AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

109TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 109–393

NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2006

MARCH 15, 2006.—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. 1176]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1176) to provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage, adoption, or failure to adopt rules of play for athletic competitions and practices, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	5
Committee Consideration	5
Vote of the Committee	6
Committee Oversight Findings	6
New Budget Authority and Tax Expenditures	6
Congressional Budget Office Cost Estimate	6
Performance Goals and Objectives	7
Constitutional Authority Statement	7
Section-by-Section Analysis and Discussion	7
Markup Transcript	9
Dissenting Views	21

49–006

PURPOSE AND SUMMARY

H.R. 1176, the "Nonprofit Athletic Organization Protection Act of 2006," was introduced by Representative Souder on March 8, 2005. The legislation is intended to stem the growing threat of lawsuits against organizations ranging from youth sport's baseball Little Leagues to high school sports rule-making bodies. The bill exempts nonprofit athletic organizations and their officers and employees acting in their official capacity from liability for harm caused by a negligent act or omission of such organization in the adoption of rules of play 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 any officer of the State or local government. The language mirrors provisions of the "Volunteer Protection Act" (VPA).[1]

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1176 extends the liability protections already provided by Congress in the Volunteer Protection Act of 1997 to nonprofit athletic rule-making organizations. The extension of these liability protections reflects Congress' recognition that America's long tradition of volunteerism and generosity has been undermined by costly and often frivolous litigation. In recent decades, actual lawsuits and fears of liability have increasingly become a deterrent to people who might otherwise have given of their time or resources to better their community and country.

HISTORY OF VOLUNTEER LIABILITY PROTECTIONS

The common law of all 50 States allows individuals to collect monetary damages in tort for personal injury or property damage caused by another person's negligence or willful conduct. Virtually all of these States have recognized the need to encourage good works and volunteerism by protecting volunteers and nonprofit organizations from tort liability for accidents that arise in the normal course of their dealings. For example, New Jersey provides that charities and the volunteers they utilize are immune from liability for ordinary negligence.[2] In Kansas, a volunteer or nonprofit organization is immune from liability for negligence if the organization carries general liability insurance coverage.[3] Ohio offers broad immunity for volunteers of charitable organizations.[4] Wisconsin State law limits the liability of volunteers of non-stock corporations organized under Chapter 181.[5] Georgia grants immunity for members, directors, officers, and trustees of charities from negligence claims asserted by beneficiaries of the charity.[6] These States' efforts reflect a broader national consensus that volunteers and volunteer organizations should be protected from legal liability.

---

[1] 42 U.S.C. § 14501 et. seq.
[2] N.J. Stat. Ann. §§ 2A: 53A–7 to 7.1.
[3] Kan. Stat. Ann. § 60–3601.
[4] Ohio. Rev. Code Ann. § 2305.38.
[5] Wis. Stat. §§ 181.0670.
[6] Ga. Code Ann. § 51–1–20.

Congress recognized this national consensus and held hearings examining this subject in 1997.[7] Those hearings showed that in addition to causing potential volunteers to stay at home or refrain from certain needed activities, liability and the fear of liability for volunteer activities had very real financial impacts, including dramatically rising costs for liability insurance premiums for volunteer organizations. These increased premiums have practical consequences: the Executive Director of the Girl Scout Council of Washington, D.C. stated that "locally we must sell 87,000 boxes of . . . Girl Scout cookies each year to pay for [our] liability insurance."[8] Furthermore, 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."[9]

These concerns prompted Congress to pass the Volunteer Protection Act (VPA), which was signed into law by President Clinton on June 18, 1997.[10] The VPA protects "volunteers"[11] for incidents that arise in the scope of their work, but it does not provide liability protection for willful, reckless, or criminal conduct or gross negligence. The Act limits punitive damages and non-economic damages for those individuals found liable.[12] 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.[13] Hence, under the common law doctrine of *respondeat superior,* volunteer organizations and entities are still generally vicariously liable for the negligence of their employees and volunteers. Also, volunteers that operate motor vehicles, vessels, or aircraft are not protected by the VPA.[14]

The passage of the VPA has not ended the problem of liability and its associated costs for volunteers and the non-profit organizations that support them. Hence, the Committee has held hearings[15] in recent years about various aspects of this problem and has advanced several pieces of legislation[16] designed to limit liability for volunteers and volunteer, non-profit, or charitable organizations. For example, in the 107th Congress, the House-passed

---

[7] *Volunteer Liability Legislation, Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary,* 105th Cong. (1997).

[8] H.R. Rep. No. 105–101, at 6 (1997).

[9] *Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167,* supra, 105th Cong. at 56.

[10] Pub. L. No. 105–19 (1997).

[11] "Volunteer" is defined in the VPA as a person who performs services for a non-profit and who receives no more than $500 per year for such services. 24 U.S.C. § 14505(6).

[12] 42 U.S.C. §§ 14503(e), 14504.

[13] 42 U.S.C. §§ 14502(a), 14503(c).

[14] 42 U.S.C. § 14503(a)(4).

[15] *See, e.g., Good Samaritan Volunteer Firefighter Assistance Act of 2003, the Non Profit Athletic Organization Protection Act of 2003, and the Volunteer Pilot Organization Protection Act: Hearing Before the House Comm. on the Judiciary on H.R. 1787, H.R. 3369, and H.R. 1084,*108th Cong. (2004); *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. (1997); and *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. (1995).

[16] *See,e.g.,* H.R. 911, 105th Cong. (1997); H.R. 1167, 105th Cong. (1997); H.R. 7, 107th Cong. (2001); H.R. 1787, 108th Cong. (2003); H.R. 3369, 108th Cong. (2003); H.R. 1084, 108th Cong. (2003); and H.R. 3736, 109th Cong. (2005).

version of the "Charitable Choice Act of 2001," H.R. 7, contained provisions limiting liability for persons or entities who donated equipment to charitable organizations.[17] In the 108th Congress, the House overwhelmingly passed H.R. 1787, the "Good Samaritan Volunteer Firefighter Assistance Act of 2003," which extends certain liability protections to those who donate equipment to volunteer fire stations, by a vote of 397–3.[18] The provisions of that Act are now included as Section 125 of the USA PATRIOT Improvement and Reauthorization Act of 2005, which was signed into law on March 9, 2006.[19] On the same day, the House also overwhelmingly passed H.R. 1084, the "Volunteer Pilot Organization Protection Act," by a vote of 385–12.[20]

Most recently, the House passed the "Katrina Volunteer Protection Act of 2005," H.R. 3736, by voice vote on September 14, 2005.[21] This bill extends liability protections to any person or entity that voluntarily rendered aid in the wake of Hurricane Katrina, provided that the harm was not caused by willful, wanton, reckless, or criminal conduct.

THE NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2006

H.R. 1176, the "Nonprofit Athletic Organization Protection Act of 2006," is intended to stem the growing threat of lawsuits against sports rulemaking bodies. Rulemaking bodies play a critical role in facilitating all levels and all types of sports. Nonprofit rulemaking 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, this rulemaking function is a predictive endeavor without the benefit of perfect foresight, and sports involve inherent risks.[22] Thus, when the inevitable accidents do occur, nonprofit rulemaking bodies are often sued along with the local school district, coach, and referee because such organizations are presumed to have "deep pockets." This growing trend of lawsuits has led to a dramatic increase in the insurance premiums for many rulemaking associations. For example, the National High School Federation, which develops rules for 17 different sports, saw a 300 percent increase for insurance premiums over just 3 years.[23] This increase means that insurance premiums now make up over 10 percent of the Federation's annual budget.[24]

If this trend continues, these rulemaking authorities may be driven out of existence and amateur sports would suffer. Typical bodily injury cases cost over $25,000 in legal fees—even when the case is ultimately dismissed.[25] As a result, organizations are unable to find a provider of insurance willing to offer them coverage

[17] H.R. 7, 107th Cong. § 401 (2001).
[18] 150 Cong. Rec. H7097 (daily ed. Sept. 14, 2004).
[19] 151 Cong. Rec. H11289 (daily ed. Dec. 8, 2005), Pub. L. No. 109–177.
[20] 150 Cong. Rec. H7098 (daily ed. Sept. 14, 2004).
[21] 151 Cong. Rec. H7887 (daily ed. Sept. 14, 2005).
[22] *Good Samaritan Volunteer Firefighter Assistance Act of 2003, the Nonprofit Athletic Organization Protection Act of 2003, and the Volunteer Pilot Organization Protection Act: Hearing Before the H. Comm. on the Judiciary,* 108th Cong. 12 (2004) (testimony of Robert F. Kanaby, Executive Director of the National Federation of High School Associations).
[23] Id.
[24] *Id.*
[25] *Id. at 22.*

because of their exposure to millions of potential litigants (high school athletes).[26]

H.R. 1176 addresses this insurance reality by mirroring the Volunteer Protection Act and exempting nonprofit athletic organizations from liability *only* for harm caused by an act or omission of such organization in the adoption of rules of play (and not in any other context) for sanctioned or approved athletic competitions or practices. This legislation does provide a blanket grant of immunity; rather nonprofit athletic rulemaking organizations could still be held liable for any grossly negligent or reckless, willful, or criminal acts or omissions in the formulation of these rules of play. The athletic organizations covered are defined by both their IRS nonprofit status and those with a primary function of setting rules for competitions. Also covered are employees of such organizations acting in the scope of their official duties. 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. 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 predecessor bill to H.R. 1176, H.R. 3369, received majority support (217–176) in the House of Representatives in the 108th Congress.[27] Because the bill was brought up on suspension of the rules and failed to achieve the requisite two-thirds support, it did not pass. However, a new provision, subsection 4(d), has been added to the bill to address the concerns of some Members that the liability protections be clearly directed at personal injury claims.

H.R. 1176 is supported by, among others, the National Federation of State High School Associations; the National Collegiate Athletic Association; the National Council of Youth Sports; the Amateur Athletic Union of the United States (AAU); Little League Baseball; Pop Warner Little Scholars, Inc.; USA Baseball; USA Softball; and the Women's Sports Foundation.

HEARINGS

The full Committee on the Judiciary held no hearings on H.R. 1176 in the 109th Congress. However, the full Committee on the Judiciary held a hearing on a nearly identical bill, H.R. 3369, in the 108th Congress, at which testimony was received from Mr. Robert Kanaby, Executive Director of the National Federation of State High School Associations, and Professor Andrew F. Popper, of the American University and Washington College of Law.

COMMITTEE CONSIDERATION

On March 2, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 1176 by voice vote, a quorum being present.

---

[26] *Id.* at 24–25.

[27] 150 Cong. Rec. H7096 (daily ed. Sept. 14, 2004).

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 there were no recorded votes during the Committee consideration of H.R. 1176.

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. 1176, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 10, 2006.

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. 1176, the "Nonprofit Athletic Organization Protection Act of 2006."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gregory Waring (for Federal costs), who can be reached at 226–2860, and Melissa Merrell (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1176—Nonprofit Athletic Organization Protection Act of 2006.

H.R. 1176 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 implementing the legislation would result in no significant costs to the Federal Government. Enacting H.R. 1176 would not affect direct spending or revenues.

H.R. 1176 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs, if any, would not be significant and would be well below the threshold for intergovernmental mandates established in that act ($64 million in 2006, adjusted annually for inflation). This bill contains no new private-sector mandates as defined in UMRA.

H.R. 1176 contains an intergovernmental mandate because it would preempt certain state liability laws. Specifically, the bill would exempt nonprofit athletic organizations from liability under state tort laws for certain injuries that may occur during practice or competitions. CBO estimates that the costs, if any, would not be significant and would be well below the threshold established in UMRA.

The CBO staff contacts for this estimate are Gregory Waring (for Federal costs), who can be reached at 226–2860, and Melissa Merrell (for the state and local impact), who can be reached at 225–3220. 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.1176, 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 Representatives, the Committee finds the authority for this legislation in art. I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title

Section 1 provides that H.R. 1176 may be cited as the "Nonprofit Athletic Organization Protection Act of 2006."

Section 2. Findings

Section 2 sets forth eight Congressional findings regarding the role amateur athletics plays in the overall health and well-being of America's youth. The findings also note that rules and rule-making bodies are essential for the development of amateur athletics, and that these rules and rule-making bodies have become the focus of a large number of lawsuits.

Section 3. Definitions

Section 3 sets forth the operative definitions for the Act. Those definitions are identical to those found in the Volunteer Protection

Act, 14 U.S.C. § 14505, with one addition: the term "Nonprofit Athletic Organization." That term is defined as nonprofit organization (as that term is defined in Section 401(c)(3) of the Tax Code) 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.

Section 4. Limitation on Liability for Nonprofit Athletic Organizations

Section 4 creates ordinary negligence liability protection for nonprofit athletic organizations for lawsuits arising out of their rulemaking 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. These protections are identical to those contained within the Volunteer Protection Act, 42 U.S.C. § 14503, and only protect against negligent actions and decisions of a nonprofit athletic organization related to enacting a "rule of play," as opposed to a rule related to hiring or eligibility. This protection does not apply when certain State law requirements are in effect and such requirements have not been met.

Subsection 4(a) provides that a nonprofit athletic organization shall not be liable for harm caused by an act or omission of such an organization in the adoption of rules of play for sanctioned or approved athletic competitions or practices if it was acting within the scope of its duties at the time of the adoption of the rules; it met the applicable State licensing, certification or authorization requirements; and the harm was not caused by willful or criminal misconduct, gross negligence, or reckless misconduct on the part of the nonprofit athletic organization. Nothing in this subsection would preclude a suit against a coach or referee, or the organization that hired such coach or referee, for claims of molestation or sexual battery.

Subsection 4(b) provides that nothing in the act shall be construed to affect a lawsuit brought by a covered nonprofit athletic organization against any employee, agent, or volunteer of the organization. This section does not preclude a lawsuit by an employee, agent, or volunteer against the nonprofit athletic organization, provided that the suit is not related to the adoption of rules of play as provided in subsection 4(a).

Subsection 4(c) provides that if the laws of a State limit the liability of a nonprofit athletic organization subject to the following conditions, those conditions 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; or (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.

Subsection 4(d) provides that this Act shall not apply to any claims arising out of Federal, State, or local antitrust, labor, envi-

ronmental, defamation, tortious interference of contract law, or civil rights law, or any other Federal, State, or local law providing protection from discrimination.

Section 5. Preemption

Section 5 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 liability relating to the rulemaking activities of nonprofit athletic organizations.

Section 6. Effective Date

Section 6 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.

MARKUP TRANSCRIPT

BUSINESS MEETING

THURSDAY, MARCH 2, 2005

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, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill H.R. 1176, the "Nonprofit Athletic Organization Protection Act," for purposes 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. 1176, follows:]

I

109TH CONGRESS
1ST SESSION

H. R. 1176

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2005

Mr. SOUDER (for himself and Mr. CANTOR) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage, adoption, or failure to adopt rules of play 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 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Amateur Sports and education-based athletics are an important part of our culture. Sports provide a tremendous opportunity for the youth of America to learn the skills of leadership, teamwork, and discipline. Studies have shown that participation in these activities is directly connected to academic achievement and overall social development.

(2) Amateur athletics are integral to the good health and overall well-being of American society. Nonprofit organizations put forward their best efforts to enact rules that are in the best interests of young people. Injuries will occur as a result of the inherent risks involved in sports. These risks, however, should not work to the detriment of the greater good served by amateur athletics.

(3) Young people who participate in school sports and other amateur competition have lower levels of obesity.

(4) Young people who participate in sports tend to be fitter adults, and suffer fewer health problems as they age.

(5) Playing rules in amateur sports are necessary to provide the opportunity for young people to participate in age- and skill level-appropriate competition.

(6) Sport involves intense physical activity. It also involves a certain element of danger. Rule making is anticipatory, and hence a difficult balancing act. Rules committee members face a constant struggle to balance the tradeoffs of limiting risk and preserving the key elements and sound traditions of the sport. Rules makers must draw unambiguous lines; they do not have the luxury of self-protective vagueness. Given the large number of participants and the risks inherent in sport, injuries cannot be avoided. By deciding to partake in competition, athletes assume such risks. Allowing lawsuits based merely on the good faith development of the rules is wrong and unfair.

(7) Rules makers have been the target of an increasing number of lawsuits claiming negligence due to the adoption, or failure to adopt, particular rules for amateur sports.

(8) Repeatedly defending claims will have a detrimental impact on the ability of rules makers to continue to provide these services, and will discourage the best and brightest coaches, officials, and administrators from serving on rules committees. Additionally, some children may lose the opportunity to participate in organized sports if higher insurance

premiums compel amateur athletic organizations to raise fees.

SEC. 3. 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. 4. LIMITATION ON LIABILITY FOR NONPROFIT ATHLETIC ORGANIZATIONS.

(a) LIABILITY PROTECTION FOR NONPROFIT ATHLETIC ORGANIZATIONS.—Except as provided in sub-

sections (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 of play 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.

(d) NONAPPLICABILITY TO CERTAIN CLAIMS.—The limitation on liability provided by subsection (a) does not apply to an action or claim arising out of a Federal, State, or local antitrust, labor, environmental, defamation, tortious interference of contract law, or civil rights law, or any other Federal, State, or local law providing protection from discrimination.

SEC. 5. 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 rule-making activities of nonprofit athletic organizations.

SEC. 6. EFFECTIVE DATE.

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

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

○

Chairman SENSENBRENNER. The Chair recognizes himself briefly to explain the bill.

This bill, like the previous bill, is narrowly tailored to address the liability exposure for problems with nonprofit sports rulemaking bodies such as the National Federation of State High School Athletic Associations. These rulemaking bodies use the expertise of experienced volunteers to set forth rules for athletic competitions and practices that preserve sports traditions and minimize risks to participants.

Because these organizations are not covered by the Volunteer Protection Act, lawsuits have dramatically increased insurance premiums for many rulemaking associations. The Federation of National High Schools saw a 300-percent increase in the premiums over 3 years. What this bill does is it provides nonprofit athletic rulemaking organizations with limited liability protections. I believe that this is a good bill. I ask unanimous consent to include a letter of support from the National Federation of State High School Athletic Associations and yield back the balance of my time.

Mr. CONYERS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. My reservations against this bill is because, as it's drafted, the broad immunity that 1176, this bill's number, extends to nonprofit athletic organizations, reaches far beyond the potential for frivolous lawsuits. It 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. So, in effect, this legislation will effectively bar those who have non-frivolous lawsuits from having their day in court. Such lawsuits that call attention to public safety hazards are needed to protect our Nation's children.

In addition, this measure would also protect the right of a nonprofit athletic organization to sue others. If this legislation is designed to suppress unnecessary litigation altogether, how are an organization's grievances are legitimate but individual complaints are not? Written to suppress only the outlets available to individual citizens, this legislation is overreaching and unfair. To me, it's hypocritical to suggest that these organizations be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

So these are a couple of the serious problems that seem to me require us to send this bill back to Subcommittee.

Ms. LOFGREN. Would the gentleman yield?

Mr. CONYERS. Of course.

Ms. LOFGREN. I would just like to concur with the reservations expressed by the gentleman and note that if an organization promulgated rules requiring adult supervision at a game but failed to provide for background checks or the kind of efforts you need to prevent children from being the victims of sexual predators, they would be exempt from that negligence. This has become a very big issue in the San Francisco Bay Area, and recently we've had two soccer coaches that have molested girls on their girls' soccer team, and it is important.

I mean, I support athletics and I support these nonprofit organizations, but they have to take due diligence to make sure that their young charges are protected from sexual predators. And it is a

huge mistake to exempt them from that liability if they don't take those prudent steps. And I thank the gentleman for yielding.

Mr. CONYERS. Well, the gentlelady from California has emphasized the point that causes my reservation. This legislation does not differentiate between frivolous lawsuits and meritorious lawsuits, and thereby it fails in a very large and serious way.

Mr. Chairman, I ask unanimous consent to include my full statement in the record and return the balance of my time.

Chairman SENSENBRENNER. And, without objection, so ordered.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND RANKING MEMBER, COMMITTEE ON THE JUDICIARY

Mr. Chairman, I oppose this legislation. As drafted, H.R. 1176 provides immunity for nonprofit athletic organization from lawsuits in the adoption of rules for sanctioned or approved athletic competitions or practices. This legislation would virtually eliminate any valid claims from being brought forth.

Specifically, the legislation does not differentiate between meritorious lawsuits and frivolous lawsuits. H.R. 1176 prohibits civil litigation of any grievance arising under the rules promulgated by a nonprofit sporting organization. As drafted, the broad immunity H.R. 1176 extends to nonprofit athletic organizations reaches far beyond the potential for "frivolous" lawsuits in the federal judicial system. It 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 lawsuits filed by parents because their child was not put on a team may rightly be dismissed, cases with legal merit, such as a rule which endangers the life of a child, would also be dismissed. In effect, this legislation will effectively bar them from their day in court. Such lawsuits call attention to public safety hazards are needed to protect our nation's children.

Additionally, H.R. 1176 also protects the right of a nonprofit athletic organization to sue others. If this legislation is designed to suppress unnecessary litigation altogether, how are an organization's grievances are legitimate but individual complaints are not? Written to suppress only the outlets available to individual citizens, this legislation is simply overreaching and unfair. It is the height of hypocrisy to suggest that these organizations be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

There are serious problems with this legislation. I urge my colleagues to oppose H.R. 1176.

Chairman SENSENBRENNER. Also without objection, all Members may include opening statements in the record at this point.

[The prepared statement of Ms. Waters follows:]

PREPARED STATEMENT OF THE HONORABLE MAXINE WATERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I rise in opposition of this legislation, H.R. 1176, the "Nonprofit Athletic Organization Protection Act." This bill provides 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. As a member of the House Judiciary Committee, many of my colleagues have reservations about the broad sweep of immunity that this bill will give to certain organizations and eliminate valid discrimination claims.

H.R. 1176 would provide immunity for any act or omission of a nonprofit athletic organization and its employees in the adoption of rules for sanctioned or approved athletic competitions or practices. This broad sweep of immunity would virtually eliminate valid discrimination claims such as those found in the following cases:

In Cureton v. NCAA, a class of 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. Early on, the Educational Testing Services (ETS), which designed the SAT, criticized the NCAA's then-pro-

posed use of a fixed cut-off score and warned such a rule would have a disproportionate impact on African-American students. It did in fact have such an impact, but the NCAA did not change its rule. Only when this class 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.

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 , who suffers from a circulatory disorder making it painful to walk long distances, to ride in a golf cart between shots at Tour events. The nonprofit PGA had ruled that walking the course is an integral part of golf, and 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.

Moreover, in Michigan High School Athletic Association v. Communities for Equity, a federal district court ruled that the state's high school athletic association practice of scheduling its female teams during nontraditional seasons discriminated against female athletes. The court found that scheduling the girls' sports, but not boys' sports, 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.

H.R. 1176 allows nonprofit athletic organizations to sue, but not be sued. It is the height of hypocrisy to suggest that these organizations be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

There is no need for Congress to preempt state law. If states want to protect certain state athletic organizations, they can do so right not without any action by Congress. Unfortunately, H.R. 1176 doesn't just preempt state law. It preempts state law that gives more protections to athletes and leaves in places states that give additional liability protections to nonprofit athletic organizations.

I urge my colleagues to see this bill for what it really does, catering to special interests. Please join me in voting against HR 1176. Thank you.

Chairman SENSENBRENNER. Are there amendments? Are there amendments?

[No response.]

Chairman SENSENBRENNER. If there are no amendments, a reporting quorum is present. The question occurs on the motion to report the bill H.R. 1176 favorably. All those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the motion to report favorably is agreed to.

Without objection, the staff is directed to make any technical and conforming changes, and all Members may be given 2 days, as provided by the House rules, in which to submit additional, dissenting, supplemental, or minority views.

And last, but not least, the next item on the agenda is the adoption of H.R. 2955, the "Intellectual Property Jurisdiction Clarification Act of 2005." The Chair recognizes the gentleman from Texas, Mr. Smith, the Chairman of the Subcommittee on Courts, the Internet, and Intellectual Property, for a motion.

Mr. SMITH. Mr. Chairman, the Subcommittee on Courts, the Internet, and Intellectual Property reports favorably the bill H.R. 2955 and moves its favorable recommendation to the full House.

[Intervening business.]

The business noticed on today's schedule having been concluded, without objection, the Committee stands adjourned.

[Whereupon, at 11:01 a.m., the Committee was adjourned.]

DISSENTING VIEWS

We strongly oppose H.R. 1176, the "Nonprofit Athletic Organization Protection Act of 2005," which would extend immunity to nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating 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.

H.R. 1176 is problematic for several reasons. First, under H.R. 1176, 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 legitimate claims and matters 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. 1176 prohibits civil litigation of any grievance arising under the rules promulgated by a nonprofit sporting organization. Specifically, H.R. 1176 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 nonfrivolous. H.R. 1176 would dramatically obstruct valid, meritorious claims that call attention to public safety hazards, discriminatory practices, and are needed to protect our nation's children.

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 reach-

ing. This legislation would 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.

B. H.R. 1176 PROVIDES ONE WAY IMMUNITY.

Significantly, while immunizing nonprofit athletic organizations from civil claims, H.R. 1176 protects the right of a nonprofit athletic organization to sue others.[1] 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. 1176 however, does not meet this test. Instead of protecting good faith and reasonable actions by non-profit athletic associations designed to protect athletes from physical harm, the bill massively overreaches and limits legitimate actions.

JOHN CONYERS, JR.
BOBBY SCOTT.
MAXINE WATERS.
BILL DELAHUNT.
LINDA T. SÁNCHEZ
DEBBIE WASSERMAN SCHULTZ.
HOWARD L. BERMAN.
MELVIN L. WATT.

○

[1] H.R. 1176, sec. 3(b).