

perfectly reasonable solution to a problem which we should not have allowed to arise in the first place.

Mr. CONYERS. Mr. Speaker, I rise in support of this legislation amending the National Gambling Impact Study Commission. Chairman HYDE introduced this bill after two of the Commissioners, James Dobson, president of Focus on the Family, and Kay James, dean of Regent University, refused to serve on the commission unless they were assured that they cannot be sued for their work on the Commission. Apparently, Mr. Dobson served on a pornography commission in the 1980's at which time he was sued over his work on the commission. Although the Department of Justice eventually did defend him, it was only because the Attorney General had been named in the same suit.

Now, because the Department of Justice will not agree that a member of the Gambling Commission is a Federal employee for purposes of liability under the Federal Tort Claims Act, Chairman HYDE has introduced this legislation specifically providing that the Gambling Commission is a Federal agency under FTCA and that all members and personnel of the Commission are Federal employees under the act.

The legislation also includes a rule of construction making it clear that this bill does not imply that other commissions or other members or personnel on other commissions are not covered by the FTCA.

Given the fact that two commissioners may resign without assurances that they will not be sued for their work, I understand the desire to quickly pass this legislation. Nonetheless, I do have some concerns.

When we have created other commissions in the past, we have been silent as to whether or not the commissioners were covered by the Federal Tort Claims Act. I don't know whether we assumed they were covered or we assumed they weren't covered, but it seems to me that we should consider the consequences of what it means to change the law to clearly cover such individuals. This issue is likely to come up again since I would imagine that other people might also be hesitant to serve on future commissions without assurances that they will be defended in the event of suits, particularly given that at least the Gambling Commissioners now have this protection.

I think it would be very useful for the committee to hold hearings considering the definitions of Federal agency and employee of the Government under the Federal Tort Claims Act. There are questions not only as to whether commissions are covered, but as to whether committees, boards and other quasi-governmental organizations are covered as well. Since the Federal Tort Claims Act is unclear in this regard, perhaps the best course of action would be to amend that act itself to be clear as to which governmental and quasi-governmental entities are covered.

The bottom line is that we shouldn't have to guess as to whether or not a certain entity is covered by the Federal Tort Claims Act. If the law is unclear, we should determine what should be covered and then make certain that those entities are covered. I hope the chairman will consider holding hearings and perhaps even moving legislation—should it be appropriate—to clear up this morass.

In the meantime, however, I support the passage of this legislation.

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

Mr. HYDE. Mr. Speaker, I have no further requests for time and I yield back the balance my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois [Mr. HYDE] that the House suspend the rules and pass the bill, H.R. 1901.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1901.

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

There was no objection.

CHARITABLE DONATION ANTITRUST IMMUNITY ACT OF 1997

Mr. HYDE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1902) to immunize donations made in the form of charitable gift annuities and charitable remainder trusts from the antitrust laws and State laws similar to the antitrust laws.

The Clerk read as follows:

H.R. 1902

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 "Charitable Donation Antitrust Immunity Act of 1997".

SEC. 2. IMMUNITY FROM ANTITRUST LAWS.

The Charitable Gift Annuity Antitrust Relief Act of 1995 (15 U.S.C. 37 et seq.) is amended—

(1) by amending section 2 to read as follows:

"SEC. 2. IMMUNITY FROM ANTITRUST LAWS.

"(a) INAPPLICABILITY OF ANTITRUST LAWS.—Except as provided in subsection (d), the antitrust laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.

"(b) IMMUNITY.—Except as provided in subsection (d), any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning, issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.

"(c) TREATMENT OF CERTAIN ANNUITIES AND TRUSTS.—Any annuity treated as a charitable gift annuity, or any trust treated as a charitable remainder trust, either—

"(1) in any filing by the donor with the Internal Revenue Service; or

"(2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;

shall be conclusively presumed for the purposes of this Act to be respectively a charitable gift annuity or a charitable remainder trust, unless there has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the donor's annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder trust when created.

"(d) LIMITATION.—Subsections (a) and (b) shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift annuities, or charitable remainder trusts, created after the State enacts a statute, not later than December 8, 1998, that expressly provides that subsections (a) and (b) shall not apply with respect to such charitable gift annuities and such charitable remainder trusts."; and

(2) in section 3—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (1);

(C) by inserting after paragraph (1), as so redesignated, the following:

"(2) CHARITABLE REMAINDER TRUST.—The term 'charitable remainder trust' has the meaning given it in section 664(d) of the Internal Revenue Code of 1986 (26 U.S.C. 664(d)).";

(D) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(E) by inserting after paragraph (3) the following:

"(4) FINAL DETERMINATION.—The term 'final determination' includes an Internal Revenue Service determination, after exhaustion of donor's and donee's administrative remedies, disallowing the donor's charitable deduction for the year in which the initial contribution was made because of the donee's failure to comply at such time with the requirements of section 501(m)(5) or 664(d), respectively, of the Internal Revenue Code of 1986 (26 U.S.C. 501(m)(5), 664(d))."

SEC. 3. APPLICATION OF ACT.

This Act, and the amendments made by this Act, shall apply with respect to all conduct occurring before, on, or after the date of the enactment of this Act and shall apply in all administrative and judicial actions pending on or commenced after the date of the enactment of this Act.

SEC. 4. STUDY AND REPORT.

(a) STUDY AND REPORT.—The Attorney General shall carry out a study to determine the effect of this Act on markets for non-charitable annuities, charitable gift annuities, and charitable remainder trusts. The Attorney General shall prepare a report summarizing the results of the study.

(b) DETAILS OF STUDY AND REPORT.—The report referred to in subsection (a) shall include any information on possible inappropriate activity resulting from this Act and any recommendations for legislative changes, including recommendations for additional enforcement resources.

(c) SUBMISSION OF REPORT.—The Attorney General shall submit the report referred to in subsection (a) to the Chairman and the ranking member of the Committee on the Judiciary of the House of Representatives, and to the Chairman and the ranking member of the Committee on the Judiciary of the Senate, not later than 27 months after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] and the gentleman from Massachusetts [Mr. FRANK] each will control 20 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

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

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the bill under consideration.

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

There was no objection.

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

Mr. Speaker, I would state that in 1995, Congress learned of an assault on charitable giving that was being waged in a class action lawsuit underway in the Federal court in Texas. The defendants in the case, a collection of charitable organizations which included the Lutheran Church, the United Way, and Northwestern University, stood accused of violating the antitrust laws by agreeing to use the same annuity rate when is offering donors charitable gift annuities.

Charitable gift annuities are a vehicle for charitable giving. The donor gives a charitable organization a sum of money. In return, the donor receives a charitable deduction and the agreement of the donee to pay back a fixed income for life. Depending on the annuity rate used, the value of the life income in relation to the total donation fluctuates, as does the amount of the charitable deduction.

Finding that there were strong public policy reasons to protect charitable organizations from antitrust suits in this context, the 104th Congress enacted the Charitable Gift Annuity Antitrust Relief Act of 1995. That act specifies that it is not a violation of the antitrust laws for section 501(c)(3) organizations to agree to use the same annuity rate when issuing charitable gift annuities. The bill was unanimously approved in the House by a vote of 427 to 0; the Senate passed the House bill by voice vote. The expectation was that the act would lead to the dismissal of the class action suit and an end to the Texas case.

Alas, this has not been the result. When the 1995 act was asserted as a defense in the case, the judge denied the motion to dismiss, citing new allegations and issues of fact which were allegedly raised under the act. The Court's rulings make it clear that in order to achieve the goal we originally intended, that is, to protect this kind of charitable fundraising from the antitrust laws, we must act again. Two issues in particular must be clarified: that all activity related to the issuance of a charitable gift annuity is protected, and that the Internal Revenue Service, not the district court, is the arbiter of whether a particular annuity meets the criteria of a charitable gift annuity.

□ 1215

The bill before us today, the Charitable Donation Antitrust Immunity

Act of 1997, amends the 1995 act for that purpose. H.R. 1902 provides antitrust protection for charitable gift annuities and charitable remainder trusts, and grants immunity from anti-trust suit to any person involved in issuing or selling those annuities or trusts. It establishes a conclusive presumption that a particular instrument is a charitable gift annuity or charitable remainder trust if the donor has treated it as one in filings with the Internal Revenue Service, or if the donee has treated it as one in documents provided to the donor. However, the conclusive presumption would not be available if the Internal Revenue Service has made a final determination that the annuity or trust was not qualified under the revenue laws.

H.R. 1902 is a bipartisan effort to re-draft legislation to ensure that the courts will interpret the law in a manner consistent with congressional intent. The gentleman from Michigan [Mr. CONYERS], the ranking member, and I have worked closely on this legislation to ensure that the exemption is drawn as narrowly as possible while still achieving our goal. A companion bill has been introduced in the Senate by Senators COVERDELL, DODD, and DEWINE, and I anticipate it will receive swift consideration in that body. I also should mention the Antitrust Division of the Department of Justice has indicated they have no objection to the new language.

Mr. Speaker, in these days of fiscal conservatism we are asking our communities to do more and more. With the help of charitable organizations, we stretch our government dollars to feed more hungry people, build homes for the poor, and care for the less fortunate. Every dollar raised by these organizations is needed to help in the mission of the charity. By enacting H.R. 1902, we are making sure that these scarce resources are not used to pay lawyers to defend a lawsuit that Congress has deemed meritless, but instead to contribute to the strength of our communities.

Mr. CONYERS. Mr. Speaker, as the Members of this House well know I am a strong supporter of vigorous enforcement of the antitrust laws, and as a general matter I do not favor any exemptions or exclusions from the antitrust laws or legislation which would impact pending cases.

However, when it comes to beneficial cooperative activity by charities I believe there is no legitimate role for the antitrust laws. This is why when I learned last year that a group of plaintiffs had brought an unfounded antitrust action against a large number of charities who had agreed to use a common formula in offering gift annuities, I cosponsored with Chairman HYDE H.R. 2525. That legislation granted an antitrust immunity for charities offering gift annuities and eventually passed the Congress unanimously and was signed into law by the President.

Unfortunately, subsequent to the law's enactment, the plaintiffs amended their complaint to allege that the charities' accountants and lawyers had also participated in the anti-

trust conspiracy and charged that the charities' tax exempt status was fraudulent. Despite Congress' clear intent, rather than throw these frivolous allegations out, the courts have continued to allow the case to proceed, allowing the parties to engage in discovery. As a result, the charities continue to face the risk of billions of dollars in damages and millions of dollars in legal fees.

This bill would strengthen last year's law to clarify that actions by professionals associated with charitable gift annuities are not subject to the antitrust laws, and create a conclusive presumption of coverage to entities treated as charities by the IRS. This should end the wasteful litigation and allow the charities to focus their resources on better serving our communities.

This law is narrowly crafted and specific. It will do no damage to the letter or spirit of our antitrust laws. The language has been carefully reviewed by the Justice Department and they have voiced no objections to the bill. I urge the Members to join me in supporting this important legislation.

Mr. FRANK of Massachusetts. Mr. Speaker, I believe that the distinguished chairman has explained this quite adequately.

Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

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

The SPEAKER pro tempore [Mr. PETRI]. The question is on the motion offered by the gentleman from Illinois [Mr. HYDE] that the House suspend the rules and pass the bill, H.R. 1902.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

VETERANS' CEMETERY
PROTECTION ACT OF 1997

Mr. HYDE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1532) to amend title 18, United States Code, to create criminal penalties for theft and willful vandalism at national cemeteries, as amended.

The Clerk read as follows:

H.R. 1532

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 "Veterans' Cemetery Protection Act of 1997".

SEC. 2. SENTENCING FOR VANDALISM AT NATIONAL CEMETERIES.

(a) *General Rule.*—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the sentencing guidelines to provide a sentencing enhancement for any offense against any property of a national cemetery—

(1) by at least 4 levels if the offense involves the willful injury to or depredation against such property, and

(2) by at least 6 levels if the offense involves the knowing theft, conversion, or unlawful sale or disposition of such property.

(b) *COMMISSION DUTY.*—In carrying out subsection (a), the Sentencing Commission shall ensure that the sentences, guidelines, and