GOOD SAMARITAN VOLUNTEER FIREFIGHTER ASSISTANCE ACT OF 2003, THE NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2003, AND THE VOLUNTEER PILOT ORGANIZATION PROTECTION ACT

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

H.R. 1787, H.R. 3369, and H.R. 1084

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GOOD SAMARITAN VOLUNTEER FIREFIGHTER ASSISTANCE ACT OF 2003, THE NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2003, AND THE VOLUNTEER PILOT ORGANIZATION PROTECTION ACT

TUESDAY, JULY 20, 2004

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. Good morning.

The Committee on the Judiciary is holding a legislative hearing today on three bills: H.R. 1787, H.R. 3369, and H.R. 1084.

Each of these bills are intended to remedy specific liability problems in particular areas of volunteer and non-profit activities. I would like to thank the sponsors of these bills: Representative Mike Castle of Delaware, Representative Mark Souder of Indiana, and Representative Ed Schrock of Virginia, respectively. They are to be praised for their good work on legislation designed to protect and encourage those who do so many good works.

The overall objective of today's hearing is to explore the effects of liability fears on volunteer and non-profit organizations generally and on whether Congress might provide appropriate legal relief that will encourage activities which benefit society. An even broader theme of this hearing and a central concern of this Committee is how institutions that are vital to the functions of a decent society, such as the volunteer and non-profit organizations before us today, have been damaged by the development of the lawsuit culture.

The witnesses before us today will describe some of the specific failings of our civil justice system because they, their organizations, or those they serve have been the direct victims of it. But in a larger sense, all Americans have already been victimized by the lawsuit culture. The economic consequences of the lawsuit culture are severe, but pale in comparison to the overall societal cost. The lawsuit culture has already fundamentally altered the behavior of average Americans without their ever making a conscious choice in the matter. It pervades our thinking and has changed who we are and what we do, and not for the better.

In the lawsuit culture, teachers are afraid to teach or discipline students; doctors are afraid to practice medicine; recreation departments are so afraid of liability that they remove standard playground equipment, happily enjoyed by millions of children for decades. And as we will hear today, in the lawsuit culture volunteer organizations and those who give time and resources to them are increasingly fearful of legal exposure that might arise from their efforts to help others.

It is difficult to quantify the overall damage to American society done by the lawsuit culture, but easy to see the results anecdotally and in our own changed thinking. Philip Howard recently catalogued these consequences in his thought-provoking book "The Collapse of the Common Good." Mr. Howard observed that the law is supposed to be an instrument of freedom, allowing us to act freely, confident that the law will defend reasonable conduct. "By letting everybody know where they stand, law liberates people to make free choices," writes Howard. But instead of law providing freedom today, Mr. Howard notes, and I quote, "Social relations in America, far from being steadied by law's sure hand, are a frayed tangle of legal nerves. Any dealings in public, whether in hospitals, schools, offices, or in the ebb and flow of daily life, are fraught with legal anxiety. An undertow pulls at us constantly, drawing us away from choices we think are reasonable. Legal fear has become a defining feature of our culture."

How can we restore personal responsibility in the law as the guardian of freedom rather than a subconscious, pervasive, paralyzing fear of all risk? Perhaps what is most in need of fundamental change is our own perception of the law as a system of individual rights disjoined from any conception of fairness to society as a whole.

As Mr. Howard again writes, "Law serves a social function as well as an individual one. The social function used to be considered its main function. The rule of law was the main concern of our Founders, but not because they were expecting America to sue its way to greatness."

We can take a small step today in restoring that balance of social function of the law by examining the deterrent effect that legal fear is having in some very specific areas that otherwise benefit society. By curbing the worst excesses of the lawsuit culture, Congress can do something to see that volunteer firefighters are better equipped without spending a dime of the taxpayers' money. We can make sure that those who teach our children sports are more concerned about fair play and good sportsmanship than their insurance rates or getting sued. And we can ensure that volunteers who give of their own time and resources to transport ill patients hundreds of miles for life-saving medical treatments concentrate on flying planes instead of hiring a defense team.

It's hard to imagine today, but there was a time in the not too distant past when no one in our society would have considered bringing a lawsuit for an accident against some charity seeking to do good. We must keep in mind that the lawsuit culture is a fairly recent departure from our traditional legal foundation. It does not have to be a permanent departure, and the rational changes we

seek should not be viewed as new or radical or impossible but, rather, as a return to legal normalcy.

I thank the witnesses before us today and look forward to their testimony. And I also look forward to America's swift return to making judgments based upon what's right rather than upon fear of legal risk.

I now recognize the gentleman from Michigan for his opening statement.

Mr. CONYERS. Thank you, Chairman Sensenbrenner. I take this opportunity to welcome the witnesses, in particular, Professor Popper, who has been before the Judiciary Committee before on this and related matters.

It's true that there are people that are afraid of lawsuits in America. But it may not be true that teachers are afraid to teach. It may not be accurate to say that doctors are afraid to practice medicine. And it may be misconceived that people doing good are afraid to do good because they are afraid that they may be held accountable for negligent acts that might flow out of their doing good.

So we begin with the appreciation of all those that help—the firefighters, the good Samaritans, the athletic organizations, the volunteer pilots. But the question is: Is this a Federal matter to determine the liability of, say, a fire department? We now are deciding that the State laws and the local laws are insufficient and it's very important that the national legislature weigh in on this.

I must say that in my entire career in the Congress, I have never received—not just I have not received any letters, I have never been advised by any of these organizations about any problem they've had in terms of being sued or having to go into court or having to litigate.

So I wonder if this is—is this a real monster we are attacking, or is it a continuation of the limiting of the rights of people who seek redress in a system which is rife in many instances with abuses which are uncorrected? Are we trying again to limit recovery? Are we trying to make it as hard as possible for those who do have a meritorious claim to come before the court? Or is this preparation for Lawsuit Abuse Week that our distinguished leader, Tom DeLay of Texas, has declared will happen in September when we come out of the August recess, in which all of these things will be orchestrated to form a part of this continuing assault on the legal system as if judges and State legislatures don't have the same good, common sense that we have?

I'd like to ask the Chairman of the Committee, Mr. Smith, whether or not there have been Subcommittee hearings on, let's see, one, two, three measures that are being brought all together before us to the full Committee this morning, and I would yield to the gentleman.

Mr. SMITH. I thank the gentleman for yielding. To my knowledge, there has not been a Subcommittee hearing, but if I were the gentleman, I would be impressed by the fact that we're having a full Committee hearing on these three particular pieces of legislation.

Mr. CONYERS. Well, do you plan to hold——

Mr. SMITH. I think that is the——

Mr. CONYERS. Do you plan to hold any Subcommittee hearings?

Mr. SMITH. That is not my decision, Mr. Conyers.

Mr. CONYERS. Okay. Well, was it your decision to skip the Subcommittee hearings? And I yield to the gentleman.

Mr. SMITH. Well, I think there is good reason to do so because I think this points out the importance of the legislation to the Chairman and to the full Committee that we would have a hearing by the full Committee and not just limit a hearing to the relevant Subcommittee. So I think today's hearing is going to be a good one and very instructive for all of us.

Mr. CONYERS. Well, then, why don't we just eliminate Subcommittees and hold everything at the full Committee if everything's so important?

By the way, I will be looking—and I ask our distinguished witnesses to please produce any empirical evidence, studies, lawsuits that have come to your attention that require action on not only this bill but on three completely—not completely different, but three similar bills to protect the firefighters, to assist athletic organizations, and to help volunteer pilots against litigation. If you have any studies, if you know anything about this, because I must say, only when you come before me am I told that this is a pressing problem, or is it because the distinguished Majority Leader Tom DeLay of Texas wants to aggregate all of these hearings in a Lawsuit Abuse Week? I'm not quite sure what it is we're trying to do here.

I thank the Subcommittee Chairman.

Mr. SMITH. [Presiding.] Thank you, Mr. Conyers.

Without objection, all Members' opening statements will be made a part of the record, and I will proceed to introduce the witnesses.

Our first witness on the panel this morning is Chief Philip C. Stittleburg, of the great State of Wisconsin. He has been Chairman of the National Volunteer Fire Council, NVFC, since 2001. Chief Stittleburg joined the Volunteer Fire Service in 1972 and has served as Chief of the LaFarge, Wisconsin, Fire Department for 27 years. He is also Legal Counsel to the NVFC, the LaFarge Fire Department, and the Wisconsin State Firefighters Association, and has represented the NVFC on numerous National Fire Protection Association standards-making committees, including ones that set industry standards on firefighter health and safety. He served as the NVFC Foundation President for 12 years, and just recently completed his second term on the NFPA Board of Directors.

Chief Stittleburg earns his livelihood as an attorney, but we won't hold that against him on this Committee. His legal career includes serving as an Assistant District Attorney on a half-time basis for the last 30 years. Welcome, Chief Stittleburg.

Our next witness is Robert F. Kanaby, the Executive Director of the National Federation of State High School Associations. Before serving as Executive Director of the NFSHS, he spent 13 years as the Executive Director of the New Jersey State Interscholastic Activities Athletic Association and 19 years in the public schools of New Jersey. Mr. Kanaby has been instrumental in creating a stronger national presence for the NFSHS, stressing citizenship issues in high school activity programs and imparting the values of respect and sportsmanship in high school sports lesson plans. Mr. Kanaby is also a member of the board and Executive Com-

mittee of USA Basketball and the Board of the Naismith Basketball Hall of Fame. We welcome you as well, Mr. Kanaby.

Our third witness is Andrew F. Popper. Mr. Popper is a tenured full professor at American University and Washington College of Law in Washington, D.C. He teaches torts, product liability, administrative law, and a seminar in government litigation. In 1996, he was honored nationally as the recipient of the American Bar Association Robert B. McKay Award for Excellence in Tort Law. In 1999, he was named University Teacher of the Year. He has served as Chair of the Administrative Law Section of the Federal Bar Association and was Vice Chairman of the ABA Committee on Government Relations Section on Legal Education and Admission to the Bar. Professor Popper is the author of more than 100 published articles, papers, and public documents.

I am now going to recognize the gentleman from Virginia, Mr. Forbes, to introduce our last witness.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Chairman, I'm honored to introduce the final member of our panel today, Edward R. Boyer of Virginia Beach, VA. Mr. Boyer is a retired senior career Federal employee with 29 years of service at the U.S. Department of Health and Human Services and 44 years as a pilot in single- and multi-engine aircraft. Mr. Boyer has served in various capacities in the military, from an active-duty Army officer responsible for the Advanced Nike Air Hercules Air Defense System to an Air Force civilian employee managing the design and construction of U.S. air bases. Mr. Boyer is the founder of Mercy Medical Airlift, a charitable medical air transportation system, and Angel Flight America, a public benefit aviation program that offers no-cost access for ill patients to distant, specialized medical evaluation, diagnostic, and treatment centers.

Mr. Boyer, it's a pleasure for us to have you with us this morning.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Forbes.

Let me swear in the witnesses, and if you all would stand and raise your right hand.

[Witnesses sworn.]

Mr. SMITH. Thank you all. Please be seated.

Let's see. Chief Stittleburg, if you'll proceed, we will start with you.

TESTIMONY OF PHILIP C. STITTLEBURG, CHAIRMAN, NATIONAL VOLUNTEER FIRE COUNCIL

Mr. STITTLEBURG. Thank you, sir. Good morning. I appreciate the opportunity to address this Committee. I represent the National Volunteer Fire Council, and I am here to speak on behalf of the "Good Samaritan Volunteer Firefighters Assistance Act of 2003" and to explain to you why the NVFC supports this bill.

About 75 percent of the fire departments in our country are volunteer, about 15 percent more are predominantly volunteer, and we protect about 45 percent of the population of this country. Volunteer fire departments run the gamut in terms of size from very, very small to very large. Most communities that have 25,000 popu-

lation or less are probably going to be protected by a volunteer fire department.

Some of these departments are extremely well equipped; others struggle on a daily basis to try to get equipment that allows them to carry out their mission.

In 2001, the National Fire Protection Association made a study of the needs of the volunteer fire service and have found that one-third of all firefighters per shift lacked adequate breathing apparatus; half of all of them lacked PASS devices, and the list goes on. One of the sources for less well equipped departments to obtain equipment is from larger, better equipped fire departments and from industrial fire brigades.

The role that volunteer fire departments play in homeland security is immense. I think this is finally being recognized since the events of 9/11.

The Federal Government has provided financial help to us in the form in the past of the Assistance to Firefighters Grant program, which you are all familiar with, or what we frequently refer to as the Fire Act, which has distributed now more than $1 billion to the fire service over just the past several years. This is a greatly needed resource for which we are very grateful. But I can tell you that it's only a small start toward what we actually need.

The bill that's before you today actually relates to this Fire Act because, as some departments receive new equipment with their Fire Act funds, they will be in a position to donate their old equipment, and this bill would facilitate that.

What that means, in effect, is that Government gets more bang for its Fire Act buck. We provide more protection with that buck, and we are better able to protect our own members with that very same buck.

Today's appearance is a bit different for me. I have the privilege of appearing on occasion before congressional committees, and I'm typically there asking for something, for the Federal Government to give us something.

Today is different. Today I am not asking for the Federal Government to give us something. I am asking for the Federal Government to enable us to take care of ourselves.

Now, one potential question that may arise is: Would legislation such as this encourage the use of gear that may possibly be unsafe? I have two responses to that question. Both of them are no.

First of all, we have standards in the fire service that designate how we use our equipment. We have standards that relate to use, maintenance, inspection on a periodic basis, repair, taking care of the equipment according to the manufacturer's instructions. So we don't simply pick up a piece of equipment and use it. It is constantly being maintained and inspected.

The second point I would make is that the gear that's being donated is not being donated because it's no longer serviceable. It's being donated frequently because the department that is the donor is able to upgrade their equipment. So what this means is that the donee is much better off with older-model equipment than without equipment at all.

Another objection I hear mentioned is, you know, shouldn't this be a State issue? Why would the Federal Government be involved

in liability legislation at the Federal level? Well, I can tell you that right now there are about 10 States in the Union that have passed legislation similar to this. This problem first became apparent to us about 10 years ago. Now, at that rate we will never get it done. We don't have the time to fight this battle 40 more times.

But, in addition to that, there is now an urgency to this matter. 9/11 has greatly expanded the demands made on the fire service, and particularly on the volunteer sector of the fire service. It's more important than ever that we be properly equipped so that we may discharge that mission that we are called upon to fulfill.

The Fire Act has created a lot more fire departments that are now able to donate equipment. This didn't exist before. To lose serviceable equipment at this juncture when the mission of the fire service has so greatly expanded would be needless, unforgivable. It would be detrimental to the fire service. It would be detrimental to the protection that we provide to the American public.

I thank you, sir.

[The prepared statement of Mr. Stittleburg follows:]

PREPARED STATEMENT OF PHILIP C. STITTLEBURG

Chairman Sensenbrenner, Ranking Member Conyers and members of the committee, my name is Chief Phil Stittleburg and I am Chairman of the National Volunteer Fire Council (NVFC). The NVFC represents the interests of the more than 800,000 members of America's volunteer fire and emergency services community, who provide staffing in over 90 percent of America's fire departments. I joined the volunteer fire service in 1972 and have been the Chief of the LaFarge Volunteer Fire Department in Wisconsin for the last 27 years. I have had experiences in all phases of the first responder community, including chemical and hazardous materials incidents, EMS, rescue and fire.

In addition to serving as the NVFC Chairman, I have represented the NVFC on a variety of standards-making committees, including ones that set industry standards on firefighter health and safety. I serve on the National Fallen Firefighters Foundation Board of Directors and have just completed two terms on the Board of Directors of the National Fire Protection Association. I have also served as an adjunct instructor for the National Fire Academy. I earn my livelihood as an attorney, which includes serving as an Assistant District Attorney on a half-time basis for the last 30 years. These positions give me an excellent opportunity to serve and lend my expertise in a wide array of professions in the public safety arena.

According to the National Fire Protection Association (NFPA), nearly 75 percent of our nation's firefighters are volunteers. In any given year, more than half of the firefighters that are killed in the line of duty are typically volunteers. In addition to the obvious contribution that volunteer firefighters lend to their communities as the first arriving domestic defenders, these brave men and women represent a significant cost saving to taxpayers, a savings sometimes estimated to be as much as $37 billion annually.

On behalf of our membership, I appreciate this opportunity to comment on H.R. 1787, the Good Samaritan Volunteer Firefighter Assistance Act, which would limit the liability of companies and fire departments that want to donate surplus equipment to volunteer fire departments. This legislation, introduced on April 11, 2003 by Rep. Michael Castle (DE), has a bipartisan group of 66 cosponsors. The NVFC strongly supports passage of this legislation.

The fire service responds to nearly 21 million calls annually involving structural fire suppression, emergency medical response, hazardous materials incidents, clandestine drug labs, search and rescue, wildland fire protection, natural disasters and terrorism. Many of these incidents can damage America's critical infrastructure, including our interstate highways, railroads, bridges, tunnels, financial and agriculture centers, power plants, refineries, and chemical manufacturing and storage facilities.

Many of these responding departments are rural, volunteer departments that struggle the most to provide their members with adequate equipment to protect their communities. In these difficult times, while volunteer fire departments are already struggling to handle their own needs and finances, they are now forced to provide more services.

In recent years, the Congress has begun to respond to the enormous need in America's fire service by creating the Assistance to Firefighters Grant program, created in 2000. To date the program has distributed over $1.1 billion to almost 16,000 fire departments across the country for apparatus, personal protective equipment, hazmat detection devices, improved breathing apparatus, wellness and fitness programs, fire prevention and education programs and interoperable communication systems. This is the basic equipment our fire departments need to effectively respond to all hazards. While we greatly appreciate this support, we feel the Congress can do more for the fire service at no additional cost to the taxpayers.

The volunteer fire service was built on a tradition of giving. Volunteer firefighters give hundreds and thousands of hours each year in service to their community. Moreover, well equipped fire departments have made it a tradition to give used equipment to those departments that are less fortunate or in dire need of equipment. However, in recent years, the fear of getting sued if the gear later turns out to be faulty has made these donors think twice about giving.

In fact, every year, quality fire equipment, including hoses, fire trucks, protective clothing and breathing apparatus, with an estimated worth in the millions of dollars, are destroyed instead of being donated to volunteer fire departments in order to avoid civil liability lawsuits. The fear of litigation has forced heavy industry and wealthier fire departments to waste surplus equipment, which in some cases has never been used to extinguish a single fire. They are chopped up or sent to the dump while volunteer fire departments remain in desperate need of quality equipment to protect themselves and their communities.

Consequently, volunteer firefighters must spend large amounts of time raising money, time that could be better used training for emergency responses. In addition, local taxpayers spend millions of dollars for operating expenses and for purchasing replacement equipment for their volunteer fire companies.

Congress can contribute by removing liability barriers that keep volunteer firefighters from receiving perfectly safe equipment. To be sure, this act takes measures to protect firefighters from faulty donated equipment by continuing to hold organizations liable if they act with malice, gross negligence, or recklessness in making the donation or are the manufacturer of the donated equipment. A donor may still be found liable under a negligence standard. Like other Good Samaritan laws, this bill proposes to raise the standard from negligence to gross negligence.

H.R. 1787 is modeled after state law that has been passed in Alabama, Arizona, Arkansas, California, Florida, Illinois, Indiana, Missouri, South Carolina and Texas. In fact, since this bill was signed into law in Texas in 1997, donations in excess of $10 million worth of equipment for volunteer fire departments has been distributed.

Prior to the law being put in place, large oil refineries such as Union Carbide with their own fire brigades would not make any donations to the volunteer fire departments in the communities in which they operate. They cut up hundreds of thousands of dollars worth of fire equipment and buried it so it could not be used and traced back to them. This is not an isolated situation. There are other instances where equipment is donated in a secret fashion and anonymously dropped off at a specific location with a blind eye turned.

While I understand there is limited case law against these types of donors, it is quite clear from my experience that the fear of these lawsuits is having a very real impact. It is our hope that passage of this legislation will send a clear signal to corporations and wealthier fire departments that they can donate their surplus fire equipment with a reduced risk of being sued for their act of kindness.

It is unfortunate that the fire service of our country is forced to search for serviceable used equipment to enable it to carry out its vital mission. However, until the day dawns when society accepts its role in providing proper support to those who protect them, legislation such as this will be necessary.

Mr. Chairman, I thank you for your time and your attention to the views of America's fire service, and I would be happy to answer any questions you may have.

Mr. SMITH. Thank you, Mr. Stittleburg.

Mr. Kanaby.

TESTIMONY OF ROBERT F. KANABY, EXECUTIVE DIRECTOR, NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS

Mr. KANABY. Thank you, Mr. Chairman. Good morning, Members of the Committee as well. We appreciate the opportunity to come here and provide some information regarding the House Resolution

3369, the "Non-Profit Athletic Association Protection Act." I represent the National High School Federation. We represent some 51 State associations throughout this Nation, those of—each one in each of the States that are represented here on this Committee, as well as the District of Columbia. They in turn represent services that we provide to more than 18,000 secondary schools across the United States in the areas of sports and activities such as speech, music, debate, and theater. In total, our services reach more than 7 million participation opportunities for student athletes and more than 4 million participation opportunities in the areas of the activities that I mentioned.

We're here to talk about those activities as a means to deal with a situation that we are encountering that's making it extremely difficult for us to fulfill our mission and to fulfill our responsibilities to those schools and to those young people. We are extremely thankful to Representative Souder for introducing this bill, which is also cosponsored by Representative Smith. It is our pleasure to be able to provide you with any information that you would seek regarding this.

We come to you today because we are threatened with a situation that may prohibit our ability to continue to write playing rules for those sports that we have mentioned, some 17 sports. We publish the playing rules for 17 sports which are utilized by our Nation's high schools throughout the country. The reason why we are in danger or imperiled is because of this is, quite frankly, because we cannot—we are reaching a situation where we cannot afford to pay the insurance premiums that are occurring.

Within the past 10 years, we have dealt with this situation, but are finding it more and more difficult to do so. We have seen our insurance premiums more than triple. They are now approaching the $1 million mark on an annual basis, and that represents a tremendous strain on the organization when we have a total budget of only $9 million.

We come here to explain to you what it is that we do specifically. We write rules for playing sports here in this country. The rules-writing process is extremely open. It is representative of people from all over the Nation. It's representative by educators who are teacher coaches, officials, athletic administrators from all walks of life. It is gender-sensitive, and it is racially sensitive. It truly represents America and those individuals who are working on these programs.

But there is a realization that we are having more and more difficulty dealing with, and that is, sport requires an element of risk. You cannot participate in sports and eliminate the element of risk. When you have bodies flying through the air, when you have young people doing extremely—talented young people doing all kinds of stunts and activities, and you have less talented young people doing those same kinds of things or developing skills to do those same kinds of things, accidents are going to occur. And each of those accidents has now been representative to our being sued because we have either passed a rule or failed to pass a rule, because we have developed a rule or failed to develop a rule. And we are in a logjam situation where, no matter what we do, every time

there's an accident or a difficulty that occurs, we are embroiled in a suit.

Let me underscore the point that this bill does not—does not attempt to grant immunity over issues regarding discrimination, whether it be gender, racial, or disability. This merely is a bill to try to attempt to provide some level of immunity for individuals, all volunteers, who are developing playing rules for high school sports. We could easily offer why we should not have just one playing rule. But that's not the case. This organization, which is more than 80 years old, has been writing high school rules since the 1930's because the rules in the professional leagues do not apply to 13- and 14-year-olds. They basically need a certain set of circumstances and rules that basically are done by the educators who are doing that teaching.

Let me sum up by saying it's important to protect this organization that promotes these activities for young people because, should we go away or fail to start—to keep writing playing rules and provide the services that we do, we are going to lose a tremendous opportunity for young people to continue to learn through the spirit of sport, not just necessarily the skill of sport. And the spirit of sport is that which evolves around sportsmanship activities, it evolves around teaching young people citizenship skills—all the kinds of things that make the difference between a good citizen who contributes to our society and a citizen who becomes a detriment to it.

Thank you very much for your attention. I'll be happy to answer any questions you might have.

[The prepared statement of Mr. Kanaby follows:]

PREPARED STATEMENT OF ROBERT F. KANABY

Thank you Mr. Chairman and members of the Committee for the opportunity to testify in support of HR 3369, the Non-Profit Athletic Association Protection Act. My name is Robert Kanaby and I have served as the Executive Director of the National Federation of State High School Associations for the past 11 years. Prior to that I served 13 years as the Executive Director of the New Jersey State Interscholastic Athletic Association. I have also been a high school teacher, coach, vice principal and principal.

The High School Federation is the national service organization and administrative organization for high school athletics and fine arts programs in speech, debate, theater and music. Our purpose is to provide leadership and coordination of these activities to enhance the educational experiences of high school students and reduce the risks incident to their participation. We promote inclusiveness and sportsmanship, and our paramount goal is to develop good citizens.

I am here today to talk about our activities with respect to high school sports. Specifically, I am here to ask you support and pass legislation that will provide some immunity for claims of negligence for us and other non-profit amateur sports rule makers resulting from passing or adopting sports competition rules for sanctioned or approved play.

The National High School Federation develops and publishes playing rules for 17 sports for boys and girls competition. These rules govern virtually all high school competition in the United States for baseball, basketball, cross country, field hockey, football, boys gymnastics, girls gymnastics, ice hockey, boys lacrosse, soccer, softball, spirit, swimming and diving, track and field, volleyball, water polo and wrestling. To give you an example of our product, I included with my written testimony a copy of the rule book for wrestling.

We have come to Congress because we have a situation that threatens our ability to pursue our mission. This legislation introduced by Representation Mark Souder would shield these organizations, their directors, officers, employees, representatives, and agents from liability for claims of negligence involving the passage, failure to pass, adoption, or failure to adopt rules concerning athletic competition.

Before going into the details of our problem it is important to understand what we do and the service we provide to communities throughout this country. The rules writing program, which stresses "grassroots" input, was initiated in order for high schools, coaches, athletic administrators and interscholastic officials to have direct influence in developing rules. NFHS rules are written specifically by and for the high school level of participation and are intended to promote and preserve the sound traditions of the sport and to minimize the risk of injury for participants.

It is important to understand how these rules are developed. The two primary rules organizations for education-based athletics are the NCAA and NFHS. These two non-profit organizations publish rules for most education-based athletics across the country. They organize rules committees which are comprised of experienced practitioners (i.e., coaches, officials and administrators) who volunteer their time. As rule makers, they are involved in a predictive endeavor, which means that unintended consequences are always a possibility. Committee members observe trends in their sports, seek input from a spectrum of sources, and then measure possible rules changes against three principal standards, all of which are subjective. The three standards include: preservation of each sport's sound traditions; risk minimization; and maintenance of an appropriate balance between offense and defense. Each set of rules is a work in progress as players get bigger and stronger, coaching methods change, and technology advances. Each sport is an ever-moving target for rules makers, and no set of rules can ever make participation in sport, as we know it, completely "safe."

This is not a new process and this is not a new organization. The High School Federation is over 80 years old. We published our first rules in 1930 for football. On the basis of our track record of service to over 7 million students each year we have done a pretty good job.

Education based sports are an important and essential part of our society. These activities provide great benefits for participants and spectators alike. It is widely acknowledged that interscholastic sports are a tremendous asset to America's young people. They help to build character and they promote important social qualities such as leadership, teamwork, discipline, and goal setting.

A study conducted by the Department of Health and Human Services (Adolescent Time Use, Risky Behavior, and Outcomes: An Analysis of National Data Issued in September of 1995) found that students who spend no time in extra-curricular activities are 57% more likely to have dropped out of school by the time they would have been seniors; 49% more likely to have used drugs; 37% more likely to have become teen parents; 35% more likely to have smoked cigarettes; and 27% more likely to have been arrested than those who spend one to four hours per week in extra-curricular and sporting activities.

High School sports provides an important outlet for celebrating human achievement. Sport is an activity where competitors and spectators alike can come together to applaud athletic achievement without regard to politics, race, gender or ethnic origin. Next month the 2004 Summer Olympic games will take place in Athens, Greece. This event brings spectators and athletes together from over 100 countries to witness the performance of the world's best. For 17 days, political and social barriers will fall to the side as the world celebrates the achievement of these athletes. Similar examples take place in high schools every day.

There is no question that interscholastic sports contributes to the health and social well being of all of the participants and helps to lift the spirits of spectators who watch these events. Preserving amateur and interscholastic sports is essential in our society, particularly with respect to the development of our children. However a situation exists that is a threat to the continuation of our ability to facilitate this important part of our culture.

Sport is not without an element of danger. The nature of aggressive, competitive, contact-permissive physical activity entails a small risk of serious harm. For a few, the risk becomes a

reality. It is only in the last decade or so that this has become a threat to the larger good afforded by amateur sports. As I mentioned at the beginning of my testimony, rule makers have increasingly become the target of liability claims alleging negligence due to the passage or adoption of rules. These allegations have resulted in an increase in the number of liability claims against our organization and are beginning to have a detrimental financial impact on the organization and will eventually affect our ability to continue to provide rule making services to our nation's high schools. Therefore we are seeking legislative relief through immunity for claims of negligence resulting from the rule making process.

While these claims are believed to be without merit, the cost of defending claims and the uncertainty of judicial proceedings have caused us significant financial harm and have forced us to reconsider whether we should continue to provide rules.

The progression of the problem for us is fairly simple. With an increase in liability claims, comes and increase in insurance premiums and with an increase in risk we find fewer companies willing to offer this type of coverage.

Our position is quite simple. Catastrophic injuries while tragic, are not the fault of the rule maker. Sports involve a certain element of risk. Rule making is anticipatory and even if rule makers successfully anticipate problems during competition, injuries will occur. In deciding to partake in competition, athletes assume risk, and allowing suits based merely on the good faith development of the rules is wrong and unfair.

Over the last three years, the annual liability insurance premiums for the National High School Federation have increased three-fold to about $1,000,000. We have been advised by experts that given our claims experience and the reluctance of insurers to offer such coverage to an organization "serving 7,000,000 potential claimants," the premiums will likely increase significantly in years to come. Since we operate on a total budget of about $9,000,000, such an increase would be, to put it mildly, problematical.

The proponents of this legislation do not seek protection for rule-makers and administrators who act with malice or gross negligence. Such people should answer for their actions. However, we believe that ordinary negligence is a liability standard that simply doesn't work for non-profit amateur sport rule-makers. Given the inherent nature of sport and the massive numbers of participants, some injuries and deaths inevitably ensue from rule-makers decisions. To subject them to litigation is distracting, expensive, unfair and counterproductive. Rule-makers are not insurers, and the Congress should act to protect them and to promote the larger societal benefits they provide.

Everyone who plays or watches high school sports or sports, at any level, understands that the possibility of injury is inherent in all sports. Any activity that involves speed, collisions, objects and humans to travel through the air has risks. Nor are sports stagnant. They are subject to ongoing redefinition as rule makers act to minimize risk factors and to deal with new coaching methods and technology. Because rule making is an anticipatory function, the consequences of any change takes time to play out. Even if a new rule works as intended, there will be adverse consequences for some athletes. As a nation, we recognize that such individual costs are outweighed by the social, educational and public health benefits that sports provide.

For these sports to continue to grow and prosper, the development and enforcement of rules is essential. However, the increased expense of defending litigation is endangering the future of these socially beneficial activities. Without rules specifically written for this level of play, the risks will be come greater as programs throughout the country adopt rules written for others.

Amateur athletics are integral to the health and well being of society. While nonprofit organizations put their best efforts forward by passing rules in the best interest of the athletes and competition, injuries will occur as a result of the inherent risk involved in sport. This risk, however, should not be work to the detriment of amateur athletics generally. Legislation is necessary to protect rule makers so funds may be allocated to expanding competition, not legal fees.

Thank you again for the opportunity to be here today and I look forward to answering any questions.

Mr. SMITH. Thank you, Mr. Kanaby.

Mr. Boyer.

TESTIMONY OF EDWARD R. BOYER, P.E., PRESIDENT AND CEO, MERCY MEDICAL AIRLIFT, AND VICE CHAIRMAN, ANGEL FLIGHT AMERICA

Mr. BOYER. Thank you very much for this opportunity to present information.

Last year, volunteer pilot organizations facilitated long-distance, no-cost transportation for over 40,000 patients and their escorts in times of special need. This year, that figure will likely grow to 54,000 people. H.R. 1084 is essential to allow this unique and grass-roots form of volunteerism to achieve even greater growth into the future.

Volunteer pilot organizations and the pilots themselves are involved in many different activities in what is generally called "public benefit aviation." This activity can range from environmental observation flights to the compassionate transport of a widow, to the operation of the large and sophisticated charitable medical air transportation system in the United States.

The mission and purpose of volunteer pilot organizations involved in the patient transport is to ensure that no needy patient is denied access to distant specialized medical evaluation, diagnosis, or treatment for lack of a means of long-distance medical air transportation. It's a safety net, as it were, for those that are bypassed by the system and can't get to the treatment they need. The goal is to see geographic distance and/or family resources removed as a factor denying access to specialized medical care—for all Americans.

Patient families learn about the availability of no-cost transportation through disease organization letters, from physicians' offices, from medical centers, and, indeed, from constituent service staff in congressional offices. The volunteer pilots themselves pay all the costs of owning and operating their own aircraft, including fuel, maintenance, and landing fees, and they're not paid or reimbursed for any of these expenses.

Okay. How many organizations? How many pilots? There are upwards of 60 volunteer pilot organizations flying for public benefit, but only perhaps 30 of them are separate entities and part of this medical air transportation system. The largest of the regional organizations function together as Angel Flight America, which has about 6,000 volunteer pilots all over the United States. Each organization, however large or small, contributes to the general public benefit, and no one group has an edge on doing good.

The non-profit volunteer pilot organizations that organize, coordinate, and facilitate this process themselves are diverse. Some operate with no paid staff. Some have very small paid staffs. All, however, have boards of directors and they all have large numbers of non-flying volunteers.

In recent years, liability issues have come to the forefront and now are dampening the effort.

What are these issues? First, any organization or individual related to or involved with airplanes or aviation is perceived to have deep pockets and thus can be a tempting target of a lawsuit.

Secondly, aviation insurance has skyrocketed in cost, and certain key aviation insurance products are no longer available. The one in particular here that we're dealing with is called "non-owned" aircraft liability insurance. Prior to 9/11, a volunteer pilot organization could purchase same for under $2,000 annually for coverage of $5 million. Now virtually all volunteer pilot organizations have no non-owned aircraft liability insurance, meaning that their organizations, their boards, their paid staff, their other volunteers have no liability protection.

Volunteer pilot organizations have a difficult time recruiting professional persons for board positions because of the exposure to liability. In fact, the fear of liability means that hospitals, doctors, medical institutions, and disease organizations such as the American Cancer Society are unwilling to refer their patients to a volun-

teer pilot organization. This is why the Shriner system, hospital system, for example, recently sent a letter to the Congress asking for passage of this bill, which would allow them to work with volunteer pilot organizations to move their patients to the Shriner Hospitals where they give free care to the children.

On the matter of safety, the history of volunteer flying goes back 32 years, although most of it has arguably been done in the last 10 to 15 years. The safety record is exemplary.

By way of example, Angel Flight America this year will fly 40 million passenger miles, representing 120,000 flying hours. Angel Flight America, which was formed as an association in 2000 and its seven-member agencies, some of them go back all the way to the 1970's. Neither Angel Flight America nor any of its member agencies have ever in this entire history had a fatal accident throughout this time. The same is true for virtually all the groups.

The fear of liability is thus far greater than the reality of liability in history. That's a fact. The entire public benefit volunteer pilot world is to be commended for this outstanding and wonderful safety record.

I thank you very much for this opportunity to share with you.

[The prepared statement of Mr. Boyer follows:]

PREPARED STATEMENT OF EDWARD R. BOYER

INTRODUCTION:

Thank you very much for the opportunity to present this information regarding the need for and impact of H.R. 1084, the Volunteer Pilot Organization Protection Act of 2003.

Last year public benefit flying non-profit volunteer pilot organizations provided long-distance, no-cost transportation for over 40,000 patients and their escorts in times of special need. This year that figure will likely grow to approximately 54,000 people. H.R. 1084 is essential to allow this unique and grass-roots form of volunteerism to achieve even greater growth on into the future.

Volunteer pilot organizations and the volunteer pilots themselves are involved in many different activities in what is called public benefit aviation. This activity can range from environmental observation flights to compassionate transport of a son to the distant bedside of his dying mother or to the operation of the very large and sophisticated charitable medical air transportation system in the U.S.. Indeed the very lifeblood of the nation is in the hands of volunteer pilots who are organized to respond to the call for emergency transport of blood and blood products when commercial means of transport are either not available or cannot deliver the blood in the time required. (See Note 1 below).

Note 1. *Post 911 activities saw significant quantities of blood and blood products transported by volunteer pilots. To streamline and pre-plan the process for future small or large-scale emergency transport needs, Angel Flight America (the largest volunteer pilot organization in the country) and the American Association of Blood Banks Interorganizational Task Force on Domestic Disasters and Acts of Terrorism have a written Memorandum of Understanding (MOU) detailing how Angel Flight America volunteer pilots will provide blood transportation nationwide in future emergencies.*

Public benefit aviation has become so important in our society that the National Aeronautic Association instituted a series of Public Benefit Flying Awards in 2003. They annually present awards to volunteer pilots and volunteer pilot organizations along side their more famous awards including the Robert J. Collier Trophy and the Wright Brothers Memorial Trophy. Because they understand the critical role of volunteer pilot organizations the National Aeronautic Association recently wrote the Congress encouraging the passage of H.R. 1084.

WHAT IS THE CHARITABLE MEDICAL AIR TRANSPORTATION SYSTEM IN THE UNITED STATES?

What today is a rather large sophisticated system of cooperating volunteer pilot organizations had its beginnings in the early 1970s with a couple of small and very "grass-roots" groups of pilots helping neighbors and friends travel to and from distant medical care. Unknown to each other, one group started in Sacramento, California and the second group right here in the Washington, DC area. While it all started with a few pilots and a few flights a year—it has now become a major public service operation functioning throughout the United States—indeed the concept has now spread and is being initiated in Europe, Canada and Australia.

The mission and purpose of public benefit non-profit volunteer pilot organizations involved in patient transport is to ensure that no needy patient is denied access to distant specialized medical evaluation, diagnosis or treatment for lack of a means of long-distance medical air transportation. The goal is to see geographic distance and/or family financial resources removed as factors denying access to specialized medical care—for all Americans.

The scope of long-distance patient travel in the U.S. is greatly increasing as medicine becomes increasingly specialized and much more able to deal with the thousands of rare and other debilitating diseases heretofore only nominally treated. The Rare Disease Act of 2002 and the resulting new Rare Disease Centers of Excellence around the country are becoming places of hope for patients and families—but only if transportation is available. Specialized care or even access to a promising new clinical trial that is three states away can mean nothing to a patient and family that has no means for the long-distance travel—often required multiple times during the course of a clinical trial or treatment. Volunteer pilot organizations are multiplying on a scale that is targeted to meet this need. This is a true demonstration of what is best about America.

Simply put, patients or patient family members—or members of the medical community—may call and tap into and seek help with no-cost, long-distance medical air travel for ambulatory outpatients. This travel is almost always needed to go to preplanned medical appointments with disease specialists and/or to specialized medical facilities. Even if the medical care itself is free or covered by insurance, the matter of travel is up to the patient family and is most often not covered by insurance. If a family cannot afford the travel—they are effectively denied access to what is often life-saving or quality of life improving specialized treatment. Such treatment often takes months of time and many round-trips for the patient and patient escort. Even "middle America" who might afford one round trip can rapidly become financially depleted and find themselves without the money needed to complete the specialized course of treatment or the clinical trial. The provision of charitable transportation in these situations becomes "the shortest distance between home and hope."

Patients and patient families learn about the availability of no-cost transportation through disease organization newsletters and web sites, from physicians offices, from medical centers around America and, indeed, from constituent service staff in Congressional offices. A phone call to one of these volunteer pilot organizations, such as the National Patient Air Transport HELPLINE or to an Angel Flight office, can start the process for a patient. The volunteer pilot organizations most often have a small paid staff who, in cooperation with the patient's doctor, screen the patients for both medical and financial need and then serve as mission coordinators—matching the patient and patient/escort needing transportation with a willing FAA qualified volunteer pilot who is able to provide the help for the mission at hand. Flights only out to about 1,000 miles are accepted for small aircraft travel as most volunteer pilots are operating 4 to 6 place small aircraft with the obvious limitations of range. Flights in excess of 400 miles usually involve the pre-planned linking of two or three different planes/pilots to complete the trip.

The volunteer pilots themselves pay all the costs for owning (or renting) and operating their own aircraft including fuel, maintenance and landing fees. The pilots are not paid or reimbursed for any of these expenses. Pilots are not limited to flying for only one volunteer pilot organization. Indeed, many do fly for two or more such organizations.

HOW MANY ORGANIZATIONS AND HOW MANY VOLUNTEER PILOTS?

There are upwards of 60 volunteer pilot organizations flying for public benefit—but only perhaps 30 of them are separate entities and part of the national charitable medical air transportation system. The largest of the regional organizations function together in Angel Flight America, which has about 6,000 volunteer pilots. Organizations other than AFA tend to either not be involved in the charitable medical air

transportation system or are smaller organizations with a restricted geographical focus. Each organization contributes to the general public benefit and no one group has an "edge" on doing good.

These 30 non-profit organizations together likely have about 8,000 volunteer pilots. Some pilots only fly one or perhaps two public benefit flights per year—others may fly as many as 50 missions a year—all at their own expense. The most active and even the less active all play an important role in serving the public. The non-profit volunteer pilot organizations that organize and coordinate/facilitate the process themselves are diverse. Some operate with no paid staff at all. Some have small paid staffs to handle the larger more diverse workload they face. All these organizations have boards of directors—and all of these organizations have large numbers of non-flying volunteers who do everything from stuffing envelopes to driving patients from airports to the medical facility. All of these organizations must raise the funds they need to operate from private donations. The "organizational health" of these volunteer pilot organizations directly affects the level of public benefit their volunteer pilots can provide.

In recent years liability issues have come to the forefront and now are dampening the effort. H.R. 1084 is designed to address these issues as they are being experienced at this time.

WHAT ARE THE LIABILITY ISSUES FACING PUBLIC BENEFIT AVIATION AND HOW CAN H.R. 1084 ASSIST?

All of the issues discussed here relate to one of two realities that have come upon the aviation community, and to a certain extent, onto us all.

First, any organization or any individual related to or involved with airplanes or aviation is perceived to have deep pockets and thus could be the target of a lawsuit.

Secondly, aviation insurance has skyrocketed up in price and certain key products are no longer reasonably available to volunteer pilot organizations. The product in question here is what is called "non-owned" aircraft liability insurance. Avemco Insurance Company, which insures a major part of the general aviation fleet of aircraft, had traditionally provided this coverage for volunteer pilot organizations—but stopped marketing same about four years ago and never expects to return to that market. Prior to 911, a volunteer pilot organization could purchase same for under $2,000 annually for coverage of $5 million. Now virtually all volunteer pilot organizations have no non-owned aircraft liability insurance.

(Note that this should not be confused with Directors and Officers insurance that is available but specifically excludes aviation liability. Many volunteer pilot organizations do carry D&O as well as general office liability insurance.)

This "insurance reality" means that most non-profit volunteer pilot organizations, their boards of directors, their paid staff and their non-flying volunteer staff persons have no liability protection. Should an accident occur with a volunteer pilot using his own aircraft, the resulting lawsuit could come right on through to the organization and these people even though they have nothing to do with the operation of the flight, the pilot or the aircraft. Volunteer pilot organizations have a difficult time recruiting professional persons for board positions because of the lack of non-owned aircraft liability insurance coverage.

(Note: The pilot, his aircraft and the conduct of the flight are under the jurisdiction of the Federal Aviation Administration that administers the Federal Aviation Regulations. The volunteer pilot organization does not in any way stand between the volunteer pilot and the FAA and the volunteer pilot organization does not "dispatch" the flight as would be the case if it were a commercial aviation venture).

Insurance companies report to me that they will not underwrite non-owned aircraft liability insurance for organizations because they say there is no way to measure the extent of their exposure to loss.

H.R.1084 will provide this liability protection.

More importantly, the second result of the "insurance reality" is that referring hospitals and clinics are becoming unwilling to inform their patients that charitable medical air transportation help is available for fear of a liability against them should something happen in a subsequent volunteer pilot flight. This means that hospitals, doctors, medical institutions and even disease organizations such as the American Cancer Society are unwilling to refer their patients to a volunteer pilot organization for fear of liability. This is why the Shriner Hospital System recently sent a letter to the Congress asking for passage of H.R. 1084 so they can work with volunteer pilot organizations to move their patients from hometown communities to their hospitals—all of which provide free medical care for child patients. H.R. 1084 solves the "referral agency" liability problem. (Note: There would be no practical

way for thousands of "referral agencies" to purchase liability insurance for this even if it were available.)

And, lastly, most pilots do not carry high liability insurance limits because they normally only carry their own families or close business associates in their aircraft. Opening their aircraft to needy patients and patient escorts has the effect of expanding the "window of opportunity" for a liability lawsuit and thus H.R. 1084 provides for liability protection for the pilot only over and above the liability protection in the insurance, which he/she must carry to participate in a volunteer pilot organization program. This means that some pilots, who have the means to contribute with their time and their talent, do not fly for a volunteer pilot organization because of their fear of liability. These pilots are afraid of how their families would cope if they were involved with a crash with a patient with them—so this fear paralyzes them from helping others.

Congressional staff is to be commended for providing the legal wording in H.R. 1084, which is an amendment to the highly regarded 1997 Volunteer Protection Act. Four different aviation law attorneys who advise and help the efforts of volunteer pilot organizations nationally have reviewed the wording and find it acceptable. I thank each of these professionals for their kind encouragement and support.

THE MATTER OF SAFETY BASED ON HISTORY

The history of volunteer pilot organizations goes back about 32 years even though a largest portion of the flying has taken place within the last 10 to 15 years.

Research into the safety record of this major volunteer effort shows that safety record is exemplary.

By way of example, Angel Flight America this year will fly nearly 40 million passenger miles. This represents about 120,000 flying hours. Angel Flight America (an association) was formed in the year 2,000 though some of its' member agencies go back to the early 1970s. Neither Angel Flight America nor any of its seven member agencies have ever had a fatal accident throughout this entire history. The same is true for most other volunteer pilot organizations.

I am personally aware of three fatal accidents since the 1970s involving patients while being transported with the assistance of a volunteer pilot organization. In two cases the lawsuit was dropped and one was settled out of court for a very modest amount. The fear of liability is thus far greater than the reality of liability in history. The entire public benefit volunteer pilot world is to be commended for an outstanding and wonderful record of safety.

IN SUMMARY

With the kind help of Congressman Ed Schrock of Virginia, his able staff person Jeff Palmore and other Congressional staff resources it has been a pleasure and a learning experience to work with this legislation through its development, writing and process. I thank the House Judiciary Committee for considering this legislation. It will make the well respected 1997 Volunteer Protection Act much better, indeed—a shield and encouragement to our professionally qualified volunteers.

Mr. SMITH. Thank you, Mr. Boyer.

Mr. Popper.

TESTIMONY OF ANDREW F. POPPER, PROFESSOR OF LAW, AMERICAN UNIVERSITY AND WASHINGTON COLLEGE OF LAW

Mr. POPPER. I have just heard impressive testimony from remarkably impressive people, and I'm reminded of the George Gobel line: "I feel like all the world's a tuxedo, and I'm a pair of brown shoes." [Laughter.]

In my view, this legislation looks and carries the impact of all tort reform legislation, and I use the word "reform" advisedly. Laws that provide no protection for consumers, no incentive for greater safety, and limit significantly the rights of those who lack power are hardly the stuff of reform.

On June 22, 2004, Professor Theodore Eisenberg presented to this Committee testimony in which he said, "Tort reform proposals are based on questionable views of the operation of the tort system. The United States is not the most litigious country, tort awards are

not increasing, punitive damages are rare and in line with compensatory damages [and] estimates of tort system costs supplied to Congress and the media are deeply flawed...”

I agree wholeheartedly. The tort system should not be set aside in any field unless there’s unequivocal evidence of its failure, of perverse incentives that outweigh the corrective justice effect of tort law. I am not aware of any evidence that exists for the bills that are the subjects of today’s hearings.

Let me be clear. First, only a fool would deny the immeasurable value of the individuals and organizations who are backing this legislation. But recognizing that volunteers are of great value is entirely different from immunizing volunteers—and their organizations—when those volunteers or their organizations engage in behavior that breaches fundamental duties of care. When one engages in an act that violates basic standards of care, the harm they cause is not assuaged on the premise that, done properly, such acts would have been the essence of decency.

Second, while each of these bills affects only a small part of the tort system, this type of piecemeal tort reform is devastatingly dangerous. In my written testimony, I said the pattern that emerges reminds me of the hunting practices of a wolf pack. Rather than taking their prey with a single bite, wolves begin with a series of bites, disabling and weakening their victims before coming in for the kill.

The “bites” proposed in these bills, in isolation, are minor and understandable. It’s easy to see why they’re supported by such passionate testimony. But taken in conjunction with the stream of endless attacks of tort reform, they are dangerous and threaten the model of civil litigation that I believe in deeply.

The immunity provided to athletic organizations, were this bill to pass, as I read this legislation, would block discrimination actions. I understand the testimony I’ve just heard. I simply don’t read the legislation that way. It does preempt State law for no discernible reason. It does take away organizations that were supposed to be defendants after the Volunteer Protection Act of 1997 and eliminates that source for those who have been affected adversely.

The firefighter bill likewise doesn’t seem to me to have a premise for the preemption that is the predicate of the bill. If there’s a problem in this area—and I don’t know whether there is or there isn’t; there certainly isn’t if you look at cases and litigation in this field—then informed consent and waivers would certainly do the trick. It’s hard to see why Congress would favor a bill that removes liability from those who foreseeably place firefighters at risk. We’re talking about negligence. Not every gift where the product goes wrong constitutes the basis for a lawsuit. It’s only those cases where you can prove a breach of a duty of care. You would be rewarding people who put firefighters at risk. I don’t get it.

Finally, the act regarding the airlines, the Angel organization, you’re talking about affecting those who are in need of emergency air service, who have to rely on volunteers, who are without bargaining power in the market, who would be in the hands of individuals and organizations who are unaccountable legally for negligent acts. It’s troubling to think that Congress would pass a law that reduces standards for pilots.

The individuals touched by these laws, those served by volunteers, are victims of disaster, students, patients, and countless others in need of help, compassion, and diverse skills these volunteers provide. This is a highly vulnerable group, often without the power to select a person who will assist them. It is worth asking why in this situation, involving those least able to bargain in the marketplace for assistance, one would relieve actors of the beneficial pressure of a legal system that asks them to act reasonably.

A fundamental predicate of the tort system involves the belief that the potential of liability creates accountability and improves the likelihood of enhancing the quality of goods and services. It is difficult to imagine how the removal of liability advances that objective.

Thank you.

[The prepared statement of Mr. Popper follows:]

PREPARED STATEMENT OF ANDREW F. POPPER [1]

The tort reform movement has done little to strengthen laws that protect consumers from harm and even less to stimulate essential civil liability pressures that compel higher quality in the production of goods and services. While the term "reform" suggests affirmative changes that do some good, the goal of tort reform has been to limit civil litigation options, reduce exposure to civil liability, and create laws that allow defendants to calculate their exposure in advance and then breed those costs into the price of the goods or services they provide. Laws that provide no protection for consumers, no incentive for greater safety, and limit significantly the rights of those who lack power are hardly the stuff of reform.

The very premise of tort reform is flawed. On June 22, 2004, Professor Theodore Eisenberg provided testimony to this Committee in which he contended that the foundation for tort reform is specious. Professor Eisenberg summarized his remarks as follows:

> "Tort reform proposals are based on questionable views of the operation of the tort system. The United States is not the most litigious country, tort awards are not increasing, punitive damages are rare and in line with compensatory awards. . . . Estimates of tort system costs supplied to Congress and the media are deeply flawed and provide no basis for sound policymaking."

I agree wholeheartedly with Professor Eisenberg's conclusions. The tort system should not be set aside in any field unless there is unequivocal evidence of its failure, of perverse incentives that outweigh the corrective justice effect of tort law. I am not aware that such evidence exists for the bills that are the subject of today's hearings, H.R. 3369, H.R. 1787, and H.R. 1084 and I oppose them.

Two preliminary comments are in order before discussing these proposals. First, firefighters, pilots who volunteer to assist those in need, and those who make charitable gifts are appropriately honored and supported. Only a fool would deny the immeasurable value of these individuals. Recognizing that volunteers are of great value is entirely different from immunizing volunteers' and their organizations' when volunteers or their organizations engage in misconduct tantamount to negligence. When one engages in acts that violate basic standards of due care, the harm they cause is not assuaged on the premise that, properly done, such acts would have been the essence of decency.

Second, while these bills target singular and narrow segments of tort liability, they represent a threat to the whole of the civil liability system. Since broad proposals such as abolishing punitive damages, strict liability, or joint and several liability have not yet succeeded, tort reformers have followed a strategy of pursuing isolated aspects of civil liability law. Biomaterials, vaccines, charities, airlines, tobacco, fast foods, and other fields are presented to be in desperate need of federally imposed limits on liability, purportedly to insure industry survival. The pattern that emerges resembles the hunting practices of a wolf pack. Rather than taking their

[1] Professor of Law, American University, Washington College of Law. This testimony draws heavily from a draft of my article, Popper, "A One Term Tort Reform Tale: Victimizing the Vulnerable," 35 Harvard Journal on Legislation, 123 (1998). For those interested in the documentation for assertions made in this testimony, please refer to that article.

prey with a single bite, wolves begin with a series of bites, disabling and weakening their victims before coming in for the kill. The "bites" proposed in these bills, in isolation, may not seem all that devastating. Taken in conjunction with the stream of endless targeted tort reform attacks, they are dangerous and threaten our model of civil justice and legal accountability.

H.R. 3369, H.R. 1787, AND H.R. 1084

H.R. 3369, the "Nonprofit Athletic Organization Protection Act" would give immunity to non-profit athletic organizations. The bill covers rules an organization might adopt but also seems to grant general immunity to such organizations. If passed, the bill would block anti-discrimination cases that have been used to address race, disability and gender discrimination. In addition to destroying the opportunity for an athlete to challenge discriminatory practices (while placing no limit on an organizations ability to use the courts), the bill would preempt state laws for no discernible reason.

In addition, the bill undercuts one of the stated reasons that allegedly justified the 1997 Volunteer Protection Act. During the debates regarding that law, supporters contended that while the legislation liberated coaches and volunteers from the risk of liability, even when they were negligent, it left the organizations as viable defendants in the event a plaintiff could fashion a respondeat superior theory or a general vicarious liability claim under state law. H.R. 3369, would destroy that protection.

The second bill before the committee today is H.R. 1787. This bill would give immunity to those who donate fire fighting equipment. I am hard pressed to see why a federal bill that preempts state law is needed in this field. I don't claim to have knowledge of every tort case filed, but I do try to keep up with major areas of litigation and judicial trends. I am unaware of meaningful case law imposing liability on donors of equipment used in firefighting. I have no information regarding a shift in willingness to make donations and could not identify a single comprehensive study or professionally documented article, or other form of "evidence" (taking *Daubert* in its broadest light) to justify a federal law that would destroy the rights of an injured party to pursue a tort claim. If there is a problem in this area, I would think a waiver of liability, assuming the parties are reasonably informed of risk, would make more sense than an overly broad law that would be at odds with the most basic notions of federalism. What could be more local (i.e. subject to state law) than a fire department? If a state wants to facilitate donations (to and from fire departments) it can do so. It hardly seems a federal matter.

Finally, without putting too fine an edge on this, it is hard to see why Congress would favor a bill that removes liability from those who foreseeabily place fire-fighters at risk. It is nonsensical to protect one who knows or reasonably should know of the risk they are creating.

The third bill, H.R. 1084, if passed, protects pilots, pilot organizations, hospitals and others (including for-profit entities) involved in the transport of those who are injured or ill. As with my critique of H.R. 3369, H.R. 1084 undercuts a fundamental premise of exiting federal law, the 1997 Volunteer Protection Act. That legislation immunized negligent coaches, lawyers and doctors engaged in malpractice, and others who have trusting contact with vulnerable populations, on the premise that victims of such misconduct would still have recourse against the organizations who sponsored the immunized defendant-volunteers. If this bill passes, that protection will vanish. Under this bill, the pilots, as well as their organizations and sponsoring entities, would all be immunized. In short, those who are in need of emergency air service and must rely on volunteers would be in the hands of individuals and organizations who are unaccountable for negligent acts.

The 1997 Volunteer Protection Act of 1997 explicitly excluded from its coverage motor vehicles and aircraft, presumably on the premise that the operation of cars, trucks, ambulances, and aircraft presented a foreseeable risk for which tort immunity was inappropriate. This bill would undo that protection.

It is troubling to think that Congress would pass a law that reduces the standard of care for pilots, particularly when they are transporting those who are in the most vulnerable condition imaginable.

I confess, as with the fire fighter bill, I do not know every case in the field of pilot or airline organization liability. I do follow case-law and try to observe trends—and I am unaware of litigation, appellate cases, or credible documented literature that justifies this bill.

The bills discussed above are based in part on the premise that without the risk of tort liability, more people will volunteer or make donations, and presumably, the quality and frequency of charitable work will be enhanced. Putting aside the fact that there is no meaningful study to support the claim that tort immunity would improve the number or quality of volunteers, there is a deeper problem: these laws would eliminate the existing right to expect others to exercise due care.

The individuals who will be touched by these laws, those served by volunteers, are victims of disaster, students, patients, and countless others in need of the help, compassion, and diverse skills the volunteers can provide. This is a highly vulnerable group, often without the power to select the person who will assist them. It is worth asking why in this situation, involving those least able to "bargain" in the marketplace for assistance, one would relieve actors of the beneficial pressure of a legal system that asks them to act reasonably.

A fundamental predicate of the tort system involves the belief that the potential of liability creates accountability and improves the likelihood of enhancing the quality of goods and services. It is difficult to imagine how the removal of personal and organizational accountability advances that objective. Further, the common law has never been particularly generous to those in need of competent assistance. Outside of statutes, contracts, or certain special relationships, there is no generic duty to come to the aid of another. However, once a person has made the decision to volunteer, there must be conformity with a minimum level of due care. The bills under consideration today change that standard.

Volunteers who reach out to others are to be accorded support, respect, and encouragement. That should not mean abandoning the conventional responsibilities of due care.

Mr. SMITH. Thank you, Mr. Popper, and let me thank all the witnesses for keeping their remarks roughly within 5 minutes. That's a new precedent, I think.

Mr. Stittleburg, let me address my first question to you, slightly esoteric, and I hope you know the answer or are aware of the question. Several years ago, my home State of Texas passed legislation that made it easier for individuals, encouraged individuals to donate firefighters' equipment. Could you tell us how that has worked or hasn't worked, particularly as it might relate to the legislation that we're considering today?

Mr. STITTLEBURG. Well, sir, it has worked tremendously, and I do, in fact, have some numbers that will verify that. That legislation that you referred to, which I believe they called the "Helping Hands" legislation, if memory serves me, became effective September 1st of 1997, so it's been around for approximately 7 and a half years now.

In that 7 and a half years, there have been donations passed through that program of approximately $13 million, and that donated equipment has assisted in excess of 1,000 volunteer fire departments during that period of time.

Now, that legislation got passed in Texas because the problem was recognized there. Union Carbide, for instance, was a prime example of a potential donor that was destroying very valuable equipment that could certainly have been of great assistance to volunteer fire departments simply because of its fear of liability.

In fact, you know, as attorneys, we tend to look to the reporting of lawsuits to determine if there's a problem. And, in fact, the reason that that—the reason that the problem is not documented in lawsuits I believe is twofold:

One, it's because of the chilling effect of the perception of the liability. In other words, the donor's perception of liability becomes the donor's reality. The equipment simply doesn't get donated, and so there is no suit at all because the donation didn't happen.

I think there's a second reason, too, and that's because the donated property is properly inspected and maintained and used and, therefore, doesn't malfunction.

Mr. SMITH. Okay. Thank you, Mr. Stittleburg.

Mr. Kanaby, suppose someone is injured who the volunteer or the volunteers are trying to help. Who should be responsible if there's an injury? Who should be responsible if there's gross negligence, for example?

Mr. KANABY. Certainly those individuals who would contribute to a gross negligence situation should be held accountable. This bill does not remove the factors of gross negligence from litigation.

Mr. SMITH. Either gross negligence or willful misconduct.

Mr. KANABY. That is absolutely correct, Mr. Smith. The sole purpose of this for the National Federation and for other organizations, amateur organizations that write playing rules, is to simply remove the fact that we write playing rules simply as one of those particular means. Let me give you a classic example of what I'm talking about.

There was a lawsuit filed against the National Federation of State High School Associations over an incident that occurred in practice. It wasn't even a game situation for which we write the rules. But a coach, unfortunately, was working with an athlete in wrestling and dropped the wrestler on his head and he suffered neck injuries that left him—that rendered him in a paralysis state.

Well, we were sued because the idea was offered that we should have anticipated those kinds of situations and placed that in the rules. And were we excused from that lawsuit? Yes. But we were excused from that lawsuit after about $25,000 worth of legal bills, which were paid by our insurance broker or our insurance company, and then our company at the end of the years says, "Your claims record is terrible. Therefore, your rates are going to increase exponentially in that regard."

That's our concern. We are not looking to protect anyone who is malfeasant or does not do their job or is grossly negligent of anything. This bill does not do that.

Mr. SMITH. I understand. Thank you, Mr. Kanaby.

Mr. Boyer, Mr. Popper, let me squeeze two quick questions in. Mr. Boyer, speaking of $25,000 in legal fees, speaking of the threat of lawsuits, what does that do to insurance? And why did you, as well as Mr. Kanaby, mention the threat of high insurance premiums as being one of the adverse results? And give me a quick answer, if you can.

Mr. BOYER. The aviation insurance world seems to lump all aviation things together. When a 747 crashes in the middle of the desert somewhere or great, huge, expensive things happen, all insurance rates goes up, even for the guy who flies a four-seater airplane out of Manassas Airport. I can't explain why the industry acts that way, but it does. But the fear of that liability is just driving everything. That's why the non-owned aircraft liability insurance has just virtually disappeared as a reasonable insurance issue for volunteer pilot organizations.

Mr. SMITH. Okay. Thank you, Mr. Boyer.

Mr. Popper, real, real quickly, do you support any tort reform at all in regard to volunteers or volunteer organizations? Just a quick yes or no. We can go into more details later on.

Mr. POPPER. As currently constructed in the legislation, no.

Mr. SMITH. Okay. Thank you, Mr. Popper.

The gentleman from Michigan, the Ranking Member of the Judiciary Committee, Mr. Conyers, is recognized for his questions.

Mr. CONYERS. Thank you, Mr. Chairman, and thank all of you for being here. I appreciate the leadership you've given among the firefighters, the school athletics activity, and, Mr. Boyer, with the pilots and those who in those seven groups help get people in need and in emergency back and forth.

Have you recognized, Mr. Boyer, that part of the reason for your high and increasing insurance rates since 9/11 is due to the fact that flying is one of those areas that attract the attention of terrorists and those who would do us harm and that those premiums have gone up throughout the whole industry?

Mr. BOYER. Certainly I recognize that.

Mr. CONYERS. Certainly you recognize that, okay. Now, do you also recognize the fact that the Angel Flights have absolutely nothing to do with the increases in the insurance rates that you're paying?

Mr. BOYER. That's absolutely true.

Mr. CONYERS. Okay. Now we're getting somewhere.

Now, let us examine the number of people that have been sued in those seven groups that do what we generally term "the Angel Flights." I would suggest that the answer to that question is zero. What do you suggest?

Mr. BOYER. Among the 30 or so organizations involved in this, of which Angel Flight was just 7, but among the 30, historically I am personally aware of three lawsuits in the last 15 years.

Mr. CONYERS. Okay.

Mr. BOYER. Two were dropped. A third one was settled out of court for a very nominal sum.

Mr. CONYERS. Thank you very much for that information.

Now, let me ask, you made a statement, I thought, that carried a lot of weight here, Mr. Boyer, and I am going to ask Chief Stittleburg about it. Mr. Boyer said that the fear of liability is much greater than the actual—the actuality of lawsuits in his industry. Do you agree with that as it applies to yours?

Mr. STITTLEBURG. Yes, sir.

Mr. CONYERS. Okay.

Mr. STITTLEBURG. I believe that is the reason donations do not occur, sir.

Mr. CONYERS. Wait a minute. Let me ask the question, and I don't need you to modify it. Do you agree with Mr. Boyer's statement that the fear of lawsuit liability, tort liability lawsuits, is much greater than the actual bringing of the lawsuits?

Mr. STITTLEBURG. Yes, sir——

Mr. CONYERS. Psychological.

Mr. STITTLEBURG. Yes, sir, I do.

Mr. CONYERS. I can understand that.

Now, Mr. Kanaby, do you have a similar reaction? Or how do you respond to that question?

Mr. KANABY. Whether the fear of lawsuits—I'm sorry. Would you repeat the question again, Mr. Conyers?

Mr. CONYERS. Sure.

Mr. KANABY. Because I want to——

Mr. CONYERS. Is it true that for many the fear of being sued is much greater than the actuality of getting sued?

Mr. KANABY. I believe that would be true in all walks of life, yes.

Mr. CONYERS. Of course. And then among the general citizenry that's a fear. The people are worried about getting sued.

Now, here's the problem that we on the Judiciary Committee face, and I know you're here to tell us about your problem, but I want to tell you about ours because we've got something in common. What we've found is that when you—when you limit tort liability and create exemptions, guess what happens? The premiums don't go down. So what are we supposed—you know, we can create all the exemptions we want, and your high premiums, Mr. Boyer, if historical precedence in any guide, the premiums aren't going to go down after you get exemptions. Yes, sir?

Mr. BOYER. Actually, the product that we need, non-owned aircraft liability insurance, is no longer available in the market.

Mr. CONYERS. It's not even available.

Mr. BOYER. No.

Mr. CONYERS. Well, I think that you should have it.

Let me ask you all a question, and I will start with you, Mr. Kanaby, and this is my last question. Why not use a liability waiver for incidents that you think are going to be difficult rather than come to the Federal legislature to have us intervening in literally hundreds of thousands of local activities for which we have, frankly, little record of any actual lawsuit problem? Mr. Kanaby?

Mr. KANABY. Yes, sir. Because traditionally the courts have not recognized that you can waive the rights of minors, sir, and most of our participants are minors. And parent permission slips for field trips or athletic events, et cetera, once they are—once they are implemented, have not been held up traditionally in the courts as being reasonable.

Mr. CONYERS. Well, I don't think you're going to find many Members in the House or the Senate at the Federal level that are going to give you a law that would allow us to exempt them from waiver of liability when the State and local courts and traditional legal practice won't let you do it. To me, I can't do it because it would be unconscionable for me to tell kids that it's too bad that the coach was negligent or that something happened that shouldn't have happened, but we've got a Federal law that exempts them from liability. That would be unconscionable.

Mr. Kanaby?

Mr. KANABY. I would agree with that. If we were to look for immunity from those kinds of acts, this bill does not attempt to free us from holding people accountable. This bill is merely designed to protect groups who in all good faith through volunteer efforts develop a set of guidelines and rules under which a program is going to be held by people who have great years of experience at that level of play. That is what this legislation is about.

If I might also, with your permission, sir, respond to the earlier question to Mr. Boyer, 2 years ago this organization could not find

a single insurance carrier who was willing to provide it liability insurance.

Mr. CONYERS. Let me ask if you've ever heard—I just want to——

Mr. SMITH. The gentleman's time has expired, but he's recognized, without objection, for an additional minute.

Mr. CONYERS. Thank you.

Have you ever heard of *PGA Tour* vs. *Martin* in the Supreme Court of the United States?

Mr. KANABY. Yes, sir.

Mr. CONYERS. Okay. Have you ever heard of the *Michigan High School Athletic Association* vs. *Communities for Equity*?

Mr. KANABY. Yes, sir.

Mr. CONYERS. And have you ever heard of *Cureton* vs. *NCAA*?

Mr. KANABY. Yes, sir.

Mr. CONYERS. Well, then, would you kindly—and I have no more questions. Would you kindly tell me what your understanding of any one of those three cases or all of them are?

Mr. KANABY. My understanding basically is that the bill that you have before you now does not involve any of those situations. The Michigan situation involved the placement of sports within a specific season. The *Martin* case obviously is a disability case. And as earlier stated, this bill has nothing to do with discrimination cases for race, gender, or disabilities or the like.

Mr. CONYERS. Well, then, that means I need to get rid of my whole legal staff on the Judiciary Committee. [Laughter.]

Who have been failing me badly in this hearing, and I thank you for your advice.

Mr. SMITH. Thank you, Mr. Conyers.

The gentleman from Texas, Mr. Carter, is recognized for his questions.

Mr. CARTER. Thank you, Mr. Chairman.

Mr. Kanaby, let me ask, my son's a high school baseball coach, and so I have a real interest in what you're talking about here. So if you pass a rule for 14-year-olds, a slide rule, you must slide into second base, and somebody breaks a leg sliding into second base, they sue—they would sue you because you said they had to slide.

Mr. KANABY. That would be correct.

Mr. CARTER. And yet you—so then you could have a no-slide rule, and there would be a collision at second base, and somebody would get hit in the back of the head with a baseball, and they would sue you for having a no-slide rule.

Mr. KANABY. That is also correct.

Mr. CARTER. So basically you don't have the ability—there's only two things you can really do there, either—well, I guess the third thing is just stop on first base and be out. But other than that, you're damned if you do and damned if you don't in that rule.

Mr. KANABY. Which is the real threat to us, sir, yes.

Mr. CARTER. And people do get sued for when their kid flat slides into second base and breaks his leg.

Mr. KANABY. That is correct.

Mr. CARTER. And they do get sued when they don't slide into second base or when they collide and hurt the second baseman.

Mr. KANABY. Also likely, yes, sir.

Mr. CARTER. Right. And what you're telling us here, you're just writing rules that are the safest rules you can, and yet your liability extends across the Nation as every time the kid takes the field in amateur sports in this country.

Mr. KANABY. That's absolutely correct, yes.

Mr. CARTER. I see that as a real problem. I mean, I don't see why liability should extend to that level.

Mr. Popper, you are a lawyer, I assume. You are teaching law school, and I'm a lawyer and I've been in the courtroom for 20 years. I listen to these tort reform arguments, and I have been on both sides of the docket. I like a level playing field and fairness in the law, and I'm not an anti-lawyer judge. What do you see as the solution to the problem that these three organizations have here? These three organizations are trying to do good. They are way extended generally from the injuries that occur, and yet they're being put out of business because of the cost of insurance or the inability of insurance. What do you see as the solution to the problem?

Mr. POPPER. That's an awfully broad question, sir.

Mr. CARTER. Well, narrow it down. Should we put everything—every pilot, should he be an indigent? I know lawyers don't sue indigents. Should we put an indigent in the cockpit of every airplane that flies and let him have ownership so they won't be sued? What do you see as the solution?

Mr. POPPER. I hardly think putting an unqualified person in the cockpit of an airplane provides any kind of meaningful——

Mr. CARTER. No, I didn't mean unqualified. He may be a qualified pilot, but he doesn't have any money.

Mr. POPPER. Okay.

Mr. CARTER. You're not going to sue anybody that doesn't have any money or insurance.

Mr. POPPER. Well, you're not making the distinction between the imposition of liability after a finding of negligence and the ability to file a lawsuit. Everything that I've heard in your question and everything that I've heard thus far talks about people filing lawsuits. Well, people file lawsuits. It's part of our access to the civil justice system. The question isn't whether they can file lawsuits or not, unless you want to talk about jurisdiction and venue and standing. The question is whether, once lawsuits are filed, judges and juries in the United States, State legislatures in the United States, those entities that have the ability to control and affect the outcome of lawsuits, are doing their job. And in my opinion, they are.

You're not hearing—or at least I'm not hearing about findings of liability. I'm hearing about people exploring whether their rights have been violated, and from these organizations hearing that they effectively defend themselves. I cannot, however, tell you—and I think this is your question—what to do about the fact that insurance companies mismanage funds, choose not to provide insurance for certain high-risk activities, when the risk is filing a lawsuit. That's a problem for insurance regulation. To me, that's at the heart of tort reform, not the ability to file a lawsuit and not providing immunity to somebody who overtly breaches a duty of care.

Mr. CARTER. From a judge's perspective, we have a saying; you know, anybody with $150 in their pocket and directions to the

courthouse can file a lawsuit. And we know because we've got lots of them that come in there that have no credibility whatsoever.

But the issue here is—and all three of these witnesses have said it—the perception. And the perception is that they are liable and they've got this long, extended liability that extends to them. And, therefore, when they try to do good, they are punished for their good.

We used to have Good Samaritan laws in this country that we—in the history of our law protected Good Samaritans. Those things have long since gone away. Doctors no longer stop on the side of the road to help people. And, you know, ultimately kids are not going to play baseball or they're not going to wrestle or play football. I have a volunteer fire department in my district that covers 50 percent of Harris County, our most populous district. And yet, they are important to the people that live in that—the millions of people that live in that area. And why shouldn't we have some sort of protection for them? And if you've got a better solution, I want to hear it. I keep hearing this is not a good solution, but we have a problem. What is the better solution? And that's what lawyers need to step up and start telling us.

Mr. POPPER. With all due respect, I think if we continue to focus on having hearings where we stimulate fear, then there will be a lot of fear. If instead we had a hearing where we could focus on rule 11 sanctions, if, in fact, people are bringing lawsuits, lawyers are bringing lawsuits without a legitimate basis, then the lawyer gets sanctioned. And that's fine. That was asked earlier: Are there parts of tort reform that make sense? Well, sure, that's a great part. And if people are bringing lawsuits and the lawsuits are being thrown out and the lawyer is doing it just to see if he can squeeze something out of the insurance company, like you, I would agree that that's an abuse.

Mr. CARTER. Well, we've had those hearings this year——

Mr. SMITH. The gentleman's time has expired.

The gentleman from Virginia, Mr. Scott, is recognized for his questions.

Mr. SCOTT. Thank you, Mr. Chairman.

We've had—generally, our policy has been to consider Good Samaritan laws in there, but they're done on a State-by-State basis, and they're balanced with other State laws. You consider whether or not there's indigent health care in Medicaid. You consider whether they have the collateral source rule, damage caps, what the jury award history is. And after all that balancing, you put the Good Samaritan laws in that mix. Here we're doing a Federal law, and it has a one-way exemption, so it's not part of that balance at all.

I also want to point out that what I've heard sounds like an insurance policy, not a tort policy. But let me ask a couple—a few specific questions.

Mr. Stittleburg, is a waiver of liability effective in cases of donations?

Mr. STITTLEBURG. In my view, sir, it can be effective. The problem is in obtaining it. Frequently, you have the situation where the donor simply wants to donate equipment. They don't want to be involved in having to hire an attorney to draw a waiver.

Mr. SCOTT. Wait a minute. And the donor wants to make a donation, and the donee doesn't want to do a waiver?

Mr. STITTLEBURG. The donee——

Mr. SCOTT. Wait a minute. The waiver is effective. That was your answer? Because I have a lot of different questions.

Mr. STITTLEBURG. I believe that's correct, sir.

Mr. SCOTT. Okay. This bill, does it protect a manufacturer making donations? You said—talked about different Governmental agencies. Does it immunize a manufacturer giving defective products?

Mr. STITTLEBURG. No, sir. Manufacturers are excluded in the definition.

Mr. SCOTT. Okay. I missed that.

Mr. STITTLEBURG. If the person's a manufacturer of fire control or fire rescue equipment, they do not enjoy the exemption.

Mr. SCOTT. Okay. Do you have a—can you cite the number of claims and the amount of actual payouts in cases involving donations?

Mr. STITTLEBURG. No, sir, I cannot. And, in fact, just to distinguish this bill from the other bills, this is not a bill basically that relates to insurance claims. This bill is designed to facilitate and encourage the donation.

Mr. SCOTT. Well, wait a minute. You are not aware of any claims paid as a result of these kinds of donations?

Mr. STITTLEBURG. That's correct, sir.

Mr. SCOTT. Mr. Kanaby, I'm a little concerned about the kinds of cases we're talking about. You indicated that the cases that the gentleman from Michigan mentioned were not covered. You have inferred that the injury cases are what we're talking about. Is that right?

Mr. KANABY. That is correct.

Mr. SCOTT. Other kinds of cases are not to be covered, just injury cases?

Mr. KANABY. Gross negligence, including injuries. If injuries involve gross negligence——

Mr. SCOTT. The definition says non-profit athletic organizations shall not be liable for harm caused by an act or omission by the non-profit organization for adoption of rules. That doesn't say anything about injuries.

Mr. KANABY. That is correct, but it is not our intent to avoid——

Mr. SCOTT. Your intent is just to cover the injury cases?

Mr. KANABY. Our intent is just to cover the fact that we write the playing rules in a specific sport. The issue of gross negligence, even within those playing rules—it is not our intention to have them excluded if someone is grossly negligent in terms of implementing their responsibilities.

Mr. SCOTT. How about racial discrimination cases?

Mr. KANABY. Absolutely no inclusion of that as well, nor gender, nor race, or disabilities.

Mr. SCOTT. I mean, are you talking about injury cases alone? Or are you talking about all kinds of litigation?

Mr. KANABY. No, just injury cases alone basically whereby that would involve negligence. Other cases might involve us, for example, a discrimination case, we don't—if we're pulled into a discrimi-

nation case, then I—well, a good example would be the *Martin* vs. *NCAA*. If there was a local school, for example, that prohibited a youngster from participating because of AIDS, and that to us basically is a situation between that local school and the individual parties. It would be our intent that we should not be brought into that kind of a situation simply because we write the playing rules for that sport. Our position is always that all youngsters——

Mr. SCOTT. So you're not—that's not an injury kind of case.

Mr. KANABY. That's correct. But our position——

Mr. SCOTT. You're talking about all kinds of different litigation you want to be exempt from.

Mr. KANABY. That's correct. But the situations that I'm describing such as—in the *Martin* case, our position basically to our member State associations and they to their member schools basically is that anything that would involve ADA, et cetera, reasonable accommodation should be made, the letter of the law should be following, a hearing should be held on an individual basis, and cases decided on that basis.

Mr. SCOTT. Mr. Chairman, I ask unanimous consent for an additional minute.

Mr. SMITH. Without objection, the gentleman is recognized for an additional minute.

Mr. SCOTT. Mr. Boyer, I welcome you to Washington.

Mr. BOYER. Thank you. I spent 29 years here.

Mr. SCOTT. You've indicated a problem with non-owner access to insurance with planes. That cannot be just a problem for charitable donation situations.

Mr. BOYER. No. It's a case of any organization unable to get non-owner insurance.

Mr. SCOTT. If you've got a non-owner doing commercial work, borrowing somebody's plane to fly, other kinds—a personal vacation kind of stuff.

Mr. BOYER. Individual pilots, non-commercial entities, can buy non-owned liability insurance. Only organizations no longer can buy it.

Mr. SCOTT. So if somebody's a pilot doing charitable work, they can't get insurance——

Mr. BOYER. Yes, they can. The pilots—the pilots can get insurance. In fact, the pilots are—it's their insurance that is the redress for a patient that might be injured or killed. The issue of willful or criminal behavior is a non-issue here. The issue of lowering the standards for the pilots or their pilotage is not an issue because the pilots can get insurance, have insurance, are required to have insurance. And the——

Mr. SCOTT. If I could just ask one quick follow-up. Is that a per flight insurance or an annual——

Mr. BOYER. No. It's usually an annual. If I am a plane owner, I have insurance on my airplane, including liability. If I rent airplanes—and some of that is done—I can buy as an individual pilot a non-owned aircraft liability policy. But the organizations cannot.

Mr. SMITH. The gentleman's time has expired.

The gentleman from Virginia, Mr. Forbes, is recognized for his questions.

Mr. FORBES. Thank you, Mr. Chairman. I thank all of you gentlemen for being here today. And, Mr. Chairman, thank you for holding this hearing. I think we're talking about really today what kind of society that we want to live in, and you heard it, I think, mischaracterized earlier that this was an attack on the legal system. This is no more an attack on the legal system than anything that I hear, you know, coming down. It makes good political spin, but it's not an attack on the legal system.

I was a partner in one of the largest law firms in southeastern Virginia. We had over 100 lawyers. And I can tell you, there are a lot of judges and there are a lot of attorneys in the legal system who don't like what we sometimes see with a handful of lawyers who keep good, ordinary citizens from doing things we want them to do in society.

We heard earlier that there were all these abuses that are uncorrected, and I would just ask also that in the record anybody place in the record this list of abuses that all of your organizations are doing right now that have not been corrected, because I don't think they exist either.

And the real question for us is this: We live in a society where we see somebody in need and people walk by them because they don't have time to help that individual. And you represent organizations where people have the time and the willingness to give—to help, but what they don't want to do is lose their homes and lose everything else they have. And that discourages them sometimes from taking these activities.

And I've been in the position over the years of having to look at people that would want to help you and tell them you can't do that because of the exposure that you might have.

Mr. Boyer, let me ask you first of all, have you had volunteers not wanting to help or potential directors not wanting to serve because of the potential liability or exposure?

Mr. BOYER. Absolutely. It puts a dampening effect on recruiting board members. It puts a dampening effect on recruiting perhaps a wealthy individual who has an airplane who'd like to help but all of a sudden feels that his net worth is in a sense put out there for exposure.

Mr. FORBES. Now, you mentioned in your testimony that groups that would like to refer people in need to your organizations are hesitant to do so out of exposure to liability. What effect would this legislation have on the ability of these groups to recommend people to you, if any?

Mr. BOYER. Yes, what you're mentioning is that just even in many cases the simple act of recommending to a patient that they explore the possibility of this free transportation, groups such as the American Cancer Society, the Shriners, and the others, are reluctant to do that because of the fear of liability. If that fear is done away with, if the referral portion of H.R. 1084 is passed, then those organizations will be providing—referring patients and their job will get done a lot better because the organizations will be able to cooperate and work together.

Mr. FORBES. In times of disaster or emergency, does the FAA allow your volunteer pilots to fly, or are they grounded such as the situation we had with September——

Mr. BOYER. Volunteer pilots through this program were flying on September 12th. No restriction. Airlines grounded, everybody else grounds. The volunteer pilots were flying. We have a very good, close working relationship with the Federal Aviation Administration, and that was no problem at all.

Mr. FORBES. And if they're not flying, is there some of these patients that aren't going to get the treatment that they need and medical care that they need in that particular situation?

Mr. BOYER. Well, in many instances, a patient or a patient's family's ability to travel long distances to specialized medical care—if they can't afford it, they can't get the care. It's that simple.

Mr. FORBES. And if they don't get the care, that's because you didn't have people that were willing to volunteer because of the threat of lawsuits that we've heard today aren't showing up because there are these abuses that need to be corrected, apparently, that are even taking place. Is that correct?

Mr. BOYER. That's absolutely correct. It's the relationship between the pilot and the Federal Aviation Administration that sets the standards for professional conduct of the pilot. The volunteer pilot organizations do not get in between a pilot and the Federal air regulations. So this has nothing to do with standards of how pilots will operate.

Mr. FORBES. Are there services that groups such as yours do not currently provide that you would be likely to provide if this change took place and referrals were more likely?

Mr. BOYER. There's a good case in point there. The American Red Cross, with whom we're in discussions, negotiations, whatever the right term is, has been very, very reluctant to—as part of their disaster preparedness—say that their volunteers, their disaster volunteers, could be flown by a volunteer pilot organization to the point of a disaster. If this law passes, it removes that obstacle.

Mr. FORBES. And if this legislation were in place and you had an accident, what sort of recourse would the injured families have?

Mr. BOYER. Their recourse is to the pilots and the pilots' insurance. And to the extent that there is willful or criminal activity, obviously that insurance doesn't apply, and it's with the pilot totally, because the organizations are nothing more than matchmakers between the volunteer pilot who wants to help and the needy patient that needs the help. The organization puts the two of them together. The organization has nothing to do with the conduct of the flight per se. That's the relationship between the pilot and the Federal air regulations as administered by the FAA.

Mr. SMITH. The gentleman's time has expired. Thank you.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I would say to my colleagues and to the witnesses, this is certainly a very important hearing. I question the wisdom of the hearing, and I'm hoping to be able to peruse the testimony of all of the witnesses so that we can come to a common good, and that is, to promote volunteerism and to enhance opportunities for our community.

At the same time, I would raise the specter of an existing legislation, the Volunteer Protection Act, that is in existence. And as I understand it, the Volunteer Protection Act is—merely permits but does not require States to provide adequate measures to ensure

that non-profit organizations operate in a safe manner. And it goes on to suggest a variety of aspects of this particular legislation.

It has its weaknesses, even though it has good intentions, and the legislation that is coming forward raises concerns that I think we should answer if we're trying to be helpful.

One of the points that I find a concern is that it looks as if all of these laws would preempt State law, and I cite, for example, a law in Texas under the Texas Education Code that talks about the idea of cooperating in securing volunteer equipment. However, the language here that is not in the Federal bill specifically states the equipment being donated in good faith, and I think it also has some language in here about malice and a number of other provisions that would seemingly be protective of innocent persons. Also, the language, the Federal language, does not have any language of good faith or bad faith, and I think that's extremely important as a measure of protection to the recipient of this wonderful largesse.

Let me ask Chief Stittleburg, again, if he could explain to me what would happen if a volunteer is seriously injured or killed because of the malfunction of old, used equipment. Who then should be held accountable? Could you be more precise on that?

Mr. STITTLEBURG. In the event that were to occur, there would still be the opportunity to make claims against the manufacturer, if indeed the product was defective. There would also be the workers' compensation benefits available to the injured employee, assuming this was a line-of-duty injury.

Ms. JACKSON LEE. Then what you're saying is that that particular individual would have to go—stair-step up to a third party. Is there some understanding in the workmens' compensation laws that would not preclude that individual who was not using authorized equipment or equipment associated with his public responsibility because it was volunteer equipment, how do we know that the workmen compensation laws—have you reviewed State compensation laws to know that there would not be a preclusion?

Additionally, on the manufacturing end, there is questions as to whether the manufacturers would have a bar if they thought that the equipment was not being used properly.

Mr. STITTLEBURG. That issue will always be there regardless of whether it's been donated by another department or whether it's an initial purchase. The use to which that equipment was then put is always going to be raised by the manufacturer.

Ms. JACKSON LEE. Well, I think the point, Chief, is that if there are already known bars that are not being made clear to the users of those vehicles, unlike a circumstance where you are using a manufactured product for its right reason, if the manufacturer determines that I had nothing to do with it being transferred for free to someone, et cetera, and there's a bar or there may be something in place about secondhand, thirdhand users, that may put a more onerous burden on proving and getting relief for the injured people or the killed—or the individual that lost their life.

Mr. STITTLEBURG. Well, ma'am, I have a different reading of it. The bill, of course, specifically exempts protection to the manufacturer of the fire control or fire rescue equipment.

Ms. JACKSON LEE. I didn't hear what you said.

Mr. STITTLEBURG. The bill specifically exempts protection—in other words, does not apply to the manufacturer of the fire control or fire rescue equipment.

Ms. JACKSON LEE. Are you suggesting that it doesn't apply to provide them with cover?

Mr. STITTLEBURG. Yes, sir—yes, ma'am, I am. That's my reading of the bill.

Ms. JACKSON LEE. That they can sue the manufacturer?

Mr. STITTLEBURG. That is correct, ma'am.

Ms. JACKSON LEE. My reading is not such, and when I was raising questions, they would contravene that, and that's what I'm saying, making their own argument.

Let me ask Mr. Popper——

Mr. SMITH. The gentlewoman's time has expired. Without objection——

Ms. JACKSON LEE. I'd ask 1 minute additional time.

Mr. SMITH. Without objection, she's recognized for one more minute.

Ms. JACKSON LEE. Thank you very much.

Professor Popper, what is the downside, if you will, of, one, removing the State protection, meaning usurping State laws that may pertain to this kind—these kinds of generous activities? And what would be the outcome of preempting State laws that may be more—may be more strict?

Mr. POPPER. You have 200 years of history of tort law in virtually all of the affected States that would suddenly be swept aside were these bills to be adopted. You have specific provisions regarding warranty. You have the manufacturers' claims provision. You have the developed history of strict liability and tort. All of that would be swept under the table, would no longer be applicable, because at the Federal level, none of that, at least at the present time, would be available for cause of action and tort. It would change the dynamic of tort law. And perhaps the most profound change is that you would be sweeping away State law without creating concomitant Federal court jurisdiction. So you're not moving into Federal court for some Federal set of claims under legislation that Congress could pass. You would be giving back to the State a system where its own law has been removed, inserting nothing in its place. That's the downside of preemption. Unless there's something in its place federally, you're literally adrift in terms of the tort system.

Ms. JACKSON LEE. So any language in this bill that says we can go against the manufacturer could be thwarted on the State level by—or be thwarted by the manufacturer by some other defense.

Mr. POPPER. Yes, that's true. The bill seems to specifically exempt manufacturers, but once it preempts State law, it leaves a void.

Ms. JACKSON LEE. It leaves a void.

Mr. SMITH. The gentlewoman's time has expired.

Ms. JACKSON LEE. That's the point I wanted to make. Thank you very much, Mr. Chairman.

Mr. SMITH. The gentleman from Michigan——

Mr. CONYERS. Mr. Chairman, I rise to strike——

Mr. SMITH.—is recognized for a unanimous consent request.

Mr. CONYERS. I'd rather just strike the requisite number of words, because I want to add a question to it.

Mr. SMITH. Okay. The gentleman is recognized.

Mr. CONYERS. Thank you very much. Thank you, Mr. Chairman. I wanted to thank the witnesses, first of all, and I want to ask a unanimous consent request. But before I do, I wanted to ask this question: Is it true—well, I going to make a statement, and then you can tell me if it's—if it's true or false or that you don't know.

Poorer return on insurance investments cause premiums to go up: true or false or I don't know. Chief Stittleburg?

Mr. STITTLEBURG. I don't know. That's not a part of the bill that we're interested in.

Mr. CONYERS. Of course.

Mr. Kanaby?

Mr. KANABY. I would concur with Mr. Stittleburg's response.

Mr. CONYERS. In other words, you don't know either?

Mr. KANABY. I think it's a myriad of factors. I don't think that it can be held within the constriction of the question itself.

Mr. CONYERS. Okay. Mr. Boyer?

Mr. BOYER. I do not know enough about the insurance industry to respond.

Mr. CONYERS. Okay. The reason we have to all look at this together is because that's what much of the testimony in these hearings before the Committee have demonstrated, is that you can create all the restrictions on tort liability you want, but if the insurance companies have generally had a poor year, the returns are poor, the premiums go up. And it's not—it's not connected to how many people file the lawsuit, nor even how much—how many recovered after the lawsuit was filed.

But, Mr. Kanaby, the book that you published, the 2004 Wrestling Rules Book, was very fascinated. I—fascinating. I was particularly drawn to the officials' wrestling signals, high school and college, which I always wondered what those things meant when I was watching them. And then from pages 55 to 72, you illustrate all of the kinds of violations in wrestling that referees have to be aware of.

Was there any other reason that this was distributed to all of the Members of the Committee?

Mr. KANABY. No, sir. We just wanted to provide the Committee with an example of one of the 17 rule books that we publish in various sports. We just happened to pick wrestling, but we're pleased that we were able to pick the one that helped you in terms of your understanding of the signals. But we publish 16 other sports' rules in this form.

Mr. CONYERS. Well, as long as you're not sending us some quiet signal about wrestling in the Congress.

Mr. KANABY. No, sir. But if there are other sports you——

Mr. CONYERS. We have enough inter-college—intercollegiate sports activities going on here without adding wrestling to the number.

Mr. KANABY. Well, perhaps some of those holds would be of assistance, sir. [Laughter.]

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Mr. Conyers. And your choice of this particular brochure had nothing to do with the fact that our speaker's a former wrestling coach, I presume, either.

Mr. CONYERS. Yes.

Mr. KANABY. No comment.

Mr. SMITH. Oh, maybe there's something there.

Mr. SCOTT. Mr. Chairman, could I ask one additional question?

Mr. SMITH. Mr. Scott, you will be recognized to ask an additional question. We are expecting a vote momentarily, and some of us were hoping to get to the House floor before that vote occurred. But the gentleman is recognized for 1 minute for an additional question, without objection.

Mr. SCOTT. To Mr. Popper, of all the bills, Mr. Boyer's bill involving pilots has a provision that it only kicks in if the pilot is licensed and has insurance, so that if there is an injury, the injured party has recourse. Does that make that bill different from the other two?

Mr. POPPER. I think these bills are different in many respects, one to the next, and that is a distinguishing feature in that bill, yes.

Mr. SCOTT. Okay. Thank you.

Mr. SMITH. All right. Thank you, Mr. Scott.

Mr. CARTER. Mr. Chairman?

Mr. SMITH. Also, I'd like to ask unanimous consent that written statements by the sponsors of the three pieces of legislation that we're considering today be made a part of the record as well.

Mr. CARTER. Mr. Chairman, may I be recognized for one additional comment?

Mr. SMITH. The gentleman from Texas is recognized for an additional minute.

Mr. CARTER. Mr. Popper, I was picking on you a little while ago. There's a reason for that. I honestly believe that we lawyers have some solutions that we're not—we're not willing to talk about, and I'm really coming to every one of these hearings hoping that I will hear the bar step forward and start offering some solutions for some of these problems that we're seeing that may be different from the tort reform problems that we're looking at.

So I think we have a responsibility, and that's why I raised—I wasn't picking on you individually. I look for that every time we have a hearing, and I don't hear it, and I would really like to hear it. And that's why I was asking those questions. I would like to see us try to solve some of these problems.

Mr. POPPER. I agree, and I'd just make one final comment in response, which is there are areas, obviously, there are situations where lawyers are charging 50-, 60-percent fees. It's outrageous. There has been, in terms of the legal system itself, a downplay of classical doctrines like res ipsa loquitur, which, if properly understood at the State level, could avoid a lot of the problems we have with tort reform. And I'd be happy to have a dialogue with you about that, and I appreciate your comment.

Mr. FORBES. Yes, sir. Well, thank you. I'd welcome that.

Mr. SMITH. That's an encouraging response, Mr. Popper. Thank you for that. Thank you, Mr. Carter.

I thank all the Members for being present today, and we thank our four witnesses for contributing a lot of information, insight, and expertise on the subjects at hand.

We stand adjourned.

[Whereupon, at 11:25 a.m., the Committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE MICHAEL N. CASTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Mr. CASTLE. Mr. Chairman, I rise today in support of legislation I introduced, the "Good Samaritan Volunteer Firefighter Assistance Act." This legislation removes a barrier which has prevented some organizations from donating surplus fire fighting equipment to needy fire departments. 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 presume that these firefighters work in departments which have the latest and best firefighting and protective equipment. What we must recognize is that there are an estimated 30,000 firefighters who risk their lives daily due to a lack of basic Personal Protective Equipment (PPE). In both rural and urban fire departments, limited budgets make it difficult to purchase more than fuel and minimum maintenance. There is not enough money to buy new equipment. At the same time, certain industries are constantly improving and updating the fire protection equipment to take advantage of new, state-of-the-art innovation. Sometimes, the surplus equipment may be almost new or 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. While volunteering to fight fires, these same, selfless individuals are asked to raise funds to pay for new equipment. Bake sales, pot luck 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 fire fighting equipment. The generosity and good will 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 from negligence to gross negligence. Mr. Chairman, I thank you for holding this hearing today and calling attention to this important issue and I look forward to continuing to work with the Chairman and the Judiciary Committee in helping our nation's firefighters.

PREPARED STATEMENT OF THE HONORABLE ED SCHROCK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you, Chairman Sensenbrenner for holding this hearing today on tort reform and on H.R. 1084, the Volunteer Pilot Organization Protection Act. I am grateful that the Judiciary Committee is taking this opportunity to examine ways to improve to improve the Volunteer Protection Act in order to bring protection to these worthwhile volunteers.

The charitable flying community is facing a crisis, and if action is not taken, I am afraid the community is on the brink of a breakdown. Escalating insurance costs have become prohibitively expensive for these groups that survive through donations of both time and money and operate on small margins. Increasing insurance costs have forced many volunteer pilot organizations to operate without insurance coverage, and a single incident with one of the volunteer pilots could shut down the entire charitable flying sector.

For many years volunteer pilot organizations have helped those in need to get the medical care they require. Thousands have relied on these groups to provide free transportation to get specialized medical treatment when they otherwise could not have afforded transportation costs. Every year, thousands of pilots with years of experience and hundreds of flight hours under their belt volunteer their time to fly these missions. It is essential that we keep these lines of transportation open to the people who need it the most. It would certainly be a tragedy if one lawsuit, or even the threat of a lawsuit, were to bring down this network. This is the crisis we are facing today.

H.R. 1084, the Volunteer Pilot Organization Protect Act, will ensure that these organizations can continue to fly without this threat of collapse surrounding them. The list of groups supporting this legislation is extensive, including:

National Air Transportation Association
Children's Organ Transplant Association
National Association of Hospital Hospitality Houses
Health and Medical Research Charities of America
National Organization of Rare Disorders
National Foundation for Transplants
Independent Charities of America
Shriners Hospitals for Children
US Airways

I thank the Judiciary Committee for holding this hearing, and I look forward to working with the Committee for further consideration of this legislation.

PREPARED STATEMENT OF THE HONORABLE MARK E. SOUDER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

I would like to take this opportunity to thank Chairman Sensenbrenner for conducting today's hearing and, in particular, for considering H.R. 3369, the Non-Profit Athletic Association Protection Act of 2003.

As today's witnesses will attest to, volunteer organizations across the nation are under attack by overreaching personal injury lawyers. Notably, in the past decade there has been an extraordinary increase in legal attacks against the rule-making bodies who determine the rules of play that govern amateur athletic competition. These cases rely on the curious presumption that rules themselves should eliminate ALL risk in athletic competition. Objectively, however, all athletic activities involve an element of risk, and rulemaking bodies can merely anticipate risk—they can not prevent every injury that could result from participation in athletic competition. Repeatedly defending against claims based on this assumption has resulted in astronomical legal bills for amateur and education-based athletic organizations.

As a direct result of the increased frequency of these legal attacks, the insurance industry has exhibited a reluctance to offer policies covering non-profit athletics. Moreover, those few insurance companies that do continue to offer such policies have drastically increased premiums and deductibles, thus placing a strain on the non-profits' financial status. For example, sports governing authorities have seen outrageous percentage increases in liability insurance rates from 121 percent to 1000 percent. Moreover, as Robert F. Kanaby will testify, in the past three years the cost of liability insurance for the National Federation of State High School Associations (NFHS) has risen threefold, to in excess of $1 million annually. This is greater than 10 percent of the organization's $9 million budget, and this unaffordable premium is certain to rise. Amateur sports rule-making organizations like NFHS can neither afford such continued premium increases, nor can they operate without liability insurance.

Without action, the escalation in abusive lawsuits and the attendant costs to rule-making organizations will affect the ability of amateur and education-based athletic leagues to continue operating competitively. The Non-Profit Athletic Association Protection Act seeks to insure the continued viability of amateur and education

based athletics by shielding rulemaking bodies from the devastating consequences of continued abusive lawsuits. Millions of children and young adults across America rely on organizations like the NFHS, Little League baseball and the NCAA in their athletic pursuits, and their sporting endeavors should not be imperiled because of the excesses of trial lawyers.

I urge my colleagues to support H.R. 3369.