

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 Stittsburg 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, common-sense 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

has the responsibility to do whatever it can to help volunteer firefighters get better equipment at zero taxpayer cost. What the bill does is simply provide that a person or entity who donates fire control or rescue equipment to a volunteer department will not be liable for civil damages for damage or loss proximately caused by the equipment after donation.

Despite some allegations by trial lawyers and other opponents, what the bill does not do is to protect the manufacturer of such equipment. It does not protect any donor whose actual mission constitutes gross negligence or intentional misconduct. Furthermore, the bill does not endanger the safety of firefighters. As Chief Stittsburg testified at the committee's hearing, fire chiefs are responsible for inspecting donated and purchased equipment alike, and no chief would allow their firefighters to answer an alarm using equipment that was not properly inspected and deemed fit for use.

Given a choice between no equipment and donated equipment that they inspect before using, volunteer fire departments are clearly in favor of the latter. And given a choice between believing trial lawyers versus volunteer firefighters about the need for use and safety of donated equipment, I will choose the latter.

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Mr. Speaker, today we have an opportunity to provide some limited, commonsense relief to Good Samaritan donors of needed equipment to Members' own local fire departments and to the communities that rely upon volunteer firefighters. I urge my colleagues to join me in supporting H.R. 1787.

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 oppose this legislation. While I salute the hard work of our volunteer firefighters, it appears to me we have before us a very extreme solution to a problem that does not exist. Although H.R. 1787 is supposed to encourage donation of firefighting equipment by eliminating civil liability barriers, there are no reported cases of businesses refusing to donate equipment, nor cases of volunteer firefighting companies suing their donors. The so-called problem could be solved without congressional action.

First, we heard during our committee deliberations that a volunteer fire department could simply sign a contract waiving liability of the donors from negligence resulted from the donated firefighting equipment. This tactic would ensure that fire companies are informed and have consented to the immunity of the donor. We do not have to mandate the immunity. They can agree to it if they want or if the donor insists.

Furthermore, Mr. Speaker, this is not a Federal issue. It is a matter that

can be dealt with by the States. There is nothing Federal about local volunteer fire departments. This liability issue is a State issue, and the gentleman from Wisconsin (Mr. SENSENBRENNER) has pointed out that many States have already dealt with the issue on a State basis. Companies should not be given blanket immunity for donating fire equipment. While it may be true that most of the equipment is perfectly usable, companies should be prevented from donating obsolete equipment known to be of dubious safety. Certain equipment, like protective gear and breathing apparatus, can deteriorate over time and may not be suitable for reuse.

With all of the other pertinent issues we have before Congress, I find it problematic that we are focusing our attention and problems on something that is frankly not a problem. I urge my colleagues to reject this bill which may in fact endanger firefighters.

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

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Delaware (Mr. CASTLE), the author of the bill.

Mr. CASTLE. Mr. Speaker, I thank the gentleman for yielding. I rise in support of the legislation which I introduced, the Good Samaritan Volunteer Firefighter Assistance Act, and I find it stunning that anyone would oppose this legislation. It just never occurred to me that could happen.

The legislation removes a barrier which currently prevents some organizations from donating surplus firefighting equipment to fire departments in need. Under current law, the threat of civil liability has caused some organizations to destroy fire equipment rather than donating it to volunteer rural and other financially strapped departments.

We know that every day across the United States, firefighters respond to calls for help. We are grateful that these brave men and women work to save our lives and protect our homes and businesses. We may presume that firefighters work in departments with the latest and best firefighting and protective equipment when in reality there are an estimated 30,000 firefighters who risk their lives daily due to a lack of basic personal protective equipment.

In both rural and urban fire departments, limited budgets make it difficult to purchase more than fuel and minimum maintenance. There is rarely enough money to buy new equipment. At the same time, certain industries are constantly improving and updating their fire protection equipment to take advantage of new state-of-the-art innovation. Sometimes the surplus equipment has never been used to put out a single fire. Sadly, the threat of civil liability causes many organizations to destroy, rather than donate, millions of dollars of quality fire equipment.

Not only do volunteer fire departments provide an indispensable service,

some estimates indicate that the nearly 800,000 volunteer firefighters nationwide save State and local governments \$36.8 billion a year. Of the 26,000 fire departments in the United States, more than 19,000 are all volunteers and another 3,800 are mostly volunteer. While volunteering to fight fires, these same selfless individuals are asked to raise funds to pay for new equipment. Bake sales, potluck dinners, and raffles consume valuable time that could be better spent training to respond to emergencies. All this, while surplus equipment is being destroyed.

In States that have removed liability barriers, such as Texas, fire companies have received millions of dollars in quality firefighting equipment. In the 7 years of the Texas program, more than \$12 million worth of firefighter equipment has been donated and given to needy departments. This includes nearly 70 emergency vehicles and more than 1,500 pieces of communications equipment. In total more than 33,000 items have been donated.

The generosity and goodwill of private entities donating surplus fire equipment to volunteer fire companies are well received by the firefighters and the communities. The donated fire equipment will undergo a safety inspection by the fire company to make sure firefighters and the public are safe.

We can help solve this problem. Congress can respond to the needs of fire companies by removing civil liability barriers. This bill accomplishes this by raising the current liability standard.

Mr. Speaker, I hope all of my colleagues will join me in supporting this bipartisan legislation to better equip our Nation's firefighters.

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

Mr. Speaker, as I understand it, the threat of civil liability causes some to think twice about donating dangerous equipment, equipment which may place our firefighters in danger. If this bill passes, they will not have to be concerned about donating dangerous equipment. I am not sure that is a good thing. I would hope that we would defeat the bill, allow the volunteer firefighters to waive liability if they see fit, but not impose this mandated waiver on everybody whether they want it or not.

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

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

Mr. Speaker, I think the choice in this bill is either pass the bill and allow for the donation of the equipment, or do not pass the bill and no equipment is going to be donated at all because the donor does not want to be on the hook for a civil liability lawsuit merely as a result of the donation.

This bill does not immunize the manufacturer of the equipment so if the equipment was defectively manufactured, a lawsuit would still lie against

that manufacturer for either product liability or negligence.

The gentleman from Virginia (Mr. SCOTT) also says, well, the way to deal with this is to defeat the bill and have every volunteer fire company sign a waiver when they receive donated equipment. Well, that means that there is going to have to be a lawyer sitting in the firehouse drafting these waiver documents. Most of the volunteer fire companies that I am familiar with in my State, and I do not think they are any different from volunteer fire companies in other States, are staffed entirely by volunteers. These are people who donate their time to deal with emergency situations. Many of the volunteer fire companies in Wisconsin also run the first responder and emergency medical technician teams, and they ought to be spending their time and efforts doing training and raising money to purchase equipment that could not be donated, rather than paying for lawyers' fees to draft up waiver of liability agreements.

I think this is a very sound bill. It is a commonsense bill. It should be passed.

Mr. Speaker, I yield such time as he may consume to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. Mr. Speaker, I thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for yielding me this time.

I really find it amazing that anyone would come to the floor and vote against this legislation. There are nine States which have this in place at this time, and they are large States. I mentioned Texas, but there are also other large States such as Florida and California.

This is clearly something which has worked in these States. They have received contributions of communications and firefighting equipment. In most instances, it is far better equipment than what they have already. In every single case, the fire companies inspect the equipment to make sure it is safe, contrary to what the gentleman from Virginia (Mr. SCOTT) has stated regarding the safety aspects. In the research I have done, it has proven to be extremely safe.

But a lot of companies, frankly, in other States, corporations, absolutely refuse to make donations because they are worried about liability. We are simply trying to clear the way to do that. What is in the best public interest, to worry that somebody does not inspect the equipment properly, that is just not very likely to happen, or saving people's lives in firefighting, which is really what this legislation is all about.

There is no doubt the scale on this one is overwhelming in terms of doing something such as this. This protects the donor only, not the manufacturer. No one is donating dangerous equipment in this particular circumstance. There is no reason whatsoever not to support this legislation, not to support

the volunteer firefighters, not to support the public who will benefit from this, not to support the use of the equipment rather than destroying the equipment because of concern about litigation and concerns such as those.

Mr. Speaker, for all these reasons, I hope when the time comes there is only one vote against this, and that is the gentleman from Virginia, and all other Members are aware of the benefits and what this legislation does.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of this legislation, H.R. 1787, the Good Samaritan Volunteer Firefighter Assistance Act of 2003, but will express the reservations that I had during the Judiciary Committee oversight and markup hearings. The purpose of this legislation—purportedly, is to ensure that an individual or entity that donates fire control or fire rescue equipment to a volunteer fire company is not held liable for State or Federal civil damages for personal injuries, property damage or loss, or death caused by the equipment after the donation.

On its face, this legislation has beneficial purpose, that is, to encourage large companies that own new or virtually new equipment to donate it to rural area fire companies or those that lack resources. This purpose is definitely consistent with America's need to support its first responders as terror threats continue to loom and cause continual rise in threat level.

However, records—or the lack of record shows that there is currently no need for this legislation. There have been no reported cases of volunteer firefighting companies bringing suit to recover from damages caused by defective equipment. Moreover, we have no record of numbers of companies that have refused to donate their used or new fire equipment to volunteer fire companies.

This legislation preempts State law in terms of shielding donors of equipment from liability. We in Congress have a duty to uphold the Constitution, and given the lack of immediate need, it seems "frivolous" to contravene the 10th amendment and erode the rights of the individual States to handle matters relating to their local fire companies.

In Texas, this issue is already legislatively addressed in 1997, as it is in the States of Alabama, Arizona, Arkansas, California, Florida, Illinois, Indiana, Missouri, and South Carolina. Therefore, if we refrain from taking this unnecessary congressional action, other States will follow suit and pass similar measures to achieve positive results.

Therefore, I would have offered two amendments. I would have offered an amendment that would limit this legislation to situations where the donee has not executed a waiver of liability.

The text of the first amendment read "if the volunteer fire company waives all liability claims against the donor with respect to that equipment."

This amendment would have appropriately narrowed the scope of this legislation by specifying that a donor of fire equipment will be exempt from liability only if the donee fire company has executed a waiver of liability. Moreover, by adding this provision, "frivolous lawsuits" would be prevented with minimal congressional action and with minimal effects on the 10th amendment to the Constitution.

Additionally, this amendment would have protected both the donor and the donee by re-

quiring a legal showing that there was acceptance as to the quality of the equipment donated in any given circumstance.

I also planned to offer an amendment that called for the State-by-State review of the amount of equipment donated to volunteer firefighter companies for 5 years after enactment of H.R. 1787. This provision would have shown the public the results of this legislation in order to reveal its effectiveness or the lack thereof. The second part of this amendment would have required the Attorney General to submit a report to Congress of the results of the State-by-State review.

The Jackson-Lee "State review" amendment would have allowed Congress to clearly analyze how our first responders benefit from this legislation against the effects it will have on the execution of State law. If the legislation fails to serve its purported purpose, the study would have clearly revealed it to Congress so that corrective measures may be taken.

The two amendments above would have helped to narrow the scope of this vague legislation as well as to even the scale for the donee firefighting corporation as well as the donor. It is critical that we protect and preserve the rights of the individual States as well, consistent with the 10th amendment to the U.S. Constitution.

Nevertheless, I ask that my colleagues support this legislation recognizing the points that I have made above.

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

The SPEAKER pro tempore (Mr. OSE). 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. 1787, as amended.

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.

VOLUNTEER PILOT ORGANIZATION PROTECTION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1084) to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations, as amended.

The Clerk read as follows:

H.R. 1084

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 "Volunteer Pilot Organization Protection Act of 2004".

SEC. 2. FINDINGS AND PURPOSE.

(a) *FINDINGS.*—Congress finds the following:

(1) *Scores of public benefit nonprofit volunteer pilot organizations provide valuable services to communities and individuals.*