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

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

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

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

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

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

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

Congress, in 1970, passed the OSHA Act, putting in statute a set of laws, rules and regulations about the protection of American workers. And over the last, really the last 7 or 8 years, we have made great progress in reducing workplace accidents, illnesses and deaths, because OSHA, at the prodding of many of us, began to work more cooperatively with employers around the country. I have been to many work sites in my own district where voluntary protection programs have been instituted and have been signed off by OSHA that allow employers and their employees to work cooperatively in order to have a safer workplace. And the results, the results are pretty clear. If you look at, over the last 5 years, the rate of illness, workplace injuries, and deaths has continued to decline precipitously. We are making real progress. So I would continue to urge OSHA to work with employers and their employees to help create the safer workplace that all of us want.

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

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

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

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

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

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

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

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

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today speak in opposition to H.R. 741, a bill to amend the Occupational Safety and Health Act of 1970 by requiring judges in OSHA appeals cases to give more weight to the commission's decisions than to Labor Department regulators. Supporters argue the legislation would codify the intent of the 1970 Occupational Safety and Health Act (PL 91–596). However, I would argue that the measure would violate a 1991 Supreme Court ruling that gave the Labor Department priority in interpreting OSHA regulations.

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

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

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

The SPEAKER pro tempore (Mr. REHBERG). All time for debate having expired, pursuant to House Resolution 351, the previous question is ordered on the bill, as amended.

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

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

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

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

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

The yeas and nays were ordered.

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

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

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

The Clerk read the title of the bill.

The text of H.R. 742 is as follows:

H.R. 742

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Occupational Safety and Health Small Employer Access to Justice Act of 2005''.

SEC. 2. AWARD OF ATTORNEYS' FEES AND COSTS.

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) is amended by redesignating sections 32, 33, and 34 as sections 33, 34, and 35, respectively, and by inserting after section 31 the following new section:

''AWARD OF ATTORNEYS' FEES AND COSTS

''SEC. 32. (a) ADMINISTRATIVE PROCEEDINGS.—An employer who—

''(1) is the prevailing party in any adversary adjudication instituted under this Act, and

''(2) had not more than 100 employees and a net worth of not more than $7,000,000 at the time the adversary adjudication was initiated,

shall be awarded fees and other expenses as a prevailing party under section 504 of title 5, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the Secretary was substantially justified or special circumstances make an award unjust. For purposes of this section the term 'adversary adjudication' has the meaning given that term in section 504(b)(1)(C) of title 5, United States Code.

''(b) PROCEEDINGS.—An employer who—

''(1) is the prevailing party in any proceeding for judicial review of any action instituted under this Act, and

''(2) had not more than 100 employees and a net worth of not more than $7,000,000 at the time the action addressed under subsection (1) was filed,

shall be awarded fees and other expenses as a prevailing party under section 2412(d) of title 28, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust. Any appeal of a determination of fees pursuant to subsection (a) of this subsection shall be determined without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust.

''(c) APPLICABILITY.—

''(1) COMMISSION PROCEEDINGS.—Subsection (a) shall apply to proceedings commenced on or after the date of enactment of this section.

''(2) COURT PROCEEDINGS.—Subsection (b) shall apply to proceedings for judicial review commenced on or after the date of enactment of this section.''.

The SPEAKER pro tempore. Pursuant to House Resolution 351, 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. 742.

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

There was no objection.

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

Mr. Speaker, the fourth bill we will debate today is another narrowly crafted bill that addresses a specific OSHA problem. In short, we strongly believe that small businesses that face meritless OSHA enforcement actions should not be prevented from defending themselves simply because they cannot afford it.

The Occupational Safety and Health Small Employer Access to Justice Act levels the playing field for small businesses and encourages OSHA to better assess the merits of a case before it brings unnecessary enforcement actions to court against small businesses. Under current law, the Equal Access to Justice Act allows small business owners to recover attorneys' fees if the owner successfully challenges a citation. However, if OSHA can establish that its enforcement action was ''substantially justified'' or the result of ''special circumstances,'' small businesses can be refused attorneys' fees even if OSHA loses the case in court. Historically, the law's ''substantially justified'' and ''special circumstances'' standards have made it easy for OSHA to prevent recovery under this broad standard, so attempts by small business owners to recover costs often exacerbate the financial harm caused by OSHA's dubious enforcement actions.

Let us look at some of the facts. In 2004, OSHA cited 86,708 violations based on its nearly 40,000 workplace inspections. Yet, how many applications were filed for attorneys' fees against OSHA in 2004? That number is four. Yes, exactly four. How many were granted? Three. Three. Moreover, for the last 25 years, only 1 year has seen more than ten applications filed for attorneys' fees against OSHA. Now, when you compare that number to the more than 80,000 OSHA violations cited every year, you start to wonder. We heard testimony in our committee on this issue, and what we found is that the law's ''substantially justified'' and ''special circumstances'' standards have made it easy for OSHA to deny small businesses the ability to recover attorneys' fees.

What these numbers tell us is that small businesses can already see the writing on the wall. They know that OSHA has the upper hand, and if the prospect of recovering attorneys' fees is as bleak as it appears, then why fight the citation at all? Small employers should not be forced to knuckle under to OSHA citations and settle up front when they know and believe that they are innocent. This measure simply forces OSHA to carefully evaluate the merits of its cases against small employers before they bring the case. If OSHA's case is weak, and they bring the case anyway, then the agency will have to pay attorneys' fees, and rightly so.

Employers face relentless competition every day in the face of high taxes, rising health care costs and burdensome government regulations. The last thing they need is a meritless OSHA-related litigation that could take years to resolve. Last week, the Labor Department reported that more than 3.7 million new jobs have been created since May of 2003. We want to make sure that onerous government regulations do not hamstring small businesses' ability to continue to hire new workers and compete in our economy. Frivolous litigation kills jobs, and this measure will help ensure that OSHA carefully considers the merits of its case before they bring an enforcement action.

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

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

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

Mr. Speaker, this is the worst of all of the OSHA bills before us today. It would treat OSHA differently than any other Federal agency. Under the Equal Access to Justice Act, if any agency's position is not ''substantially justified,'' the government must pay the opposing party's attorneys' fees. This bill says OSHA must pay attorneys' fees to a prevailing employer, even if OSHA's actions were reasonable. Under this bill, OSHA will find itself paying the attorneys' fees of repeated safety violators whose penalties were reduced on a technicality.

The real-life example of an employer by the name of Eric Ho in Houston illustrates the problem here. Eric Ho hired undocumented workers and exposed them to high levels of asbestos, and this represents the kind of case that could not be tolerated by OSHA. Even after a city worker issued a stop-work order, Eric Ho secretly had the workers stay on the job. Eric Ho's workers ate at the site. They worked throughout the night, and some even slept at the site. Ho then directed the workers to tap into what would prove to be a gas line, and there was an explosion which resulted in one contractor and two workers being seriously injured. In the end, OSHA cited Eric Ho for ten serious violations and 29 willful violations. In turn, Eric Ho challenged OSHA and a divided OSHA review commission eventually downgraded Eric Ho's citations. Although Eric Ho was sentenced to prison in a prosecution led by the Environmental Protection Agency, because they had jurisdiction also. Eric Ho violated the Clean Air Act and H.R. 742 would require that this man, who had been convicted by one Federal agency, be awarded attorneys' fees because of OSHA's actions. OSHA would have to award attorneys' fees to Eric Ho. In this instance, H.R. 742 would use taxpayer funds to reimburse a convicted felon on OSHA technicalities.

Under the Equal Access to Justice Act, when a Federal agency is not substantially justified and cites an employer and the employer prevails in judicial proceedings, the employer is reimbursed for his attorneys' fees and expenses by the U.S. Treasury funds. Under this bill, H.R. 742, OSHA would be required to reimburse from its own budget an employer who prevails in judicial or administrative proceedings,

even when OSHA was ''substantially justified'' in issuing its initial citations. Now, they say, still, they are not trying to chip away at the effectiveness of OSHA, destroying OSHA bit by bit. OSHA would have to pay out of its own budget. Whereas, under the other circumstances that are similar, U.S. Treasury funds are used. Thus, any time an OSHA staffer conducts an inspection and discovers serious safety violations, that inspector would have to second-guess himself or herself.

□ 1700

OSHA's inspectors will be forced to perform many mental gymnastics, trying to predict whether a citation, no matter how justified, might have the slightest chance of being adjusted or overturned on a technicality in review proceedings.

Mr. Speaker, Members of both sides of the aisle agree that under its current budget and staffing configuration, it would take OSHA 108 years, 108 years to inspect all of the workplaces in America.

Now, H.R. 742 would have the effect of tying the hands of OSHA inspectors behind their own backs, causing them to analyze each and every citation in the most serious minute detail.

In a sense this bill calls for OSHA inspectors and supervisory staff to become forecasters. They will be required to predict any and all possible scenarios in which a specific citation might be reversed on a technicality. In the meantime, the founding purpose of OSHA, to assure, quote, ''every working man and woman in the United States safe and healthful working conditions,'' that would be more or lose forgotten.

Mr. Speaker, there are Members on the other side of the aisle who would have us believe that every OSHA inspector is like police inspector Javert in Victor Hugo's famous novel ''Les Miserables.''

These Members compare every business owner to Hugo's noble character Jean Valjean, hounded by OSHA's Javertian inspector for having innocently slipped up on one point, one miniscule point of an obscure and archaic OSHA safety rule.

In turn, those Members refuse to acknowledge the relevance of another great novelist, Charles Dickens, who captured bleak scenarios in which greed led the owners of blacking factories to subject child workers to inhumane and life-threatening conditions. In reality, we do not have to turn to 19th century novels to enlighten us on workplace safety conditions in this country. We need merely turn to the last year's astounding New York Times investigative series on worker deaths by David Barstow.

Reporter Barstow reminded us all that someone harassing a wild burro on Federal lands in 2004 would get a stiffer penalty, that is up to a year in prison, than an unscrupulous employer whose willful safety violations resulted in the death of a worker.

As I have repeated several times during today's debate, that employer's malfeasance could result in a sentence of no more than 6 months in jail. However, if Mr. Barstow were to write his series this year, he would have to alter the comparison slightly. It is not, I am afraid, that we are doing a better job of holding errant employers accountable for serious safety offenses. Rather, it is because a provision in the Omnibus Appropriations Act enacted at the end of the 108th Congress repealed the protection of wild burros and horses on Federal lands.

So it is a different scenario; but still workers are no better off, I assure you.

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

Mr. NORWOOD. Mr. Speaker, I yield 2 minutes to my friend, the gentleman from Puerto Rico (Mr. FORTUÑO).

Mr. FORTUÑO. Mr. Speaker, I am quite pleased to have the opportunity today to address my colleagues and argue all to support the four OSHA bills that are being discussed today. At this point I would like to particularly address the importance of H.R. 742.

This bill narrows the target to a very specific goal, fairness. By permitting small employers to defend themselves against OSHA's superior litigation position when they believe that they are right, we are both creating consciousness about the values and needs of occupational security and health among employers and simultaneously promoting responsibility to our regulatory agency at the moment of acting.

Reality is that many small businesses simply do not have the resources to compete against OSHA's team of legal experts and are forced to ''surrender'' just because of the economic burden that litigating a case will have on their company.

It is not a matter of having a strange or poor case. It all comes down to the amount of time and money that litigating represents for them. We cannot allow our regulatory agencies such as OSHA to take advantage of their superior position and by doing so affect an important part of our national economy.

I personally have been informed by the Puerto Rico Chamber of Commerce that the main frustration among small employers is the unfair advantage that OSHA has when pursuing litigation against a small company even when the case is without merit or on shaky legal ground.

But, in fact, it is not news. Congress clearly recognized this problem when it passed the Equal Access to Justice Act. Still, this act just does not work when it comes to OSHA law.

In 2003, OSHA collected over $82 million in penalties; but in 12 of the last 20 years, OSHA's total EAJA awards have been less than $10,000. This simply does not make sense in light of all of the complaints that we hear from our small business constituents. We have to promote a level playing field for all. That should be our motive.

The message that we have to make clear to the small businesses is, if you need to, you can fight OSHA and win, and your victory will involve no burden.

Mr. Speaker, no one wants OSHA to be using taxpayer money to pay attorneys' fees instead of enforcing the law. That is not the purpose of this bill. But we do care to ensure that OSHA will think twice before pursuing expensive and time-consuming litigation in cases with no merit.

Mr. OWENS. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. ANDREWS).

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

Mr. ANDREWS. Mr. Speaker, I rise in opposition to this bill. If the principle in this bill were applied to U.S. attorneys across the country, we would have a crime wave like you would not believe. If prosecutors had to be sure they were going to win every time they brought a case, they would bring very few cases. And that is the flaw in this bill.

There are four kinds of results when OSHA brings an action. The first is the result when OSHA is right, when they win on every question. And this bill does not affect that situation.

The second is the mixed result where OSHA wins some and loses some, where some of the charges that they make are downgraded, others are dismissed, and others are upheld in their entirety. As I read this legislation, Mr. Speaker, in that case, it is indeed possible, perhaps likely, that OSHA would be held responsible for paying the attorneys' fees of the defendant or accused party in that case.

The third kind of case OSHA brings is one where OSHA loses on all counts, but the claim was not unreasonable, where they made a judgment call and they thought they were right, but the adjudicator, the court, the decision-maker made a different decision.

Well, in that case, it is obvious under this bill that OSHA would be responsible for the counsel fees of the accused party.

The fourth kind of case is the case where OSHA brings a case that is unreasonable, that is arbitrary and capricious. Under present law, under such circumstances, OSHA is responsible for the counsel fees and attorneys' fees of the accused party.

Now, our friends on the other side say, well, this has been rarely invoked. I believe they said there are three cases in recent years, in a long time, where this has been invoked. And they draw from that the conclusion, Mr. Speaker, that there must be many, many cases where OSHA has done something arbitrary or unreasonable, but not been called on it, not been caught at it.

One could draw a very different set of conclusions from that record. It could draw the conclusion that in the vast majority of the cases, even when they

lose, their claims are reasonable; and the adjudicator and finder of fact in law has found that although OSHA is wrong, they were not acting in a vindictive or unreasonable way. This is a consistent principle across the board in Federal law.

If a Federal agency brings a case that is vindictive or unreasonable or patently unfair, then they are in fact responsible to pay the attorneys' fees of the accused party. But if they bring a case that is just wrong, but not unreasonable, where reasonable people could disagree before the case was brought as to whether it was right or wrong, then they do not have to pay the attorneys' fees, and it is for a very good reason.

It is because there are judgment calls that prosecutors have to make, there are judgment calls that enforcing agencies have to make, and we do not want to chill that judgment by saying, we will bring the case if you are sure that you are going to win. I am glad that the Securities and Exchange Commission is not going to be held to this standard, because if every time someone on Wall Street were accused of stock fraud, the SEC had to say, well, are we sure we are going to win before we bring this case, the cases of stock fraud that we have seen would be far more rampant than we have seen in recent years.

I am glad that other agencies, the mine safety agency is not held to this standard. You know, the basic question here is whether we want to so chill and corrode the enforcement powers of the agency that we want to wipe them out all together. I just do not think that makes any sense.

I think a far more sensible course would be to examine the existing legal provisions as to whether they go far enough, whether they are properly administered; but to make this wholesale change is to say to OSHA, unless you are sure you are going to win, do not bring the case.

You know, every lawyer is asked by every client at some phase of the litigation, am I going to win? Clients want to know this. And competent, honest lawyers usually give an answer that says, I am not sure. I can give you the probabilities. I can give you the circumstances under which I think we can win, and the circumstances under which I think we would not win. And a sensible client decides whether to go forward or not.

OSHA should have the same degree of discretion. If it abuses that discretion, it should be punished. If it does so on a consistent basis, we should change the law. But I believe there is no record that would demonstrate that conclusion, and I think that this proposal would seriously corrode the ability of this much needed agency to protect the working people of the country. I would urge both sides to cast a ''no'' vote on this bill.

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

Mr. Speaker, I always enjoy following my friend, the gentleman from New Jersey (Mr. ANDREWS). I love to hear his debate, and I respect it. But I just think he is wrong about this.

We are not chilling anybody. What we are telling OSHA is you be darn careful before you drag people into court or force them to pay the citation because they simply cannot go to court.

They can take anybody to court anytime they want to under this bill. But they better be right more often than they are wrong, and that is not necessarily the case. So many of the cases we never hear about because the poor small business owner simply has to pay the citation because he knows that the attorneys' fees are going to be 10 times more than the citation.

In hearings before my subcommittee in the last Congress, we heard testimony from several witnesses about settling citations with OSHA rather than contesting citations, even though the employer felt the citation was dead wrong.

Why is this a continuing theme? I do not even have to be in Congress to hear this. I know about this kind of thing going on in my area all of the time. I would argue that since it is too hard to challenge OSHA and its attorneys, and the fact that you are challenging the entire taxpayers of the country and the use of their dollars, an employer simply cannot afford to go to court to prove that they are right because of the cost.

Does this remind any of you that have been in business about hearing from any of your friends with the IRS? They do the same thing. They just beat you to death and make you pay whatever they want you to pay and you cannot go to court to defend yourself.

The Occupational Safety and Health Small Employer Access to Justice Act, would award attorneys' fees to small businesses that successfully challenge an OSHA citation. They need to know what they are doing before they drag people into court. They need to be right.

They will not be every time. It may cost them sometimes. But that is better than not ever allowing a small businessman to be able to defend himself in court. The legislation defines a small business as one with 100 employees or less and with a net worth of not more than $7 million.

This is a very limited definition. This very limited definition will award attorneys' fees to the very small employer who is often pressured into settling with OSHA despite the fact that the company believes it has done nothing wrong.

□ 1715

This legislation is needed because the Equal Access to Justice Act has not been effective in redressing unfair citations for small business owners. Some people think that is not true. We think it is true. The numbers of cases filed under EAJA are few and far between. Why? Because OSHA can easily claim that the citations were justified. Under EAJA this is all they need to do.

In fiscal year 2004, small businesses were awarded only $11,585 by OSHRC. Witnesses before the Committee on Education and the Workforce have described the economic calculus small businesses make where settling OSHA cases is concerned. What was the common theme? It is cheaper to settle with OSHA than it is to fight, win and file for attorneys fees. That is wrong. Occasionally, some businessmen cannot stand it. They just cannot stand what OSHA is doing to them, and they are willing to pay a lot of money to go to court, a lot more money than the citation to prove that they were not wrong. But not everybody can do that.

Mr. Speaker, my bill is simply not a new concept. I would like to point out that in 180 other areas Congress has provided fee-shifting statutory arrangements for attorneys fees. This includes the Fair Labor Standards Act, the Americans with Disabilities Act, and numerous other laws. H.R. 742 simply levels the playing field for small employers by encouraging OSHA to better assess the merits of the case before bringing the full force and power of the United States government in their litigation against a small business. If you think that is not scary, you ought to try it some time.

This measure passed the House, thank goodness, last year in the Congress with bipartisan support, 223 to 194. I urge my colleagues, in particular my Democratic friends who have small businesses in their district, I urge them to vote for all four of these bills. I know it has been hard to tell what we have been talking about today because there has been so much superfluous conversation going on not concerning these four bills. But these are four simple, commonsense, fair bills that small business in this country need.

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

Mr. Chairman, how much time remains?

The SPEAKER pro tempore (Mr. WALDEN of Oregon). The gentleman from Georgia (Mr. NORWOOD) has 19 minutes remaining. The gentleman from New York (Mr. OWENS) has 18 minutes remaining.

Mr. OWENS. Mr. Speaker, I yield 6 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, I thank the gentleman from New York (Mr. OWENS) for his defense of workers rights.

I rise in strong opposition to H.R. 742 and to any bill that seeks to weaken OSHA at a time when we should be strengthening it. I further want to say that I think the passage of this bill sets a dangerous precedent because what we would be doing effectively is undermining OSHA, not only discouraging it from performing its statutory mission of making sure that the workplace is safe, but also setting the stage for depriving OSHA of any revenues

that it would need to be able to enforce the law.

It also occurs to me that there is a question of the constitutional rights of workers here, that since OSHA is given rather exclusive jurisdiction to protect the rights of workers and to enforce workplace safety standards, that working people would in effect be deprived of due process of law and equal protection of the law. So it seems to me there are constitutional issues here at stake as well.

The core mission of OSHA is to protect workers by enforcing safety standards. This bill will undermine that mission. It will alter OSHA's ability to enforce, and it will leave workers in danger. The latest numbers from the Bureau of Labor Statistics show a rise in deaths of American workers on the job. In 2002, 5,524 workers were killed due to injuries on the job. By 2003, that number had risen to 5,575. In 2003, 4.4 million, 4.4 million non-fatal workplace injuries were also reported.

Let us remember what OSHA is: OSHA is the Federal cop on the workplace safety beat. H.R. 742 will discourage OSHA from enforcing the laws against dangerous workplaces. Instead, OSHA will spend its time weighing the odds of winning against the costs to its budget if it loses.

H.R. 742 would require OSHA to pay attorneys fees in any case which it does not prevail. This would discourage settlements which save both time and money and in effect leave businesses with little or no reason to not contest charges.

Imagine if Congress were to consider a bill to require police departments to pay attorneys fees of a criminal defendant charged with reckless endangerment merely because they were acquitted or found guilty of a lesser charge. Would this House support that? The question answers itself.

Why support H.R. 742 which, in effect, does this same thing? The Nation's workplaces will be more dangerous and more lawless if the changes made by this bill are passed. This bill was designed to weaken enforcement of workplace safety laws and to in effect steal from exploited Americans the protection from injury and the justice they deserve. This legislation will severely handicap OSHA, the Federal workplace safety force, by discouraging it from citing employers unless the agency is completely certain it will win.

This legislation will endanger Americans, the vast majority of whom work for others to make a living. They work in factories, in shops, in hospitals. They work in nursing homes and in schools. They are not the bosses who decide if and how businesses will obey the law. Instead, they face the consequences of those decisions, and they live and die by those decisions. They need strong workplace safety laws and vigorous enforcement. They need to have H.R. 742 to feed it.

Current law already permits small businesses to recover litigation costs when the government position was not substantially justified. In the year 2000, 97.7 percent of all private establishments had less than seven employees and such establishments have a higher rate of occupational fatalities than establishments of more than 100 workers.

The fundamental question that faces this House here is, do workers have rights to fair compensation when they are hurt on the job? Because this is not just about workers; it is about the American family. Does a breadwinner have the right to be protected in the workplace? Do we have an obligation as a Congress to ensure a safe workplace? That is really the question that we are deciding here today. We are acting as though the interest of business and the interest of workers is somehow divided. The interest should be the same.

Workplace safety should be the highest criteria. We should not give up on workplace safety because of some odd notion that OSHA should pay if it brings a proceeding that is not upheld in a higher jurisdiction. We as Members of this House will pay a price if we fail to uphold workers' rights, if we fail to uphold the rights of a safe workplace, if we fail to uphold the right to fair compensation if someone is injured on the job, if we fail in our moral obligation to assure that corporations have a responsibility to their workers.

This should not be a matter of Democrat or Republican. It should not be a matter of labor management. This should be an American commitment to safe workplaces. And because of that I urge my colleagues to vote to defeat H.R. 742 and to work in a bipartisan way to assure that the American workplace is going to be safe for all those who toil for a living.

Mr. NORWOOD. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota (Mr. KLINE).

Mr. KLINE. Mr. Speaker, I thank the gentleman for yielding me time and for his tremendous leadership on this issue. He has been working it for a long time.

Mr. Speaker, I rise today in support of the Occupational Safety and Health Small Employer Access to Justice Act. And I read it that way in the quotes for a purpose. The gentleman from Georgia (Mr. NORWOOD) mentioned earlier that we have heard language today that ranged on a wide variety of subjects, and I am not sure at all that they were talking about the issue before us today.

This legislation that is before us now is one of four bills under consideration today which reflects the commitment of the gentleman from Georgia (Mr. NORWOOD) and me and my colleagues to improve the effectiveness of OSHA regulations and changes the environment that has hindered U.S. employers from creating and keeping more jobs.

I have listened to language today earlier this afternoon on these four bills that talked about us losing millions of jobs to China and elsewhere. The purpose of the legislation that we are talking about today is to, in fact, help create and keep jobs here in America. I will repeat what my friend from Georgia said earlier today, that the OSHA Small Employer Access to Justice Act levels the playing field for small business owners and encourages OSHA to better assess the merits of a case before it brings unnecessary enforcement actions to court against small business.

Loopholes in the current law make it possible for small businesses to be denied attorneys fees, and as my friends said, therefore, not even take the case to court because they simply cannot afford to defend themselves against a case brought against them by OSHA. This exacerbates the financial harm called by OSHA's sometimes dubious enforcement actions and discourages small business owners from seeking the restitution which rightly belongs to them. By closing this loophole, we ensure it is in everyone's best interest.

Mr. NORWOOD. Mr. Speaker, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. Mr. Speaker, I thank the chairman and I appreciate all he does.

Mr. Speaker, I rise today in support of all four of the OSHA reforms bills on the floor. These bills contain reforms that will encourage a more collaborative environment in which small business owners and the Occupational Safety and Health Administration can work together and, in doing so, improve workplace safety.

In particular I rise to support H.R. 742, the Small Employer Access to Justice Act. It would amend the OSHA Act of 1970 to reimburse small employers for attorneys' fees and costs when they are successful in challenging an OSHA citation.

Now it is true that the Equal Access to Justice Act already allows small business owners to recover attorneys' fees when a ruling is in the employers favor. However, reimbursement for attorney fees is refused if OSHA can establish that the citation was substantially justified or that special circumstances led to the issuance of citations. This loophole means that small businesses are saddled with costly attorneys fees regardless of their innocence.

Small business owners who believe that they have not violated any law are faced with a difficult question. Should I simply pay the fine or risk possibly incurring greater costs and attorneys fees by challenging this citation?

No small business owner should face such a choice, especially if he or she is wrongly accused. Small business that have violated health or safety laws should be fined. It is important that workers should be protect. But small business owners that have not broken any laws should not be drained by large attorneys fees that they have accrued in order to contest the citation.

I ask Members to support the OSHA reform and in particular H.R. 742 so that a fair legal environment can be created for small businesses owners.

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

Mr. NORWOOD. Mr. Speaker, I yield 2 minutes the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. Mr. Speaker, I have come down on these four bills and I have come for a variety of reasons, but one main reason is to make those corrections that are so necessary with the arguments on the other side.

We have heard, why can we not have investigations? Why can we not consider another bill? Why can we not do this or that?

Well, these are all interesting questions but they have nothing to do with this bill. The hyperbole from the opposition has been remarkable.

□ 1730

The contention, they would say, is that unless you are going to win, do not bring the case. That is not what this bill says. This bill simply provides that if the small business owner wins, then OSHA should be responsible for the attorneys' fees. We seek to improve OSHA and make it responsive to the intent of Congress. This bill is designed to strengthen small business and to save jobs.

Again, the magnitude of this issue, 99.7 percent of all businesses are small businesses, 75 percent of all new jobs are in the area of small business. OSHA has a budget of $468 million, with 2,200 employees and 1,100 inspectors. The deck is stacked. Yes, it is stacked; it is stacked against those most beneficial to our economy, small business owners and their employees.

H.R. 742 would allow a small businessman or -woman to recover attorneys' fees if they contest and they win, they win, an allegation in a citation by OSHA. Remember OSHA's budget, $468 million? You win, OSHA was wrong. Right? OSHA was wrong, but you spent thousands of dollars to defend your business and your workers' jobs. Remember, you win against a $468 million budget. So OSHA should reimburse your attorneys' fees. Right? Just like current law. Right? Wrong.

You cannot win. Even if you win your case, you may be out the amount of money it cost to defend yourself. Less money in your business means fewer jobs. Remember, reimbursement only occurs if you win. If you lose, you are responsible, and that is as it should be.

So let us stop punishing the backbone of our economy. Let us stop punishing small businesses and employees and workers. I urge support for H.R. 742, one of four commonsense worker-friendly, job-friendly, small business-friendly bills before us today.

Mr. NORWOOD. Mr. Speaker, it is a pleasure to yield 2½ minutes to the gentleman from Texas (Mr. SAM JOHNSON), another of our subcommittee chairmen.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I want to express my support for the legislation introduced today by my colleague from Georgia. I am a cosponsor of all four of these bills on the floor today, and I believe they will improve the workplace safety level, the playing field for small business, and ensure that employers and employees are treated fairly.

H.R. 742 encourages OSHA to really look at the merits of the case before it brings unnecessary enforcement actions to court against small businesses. Current law already does allow small business owners to recover attorneys' fees if they successfully challenge a citation; but in the real world of OSHA, it simply does not work for small businesses.

Case in point: in the last 24 years, small business owners have been able to recover costs from OSHA only 38 times. In 2004, only three employers were awarded attorneys' fees, despite more than 86,000 citations issued by OSHA. H.R. 742 also limits its scope to small businesses with less than 100 employees or less than $7 million in net worth. This assures targeted and meaningful relief to those businesses that are least able to cope with these hefty and ongoing litigation costs.

This reform is necessary for the vitality of America's small businesses and the job security of America's workforce. As chairman of the Subcommittee on Employer-Employee Relations, I have seen these bills through the committee and the full House in the past, and I look forward to their passing again today.

Again, I applaud my colleague from Georgia for his hard work on behalf of American small business owners and their employees.

Mr. NORWOOD. Mr. Speaker, how much time remains?

The SPEAKER pro tempore (Mr. WALDEN of Oregon). The gentleman from Georgia has 11 minutes remaining.

Mr. NORWOOD. Mr. Speaker, it gives me absolute pleasure to yield 2 minutes to the gentleman from South Carolina (Mr. WILSON), my friend and neighbor, who lives right up the road from me in Columbia.

Mr. WILSON of South Carolina. Mr. Speaker, my legal career of 25 years was to represent small business owners. And since coming to Congress 3 years ago, I have worked consistently to make it easier for small businesses to grow and succeed in our country. I appreciate the leadership of the chairman, the gentleman from Ohio (Mr. BOEHNER), and my next-door neighbor, the gentleman from Georgia (Mr. NORWOOD), for their promotion of small businesses.

However, OSHA regulations placed upon our small businesses continue to be among the most complex and difficult legal mandates imposed on employers. The Occupational Safety and Health Small Employer Access to Justice Act is a vital piece of legislation that significantly reduces burdensome government regulations. H.R. 742 levels the playing field for small businesses and encourages OSHA to better assess the merits of a case before bringing unnecessary enforcement actions to court against small businesses.

By passing this vital legislation, Congress will enhance fairness for employers, especially small businesses; and give them new tools to defend themselves against OSHA citations they believe are unjustified. Small businesses provide, in the district I represent, 99 percent of businesses, creating 85 percent of jobs for working people; and Congress should act now to help them succeed.

As a member of the Committee on Education and the Workforce, and cosponsor of the four bills today, I have been honored to work with Chairman BOEHNER and the gentleman from Georgia (Mr. NORWOOD). I applaud their efforts to provide commonsense legislation that will reduce the burden placed upon America's small business owners.

I urge my colleagues to support OSHA reform, H.R. 742.

Mr. NORWOOD. Mr. Speaker, it is a great pleasure to yield 2 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank my colleague from Georgia for yielding me this time, and I am here in support not only of H.R. 742 but of all four of these OSHA reform bills. What we are talking about here, my colleagues, is leveling the playing field, that is all, reforming a 34-year-old act that is long overdue for reform.

During the 2004 elections, what we heard constantly from the other side was the concern about outsourcing of jobs, of losing jobs in this country. Well, there is no way we can compete with other countries with these burdensome rules and regulations like OSHA puts on our small businessmen and -women in this country who create most of the jobs. We just need a level playing field, and I am proud to stand in support of these four bills, and I am proud of my colleague from Georgia (Mr. NORWOOD). Nobody is more concerned about workers and workers' health. He has been a leader all these years in regard to issues like the Patients' Bill of Rights. He has shown great compassion, and I commend him for bringing these bills, and for the gentleman from Ohio (Mr. BOEHNER), the chairman, and the committee for working through this process.

So as my colleagues have said before me, it is time to make these reforms and level the playing field. Yes, protect our workers, but also protect our small employers so they can continue to create these jobs and compete in the world market. Then, and only then, will we end the outsourcing of jobs.

Mr. OWENS. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman has 12 minutes remaining.

Mr. OWENS. Mr. Speaker, I yield myself the balance of my time and would

like to point out that despite the rhetoric of my colleagues on the other side of the aisle, and we did hear again the last speaker mention the fact that one of the reasons we are attacking OSHA is because employers feel they cannot compete with these regulations. They cannot compete with American workers being treated the way they are being treated.

The humane treatment of American workers stands in the way of profits and competition with the people who are in the developing countries and China. They do not have to treat workers this way. They do not have to spend the money, as I said before.

But I want to point out that this bill is hardly limited to small businesses. The appearance or the notion that small businesses are being persecuted by OSHA, by the government, is an incorrect one. According to the Bureau of Labor Statistics, in 1998 there were more than 6.5 million private sector firms with 99 or fewer employees. H.R. 742 applies to all firms with 100 or fewer employees with a net worth of $7 million or less. These companies, those with a hundred or fewer employees and $7 million or less, comprise about 97 percent of all American businesses.

Let me repeat that. H.R. 742 applies to all but 2 or 3 percent of American businesses. This is the broadest definition of small business that anyone could ever come up with or dream up. It is similar to categorizing elephants as small mammals. It does not tell the story as it should be told.

Mr. Speaker, when it comes to employment-related laws, Congress traditionally defines a small business as one with 20 or fewer employees, 20 or fewer employees. As a matter of fact, that is the definition used on annual congressional appropriation riders, which exempt firms of 20 or fewer workers from scheduled OSHA inspections, 20 or fewer workers, not 100, as this bill treats.

Mr. Speaker, I would also point out that OSHA also has a long-standing practice of reducing penalties for small employers. For businesses with 25 or fewer workers, any OSHA penalty is routinely reduced by 60 percent. Routinely reduced by 60 percent. Likewise, for businesses with between 26 and 100 workers, any OSHA penalty is reduced by 40 percent. Again, OSHA inspectors, in reality, are hardly like the draconian police inspector Javert from the famous novel, ''Les Miserable.''

It is important, Mr. Speaker, to realize that there is a need for both parties to come together and for the Republican majority to yield on its strategy to destroy labor unions. There is a strategy that has been pursued relentlessly to destroy labor unions; and in the process, working families of course get hurt because working families are represented by labor unions. In the effort to destroy labor unions, everything related to them, it gives them some kind of power, has to be destroyed, among them including OSHA.

Members of unions are likely to complain. They are likely to insist on their rights. They are likely to report violations. OSHA is less likely to run over the interests of the workers if there is an accident or some problem. So the relentless pursuit of labor unions is part of the problem with this legislation. It has been brought back because it is a part of a master plan, and that master plan is to sort of distract our attention from the real issues related to safety in the workplace, distract our attention from the fact that it is really an employer protection act that we are concerned with. Employer protection at all cost.

The constituency of the Republican majority party demands it all: destroy the kind of environment and atmosphere that working families have been used to for years in this Nation. Let us change all that because it is not competitive. It is not competitive. It costs too much. We cannot compete with our overseas competitors. We are, in the process, drawn into the trap of class warfare. We hate to hear the term class warfare anywhere in America. Nobody wants to be accused of class warfare, but that is what it amounts to: working families against people who never get enough.

We have bloated capitalism. Aristotle said there are extremes of everything. There are extremes to capitalism. At one end of the spectrum, in terms of economic systems, you have communism; at the other end you have reckless capitalism. Capitalism out of control. Capitalism so greedy it never gets enough. I think democratic capitalism is the hope of the world, and we have enough experience now to know that democratic capitalism is the only system that really works. But if you allow capitalism to go to extremes, it tramples on the rights of workers. It tramples on the rights of consumers.

You know, workers are consumers. There is a madness at work here. As we destroy the buying power of workers, we are destroying that which makes our economy go.

□ 1745

We all agree, there is no debate about the fact that the economy of America is driven by consumer spending. Henry Ford understood that very early when he said, I am going to make cars and pay my workers enough money to buy them. That was a simple, commonsense idea that is at the heart of capitalism today. Two-thirds of our economy is dependent on what people buy. We are going to destroy the consumers by destroying the conditions in the workplace which allow our workers to work productively and get paid appropriately.

The minimum wage of today, Henry Ford would see right away, is not going to allow our consumers to keep buying products. We are lucky; there is a sort of credit card fantasy, an oasis of credit card credit that is driving our economy right now. But slowly, as we lessen the amount of money that flows into the hands of workers, as we move more jobs overseas and encourage outsourcing, as we give more and more of our dollars to China, because we are not giving all of our dollars to China, we are giving the dollars that they use for manufacturing, for production, but the trade with China benefits the wholesalers and retailers.

People are making big profits off China in this country. We would not be dealing with China if somebody was not making big profits in this country, but it is skewed. It is out of balance because in order to make big profits at the upper levels by producing products in a low-cost economy and getting the low-cost product, bringing them back into another economy with a different standard of living and selling those products at that standard, we are having consumers in America pay high prices for the lowest-priced goods that come from China. And the people who sell those goods and buy them from China, they walk off with the profits, along with the Chinese who produce those goods through the deals that have been made. There is more Wal-Mart in China than there is in the U.S., and more all of the time.

They find it so profitable to take the product, the production, the manufacturing to China, and bring back the products to capitalize on the sales here. It is not going to work eventually. We are catering to those who benefit at the top, but it is not going to continue to work because we are destroying our own consumer market. We are going to wake up and find that the economy is going to come to a standstill because nobody is able to buy the products that we want to sell.

Our own class war that we do not recognize and will not recognize will destroy us. Other evidence of a class war is the fact that we continue to give huge tax credits to the people at the very top who need it the least, yet we do not use the power of the Federal Government to increase the minimum wage.

We started this discussion about minimum wage, and we are going to end it on minimum wage. The minimum wage is one way that we guarantee all Americans have a part of American prosperity. We should be paying something like $8 an hour in order to keep minimum wage competitive with when minimum wage was first instituted. We should be paying about $8 an hour to enable those workers to buy the products that we want to sell and keep our economy going.

So minimum wage, we refuse to even consider. Congress has gotten huge increases in their own salaries, and refuse to consider a minimum wage increase for the workers at the very bottom. Is that not an element of class warfare? That is class contempt. That is class hatred, to stamp on those at the very bottom and refuse to use the authority invested in us by the American people.

We have the authority to raise wages, but the same people who are being protected by these bills as far as OSHA is concerned by minimizing their expenses and minimizing any trouble they have to encounter in making the workplace safe, they are being protected by refusing to raise the minimum wage. What is the ultimate danger here? The ultimate danger here is that, one day, working families are going to wake up and say, you have it all wrong. The country belongs to all of us, not you. If you do not want to admit that, it belongs only to us.

Working families are the people who go out and defend the existence of this country in times of war. They will determine whether we defeat terrorism or not. Working families are going to determine that we do not have domestic terrorism spreading in America because working families are going to save America by rising up to throw out people who insist on stamping on them and have contempt for them.

Mr. Speaker, in closing, I urge a ''no'' vote on all four of these bills today.

Mr. NORWOOD. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. HENSARLING), and just say we still are on H.R. 742.

Mr. HENSARLING. Mr. Speaker, as a former small businessman, I rise today in support of H.R. 742 and Republican efforts to reduce the regulatory burden on small businesses, the job engine in this country.

The Federal regulatory burden is strangling small business in America. The estimated total regulatory burden in America is now approaching $1 trillion a year. If we could only save 1 percent of that amount, if that could be returned to the marketplace, that would be enough money to provide capital for 400,000 new small businesses. Or it could pay the annual salaries for over a quarter million of our American workers.

Furthermore, according to the SBA, small businesses that employ fewer than 20 workers pay almost $7,000 each year in regulatory cost for every employee. Instead of using these funds to create new jobs or pay higher salaries or fund expanded health care benefits, small business owners are increasingly being forced to spend much of it complying with mind-numbing, inflexible, expensive, draconian and all too often just plain dumb Federal regulations.

H.R. 742 will make a difference in a small way in helping level the playing field for small businesses. It would require OSHA to better assess the merits of a case before it brings unnecessary enforcement actions to court against small businesses. This act will simply help small business owners to recover attorneys' fees if the owner successfully challenges a dubious OSHA citation. And there have been a number. Let us remember, OSHA does not always get it right. These are the folks who alleged that some workers face death or serious physical harm from lifting the top of a sandwich cookie from one assembly line and putting it on the bottom of the cookie on another. Give me a break.

Mr. Speaker, this is a matter of fairness. It is a matter of common sense and American jobs. I urge all of my colleagues to support small business owners and the millions of Americans they employ by voting in favor of H.R. 742.

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

It has been a long 4 hours on four bills. We stayed on the subject for about 2 hours. These four bills are very important, I believe, for the small business community in the country. I realize that the labor union kingpins do not like these four bills, but I promise labor union workers who are out there in small businesses will like these bills.

There have been some outlandish statements that need to be corrected for the record.

Number one, there is nobody on our committee, including myself, any of us who made these bills, that believe for one minute any of these bills are going to harm the workplace safety or health factor. It is simply not going to do that. Somebody said, oh, gosh, if we pass these bills, workers will have more injuries. Members can have that opinion; it does not make it right. That is simply not true.

Somebody said, if you pass these four bills, you are going to weaken OSHA. That is not true either. We are going to help make OSHA work a little better.

Lastly, I want to mention to my friend who said OSHA is a Federal cop. That is the problem. If you believe they are a bunch of police over there, we never will get anywhere with OSHA because until we get this Federal agency working with people in small businesses who want to have a safer workplace rather than a bunch of cops who come around and beat people up, this is never going to work. I had this happen just yesterday in my own district where this female came in, and her badge was bigger than her brain. It was just ridiculous. Until we get a different attitude and not feeling that OSHA is a Federal cop, it is not going to get better.

Mr. Speaker, I yield the balance of my time to the gentleman from Ohio (Mr. BOEHNER), chairman of the Committee on Education and the Workforce.

Mr. BOEHNER. Mr. Speaker, I congratulate the gentleman from Georgia (Mr. NORWOOD) who has spent a lot of years trying to make OSHA work better for those in the workplace and those who employ them in the workplace. He has done a great job in bringing these four bills out of the subcommittee and to the floor today.

Mr. Speaker, we are here today to help promote a climate of cooperation between OSHA and employers. The focus is on improving workplace safety. In so doing, we have the opportunity to enhance business competitiveness and further job creation.

Now these bills are important and here is why. No small business should be penalized for missing a deadline because of an honest mistake. No small business should have to wait 8 years to have their case reviewed by the Occupational Safety and Health Review Commission simply because it cannot get a quorum.

Thirdly, no small business wants to go up against an OSHA that is the prosecutor, judge and jury all in one.

Lastly, no small business should be required to spend years and significant money trying to recover attorneys' fees after defending itself against a meritless enforcement action by OSHA. These OSHA reform bills can make a real difference in the lives of small businesses that face fierce competition at home and abroad. We truly do believe that these bills will help the effectiveness of OSHA and help improve the workplace safety for millions of American workers. I encourage all of my colleagues to support all four bills.

Ms. WOOLSEY. Mr. Speaker, I rise in opposition to H.R. 742 because workers deserve to know their interests will be represented fairly by OSHA, not weighed by how much money it will cost to bring the claim forward.

We all have small businesses in our districts, and we all know that it saves money to provide for a safe workplace in the first place and preventing accidents.

Workers and their families suffer due to poor safety at some workplaces. They have enough angst because they can't count on their employers to provide protection. Experiencing further betrayal by their Government when they seek justice is the last thing they need.

But, this bill threatens the lives of thousands of workers employed by small businesses because it forces OSHA to consider the costs of attorneys' fees when deciding to take action. Putting this unique burden on OSHA may take away the only recourse employees have to stand up for their safety.

Since Bush took office, it has been clear that he intends to use OSHA to protect big business rather than worker safety. First, he signed legislation overturning workplace safety rules to prevent ergonomic standards.

Then he advocated budget cuts for job safety agencies, such as OSHA and NIOSH. He went even further by suspending twenty-three important job safety regulations. The list goes on and on. This legislation is one more way to weaken OSHA. If this passes it will be that much easier for businesses to avoid OSHA regulations.

If my colleagues on the other side of the aisle really wanted to help workers, they would increase penalties for employers that ignore safety regulations. They would protect companys from dumping their pensions on to the taxpayers and raise minimum wage. These actions would let our workers know that someone is worrying about the costs in their lives as well.

Mr. Speaker, I urge my colleagues to join me in opposing H.R. 742, which is an unnecessary attack on worker protections.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today to speak in opposition to H.R. 742, a bill to amend the Occupational Safety and Health Act of 1970 by making it easier for small businesses to recover attorneys' fees from OSHA if the agency brought unjustified

enforcement action. Small businesses under the bill are defined as those with no more than 100 employees and a maximum $7 million in net worth.

More than any of the other bills, H.R. 742 poses the greatest threat to worker safety and health. OSHA, as is almost every other Federal agency, is already required by law to pay attorneys' fees and costs in any proceeding in which the agency's charge is not substantially justified. H.R. 742 singles out OSHA, alone among all Federal agencies, to require it to pay attorneys' fees and costs in any proceeding in which it does not win, regardless of why it lost and notwithstanding the fact that the position of the agency was substantially justified. In effect, unless the agency can guarantee that it will win every case it brings, H.R. 742 punishes the OSHA for trying to enforce the law. The OSH Act does not afford workers a private right of action. If OSHA fails to enforce the law workers have no other means of doing so.

In summary, this bill, as would all the other OSHA bills considered today, would impede the enforcement of worksite safety and health provisions at the very time when more and more Americans have identified safety as one of their foremost concerns. According to a poll conducted in April by NBC and the Wall Street Journal, 84 percent of Americans want Congress to pass legislation that ensures greater workplace safety and health. Supporting this bill would take us in exactly the opposite direction.

Mr. CONYERS. Mr. Speaker, today, I express strong opposition to H.R. 742, the Occupational Safety Health Small Employer Access to Justice Act.

This fee shifting legislation before us is really a wolf in sheep's clothing. It is dangerous to our workers, overbroad, and unnecessary.

The bill is dangerous because it creates an incentive for employers to litigate with OSHA rather than to correct any safety flaws in the workplace. Since OSHA was created in 1970, its mission has been clear: "to assure so far as possible every working man and woman in the nation safe and healthful working conditions." Unfortunately, H.R. 742 will undermine that goal and penalize OSHA for any instance in which it attempts to safeguard worker safety and loses the case even for technical reasons.

The bill is overbroad because it applies to any company with less than 100 employees, regardless of their revenues or their safety record. Currently, over 6.5 million private sector establishments fall into this category, more than 97 percent of all employers. These companies employ more than 55 million workers. Many of these businesses have millions if not billions of dollars in annual revenues, and have no business being covered by a "small business" bill.

The bill is unnecessary because this Committee has not received a shred of evidence that OSHA has pursued unwarranted litigation or abused its prosecutorial discretion. To the contrary, more than sixty percent of OSHA citations resulted in settlements, and OSHA wins nearly four out of five cases that make it to the Federal appellate level.

Moreover, employers are already entitled to the recovery of legal fees under the Equal Access to Justice Act. That law specifies that the government must pay the prevailing party's fees and costs in any situation in which the government's position was not "substantially justified." This offers more than sufficient incentive to prevent OSHA from overstepping its authority.

So we have before us an unnecessary and unwarranted bill, that, punishes an effective agency, and places our workers in danger. I urge Members to reject this measure.

Mr. BLUMENSUER. Mr. Speaker, this Congress has repeatedly undermined protections for the American workforce, shifting emphasis from employees to employers. Just like the identical bills introduced last year, the four bills brought to the House floor today are further examples that hinder the efficacy of the Occupational Safety and Health Administration (OSHA), taking away protections from the workers that need them most, and shielding businesses from government oversight.

As of late, Congress' hostility towards workers' rights has been widespread. Recently, I decided to oppose the Central American Free Trade Agreement (CAFTA) because it does not do enough to ensure adequate and fair labor laws for workers in foreign countries. Now today, Congress is trying to roll back significant worker protections that were put in place for our workers here at home.

Rather than "reform," the fact of the matter is that these four pieces of legislation weaken OSHA and undermine Congress's original intent when OSHA was enacted in 1970. Americans deserve a safe and healthy workplace. Limiting OSHA, the agency created to ensure workers receive these basic rights, will do nothing to advance the cause.

The SPEAKER pro tempore (Mr. WALDEN of Oregon). All time for debate has expired.

Pursuant to House Resolution 351, the bill is considered read for amendment, and the previous question is ordered.

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

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

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

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

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

The yeas and nays were ordered.

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

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will now put each question on which further proceedings were postponed earlier today in the following order:

H.R. 739, by the yeas and nays;

H.R. 740, by the yeas and nays;

H.R. 741, by the yeas and nays; and

H.R. 742, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

OCCUPATIONAL SAFETY AND HEALTH SMALL BUSINESS DAY IN COURT ACT OF 2005

The SPEAKER pro tempore. The pending business is the question of the passage of the bill, H.R. 739, on which further proceedings were postponed earlier.

The Clerk read the title of the bill.

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

The vote was taken by electronic device, and there were—yeas 256, nays 164, not voting 13, as follows:

[Roll No. 369]

YEAS—256

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cooper
Costa
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Cunningham
Davis (FL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris
Mica
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Musgrave
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Salazar
Saxton
Schwarz (MI)
Sensenbrenner
Sessions
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns