108TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 108–681

NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2003

SEPTEMBER 13, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3369]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3369) to provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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29–006

PURPOSE AND SUMMARY

H.R. 3369 was introduced by Representative Souder on October 21, 2003. The legislation is intended to stem the growing threat of lawsuits against organizations ranging from little leagues to high school sports rule-making bodies. The bill is designed to accomplish this by exempting non-profit athletic organizations and their officers and employees acting in their official capacity from liability for harm caused by an act or omission of such organization in the adoption of rules for sanctioned or approved athletic competitions or practices. The general protection preempts inconsistent State laws but makes exceptions for certain State laws requiring adherence to risk management and training procedures, State general *respondeat superior* laws, or State laws waiving liability limits in cases brought by an officer of the State or local government. The language mirrors provisions of the "Volunteer Protection Act" ("VPA").[1]

BACKGROUND AND NEED FOR THE LEGISLATION

VOLUNTEER ORGANIZATIONS AND THEIR LEGAL STATUS

Volunteerism and the Advent of the "Lawsuit Culture"

In the United States, a multitude of organizations exist solely for the purpose of helping their communities, both locally and nationally. These volunteer and nonprofit organizations make use of volunteers who selflessly give of their time and resources to benefit others. However, America's long tradition of volunteerism and generosity has been undermined by what has become a new American tradition: the lawsuit culture. In recent decades, actual lawsuits and fears of liability (both rational and irrational) have increasingly become a deterrent to people who might otherwise have given of their time or resources to better their community and country.

Congressional Efforts to Assess and Address Legal Attacks on Volunteer Organizations

The Judiciary Committee and Congress have previously recognized that the simple fear of liability, if left unchecked, would cause potential volunteers to stay home. The Committee has held hearings[2] in recent years about various aspects of this problem and has advanced several pieces of legislation[3] designed to limit liability for volunteers and volunteer, non-profit, or charitable organizations. Some of the evidence gathered during these hearings bears repeating. According to a report by the Independent Sector, a national coalition of 800 organizations, the percentage of Americans volunteering dropped from 54% in 1989 to 51% in 1991 and 48% in 1993.[4] Gallup polls have shown that 1 in 6 potential volunteers reported that they withheld their services due to fear of expo-

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[1] 42 U.S.C. § 14501 et. seq. (2003).

[2] *See, e.g., State and Local Implementation of Existing Charitable Choice Programs,* 107th Cong. 13 (2001), *Volunteer Liability Legislation, Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary,* 105th Cong. 6 (1997), *Health Care Reform Issues: Antitrust, Medical Malpractice Liability, and Volunteer Liability, Hearing on H.R. 911, H.R. 2925, H.R. 2938 Before the House Committee on the Judiciary,* 104th Cong. 66 (1995).

[3] *See, e.g.* H.R. 911, 105th Cong. 6 (1997), H.R. 1167, 105th Cong. 6 (1997), H.R. 7, 107th Cong. 13 (2001).

[4] H. Rep. No. 105–101, Part 1 (1997).

sure to liability lawsuits.[5] The Committee's hearings also brought to light how the general fear of liability is borne out by anecdotal examples of the types of lawsuits that have been brought. When a youth suffered a paralyzing injury in a volunteer supervised Boy Scout game of touch football, he filed a multimillion dollar lawsuit against the adult supervisors and the Boy Scouts.[6] In California, a volunteer Mountain Rescue member helped paramedics aid a climber who had fallen and sustained injuries to his spine; his reward was a $12 million lawsuit for damages.[7]

In addition to causing potential volunteers to stay at home or refrain from certain needed activities, the Committee's hearings showed that the liability threat has had very real financial consequences. Many nonprofit organizations have encountered dramatically rising costs for liability insurance due to fears of litigation. The average reported increase for insurance premiums for nonprofits over the period of 1985–1988 was 155%.[8] The Executive Director of the Girl Scout Council of Washington, D.C. said in a February 1995 letter that "locally we must sell 87,000 boxes of . . . Girl Scout cookies each year to pay for [our] liability insurance."[9] Dr. Thomas Jones, Managing Director of the Washington, D.C. office of Habitat for Humanity, testified that "[t]here are Habitat affiliate boards for whom the largest single administrative cost is the perceived necessity of purchasing liability insurance to protect board members. These are moneys which otherwise would be used to build more houses [for] more persons in need."[10]

Volunteer Protection Act

Based on the evidence gathered in such hearings, the Committee and Congress took actions to remedy the growing problem of liability fears for volunteers. The most notable action in recent years was consideration and passage of Federal legislation during the 105th Congress that became known as the "Volunteer Protection Act" ("VPA").[11] The final legislation signed into law by President Clinton on June 18, 1997 was identical to H.R. 911 as reported by the House Committee on the Judiciary earlier that year. The Federal legislation setting a uniform national standard for limiting the liability of volunteers was preceded by a patchwork of State laws with similar purposes, which the VPA largely preempted as well as preempting relevant State tort laws. However, these earlier State efforts to limit liability for volunteers are noteworthy because they reflected a pre-existing national consensus that volunteers and volunteer organizations ought to be encouraged by reducing the fear of legal liability.

The common law of all fifty States allows individuals to collect monetary damages in tort for personal injury or property damage caused by another person's negligence or willful conduct. Almost all of these States, however, have limited the liability of volunteers and charitable organizations to some extent. New Jersey provides

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[5] *Id.*
[6] *Id.* at 26.
[7] *Id.* at 23.
[8] H. Rep. No. 105–101, Part 1 (1997).
[9] *Id.*
[10] *Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167,* supra, 105th Cong. at 56.
[11] Pub. L. No. 105–19; codified at 42 U.S.C. § 14503 *et. seq.* (2003).

that charities and their volunteers are immune from liability for ordinary negligence.[12] In Kansas, a volunteer or nonprofit organization is immune from liability for negligence if the organization carries general liability insurance coverage.[13] Ohio offers broad immunity for volunteers of charitable organizations.[14] Wisconsin State law limits the liability of volunteers of non-stock corporations organized under Chapter 181.[15] Georgia grants immunity for members, directors, officers, and trustees of charities from negligence claims asserted by beneficiaries of the charity.[16] Each of these States and others have recognized the need to encourage good works and protect volunteers and nonprofit organizations from tort liability for accidents that arise in the normal course of their dealings.

The VPA was intended to encourage people to do necessary volunteer work for nonprofit and governmental entities by offering immunization from liability under State tort law for ordinary negligence. The VPA only protects "volunteers"[17] for incidents that arise in the scope of their work, and it does not protect willful or criminal conduct and gross negligence. The VPA also limits punitive damages and non-economic damages for those individuals found liable. However, the VPA does not protect nonprofit organizations and government entities themselves from liability for negligence of their volunteers unless State law provides "charitable immunity" for such organizations. Hence, under the common law doctrine of *respondeat superior*, volunteer organizations and entities are still generally vicariously liable for the negligence or their employees and volunteers.

The VPA also allows States to declare affirmatively that the Act does not apply to suits in which all the parties to the action are citizens of the State. The VPA became effective on September 16, 1997, and did not apply retroactively to suits brought before that date. The VPA represents a great improvement by setting a comprehensive and consistent standard governing the tort liability of volunteers and thereby encouraging their good works. However, the fear of liability exposure still affects and hampers volunteer and non-profit organizations. Subsequent efforts in Congress since passage of the VPA have focused on some of the remaining gaps in liability protection for both volunteer organizations themselves and their donors. For example, in the 107th Congress H.R. 7, the "Charitable Choice Act of 2001" as passed by the House contained provisions limiting liability for persons or entities who donated equipment to charitable organizations.

NONPROFIT ATHLETIC ORGANIZATIONS

Volunteer athletic organizations play an important role in the lives of children and communities throughout the country. Rule-making bodies that set uniform rules for competition play a vital role in facilitating a broad range of athletic competition. Non-profit rule-making bodies, such as Little League Baseball, rely on the expertise of volunteers to establish rules for athletic competition and

[12] N.J. Stat. Ann. §§ 2A: 53A–7 to 7.1 (West 1983).
[13] Kan. Stat. Ann. § 60–3601 (1987).
[14] Ohio. Rev. Code Ann. § 2305.38 (Anderson Supp. 1987).
[15] Wis. Stat. §§ 181.297, 180.0828.
[16] Ga. Code Ann. § 105–114 (Harrison 1984).
[17] "Volunteer" is defined in the VPA as a person who perfoms services for a non-profit and who receives no more than $500 per year for such services.

training that promote sportsmanship, preserve sports traditions, promote fair and competitive play, and minimize risk to participants. Many Americans have personally benefitted or know someone who has benefitted from the good work of these organizations and the people who work for them.

All athletic competition carries risks to those who participate. However, over the last several years, the non-profit organizations that seek to preserve fair competition and sports tradition while minimizing these risks to participants have become the targets of costly, protracted, and often frivolous litigation. Egregious examples are all too common: one Little League organization chose to avoid the threat of massive damages by settling a claim by a parent who was hit by a ball her own child failed to catch.[18] When a youth suffered a paralyzing injury in a volunteer supervised Boy Scout game of touch football, he filed a multimillion dollar lawsuit against the adult supervisors and the Boy Scouts.[19]

The explosion in the number of lawsuits against volunteer athletic associations has had a corresponding impact on the price of insurance premiums these organizations are required to carry. According to the National High School Federation, liability insurance rates for high school athletic organizations have spiked 300 percent over the last 3 years. In the short term, these increases divert resources from safety programs and equipment that reduce the risk of these injuries to athletes. If this trend continues to escalate, rule making authorities may simply be driven out of existence.

H.R. 3369, THE "NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT"

H.R. 3369, the "Nonprofit Athletic Organization Protection Act," would stem the growing tide of lawsuits against a range of nonprofit youth and high school athletic rule making bodies. The legislation protects nonprofit athletic organizations from legal assault if harm was not caused by that organization's misconduct. Critically, this legislation would not eliminate all claims against non-profit rule making organizations—claims for willful misconduct, gross negligence, or reckless misconduct would still be actionable. The legislation also provides deference to States by preserving any State law that affords additional protection from liability relating to the rule making activities of nonprofit athletic organizations.

To further clarify that this legislation only applies to a limited category of claims that arise out of activities on the field in sanctioned athletic competitions, an amendment may be added to this legislation before House floor action to further clarify that the liability relief is not intended to apply to civil rights and discrimination cases that challenge eligibility rules set by such organizations. H.R. 3369 is intended to be a narrowly-tailored, common sense remedy to a very serious and growing threat to volunteer athletic organizations mainly from lawsuits alleging bodily injury as a result of a rule or lack of a rule.

During Committee consideration of H.R. 3369, Mr. Robert Kanaby, Executive Director of the National Federation of State High School Associations, delivered testimony concerning the grow-

[18] *Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary,* 105th Cong. 6 at 21 (1997).
[19] *Id.* at 26.

ing liability crisis confronting nonprofit athletic organizations. According to Mr. Kanaby's testimony, rule making bodies play a critical role in facilitating all levels and all types of sports. Non-profit rule making bodies use the expertise of experienced volunteers to set forth rules for athletic competitions and practices that attempt to preserve sports traditions and minimize risks to participants. However, Mr. Kanaby testified that this rule making function is an inherently predictive endeavor without the benefit of perfect foresight, and though rules make sports as safe as possible, sports involve risks and unintended consequences and accidents do happen when young men and women are flying about on athletic fields and courts.

When such accidents resulting in bodily injury do occur, according to Mr. Kanaby, non-profit rule making bodies are often brought into lawsuits that may also be brought against the local school district, coach, referee, etc. For example, the Committee was informed that in Arizona, a wrestler who was rendered quadriplegic filed suit maintaining the rule making body had not outlined a mandate to prevent a dangerous wrestling maneuver.[20] Similar incidents have been reported in the sports of Tae kwon do, baseball, and field hockey, each time resulting in a lawsuit against the rule making body.

When Mr. Kanaby testified that this growing trend of lawsuits has led to a dramatic increase in the insurance renewal amount for many rule making associations, sometimes double and triple the previous annual amount. For example, the National High School Federation represented by Mr. Kanaby, which develops rules for 17 different high school sports, saw a 300% increase for insurance premiums over just 3 years. Many associations, according to the testimony, are being forced to self-insure, and at significantly greater amounts than before. Other sports governing authorities have reportedly seen percentage increases in liability insurance rates from 121% up to 1000%. If this trend continues to escalate, according to Mr. Kanaby these rule making authorities may be driven out of existence and amateur sports would suffer.

In his testimony and in response to Member questions at the hearing, Mr. Kanaby noted that H.R. 3369 is not intended to apply to lawsuits other than essentially bodily injury cases, and should not grant any liability relief or immunity, for instance, in discrimination lawsuits alleging unequal treatment based on gender, race, or disability. Mr. Kanaby also testified in response to questions that a typical bodily injury case in which his organization was sued and then eventually excused from the lawsuit still cost over $25,000 in legal fees and that 2 years ago his organization could not find a single provider of insurance willing to offer them coverage because of his organization's exposure to millions of potential litigants. Finally, the liability protections have limiting exceptions to ensure the organization meets any certification or licensing requirements, and that the harm was not caused by willful or criminal misconduct or gross negligence on the part of the organization.

[20] *Work* v. *National Federation of State High School Associations, Arizona*—Maricopa County, AZ, Docket #CV00–008646.

HEARINGS

The full Committee on the Judiciary held a hearing on H.R. 3369 and two related bills, H.R. 1787, and H.R. 1084, on July 20, 2004. Testimony was received by Mr. Robert Kanaby, Executive Director of the National Federation of State High School Associations.

COMMITTEE CONSIDERATION

On September 8, 2004, the full Committee on the Judiciary met in open session and ordered favorably reported the bill H.R. 3369, without amendment, by a rollcall vote of 14 to 7, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall vote occurred during the Committee's consideration of H.R. 3369.

1. Motion to report H.R. 3369 was agreed to by a rollcall vote of 14 yeas to 7 noes.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Hyde	X		
Mr. Coble	X		
Mr. Smith	X		
Mr. Gallegly			
Mr. Goodlatte	X		
Mr. Chabot			
Mr. Jenkins	X		
Mr. Cannon			
Mr. Bachus			
Mr. Hostettler			
Mr. Green	X		
Mr. Keller	X		
Ms. Hart	X		
Mr. Flake			
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Carter	X		
Mr. Feeney	X		
Mrs. Blackburn	X		
Mr. Conyers			
Mr. Berman		X	
Mr. Boucher			
Mr. Nadler			
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee			
Ms. Waters			
Mr. Meehan			
Mr. Delahunt		X	
Mr. Wexler			
Ms. Baldwin		X	
Mr. Weiner			
Mr. Schiff			z

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Ms. Sánchez		X	
Mr. Sensenbrenner, Chairman	X		
Total	14	7	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1084, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 13, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3369, the Nonprofit Athletic Organization Protection Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs) and Melissa Merrell (for the state and local impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 3369—Nonprofit Athletic Organization Protection Act of 2003

H.R. 3369 would provide immunity to nonprofit athletic organizations such as Little League and school sports programs from liability in certain civil suits alleging harm from an act or omission of such an organization in the adoption of rules for athletic competitions or practices.

CBO estimates that enacting the legislation would result in no costs to the federal government. H.R. 3369 would not affect direct spending or revenues.

H.R. 3369 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act, but CBO estimates that the

costs, if any, would not be significant and would be well below the threshold established in that act ($60 million in 2004, adjusted annually for inflation). Specifically, the bill would exempt nonprofit athletic organizations from liability under state tort laws for certain injuries that may occur during practice or competitions. The bill contains no new private-sector mandates.

The CBO staff contacts for this estimate are Lanette J. Walker (for federal costs) and Melissa Merrell (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3369 will provide limited liability protection for nonprofit athletic organizations and their officers operating within the scope of their official capacity.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representative Congress finds the authority for this legislation in article I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1—Short Title

Section 1 provides that H.R. 3369 may be cited as the "Nonprofit Athletic Organization Protection Act of 2003."

Section 2—Definitions

Section 2 defines the following terms used in the bill:

(1) "Economic loss" means any pecuniary loss resulting from harm (including loss of earnings, medical expenses, etc.) to the extent recovery for such loss is allowed under applicable State law.

(2) "Harm" includes physical, nonphysical, economic, and noneconomic losses.

(3) "Noneconomic loss" means any loss resulting from physical and emotional pain, suffering, inconvenience, anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, etc., and all other nonpecuniary losses of any kind.

(4) "Nonprofit Organization" means:

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare or health purposes.

(5) "Nonprofit Athletic Organization" means a nonprofit organization that has as one of its primary functions the adoption of rules for sanctioned or approved athletic competitions and practices. The term includes the employees, agents, and volunteers of such organi-

zation, provided such individuals are acting within the scope of their duties with the non-profit athletic organization.

(6) "State" includes the 50 States, the District of Columbia and all other territories or possessions of the United States.

Section 3—Limitation on Liability for Nonprofit Athletic Organizations

Section 3 creates liability protection for non-profit athletic organizations for lawsuits arising out of their rule making function in setting the rules for athletic competitions. This protection does not apply when harm was caused by gross negligence, or willful, criminal, or reckless misconduct by the organization. The protection also does not apply when certain State law requirements are in effect unless these are met.

(a) LIABILITY PROTECTION FOR NONPROFIT ATHLETIC ORGANIZATIONS—Subsection 3(a) provides that a non-profit athletic organization shall not be liable for harm caused by an act or omission of such an organization in the adoption of rules for sanctioned or approved athletic competitions or practices if—

(1) the organization was acting within the scope of its duties at the time of the adoption of the rules.

(2) the nonprofit athletic organization met applicable licensing, certification, or authorization requirements in the State in which either the harm, competition, or practice occurred; AND

(3) the harm was not caused by willful or criminal misconduct, gross negligence, or reckless misconduct on the part of the nonprofit athletic organization

(b) RESPONSIBILITY OF EMPLOYEES, AGENTS, AND VOLUNTEERS TO NONPROFIT ATHLETIC ORGANIZATIONS—Subsection 3(b) provides that nothing in the act shall be construed to affect a lawsuit brought by a covered non-profit athletic organization against any employee, agent, or volunteer of the organization.

(c) EXCEPTIONS TO NONPROFIT ATHLETIC ORGANIZATION LIABILITY PROTECTION—Subsection 3(c) provides that if the laws of a State limit the liability of a nonprofit athletic organization subject to the following conditions, such required conditions are not inconsistent with the Act and therefore must still be met by the organization to enjoy protection:

(1) A State law that requires such organization to adhere to risk management procedures.

(2) A State respondeat superior law that makes such an organization liable for the acts or omissions of its employees, agents, and volunteers to the same extent any employer is liable for acts or omissions of its employees.

(3) A State law that makes a limitation on liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

Section 4—Preemption

Section 4 provides that this Act preempts the laws of any State to the extent such laws are inconsistent with the Act, but shall not preempt any State law that affords additional protection from li-

ability relating to the rule making activities of nonprofit athletic organizations.

Section 5—Effective Date

Section 5 provides that the Act shall take effect on the date of enactment and will apply to any claim for harm caused by a nonprofit athletic organization that is filed on or after the effective date, but only if the harm that is the subject of the claim occurred on or after the effective date.

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, the Committee notes that H.R. 3369 makes no changes to existing law.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, SEPTEMBER 8, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] Presiding.

[Intervening business.]

Chairman SENSENBRENNER. Now, pursuant to notice, I call up the bill H.R. 3369, the "Nonprofit Athletic Organization Protection Act of 2003" for purpose of markup and move its favorable recommendation to the house.

Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 3369, follows:]

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108TH CONGRESS
1ST SESSION

H. R. 3369

To provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 2003

Mr. SOUDER (for himself, Mr. WYNN, Mr. OSBORNE, Mr. HASTINGS of Washington, Mr. KELLER, and Mrs. MUSGRAVE) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices.

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 "Nonprofit Athletic Organization Protection Act of 2003".

SEC. 2. DEFINITIONS.

In this Act:

(1) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) HARM.—The term "harm" includes physical, nonphysical, economic, and noneconomic losses.

(3) NONECONOMIC LOSS.—The term "noneconomic loss" means any loss resulting from physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(4) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(5) NONPROFIT ATHLETIC ORGANIZATION.—The term "nonprofit athletic organization" means a nonprofit organization that has as one of its primary functions the adoption of rules for sanctioned or approved athletic competitions and practices. The term includes the employees, agents, and volunteers of such organization, provided such individuals are acting within the scope of their duties with the nonprofit athletic organization.

(6) STATE.—The term "State" includes the District of Columbia, and any commonwealth, territory, or possession of the United States.

SEC. 3. LIMITATION ON LIABILITY FOR NONPROFIT ATHLETIC ORGANIZATIONS.

(a) LIABILITY PROTECTION FOR NONPROFIT ATHLETIC ORGANIZATIONS.—Except as provided in subsections (b) and (c), a nonprofit athletic organization shall not be liable for harm caused by an act or omission of the nonprofit athletic organization in the adoption of rules

for sanctioned or approved athletic competitions or practices if—

(1) the nonprofit athletic organization was acting within the scope of the organization's duties at the time of the adoption of the rules at issue;

(2) the nonprofit athletic organization was, if required, properly licensed, certified, or authorized by the appropriate authorities for the competition or practice in the State in which the harm occurred or where the competition or practice was undertaken; and

(3) the harm was not caused by willful or criminal misconduct, gross negligence, or reckless misconduct on the part of the nonprofit athletic organization.

(b) RESPONSIBILITY OF EMPLOYEES, AGENTS, AND VOLUNTEERS TO NONPROFIT ATHLETIC ORGANIZATIONS.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit athletic organization against any employee, agent, or volunteer of such organization.

(c) EXCEPTIONS TO NONPROFIT ATHLETIC ORGANIZATION LIABILITY PROTECTION.—If the laws of a State limit nonprofit athletic organization liability subject to one

or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit athletic organization to adhere to risk management procedures, including mandatory training of its employees, agents, or volunteers.

(2) A State law that makes the nonprofit athletic organization liable for the acts or omissions of its employees, agents, and volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

SEC. 4. PREEMPTION.

This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to the rulemaking activities of nonprofit athletic organizations.

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—This Act shall take effect on the date of enactment of this Act.

1 (b) APPLICATION.—This Act applies to any claim for
2 harm caused by an act or omission of a nonprofit athletic
3 organization that is filed on or after the effective date of
4 this Act but only if the harm that is the subject of the
5 claim or the conduct that caused the harm occurred on
6 or after such effective date.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Texas, Mr. Carter for 5 minutes to explain the bill.

Mr. CARTER. Thank you, Mr. Chairman.

I urge my colleagues to join me in favorably reporting H.R. 3369, the "Nonprofit Athletic Organization Protection Act of 2003." The voluntary athletic organization played—these organizations play an important part in the lives of children and communities throughout this country.

Rulemaking bodies that set eligibility standards and uniform rules of play, play a vital role in the facilitating a broad range of athletic competition. Nonprofit rulemaking bodies such as little league baseball relay on the expertise of volunteers to establish rules for athletic competition and training that promote sportsmanship, preserve sports tradition, promotes fair and competitive play and minimizes risk to participants. Each of us has personally benefited or knows someone who has benefited from the good work of these organizations.

I have a son who is a high school baseball coach and has benefited from these organizations all of his life as did all of my four other children. I asked at the hearing to give an example of what in this would entail. If a rulemaking authority decided that a kid has to slide into home plate, they make that authority because they know that collisions at home plate cause more injuries than sliding.

Though the results of what is going on presently with our liability insurance is that if the kid slides and breaks his ankle, he sues the rulemaking authority for making a rule that required him to slide. That rule was made to protect the vast majority of people because a collision would have resulted in more injure than the slide. But if they hadn't had the rule, they would get sued for the collision that took place at home plate.

These are organizations that are trying to come up with the safest possible means for these kids to be playing competitive ball. As we all know, almost all of athletic competition carries risks for those who participate. What we could not have known is that these very volunteer organizations that seek to minimize these risks would become the targets of costly, protracted and all too frivolous litigation. Over the last several years these volunteer organization have been subjected to mounting legal as a results. An egregious example is all too common.

One little league organization chose to avoid the threat of massive damages by settling a claim by a parent who was hit by a ball her own child failed to catch. Another example, lawyers for a youth who suffered an injury in a volunteer supervised Boy Scout game of touch football filed a multimillion dollar lawsuit against the adult supervisors and the Boy Scouts of America.

The explosion in the number of lawsuits against volunteer athletic associations has had a corresponding impact on the price of insurance premiums on these organizations and what they are required to carry. According to the National High School Federation, liability insurance rates for high school athletic organizations have spiked 300 percent over the last 3 years.

In the short term, these increases divert resources from safety programs and equipment that reduce the risk of injuries to athletes. If this trend continues to escalate, the rulemaking authorities may be driven out of existence.

H.R. 3369, the Nonprofit Athletic Organization Protection Act, would stem the growing tide of lawsuits against a range of nonprofit youth and high school athletic rulemaking bodies. The legislation merely protects nonprofit athletic organizations from legal assault if harm was not caused by that organization's misconduct.

Critically, this legislation would not eliminate all claims against nonprofit rulemaking organizations. Claims for willful misconduct, gross negligence and reckless misconduct would still be actionable.

The legislation also provides deference to States by preserving any State law that affords additional protection from liability relating to the rulemaking activities of nonprofit athletic organizations. H.R. 3369 is a narrowly tailored, commonsense remedy to a very serious and growing threat to voluntary athletic organizations; and I urge support for this legislation.

I yield back my time

Chairman SENSENBRENNER. Who wishes to give the Democratic opening statement?

Mr. SCOTT. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I would just say a couple of points, that the bill is overbroad. It not only covers what the gentleman from Texas just indicated is covered. It also appears to cover civil rights actions. Defamation, negligence, antitrust, labor disputes, insurance claims, freedom of expression, first amendment claims and everything else would be exempted by this legislation. It is clearly overly broad, and I think that it needs a lot more work than we have got time to do now. I would hope we would not pass the bill, and if we are going to consider it, fix it up so that it covers only what we are thinking about covering.

Ms. LOFGREN. Would the gentleman yield?

Mr. SCOTT. I yield.

Ms. LOFGREN. I have the same concern, and I say this as one who spent my entire youth at Little League baseball games when my father was a manager and my brother was on the team and I understand the point being made.

But, as I look at this, I think we really do need to tighten up the language. We all know that there is a problem with sexual predators preying on young children in supporting endeavors. It has been in the papers in my hometown and the like.

And as I am thinking about that issue, I think the way—on page—well, three—theoretically, if you had a rule providing for adult supervision at, you know, the practice game, you could insulate from liability sexual assault, which is something that, you know, because of the litigation in California, these nonprofit groups have had to become very sensitive to the fact that this is a well-known situation where, you know, sexual predators actually volunteer to be on these sports teams. Now, in California at least, we have the ability for nonprofits to do a criminal records search to make sure that they haven't, you know, allowed some pedophile to come on and be a manager or a coach at the team; and that has really been a very positive thing. I think that, although it is not intended, there is an opportunity here to really undercut that; and I know you would not want that. I do not either. But I think the drafting leaves that open.

I don't have the time. I yield back to Mr. Scott.

Mr. CARTER. Would the gentlelady yield—or would the gentleman yield?

Mr. SCOTT. Let me just make one more comment.

The other immunizations we have given in the past have immunized all the volunteers, but because the organization was still on the hook a victim would still have recourse. This—you have immunized all the volunteers, the coaches and everybody else, and this will immunize the organization so there will be no recourse at all.

And I will yield to whoever asked for time and if not——

Mr. CARTER. I thank you for yielding.

This, what you are describing, is willful misconduct. But, remember, this goes to the rulemaking authority and the rules that are set up under that rulemaking authority. That—it is limited to the rulemaking authority for—if you write the rules for Little League and somebody gets hurt as a result of those rules, you don't get sued for the rules that you wrote. That is what this is all about. And on the sexual predators, that is certainly willful misconduct and clearly would not fall in the limitations of this bill.

Ms. LOFGREN. Would the gentleman, Mr. Scott, yield?

Mr. SCOTT. I am trying to figure out where that—a non—on page three, line 22, it says a nonprofit athletic organization shall not be liable for harm caused by acts or omissions and adoption of rules for sanction and approved competitions. I think the rules that the gentlelady from California just mentioned would certainly fall under that category, and I will yield to her.

Ms. LOFGREN. That is what I—I understand what the gentleman is trying to accomplish with this bill, and I don't disagree with what he is trying to accomplish with this bill. My concern is, since we are writing legislation, is that if you—the organization shall not be liable for harm caused by an act or in this case it would be an omission of the nonprofit athletic organization and the adoption of rules for sanctioned or approved athletic competitions.

Well, if the rule is that—they adopt a rule that you have got to have a coach at every practice, batting practice, that is a rule. And if they omit what any athletic organization should know now, that you have got to do a screen of your volunteers through the pedophile check, that is an omission. And if the pedophile molests a kid, this provides for immunity from liability. And it is not willful on the part of Little League. It is an omission. It is negligence. And really the fact that there has been litigation has raised the understanding of these—I mean——

Chairman SENSENBRENNER. The gentlelady's time has expired.

Without objection, all Members may place opening statements into the record.

At this point, are there amendments?

If there are no amendments, a reporting quorum——

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. I understand that there has been some discussion about another concern that has been raised but apparently not yet

addressed and that is the exercise of rulemaking authority to, in some ways, discriminate against various categories of athletes, which doesn't seem to be excluded from coverage here either.

Mr. CARTER. If the gentleman would yield for just a moment.

Mr. WATT. Yes, I would be happy yield to you.

Mr. CARTER. I thank you for yielding.

We have been working with the minority on this issue. In fact, we were anticipating an amendment to that effect to cover civil rights to be offered, but the Member who was going to offer that amendment is not here. We are perfectly willing to work and accept an amendment that would cover what you are discussing right now.

Mr. WATT. But if you have got a bill and you acknowledge that it has a problem, just as you acknowledged that the problem that was raised by Ms. Lofgren was a real problem——

Mr. CARTER. Well, I don't acknowledge that as a real problem. I disagree with her interpretation.

Mr. WATT. Okay. Well, you acknowledge this one as a real problem.

Mr. CARTER. Potentially.

Mr. WATT. Is there some expectation that this is going to be corrected?

Mr. CARTER. We can work between now and offering the—to get that amended, to get that amendment accepted. And I came ready and willing to accept that amendment.

Mr. WATT. All right. Well——

Chairman SENSENBRENNER. Does the gentleman yield back.

Mr. WATT. I yield back, yeah.

Chairman SENSENBRENNER. Other amendments?

If there are no amendments, a reporting quorum is present. A question occurs on the motion to report the bill, H.R. 3369, favorably. All in favor, say aye. Opposed, no.

The ayes appear to have it.

Ms. LOFGREN. I would like a recorded vote on that, Mr. Chairman.

Chairman SENSENBRENNER. A recorded vote will be ordered. Those in favor of reporting the bill H.R. 3369 favorably will, as your names are called, answer aye. Those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde.

Mr. HYDE. Aye.

The CLERK. Mr. Hyde, aye.

Mr. Coble.

Mr. COBLE. Aye.

The CLERK. Mr. Coble, aye.

Mr. Smith.

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye.

Mr. Gallegly.

[No response.]

The CLERK. Mr. Goodlatte.

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye.

Mr. Chabot.

[No response.]

The CLERK. Mr. Jenkins.
Mr. JENKINS. Aye.
The CLERK. Mr. Jenkins, aye.
Mr. Cannon.
[no response.]
The CLERK. Mr. Bachus.
[no response.]
The CLERK. Mr. Hostettler.
[no response.]
The CLERK. Mr. Green.
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller.
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Ms. Hart.
Ms. HART. Aye.
The CLERK. Ms. Hart, aye.
Mr. Flake.
[no response.]
The CLERK. Mr. Pence.
[no response.]
The CLERK. Mr. Forbes.
Mr. FORBES. Aye.
The CLERK. Mr. Forbes, aye.
Mr. King.
Mr. KING. Aye.
The CLERK. Mr. King, aye.
Mr. Carter.
Mr. CARTER. Aye.
The CLERK. Mr. Carter, aye.
Mr. Feeney.
Mr. FEENEY. Aye.
The CLERK. Mr. Feeney, aye.
Mrs. Blackburn.
Mrs. BLACKBURN. Aye.
The CLERK. Mrs. Blackburn, aye.
Mr. Conyers.
[no response.]
The CLERK. Mr. Berman.
Mr. BERMAN. No.
The CLERK. Mr. Berman, no.
Mr. Boucher.
[no response.]
The CLERK. Mr. Nadler.
[no response].
The CLERK. Mr. Scott.
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt.
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren.
Ms. LOFGREN. No.
The CLERK. Ms. Lofgren, no.

Ms. Jackson Lee.
[no response.]
The CLERK. Ms. Waters.
[no response.]
The CLERK. Mr. Meehan.
[no response.]
The CLERK. Mr. Delahunt.
Mr. DELAHUNT. No.
The CLERK. Mr. Delahunt, no.
Mr. Wexler.
[no response.]
The CLERK. Ms. Baldwin.
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin, no.
Mr. Weiner.
[no response.]
The CLERK. Mr. Schiff.
[no response.]
Ms. Sánchez.
Ms. SÁNCHEZ. No.
The CLERK. Ms. Sánchez, no.
Mr. Chairman.
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Members in the chamber who wish to cast or change their votes? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 14 ayes and 7 nos.

Chairman SENSENBRENNER. And the motion to report favorably is agreed to.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes; and all Members will be given 2 days as provided by the House rules in which to submit additional dissenting supplemental or minority views.

DISSENTING VIEWS

We strongly oppose H.R. 3369, the "Nonprofit Athletic Organization Protection Act of 2003," which would extend immunity to nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence to the passage or adoption of rules for athletic competitions and practices. While proponents maintain this legislation was designed to protect nonprofit athletic organizations from unnecessary litigation relating to physical safety regulations, its effects would all but eliminate any valid claims brought against such organizations, including civil rights claims. This is why the legislation is so strongly opposed by civil rights groups, such as the NAACP, Alliance for Justice, American Association of People with Disabilities (AAPD), Lawyers' Committee for Civil Rights Under Law, National Association for the Advancement of Colored People (NAACP), National Partnership for Women, National Women's Law Center, People For the American Way, and U.S. Public Interest Research Group (U.S. PIRG).

H.R. 3369 is problematic for several reasons. First, under H.R. 3369, valid cases would be affected as well as frivolous claims. Second, this legislation is overly broad. It would go beyond the "physical harm" claims the sponsors state are intended to be encompassed by the legislation and would affect discrimination (including, significantly, Title IX claims), labor, and any other matter that arises from nonprofit athletic organizations' rules for practices and competitions. Third, this legislation provides one-way immunity—the nonprofit athlete organization would receive immunity yet retain its right to sue.

A. The legislation does not differentiate between meritorious lawsuits and frivolous claims

The broad immunity that is extended to nonprofit athletic organizations reaches far beyond the potential for "frivolous" lawsuits. H.R. 3369 prohibits civil litigation of any grievance arising under the rules promulgated by a nonprofit sporting organization. Specifically, H.R. 3369 exempts a nonprofit athletic organization from liability for harm caused by an act or omission in the adoption of rules for sanctioned or approved athletic competitions or practices if: (1) the organization was acting within the scope of its duties; (2) the organization was properly licensed, certified, or authorized for the competition or practice; and (3) the harm was not caused by the organization's willful or criminal misconduct, gross negligence, or reckless misconduct.

So while a lawsuit filed by parents because their child was not put on a team may rightly be dismissed (and would be dismissed under current law without the benefit of this legislation), cases with legal merit, such as a case challenging a rule that endangers the life of a child, would also be dismissed. In effect, this legislation

will bar young athletes and their families from having their day in court for an entire range of legal actions—frivolous as well as non-frivolous. H.R. 3369 would dramatically obstruct valid, meritorious claims that call attention to public safety hazards, discriminatory practices, and are needed to protect our nation's children.

B. H.R. 3369 goes far beyond cases involving physical harm and impacts civil rights and other cases

Proponents of the legislation claim that it is designed to narrowly limit a nonprofit athletic organizations' immunity in "physical harm" claims. However, the effect of the bill is vast and far reaching.

First and foremost, H.R. 3369 would provide broad immunity to nonprofit athletic organizations in civil rights matters. As Professor Andrew Popper stated in his testimony before the Committee, "If passed, the bill would block anti-discrimination cases that have been used to address race, disability, and gender discrimination. In addition to destroying the opportunity for an athlete to challenge discriminatory practices (while placing no limit on an organizations ability to use courts), the bill would preempt state laws for no discernible reason." [1]

Consider the following civil rights actions brought against athletic organizations that would have been precluded had H.R. 3369 been law:

• In *Cureton* v. *NCAA,* a class action lawsuit filed by African-American student, athletes challenged the National Collegiate Athletic Association's rule requiring all potential student-athletes to achieve a minimum score on the SAT or the ACT. Educational Testing Services (ETS), designers of the SAT, had long cautioned the NCAA that use of a fixed cut-off score would have a disproportionate impact on African-American students. Only when African-Americans brought a civil action did the NCAA change its rule so that student athletes could be eligible for Division I schools on the basis of their grades, not just their test scores.[2]

• In *PGA Tour, Inc.* v. *Martin,* the U.S. Supreme Court ruled that the Americans with Disabilities Act requires the PGA Tour to allow professional golfer Casey Martin to ride in a golf cart between shots at Tour events. Martin suffers from a circulatory disorder making it painful for him to walk long distances; despite appeal after appeal, the nonprofit PGA continued to rule that walking the course is an integral part of golf, and that Martin would gain an unfair advantage using the cart. In a 7–2 decision, the Supreme Court decided that the PGA could not deny Martin equal access to its tours on the basis of his disability. It took a lawsuit to enforce "what Congress described as a 'compelling need' for a 'clear and comprehensive national mandate' to eliminate discrimination against disabled individuals." [3] Under H.R. 3369, a comparable case brought against a non-profit athletic association would be banned.

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[1] Legislative Hearing on H.R. 3369, "Nonprofit Athletic Organization Protection Act of 2003": Hearing before the House Comm. On the Judiciary 108th Cong. 4 (2004)[hereinafter Hearings](written testimony of Andrew Popper, Professor of Law, American University, Washington College of Law)

[2] *Cureton* v. *NCAA,* 198 F.3d 107 (3rd Cir. 1999).

[3] *PGA Tour, Inc.* v. *Martin*, 532 U.S. 661, 675 (2001).

• In *Michigan High School Athletic Association* v. *Communities for Equity,* a federal district court found that scheduling the women's athletics during nontraditional seasons resulted in limited opportunities for athletic scholarships and collegiate recruitment, limited opportunities to play in club or Olympic development programs, and missed opportunities for awards and recognition for female athletes. It was only through civil litigation that this practice of discrimination was publicly identified, addressed by the legal system, and corrected to level the playing field for all involved.

• In *Williams* v. *Eaton,* 468 F.2d 1079 (10th Cir. 1972), several black athletes were dismissed from the University of Wyoming football team following a dispute over their plan to wear black armbands during a game with Brigham Young University. Under the terms of this bill, the athletes would not be permitted to bring the suit forward.[4]

• In *Williams* v. *the School District of Bethlehem, PA,* 998 F.2d 168, Mr. Williams wanted to try out for the field hockey team but was banned because the field hockey team was an all female team. Damages were sought by Williams under title IX of the Education Amendments of 1972. The 3rd Circuit court remanded to the lower court to find whether there were real differences between the males and females, which warranted different treatment. Had H.R. 3369 been law, this type of action would be precluded.

• In *Pryor* v. *NCAA,* 288 F.3d 548, the NCAA adopted a policy that raised academic standards for student athletes in their freshman year. The complaint alleged that the policy's real goal was to "screen out" more black student athletes from ever receiving athletic scholarships in the first place. The Court held that the Title VI and 42 USCS § 1981 allegations were sufficient to withstand a motion to dismiss. The association had considered race as one of its reasons for adopting the policy and the complaint alleged that the association purposefully discriminated against black student athletes because it knew policy would prevent more black athletes from ever receiving athletic scholarship aid. The association could not avoid § 1981 liability simply because the condition of not meeting academic standards was not satisfied, if that condition was an alleged produce of purposeful discrimination.

• In *Horner* v. *Kentucky High School Athletic Association,* 43 F.3d 265, female athletes, filed an action against the state board of education and the state high school athletic association, alleging that defendants discriminated against them on the basis of sex by sanctioning fewer sports for girls than for boys and by refusing to sanction girls' interscholastic fast-pitch softball. The complaint asserted claims under the Equal Protection Clause and Title IX of the Education Amendments of 1972.

H.R. 3369 would immunize nonprofit athletics in several other claims including antitrust, labor, environmental, defamation, fraud and numerous other actions not based on physical harm. The following are examples of claims that would not be permitted under this legislation:

[4] The court ultimately found that permitting the armbands would have been a violation of "the First Amendment establishment clause and its requirement of neutrality on expressions relating to religion."

• In *NCAA* v. *Board of Regents of the University of Oklahoma*, 486 U.S. 85, the Athletic Association adopted a rule to reduce the number of football games that could be televised. The University of Oklahoma objected to the rule and negotiated a contract to allow a liberal number of games to be televised. NCAA took disciplinary action, and a suit followed stating that the NCAA engaged in Sherman Act violations. The Supreme Court held that the NCAA plan constituted a restrain upon the operations of the free market and that its television plan had a significant anti-competitive effect.

• In *Tiffany* v. *Arizona Interscholastic Association, Inc.,* 726 P.2d 231, a student filed a suit against the Arizona interscholastic association competition requesting that the associations be enjoined from disqualifying Tiffany from interscholastic athletic competition and that the association's actions be declared unconstitutional as a denial of due process. The lower court granted a preliminary injunction and found that the association acted unreasonably in considering Tiffany's waiver from disqualifications and that Tiffany had a sufficient liberty interest in high school athletics so as to have rendered associations's denial a constitutional violation. The court held that the association did act arbitrarily in exercising its discretion in denying Tiffany's waiver because although the association's bylaws allowed for a waiver of disqualification upon the showing of hardship, the association also had a policy of not making any exception to an age eligibility requirement under which Tiffany took exception.

This legislation would also inadvertently protect individuals who could potentially harm children. During the Judiciary Committee markup, Representative Lofgren remarked that if a poor hiring rule was in place that did not screen out pedophiles, parents would be barred from suing the athletic association regarding that rule. While the sponsors claim their true intent was to eliminate physical harm claims, the legislation, as drafted, eliminates any and all civil actions relating to practices and procedures of a non-profit athletic organization.

C. H.R. 3369 provides one way immunity

Significantly, while immunizing nonprofit athletic organizations from civil claims, H.R. 3369 protects the right of a nonprofit athletic organization to sue others.[5] If this legislation is designed to suppress unnecessary litigation altogether, it fails to describe how an organization's grievances are legitimate but individual complaints are not. Written to suppress the only outlets available to athletes and their families, this legislation is overreaching. It is unfair to provide that these organizations be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

CONCLUSION

As we have in the past, we are willing to work with the Majority to develop reasonable legislation that protects non-profit groups from unnecessary litigation while insuring that meritorious claims are protected. H.R. 3369 however, does not meet this test. Instead

[5] H.R. 3369, sec. 3(b).

of protecting good faith and reasonable actions by non-profit athletic associations designed to protect athletes from physical harm, the bill massively overreaches and cuts of legitimate actions for civil rights and other matters having nothing to do with physical harm.

JOHN CONYERS, Jr.
BOBBY SCOTT.
MAXINE WATERS.
TAMMY BALDWIN.
HOWARD L. BERMAN.
JERROLD NADLER.
MELVIN L. WATT.
SHEILA JACKSON LEE.
ROBERT WEXLER.
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