order to make it less of a misnomer—to reduce abuse rather than encourage it.

The goal of the tort reform legislation is to allow businesses to externalize, or shift, some of the cost of the injuries they cause to others. Tort law always assigns liability to the party in the best position to prevent an injury in the most reasonable and fair manner. In looking at the disparate impact that the new tort reform laws will have on ethnic minority groups, it is unconscionable that the burden will be placed on these groups—that are in the worst position to bear the liability costs.

When Congress considers pre-empting State laws, it must strike the appropriate balance between two competing values—local control and national uniformity. Local control is extremely important because we all believe, as did the Founders two centuries ago, that State governments are closer to the people and better able to assess local needs and desires. National uniformity is also an important consideration in federalism—Congress's exclusive jurisdiction over interstate commerce has allowed our economy to grow dramatically over the past 200 years.

This legislation would reverse the changes to Rule 11 of the Federal Rules of Civil Procedure (FRCP) that were made by the Judicial Conference in 1993 such that (1) sanctions against an attorney whose litigation tactics are determined to harass or cause unnecessary delay or cost or who has been determined to have made frivolous legal arguments or unwarranted factual assertions would become mandatory rather than discretionary to the court, (2) discovery-related activity would be included within the scope of the rule, and (3) the rule would be extended to State cases affecting interstate commerce so that if a State judge decides that a case affects interstate commerce, he or she must apply rule 11 if violations are found.

This legislation strips State and Federal judges of their discretion in the area of applying rule 11 sanctions. Furthermore, it infringes States' rights by forcing State courts to apply the rule if interstate commerce is affected. Why is the discretion of the judge not sufficient in discerning whether rule 11 sanctions should be assessed?

If this legislation moves forward in this body, it will be important for us to find out its effect on indigent plaintiffs or those who must hire an attorney strictly on a contingent-fee basis. Because the application of rule 11 would be mandatory, attorneys will pad their legal fees to account for the additional risk that they will have to incur in filing lawsuits and the fact that they will have no opportunity to withdraw the suit due to a mistake. Overall, this legislation will deter indigent plaintiffs from seeking counsel to file meritorious claims given the extremely high legal fees.

Furthermore, H.R. 4571, as drafted, would allow corporations that perform sham and non-economic transactions in order to enjoy economic benefits in this country.

This is a bad rule that will have terrible implications on our legislative branch, and I ask that my colleagues defeat the rule, defeat the bill, and support the substitute offered by Mr. TURNER. We must carefully consider the long-term implications that this bill, as drafted, will have on indigent claimants, the trial attorney community, and facilitation of corporate fraud.

Mr. SESSIONS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. OSE). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCGOVERN. Mr. 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 motion will be postponed.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded voted or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2003

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3369) to provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage or adoption of rules for athletic competitions and practices.

The Clerk read as follows:

H.R. 3369

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Nonprofit Athletic Organization Protection Act of 2003''.

SEC. 2. DEFINITIONS.

In this Act:

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

(2) HARM.—The term ''harm'' includes physical, nonphysical, economic, and non-economic losses.

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

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

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

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

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

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

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

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

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

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

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

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

(c) EXCEPTIONS TO NONPROFIT ATHLETIC ORGANIZATION LIABILITY PROTECTION.—If the laws of a State limit nonprofit athletic organization liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

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

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

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

SEC. 4. PREEMPTION.

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

SEC. 5. EFFECTIVE DATE.

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

(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 Virginia (Mr. SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. 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. 3369.

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

There was no objection.

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

Mr. Speaker, I urge my colleagues to join me in voting for H.R. 3369, the Nonprofit Athletic Organization Protection Act of 2003. I would like to thank the bill's sponsor, the gentleman from Indiana (Mr. SOUDER) for bringing attention to this issue and offering this legislation.

Volunteer athletic organizations play an important role in the lives of children and communities throughout the country. Rulemaking bodies that set standards and uniform rules for sports play a vital role in facilitating a broad range of athletic competition. Nonprofit rulemaking bodies, such as Little League baseball or Pop Warner football, rely on the expertise of volunteers to establish rules for athletic competition and training that promote sportsmanship, preserve sports traditions, ensure fair and competitive play, and minimize risk to participants.

As we know, almost all athletic competition carries risks to those who participate, and accidents do occur when young men and women are flying about on fields and courts and rinks. But rulemaking is a predictive endeavor, and rulemakers do not have the advantage of 20–20 hindsight when they make rules for competition. Unfortunately, no rule book can prevent injuries from occurring in the games that we play and love.

What we also know after multiple lawsuits is that when those accidents occur sometimes the very nonprofit athletic organizations that seek to minimize risk to athletes have become the targets of costly, protracted, and often frivolous litigation based on harm that occurs in the course of a sporting event. Over the last several years nonprofit athletic organizations have been subject to mounting legal assault.

Egregious examples are all too common. One Little League organization chose to avoid the threat of massive damages by settling a claim by a parent who was hit by a ball her own child failed to catch. In another example, lawyers for a youth who suffered an injury in a volunteer sponsored and supervised Boy Scout game of touch football filed a multimillion dollar lawsuit against the adult supervisors and the Boy Scouts of America.

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

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

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

Critically, this legislation would effect only a limited category of claims against the nonprofit rulemaking organizations, and all claims for willful misconduct, gross negligence or reckless misconduct would still be actionable. Nothing in this legislation provides liability relief for a school or a school district holding a competition or for coaches or officials supervising or conducting a game.

The legislation also provides deference to States by preserving any State law that affords additional protection from liability relating to the rulemaking activities of the nonprofit athletic organization. The bill is a narrowly tailored, common sense remedy to a very serious and growing threat to volunteer athletic organizations.

If we fail to act, some of these valuable organizations will close up shop. If we fail to act, youth sports and those who play them will ultimately suffer. I urge my colleagues to support the legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask the gentleman if this is the same bill that was reported from committee, because there were other drafts floating around in the last couple of days.

Mr. SENSENBRENNER. Mr. Speaker, will the gentleman yield?

Mr. SCOTT of Virginia. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, the answer is yes. This bill is in the form that was reported from committee and it is also in the form that it was introduced by the gentleman from Indiana (Mr. SOUDER).

Mr. SCOTT of Virginia. Reclaiming my time, Mr. Speaker, I oppose the legislation that is drafted. H.R. 3369 provides immunity for nonprofit athletic organizations 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. 3369 prohibits civil litigation of any grievance arising under the rules promulgated by the nonprofit sporting organization. It exempts the athletic organization from liability for harm caused by an act or omission of the adoption of rules for sanctioned or approved athletic competitions or practices if the organization was acting within the scope of its duties, the organization was properly licensed, certified or authorized for the competition or practice, and 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 that endangers the life of a child would also be dismissed.

□ 1100

In effect, this legislation would effectively bar them from their day in court, and H.R. 3369 would dramatically obstruct valid discrimination claims or other kinds of discrimination claims against such athletic organizations. Such lawsuits call attention to public safety hazards and discriminatory acts and need to be available for litigation to protect our Nation's children.

As drafted, the broad immunity H.R. 3369 extends to nonprofit organizations reaches far beyond the potential for frivolous lawsuits in our Federal judicial system. H.R. 3369 prohibits civil litigation of any grievance arising out of the rules promulgated by nonprofit organizations.

As drafted, this legislation is so broad that it would bar legitimate issues from being brought forth. Thus, such cases as discrimination, antitrust, labor, environmental and other important claims would not be allowed to go forward.

Additionally, H.R. 3369 protects the right of a nonprofit organization to sue others. If the legislation is designed to suppress unnecessary litigation altogether, how is an organization's grievance legitimate but individual complaints are not?

Written to suppress only the outlets available for individual citizens, this legislation simply overreaches. It is the height of hypocrisy to suggest that these organizations should be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

Mr. Speaker, previous immunity statutes like this would immunize coaches, volunteers and board members, but the injured party, somebody injured through no fault of their own, would have recourse against the organization.

This bill leaves the injured party without any recourse at all.

There are serious problems with this legislation, so I would urge my colleagues to oppose the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentleman from Indiana (Mr. SOUDER), the author of the bill.

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

Mr. SOUDER. Mr. Speaker, I want to thank the chairman for moving this bill. I very much appreciate his leadership in the whole area of tort reform and particularly appreciate his willingness to move this bill.

I also would like to thank the original cosponsors of the bill, the gentleman from Maryland (Mr. WYNN), the gentleman from Nebraska (Mr. OSBORNE), the gentleman from Washington (Mr. HASTINGS), the gentlewoman from New York (Mrs. KELLY) and the gentlewoman from Colorado (Mrs. MUSGRAVE).

My colleagues have heard some of the opening debate on this, and let me say, to put this in realistic terms, in a new book by the gentleman from Illinois (Speaker HASTERT), he talks about how he injured his shoulder off-season practicing wrestling. Then he wanted to play football, and his coach and the association rules outfitted him in a shoulder pad, and he played with pain. He goes through a number of things that he and his good friend Tom Jarman did with that shoulder. Then he went through the wrestling season. Then he had surgery.

The question is and the plain truth is, under today's society, he could have sued the State of Illinois blind. He could have sued his school. He could be as outrageous as some of these other people because, in wrestling and football, occasionally people get hurt. And it does not give people the right to sue the schools and to make it hard for every other kid to play the sport.

What we have seen in this country, just recently, costs of lawsuits have gone out of control. One provider has informed us that they have gone up 300 percent; another one, 600 percent. One has dropped coverage of all high school associations and Little Leagues and Pop Warners. Three more are considering it.

Their costs are going up every year faster than they can charge assessments. One governing body that provides for 5,000 athletes, some of the elite athletes in the country, for an Olympic sport has had a 1,000 percent increase in their costs. How are they supposed to deal with this? Who pays for this?

Often, it is the taxpayer, but in this case, the taxpayers are not giving more money to the schools. So, if the Indiana State High School Athletic Association has to absorb 300, 600 percent, 1,000 percent increases in costs, they do not have anywhere to pass it. The kids pay it. They will lose certain sports that are higher risk. They have computers reduced in the schools, books reduced in the schools. Sometimes even teachers, when they retire, are not replaced. And so we have class size increase because the taxpayers are not giving the schools more money.

So what happens when they increase their rates? Something has to give. What happens when a Little League or a Pop Warner league has a 300 percent or a 600 percent or 1,000 percent increase in their costs? Where do they get their money? They get it from the kids who are playing.

If one is a mom or dad and you are working on a tight budget and you wanted your kid to play Pee Wee Football or Little League and you want to have them go and you just saw a 300 percent or 600 percent or 1,000 percent increase in the cost of playing and you do not have much money, you are not going to let them play.

In many middle class families, I know in my family, we make the judgment, boy, we have got spring soccer, fall soccer, summer, winter, indoor, okay, you know, you start taking double, triple costs on these type of things, even middle- and upper-income families are going to restrict the amount.

At a time of rising obesity in this country, the last thing we need to do right now is shut down high school sports.

The plain truth of the matter is that some of the objections my good friend from Virginia raised, we have been trying to negotiate. We offered amendments. They said that they still would not support the bill. Then they came up with this last one on physical injury, because the bill does not even relate to other things other than physical injury. But we said, Okay, we will put them in, even though they are extraneous. If you are worried about them, we have protections about State laws. We have protection on civil rights laws, but if you want to put that in, we will put it in.

Then they went physical injury. What is a pitcher supposed to do in Little League? Unless you can throw it straight over the plate, you are not allowed to pitch or the umpire is going to be held liable. The coach is going to be held liable. The association is going to be held liable.

In football, when a linebacker's coming up, does he have to say, Excuse me, brace yourself, I am going to hit you at the knees, I am going to hit you in your back? In wrestling, are you supposed to say, before a take-down in the State rules, Uh-oh, I am going to go for a pin now, be ready? How does this actually work?

The way we have governing bodies is, they have to take into account the risk to the individual plus the historic purpose of the sport. They have governing bodies that change these rules every year to try to make them safer, but you know what? Sports are not always safe. If we are going to have these ridiculous suits that go for millions of dollars, nobody's doing physical damages, hospital costs. This is for nonrelated to physical costs. If this is what we are going to do in our society, what we are going to have is silly sports or no sports, and everybody's going to be playing Frisbee unless the Frisbee hits somebody in the head, and then there will be a lawsuit off that, too.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SCOTT of Virginia asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. SCOTT of Virginia. Mr. Speaker, the gentleman has made all these statements that somebody can sue, somebody can sue, somebody can sue. What he has not related is anyone who has filed suit and actually recovered a judgment.

I would like to introduce for the RECORD at this point a letter from the Leadership Conference on Civil Rights which outlines several civil rights claims that would be barred by this legislation.

SEPTEMBER 13, 2004.

DEAR REPRESENTATIVE: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil rights coalition representing people of color, women, children, older Americans, persons with disabilities, gays and lesbians, major religious organizations, labor unions, and civil and human rights groups, we urge you to vote against H.R. 3369, the ''Nonprofit Athletic Organization Protection Act of 2003.'' If enacted, this bill could set a dangerous precedent for the enforcement of civil rights laws generally and could specifically allow nonprofit athletic organizations to evade civil rights laws and unlawfully discriminate on the basis of race, sex, disability, or other characteristics protected by federal and/or state law.

While the preamble suggests that the bill's intent is to protect nonprofit athletic organizations from liability arising from claims of ordinary negligence relating to the adoption of rules for competitions/practices, the actual text of the bill is much broader and creates the risk that such organizations could evade their obligations under laws unrelated to negligence, such as federal and state civil rights laws. More specifically, the bill provides that ''a nonprofit athletic organization [which includes the employees, agents, and volunteers of such organization] shall not be liable for harm caused by an act or omission of the . . . organization in the adoption of rules for sanction or approved athletic competitions or practices. . . . This language creates the risk of eliminating valid discrimination claims such as those found in the following cases:

In Cureton v. NCAA, a class action lawsuit filed by African-American student athletes challenged the National Collegiate Athletic Association's rule requiring all potential student-athletes to achieve a minimum score on the SAT or the ACT as having a disparate impact on African-American students, in

violation of Title VI of the Civil Rights Act of 1964. Early on, the Educational Testing Services (ETS), which designed the SAT, criticized the NCAA's then-proposed use of a fixed cut-off score and warned that such a rule would have such a disproportionate impact, and it did. But only in the face of a lawsuit 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 Michigan High School Athletic Association v. Communities for Equity, federal district and appellate courts in the Sixth Circuit have ruled that the state high school athletic association's practice of scheduling six girls' sports, and no boys' sports, in nontraditional and/or disadvantageous seasons discriminated against female athletes in violation of Title IX of the Education Amendments of 1972 and the U.S. Constitution. The court found that the association's scheduling decisions harmed girls by limiting their opportunities for athletic scholarships and collegiate recruitment, limiting their opportunities to play in club or Olympic development programs, and causing them to miss opportunities for awards and recognition.

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 in 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.

In addition, H.R. 3369 allows nonprofit athletic organizations to sue, but not be sued. It is the height of hypocrisy to suggest that these organizations should be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

Finally, the bill preempts state law that provides less liability protection to nonprofit athletic organizations but not state law that gives additional protection to nonprofit athletic organizations. There is no need for Congress to preempt state law at all. If states want to protect certain state athletic organizations, they can do so right now without any action by Congress.

While we understand that those who oppose this bill might be accused of fueling litigation, we urge you to consider the risk that this bill could be used to exempt nonprofit athletic organizations, which exercise control over the lives of student-athletes, coaches, and many others, from treating these individuals fairly and in accordance with our nation's civil rights laws. Moreover, this bill would create additional litigation regarding who is covered by the bill and what types of claims it precludes.

LCCR strongly urges you to oppose the ''Nonprofit Athletic Organization Protection Act of 2003.'' If you have any questions, or would like additional information, please contact Nancy Zirkin at 202/263–2880, or Julie Fernandes, Senior Policy Analyst, at 202/263–2856.

Thank you in advance for your support.

Sincerely,

WADE HENDERSON,
Executive Director.
NANCY ZIRKIN,
Deputy Director.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield 1 minute to the gentleman from Virginia (Mr. CANTOR).

Mr. CANTOR. Mr. Speaker, I thank the chairman for the time.

The increased cost of insuring youth athletic leagues is of great concern to me and the constituents of the Seventh Congressional District of Virginia. Millions of youngsters around the country participate in soccer, football, baseball, basketball, lacrosse and other sports. They learn discipline and teamwork, and most importantly, they have fun.

As a parent of three, I have spent countless hours on the football, soccer, lacrosse fields and other athletic facilities watching my children compete and grow from their athletic experience. It is something that I am very concerned about.

As has been said, we are now facing a very real prospect of a chilling of the desire for parents to form athletic associations to give their children an opportunity to compete on the athletic field. This bill takes on the prospects of this chilling.

It addresses the fact that there is increasing costs playing sports in a voluntary way, cost-prohibitive for American families. That is why I am here.

I thank the gentleman from Indiana for his sponsorship of this important legislation. I urge its passage and return to common sense so that we can see our children continue to play on the fields.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished ranking member for the time, and I not only stand here as a mother of two who spent many countless hours in soccer and Little League and a variety of other sports, basketball and others, I agree with my colleagues who express their concern for the validity and support of these nonprofit athletic organizations.

But I also say that we are going at our concern in the wrong manner and wrong-headed way.

All of us enjoy the mementos and the various awards that our young people get in the playing of competitive voluntary sports as children, but the problem with this legislation, H.R. 3369, frankly, is that it does not differentiate between meritorious lawsuits and frivolous claims. It allows the organizations to sue but not to be sued and, thereby, I think, finds us in a very bad dilemma.

There are a number of suits involving civil rights, discrimination, disabled issues, disabled Americans that would not have gotten the attention if we had not allowed them to sue these various organizations.

In the Cureton v. NCAA, a class of African American student athletes challenged the National Collegiate Athletic Association's rule regarding national testing. They deserve their day in court.

The PGA Tour, Inc., v. Martin was a case dealing with the Americans with Disabilities Act which would suggest that the organization was antiquated in its understanding of the rights of disabled Americans.

Why would my colleagues deny these rights? And why would they deny the rights of Americans to provide themselves with some sort of relief?

I believe this legislation preempts State law unnecessarily. If States want to protect certain State athletic organizations, they can do so right now without any action by Congress. They can do so right now.

Unfortunately, H.R. 3369 does not just preempt State law. It preempts State law that gives more protections to athletes and leaves in place States that give additional liability protections to nonprofit athletic organizations.

I believe that this bill goes too far in the desire that we have, which is to make sure that we have a free or an open playing field, if you will, for our young people of America to develop their character skills, their leadership skills and their athletic ability.

Why are we interfering? I believe that we can look at the record and find a number of lawsuits did not generate into judgment, and so we understand that frivolous lawsuits are taken care of by the legal system, the judicial system that we put in place. Why are we putting our heavy hand to deny those parents and students and players on the field, those young people and others, the opportunity to engage when their rights have been deprived?

I would ask my colleagues to, one, appreciate the desire of my good friend the gentleman from Indiana (Mr. SOUDER) on this bill but recognize that laws are already in place to protect these nonprofit athletic organizations, and I ask them to reject this legislation at this time.

Mr. Speaker, I rise in opposition of this legislation, H.R. 3369, 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. 3369 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-proposed 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. 3369 allows nonprofit athletic organizations to sue, but not be sued. It is the height of hypocrisy to suggest that these organization 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. 3369 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 H.R. 3369.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. OSBORNE).

Mr. OSBORNE. Mr. Speaker, I rise in support of H.R. 3369.

There is no question there has been a huge increase in personal injury lawsuits targeted at rulemaking bodies in recent years, such as Pop Warner, Little League, high school athletic associations and on and on.

Sports-governing authorities' premiums have risen, as has been stated previously, from about 120 percent to about 1,000 percent. At least one known carrier has completely dropped providing general liability coverage, while three others are looking at nonrenewing all policies.

So this is a concern, and so the rulemaking bodies will be driven out of existence if they, number one, cannot afford the premium or, number two, if they just simply cannot get coverage. This would take roughly 7 million high school athletes right off the field, and I think that the good that is done by college athletics and amateur sports far outweighs what we might see in terms of lawsuits.

The legal attack against all rulemaking bodies relies on the presumption that rules should eliminate all risk in athletic competition. In 1905, the NCAA was formed to eliminate the flying wedge. Recently, in football, a person cannot block with their head. They cannot chop block; clipping; practice in sweat clothes during the early season; water breaks; spring practice rules and so on. Yet if some young man decides to go out and tackle with his head down or has a spinal injury, there is absolutely no way we can prevent that. The rules have all been written, that I know of, that would provide safety in football. So accidents will happen.

So this rule, I think, is a good one because it would allow the rulemaking bodies to be protected from frivolous lawsuits by raising the standard of liability from negligence to gross negligence. And if we do not do something like this, a great number of young people will simply be taken off the field. I do not think that is a viable alternative.

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Mr. SCOTT of Virginia. Mr. Speaker, can you tell us how much time remains on both sides?

The SPEAKER pro tempore (Mr. OSE). The gentleman from Virginia (Mr. SCOTT) has 12½ minutes remaining, and the gentleman from Wisconsin (Mr. SENSENBRENNER) has 7½ minutes remaining.

Mr. SCOTT of Virginia. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, the Nonprofit Athletic Organization Protection Act before us today I believe sets a very dangerous civil rights precedent. I take this personally, because I raised four, now grown, children, and each and every one of them was an athlete, from competitive skater to All American football player, and I cannot imagine what our family would have been like if they had not been able to use their energy in sports. I cannot imagine the learning experience they would have missed if they had been faced with some unfair practice or decision that I could not challenge if that would have kept them out of athletics.

So I think what we are setting up here is the possibility of unfair practices and policies when I do not believe there is a need. This bill attempts to protect nonprofit athletic organizations from liability arising from claims of negligence, but I believe it could do more than that. What I believe it does is protect organizations from actual legitimate lawsuits.

What position does this put a parent in, when and if their daughter is told she cannot play soccer because she is not a boy? What does a parent do when their handicapped child is told they cannot be on a golf team because they cannot walk the course, but they could certainly get around the course in a wheelchair?

While my children are now grown, they join me in wanting to have their children have every opportunity to play any sport. They know the value of their experience and they want all children, every child in this country, to have the same experiences that they had.

Mr. Speaker, this legislation will prevent athletes from fighting for their rights to play, and that is just plain wrong. I urge my colleagues to oppose H.R. 3369.

Mr. SENSENBRENNER. Mr. Speaker, I yield 30 seconds to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Speaker, the bill relates specifically to harm on the athletic field. We offered the Democrats this amendment, and they still opposed the bill.

Mr. Speaker, every single State high school athletic association supports this bill. So Members of Congress, if we have a recorded vote on this, need to know their high school association is already on record, including California, including Virginia, including Texas, every single State high school athletic association supports this bill.

Mr. Speaker, I will insert the list of these State associations into the RECORD.

NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS,
Indianapolis, IN, September 10, 2004.

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 2003'', H.R. 3369, and urge you to vote for this legislation when it reaches the House floor. On September 8, the Judiciary Committee voted to support moving this bill forward and we understand it will reach the House floor soon.

The National Federation of State High School Associations, a non-profit organization that administers education-based athletic competitions, 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 impact on the NFHS and could affect our ability to continue to provide services to the nation's 20,000 high schools.

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

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

Earlier this summer, the Federation adopted a resolution supporting H.R. 3369. A list of

each state association supporting this legislation is attached.

Sincerely,

ROBERT KANABY,
Executive Director.

STATE HIGH SCHOOL ATHLETIC ASSOCIATIONS SUPPORTING H.R. 3369—THE NON PROFIT ATHLETIC ASSOCIATION PROTECTION ACT

Alabama High School Athletic Association
Alaska School Activities Association
Arizona Interscholastic Association
Arkansas Activities Association
California Interscholastic Federation
Colorado High School Activities Association
Connecticut Interscholastic Athletic Conference
Delaware Secondary School Association
District of Columbia Interscholastic Athletic Association
Florida High School Activities 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 High Activities Association
Kentucky High School Athletic Association
Louisiana High School Athletic Association
Maine Principals' Association
Maryland Public Secondary Schools Athletic Association
Massachusetts Interscholastic Athletic Association
Michigan High School Athletic Association
Minnesota State High School League
Mississippi High School Activities Association
Missouri High School Activities Association
Montana High School Association
Nebraska School Activities Association
Nevada Interscholastic Activities Association
New Hampshire Interscholastic Athletic Association
New Jersey State Interscholastic Athletic Association
New Mexico Activities Association
New York State Public High School Athletic Association
North Carolina High School Athletic Association
North Dakota High School Activities Association
Ohio High School Athletic Association
Oklahoma Secondary School Activities Association
Oregon School Activities Association
Pennsylvania Interscholastic Athletic Association
Rhode Island Interscholastic League
South Carolina High School League
South Dakota High School Activities Association
Tennessee Secondary School Athletic Association
Texas University Interscholastic League
Utah High School Activities Association
Vermont Principals' Association
Virginia High School League
Washington Interscholastic Activities Association
West Virginia Secondary School Activities Commission
Wisconsin Interscholastic Athletic Association
Wyoming High School Activities Association

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume, and I would point out to the gentleman from Indiana that I would assume that anyone who has been immunized from liability would support the legislation. I would like to see a list of people who have been injured by negligence, victims of discrimination, victims of violations of labor law. Let us get some of those to see what they think about it.

Mr. Speaker, as I said, we have immunized the volunteers, so in terms of running the organization, the volunteers have been immunized. A lot of places do not have problems with insurance. This mandates there is a blanket for everybody, State, local, everybody else, whether there are insurance problems or not.

We hear so much from the other side about States rights. Well, here we are, whether there is a problem in the State or not, here we come with a Federal mandate changing all their tort laws. Whether or not you disagree or agree with the Americans for Disabilities Act, or whether you agree or disagree with civil rights laws or labor laws, people ought to have the right to bring these cases in appropriate circumstances. Otherwise, the agency has no responsibility in any of these areas.

Now, accidents happen. We are not talking about accidents. What we are talking about is when an organization violates good common sense and someone is injured as a direct result of negligence. Should there be a recourse? Who should be responsible for the damage? If there is insurance, if you can get insurance, then certainly you should not immunize everybody. This can be done on a State-by-State basis. If Indiana cannot get insurance, then maybe Indiana can deal with that the best way Indiana feels Indiana can deal with it. If Virginia wants to deal with it in a different way, they can deal with it in a different way based on the availability of insurance.

But, Mr. Speaker, this bill goes too far. It immunizes more than is needed and it immunizes more causes of action. Now, the gentleman has talked about what kinds of negotiations were going back and forth. That is true. But we are not talking about the negotiations, we are talking about what is in the bill. The fact is, because of what is in the bill discrimination cases are thrown out; because of the bill, labor disputes are thrown out; all kinds of Americans with disabilities and everything else are thrown out because of the legislation. It is clearly overbroad and should be defeated.

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

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

With all due respect, Mr. Speaker, I believe the arguments advanced by the gentleman from Virginia are wrong. This bill defines a nonprofit athletic organization as one whose primary function is ''the adoption of rules for sanctioned or approved athletic competitions and practices.'' And the bill only provides liability protection for an act or omission in the adoption of rules for such competitions and practices.

This language is very clear, and it should be interpreted only to deal with on-the-field rules that govern such competitions and the injuries that arise from them. It does not cover civil rights cases alleging discrimination or other off-the-field harms.

Now, I am a little bit puzzled about these objections coming up at this late date. This bill went through the regular committee process. There was a full committee hearing on July 20 and a full committee markup on September 8. The bill was open for amendment at the markup, and had the gentleman from Virginia or anybody else on either side of the aisle been concerned about the aspect that has been complained about, they had the opportunity to offer an amendment and to have the amendment voted on. They chose not to do so.

I do not think that the amendment would have been necessary, because what this bill does is it says that if a State athletic association, like the Wisconsin Interscholastic Athletic Association, decides to adopt a rule for competition that means that everybody who competes in a sanctioned high school competition has to have a certain piece of equipment on, they cannot be sued merely for adopting that rule if the equipment failed. That is what the protection is all about.

Now, if this bill goes down, with the huge increases in insurance premiums that have been recounted by many of the Members here, one of two things is going to happen. One is that there will be an increase in premiums that are passed on to the schools involved, both public schools and private schools; or, alternatively, if there is no coverage that is available, then the State athletic association or the Little League governing bodies or the Pop Warner governing body will simply cease to exist and there will not be any rules that are adopted that are designed to protect athletes from injury to the greatest extent humanly possible.

This is a good bill. This is a narrow bill. It should be passed.

Mr. UDALL of Colorado. Mr. Speaker, I think this bill is well-intentioned but I must reluctantly oppose it because I think it goes further than it should and because the House will have no opportunity to consider amendments that would narrow its scope.

As it stands, the bill would not only prevent lawsuits related to personal injuries, but also evidently would apply to complains that rules adopted by these organizations unfairly discriminate against women or otherwise violate civil rights protected by the constitution or by federal laws.

That this is a real possibility is made clear by the Judiciary Committee's report, which notes that "To further clarify that this legislation only applies to a limited category of claims that arise out of activities on the field in sanctioned athletic competitions, an amendment may be added to this legislation before House floor action to further clarify that the liability relief is not intended to apply to civil rights and discrimination cases that challenge eligibility rules set by such organizations."

Unfortunately, no such clarifying change was included—and now the bill is being considered under a procedure that prevents the House from considering any amendment.

I also am concerned that the bill as it stands might also inadvertently protect individuals who could potentially harm children. During the Judiciary Committee markup, Representative LOFGREN remarked that if a poor hiring rule was in place that did not screen out pedophiles, parents would be barred from suing the athletic association regarding that rule. Here again I think it would have been better for the House to be able to at least consider an amendment to address this point.

Because of these problems, and because the only choice before us is to approve or disapprove the bill as it stands, I will vote against this measure in the hope that it can be reconsidered under a procedure that permits more extensive debate and consideration of amendments.

Mr. SENSENBRENNER. Mr. 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. 3369.

The question was taken.

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

Mr. SENSENBRENNER. Mr. 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 motion will be postponed.

GOOD SAMARITAN VOLUNTEER FIREFIGHTER ASSISTANCE ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1787) to remove civil liability barriers that discourage the donation of fire equipment to volunteer fire companies, as amended.

The Clerk read as follows:

H.R. 1787

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 ''Good Samaritan Volunteer Firefighter Assistance Act of 2004''.

SEC. 2. REMOVAL OF CIVIL LIABILITY BARRIERS THAT DISCOURAGE THE DONATION OF FIRE EQUIPMENT TO VOLUNTEER FIRE COMPANIES.

(a) LIABILITY PROTECTION.—A person who donates fire control or fire rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death proximately caused by the equipment after the donation.

(b) EXCEPTIONS.—Subsection (a) does not apply to a person if—

(1) the person's act or omission proximately causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct; or

(2) the person is the manufacturer of the fire control or fire rescue equipment.

(c) PREEMPTION.—This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that notwithstanding subsection (b) this Act shall not preempt any State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.

(d) DEFINITIONS.—In this section:

(1) PERSON.—The term ''person'' includes any governmental or other entity.

(2) FIRE CONTROL OR RESCUE EQUIPMENT.—The term ''fire control or fire rescue equipment'' includes any fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) STATE.—The term ''State'' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any other territory or possession of the United States, and any political subdivision of any such State, territory, or possession.

(4) VOLUNTEER FIRE COMPANY.—The term ''volunteer fire company'' means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation compared with an entry level full-time paid individual in that association or in the nearest such association with an entry level full-time paid individual.

(e) EFFECTIVE DATE.—This Act applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (a), is donated on or after the date that is 30 days after the date of the enactment of this Act.

SEC. 3. STATE-BY-STATE REVIEW OF DONATION OF FIREFIGHTER EQUIPMENT.

(a) IN GENERAL.—The Attorney General of the United States shall conduct a State-by-State review of the donation of firefighter equipment to volunteer firefighter companies during the 5-year period ending on the date of the enactment of this Act.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Attorney General of the United States shall publish and submit to the Congress a report on the results of the review conducted under subsection (a). The report shall include, for each State, the most effective way to fund firefighter companies, whether first responder funding is sufficient to respond to the Nation's needs, and the best method to ensure that the equipment donated to volunteer firefighter companies is in usable condition.

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

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. 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. 1787, the bill now under consideration.

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

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume. I rise today to urge my colleagues to vote for H.R. 1787, the Good Samaritan Volunteer Firefighter Assistance Act of 2004. I would like to thank the sponsor of the bill, the gentleman from Delaware (Mr. CASTLE), for bringing attention to an important issue.

This straightforward, narrowly tailored legislation deserves our support, as do the volunteer firefighters who stand to benefit from its passage. The purpose of the bill is simple and clear: To encourage increased donation of surplus firefighting equipment to volunteer firefighting units by removing civil liability barriers that currently cause some corporation, individuals, and professional firefighting entities that destroy or mothball surplus or used equipment rather than to donate it.

The Committee on the Judiciary had a hearing on H.R. 1787 on July 20, 2004, at which Chief Philip Stittleburg of the National Volunteer Fire Council testified in favor of the bill. According to the testimony received by the committee, volunteer fire departments account for 75 percent of all the Nation's firefighters and represent a cost savings estimated to be as much as $37 billion annually, which taxpayers would otherwise have to spend if those services that volunteers provide had to be replaced with full-time paid professional firefighters.

Many of these volunteer departments are in rural areas, with fewer resources, and face a constant struggle to provide their members with adequate equipment to protect local communities. Volunteer fire departments have traditionally benefited from the donation of surplus or used equipment when professional fire departments or firefighting units of private enterprises upgrade or replace their own equipment. Surplus equipment may include hoses, oxygen masks, protective clothing or even fire trucks. However, today, some of this needed, usable, and safe equipment is being destroyed or put in storage by the better-equipped fire units instead of being donated to the volunteer departments.

Many times donations never occur because of the fear of legal liability exposure if such equipment were ever to fail, even through no fault of the donor. The legislation before us would remove both the fear and reality of such liability for potential donors of fire safety or fire rescue equipment to volunteer departments.

The bill before us is a good, commonsense idea, but not an entirely original one. Ten States have already passed versions of this legislation at the State level. Texas, most notably, passed a law 7 years ago granting liability relief to donors of firefighting equipment that have resulted in approximately $13 million worth of donations to over a thousand volunteer departments since 1997. However, volunteer firefighter advocates do not have the resources to wage legislative campaigns in the remaining 40 States.

At a time when the Federal Government is more involved than ever in funding local first responders, Congress