

## HOUSEPARENTS

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MAY 23, 1996.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. GOODLING, from the Committee on Economic and Educational Opportunities, submitted the following

## REPORT

together with

## MINORITY VIEWS

[To accompany H.R. 2531]

[Including cost estimate of the Congressional Budget Office]

The Committee on Economic and Educational Opportunities, to whom was referred the bill (H.R. 2531) to amend the Fair Labor Standards Act of 1938 to clarify the exemption for houseparents from the minimum wage and maximum hours requirements of that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

### SECTION 1. REFERENCE.

Whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered made to a section or other provision of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

### SEC. 2. DEFINITION OF HOUSEPARENT.

Section 3 (29 U.S.C. 203) is amended by adding at the end thereof the following: “(y) ‘Houseparent’ means any person employed by a private nonprofit institution as a child-care worker, either as a member of a married couple or as a single person (1) to serve as a substitute parent for children who do not live with their own families, and (2) to reside in a family like setting with such children.”

### SEC. 3. MINIMUM WAGE AND MAXIMUM HOURS EXEMPTION FOR HOUSEPARENTS.

Section 13(a) (29 U.S.C. 213(a)) is amended by striking the period at the end of paragraph (16) and inserting “; or” and by adding at the end thereof the following:

“(17) any employee employed by a private nonprofit institution to serve as a houseparent for abused, neglected, delinquent, orphaned, homeless, or emotionally impaired children, when—

“(A) such children’s primary residence is in the residential facilities of such institution,

“(B) such houseparent resides with such children in the residential facilities of such institution for at least 72 hours a week, and

“(C) such houseparent receives, without cost, board and lodging from such institution and is compensated, on a cash basis, at an annual rate of not less than \$8,000.”.

#### SEC. 4. CONFORMING AMENDMENT.

Subsection (b) of section 13 (29 U.S.C. 213) is amended by striking out paragraph (24).

#### PURPOSE

The purpose of H.R. 2531 is to exempt qualifying houseparents from the minimum wage and maximum hours requirements of the Fair Labor Standards Act of 1938.

#### COMMITTEE ACTION

H.R. 2531 was introduced by Representative Tim Hutchinson on October 25, 1995, with 27 original cosponsors. The Subcommittee on Workforce Protections held a hearing on H.R. 2531 on November 1, 1995. Witnesses testified about the need for legislative changes to the Fair Labor Standards Act to exempt certain qualified houseparents from the minimum wage and overtime protections of the Act. Father Val Peter, the Executive Director of Father Flanagan’s Boys’ Home, and Mr. W. Thomas Siler, Jr., Attorney at Law, Pelts Dunbar, Jackson, Mississippi, testified in favor of changes to the Fair Labor Standards Act. There were no witnesses testifying in opposition to such a change.

On December 13, 1995, the Subcommittee on Workforce Protections approved H.R. 2531, as amended, by voice vote and, ordered the bill favorably reported to the Full Committee. On March 21, 1996, the Committee on Economic and Educational Opportunities ordered the bill favorably reported with an Amendment in the Nature of a Substitute by a vote of 21 to 15.

#### EXPLANATION OF AMENDMENTS

The Amendment in the Nature of a Substitute adopted in Committee is explained in this report.

#### COMMITTEE STATEMENT AND VIEWS

##### BACKGROUND

Many private, nonprofit, charitable institutions which serve neglected or abused children employ individuals as houseparents or substitute parents, on a twenty-four hour basis. The institutions maintain a family-based environment by providing continuous, consistent care to children from homes broken by divorce, desertion, death, and separation. Staff who function as houseparents live, eat, sleep and enjoy recreation in the home with the children under their care. However, as a result of the application of the Fair Labor Standards Act (FLSA) to houseparents, a number of these institu-

tions have been forced to change the method in which they provide care to children who reside in the homes.

The FLSA is the primary federal statute regulating the wages and hours of work. (29 U.S.C. Sec. 201–209). The Act covers employees who are (1) engaged in interstate commerce, or (2) engaged in the production of goods for travel of interstate commerce, or (3) employed in an enterprise engaged in commerce or the production of goods for commerce. For covered or non-exempt employees, the FLSA sets a minimum wage of \$4.25 per hour and a 40-hour per week overtime standard. The overtime requirement stipulates the payment of time-and-one-half wages for all hours worked in excess of 40 within a seven day period. In addition, the FLSA requires employers to maintain records reflecting employees' hours of work and wages received.

The 1966 amendments to section 3(r) and 3(s) of the FLSA brought residential institutions which have on-site educational facilities under the minimum wage and overtime requirements. These provisions covered enterprises:

\* \* \* engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit) \* \* \* (29 U.S.C. Sec. 213(24)(A) and (B)).

The FLSA Amendments of 1974 excluded from overtime certain employees of institutions which operate residential schools serving children and youth. Section 13(b)(24) exempts:

any employee who is employed with his spouse by a non-profit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or (B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than \$10,000; (29 U.S.C. Sec. 213(13)(b)(24)).

In reality, there are likely to be few individuals, if any, who are able to qualify for this exemption. The language fails to recognize the types of individuals who are employed today as houseparents. There are many single individuals, as well as married couples, who ably serve as houseparents. An individual who serves as the substitute parent of children who are from broken homes where both parents are living, but no longer together, would not qualify for the exemption because only orphans or children with at least one parent deceased will meet the current law requirement. Furthermore, many houseparents do not qualify for the exemption because they

are employed by institutions which only provide residential care, not educational programs, for abused or neglected children.

Private, charitable, nonprofits providing residential care without educational programs for abused or neglected children may not be covered by the FLSA, provided that the institution is not operated in conjunction with a hospital, covered institution or school within the meaning of sections 3(r) and 3(s) of the Act. However, the Department of Labor has interpreted the FLSA as covering some employees on an "individual" basis, for example, employees who handle goods or materials which have been moved in commerce or produced for commerce (U.S. Department of Labor, Wage and Hour Division, Field Operations Handbook, 12g18, Institutions for neglected and dependent children).

The Committee strongly believes that the success of these programs for abused or neglected children directly depends upon the institution's ability to provide a family-based home environment with continuous, consistent care by substitute parents. The Committee is aware that many of these institutions face tremendous uncertainty as to whether or not staff functioning as houseparents are covered by the FLSA. Furthermore, the Committee notes that the absence of clearly-defined guidelines from the Department of Labor concerning the treatment of houseparents under the FLSA has resulted in confusion and costly litigation for some private, nonprofit institutions providing care for children.

As Father Val Peter testified before the Subcommittee on Workforce Protections:

\* \* \* the interpretation of the law through regulation and the Department of Labor (DOL) is confusing. Programs that were thought to be in compliance with the law have been found in violation and required to pay large sums in back pay—sometimes to pay people while they were asleep or taking children on a fully paid vacation.

Additionally, Mr. Siler testified before the Subcommittee on Workforce Protections that he had been involved in situations:

\* \* \* where the Department of Labor looked at such matters as whether houseparents answered long distance telephone calls, opened mail or took children on trips that crossed state lines, to determine whether the houseparents were entitled to minimum wage or overtime pay. As a result of this type of investigation, even small children's homes which are not operated in conjunction with a hospital, school or other covered institution will be required to meet minimum wage and overtime requirements for houseparents.

The Committee notes that a family-based environment is a mission which has been mandated by federal law. Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, stipulates that children in such homes should be served in a setting which is most closely identified with a family setting. Yet, children's homes attempting to provide a family-based setting using the houseparent model are then vulnerable to potentially enormous financial liability in defending themselves against employee lawsuits

and Department of Labor actions. The present treatment of houseparents under the FLSA is an impediment to charitable, non-profit organizations which attempt to provide necessary services in the proper environment for children who are greatly in need of this type of care.

In order to comply with the FLSA, employers must maintain adequate records of employees, hours worked, and the wages received. The Committee recognizes the paperwork burdens, particularly on the smaller children's homes, which are inherently associated with keeping track of the hours worked by houseparents. Furthermore, the Committee acknowledges the difficulty that such institutions may have in determining the hours which a houseparent is considered to be working and thus eligible for compensation. Parenting involves such things as sitting with a sick child during the night or responding to a child who has had a nightmare. If each hour must be accounted for, it would be nearly impossible to delineate in statute or regulation all of the activities and circumstances which would be considered compensable work time.

The Committee supports providing a specific exemption for qualifying houseparents from the minimum wage and overtime requirements of the FLSA. Without this exemption, many of these homes may be forced to abandon the use of the houseparent model in attempting to create a stable, family-based environment for the children of the home. In its place, the homes may be forced to, and some already do, implement a shift model system where individuals work eight-hour shifts, essentially supervising the children. As Father Val Peter testified:

If the court rules in favor of the houseparents, Boys Town would be forced to stop using the family-based model and depending upon the damages in this case and in subsequent cases that would probably ensue, we might have to close our doors.

By continuously rotating the staff who supervise the children, it is impossible to fulfill the mission of these homes; that is, to create a family-based environment for the children. In effect, the children could have a different set of substitute parents every eight hours. The Committee believes that a shift work system would be detrimental to the effectiveness of such programs.

#### LEGISLATION

H.R. 2531 exempts from the FLSA's minimum wage and overtime requirements those individuals employed as houseparents who meet specific requirements. The bill adds a definition of a houseparent to section 3 (Definitions) of the FLSA. A "houseparent" is defined as any person employed by a private, nonprofit institution as a child care worker, either as a member of a married couple or as a single person to serve as a substitute parent for children who do not live with their own families, and to reside in a family-based setting with the children.

H.R. 2531 amends section 13(a) of the FLSA to exempt any employee employed by a private, nonprofit institution to serve as a houseparent for abused, neglected, delinquent, orphaned, homeless, or emotionally impaired children, when: (1) the children's primary

residence is in the residential facilities of the institution; (2) the houseparent resides with the children at the home for a minimum of 72 hours a week; and (3) the houseparent receives, without cost, board and lodging and cash wages at an annual basis of not less than \$8,000. H.R. 2531 deletes the exemption for houseparents in current law under section 13(b)(24).

The Committee recognizes that one of the most troubling issues for private, nonprofit homes under the FLSA today is the tremendous uncertainty in determining the coverage of houseparents under the Act. H.R. 2531 would clarify the FLSA's treatment of houseparents who are employed at private, nonprofit institutions providing care for abused and neglected children. The legislation would enable children's homes to continue providing a family-based environment using the houseparent model. This will foster a stable, home-like atmosphere and encourage the kinds of personal relationships which are so vital to a child's development. The Committee believes that H.R. 2531 will enable those homes which use the houseparent model to set up pay systems which meet the requirements of the FLSA. The Committee does not believe that such homes should have to spend precious time and limited resources defending themselves in investigations of this nature.

#### SUMMARY

H.R. 2531, as amended, would exempt individuals employed by private, nonprofit institutions as houseparents from the minimum wage and overtime provisions of the Fair Labor Standards Act provided that the individual (1) receives room and board, without cost, (2) is compensated on an annual basis of not less than \$8,000 and (3) resides in the home with the children for a minimum of 72 hours per week.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1*

Specifies that whenever an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Fair Labor Standards Act.

##### *Section 2*

A "houseparent" is defined as any person employed by a private, nonprofit institution as a child care worker, either as a member of a married couple or as a single person (1) to serve as a substitute parent for children who do not live with their own families, and (2) to reside in a family like setting with the children.

##### *Section 3*

This section would exempt from the minimum wage and maximum hours requirements of the Fair Labor Standards Act any employee employed by a private, nonprofit institution to serve as a houseparent for abused, neglected, delinquent, orphaned, homeless, or emotionally impaired children, when (1) the children's primary residence is in the residential facilities of the private, nonprofit institution; (2) the houseparent resides with the children in the resi-

dential facilities of the institution for a minimum of 72 hours per week; and (3) the houseparent receives, without cost, board and lodging from the institution and is compensated, on a cash basis, at an annual rate of not less than \$8,000.

#### *Section 4*

This section would delete section 13(b)(24) of the Fair Labor Standards Act which provides an exemption from the minimum wage requirements for any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are (1) orphans or one of whose natural parents is deceased, or (2) who are enrolled in the institution and reside in the residential facilities of the institution, if the employee and his spouse reside in the facilities, receive without cost, board and lodging from the institution, and are together compensated at a minimum annual rate of \$10,000.

#### OVERSIGHT FINDINGS OF THE COMMITTEE

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives 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.

#### INFLATIONARY IMPACT STATEMENT

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment into law of H.R. 2531 will have no significant inflationary impact on prices and costs in the operation of the national economy. It is the judgment of the Committee that the inflationary impact of this legislation as a component of the federal budget is negligible.

#### GOVERNMENT REFORM AND OVERSIGHT

With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2531.

#### COMMITTEE ESTIMATE

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2531. However, clause 7(d) 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 403 of the Congressional Budget Act of 1974.

#### APPLICATION OF LAW TO LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch. This bill would

exempt qualifying houseparents from the minimum wage and maximum hours requirements of the Fair Labor Standards Act of 1938. The bill does not prohibit legislative branch employees from otherwise being effected by these amendments.

#### UNFUNDED MANDATE STATEMENT

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

#### BUDGET AUTHORITY AND CONGRESSIONAL BUDGET –OFFICE COST ESTIMATE

With respect to the requirement of clause 2(1)(3)(B) of rule XI of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 2(1)(3)(C) of rule XI of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2531 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, April 1, 1996.*

Hon. WILLIAM F. GOODLING,  
*Chairman, Committee on Economic and Educational Opportunities,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2531, as ordered reported by the Committee on Economic and Educational Opportunities on March 21, 1996, and has determined that the bill would have no direct effect on the federal budget. The bill would amend the Fair Labor Standards Act by exempting houseparents from the minimum wage and maximum hours requirements of the act.

A houseparent is defined by the bill as any person employed by a private, nonprofit institution as a child-care worker to serve as a substitute parent in a family-like setting with abused, neglected, delinquent, orphaned, homeless, or emotionally impaired children. In order to be exempt from the minimum wage and maximum hour requirements of the Fair Labor Standards Act, the houseparent must reside in the institution for at least 72 hours per week, receive free board and lodging, and be compensated at least \$8000 on an annual basis.

H.R. 2531 would affect only private nonprofit employers. The bill contains no intergovernmental or private sector mandates as defined in Public Law 104–4, and would impose no direct costs on state, local, or tribal governments.

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

Sincerely,

JUNE E. O'NEILL,  
*Director.*

ROLL CALL 1 COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES DATE March 21, 1996  
 BILL H.R. 2531 AMENDMENT #2 DEFEATED 17 - 20  
 SPONSOR/AMENDMENT MR. ANDREWS / AMENDMENT IN THE NATURE OF A SUBSTITUTE

PRESENT	MEMBER	AYE	NO
	CHAIRMAN GOODLING		X
	Mr. PETRI		X
	Mrs. ROUKEMA		
	Mr. GUNDERSON		
	Mr. FAWELL		X
	Mr. BALLENGER		X
	Mr. BARRETT		
	Mr. CUNNINGHAM		X
	Mr. HOEKSTRA		X
	Mr. McKEON		X
	Mr. CASTLE		
	Mrs. MEYERS		X
	Mr. JOHNSON		X
	Mr. TALENT		X
	Mr. GREENWOOD		X
	Mr. HUTCHINSON		X
	Mr. KNOLLENBERG		X
	Mr. RIGGS		X
	Mr. GRAHAM		X
	Mr. WELDON		X
	Mr. FUNDERBURK		X
	Mr. SOUDER		X
	Mr. McINTOSH		X
	Mr. NORWOOD		X
	Mr. CLAY	X	
	Mr. MILLER	X	
	Mr. KILDEE	X	
	Mr. WILLIAMS	X	
	Mr. MARTINEZ	X	
	Mr. OWENS	X	
	Mr. SAWYER	X	
	Mr. PAYNE	X	
	Mrs. MINK	X	
	Mr. ANDREWS	X	
	Mr. REED	X	
	Mr. ROEMER	X	
	Mr. ENGEL		
	Mr. BECERRA	X	
	Mr. SCOTT	X	
	Mr. GREEN	X	
	Ms. WOOLSEY	X	
	Mr. ROMERO-BARCELO		
	Mr. FATTAH	X	
	<b>TOTALS</b>	17	20

ROLL CALL 2 COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES DATE March 21, 1996  
 BILL H.R. 2531 AMENDMENT #3 DEFEATED 17 - 18  
 SPONSOR/AMENDMENT MR. CLAY / AMENDMENT REGARDING THE MINIMUM WAGE

PRESENT	MEMBER	AYE	NO
	CHAIRMAN GOODLING		X
	Mr. PETRI		X
	Mrs. ROUKEMA		
	Mr. GUNDERSON		
	Mr. FAWELL		X
	Mr. BALLENGER		X
	Mr. BARRETT		
	Mr. CUNNINGHAM		
	Mr. HOEKSTRA		X
	Mr. McKEON		X
	Mr. CASTLE		
	Mrs. MEYERS		X
	Mr. JOHNSON		X
	Mr. TALENT		X
	Mr. GREENWOOD		X
	Mr. HUTCHINSON		X
	Mr. KNOLLENBERG		
	Mr. RIGGS		X
	Mr. GRAHAM		X
	Mr. WELDON		X
	Mr. FUNDERBURK		X
	Mr. SOUDER		X
	Mr. McINTOSH		X
	Mr. NORWOOD		X
	Mr. CLAY	X	
	Mr. MILLER	X	
	Mr. KILDEE	X	
	Mr. WILLIAMS		
	Mr. MARTINEZ	X	
	Mr. OWENS	X	
	Mr. SAWYER	X	
	Mr. PAYNE	X	
	Mrs. MINK	X	
	Mr. ANDREWS	X	
	Mr. REED	X	
	Mr. ROEMER	X	
	Mr. ENGEL	X	
	Mr. BECERRA	X	
	Mr. SCOTT	X	
	Mr. GREEN	X	
	Ms. WOOLSEY	X	
	Mr. ROMERO-BARCELO		
	Mr. FATTAH	X	
	TOTALS	17	18

COMMITTEE ON ECONOMIC AND EDUCATIONAL OPPORTUNITIES  
 ROLL CALL 3 BILL H.R. 2531 PASSED 21-15 DATE March 21, 1996  
 SPONSOR/AMENDMENT MR. PETRI / MOTION TO REPORT THE BILL TO THE HOUSE WITH AN AMENDMENT IN THE NATURE OF A SUBSTITUTE

PRESENT	MEMBER	AYE	NO
	CHAIRMAN GOODLING	X	
	Mr. PETRI	X	
	Mrs. ROUKEMA		
	Mr. GUNDERSON		
	Mr. FAWELL	X	
	Mr. BALLENGER	X	
	Mr. BARRETT		
	Mr. CUNNINGHAM	X	
	Mr. HOEKSTRA	X	
	Mr. McKEON	X	
	Mr. CASTLE		
	Mrs. MEYERS	X	
	Mr. JOHNSON	X	
	Mr. TALENT	X	
	Mr. GREENWOOD	X	
	Mr. HUTCHINSON	X	
	Mr. KNOLLENBERG	X	
	Mr. RIGGS	X	
	Mr. GRAHAM	X	
	Mr. WELDON	X	
	Mr. FUNDERBURK	X	
	Mr. SOUDER	X	
	Mr. McINTOSH	X	
	Mr. NORWOOD	X	
	Mr. CLAY		X
	Mr. MILLER		X
	Mr. KILDEE		X
	Mr. WILLIAMS		
	Mr. MARTINEZ	X	
	Mr. OWENS		X
	Mr. SAWYER		X
	Mr. PAYNE		
	Mrs. MINK		X
	Mr. ANDREWS		X
	Mr. REED		X
	Mr. ROEMER		X
	Mr. ENGEL		X
	Mr. BECERRA		X
	Mr. SCOTT		X
	Mr. GREEN		X
	Ms. WOOLSEY		X
	Mr. ROMERO-BARCELO		
	Mr. FATTAH		X
	<b>TOTALS</b>	<b>21</b>	<b>15</b>

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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):

**FAIR LABOR STANDARDS ACT OF 1938**

\* \* \* \* \*

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

\* \* \* \* \*

(y) "*Houseparent*" means any person employed by a private non-profit institution as a child-care worker, either as a member of a married couple or as a single person (1) to serve as a substitute parent for children who do not live with their own families, and (2) to reside in a family like setting with such children.

\* \* \* \* \*

EXEMPTIONS

SEC. 13. (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—

(1) \* \* \*

\* \* \* \* \*

(16) a criminal investigator who is paid availability pay under section 5545a of title 5, United States Code[.]; or

(17) any employee employed by a private nonprofit institution to serve as a houseparent for abused, neglected, delinquent, orphaned, homeless, or emotionally impaired children, when—

(A) such children's primary residence is in the residential facilities of such institution,

(B) such houseparent resides with such children in the residential facilities of such institution for at least 72 hours a week, and

(C) such houseparent receives, without cost, board and lodging from such institution and is compensated, on a cash basis, at an annual rate of not less than \$8,000.

(b) The provisions of section 7 shall not apply with respect to—

(1) \* \* \*

\* \* \* \* \*

[(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

[(A) who are orphans or one of whose natural parents is deceased, or

[(B) who are enrolled in such institution and reside in residential facilities of the institution. while such children are in residence at such institution, if such employee an his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than \$10,000; or]

\* \* \* \* \*

## MINORITY VIEWS

H.R. 2531 amends the Fair Labor Standards Act of 1938 (FLSA) for the purpose of exempting a class of employees, houseparents, from both the minimum wage and the maximum hours requirements of that Act. This legislation legalizes the exploitation of workers who are charged with one of the most vital duties an individual can undertake, that of raising children. By the terms of the legislation, those employed by nonprofit child care institutions to act as surrogate parents for the children who reside in such institutions may be required to work an unlimited number of hours, for an unlimited number of days, for no more compensation than \$8,000 a year, plus room and board.

The proponents of this legislation claim that it is intended to protect the children for whom houseparents care. If our concern is truly for the children, we should be seeking to ensure that those who care for those children are adequately and fairly compensated. This legislation does the exact opposite. Under it, as long as houseparents employed by nonprofit child care institutions are provided room and board, are on the premises of the institution for 72 hours, and are paid \$8,000 a year, those employees are entitled to neither minimum wages nor overtime.

Testimony supporting this legislation described its intent as follows:

What I want to make clear is that we are not trying to shirk our responsibilities to our employees in terms of a fair compensation package for their efforts. Instead, we are trying to clarify an already existing provision to exempt houseparents from the FLSA overtime provision and remove them from minimum wage and maximum hours requirements so that overtime provisions cannot apply.<sup>1</sup>

Were that, in fact, the sole effect of this legislation, many of us could support it. Regrettably, it is not.

As part of the 1974 amendments to the FLSA, section 13(b) of the law was amended “to provide an overtime exemption for (married) couples who serve as houseparents of children who was institutionalized in a nonprofit education institution by reason of being orphaned or having one deceased parent. To be covered by the overtime exemption, such couples must receive cash wages of not less than \$10,000 annually, and reside on the premises of that institution and receive their board and lodging without cost.”<sup>2</sup>

<sup>1</sup>Prepared Statement of Father Val Peter, JCD, STD, Executive Director, Father Flanagan's Boys' Home, on behalf of the National Association of Homes and Services for Children. Oversight hearing on the Fair Labor Standards Act, H.R. 2391, H.R. 1227 and H.R. 2531; Subcommittee on Workplace Protections, November 1, 1995; transcript at pages 5–6.

<sup>2</sup>Report No. 93–913, Fair Labor Standards Amendments of 1974 [to accompany H.R. 12435], House of Representatives, 93d Congress, 2d Session, March 15, 1974, at page 48.

The current law exemption is limited to overtime, and houseparents are protected by the minimum wage requirements of the FLSA. Contrary to the witness' statement, it is not necessary to exempt houseparents from the minimum wage provisions "so that overtime provisions cannot apply."

The current exemption from overtime was deemed to be necessary to facilitate the creation of a family-like atmosphere in child care institutions. Houseparents are to serve as surrogate parents for the children in their charge. As such, houseparents serve as the primary caregiver for those children and are expected to bond with them. It was anticipated that houseparents would be on call and may often be employed for more than 40 hours a week. Since it may otherwise be cheaper to hire another employee than to pay overtime to a houseparent, and since doing so would disrupt the bonding process, houseparents were exempted from the overtime requirements of the FLSA to ensure that the law did not serve to discourage the operators of child care institutions from employing couples to act as surrogate parents.

We do not object to clarifying and even broadening the existing overtime exemption. There are aspects of the 1974 amendment that, in retrospect, merit reconsideration. First, because the 1974 amendment failed to index the minimum annual cash earnings houseparents must receive to be exempt from overtime, the protections afforded workers by the amendment have been seriously eroded.<sup>3</sup> Second, the 1974 amendment is limited in its application only to those who care for children "who are institutionalized \* \* \* by reason of being orphaned or having one deceased parent." Arguably, if an exemption from overtime for those who care for orphans is merited, such an exemption is also merited for those who care for children who have been abandoned by parents who are still living.

In fact, we Democrats unanimously supported an amendment offered by Representative Andrews (D-NJ), which proposed to expand the exemption in a reasonable fashion, while retaining essential minimum wage protections and providing other provisions to help ensure that houseparents are fairly compensated for their work. Unfortunately, as is so often the case in our Committee this Congress, our Republican allies on the Committee uniformly opposed our compromise.

H.R. 2531 provides a blanket exemption from overtime and from the minimum wage for "houseparents" who care for any "abused, neglected, delinquent, orphaned, homeless, or emotionally impaired child,"<sup>4</sup> regardless of how physically or emotionally impaired that child may be. In this regard, we are concerned that the legislation is too broadly drafted. We can agree as a general matter that institutions should seek to provide a family-like atmosphere for children. We also agree that it is generally desirable for one or two employees to assume primary care-giving responsibilities for individual or small groups of children. We further agree that an exemption from the overtime provisions of the FLSA may be merited in such instances.

<sup>3</sup>This shortcoming is discussed in more detail below.

<sup>4</sup>H.R. 2531, Sec. 3. Minimum Wage and Maximum Hours Exemption for Houseparents.

Elimination of the overtime and minimum wage requirements, however, provides an unquestionable economic incentive for an institution to hire fewer employees and to work them for longer hours. In circumstances where a child is severely emotionally or physically impaired, the burdens inherent in caring for such a child are such that, for the child's sake as well as the employee's, an employee's duties should not extend beyond eight hours a day. Even if one's sole concern is for the welfare of children and one is wholly indifferent to the rights and welfare of workers, eliminating the overtime requirement for workers who care for severely impaired children is bad policy. Regrettably, there is no evidence to date to indicate whether the sponsor or the proponents of H.R. 2531 intend the legislation to apply in such circumstances; nor does the definition of "houseparent" provided in the legislation indicate clearly whether this legislation is intended to apply to those who care for severely impaired children.<sup>5</sup>

Another provision of the 1974 amendment that may merit reconsideration is the limitation of the overtime exemption to married couples. The justification for the exemption from overtime is that children's homes should strive to provide a family-like atmosphere for the children residing there. Encouraging institutions to hire married couples as houseparents, by limiting the application of the overtime exemption for houseparents only to married couples, clearly promotes the creation of a family-like atmosphere. No testimony was offered in the single hearing on this bill to justify eliminating the requirement that the exemption extend only to married couples. Indeed, testimony on H.R. 2531 spoke of a "specially trained married couple who have Tina and six other girls live with them in their Boys Town home."<sup>6</sup> Apparently, however, the sponsor of this legislation has concluded that the presence of a married couple is not essential to the creation of a family like atmosphere.

We hope that operators of children's homes would continue to seek to hire married couples as surrogate parents. However, in making their employment decisions, operators should ultimately be guided by the determination of who they believe will be able to provide the best care for the children. By limiting the overtime exemption to married couples, current law provides an economic incentive for operators to make employment decisions not on the basis of who will provide the best care, but on the basis of who is exempt from overtime. The fact of marriage, as important as it is, is not an absolute guarantee that a couple is necessarily best qualified to provide care for children. While it is, at best, extremely discomfoting to eliminate the marriage requirement in the absence of any evidence in the record that the requirement is an unreasonable burden, there is at least a theoretical basis for reconsidering the provision.

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<sup>5</sup> H.R. 2531 defines "houseparent" to mean "any person employed by a private nonprofit institution as a child-care worker \* \* \* (1) to serve as a substitute parent for children who do not live with their families." Therefore, in our view, children who are so severely mentally or physically impaired that their parents cannot physically care for them and must therefore be institutionalized, but whose parents do not otherwise surrender or abdicate their parental responsibilities, do not fall within purview of the legislation because it was not the intent of the parents to transfer parental responsibilities to the institution. However, the language of H.R. 2531 is so imprecise as to invite litigation on this issue.

<sup>6</sup> Prepared statement of Father Val Peter, at page 9.

Current law exempts houseparents from the maximum hours requirements of FLSA on the condition that the houseparents reside in facilities in which the children reside. Considering that the justification for exempting houseparents from overtime is to facilitate the creation of a family-like atmosphere, such a requirement is both practical and reasonable. H.R. 2531 requires houseparents “to reside in a family like setting with such children,”<sup>7</sup> but strangely goes on to specify that the houseparent need only reside “in the residential facilities of such institution for at least 72 hours a week.”<sup>8</sup>

If the intent of this legislation to promote the creation of a family-like atmosphere, why does the legislation require the houseparent to be in residence for only 72 hours? H.R. 2531 does not require that a houseparent be “on duty” for 72 hours a week or even that a houseparent be “on call” for 72 hours a week. The requirement is only that the houseparent be living on the grounds for 72 hours a week, regardless of how little time is spent with a child during that period. Seventy-two hours is only three days. Even assuming that a parent spends eight hours a day, seven days a week outside the home, that parent still spends more than 110 hours a week in residence with his or her children. Most parents spend considerably more time than that.

The purpose of the 72-hour requirement would appear to be to expand the existing exemption and apply it to workers who do not act as surrogate parents, but rather serve as relief workers for those who truly provide primary care for the children. Are we really trying to encourage a family-like atmosphere when the exempted employee is permitted to spend more time away from children than with them? Or are we simply trying to give employers a break at the expense of their workers?

Under section 3 of H.R. 2531, a houseparent must receive board and lodging from the institution (without cost) and must be compensated on a cash basis at an annual rate of not less than \$8,000 a year, per individual, in order to be exempt for the minimum wage and overtime provisions of the FLSA. In 1974, the Congress required that, to be exempt from overtime, houseparents must receive board and lodging (without cost) and must be compensated in cash at an annual rate of not less than \$10,000 a year, per couple. Proponents of H.R. 2531 have been quick to point out that the legislation raises the pay of houseparents by \$3,000 per individual. However, \$10,000 in 1974 was equivalent to \$31,400 today. In effect, H.R. 2531 proposes a 50-percent reduction in the compensation of houseparents as compared to what the Congress deemed appropriate in 1974. This kind of disparity is driving increasing numbers of Americans out of the middle class. Further, by failing to index the minimum annual earnings of houseparents, this legislation invites even further erosion in their living standards.

<sup>7</sup>H.R. 2531, Sec. 2. Definition of Houseparent.

<sup>8</sup>H.R. 2531, Sec. 3. Minimum Wage and Maximum Hours Exemption for Houseparents.

More importantly, unlike current law, H.R. 2531 seeks to exempt houseparents from the minimum wage provisions of the FLSA as well as its maximum hours provisions. For \$8,000 a year and room and board, the houseparent can be required to work as many hours in the day, as many days in the week, and as many weeks in a year as it is humanly possible. An employee who was scheduled to have the weekend off can be required to take children on an outing that weekend for no additional compensation, whatsoever. Even though the burdens on the employee in terms of caring for the welfare of the children may be increased, and even though the employee is required to give up his or her own time, under H.R. 2531 the employee is not entitled to any additional compensation. No matter how many hours or days the employee is required to work, the employer is not required to pay a houseparent a penny more than \$8,000 dollars a year (plus room and board).

It is ironic to us, in terms of dollars and cents, just how little value the Republican Majority places on “parenting.” At a time when the minimum wage is approaching its lowest value in 40 years, a full time minimum wage earner would still earn about \$1,000 more in a year than a houseparent. The effect of this legislation is to enact a law that requires the employer to pay higher wages to all other workers (e.g., groundskeepers, custodial workers, and housekeepers) than to the houseparent who is principally charged with the welfare of the children of the institution. The paucity of the houseparent’s compensation demonstrates low regard for those entrusted with the care of children.

Finally, we are quite disappointed that the Republican Majority deliberately considers a bill that removes the protection of the minimum wage for an entire category of workers—in this case houseparents—while steadfastly refusing even to schedule a hearing on increasing the minimum wage for millions of hardworking Americans.

In an effort to address that glaring distortion, our Ranking Member, Representative Clay (D-MO), offered an amendment to stay the applicability of the bill's houseparents exemption until such time as the minimum wage for all workers exceeds \$5.14 an hour. By denying houseparents the minimum wage protections of the FLSA, the Republicans will leave them only the salary protections afforded by the market. It is unfair to expand exceptions to minimum wage protections—exceptions that will further lower wages for whole classes of workers—while, ignoring the eroding value of today's minimum wage.

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