SECTION 1. WAIVER OF PATENT AND TRADEMARK REQUIREMENTS IN CERTAIN EMERGENCIES.

Section 2 of title 35, United States Code, is amended by adding at the end the following new subsection:

''(e) WAIVER OF REQUIREMENTS IN CERTAIN EMERGENCIES.—The Director may waive statutory provisions governing the filing, processing, renewal, and maintenance of patents, trademark registrations, and applications therefor to the extent the Director deems necessary in order to protect the rights and privileges of applicants and other persons affected by an emergency or a major disaster, as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122). A decision not to exercise, or a failure to exercise, the waiver authority provided by this subsection shall not be subject to judicial review.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 4742 currently under consideration.

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

There was no objection.

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

Madam Speaker, I rise in support of H.R. 4742, to amend title 35, United States Code, to allow the Director of the Patent and Trademark Office to waive statutory provisions governing patents and trademarks in certain emergencies.

The devastation caused by Hurricane Katrina in the gulf region affected the ability of applicants, patentees, trademark holders and other interested parties to do business with the PTO.

Following the disaster, the agency invoked as much administrative and statutory authority as it could to accommodate those affected. For example, the PTO created a toll-free hotline for victims to call with questions or problems; attempted to place calls to all registered practitioners in Alabama, Mississippi and Louisiana; blocked outgoing mail to those living at relevant ZIP codes in the region; vacated all outstanding examiners' actions, to be remailed at a later time; and accorded ''special consideration'' to all reductions of patent term adjustments where the applicant delay was attributable to the hurricane.

Despite its best efforts to date, the PTO needs additional authority to provide individuals and businesses relief from certain statutory deadlines, especially those pertaining to the maintenance of granted patents and registered trademarks.

Pursuant to the bill, the PTO may waive statutory provisions governing the filing, processing, renewal and maintenance of patents, trademark registrations and applications to the extent the director deems necessary to protect the rights and privileges of applicants and other persons affected by certain emergencies or a major disaster.

Madam Speaker, this is a noncontroversial measure that will ensure that the PTO carries out its statutory mandates in a fair manner during emergency conditions.

I urge Members to support it.

Madam Speaker, I reserve the balance of my time.

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

I too rise in support of this legislation. H.R. 4742 has been reported favorably by the Committee on the Judiciary with no controversy.

What we are talking about today responds in part to the devastation caused by Hurricane Katrina. We all know that among the hurricane's wide-ranging impact was the destruction of infrastructure and a legal maelstrom caused by judicially and statutorily imposed deadlines for filing documents and making payments. This also is the case with the patent law, which forces individuals and businesses to comply with statutory deadlines for patent and trademark filings in the midst of a natural disaster.

The measure before us is designed to alleviate that pressure by permitting the Patent and Trademark Office director to extend statutory deadlines during emergencies. This section provides an opportunity to aid innovators who, because of devastation, might lose rights to their inventions and creation.

I am pleased to join with those that urge the swift passage of H.R. 4742.

Mr. SMITH of Texas. Madam Speaker, I thank the Gentleman from Wisconsin for moving this legislatlon to the House floor.

The Committee Chairman did a good job of summarizing how the bill works, so I won't repeat his description.

I would point out that granting the additional authority to the PTO Director under H.R. 4742 is consistent with other actions by the Committee and Congress to assist other individuals and institutions in the Gulf region.

This includes enactment of legislation that allows Federal courts during emergency conditions to operate outside of their geographic domains; provide transportation and subsistence expenses for indigent defendants; and delay or toll judicial proceedings.

Madam Speaker, this is a good bill that will help inventors, trademark holders, and other interested parties maintain their intellectual property rights under adverse conditions.

I urge Members to support H.R. 4742.

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

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 4742.

The question was taken; and (two-thirds of those voting having responded in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2006

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and pass 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, as amended.

The Clerk read as follows

H.R. 1176

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 2006''.

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 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 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, sexual assault, fraud, sexual molestation, freedom of expression, sexual harassment, 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.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 1176 currently under consideration.

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

There was no objection.

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

Madam Speaker, I rise in support of H.R. 1176, the Nonprofit Athletic Organization Protection Act of 2006. This bill is narrowly tailored to correct specific liability exposure problems for nonprofit sports rulemaking bodies, such as the National Federation of State High School Associations. The nonprofit athletic rulemaking bodies covered by this bill 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 competition and practices that 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 that cannot all be minimized with a rule. Thus, when inevitable accidents do occur, nonprofit rulemaking bodies are often sued along with the local school district, coach, and referees because such organizations are presumed to have ''deep pockets.''

In 1997, Congress passed the Volunteer Protection Act to shield volunteers from liability for some forms of negligence in response to concerns that America's lawsuit culture was inhibiting this country's risk tradition of volunteerism. However, because the Volunteer Protection Act does not protect organizations, 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 in just over 3 years. This increase means that insurance premiums now make up over 10 percent of the Federation's annual budget. These trends deprive the Federation of funds that should be directed towards vital resources, such as sports equipment upgrades or routine field maintenance. If these insurance premiums continue to skyrocket, the rulemaking authorities may be unable to attract the quality of volunteers necessary to write effective rules, or worse, they may be driven out of existence entirely.

This legislation limits liability exposure for these nonprofit athletic rulemaking organizations in a very targeted manner. Modeled on the Volunteer Protection Act, it does not confer blanket immunity. Rather, liability will still attach for gross negligence or reckless, willful or criminal misconduct.

This bill is targeted at liability stemming only from an organization's promulgation of rules of play. During the committee's consideration of the bill, some raised concerns about the extent of the liability protections of the bill and claimed that it would protect, among others, entities that hire child molesters without conducting a background check. To ensure against such an unintended consequence, the legislation adds sexual assault, sexual molestation, and sexual harassment to the list of claims, including antitrust, labor, and civil rights claims, that are specifically exempted from the liability protections of this bill.

So, to be absolutely clear, this bill as it comes to the floor today has been amended to meet every single objection to date about the scope and extent of the liability protections of the bill. Consequently, this bill should enjoy overwhelming bipartisan support.

Further, this bill does not prevent suits against nonrulemaking entities, such as the owner of a field of play or an equipment manufacturer, who are likely to be implicated in a sports-related injury claim.

By curbing the worst excesses of the lawsuit culture Congress can ensure that those who teach our children sports are more concerned about fair play and good sportsmanship than their insurance rates or a potential lawsuit. This bill is supported by 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, and Little League Baseball, among others.

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Madam Speaker, I would like to submit for the RECORD a letter from Robert Kanaby, executive director of the National Federation of State High School Associations, showing the support of his organization and each of the 50 individual State high school associations for this legislation.

I hope that all my colleagues will join me in passing this bill.

NATIONAL FEDERATION OF
STATE HIGH SCHOOL ASSOCIATIONS,
Indianapolis, IN, March 15, 2006.

DEAR MEMBER OF CONGRESS: On behalf of the National Federation of State High School Associations (NFHS), I am writing to voice our strong support for the ''Nonprofit Athletic Organization Protection Act of 2005,'' H.R. 1176, and urge you to vote for this legislation when it reaches the House floor. On March 2, 2006, the Judiciary Committee voted to support moving this bill forward, and we are looking for your support when the bill reaches the House floor.

Amateur and education-based sports are an important part of our society. These activities provide great benefits for participants and spectators alike. It is widely acknowledged that youth and interscholastic sports are a tremendous asset to young people and an important part of the community. In addition, they provide experiences for athletes that assist them in becoming better human beings and citizens in our society.

The National Federation of State High School Associations, a non-profit organization that makes rules for high school sports, has been the target of liability claims alleging negligence due to the passage or adoption of rules for sanctioned or approved competitions. These allegations have resulted in an increase in the number of liability claims against this organization. The claims are beginning to have a detrimental financial and operational impact on the NFHS and could eventually affect our ability to continue to provide these services to our nation's high schools.

While these claims are believed to be without merit, the cost of defending claims and the uncertainty of judicial proceedings have created significant challenges. It is possible we will need to reconsider providing such rules or guidelines in the future. This may be true of other amateur sports rules makers. Without this legislation, we expect this situation will continue to deteriorate and will further jeopardize non-profit organizations that make rules for amateur athletic competition.

For education-based athletics to continue in America, nonprofit athletic organizations must have the ability to make rules without the threat of these claims.

A list of state associations supporting this legislation by their adoption of the enclosed resolution is attached.

Sincerely,

ROBERT F. KANABY,
Executive Director.

RESOLUTION

Resolved, by the members of the National Council of the National Federation of State High School Associations, representing all 50 states and the District of Columbia, that in the interest of the millions of young people who benefit from participation in amateur sports, the United States Congress be urged to adopt the ''Nonprofit Athletic Organization Protection Act of 2004.''

Adopted this, 2nd day of July, 2004 in San Diego, California.

NFHS Member State Associations

Alabama High School Athletic Association; Alaska School Activities Association, Inc.; Arizona Interscholastic Association, Inc.; Arkansas Activities Association; California Interscholastic Federation; Colorado High School Activities Association; Connecticut Interscholastic Athletic Conference, Inc.; Delaware Interscholastic Athletic Association; District of Columbia Interscholastic Athletic Association; Georgia High School Association; Hawaii High School Athletic Association; Idaho High School Activities Association; Illinois High School Association; Indiana High School Athletic Association; Iowa High School Athletic Association; Kansas State High School Activities Association, Inc.;

Kentucky High School Athletic Association; Louisiana High School Athletic Association; Maine Principals' Association; Maryland Public Secondary Schools Athletic Association; Massachusetts Interscholastic Athletic Association, Inc.; Michigan High School Athletic Association, Inc.; Minnesota State High School League; Mississippi High School Activities Association, Inc.; Missouri State High School Activities Association; Montana High School Association; Nebraska School Activities Association; Nevada Interscholastic Activities Association; New Hampshire Interscholastic Athletic Association, Inc.; New Jersey State Interscholastic Athletic Association, Inc.;

New York State Public High School Athletic Association, Inc.; North Carolina High School Athletic Association, Inc.; North Dakota High School Activities Association; Ohio High School Athletic Association; Oklahoma Secondary School Activities Association; Oregon School Activities Association; Pennsylvania Interscholastic Athletic Association, Inc.; Rhode Island Interscholastic League, Inc.; South Carolina High School League; S. Dakota High School Activities Assoc.; Tennessee Secondary School Athletic Association; Texas University Interscholastic League; Utah High School Activities Association; Vermont Principals' Association, Inc.; Virginia High School League; Washington Interscholastic Activities Association; West Virginia Secondary School Activities Commission; Wisconsin Interscholastic Athletic Association; Wyoming High School Activities Association.

Madam Speaker, I reserve the balance of my time.

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

I reluctantly oppose this legislation and spoil the hugely bipartisan nature of the Judiciary Committee's appearance before the floor in the House today.

The reason is that not only does H.R. 1176 provide broad immunity for nonprofit athletic organizations from lawsuits in the adoption of rules for sanctioned or approved athletic competition or practices, but it would indirectly immunize these organizations which were cited as the ones supporting the measure from claims of negligence regarding child molestation.

This is a serious matter. And, by the way, this matter has been before the House on suspension and failed earlier this year. The reason is that the most problematic issue is the failure of the other side to completely address the issue of sexual misconduct in their rush to finish out the legislative year. Specifically, while matters of gross negligence are exempted from immunity under the bill, the legislation does provide immunity from lawsuits arising from claims of ordinary negligence. This simply means that these nonprofit athletic organizations are exempt from having to exercise reasonable care. And, additionally, unless 1176 is amended to include an exemption for all State common-law tort claims, this legislation would bar claims against nonprofit athletic organizations based on negligent behavior.

Thus, if a nonprofit athletic organization negligently hired, failed to assess the background of, or conducted negligent oversight of individuals who may well do great physical or emotional or sexual harm to child athletes, this legislation that we are considering would prevent those child athletes from having their day in court. That is the heart of the problem.

Additionally, the measure extends way beyond barring potential frivolous lawsuits in the Federal judicial system. Although lawsuits filed by parents because their child was not put on a team might rightly be dismissed, cases with legal merit, such as a rule which endangers the life of a child, would be dismissed. These lawsuits are necessary, as they call attention to public safety hazards and are needed to protect our Nation's children.

Madam Speaker, I would like to put in the RECORD the letters of the National Alliance to End Sexual Violence, which urges us to carefully examine this measure before us, and which continue to oppose the legislation, as we have earlier; and as well, Madam Speaker, a letter from the three organizations, Public Citizen, Center for Justice and Democracy, and the Alliance for Justice, which urge opposition to H.R. 1176.

DECEMBER 5, 2006.

Hon. JOHN CONYERS, Jr.,
Ranking Member, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR RANKING MEMBER CONYERS: On behalf of the National Alliance to End Sexual Violence (NAESV), we are writing to express our

opposition to H.R. 1176, the Nonprofit Athletic Organization Protection Act of 2006. We understand that the bill is being brought up today for a vote on the House floor under suspension of the rules. While changes have been made to the original language of this piece of legislation. NAESV remains concerned that this bill still precludes victims of sexual assault from being able to bring a civil action against nonprofit athletic organizations which have acted negligently.

We are specifically concerned that a nonprofit athletic association could fail to do a criminal background check on an employee and then if that employee sexually assaulted a player then that victim would be precluded from being able to bring a civil suit against the organization for negligence. Since victims would then have no civil remedy available to them, we must strongly oppose this bill and ask that you not support it as well.

As a leading national sexual assault victim advocacy organization, the NAESV believes that passage of this bill would create a serious problem for victims and would not allow them to hold perpetrators and organizations responsible.

We thank you for your consideration of this serious matter, and we would be pleased to discuss this matter with you and/or your staff if that would be helpful. Please feel free to contact our Government Relations Specialist, Ellen Fern, with any further questions.

Sincerely,

MONIKA JOHNSON HOSTLER,
President, The National Alliance To End Sexual Violence.

DECEMBER 5, 2006.

DEAR REPRESENTATIVE: On December 5, Congress is scheduled to take up consideration of H.R. 1176—the Nonprofit Athletic Organization Protection Act. This bill would threaten the health and safety of our nation's athletes—especially student and amateur athletes, including Olympians—by making nonprofit athletic organizations unaccountable regardless of whether or not their negligent acts caused serious injury to an athlete.

H.R. 1176 does more than just immunize nonprofit athletic organizations; it strips away important incentives for such organizations to pay careful attention to the safety of the rules, equipment, and infrastructure used in their events. Current liability standards encourage organizations to follow best practices and to correct dangerous conditions.

In one recent case, a Wisconsin student became a quadriplegic after diving off of a starting block into a pool that was too shallow during a high school swim meet. The athletic association's standards for how deep a pool must be to use a starting block were not in line with national standards. After the student filed a claim against the athletic association, it changed its standards to comply with the standards published by the National Federation of State High School Associations.

This bill creates a disturbing legal double-standard in which the athletic organizations are shielded from suit, while maintaining full access to the courts themselves. Our nation has a proud tradition of amateur athletics through which generations have learned about justice and fair play. Creating one set of rules for one group, and another set of rules for another group is anything but just. Our laws should be at least as fair as our Little Leagues.

H.R. 1176 would deny our athletes vital legal protections. For this reason, we respectfully ask you to oppose H.R 1176.

Sincerely,

LAURA MACCLEERY,
Public Citizen.
JOANNE DOROSHOW,
Center for Justice & Democracy.
DICK WOODRUFF,
Alliance for Justice.

Madam Speaker, I reserve the balance of my time

PARLIAMENTARY INQUIRY

Mr. SENSENBRENNER. Madam Speaker, parliamentary inquiry. Is the House considering a motion to suspend the rules of the bill, as amended?

The SPEAKER pro tempore. That is the form of the motion that the Chair understands was intended and is pending at the desk.

Mr. SENSENBRENNER. Madam Speaker, I yield myself 2 minutes.

Madam Speaker, the gentleman from Michigan (Mr. CONYERS), my good friend, is simply incorrect in his statements that this bill does give blanket immunity for various types of sexual harassment and sexual molestation. Because the bill is being considered as amended, the amended version of the bill that is before the House now, on the bottom of page 7, says nonapplicability to certain claims. And it says: 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, sexual assault, fraud, sexual molestation, freedom of expression, sexual harassment, tortious interference of contract law, or civil rights law or any other Federal, State, or local law providing protection from discrimination.

So this exemption very clearly deals with the objection that has been expressed by the gentleman from Michigan (Mr. CONYERS). The bill does not provide any immunity whatsoever for all of these types of activities and claims that I have mentioned.

Madam Speaker, I yield 3 minutes to the gentleman from Indiana (Mr. SOUDER).

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

Mr. SOUDER. Madam Speaker, I have additional letters I would like to insert for the RECORD from Myles Brand, NCAA president; and from the National Council of Youth Sports, to go with the earlier letter from the high school organizations.

Madam Speaker, I am going to dispense with most of my formal statement to try to address the question before us. This bipartisan bill was drafted just to deal with the rules-setting organizations, the rules of play. And the chairman of the committee, whom I thank for bringing this bill up, and the members of the committee were working together to try to address what I believe were extraneous concerns, but if they were real concerns of the House, we needed to address them even though they were not, in my opinion, in the first draft of the bill.

Accidents are going to happen. The question is, will the injuries associated with athletics be allowed at all? How can you play youth football? How can you play youth soccer? How can you have swimming? How can you have wrestling if you are going to make it so that there is no risk?

The balance that all these organizations have to do in their procedures to setting a rule is to balance the risk, the offense and the defense, and the care of the children involved and the young people involved in these sports. What this bill does is try to make it so that the people who are making the rules can't get sued unless in drafting the rules there was gross negligence. It has nothing to do with negligence of how a coach applies a rule, whether there are things that happen during the game that were judgment things. These are about the rules themselves.

The net impact of not doing this has been that most of the major people providing the insurance premiums are looking at dropping this. Others have raised it by 400 percent. What this means for Peewee football; what this means for IHSAA, the Indiana High School Athletic Association; for the NAIA of Small Colleges, they are going to have to drop sports. They aren't going to provide the rules. That means there won't be different guidelines. There will be no different types of youth leagues. There will be no coaches or people willing to draft the rules as you bring these coaches together, because the costs will escalate. They are escalating exponentially. The losses by the different insurance companies are increasing so greatly that most of them are looking at getting out of the business. I hope that the House will carefully consider this so that the kids who so deeply want to play can be involved in these sports.

One of the other byproducts, by the way, of raising insurance premiums is to raise the costs of playing, and this is going to hurt low-income kids the most because suburban kids may be able to afford the higher premiums and they may be able to get coaches who will take the risks or take personal liabilities to be on the things, but this is going to hurt those who most need the sports, in the urban areas and other places where they do not have this opportunity.

I hope that this House will pass, on behalf of small kids, the high school kids, and the college kids of America, a bill that enables them to play and will understand that all this bill does is deal with the general rules of play. And thanks to the chairman's graciousness in working with the minority in this bipartisan bill, we have addressed what I don't believe was in the original bill but takes out all the civil rights questions, all the child abuse questions, and says those aren't relevant here. All it has to do with is rules of the game and whether there was gross negligence in developing the rules of the game.

Madam Speaker, I rise today in strong support of H.R. 1176, the bi-partisan Nonprofit Athletic Organization Protection Act of 2006,

which would help protect the ability of amateur athletic rule-making organizations to do the job that they have done for years, and that is to promulgate the rules of play for Little League Baseball, Pop Warner Football, high school athletics, college athletics, including the NCAA and NAIA, club teams and elite amateur sports teams.

I'd like to thank Chairman SENSENBRENNER for moving this important bi-partisan bill through the Judiciary Committee and bringing it to the floor today. The bill before us has been modified since it passed committee to address concerns raised by the minority, and I'd like to thank the Chairman and his staff for their help in clarifying the narrow intent of the legislation which is to ensure that sports rule-makers are not held liable for athlete injuries (in which they had no responsibility). The bill only exempts non-profit rule-making organizations from liability for physical injury caused by an act or omission of the organization in its adoption of rules of play. The bill does not in any way prevent lawsuits from moving forward that claim harm caused by other rules or guidelines or claim gross negligence on the part of the rule-maker.

It is undeniable that amateur athletic teams make a valuable contribution to the lives of young people. Active participation in sports—particularly at a time when obesity among American youth has reached an alarming level—encourages healthy lifestyles, while also imparting important social qualities such as leadership, teamwork and discipline.

Over the past decade, however, amateur athletic rule-making organizations have been forced to defend themselves against a growing number of questionable lawsuits based on claims of negligence for passing or failing to pass rules to eliminate the risks of injury inherent in athletic competition.

Unfortunately, accidents do happen. There will always be injuries associated with athletics but this is nothing new. For decades rule-makers have responded to changes in technology, coaching methods and athletes by making alterations in athletic rules. Each sport is an ever-moving target for rule-makers and no set of rules can ever make participation in sports as we know it, completely "safe." Thus, it would be wrong to punish rule-makers, who in a good faith effort, have sought to anticipate and prevent injuries to the best of their ability.

As liability costs for rule-making bodies have skyrocketed, these legal claims have had a profound impact on the financial stability of amateur and education-based athletic organizations. Several rule makers are now paying double or triple their previous annual premiums. Others have been forced to self-insure at rates significantly higher than previous years. All of these rule-making organizations are finding it more difficult to locate an insurance company to carry their insurance policy since more and more companies are getting out of the amateur athletic insurance business completely.

In testimony before the House Judiciary Committee, Robert Kanaby, Executive Director of the National Association of State High School Associations (NFHS), noted that NFHS had experienced a threefold increase in their annual liability insurance premiums over the three previous years. This organization, which serves over 7 million young people, currently pays in excess of $1 million in annual liability insurance out of a total operating budget of $9 million.

According to the testimony of Mr. Kanaby and other insurance industry experts, the staggering premium increases affecting NFHS and similar rule-making organizations are certain to continue. It is necessary that Congress act now to raise the standard for liability from ordinary negligence to gross negligence. This change in law would allow the volunteer rule-makers—often coaches with knowledge and experience in a particular sport—to continue doing the best job they can to mitigate risk while keeping the game competitive.

If the status quo is maintained, the losers in this situation will be our nation's kids. As premiums continue to rise and with no relief in sight it is becoming increasingly difficult for amateur athletic organizations to continue providing a sporting outlet for our nation's young people. Moreover, it is highly probable that amateur athletic organizations will shortly be forced to either adopt rules of play that are not specifically crafted for a certain age category (for example, adopting college rules for high school athletics) or increase fees charged to participants in order to offset the liability costs. Both of these scenarios are not desirable and would damage youth sport participation.

I hope my colleagues will consider the importance of preserving amateur athletics and join me in voting in favor of the bi-partisan Non-Profit Athletic Organization Protection Act. All of America's young athletes who participate in school-based athletics, Little League or other club sport teams will be thankful for your support.

NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION,
Indianapolis, IN, March 31, 2005.

Hon. MARK SOUDER,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN SOUDER: The NCAA believes that amateur and education-based sports play a valuable role in the development of our nation's youth. The organizations that provide amateur athletics opportunities for America's youth make every attempt to adopt playing rules that will provide participants with a safe and fair experience. However, there remains an inherent risk of injury when participating in sports activities, which constantly puts these organizations at risk of liability. As a result, the viability of these organizations is being threatened due to the escalating cost of liability insurance. Therefore, the NCAA stands in support of your efforts to provide much needed protection for these nonprofit organizations through the "Nonprofit Athletic Organization Protection Act of 2005."

Sincerely,

MYLES BRAND,
President.

ENDORSEMENT OF H.R. 1176 AND S. 567, THE NON-PROFIT ATHLETIC ASSOCIATION PROTECTION ACT OF 2005, BY THE NATIONAL COUNCIL OF YOUTH SPORTS

We are writing to voice our support for the "Non-Profit Athletic Association Protection Act" of 2005.

This is an important issue with respect to amateur sports and those who make playing rules governing amateur athletics. Education-based and community-based athletics are an important part of our culture. They provide a tremendous opportunity to the youth of America by teaching leadership, teamwork, and discipline skills. Studies have shown that participation in these activities is directly tied to academic achievement and overall social development.

Non-profit organizations that administer these activities have been the target of an increasing number of claims and lawsuits in sports injury cases claiming negligence due to the passage or adoption of rules of play for amateur sports. Repeatedly defending claims will have a detrimental impact on their ability to continue to provide these services.

This legislation would shield theses organizations, their directors, officers, employees, representatives, and agents from liability for claims of negligence in sports injury cases involving the passage, failure to pass, adoption, or failure to adopt rules concerning athletic competition.

We the undersigned fully support this legislation and urge its passage. These organizations provide an important service to our nation's youth and have developed a good system to write rules and administer competitions.

Signed, National Federation of State High School Associations (NFHS), National Collegiate Athletic Association (NCAA), National Council of Youth Sports (NCYS), Amateur Athletic Union of the United States (AAU), Amateur Athletic Union (AAU) Baseball, Amateur Softball Association of America, American Amateur Baseball Congress, American Youth Football (AYF), Catholic Youth Organization (Seattle), Dixie Softball, Inc., Dixie Youth Baseball Inc., Excel Sports Network Athletic Association (ESNAA), Georgia State Soccer Association (GSSA), Ice Skating Institute Iowa AAU, Little League Baseball, Magazines4OurTroops, Michigan State Youth Soccer Association, Inc., Mt. Olive Recreation, North American Youth Sport Institute, PBG Police Athletic League, PONY Baseball/Softball, Pop Warner Little Scholars, Inc., TeeBall USA, Sport in Society at Northeastern University, USA Baseball, USA Roller Sports, USA Softball, Women's Sports Foundation

Mr. CONYERS. Madam Speaker, I am glad someone mentioned poor kids will need to be protected more in athletic events, and that is precisely the reason I am opposing this measure, because we are eliminating State civil claims, and I think there has been some confusion on the other side about criminal and civil liabilities.

Madam Speaker, I yield such time as she may consume to the distinguished gentlewoman from California, ZOE LOFGREN.

Ms. ZOE LOFGREN of California. Madam Speaker, I thank the gentleman for yielding.

This bill, I believe, is trying to protect sports organizations, but, unfortunately, it does leave children unprotected from child molesters.

We know that sexual predators volunteer to be involved with children's sports programs and pedophiles routinely use the bond between coach and athlete to prey on children.

A Seattle Times investigation uncovered 159 coaches who had been reprimanded or fired for sexual misconduct between 1993 and 2003, and of those coaches, 98 continued to coach or teach children. An investigation in Texas uncovered 60 incidents of high school coaches being fired or reprimanded as a result of allegations of sexual misconduct with minors. And last month a Maryland high school basketball coach was charged with abusing three minors.

This amendment, the amendment to the bill that has been mentioned, does not fix the problem of providing liability relief to these nonprofits. The bill

exempts claims based on Federal, State, and local statutes concerning sexual assault, molestation, or harassment. But the bill grants complete immunity for claims of negligence in establishing rules related to adult supervision. I have here a letter from a scholar, Professor Andy Popper, a professor at the American University School of Law, and I would like to read just a small portion of his letter:

''Common-law tort claims for failure to exercise due care in hiring coaches, investigating backgrounds, or overseeing inappropriate activity would be actionable, but I think a plain reading of section 4(d) and section 5 suggests that those claims would be barred, and that is really quite horrendous from the perspective of children who might be victimized by adults treated in ways that are patently destructive from an emotional or psychological vantage point. What possible reason could there be to pass this bill?''

And he goes on to say: ''After reading the bill, I see no language that exempts State common-law tort claims. To the contrary, the specific areas exempted, labor law, antitrust law, statutory claims, et cetera, suggests that Congress intends to exempt very specific areas only. Given that list in 4(d), unless the bill were amended to include an exemption for all State common-law tort claims, the bill will be seen as a bar to cases involving negligent hiring, failing to assess background, negligent oversight of individuals who may well do great harm to children, to athletes, to those most in need of protection.''

I would like to note that the National Alliance to End Sexual Violence has asked us to vote against this bill, as amended.

□ 1145

And the reason why, and I quote from President Hostler's letter, as the leading national sexual assault victim advocacy organization, we believe the passage of this bill would create serious problems for victims and would not allow them to hold perpetrators and organizations responsible.

Now, the amended bill tells athletic organizations that they owe children no duty of care. The bill takes away any incentive to take reasonable steps to keep child molesters out and to keep children safe.

Do I suggest that the authors of this bill intend to protect child molesters? I can't imagine that they do. But intent doesn't matter. We are writing law here. And the impact of adopting this bill would, in fact, be to protect child molesters.

Now, I am someone who really believes in Little League. My dad was a Little League manager my entire young life. I have strong memories of sitting in the stands day after day, month after month, watching my brother catch the ball. I believe in Little League. But I also know that my dad, were he alive today, would say, I don't believe in protecting child molesters.

Mr. SENSENBRENNER. Madam Speaker, I yield myself 2 minutes, and I ask the gentlewoman from California to yield.

Ms. ZOE LOFGREN of California. I yield.

Mr. SENSENBRENNER. What were the dates of those two letters that you cited in your previous speech?

Ms. ZOE LOFGREN of California. The letter from the National Alliance to End Sexual Violence is dated December 5 of this year, and the letter from the law professor is dated December 4 of this year.

Mr. SENSENBRENNER. Madam Speaker, I think both of these letters have reached the wrong conclusion. And again, I will quote from the section that does make the nonapplicability to certain claims. That says 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, defamation, sexual assault, fraud, sexual molestation, freedom of expression, sexual harassment, tortious interference of contract law, or civil rights law or any other Federal, State, or local law providing protection from discrimination.

Now, I don't know how more broadly this exemption could be drafted than that. It is very clear that the complaint about the original bill providing a limitation on liability for sexual molestation or harassment or sexual assault was a legitimate one. So that is why the nonapplicability of certain claims provision was put in here.

This is a red herring. It is not the original bill that people were complaining about. This is a bill that has dealt with that objection, and it should pass.

Madam Speaker, I now yield 2 minutes to the gentlewoman from Texas (Ms. SEKULA GIBBS).

Ms. SEKULA GIBBS. Madam Speaker, I rise in support of H.R. 1176, and I say that because of the experience in my district where we are seeing an increase in children who are suffering from obesity and an increase in propensity to see dropouts in school. And youth athletics is an opportunity for children to stay in school and to stay active and stay fit.

We need to support more opportunities for youth athletics and youth sports. And one of the deterrents for those youth activities in sports is the increase in lawsuits that are being lodged against board members who are in rulemaking positions.

This resolution will go a great distance in protecting parents and grandparents and family members who want to join in and to provide athletic opportunities for their children and who are fearful of being caught up in lawsuits that stem, not from intentional criminal activities, but from inadvertent rulemaking problems.

So protecting and immunizing parents, grandparents and family members who want to participate in setting standards and rules for their children is the right thing to do. It will help our children, in the long run, stay in school, stay fit, and become good American citizens.

So I think that we should not lose sight of the goal of this bill and make sure that we see that it is in the best interests of our children to pass it.

Mr. CONYERS. Madam Speaker, I yield myself as much time as I may consume.

This is an unusual situation that has arisen here. Here we come back in the closing days of the 109th session, and I would think that everything that has occurred before now, that this Congress would be very sensitive and careful not to protect sex predators.

This is not business as usual. We have had a lot of problems in the 109th session of Congress. And yesterday, at 9:30 a.m., we received this change. And we are now told that we don't understand it, and that it has all been taken care of and everything is okay. Well, everything is not okay.

H.R. 1176 provides a carve-out for claims arising from State or Federal assault and harassment laws, a carve-out. The problem is that none of the suits by children against an athletic organization, based on the actions of a coach, sex predator, would arise under these laws. The intentions may have been to correct it, but it is not corrected. And that is the reason that we continue to oppose H.R. 1176.

This is not new information. And those who have been working on this with us in the public sector are all in agreement that the so-called fix that has been referred to is not really a fix at all. It may have been meant to be a fix, but it is not a fix. And it is as simple as that. That is why we are still opposed to this proposal as we were when it came up under suspension earlier in the 108th session.

Madam Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I am prepared to close if the gentleman will yield back.

Mr. CONYERS. Madam Speaker, I yield as much time as the gentlewoman from California may need, and then we will be ready to close.

Ms. ZOE LOFGREN of California. Madam Speaker, I will be brief.

This bill, or its predecessor bill, H.R. 3369, was not approved when it was brought before the Congress in 2004. It was defeated. And the reason why I believe it was defeated was the concern that, although probably well intentioned, it provided liability relief from predators, from child molesters.

Now, I believe the law professor when he did the analysis. And as the letter is in the record, he cites the cases and does a proper analysis that negligence that results in child molestation would be protected under this bill. We surely cannot be wanting to do that here as this Congress closes.

Now, I have raised this issue in committee. I was, frankly, rather shocked

to see this bill on the Suspension Calendar.

As Mr. CONYERS has mentioned, we have not had a wonderful record here in the 109th Congress of doing the right thing to protect children from sexual predators. Let's not compound that problem by enacting this bill today. I urge all of us to vote against it.

And I will say also that in the 110th Congress we should work in a proper way to achieve the goals of supporting Little League and the other organizations, while not letting down the children of our Nation and letting them be victimized by child molesters and sexual predators.

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

Mr. SENSENBRENNER. Madam Speaker, I yield myself the balance of the time.

Madam Speaker, I think this is an example about the way this place does business. On a bipartisan basis we passed the Adam Walsh Bill and that was signed into law by the President at the end of July. And that was the single greatest protection of children law that had been passed by the Congress in decades. And I was the author of that legislation. I worked with people on both sides of the aisle and on both sides of the Capitol, and I think that this was a really great accomplishment of this Congress. And it shows what can happen when people work in a bipartisan manner.

Now, we get to this bill after the election is over with, and there has been a change of control on both sides of the Capitol. I don't think that it can be disputed that the volunteers who set the rules of play should be exempted from liability. Now, these are the people that write the rule book. You know, they are not the people that actually coach the kids. They are not the people who make the equipment. They are not the people who provide the playing fields and either maintain them properly or don't maintain them properly. They are the ones that write the rule book. And a lot of the rules for amateur sports, whether it is at the high school or college or intramural level or whatever, those rules are designed to protect to the greatest extent possible the kids who compete in those sports, and that is what this bill is designed to protect.

Now, I think that the complaints that were made by my friends on the other side of the aisle, that this bill could have been interpreted to provide immunity or a limitation of liability on those who commit acts of sexual assault or sexual molestation or sexual harassment against the kids were legitimate. And that is why the bill is amended.

Now, when this bill was put on the Suspension Calendar last week by the leadership, we circulated an amendment to the minority party. We gave them the proposed language that is being debated and disputed early yesterday morning, and we never heard from them. And we followed up several times yesterday by staff to get their comments, and we never got any comments. We tried again this morning before this bill came up and never got any comments as well. The first we heard about their opposition to the legislation and the letters that have been cited by the gentlewoman from California (Ms. ZOE LOFGREN) was when we got to the floor today.

Now, that is their prerogative to do that, as it is the prerogative of any Member of this House, whether in the majority or in the minority. But the fact is that what we have heard from the other side of the aisle is designed to defeat this legislation altogether, as it was in the 108th Congress. And that would be a shame, because defeating this legislation is only going to hurt the volunteers who are making rules to protect children, rather than to protect people who might commit sexual offenses against them. We ought to protect the volunteers who make those rules, those volunteers who write the rule book, and the associations that bring those volunteers together so that kids can enjoy sports and play and learn the value of competition and the value of fair play. And if you can't get volunteers to write the rule book, then you are not going to be able to have kids' sports at all. So let's put the kids first and pass this bill.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1176, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those voting have responded in the affirmative.

Mr. CONYERS. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

□ 1200

GENEVA DISTINCTIVE EMBLEMS PROTECTION ACT OF 2006

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 6338) to amend title 18, United States Code, to prevent and repress the misuse of the Red Crescent distinctive emblem and the Third Protocol (Red Crystal) distinctive emblem.

The Clerk read as follows:

H.R. 6338

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 ''Geneva Distinctive Emblems Protection Act of 2006''.

SEC. 2. GENEVA DISTINCTIVE EMBLEMS.

(a) IN GENERAL.—Chapter 33 of title 18, United States Code, is amended by inserting after section 706 the following:

''§ 706a. Geneva distinctive emblems

''(a) Whoever wears or displays the sign of the Red Crescent or the Third Protocol Emblem (the Red Crystal), or any insignia colored in imitation thereof for the fraudulent purpose of inducing the belief that he is a member of or an agent for an authorized national society using the Red Crescent or the Third Protocol Emblem, the International Committee of the Red Cross, or the International Federation of Red Cross and Red Crescent Societies shall be fined under this title or imprisoned not more than 6 months, or both.

''(b) Except as set forth in section (c) and (d), whoever, whether a corporation, association, or person, uses the emblem of the Red Crescent or the Third Protocol Emblem on a white ground or any sign or insignia made or colored in imitation thereof or the designations 'Red Crescent' or 'Third Protocol Emblem' shall be fined under this title or imprisoned not more than 6 months, or both.

''(c) The following may use such emblems and designations consistent with the Geneva Conventions of August 12, 1949, and, if applicable, the Additional Protocols:

''(1) Authorized national societies that are members of the International Federation of Red Cross and Red Crescent Societies and their duly authorized employees and agents.

''(2) The International Committee of the Red Cross and its duly authorized employees and agents.

''(3) The International Federation of Red Cross and Red Crescent Societies and its duly authorized employees and agents.

''(4) The sanitary and hospital authorities of the armed forces of State Parties to the Geneva Conventions of August 12, 1949.

''(d) This section does not make unlawful the use of any such emblem, sign, insignia, or words which was lawful on or before December 8, 2005, if such use would not appear in time of armed conflict to confer the protections of the Geneva Conventions of August 12, 1949, and, if applicable, the Additional Protocols.

''(e) A violation of this section or section 706 may be enjoined at the civil suit of the Attorney General.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 33 of title 18, United States Code, is amended by inserting after the item relating to section 706 the following new item:

''706a. Geneva distinctive emblems.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 6338 currently under consideration.

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

There was no objection.

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