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109TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPORT 109–394

# VOLUNTEER PILOT ORGANIZATION PROTECTION ACT OF 2006

MARCH 15, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

## R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 1871]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1871) to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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49–006

## THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Volunteer Pilot Organization Protection Act of 2006".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds the following:

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

(2) In calendar year 2001, nonprofit volunteer pilot organizations provided long-distance, no-cost transportation for over 30,000 people in times of special need.

(3) Such organizations are no longer able to reasonably purchase non-owned aircraft liability insurance to provide liability protection, and thus face a highly detrimental liability risk.

(4) Such organizations have supported the interests of homeland security by providing volunteer pilot services at times of national emergency.

(b) PURPOSE.—The purpose of this Act is to promote the activities of nonprofit volunteer pilot organizations flying for public benefit and to sustain the availability of the services that such organizations provide, including transportation at no cost to financially needy medical patients for medical treatment, evaluation, and diagnosis, as well as other flights of compassion and flights for humanitarian and charitable purposes.

**SEC. 3. LIABILITY PROTECTION FOR NONPROFIT VOLUNTEER PILOT ORGANIZATIONS FLYING FOR PUBLIC BENEFIT AND TO PILOTS AND STAFF OF SUCH ORGANIZATIONS.**

Section 4 of the Volunteer Protection Act of 1997 (42 U.S.C. 14503) is amended—

(1) in subsection (a)(4)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by inserting "(A)" after "(4)";

(C) by striking the period at the end and inserting "; or"; and

(D) by adding at the end the following:

"(B) the harm was caused by a volunteer of a nonprofit volunteer pilot organization that flies for public benefit, while the volunteer was flying in furtherance of the purpose of the organization and was operating an aircraft for which the volunteer was properly licensed and insured, unless the conduct constitutes a Federal crime of terrorism (as such term is defined in section 2332b(g)(5) of title 18, United States Code) or an act of domestic terrorism (as such term is defined in section 2331 of such title), or unless the entity has been convicted of an offense under section 2339A of such title."; and

(2) in subsection (c)—

(A) by inserting "(1)" before "Nothing"; and

(B) by adding at the end the following new paragraph:

"(2) Notwithstanding paragraph (1), a nonprofit volunteer pilot organization that flies for public benefit, and the staff, mission coordinators, officers, and directors (whether volunteer or otherwise) of such organization or a referring agency of such organization, shall not be liable with respect to harm caused to any person by a volunteer of such organization, while the volunteer is flying in furtherance of the purpose of the organization and is operating an aircraft for which the volunteer is properly licensed and has certified to such organization that such volunteer has in force insurance for operating such aircraft. Such referring agency shall include, among others, any nonprofit organization that provides disaster relief services that place staff, volunteers, evacuees, goods, supplies, or cargo on aircraft flights being coordinated by volunteer pilot organizations in circumstances of disaster response and relief.".

**SEC. 4. REPORT BY ATTORNEY GENERAL.**

(a) STUDY REQUIRED.—The Attorney General shall carry out a study on the availability of insurance to nonprofit volunteer pilot organizations that fly for public benefit. In carrying out the study, the Attorney General shall make findings with respect to—

(1) whether nonprofit volunteer pilot organizations are able to obtain insurance;

(2) if no, then why;

(3) if yes, then on what terms such insurance is offered; and

(4) if the inability of nonprofit volunteer pilot organizations to obtain insurance has any impact on the associations' ability to operate.

(b) REPORT.—After completing the study, the Attorney General shall submit to Congress a report on the results of the study. The report shall include the findings of the study and any conclusions and recommendations that the Attorney General considers appropriate.

## PURPOSE AND SUMMARY

H.R. 1871, the "Volunteer Pilot Organization Protection Act of 2006," amends the Volunteer Protection Act of 1997 (VPA) to include volunteer pilots and volunteer pilot organizations within the scope of its protections. Under present law, nonprofit volunteer pilot organizations and their pilots that provide life-saving medical flights without compensation are vulnerable to costly and often frivolous litigation that undermines the ability of these organizations to provide critical volunteer flight services in a timely manner. In addition, institutions that refer patients to volunteer pilot organizations are presently subject to legal jeopardy. H.R. 1871 protects and promotes the important work of volunteer pilot organizations by creating limited protection against liability to volunteer pilot organizations and pilots so that they are able to procure necessary insurance and continue their important operations.

## BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1871 extends the liability protections already provided by Congress in the Volunteer Protection Act of 1997 to volunteer pilot organizations that fly for public benefit. The extension of these liability protections reflects Congress' recognition that America's long tradition of volunteerism and generosity has been undermined by costly and often frivolous litigation. In recent decades, lawsuits and fears of liability have increasingly become a deterrent to people who might otherwise have given of their time or resources to better their community and country.

### HISTORY OF VOLUNTEER LIABILITY PROTECTIONS

The common law of all 50 States allows individuals to collect monetary damages in tort for personal injury or property damage caused by another person's negligence or willful conduct. Virtually all of these States have recognized the need to encourage good works and volunteerism by protecting volunteers and nonprofit organizations from tort liability for accidents that arise in the normal course of their dealings. For example, New Jersey provides that charities and the volunteers they utilize are immune from liability for ordinary negligence.[1] In Kansas, a volunteer or nonprofit organization is immune from liability for negligence if the organization carries general liability insurance coverage.[2] Ohio offers broad immunity for volunteers of charitable organizations.[3] Wisconsin State law limits the liability of volunteers of non-stock corporations organized under Chapter 181.[4] Georgia grants immunity for members, directors, officers, and trustees of charities from negligence claims

[1] N.J. Stat. Ann. §§ 2A: 53A–7 to 7.1.
[2] Kan. Stat. Ann. § 60–3601.
[3] Ohio. Rev. Code Ann. § 2305.38.
[4] Wis. Stat. §§ 181.0670.

asserted by beneficiaries of the charity.[5] These States' efforts reflect a broader national consensus that volunteers and volunteer organizations should be protected from legal liability.

Congress recognized this national consensus and held hearings examining this subject in 1997.[6] Those hearings showed that in addition to causing potential volunteers to stay at home or refrain from certain needed activities, liability and the fear of liability for volunteer activities had very real financial impacts, including dramatically rising costs for liability insurance premiums for volunteer organizations. These increased premiums have practical consequences: the Executive Director of the Girl Scout Council of Washington, D.C. stated that "locally we must sell 87,000 boxes of . . . Girl Scout cookies each year to pay for [our] liability insurance."[7] Furthermore, Dr. Thomas Jones, Managing Director of the Washington, D.C. office of Habitat for Humanity, testified that "[t]here are Habitat affiliate boards for whom the largest single administrative cost is the perceived necessity of purchasing liability insurance to protect board members. These are moneys which otherwise would be used to build more houses [for] more persons in need."[8]

These concerns prompted Congress to pass the Volunteer Protection Act (VPA), which was signed into law by President Clinton on June 18, 1997.[9] The VPA protects "volunteers"[10] for incidents that arise in the scope of their work, but it does not provide liability protection for willful, reckless, or criminal conduct or gross negligence. The Act limits punitive damages and non-economic damages for those individuals found liable.[11] However, the VPA does not protect nonprofit organizations and government entities themselves from liability for negligence of their volunteers unless State law provides "charitable immunity" for such organizations.[12] Hence, under the common law doctrine of *respondeat superior,* volunteer organizations and entities are still generally vicariously liable for the negligence of their employees and volunteers. Also, volunteers that operate motor vehicles, vessels, or aircraft are not protected by the VPA.[13]

The passage of the VPA has not ended the problem of liability and its associated costs for volunteers and the non-profit organizations that support them. Hence, the Committee has held hearings[14] in recent years about various aspects of this problem and

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[5] Ga. Code Ann. § 51–1–20.

[6] *Volunteer Liability Legislation, Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary,* 105th Cong. (1997).

[7] H.R. Rep. No. 105–101, at 6 (1997).

[8] *Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167,* supra, 105th Cong. at 56.

[9] Pub. L. No. 105–19 (1997).

[10] "Volunteer" is defined in the VPA as a person who performs services for a non-profit and who receives no more than $500 per year for such services. 24 U.S.C. § 14505(6).

[11] 42 U.S.C. §§ 14503(e), 14504.

[12] 42 U.S.C. §§ 14502(a), 14503(c).

[13] 42 U.S.C. § 14503(a)(4).

[14] *See, e.g., Good Samaritan Volunteer Firefighter Assistance Act of 2003, the Non Profit Athletic Organization Protection Act of 2003, and the Volunteer Pilot Organization Protection Act: Hearing Before the House Comm. on the Judiciary on H.R. 1787, H.R. 3369, and H.R. 1084,*108th Cong. (2004); *State and Local Implementation of Existing Charitable Choice Programs,* 107th Cong. 13 (2001); *Volunteer Liability Legislation, Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary,* 105th Cong. (1997); and *Health Care Reform Issues: Antitrust Medical Malpractice Liability and Volunteer Liability, Hearing on H.R. 911, H.R. 2925, H.R. 2938 Before the House Committee on the Judiciary,* 104th Cong. (1995).

has advanced several pieces of legislation[15] designed to limit liability for volunteers and volunteer, non-profit, or charitable organizations. For example, in the 107th Congress, the House-passed version of the "Charitable Choice Act of 2001," H.R. 7, contained provisions limiting liability for persons or entities who donated equipment to charitable organizations.[16] In the 108th Congress, the House overwhelmingly passed H.R. 1787, the "Good Samaritan Volunteer Firefighter Assistance Act of 2003," which extends certain liability protections to those who donate equipment to volunteer fire stations, by a vote of 397–3.[17] The provisions of that Act are now included as Section 125 of the USA PATRIOT Improvement and Reauthorization Act of 2005, which was signed into law on March 9, 2006.[18] On the same day, the House also overwhelmingly passed H.R. 1084, the "Volunteer Pilot Organization Protection Act," by a vote of 385–12.[19]

Most recently, the House passed the "Katrina Volunteer Protection Act of 2005," H.R. 3736, by voice vote on September 14, 2005.[20] This bill extends liability protections to any person or entity that voluntarily rendered aid in the wake of Hurricane Katrina, provided that the harm was not caused by willful, wanton, reckless, or criminal conduct.

H.R. 1871, "THE VOLUNTEER PILOT ORGANIZATION PROTECTION ACT"

H.R. 1871 is intended to promote the publicly beneficial activities of volunteer pilot organizations and their employees by exempting them from liability when flying volunteer missions in furtherance of the purpose of such organizations. The bill amends Section 4 of the VPA to ensure that volunteer pilot organizations and their employees, officers, and volunteer pilots acting within the scope of the mission of such organizations are explicitly covered by that Act. However, H.R. 1871 does not confer blanket immunity for the actions of volunteers. Rather, it only confers immunity for simple negligence; it does not provide any liability protections for grossly negligent, or willful, reckless, or criminal conduct. Further, the exceptions to the general liability protections contained in the VPA would still apply (i.e. certain State laws on *respondeat superior* or adherence to licensing or risk management standards). A virtually identical bill, H.R. 1084, passed the House in the 108th Congress by a vote of 385–12.[21]

VOLUNTEER PILOT ORGANIZATIONS AND PUBLIC BENEFIT AVIATION

Volunteer pilot organizations and the pilots who fly for them are involved in a range of activities constituting what may generally be called "public benefit aviation." The activities of public benefit aviation range from environmental observation, to wilderness rescue, to delivery of medical supplies and organs, to transport of medical pa-

[15] *See, e.g.,* H.R. 911, 105th Cong. (1997); H.R. 1167, 105th Cong. (1997); H.R. 7, 107th Cong. (2001); H.R. 1787, 108th Cong. (2003); H.R. 3369, 108th Cong. (2003); H.R. 1084, 108th Cong. (2003); and H.R. 3736, 109th Cong. (2005).
[16] H.R. 7, 107th Cong. § 401 (2001).
[17] 150 Cong. Rec. H7097 (daily ed. Sept. 14, 2004).
[18] 151 Cong. Rec. H11289 (daily ed. Dec. 8, 2005), Pub. L. No. 109–177.
[19] 150 Cong. Rec. H7098 (daily ed. Sept. 14, 2004).
[20] 151 Cong. Rec. H7887 (daily ed. Sept. 14, 2005).
[21] 150 Cong. Rec. H7098 (daily ed. Sep. 14, 2004).

tients.[22] In the area of medical patient transport alone, volunteer pilot organizations provided long distance transportation for free to over 40,000 patients and their escorts in 2003.[23] These flights enable patients to travel to remote specialized medical centers to receive life saving treatments and partake in clinical trials that they could not otherwise obtain in their own hometowns or even in their own regions of the country.

The benefits of public benefit aviation are even more pronounced in emergency situations, such as the recent Hurricane Katrina disaster. In the wake of that disaster, more than 2,800 children were reported missing by the National Center for Missing and Exploited Children (NCMEC).[24] However, the NCMEC worked with Angel Flight America, a non-profit volunteer pilot organization, and its pilots to re-connect many of these children with their parents.[25] In addition to reuniting families, Angel Flight America flew over 500 missions in the first week after the hurricane to bring volunteers and supplies to the affected areas.[26] Overall, Angel Flight America coordinated approximately 2,200 flights into the areas affected by Hurricane Katrina, second only to the United States military.

THE LIABILITY DILEMMA FACED BY VOLUNTEER PILOT ORGANIZATIONS AND THEIR PILOTS

The activities of volunteer pilots and volunteer pilot organizations are not protected from liability by the VPA, and therefore these coordinating organizations and the pilots who fly for them face difficulty obtaining the necessary insurance because of liability exposure fears. Pilots who might otherwise volunteer using their own plane, time, and insurance are reluctant to take on passengers and expose themselves to possible liability that exceeds their own insurance coverage. In addition, hospitals and other medical establishments are leery of referring patients to volunteer pilot medical transport services because of their own fear of liability exposure based on the simple act of recommendation.[27] Furthermore, volunteer pilot organizations can no longer obtain the needed "non-owned aircraft insurance" at a reasonable cost, or, in some cases, at all.[28]

The Volunteer Pilot Organization Protection Act of 2006 addresses these concerns by bringing volunteer pilot organizations, the volunteer pilots that fly for them, as well as the hospitals and other agencies that refer patients to them under the protection of the Volunteer Protection Act. By narrowly limiting the liability of these groups, the Committee hopes to foster the good works of the volunteer pilot organizations.

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[22] *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 H. Comm. on the Judiciary,* 108th Cong. 13 (2004) (testimony of Edward R. Boyer, President and CEO of Mercy Medical Airlift and Vice Chairman, Angel Flight America).

[23] *Id.*

[24] "Over 2,000 children reported missing after Katrina," *available at http://www.cnn.com/2005/US/09/16/news.update/index.html.*

[25] Interview by Douglas Kennedy, Fox News Correspondent with Mike Keller, National Center for Missing and Exploited Children, in Baton Rouge, LA. (Sept. 9, 2005).

[26] Press Release, Angel Flight America, Angel Flight America Flies Relief for Hurricane Katrina Victims (Sept. 8, 2005), *available at http://www.angelflightamerica.org/index.php?src=news&prid=11&category=Press%20Releases.*

[27] *Id.* at 16.

[28] *Id.* at 13, 16, 22, 24.

H.R. 1871 is supported by, among others, Angel Flight East, the Aircraft Owners and Pilots Association, the Children's Organ Transport Association, the National Association for Rare Disorders, Angel Flight America, the National Air Transportation Association, and the American Red Cross.

## HEARINGS

The Committee on the Judiciary held no hearings on H.R. 1871 in the 109th Congress. However, the full Committee on the Judiciary held a hearing on a nearly identical bill, H.R. 1084, in the 108th Congress, at which testimony was received from Mr. Edward R. Boyer, President and CEO, of Mercy Medical Airlift.

## COMMITTEE CONSIDERATION

On March 2, 2006, the Committee met in open session and ordered favorably reported the H.R. 1871 as amended by voice vote, a quorum being present.

## VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that the following rollcall votes occurred during the Committee's consideration of H.R. 1871.

1. Mr. Scott offered an amendment that would have eliminated the liability protections afforded to volunteer pilots who fly on behalf of nonprofit volunteer pilot organizations that fly for public benefit. By a rollcall vote of 10 ayes to 18 nays, with one vote of present, the amendment was not agreed to.

ROLLCALL NO. 1

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Hyde | | | |
| Mr. Coble | | X | |
| Mr. Smith (Texas) | | X | |
| Mr. Gallegly | | | |
| Mr. Goodlatte | | X | |
| Mr. Chabot | | X | |
| Mr. Lungren | | | X |
| Mr. Jenkins | | X | |
| Mr. Cannon | | X | |
| Mr. Bachus | X | | |
| Mr. Inglis | | X | |
| Mr. Hostettler | | X | |
| Mr. Green | | X | |
| Mr. Keller | | X | |
| Mr. Issa | | | |
| Mr. Flake | | X | |
| Mr. Pence | | X | |
| Mr. Forbes | | X | |
| Mr. King | | X | |
| Mr. Feeney | | X | |
| Mr. Franks | | X | |
| Mr. Gohmert | | X | |
| Mr. Conyers | X | | |
| Mr. Berman | | | |
| Mr. Boucher | | | |
| Mr. Nadler | | | |
| Mr. Scott | X | | |

ROLLCALL NO. 1—Continued

| | Ayes | Nays | Present |
|---|---|---|---|
| Mr. Watt | | | |
| Ms. Lofgren | X | | |
| Ms. Jackson Lee | | | |
| Ms. Waters | X | | |
| Mr. Meehan | X | | |
| Mr. Delahunt | | | |
| Mr. Wexler | | | |
| Mr. Weiner | | | |
| Mr. Schiff | X | | |
| Ms. Sánchez | X | | |
| Mr. Van Hollen | X | | |
| Ms. Wasserman Schultz | X | | |
| Mr. Sensenbrenner, Chairman | | X | |
| Total | 10 | 18 | 1 |

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1871, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, March 10, 2006.*

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
*Committee on the Judiciary,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1871, the "Volunteer Pilot Organization Protection Act of 2006."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gregory Waring (for Federal costs), who can be reached at 226–2860, and Melissa Merrell (for the state and local impact), who can be reached at 225–3220.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

*H.R. 1871—Volunteer Pilot Organization Protection Act of 2006*

H.R. 1871 would provide immunity to volunteer pilot organizations, their employees, officers, and volunteer pilots from liability in certain civil suits alleging harm resulting from such individuals acting within the scope of the organization's mission. Such organizations typically provide wilderness rescue or medical evacuation services.

CBO estimates that implementing the legislation would result in no significant costs to the Federal Government. Enacting H.R. 1871 would not affect direct spending or revenues.

H.R. 1871 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs, if any, would not be significant and would be well below the threshold established in that act ($64 million in 2006, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

H.R. contains an intergovernmental mandate because it would preempt certain state liability laws. Specifically, the bill would exempt volunteer pilots and volunteer pilot organizations from liability under state tort laws for injuries that may occur during the course of their volunteer activities. CBO estimates that the resulting costs, if any, would not be significant and would be well below the threshold established in UMRA.

The CBO staff contacts for this estimate are Gregory Waring (for Federal costs), who can be reached at 226–2860, and Melissa Merrell (for the state and local impact), who can be reached at 225–3220. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

## PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 1871, would protect and promote the important work of volunteer pilots and volunteer pilot organizations by creating limited liability protections to encourage needed pilots and to allow the procurement of necessary insurance.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, § 8 of the Constitution.

## SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

*Section 1. Short Title*

Section 1 provides that H.R. 1871 may be cited as the "Volunteer Pilot Organization Protection Act of 2006."

*Section 2. Findings and Purpose*

Subsection 2(a) cites findings about the beneficial nature of public benefit non-profit volunteer aviation, those served by such organizations and the difficulty such organizations face in obtaining reasonable insurance due to potential liability exposure.

Subsection 2(b) sets forward the purpose of the Act, which is: "to promote the activities of non-profit volunteer pilot organizations flying for public benefit and to sustain the availability of the services that such organizations provide."

*Section 3. Liability Protection for Nonprofit Volunteer Pilot Organizations Flying for Public Benefit and to the Pilots and Staff of Such Organizations*

Section 3 amends the Volunteer Protection Act of 1997 (42 U.S.C. § 14503) by extending the liability protections of the Act to a properly licensed and insured volunteer pilot who is flying in furtherance of a nonprofit volunteer pilot organization that flies for public benefit. Such volunteers are currently not covered under 42 U.S.C. § 14503(a)(4). These liability protections apply only to pilot negligence; under H.R. 1871, pilots would still be liable for grossly negligent or willful, reckless, or criminal actions. Further, Section 3 provides an incentive for pilots to carry the requisite insurance (whether they own, rent, or borrow the aircraft) so that they can partake of the liability limiting features of the bill. An amendment offered by Representative Waters and accepted by voice vote clarifies that nothing in this bill will extend liability protections to pilots who are engaged in acts of terrorism as that term is defined in 18 U.S.C. §§ 2332b(g)(5), 2331, or 2339A.

Section 3 also extends the protection of the VPA to cover volunteer pilot organizations as well as referral organizations. Such organizations are currently not covered by the Volunteer Protection Act under 42 U.S.C. § 14503(c). This section addresses the insurance reality that volunteer pilot organizations are no longer able to obtain the insurance they need in the marketplace. An amendment offered by Representatives Chabot and Jackson Lee and accepted by voice vote clarifies that the referral agencies covered by the protections of H.R. 1871 also include those agencies, such as the American Red Cross, that provide disaster relief services and place staff, volunteers, evacuees, goods, supplies, or cargo on flights coordinated by volunteer pilot organizations.

*Section 4. Report by Attorney General*

Section 4 requires the Attorney General to study and file a report with Congress regarding the availability of insurance to nonprofit volunteer pilot organizations.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## SECTION 4 OF THE VOLUNTEER PROTECTION ACT OF 1997

**SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

(a) LIABILITY PROTECTION FOR VOLUNTEERS.—Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) * * *

* * * * * * *

(4)*(A)* the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to—

**[**(A)**]** *(i)* possess an operator's license; or

**[**(B)**]** *(ii)* maintain insurance**[**.**]***; or*

*(B) the harm was caused by a volunteer of a nonprofit volunteer pilot organization that flies for public benefit, while the volunteer was flying in furtherance of the purpose of the organization and was operating an aircraft for which the volunteer was properly licensed and insured, unless the conduct constitutes a Federal crime of terrorism (as such term is defined in section 2332b(g)(5) of title 18, United States Code) or an act of domestic terrorism (as such term is defined in section 2331 of such title), or unless the entity has been convicted of an offense under section 2339A of such title.*

* * * * * * *

(c) NO EFFECT ON LIABILITY OF ORGANIZATION OR ENTITY.—*(1)* Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

*(2) Notwithstanding paragraph (1), a nonprofit volunteer pilot organization that flies for public benefit, and the staff, mission coordinators, officers, and directors (whether volunteer or otherwise) of such organization or a referring agency of such organization, shall not be liable with respect to harm caused to any person by a volunteer of such organization, while the volunteer is flying in furtherance of the purpose of the organization and is operating an aircraft for which the volunteer is properly licensed and has certified to such organization that such volunteer has in force insurance for operating such aircraft. Such referring agency shall include, among others, any nonprofit organization that provides disaster relief services that place staff, volunteers, evacuees, goods, supplies, or cargo on aircraft flights being coordinated by volunteer pilot organizations in circumstances of disaster response and relief.*

* * * * * * *

MARKUP TRANSCRIPT

# BUSINESS MEETING

**THURSDAY, MARCH 2, 2005**

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

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill H.R. 1871, the "Volunteer Pilot Organization Protection Act of 2005," for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 1871, follows:]

I

109TH CONGRESS
1ST SESSION

# H. R. 1871

To provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2005

Mrs. DRAKE (for herself, Mr. FORBES, Mr. CUNNINGHAM, Mr. GRAVES, Mr. KIRK, Ms. HART, Mr. ALEXANDER, Mr. TANNER, Mr. STEARNS, Mr. SESSIONS, Miss MCMORRIS, Mr. MURPHY, Mr. PRICE of Georgia, Mr. EHLERS, Mr. GOODLATTE, Mr. GOODE, Mr. BURTON of Indiana, Mr. SAM JOHNSON of Texas, Mr. BURGESS, Mr. KUHL of New York, and Mr. TAYLOR of Mississippi) introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations.

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Volunteer Pilot Organization Protection Act of 2005".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds the following:

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

(2) In calendar year 2001, nonprofit volunteer pilot organizations provided long-distance, no-cost transportation for over 30,000 people in times of special need.

(3) Such organizations are no longer able to reasonably purchase non-owned aircraft liability insurance to provide liability protection, and thus face a highly detrimental liability risk.

(4) Such organizations have supported the interests of homeland security by providing volunteer pilot services at times of national emergency.

(b) PURPOSE.—The purpose of this Act is to promote the activities of nonprofit volunteer pilot organizations flying for public benefit and to sustain the availability of the services that such organizations provide, including transportation at no cost to financially needy medical patients for medical treatment, evaluation, and diagnosis, as well as other flights of compassion and flights for humanitarian and charitable purposes.

**SEC. 3. LIABILITY PROTECTION FOR NONPROFIT VOLUNTEER PILOT ORGANIZATIONS FLYING FOR PUBLIC BENEFIT AND TO PILOTS AND STAFF OF SUCH ORGANIZATIONS.**

Section 4 of the Volunteer Protection Act of 1997 (42 U.S.C. 14503) is amended—

(1) in subsection (a)(4)—

(A) by redesignating subparagraphs (A) and (B) as (i) and (ii), respectively;

(B) by inserting ''(A)'' after ''(4)'';

(C) by striking the period at the end and inserting ''; or'' and

(D) by adding at the end the following:

''(B) the harm was caused by a volunteer of a nonprofit volunteer pilot organization that flies for public benefit, while the volunteer was flying in furtherance of the purpose of the organization and was operating an aircraft for which the volunteer was properly licensed and insured.''; and

(2) in subsection (c)—

(A) by inserting ''(1)'' before ''Nothing''; and

(B) by adding at the end the following new paragraph:

''(2) Notwithstanding paragraph (1), a nonprofit volunteer pilot organization that flies for public benefit, and

the staff, mission coordinators, officers, and directors (whether volunteer or otherwise) of such organization or a referring agency of such organization, shall not be liable with respect to harm caused to any person by a volunteer of such organization, while the volunteer is flying in furtherance of the purpose of the organization and is operating an aircraft for which the volunteer is properly licensed and has certified to such organization that such volunteer has in force insurance for operating such aircraft.''.

**SEC. 4. REPORT BY ATTORNEY GENERAL.**

(a) STUDY REQUIRED.—The Attorney General shall carry out a study on the availability of insurance to nonprofit volunteer pilot organizations that fly for public benefit. In carrying out the study, the Attorney General shall make findings with respect to—

(1) whether nonprofit volunteer pilot organizations are able to obtain insurance;

(2) if no, then why;

(3) if yes, then on what terms such insurance is offered; and

(4) if the inability of nonprofit volunteer pilot organizations to obtain insurance has any impact on the associations' ability to operate.

(b) REPORT.—After completing the study, the Attorney General shall submit to Congress a report on the results of the study. The report shall include the findings of the study and any conclusions and recommendations that the Attorney General considers appropriate.

○

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes to explain the bill.

This is a bill which is narrowly tailored to address the liability exposure of certain volunteer and nonprofit activities. The next bill also proposes to do that.

In 1997, Congress passed the Volunteer Protection Act to shield volunteers from liability for some forms of negligence in response to concerns that our lawsuit culture is inhibiting this country's rich tradition of volunteerism. However, the act does not protect volunteers who operate an automobile, vessel, or aircraft, or organizations that coordinate the volunteers.

This bill is very narrowly drafted so that it applies to organizations which fly for public benefit, the largest of which function together as Angel Flight America. I will ask unanimous consent to put my entire statement in the record and also to include letters of support from the National Association for Rare Disorders, Angel Flight America, the National Air Transportation Association, the American Red Cross.

[The prepared statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

I urge my colleagues to join me in favorably reporting H.R. 1871, the "Volunteer Pilot Organization Protection Act." This bill, along with H.R. 1176, which we will take up shortly, is narrowly tailored to address the liability exposure of certain volunteer and non-profit activities.

In 1997, Congress passed the Volunteer Protection Act to shield volunteers from liability for some forms of negligence in response to concerns that America's lawsuit culture was inhibiting this country's rich tradition of volunteerism. However, the Volunteer Protection Act does not protect volunteers who operate an automobile, vessel, or aircraft, nor does it protect the organizations that coordinate the volunteers.

There are approximately 30 separate volunteer pilot organizations flying for public benefit; the largest of which function together as Angel Flight America. These organizations coordinate the almost 8,000 volunteer pilots, who fly anywhere between 1 and 50 volunteer missions per year—all at the pilots' expense. These pilots conduct "public benefit aviation," which includes activities ranging from environmental observation, to wilderness rescue, to delivery of medical supplies and organs, to transport of medical patients. In the area of medical patient transport alone, volunteer pilot organizations provided long distance transportation for free to over 40,000 patients and their escorts in 2003.

As beneficial as these groups are in ordinary circumstances, they are invaluable in cases of a national emergency, such as Hurricane Katrina. Angel Flight America, through its role with the Homeland Security Emergency Air Transportation System, flew over 500 missions in the first week after Katrina, bringing in emergency workers, agency staff, volunteers, and supplies.

They also flew high-risk individuals to safer locations, and, once there, they began the process—together with groups such as the National Center for Missing and Exploited Children—of reuniting parents and children that were separated in the evacuation of New Orleans. Overall, Angel Flight America coordinated over 2,200 flights into the areas affected by Hurricane Katrina, second only to the United States military.

Despite the invaluable services they provide, volunteer pilots are not protected from liability by the Volunteer Protection Act. As a result, these organizations and the pilots who fly for them face difficulty obtaining the necessary insurance because of liability exposure fears. In fact, in many cases, the volunteer pilot organizations cannot obtain, at any cost, the type of liability insurance that they need. In addition, hospitals and other medical establishments are sometimes reluctant to refer patients to volunteer pilot medical transport services because of their own fear of liability exposure based on the simple act of recommendation.

This legislation limits liability exposure for volunteer pilots and organizations by bringing them within the scope of coverage of the Volunteer Protection Act. This legislation will not confer blanket immunity. Liability will still attach for gross neg-

ligence or reckless, willful, or criminal misconduct. The bill would also have an added benefit of allowing hospitals, clinics, and other organizations—including those organizations active like the American Red Cross—to refer needy patients for no-cost medical transport with less fear of their own liability exposure. Further, this bill requires that pilots purchase insurance in order to be covered by the liability protections.

The legislation is supported by a wide array of charitable organizations, including the American Red Cross, the National Organization For Rare Disorders, Angel Flight America, and the National Air Transportation Association.

H.R. 1871 will end the cycle of litigation—and the threat of such litigation—that has stifled the efforts of the brave and public-minded volunteer pilots who risk their own lives for others. I urge Members to join me in favorably reporting this legislation today.

[The letters follow:]

**National Organization for Rare Disorders, Inc.®**
NORD • 55 Kenosia Avenue, P.O. Box 1968 • Danbury, CT 06813-1968
Tel: 203-744-0100 • FAX: 203-798-2291
TDD (for hearing impaired) (203) 797-9590
http://www.rarediseases.org • e-mail: orphan@rarediseases.org

February 8, 2006

The Honorable Thelma D. Drake
U. S. House of Representatives
Washington, DC 20515

Dear Congresswoman Drake:

The National Organization for Rare Disorders (NORD) is writing in strong support of the *Volunteer Pilot Organization Protection Act*, H.R. 1871.

Last year nearly 8,000 patients affected by the devastating affects of rare diseases were transported by volunteer pilots to treatment and research centers around the country. Without this vital service, rare disease patients already physically overcome by the affects of their disease, and the crippling costs of medical treatment, would be unable to receive life-saving treatment or participate in clinical trials. It is essential that the liability protections provided for in H.R. 1871 be enacted.

NORD is a unique federation of voluntary health organization dedicated to helping the millions of Americans living with the 6,000 knows rare diseases. We are committed to the identification, treatment and cure of rare diseases through programs of education, advocacy, research, and service.

NORD wishes to thank you for introducing this important legislation and we look forward to the opportunity to working with you to ensure passage of the *Volunteer Pilot Organization Protection Act* in this Congress. You may contact me at (202) 258-6457 or at ddorman@rarediseases.org.

Sincerely,

Diane E. Dorman

Diane Edquist Dorman
Vice President

**Angel Flight America**
4620 Haygood Road Ste. 1
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1-757-318-4305
1-757-271-0360 (fax)
www.angelflightamerica.org

**Executive Director**
**Kenneth R. Rusnak**

**Board Officers**

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*Virginia Beach, VA*

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*Vice Chair*
*Coral Springs, FL*

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*Kansas City, MO*

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*Treasurer*
*Virginia Beach, VA*

**Member Organizations**

**Angel Flight West**
*Santa Monica, CA*
*www.angelflight.org*

**Angel Flight Central**
*Kansas City, MO*
*www.angelflightcentral.org*

**Angel Flight South Central**
*Addison, TX*
*www.angelflightsc.org*

**Angel Flight Northeast**
*North Andover, MA*
*www.angelflightne.org*

**Angel Flight Mid-Atlantic**
*Virginia Beach, VA*
*www.angel-flight.org*

**Angel Flight Southeast**
*Leesburg, FL*
*www.angelflightse.org*

**Mercy Medical Airlift**
*Virginia Beach, VA*
*www.mercymedical.org*

Angel Flight America is dedicated to arranging free air transportation for people in need, enabling them to travel to specialized medical facilities for the evaluation, diagnosis and treatment of their disease. Angel Flight America is a non-profit, tax exempt organization recognized by the IRS under Internal Revenue Code Sec. 501(c)(3)

Angel Flight. AMERICA
*Giving hope wings*

Congresswoman Thelma Drake
U.S. House of Representatives
1208 Longworth HOB
Washington, DC 20515

February 8, 2006

Dear Representative Drake:

The purpose of this letter is to request your best efforts to have the House Judiciary Committee report out H.R.18771, The Volunteer Pilot Organization Protection Act of 2005.

As you will recall, this act was approved in the last session of The House by an overwhelming positive vote.

Angel Flight America urgently needs this legislation. It will be so helpful to so many people as we work with other organizations like the American Red Cross and The Shriners Hospitals. Organizations such as those could work so much better to help their clients with the liability protections within H.R. 1871.

Please let me know if we can be of further help in the matter.

Sincerely,

Edward R. Boyer, P.E.
Chairman

1501 Narcissa Road • Blue Bell, PA 19422
*Healing should be about getting better...not getting there.*

March 1, 2006

The Honorable Thelma Drake
1208 Longworth HOB
Washington, DC 20515

Dear Congresswoman Drake,

I am writing to express our support of HR 1871, the Volunteer Pilot Organization Protection Act of 2005. Since 1992, our organization has been arranging charitable flights for medical and compassionate needs, as well as disaster relief.

Liability concerns on the part of the organization and our pilots have significantly hindered our ability to serve the public. The relief provided by this bill will encourage more pilots to volunteer and assure our continued viability as an organization.

Thank you for your efforts.

Very truly yours,

Angel Flight East

By:

JEFFREY S. KAHN, ESQUIRE
Vice President and General Counsel

The official registration and financial information of Angel Flight East may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1-800-732-0999. Registration does not imply endorsement.

(800) 383-WING (9464)
Phone: (215) 358-1900
Fax: (215) 358-1999
www.angelflighteast.org

The Voice of Aviation Business

4226 King Street
Alexandria, VA
22302

P 703-845-9000
F 703-845-8176

NATA
National Air Transport Association

June 16, 2005

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Sensenbrenner:

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

On behalf of NATA, I am writing to urge the House Committee on the Judiciary to consider and approve H.R. 1871, the Volunteer Pilot Organization Protection Act of 2005, introduced earlier this year by Rep. Thelma Drake (R-VA).

NATA strongly endorses this important legislation, as the services performed by volunteer pilot organizations are vital to the medical industry and have assisted tens of thousands of people in receiving critical medical treatment.

The selfless volunteers who serve on the boards of directors for these 501 (c)(3) volunteer pilot organizations deserve the liability protection this legislation will provide. These organizations can no longer obtain non-owned aircraft liability insurance and, therefore, have no protection.

I strongly urge your committee to consider and approve this legislation, which overwhelmingly passed the House of Representatives during the previous Congress. Passage of this legislation will greatly assist those volunteer pilot organizations that operate within the national charitable medical air transportation system.

Thank you for your help in this effort – for the benefit of needy patients nationwide.

Sincerely,

James K. Coyne
President

CC: Rep. Thelma Drake

# Children's Organ Transplant Association®

*Celebrating 20 years of service to transplant families.*

February 8, 2006

Congresswoman Thelma Drake
1208 Longwroth House Office Building
Washington, DC 20515

Dear Congresswoman Drake,

After a phone conversation I had this morning, I want to provide this letter of support for legislation you are working on currently, and more fully introduce myself as the president of the Children's Organ Transplant Association.

It will be very helpful to patients and patient service organizations to see this legislation passed. It solves a series of liability issues, and H.R. 1871, the *Volunteer Pilot Organization Protection Act of 2005*, is important and worthy of full bipartisan support.

If you do not have the time to review the entire packet now, here is an overview of the Children's Organ Transplant Association. We are a national 501(c)(3) charity focused on providing funds to transplant-needy children and young adults who do not have the financial resources to be placed on a transplant waiting list. We also strive to raise awareness regarding the need for donation and distributed more than 2,000,000 organ donor registration cards in the past three years.

Since 1986, the Children's Organ Transplant Association has raised in excess of $40 million by assisting nearly 1,000 transplant-needy patients, and have helped countless others become organ donors and bone marrow registrants through our educational efforts. What is unique about the Children's Organ Transplant Association is that we do not charge a fee, or take a percentage of funds from an individual's campaign. In doing so, we are able to guarantee that each of our patients receives 100% of the funds raised on their behalf.

Many of our patients are cared for through the generous hours and donations provided by volunteer pilots and the organizations they represent, such as Mercy Medical Airlift and the Angel Flight network of organizations. Their staff and volunteers have donated hundreds of air miles and hours to benefit our children, and they have made a significant impact on these families.

If you would like to speak about this issue or one of our patient campaigns specifically, or about the Children's Organ Transplant Association in general, please call me at 800.366.2682, or send an e-mail to me at rick@cota.org.

Respectfully,

Rick Lofgren, CFRE
President

2501 COTA Drive • Bloomington, Indiana 47403
800.366.2682 • Fax: 812.336.8885 • Email: cota@cota.org • www.cota.org

**AIRCRAFT OWNERS AND PILOTS ASSOCIATION**
421 Aviation Way • Frederick, MD 21701-4798
Telephone (301) 695-2000 • FAX (301) 695-2375
www.aopa.org

June 8, 2005

The Honorable Jim Sensenbrenner, Jr.
Chairman
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515-6216

Dear Chairman Sensenbrenner:

I write to you today in support of H.R. 1871, the *Volunteer Pilot Organization Protection Act* that is before the House Committee on Judiciary. This bill provides volunteer pilot organizations the liability protections afforded to other non-aviation related volunteer groups.

AOPA is the largest civil aviation organization in the world, representing over 400,000 pilots nationwide. General aviation is a critical component of the aviation industry, but in addition to the economic impact, we are proud of the social and charitable contributions the community gives to society.

Volunteer pilot organizations provide life-saving services to medical patients, by providing free transportation to specialized medical facilities to those who cannot afford it. Thousands of private pilots and businesses have donated their aircraft, services and time to this noble cause through these charitable organizations. Their efforts have enabled tens of thousands of cancer patients, burn victims, and sick or injured children reach the medical facilities they needed.

Recent increases in insurance have created hardships on these organizations and limited the number of volunteer pilots. The *Volunteer Pilot Organization Protection Act* attempts to provide the necessary protection these organizations need to continue their charitable missions.

On behalf of these pilots and the entire general aviation community, we encourage passage of H.R. 1871.

Sincerely,

Phil Boyer

Phil Boyer

American Red Cross

National Headquarters

March 1, 2006

The Honorable James Sensenbrenner
Chairman
Committee on the Judiciary
U.S. House of Representative
Washington, D.C. 20515

Dear Chairman Sensenbrenner:

The American Red Cross commends the Judiciary Committee for their consideration of H.R. 1871, the *Volunteer Pilot Organization Protection Act.*

As you know, volunteer pilot organizations provide a tremendous service to the American people and to charitable organizations, particularly during times of tragedy and disaster. This legislation meets the challenges of promoting the activities of nonprofit volunteer pilot organizations flying for the public benefit and endeavors to sustain the availability of the services that these organizations provide.

Mr. Chairman, the American Red Cross commends these organizations for their flights of compassion, as well as their humanitarian and charitable purposes.

Thank you for your leadership in bringing this bill to the full committee, and to Congresswoman Thelma Drake for sponsoring the measure. I encourage you to call on me whenever I may be of service.

Sincerely,

Neal Denton
Vice President
Government Relations and Public Policy

cc: The Honorable Thelma Drake

We look forward to working with you & your fine staff on this and other important matters before the Committee.

*Together, we can save a life*

Chairman SENSENBRENNER. And I yield back the balance of my time. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Mr. Chairman, I knew this would—this wonderful cooperation would have to end somewhere, and I finally have found a bill that I am not able to support in this morning's agenda, and it's this one—the Volunteer Pilot Organization Protection Act. And the reason is simple enough. It's that it flies into the face of the Volunteer Protection Act that we passed into law after 8 years of debate, extending across five Congresses. That act was carefully deliberated and negotiated, and this bill wipes the slate clean by giving volunteer pilots protection from liability, despite the fact that the Volunteer Protection Act specifically excluded that category of volunteers from protection.

So under the earlier act, pilots and those operating aircraft were specifically left out of liability exemption because of the highly dangerous nature of the activity and the fact that States require these pilots to have insurance. This bill undoes that and exempts pilots from liability. So the choice is yours, Members of the Committee. Do we keep what we have worked on for so many years going on, or do we just turn around this morning and make an exemption?

It doesn't tackle—this bill does not tackle the real problem, which is the insurance industry's failure to offer insurance to the volunteer pilot organizations. This bill establishes national policy specifically allowing certain pilots to operate their aircraft negligently and, if they do, still escape liability.

So I hope those of you who follow this train of thought and the reasons I have suggested oppose the passage of the measure that is presently before us.

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman yield back the balance——

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

Chairman SENSENBRENNER. Without objection, all Members' opening statements will be placed in the record at this point.

[The prepared statement of Ms. Jackson Lee follows:]

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18TH DISTRICT, TEXAS

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**Congress of the United States**
**House of Representatives**
**Washington, DC 20515**

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CO-CHAIR:
CONGRESSIONAL CHILDREN'S CAUCUS

## CONGRESSWOMAN SHEILA JACKSON LEE, OF TEXAS

## STATEMENT
## ON

## H.R. 1871
## PROPOSED AMENDMENT

MARCH 2, 2006

Mr. Chairman, and fellow Members of the Committee, I am proud to co-sponsor an amendment with Mr. Chabot that answers one of many needs illustrated so starkly in the response and aftermath of Hurricanes Katrina and Rita.

When the world was falling apart around them, brave individuals with non-profits such as the Red Cross sacrificed their safety in order to offer their services, their strength, and their hearts to the disaster relief effort.

These groups volunteered their staff, volunteers, evacuees, goods, supplies and cargo, and their services selflessly, knowing the magnitude of the risk. What they contributed was crucial: Hope. They brought hope to families being evacuated by volunteer pilots, perhaps at the precise moment when these evacuees most needed it.

At the very least, we should include these groups in liability protection when we are guarding the pilot organizations that also contributed greatly needed services to the cause. This is an important coalition, and we should encourage it by protecting them. I urge the Committee to adopt this amendment and protect

those who offered more help than even our own government could muster.

Thank you Mr. Chabot, and thank you Mr. Chairman.

3

Chairman SENSENBRENNER. Are there amendments? The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

[Pause.]

Chairman SENSENBRENNER. Does the clerk have the amendment?

Mr. CHABOT. Here it comes, Mr. Chairman.

Chairman SENSENBRENNER. The clerk will be careful because the amendment might be hot since it's right off the press. And the clerk will report the amendment.

The CLERK. Amendment to H.R. 1871, offered by Mr. Chabot of Ohio and Ms. Jackson Lee of Texas.

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

## AMENDMENT TO H.R. 1871
## OFFERED BY MR. CHABOT OF OHIO AND MS. JACKSON-LEE OF TEXAS

Page 4, line 10, insert after ''craft.'' the following new sentence: ''Such referring agency shall include, among others, any nonprofit organization that provides disaster relief services that place staff, volunteers, evacuees, goods, supplies, or cargo on aircraft flights being coordinated by volunteer pilot organizations in circumstances of disaster response and relief.''.

Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot, will be recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Chairman, I will be brief. It's come to my attention that some organizations who refer the services of volunteer pilot groups, most notably the American Red Cross, are concerned that H.R. 1871 as drafted might not protect them in the event of an accident involving the volunteer pilot organization. These organizations, after all, would likely be sued in the event something went wrong, even though they did nothing more than tell a patient that groups like Angel Flight America exist. And like the volunteer pilot organizations, these referrals agencies cannot obtain the insurance they need in order to protect them from this exposure.

This amendment is designed to make it clear that groups like the American Red Cross, who during national crises like Hurricane Katrina place volunteers and supplies on flights coordinated by volunteer pilot organizations, are covered by the liability protections of this bill.

I hope my colleagues will support this amendment and will be supporting the underlying bill, and I'd like to thank the gentlelady from Texas, Ms. Jackson Lee, for her leadership and for supports and cosponsoring this particular amendment.

With that, I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the Chabot amendment. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it. The amendment is agreed to.

Are there further amendments?

Ms. WATERS. Mr. Chairman, I have an amendment.

Chairman SENSENBRENNER. The gentlewoman from California. The clerk will report the amendment.

Ms. WATERS. Mr. Chairman, I have an amendment at the desk, Waters 035.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 1871, offered by Ms. Waters of California. Page 3, line 19, insert before the period after "insured" the following: ", unless the conduct constitutes a Federal crime of terrorism"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read.

[The amendment follows:]

## AMENDMENT TO H.R. 1871
## OFFERED BY MS. WATERS OF CALIFORNIA

Page 3, line 19, insert before the period after ''insured'' the following: '', unless the conduct constitutes a Federal crime of terrorism (as such term is defined in section 2332b(g)(5) of title 18, United States Code) or an act of domestic terrorism (as such term is defined in section 2331 of such title), or unless the entity has been convicted of an offense under section 2339A of such title''.

Chairman SENSENBRENNER. The gentlewoman from California is recognized for 5——

Ms. WATERS. Mr. Chairman and Members, I offer an amendment that will——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. WATERS. Yes, I will yield.

Chairman SENSENBRENNER. To show the gentlewoman from California that the Chair is his usual warm and fuzzy self, this is a good amendment and I am prepared to accept it.

Ms. WATERS. Well, I better look at this amendment again. [Laughter.]

Chairman SENSENBRENNER. Does the gentlewoman wish to withdraw the amendment?

Ms. WATERS. No, no, no. No, no, no. It's such an unusual act by the Chairman, I must accept it. Thank you.

Chairman SENSENBRENNER. Does the gentlewoman yield back?

Ms. WATERS. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentlewoman from California, Ms. Waters. Those in favor will say aye? Opposed, no?

The ayes appears to have it. The ayes have it. The amendment is agreed to.

Are there further amendments? The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, when this came up last year—I am concerned about the remarks of the gentleman from Michigan. When this came up last year, the pilot was, in fact, not immunized by the bill from last year. I'm looking at page 3, paragraph (B) on line 14, where it suggests that—it's a little unclear whether the pilot is immunized or not. Could somebody tell me whether the pilot with insurance gets immunized for negligence such that the insurance wouldn't have to pay for ordinary negligence? And I yield to anybody that can respond to that question?

Mr. CHABOT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia has yielded to the gentleman from Ohio.

Mr. CHABOT. I thank the gentleman for yielding. I'll be brief.

This bill is identical to the one that passed in the 108th Congress by a vote of 385–12. Both that bill and this one required pilots to purchase the necessary insurance in order to receive the liability protections of the bill. However, neither bill contemplated payouts under those insurance policies unless the pilot engaged in grossly negligent or willful, reckless, or criminal behavior.

I yield.

Chairman SENSENBRENNER. The time belongs to the gentleman from Virginia.

Mr. SCOTT. Reclaiming my time, so, in fact, the pilot in this case, just to be clear, would be liable for ordinary negligence. The organization that selected the pilot would not be liable, but the pilot himself would be. Is that the case?

Mr. CHABOT. If the gentleman will yield?

Mr. SCOTT. I yield.

Mr. CHABOT. The pilot is only negligent if it's gross negligence or willful, reckless, or criminal behavior.

Mr. SCOTT. Reclaiming my time, can you point out where that is in the bill, where that language is?

Mr. CHABOT. If the gentleman will yield, he has to have insurance to get the protections of the bill——

Mr. SCOTT. Well, Mr. Chairman——

Mr. CHABOT. And the insurance is there to pay out any grossly negligent or any other——

Mr. SCOTT. Well, if he has insurance, what's the problem with paying for ordinary negligence? And I yield.

Mr. CHABOT. It increases the cost of the insurance and makes it more difficult for these pilots to obtain insurance.

Mr. SCOTT. Reclaiming my time, Mr. Chairman, when we have these immunity things, the situation always comes up with automobiles, so if somebody's driving around that is a volunteer with insurance, you go through a red light, simple negligence. There's no reason why the insurance shouldn't pay for the damage done for the simple negligence, at least up to the minimum insurance. And when this thing came up before, we thought the idea was you'd pay at least up to the insurance for ordinary negligence and not get immunity for that. The organization itself that selected the pilot ought to have immunity because they didn't do anything. And the purpose of the bill was to immunize the organization. That's why it's called the "Liability Protection to Nonprofit Pilot Organizations," not to the pilots.

So I would—well, Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The gentleman will have to yield back first.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. Are there further amendments?

Mr. SCOTT. I have an amendment at the desk.

Chairman SENSENBRENNER. The gentleman from Virginia. The clerk will report the amendment.

The CLERK. Amendment to H.R. 1871, offered by Mr. Scott of Virginia. Page 3, line 14, strike paragraph (B).

[The amendment follows:]

Scott-
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Amendment to HR 1871

offered by Mr Scott of Va.

page 3, line 14
strike Paragraph (B).

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I think this gets at the problem I was talking about. I think it aims at where the pilot was trying to get immunized. And I would hope that the Committee would accept this amendment so that the pilot with insurance committing ordinary simple negligence would be liable for the damage he caused, at least up to the insurance.

I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the amendment offered by the gentleman from Virginia, Mr. Scott. Those in favor will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Are there further amendments?

Mr. CHABOT. Mr. Chairman, could we have a recorded vote on that, please?

Mr. SCOTT. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. A recorded vote is requested by the gentleman from Ohio. Those in favor of the Scott amendment will, as your names are called, answer aye, those opposed no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Lungren?
Mr. LUNGREN. Pass.
The CLERK. Pass. Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye. Mr. Inglis?
Mr. INGLIS. No.
The CLERK. Mr. Inglis, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
[No response.]
The CLERK. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
[No response.]
The CLERK. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Pence?
Mr. PENCE. No.
The CLERK. Mr. Pence, no. Mr. Forbes?
Mr. FORBES. No.
The CLERK. Mr. Forbes, no. Mr. King?
Mr. KING. No.
The CLERK. Mr. King, no. Mr. Feeney?
Mr. FEENEY. No.
The CLERK. Mr. Feeney, no. Mr. Franks?
Mr. FRANKS. No.
The CLERK. Mr. Franks, no. Mr. Gohmert?
Mr. GOHMERT. No.
The CLERK. Mr. Gohmert, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
[No response.]

The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
[No response.]
The CLERK. Ms. Sanchez?
Ms. SANCHEZ. Aye.
The CLERK. Ms. Sanchez, aye. Mr. Van Hollen?
[No response.]
The CLERK. Ms. Wasserman Schultz?
Ms. WASSERMAN SCHULTZ. Aye.
The CLERK. Ms. Wasserman Schultz, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? The gentleman from North Carolina, Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Chairman SENSENBRENNER. The gentleman from Massachusetts, Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 8 ayes, 18 nays——
Chairman SENSENBRENNER. The gentleman from Maryland, Mr. Van Hollen?
Mr. VAN HOLLEN. Thank you, Mr. Chairman. Aye.
The CLERK. Mr. Van Hollen, aye.
Chairman SENSENBRENNER. Any other stragglers? The gentleman from California, Mr. Schiff.
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Chairman SENSENBRENNER. Further Members who wish to cast or change their votes? If not, the clerk will try again.
The CLERK. Mr. Chairman, there are 10 ayes, 18 nays, and 1 pass.
Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments?

Mr. CHABOT. Mr. Chairman, I'd ask unanimous consent to speak out of order for a moment.

Chairman SENSENBRENNER. The gentleman moves to strike the last word, is recognized for 5 minutes.

Mr. CHABOT. Thank you. I'll be very brief. I just wanted to let the gentleman from Virginia know that we will work with the gentleman and try to clear up any misunderstandings prior to the bill getting to the floor.

Mr. SCOTT. I thank you. If the gentleman would yield? Would the gentleman yield?

Mr. CHABOT. I'll yield.

Mr. SCOTT. Thank you, because I think the point is important because if a pilot negligently runs into another plane and he is given immunity, nobody in the other plane would have a claim against anybody. And I believe it's the intention to immunize the organization and the pilot at least up to his required insurance so that the people in the other plane would have something to recover against.

So I appreciate the gentleman working so that we can clear up this. I believe it's the intention not to immunize the pilot at least up to his insurance, but to make sure that the organization is, in fact, immunized.

Mr. CHABOT. I yield back my time. Thank you.

Chairman SENSENBRENNER. Are there further amendments?

[No response.]

Chairman SENSENBRENNER. If there are no further amendments, a reporting quorum is present. Those in favor of reporting the bill favorably will say aye? Opposed, no?

The ayes appear to have it. The ayes have it, and the motion to report the bill favorably is agreed to.

Without objection, the bill will be reported favorably to the House in the form of a single amendment in the nature of a substitute, incorporating the amendment adopted here today. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by the House rules, in which to submit additional, dissenting, supplemental, or minority views.

[Intervening business.]

The business noticed on today's schedule having been concluded, without objection, the Committee stands adjourned.

[Whereupon, at 11:01 a.m., the Committee was adjourned.]

## DISSENTING VIEWS

H.R. 1871, the "Volunteer Pilot Organization Protection Act" is the product of overreaching by the Majority in response to a hypothetical problem—a lack of volunteerism by pilot organizations in the face of civil liability. At our hearing on this legislation, we saw no quantitative proof of a problem in this area. Moreover, the legislation upsets the balance achieved in the Volunteer Protection Act—enacted to encourage the kind of volunteerism at issue here—by specifically exempting pilots and air carriers from liability.

As a general matter, H.R. 1871 does nothing to tackle the real problem, which is the insurance industry's failure to offer insurance to volunteer pilot organizations. However, we also oppose this bill for several substantive reasons. First, the legislation repeals portions of the Volunteer Protection Act, a bill Congress passed into law after eight years of debate extending over five Congresses, and lets insurance companies off the hook while potentially harming innocent victims. Second, the bill is overly broad, applying to staff, mission coordinators, officers and directors of volunteer pilot organizations, and referring agencies, whether for profit or not-for-profit. Third, it leaves innocent victims without recourse by reducing the standard of care applicable to pilots. Finally, the bill is poorly drafted and includes loopholes that would insulate international terrorist organizations from liability and subject innocent bystanders to harm without any recourse.

### DESCRIPTION OF LEGISLATION

Section 2 of the bill, the "Findings and Purpose" section, contains four findings describing the benefits and services provided by nonprofit volunteer pilot organizations and states that these organizations "are no longer able to reasonably purchase non-owned aircraft liability insurance to provide liability protection, and thus face a highly detrimental liability risk."

Section 3 of the bill amends the Volunteer Protection Act to provide a liability exemption when the harm was caused by a volunteer of a nonprofit volunteer pilot organization. Section 3 also carves out liability protection for the nonprofit volunteer pilot organization, the staff, mission coordinators, officers, directors, and referring agencies.

### BACKGROUND ON THE VOLUNTEER PROTECTION ACT OF 1997

Any discussion of this legislation requires an understanding of past efforts to insulate volunteers from civil liability. In 1997, we passed the Volunteer Protection Act in an effort to help increase volunteerism because of a fear that people were deterred by the potential for personal liability. Specifically, the Act limited the liability of volunteers who are: (1) acting within the scope of their re-

sponsibilities; (2) properly licensed, certified, or authorized to act; (3) not causing harm by willful or criminal conduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual; and (4) not causing harm while operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator to possess a license or to maintain insurance.[1]

In addition, the Act eliminated joint and several liability for noneconomic damages with respect to volunteers and limited awards of punitive damages against volunteers by requiring the plaintiff to establish "by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed."

The Act also preempts inconsistent state laws, except to the extent that such laws provide additional protection from liability to volunteers. Moreover, the legislation specifically provided that it would not preempt a state law that: (1) requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers; (2) makes the organization or entity liable for the acts or omissions of its volunteers to the same extent that an employer is liable for the acts or omissions of its employees (i.e. respondeat superior); (3) makes a limitation of liability inapplicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. The act also allows states to enact statutes voiding the new federal legal limitations, but only to the extent all of the parties to a particular action are citizens of the state.

## CONCERNS WITH H.R. 1871

### A. H.R. 1871 UNDOES THE BALANCE ACHIEVED BY THE VOLUNTEER PROTECTION ACT

As noted above, the Volunteer Protection Act specifically excludes harm caused while "operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator to possess a license or to maintain insurance."[2] Unfortunately, H.R. 1871 completely undermines this position. Volunteers operating aircrafts or motor vehicles were exempted from liability protection under the Act because of the concern that in highly dangerous activities (such as flying airplanes), states have made it clear that they intend to hold individuals responsible for the consequences of their negligence by mandating insurance. Congress obviously chose to trust states' judgment in these cases. Similarly, because most individuals who fly already have insurance, Congress may not have viewed liability protection for airplane pilots as an incentive to volunteer.

In addition, Congress was also concerned that if it extended liability protection to volunteer operators of airplanes and automobiles, these organizations would not be able to provide a finan-

[1] 42 U.S.C. § 14053 (2003).
[2] 42 U.S.C. § 14053 (2003).

cially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of an organization or entity. Indeed, the Volunteer Protection Act does not preempt state legislation that provides for such protection. Thus, Congress exempted operators of airplanes from liability protection because they feared, with the high rates of accidents involving airplanes, there was a potential that innocent victims could go uncompensated if volunteers did not possess insurance.

B. H.R. 1871 GOES WELL BEYOND PROTECTING VOLUNTEERS

The 1997 Act excuses volunteers from negligence but holds organizations accountable if they act irresponsibly.[3] By contrast, H.R. 1871 protects not just the volunteer, but also the staff, mission coordinator, officer, or director (whether volunteer or not) of the nonprofit organization. It also extends the protection to any referring agency (whether for-profit or non-profit). This provision is designed to protect the matching programs that bring together volunteer pilots.

As Professor Andrew Popper explained in his testimony before the Committee in the 108th Congress:

> [The legislation] undercuts a fundamental premise of exiting [sic] 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.[4]

C. H.R. 1871 REDUCES THE STANDARD OF CARE FOR PILOTS

Finally, H.R. 1871 alters the standard of care normally applied to pilots. Under current law, owners and operators of private aircraft must exercise ordinary care, or reasonable care under the circumstances.[5] However, a number of courts have held that operators of private aircrafts must exercise the highest degree of care. Indeed, one court reasoned that the nature of the conveyance and the great danger involved required the utmost practical care and prudence for the safety of passengers, and that the defendant was bound to exercise the highest degree of human care, caution, and judgment consistent with the practical operation of the plane. No

[3] Sec. 4(c) ("Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.")

[4] Increasing Volunteers by Reducing Legal Fears: Hearings on H.R. 1871, H.R. 3369, and H.R. 1787, Before the Comm. on the Judiciary, 108th Cong. (statement of Andrew F. Popper, Professor, American University, Washington College of Law) (July 20, 2004).

[5] *Brooks* v. *United States*, 695 F.2d 984 (5th Cir. 1983). Owners sued in tort for property loss arising when an aircraft was badly damaged in a runaway landing accident. The Court noted that under Texas law, liability growing out of aircraft accidents is determined by ordinary rules of negligence.

lesser degree of care and prudence would be adequate under the circumstances or commensurate with the danger involved.[6]

Under H.R. 1871 by contrast, a volunteer pilot could only be held liable if harm was caused by "willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer."[7] Thus, the standard of care would be uniformly altered for all pilots, regardless of their type of license, that are permitted to fly for a non-profit organization.

### D. H.R. 1871 IGNORES THE PROBLEM OF INADEQUATE INSURANCE COVERAGE

The real problem facing the nonprofit volunteer pilot organization community is that these organizations cannot obtain insurance. This was the point of Edward Boyer's testimony at the hearing on this bill: "[A]viation insurance has skyrocketed up in price and certain key products are no longer reasonably available to volunteer pilot organizations * * * Now virtually all volunteer pilot organizations have no non-owned aircraft liability insurance."[8] The legislation contains a study to determine the gravity of the insurance situation. While a study is a good first step in figuring out the problem, it should be conducted before Congress decides to pass a bill limiting liability for all volunteers and organizations in the industry and diminishing the chances of holding anyone accountable when harm occurs.

### E. THE LEGISLATION IS POORLY DRAFTED

As usual when it comes to "tort reform" proposals by the majority, this bill was poorly and hastily drafted and leaves all kinds of loopholes. For example, the bill does not address the situation of an innocent bystander who may be harmed by a volunteer pilot. While the bill attempts to address the situation between the pilots, the organizations, and the person in need of transport, it clearly does not contemplate the situation of someone outside that relationship, such as an innocent bystander. This is simply poor and thoughtless drafting.

Even more egregious, this poor drafting leaves a loophole for acts of domestic terrorism. Thus, if a pilot flying for a nonprofit volunteer pilot organization commits an act of domestic terrorism with an airplane, the organization will completely escape liability for the harm caused by such an act. This is simply irresponsible.

## CONCLUSION

H.R. 1871 is overbroad and unnecessary. There have been no reported civil liability cases against a volunteer pilot or a volunteer pilot organization. In addition, 43 states have already passed legislation relating to volunteer liability; some states have included or

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[6] *Dyer* v. *United States*, 551 F. Supp. 1266 (W.D. Mich. 1982), applying Federal and Michigan law.

[7] 42 U.S.C. § 14503.

[8] Increasing Volunteers by Reducing Legal Fears: Hearings on H.R. 1871, H.R. 3369, and H.R. 1787, Before the Comm. on the Judiciary, 108th Cong. (statement of Edward R. Boyer) (July 20, 2004.)

separately passed protections for non-profit organizations. There is no need to preempt state laws in this case.

JOHN CONYERS, Jr.
MAXINE WATERS.
DEBBIE WASSERMAN SCHULTZ.

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