108TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 108–488
Part 1

OCCUPATIONAL SAFETY AND HEALTH INDEPENDENT REVIEW OF OSHA CITATIONS ACT OF 2004

MAY 13, 2004.—Ordered to be printed

Mr. BOEHNER, from the Committee on Education and the Workforce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2730]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2730) to amend the Occupational Safety and Health Act of 1970 to provide for an independent review of citations issued by the Occupational Safety and Health Administration, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 1, line 6, strike "2003" and insert "2004".

PURPOSE

H.R. 2730, the "Occupational Safety and Health Independent Review of OSHA Citations Act of 2004," is intended to restore the original intent of Congress under the Occupational Safety and Health Act of 1970 (the "OSH Act") with respect to the relationship between the Occupational Safety and Health Administration ("OSHA") and the Occupational Safety and Health Review Commission ("OSHRC" or the "Commission"), the adjudicative agency specifically created by Congress to hear disputes arising under the OSH Act. Specifically, H.R. 2730 restores the intent of Congress that OSHRC decide cases without regard to the views of OSHA, and ensures that interpretation of the OSH Act is in accord with

Congressional intent by statutorily requiring that OSHRC's rulings are the controlling interpretations of law under the OSH Act, so long as they are reasonable.

COMMITTEE ACTION

H.R. 2730, the "Occupational Safety and Health Independent Review of OSHA Citations Act of 2003," was introduced by Congressman Charlie Norwood on July 15, 2003, and was referred to the Subcommittee on Workforce Protections of the Committee on Education and the Workforce. A hearing on the measure was conducted on June 17, 2003, as a part of a more comprehensive hearing on H.R. 1583, the "Occupational Safety and Health Fairness Act of 2003." [1]

Comments and views from experts in the field of safety and health and other concerned citizens were taken on H.R. 1583 at the June 17, 2003 hearing of the Subcommittee. At this hearing, the Subcommittee heard testimony from Mr. Brian Landon of Canton, Pennsylvania, testifying on behalf of the National Federation of Independent Businesses; Mr. John Molovich, Heath and Safety Specialist, United Steelworkers of America, of Pittsburgh, Pennsylvania; Mr. Ephraim Cohen, a small business owner from New York; and Arthur Sapper, Esq., an attorney of the law firm McDermott, Will & Emery in Washington, DC, testifying on behalf of the U.S. Chamber of Commerce. Legislation incorporating section 7 of H.R. 1583 was subsequently introduced as H.R. 2730 on July 15, 2003. The content of H.R. 2730, as introduced, is identical to section 7 of H.R. 1583.

On July 24, 2003, the Subcommittee on Workforce Protections favorably reported H.R. 2730, without amendment, by voice vote.

On May 5, 2004, the Committee on Education and the Workforce considered H.R. 2730. An amendment by Chairman Boehner, changing the short title of the bill from the "Occupational Safety and Health Independent Review of OSHA Citations Act of 2003" to the "Occupational Safety and Health Independent Review of OSHA Citations Act of 2004," was accepted by unanimous consent. The Committee ordered H.R. 2730, as thus amended, favorably reported to the House of Representatives by a roll call vote of 24 yeas and 20 nays.

SUMMARY

H.R. 2730 simply governs the relations between two agencies under the OSH Act: OSHA and OSHRC. The OSH Act confers rulemaking and prosecutorial authority on OSHA, but places a special limitation on the exercise of that authority in terms of an independent review of OSHA's citations and assessments by OSHRC. The OSH Act makes clear that with respect to contested citations, OSHRC is specifically authorized to affirm, vacate, or modify either the citation or the proposed penalty.[2] Since the OSH Act provides that all citations, whether contested or not, become enforceable only as final orders of the Commission, the Committee finds no

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[1] *See* Hearing on H.R. 1583, "The Occupational Safety and Health Fairness Act of 2003," before the Subcommittee on Workforce Protections, Committee on Education and the Workforce, U.S. House of Representatives, 108th Congress, First Session, Serial No. 108–20 (hereinafter "Hearing on H.R. 1583").

[2] See 29 U.S.C § 659.

basis for OSHA's position that deference should be given to its interpretations of law, rather than that of OSHRC. To the contrary, by way of H.R. 2730, the Committee affirms the original intent of Congress—that OSHRC was to decide cases without regard to OSHA's views—by statutorily requiring that reviewing courts grant deference to OSHRC, not OSHA, on questions of law, so long as OSHRC's interpretation is reasonable.

COMMITTEE VIEWS

In drafting the OSH Act, Congress extended new and unprecedented powers to OSHA to ensure a safer and healthier work place for millions of American working men and women. In granting OSHA those extensive powers, Congress also designed a unique check on their unfettered use. This check was intended to be discharged by OSHRC, through the process of an independent review by that Commission of all disputed items under the OSH Act. The record evidence before the Committee makes clear that this check is no longer functioning in the manner it was designed, and that legislative action is required to restore this necessary balance. H.R. 2730 accomplishes this goal by ensuring that OSHRC's review will be independent and meaningful by codifying in statute the guarantee that reviewing courts extend the judicial principle of "deference" to OSHRC's, and not OSHA's, interpretations of the OSH Act and its regulations.

Background

"Deference" is a legal term of art used by courts to avoid "second-guessing" or substituting their own judgment with respect to administrative decisions made by an agency interpreting its own statute or regulations concerning questions of law. When the OSH Act was enacted in 1970, courts generally used one of two methods to give deference to an administrative agency's interpretation of its own regulations. The first held that questions of law were for the courts to decide independently, though administrative interpretations were given great weight.[3] The second held that agency interpretations were controlling, as long as they were reasonable and there was no compelling indication of error.[4]

OSHRC initially chose to follow the first, "independent interpretation" method, according varying degrees of weight and deference to interpretations of law and regulations made by OSHA. Generally, the more that OSHA's interpretation reflected the original intent of a statute, or a technical view that resulted from OSHA's uniquely-qualified expertise, the greater weight OSHRC afforded OSHA in its independent review. Conversely, where OSHA's interpretation was not informed by a uniquely qualified expertise, OSHRC accorded less deference to OSHA's interpretations.[5]

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[3] See, e.g., *General Electric Co.* v. *Gilbert,* 429 US 125, 140–142 (1976).

[4] See, e.g., *Red Lion Broadcasting Co.* v. *Federal Communications Comm'n,* 395 US 367, 381 (1969).

[5] For example, OSHRC noted in its case law that many of OSHA's standards resulted from the incorporation of existing voluntary standards produced before 1970 by voluntary groups of experts based on industry data and consensus. In such instances, OSHRC generally found that inasmuch as OSHA merely was adopting previously existing standards, OSHA possessed no special knowledge of the original intent of the standards, and was therefore, in OSHRC's view, not entitled to deference. Instead, in such cases, OSHRC deferred to whatever information was most indicative of the original intent of the statute. See, e.g., *United States Steel Corp.,* 5 BNA

Continued

Until 1984, while OSHRC generally extended varying degrees of weight to OSHA's interpretations, it maintained its independence and chose not to strictly or uniformly give deference to OSHA's interpretations. In 1984, however, in a case called *Chevron USA Inc.* v. *Natural Resources Defense Council, Inc.,*[6] the U.S. Supreme Court greatly extended the concept of administrative deference, mandating that a reviewing court give deference to an agency's interpretation of an ambiguous provision of law unless the agency's own position was unreasonable. As the *Chevron* Court explained:

> First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.
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> * * * * *
>
> If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. Sometimes the legislative delegation to an agency on a particular question is implicit. *In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.*[7]

In the wake of the *Chevron* decision, OSHA renewed its demand for deference to its decisions over OSHRC's, fueling the need for Congressional resolution.[8]

Compounding the problem, in 1991 the Supreme Court held in *Martin* v. *OSHRC (CF&I Steel Corp*.) that OSHA's interpretation of an ambiguous regulation must be upheld if the interpretation is merely "reasonable"—even if the reviewing court believed that the

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OSHRC 1289, 1295 n. 9 (1977). In contrast, where OSHA incorporated existing natural standards under its authority found at section 6(a) of the OSH Act, OSHRC generally gave great weight to whatever evidence OSHA could produce that shed light on the promulgated authorities' original intent. See, e.g., *Equitable Shipyards, Inc.,* 13 BNA OSHRC 1177 (1987). Finally, OSHRC afforded great deference to OSHA in its interpretation of the standards OSHA itself had promulgated under its 6(a) authority. In these cases, since OSHA was obviously the originator of the standard, and thus in a position to be aware of original intent, OSHRC generally extended nearly dispositive weight to evidence of OSHA's intent when produced in the form of preambles to standards and other relevant indications. See, e.g., *Phelps Dodge Corp.,* 11 BNA OSHRC 1441, 1444(1984).

[6] 467 U.S. 837 (1984).

[7] Id. at 842–43 (citations omitted; emphasis added).

[8] The Committee would make clear that insofar as *Chevron* compels a reviewing court to give "deference" to the reasonable interpretation of a regulation by its administrative agency, no substantive change to the law is intended. Rather, H.R. 2730 merely directs which agency is afforded such deference in this particular instance, and restores Congressional intent by making clear that OSHRC's, not OSHA's, interpretations of law govern.

interpretation of the regulation was incorrect.[9] As one witness before the Subcommittee explained, "The [CF&I] decision awards OSHA a home run even if the Review Commission and a court think OSHA has only hit a foul ball." [10] The record evidence before the Subcommittee details at length the wide-ranging and adverse effects of these decisions on the fairness of enforcement under the OSH Act: namely, that OSHRC is effectively required to defer to OSHA on questions of law.[11]

While the judicial principle of administrative deference is one with which the Committee finds no general disagreement, the Committee believes that in this context, granting deference to OSHA instead of OSHRC is in error in light of the clear legislative history of the OSH Act.

Legislative history of OSHRC and the OSH Act

The legislative history of OSHRC contained in the OSH Act makes clear that Congress intended OSHRC to provide a wholly independent review of OSHA's functions; indeed, such a requirement was critical to reaching a final compromise on the OSH Act that was able to pass Congress.

As originally conceived in both Senate and House versions of the OSH Act, OSHA was responsible for rulemaking, enforcement, and adjudication of issues arising under the statute.[12] Opposition grew, however, in terms of concern over such a concentration of power in a single entity, especially in light of the sweeping unprecedented authority that the Department of Labor (which houses OSHA) would have over workplaces. This distrust led the Nixon administration to craft a competing bill which gave DOL only prosecutorial authority and proposed two independent boards to perform the rulemaking and adjudicative functions.[13]

In Congressional debate, the committees of jurisdiction focused much of their attention on the separation of functions under the OSH Act. Debate became so bitter as to seriously jeopardize the prospects for passage of the bill.[14] As noted at the time by Senator Jacob Javits, a Republican from New York, such a concentration of power in a single entity created a situation where "any finding of OSHA in its adjudicative function could be a repudiation of the agency's own self." [15]

Ultimately, what enabled passage of the OSH Act was a compromise authored by Senator Javits, which provided that an independent review commission—OSHRC—would be established as a check on prosecutorial excess by OSHA. That OSHRC was intended to be an independent agency which would not defer to OSHA was made explicitly clear during debate on the bill at that time:

> Mr. Holland. Would the Commission which would be set up * * * [be] controlled by the Labor Department or would it be an independent commission?

[9] See 499 U.S. 144 (1991).
[10] Testimony of Arthur G. Sapper, Esq., Hearing on H.R. 1583, at 69.
[11] See id. at 69–70 (detailing effects of *CF&I* case on OSHA enforcement).
[12] See Sec. 5., Rep. No. 1282, 91st Cong., 2nd Sess. 8, 15 (1970).
[13] See id. at 54.
[14] See id. at 55.
[15] See id. at 56.

> Mr. Javits. This is an *autonomous, independent commission* which, without regard to the Secretary, can find for or against him on the basis of individual complaints.[16]

Shortly after this assurance was given, the Senate voted to adopt the Javits compromise.

The evidence before the Committee makes clear that Congress intended that OSHRC, not OSHA, would have the final administrative say in interpretation of ambiguities under the OSH Act, and that in fact such a compromise was critical to ensuring final passage of the bill itself. The record further confirms that Congress intended to limit OSHA's prosecutorial power and to confer upon OSHRC the final compliment of adjudicative powers that are available to similar agencies. It is clear that Congress intended to vest OSHRC with this authority not only to ensure that the adjudicatory process would be fair to the regulated community, but also that there would be some reasonable check on the prosecuting agency's ability to interpret the law it was to apply. To the extent that current law and practice to not consistently reflect the intent of Congress in this regard, H.R. 2730 codifies in statute that which Congress plainly intended: that OSHRC's interpretation of ambiguities in the OSH Act and the standards and regulations adopted thereunder, be given deference over that of the prosecuting agency, OSHA, and that OSHRC's review of OSHA's decisions be meaningful and independent. The Committee does not intend that this bill affect judicial review more generally. As the Supreme Court stated in *CF&I Steel*, "We deal [here] only with the division of powers between the Secretary and the OSH Act." [17]

CONCLUSION

In H.R. 2730, the Committee affirms that the statutory structure and legislative history of the OSH Act clearly indicate an intent on the part of Congress that deference be extended to OSHRC, not OSHA, on questions of law, so long as OSHRC's interpretation is reasonable. H.R. 2730 ensures that the original intent of Congress—namely, that the decisions of OSHA be subject to a full and independent review by OSHRC—is reflected in current law by statutorily mandating that such deference on interpretations of questions of law is given to the Commission.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This act may be cited as the "Occupational Safety and Health Independent Review of OSHA Citations Act of 2004."

Section 2. Independent review

This section specifies that OSHRC's rulings, not OSHA's, shall be the controlling interpretations of law under the OSH Act, so long as they are reasonable.

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[16] See Congressional Record at 37607, (Nov. 17, 1970) (debate on the Javits Amendment to the OSH Act) (emphasis added).

[17] 499 U.S. at 157.

EXPLANATION OF AMENDMENTS

The bill was ordered reported with an amendment to the short title.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act (CAA), requires a description of the application of this bill to the legislative branch. H.R. 2730 amends the Occupational Safety and Health Act (OSH Act) to clarify the relation between the Occupational Safety and Health Administration ("OSHA") and the Occupational Safety and Health Review Commission ("OSHRC" or "Commission")—that the OSHRC decide cases "without regard to" the views of OSHA. Section 215 of the CAA applies certain requirements of the OSH Act, to the legislative branch. The Committee intends to make the provisions of this bill available to legislative branch employees and employers in the same way as it is made available to private sector employees and employers under this legislation.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget & Impoundment Control Act requires a statement of whether the provisions of the reported bill include unfunded mandates. The Committee received a letter regarding unfunded mandates from the Director of the Congressional Budget Office and as such the Committee agrees that the bill does not contain any unfunded mandates. See infra.

ROLLCALL VOTES

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 3 **BILL H.R. 2730** **DATE May 5, 2004**

H.R. 2730 was ordered favorably reported, as amended, by a vote of 24 – 20

SPONSOR/AMENDMENT Mr. Ballenger / motion to report the bill to the House with an amendment and with the recommendation that the bill as amended do pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. BOEHNER, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mr. BALLENGER	X			
Mr. HOEKSTRA				X
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. GREENWOOD				X
Mr. NORWOOD	X			
Mr. UPTON	X			
Mr. EHLERS	X			
Mr. DeMINT				X
Mr. ISAKSON	X			
Mrs. BIGGERT	X			
Mr. PLATTS	X			
Mr. TIBERI	X			
Mr. KELLER	X			
Mr. OSBORNE	X			
Mr. WILSON	X			
Mr. COLE	X			
Mr. PORTER	X			
Mr. KLINE	X			
Mr. CARTER	X			
Mrs. MUSGRAVE	X			
Mrs. BLACKBURN	X			
Mr. GINGREY	X			
Mr. BURNS	X			
Mr. MILLER		X		
Mr. KILDEE		X		
Mr. OWENS		X		
Mr. PAYNE		X		
Mr. ANDREWS		X		
Ms. WOOLSEY		X		
Mr. HINOJOSA		X		
Mrs. McCARTHY		X		
Mr. TIERNEY		X		
Mr. KIND				X
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
Mrs. DAVIS		X		
Ms. McCOLLUM		X		
Mr. DAVIS		X		
Mr. CASE				X
Mr. GRIJALVA		X		
Ms. MAJETTE		X		
Mr. VAN HOLLEN		X		
Mr. RYAN		X		
Mr. BISHOP		X		
TOTALS	24	20		5

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2730 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 2004.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2730, the Occupational Safety and Health Independent Review of OSHA Citations Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Shawn Bishop.

Sincerely,

DOUGLAS HOLTZ-EAKIN, *Director.*

Enclosure.

H.R. 2730—Occupational Safety and Health Independent Review of OSHA Citations Act of 2004

H.R. 2730 would amend the Occupational Safety and Health Act to clarify that decisions made by the Occupational Safety and Health Review Commission (OSHRC) with respect to questions of law should be given difference by appellate courts. OSHRC is an independent federal agency created to adjudicate contests of citations or penalties resulting from inspections of work places by the Occupational Safety and Health Agency. OSHRC functions as an administrative court whose decisions can be appealed to the judicial court system.

CBO estimates that implementing H.R. 2730 would not have any significant impact on the federal budget.

H.R. 2730 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact is Shawn Bishop. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with Clause (3)(c) of House Rule XIII, the goal of H.R. 2730 is to amend the Occupational Safety and Health Act (OSH Act) to clarify the relation between the Occupational Safety and Health Administration ("OSHA") and the Occupational Safety and Health Review Commission ("OSHRC" or "Commission")—that the OSHRC decide cases "without regard to" the views of OSHA. The Committee expects the Department of Labor to implement the changes to the law in accordance with these stated goals.

CONSTITUTIONAL AUTHORITY STATEMENT

H.R. 2730 amends the Occupational Safety and Health Act, and thus falls within the scope of Congressional powers under Article I, section 8, clause 3 of the Constitution of the United States to the same extent as does the OSH Act.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2730. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 11 OF THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

JUDICIAL REVIEW

SEC. 11. (a) Any person adversely affected, or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court and the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings,

testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of the fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new finding, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, is supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record, with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code. *The conclusions of the Commission with respect to all questions of law shall be given deference if reasonable.*

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MINORITY VIEWS

This bill would give the Occupational Safety and Review Commission policy making authority by allowing courts to give deference to the Commission regarding the interpretation of OSHA standards. This change would undermine the Department's enforcement functions by encouraging challenges to the Secretary's rules and interpretations.

The Secretary is much better positioned to interpret her regulations than the Commission. Beyond the obvious fact that she issued the regulation in the first instance, as noted by the Court, it is the Secretary who has broader contact, and consequently greater expertise, with both the regulated community and with the impact of regulations on the community. Further, viewing the Commission's authority as being similar to those of a court fully achieves the purpose of protecting the regulated community from biased interpretations of the Secretary's authority. Finally, contending the Commission should have both adjudicatory and rulemaking authority, as the Majority does, creates unnecessary and unwarranted confusion by leaving two agencies responsible for determining policy. For all of these reasons, we conclude that the Court's view of the Act is more reasoned and more sensible than is the Majority's. H.R. 2730 is not consistent with the OSH Act's legislative history and does not reflect sensible policy.

In *Martin* v. *OSHRC,* the Court specifically considered the issue of whether the Secretary or the Commission should receive deference regarding reasonable but conflicting interpretations of an ambiguous regulation promulgated by the Secretary. The Court concluded that based upon the Occupational Safety and Health Act's legislative history and the Act's split enforcement structure, it must be inferred that the power to render authoritative interpretations of the Secretary's regulations is a necessary adjunct of the Secretary's rulemaking and enforcement powers.

The Court noted the "unusual regulatory structure established by the Act" under which the Secretary was granted enforcement and rulemaking powers, while the Commission was afforded adjudicative powers.

> [W]e now infer from the structure and history of the statute that the power to render authoritative interpretations of the OSH Act regulations is a "necessary adjunct" of the Secretary's powers to promulgate and to enforce national health and safety standards. The Secretary enjoys readily identifiable structural advantages over the Commission in rendering authoritative interpretations of OSH Act regulations. Because the Secretary promulgates these standards, the Secretary is in a better position than is the Commission to reconstruct the purpose of the regulations in question. Moreover, by virtue of the Secretary's statu-

> tory role as enforcer, the Secretary comes into contact with a much greater number of regulatory problems than does the Commission, which encounters only these regulatory episodes resulting in contested citations. Consequently, the Secretary is more likely to develop the expertise relevant to assessing the effect of a particular regulatory interpretation. Because historical familiarity and policymaking expertise account in the first instance for the presumption that Congress delegates interpretive lawmaking power to the agency rather than to the reviewing court, we presume here that Congress intended to invest interpretative power in the administrative actor in the best position to develop these attributes. *Martin* v. *OSHRC,* 499 U.S. at 152, 153 (citations omitted).

Citing the Senate Committee Report (S. Rep. No. 91–1282, p.8), the Court noted that Congress intended "to hold a single administrative actor politically 'accountable for the overall implementation of that program'" and that granting authority to the Commission "to make law by interpreting [standards] would make *two* administrative actors ultimately responsible for implementing the Act's policy objectives * * *" *Martin* v. *OSHRC,* 499 U.S. 499 at 153, 154 (emphasis in original).

> Insofar as Congress did not invest the Commission with the power to make law or policy by other means, we cannot infer that Congress expected the Commission to use *its* adjudicatory power to play a policymaking role. Moreover, when a traditional, unitary agency uses adjudication to engage in lawmaking by regulatory interpretation, it necessarily interprets regulations that *it* has promulgated. This, too, cannot be said of the Commission's power to adjudicate. *Martin* v. *OSHRC,* 449 U.S. at 154 (emphasis in original).

The Court concluded, correctly in our view, that:

> Congress intended to delegate to the Commission the type of non-policymaking adjudicatory powers typically exercised by a *court* in the agency-review context. Under this conception of adjudication, the Commission is authorized to review the Secretary's interpretations only for consistency with the regulatory language and for reasonableness. In addition, of course, Congress expressly charged the Commission with making authoritative findings of fact and with applying the Secretary's standards to those facts in making a decision. *Martin* v. *OSHRC,* 499 U.S. at 154, 155 (emphasis in original).
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> * * * We harbor no doubt that Congress also intended to protect regulated parties from biased interpretations of the Secretary's regulations. But this objective is achieved when the Commission, and ultimately the court of appeals, reviews the Secretary's interpretation to assure that it is consistent with the regulatory language and is otherwise *reasonable*. Giving the Commission the power to substitute *its* reasonable interpretations for the Secretary's * * *

would also clearly frustrate Congress' intent to make a single administrative actor "accountable for the overall implementation" of the Act's policy objectives * * * *Martin* v. *OSHRC,* 499 U.S. at 156 (emphasis in original).

* * * [A]lthough we hold that a reviewing court may not prefer the reasonable interpretations of the Commission to the reasonable interpretations of the Secretary; we emphasize that the reviewing court should defer to the Secretary only if the Secretary's interpretation is reasonable. *Martin* v. *OSHRC,* 499 U.S. at 158.

GEORGE MILLER.
CAROLYN MCCARTHY.
DENNIS J. KUCINICH.
DANNY K. DAVIS.
BETTY MCCOLLUM.
RON KIND.
DALE E. KILDEE.
MAJOR R. OWENS.
RUBÉN HINOJOSA.
ED CASE.
SUSAN A. DAVIS.
JOHN F. TIERNEY.
TIM RYAN.
RAÚL GRIJALVA.
TIM BISHOP.
RUSH HOLT.
CHRIS VAN HOLLEN.
LYNN C. WOOLSEY.
ROBERT ANDREWS.
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DAVID WU.

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