done in this area, particularly a very important briefing that he held just last week on this very issue, bringing together experts trying to educate people on the value of OSHA.

Now, in this body we are always inclined to give acronyms, and most people would not know what we are talking about. But both the gentleman from New York (Mr. OWENS) and the gentleman from California (Mr. GEORGE MILLER), who has been an enormous leader on issues dealing with working Americans, realize it does not matter about what acronym you are talking about. The bottom line should be are you going to stand with the workers, or are you going to stand with a club beating them to death by taking away established protections!

Now, I come from Houston, which is a city that is very fond of its small businesses, and we are much like a chauvinist, if I can use that terminology, in advocating for small businesses. In fact, just this last week I joined with a number of my colleagues to support the associated health plans that would allow small businesses to get health plans at a lower rate.

But let us clear away the misrepresentations and all of the clouding about how we are standing up for one these bills to help people who are in need.

□ 1315

Mr. Speaker, that is not what we are doing. We are frankly dismantling the very agency, OSHA, which provides the umbrella of protection for workers on the job, whether working in the local laundromat or local cleaner with chemicals or working in the local refinery. That is what OSHA is all about.

Unfortunately, we have done a coup d'etat today by managing to throw all of these bills, four bills, into 1 hour. What do we have here? We have one bill, H.R. 2728, that diminishes the ability for the company to mitigate the problem, to fix the problem. So if you are dying because you are working at this particular job, they can say OSHA, we do not want to comply right now, give us a couple more years, see how many more people will die.

H.R. 2729 expands the OSHA board to put more people on who can vote ''no'' so that the workers do not have a right when they come before the board.

H.R. 2730 weakens the enforcement capabilities of the Secretary of Labor. That sounds very good. We have the Secretary of Labor who is responsible for protecting the rights of working Americans; and what do we do, we dismantle their authority.

H.R. 2731 is one that diminishes the protection of Occupational Safety and Health by discouraging OSHA from even enforcing the Occupational Safety and Health Act and punishing taxpayers under the agency.

Let me give an example why we need to have OSHA as strong as it possibly can be. We have a citation in Houston of a particular company, and I will not say its name, but here is the quote: '' 'The employer knew about the unsafe working conditions, but continued to place people at risk,' said John Lawson, OSHA Houston North area director. 'A similar incident happened 2 years ago when two employees fell to their death from a storage tank.' '' This company's continued failure to protect the workers from falls is simply unacceptable.

This is what the collective body of these bills will do, just open the door, open the door, the random trap, and allow employees to fall through.

Mr. Speaker, if we had come to this floor in a bipartisan manner and addressed this question of dealing with the concerns of small businesses, there would be a great deal of support because we do believe that small businesses are the backbone of America in terms of their job creation; but what we have here is a runaway train allowing workers to fall through the cracks. I do not want to see any more workers fall to their deaths. I ask my colleagues to vote ''no'' on all of these bills because I am standing and we should be standing with the working people of America who are already suffering from this horrible economy.

Mr. Speaker, I rise in opposition to this bill. H.R. 2728, the "Occupational Safety and Health Small Business Day in Court Act of 2004." The underlying bill would amend Sections 10(a) and (b) of the Occupational Safety and Health Act (OSHA) to provide that an employer who has failed to contest a citation and proposed penalty (Section 10(a)) or has failed to contest a notification of failure to correct a violation (Section 10(b)) in a timely manner (within 15 working days of receiving the notice) may still contest the citation (or failure to correct the notice) if the failure to contest in a timely manner was due to a "mistake, inadvertence, surprise, or excusable neglect."

Mr. Speaker, the relief granted in this bill has nothing to do with "small businesses" as its title purports. It addresses a single situation

by overturning a case out of the Second Circuit, Chao v. Russell P. Le Frois Builder, Inc. (Second Circuit, May 10, 2002) to allow the employer to contest an OSHA citation with a ridiculous amount of latitude.

Instead of focusing on helping small businesses, this bill effectively hurts employees. The backbone of the employer is the employee, and this legislation fails to consider that.

The legislation seeks to enable the Occupational Safety and Health Review Commission (OSHRC) to waive a statute of limitations for employers to contest a citation in a manner that parallels the Federal Rules of Civil Procedure—Rule 60(b). Despite the fact that a citation has been properly served by an agency and that the employer cited has failed to timely challenge the citation, this legislation will allow them to escape the commitment to safety and healthy workplaces by allowing relief if the failure to respond was due to ''mistake, inadvertence, surprise, or excusable neglect.''

Employers should be held to a high standard and should not be given this kind of latitude at the expense of the injured or dead employee. The regulations are in place to create a safe work environment. This bill seeks to permit lackadaisical maintenance of such a safe environment. Put simply, this bill is bad policy and does not help the people who really need help.

In Houston, OSHA proposed fines of $258,000 against the Pasadena Tank Corporation for an August 23, 2001 accident that killed a worker at a construction site. The company had 15 days in which to contest or pay the fines. The Houston-based firm received a citation of six willful and serious safety violations for failing to protect workers by providing an inadequate fall protection system. The employee repairing a rooftop of a storage tank fell 56 feet to the ground when the rooftop collapsed. An OSHA employee said of the situation, ''The employer knew about the unsafe working conditions, but continued to place workers at risk . . . A similar incident happened two years ago when two employees fell to their deaths from a storage tank. This company's continued failure to protect its workers from falls is simply unacceptable.'' This failure to act when there is sufficient knowledge to mitigate an unsafe condition is what H.R. 2728 will sanction and permit.

Our innocent employers should not be punished from a piece of legislation that attacks from the ''back door'' by weakening a procedural standard that has been set in place to protect them. We should follow the motto, ''if it isn't broken, don't fix it.''

Mr. Speaker, I oppose this legislation and I strongly urge my colleagues to do the same.

Mr. NORWOOD. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I remind Members that we are on H.R. 2728. It is hard to tell because we are all over the board here. This is simply about small business owners having a fair day in court.

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

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

Mr. Speaker, I take issue with the last statement. We are on the first quarter of a four-bill marathon. They have been put together by the majority. We choose to discuss them as we see fit.

Mr. Speaker, I yield the balance of my time to the gentleman from New Jersey (Mr. PAYNE) to close out this first quarter of this four-bill marathon.

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

Mr. PAYNE. Mr. Speaker, let me say this is a day when we will be talking about four quarters, and this is the first quarter of a four-quarter tragedy.

H.R. 2728 weakens enforcement of OSHA by allowing employers to drag out the imposition of penalties and the date for taking corrective action, or to buy safety officials. The principal purpose of the Occupational Safety and Health Act is to ensure, so far as possible, every working man and woman in the Nation safe and healthy working conditions and to encourage the prompt abatement of safety and health hazards.

The time frames in the act are intended to reduce the occurrence of occupational injury by ensuring that hazards are redressed in a timely fashion. H.R. 2728 creates an exception to these time frames where an employer fails to contest an OSHA citation or fails to abate a hazard in a timely manner, pursuant to section 10(b) of the Occupational Safety and Health Act.

H.R. 2728 also encourages employers to litigate citations rather than to promptly correct health and safety hazards. Allowing an employer to belatedly challenge a complaint also allows an employer to delay when he or she must correct a health or safety hazard. Under this legislation, the responsibility to correct a health hazard may be indefinitely delayed by virtue of litigation, and I always thought my friends on the other side of the aisle were opposed to litigation, even though the employer has failed to challenge a citation or a failure to abate notice in a timely manner. If that failure is due to mistake, inadvertence, surprise, or excusable neglect, the employer can nevertheless challenge the citation, does not have to abate the hazard during the challenge period, and is not liable for having failed to abate in the interim period.

The majority appears to equate an Occupational Safety and Health Act proceeding with any other typical proceeding. In fact, however, much more is at stake. What is at stake is not merely whether an employer will pay a monetary fine, but whether workers will have a safe and healthy workplace, or to be subject to injury, illness or death. It is very clear that this bill does not assist the employee. Therefore, Mr. Speaker, I urge my colleagues to vote ''no'' on H.R. 2728. It should be rejected.

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

Mr. Speaker, as I said earlier, occupational workplace injuries and illnesses have in fact been coming down in a rather dramatic way over the last few years, and this is because we continue to see more cooperation between employers and with the agency charged with enforcing these laws, OSHA.

Looking at this chart here, over the last 4 years, voluntary programs have reduced injuries. If we look at injury and illnesses over the last 4 years, Members will see that the rates per 100 workers have in fact continued to decline, and we believe that is because of the voluntary nature of these agreements between OSHA and the employer community.

Looking at workplace fatalities on the next chart, Members will see that they continue to come down rather dramatically. Today, we are trying to increase the cooperation between OSHA and employers.

The bill that we have before us, I think we need to understand that almost every other court in the Nation has the authority to excuse understandable procedural mistakes when those mistakes would take away someone's right to be heard in court. While most courts have this authority and use this authority, disputes at OSHA are an exception. There seems to be no flexibility in the OSHA Act. The OSHA Act has a 15-day deadline for filing a legal dispute against OSHA after it issues a citation. This is inflexible; 15 days, no changes.

The bill before us is to provide authority for the agency specifically created by Congress to hear OSHA disputes, the Occupational Safety and Health Review Commission, to make exceptions in appropriate cases.

Now, appropriate cases for excusing a missed deadline are only those under which the totality of the circumstances surrounding the conduct indicates a good-faith effort to comply, but an inadvertent effort to do so. The bill before us accomplishes that using the time-tested legal language with clear, long-standing legal precedent, the same language used in the Federal Rules of Civil Procedure.

So the bill before us would have no negative impact on the current safety and health protections in place. All it does is permit a case to be heard on the merits rather than being decided on a legal technicality. It does not change the outcome in any way, shape or form. The review commission is there to act as the court in these cases. We ought to give them the flexibility that every other court in the land has. We believe that this small change, this 11-word change in the law, would provide more cooperation between OSHA and employers and assist in protecting the health and safety of American workers.

Mr. Speaker, I ask my colleagues to support H.R. 2728.

Ms. WOOLSEY. Mr. Speaker, I rise in opposition of H.R. 2728 because it appears to be another way for this administration to distract from real needs facing our nation's workers. What employees deserve is a safe working environment that protects them from harm and allows their families peace of mind.

Yet, with this legislation, we put the company's bottom line above the safety of American Workers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The yeas and nays were ordered.

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

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION EFFICIENCY ACT OF 2004

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

The Clerk read the title of the bill.

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

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

H.R. 2729

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

SECTION 1. SHORT TITLE.

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

SEC. 2. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

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

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

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

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

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

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

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

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

H.R. 2729

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

SECTION 1. SHORT TITLE.

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

SEC. 2. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

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

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

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

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

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

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

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

GENERAL LEAVE

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

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