

VOLUNTEER PILOT ORGANIZATION PROTECTION ACT OF  
2004

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SEPTEMBER 13, 2004.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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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. 1084]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1084) to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## 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 2004”.

### SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

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

(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.

## PURPOSE AND SUMMARY

H.R. 1084, the “Volunteer Pilot Organization Protection Act,” amends the Volunteer Protection Act 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-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. 1084 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

## VOLUNTEER ORGANIZATIONS AND THEIR LEGAL STATUS

*Volunteerism and the Advent of the “Lawsuit Culture”*

In the United States, a multitude of organizations exist solely for the purpose of helping their communities, both locally and nationally. These volunteer and nonprofit organizations make use of volunteers who selflessly give of their time and resources to benefit others. However, America’s long tradition of volunteerism and generosity has been undermined by what has become a new American tradition: the lawsuit culture. In recent decades, actual lawsuits and fears of liability (both rational and irrational) have increasingly become a deterrent to people who might otherwise have given of their time or resources to better their community and country.

*Congressional Efforts to Assess and Address Legal Attacks on Volunteer Organizations*

The Judiciary Committee and Congress have previously recognized that the simple fear of liability, if left unchecked, would cause potential volunteers to stay home. The Committee has held hearings<sup>1</sup> in recent years about various aspects of this problem and has advanced several pieces of legislation<sup>2</sup> designed to limit liability for volunteers and volunteer, non-profit, or charitable organizations. Some of the evidence gathered during these hearings bears repeating. According to a report by the Independent Sector, a national coalition of 800 organizations, the percentage of Americans volunteering dropped from 54% in 1989 to 51% in 1991 and 48% in 1993.<sup>3</sup> Gallup polls have shown that 1 in 6 potential volunteers reported that they withheld their services due to fear of exposure to liability lawsuits.<sup>4</sup> The Committee’s hearings also brought

<sup>1</sup>See, e.g., *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. 6 (1997), *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. 66 (1995).

<sup>2</sup>See, e.g. H.R. 911, 105th Cong. 6 (1997), H.R. 1167, 105th Cong. 6 (1997), H.R. 7, 107th Cong. 13 (2001).

<sup>3</sup>H. Rep. No. 105–101, Part 1 (1997).

<sup>4</sup>*Id.*

to light how the general fear of liability is borne out by anecdotal examples of the types of lawsuits that have been brought. One Little League organization chose to settle out of court rather than face possible excessive damage awards when it was sued by a woman who was hit by a ball her own daughter failed to catch.<sup>5</sup> When a youth suffered a paralyzing injury in a volunteer supervised Boy Scout game of touch football, he filed a multimillion dollar lawsuit against the adult supervisors and the Boy Scouts.<sup>6</sup> In California, a volunteer Mountain Rescue member helped paramedics aid a climber who had fallen and sustained injuries to his spine; his reward was a \$12 million lawsuit for damages.<sup>7</sup>

In addition to causing potential volunteers to stay at home or refrain from certain needed activities, the Committee's hearings showed that the liability threat has had very real financial consequences. Many nonprofit organizations have encountered dramatically rising costs for liability insurance due to fears of litigation. The average reported increase for insurance premiums for nonprofits over the period of 1985–1988 was 155%.<sup>8</sup> The Executive Director of the Girl Scout Council of Washington, D.C. said in a February 1995 letter that “locally we must sell 87,000 boxes of . . . Girl Scout cookies each year to pay for [our] liability insurance.”<sup>9</sup> 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 funds which otherwise would be used to build more houses [for] more persons in need.”<sup>10</sup> During the same hearing, John Graham, the CEO of the American Diabetes Association, added that “[i]t is no coincidence that the issue of protecting volunteers has followed massive increases in both the size of litigation claims and the cost of liability insurance.”<sup>11</sup>

#### *Volunteer Protection Act*

Based on the evidence gathered in such hearings, the Committee and Congress took actions to remedy the growing problem of liability fears for volunteers. The most notable action in recent years was consideration and passage of Federal legislation during the 105th Congress that became known as the “Volunteer Protection Act” (VPA).<sup>12</sup> The final legislation signed into law by President Clinton on June 18, 1997 was identical to H.R. 911 as reported by the House Committee on the Judiciary earlier that year. The Federal legislation setting a uniform national standard for limiting the liability of volunteers was preceded by a patchwork of state laws with similar purposes, which the VPA largely preempted as well as preempting relevant State tort laws. However, these earlier state efforts to limit liability for volunteers are noteworthy because they reflected a pre-existing national consensus that volunteers and vol-

<sup>5</sup> *Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary*, 105th Cong. 6, at 21 (1997).

<sup>6</sup> *Id.* at 26.

<sup>7</sup> *Id.* at 23.

<sup>8</sup> H. Rep. No. 105–101, Part 1 (1997).

<sup>9</sup> *Id.*

<sup>10</sup> *Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167, supra*, 105th Cong. at 56.

<sup>11</sup> *Id.* at 51.

<sup>12</sup> Pub. L. No. 105–19; codified at 42 U.S.C. § 14503 *et. seq.* (2003).

unteer organizations ought to be encouraged by reducing the fear of legal liability.

The common law of all fifty states allows individuals to collect monetary damages in tort for personal injury or property damage caused by another person's negligence or willful conduct. Almost all of these states, however, have limited the liability of volunteers and charitable organizations to some extent. New Jersey provides that charities and their volunteers are immune from liability for ordinary negligence.<sup>13</sup> In Kansas, a volunteer or nonprofit organization is immune from liability for negligence if the organization carries general liability insurance coverage.<sup>14</sup> Ohio offers broad immunity for volunteers of charitable organizations.<sup>15</sup> Wisconsin state law limits the liability of volunteers of non-stock corporations organized under Chapter 181.<sup>16</sup> Georgia grants immunity for members, directors, officers, and trustees of charities from negligence claims asserted by beneficiaries of the charity.<sup>17</sup> Each of these states and others have recognized the need to encourage good works and protect volunteers and nonprofit organizations from tort liability for accidents that arise in the normal course of their dealings.

The VPA was intended to encourage people to do necessary volunteer work for nonprofit and governmental entities by offering immunization from liability under state tort law for ordinary negligence. The VPA only protects "volunteers"<sup>18</sup> for incidents that arise in the scope of their volunteer work, and it does not protect willful or criminal conduct and gross negligence. The VPA also limits punitive damages and non-economic damages for those individuals found liable. 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. Hence, under the common law doctrine of *respondeat superior*, volunteer organizations and entities are still generally vicariously liable for the negligence or their employees and volunteers.

The VPA also allows states to declare that affirmatively the Act does not apply to suits in which all the parties to the action are citizens of the state. The VPA became effective on September 16, 1997, and did not apply retroactively to suits brought before that date. The VPA represents a great improvement by setting a comprehensive and consistent standard governing the tort liability of volunteers and thereby encouraging their good works. However, the fear of liability exposure still affects and hampers volunteer and non-profit organizations. Subsequent efforts in Congress since passage of the VPA have focused on some of the remaining gaps in liability protection for both volunteer organizations themselves and their donors. For example, in the 107th Congress H.R. 7, the "Charitable Choice Act of 2001" as passed by the House contained provisions limiting liability for persons or entities who donated equipment to charitable organizations.

<sup>13</sup> N.J. Stat. Ann. §§ 2A: 53A-7 to 7.1 (West 1983).

<sup>14</sup> Kan. Stat. Ann. § 60-3601 (1987).

<sup>15</sup> Ohio. Rev. Code Ann. § 2305.38 (Anderson Supp. 1987).

<sup>16</sup> Wis. Stat. §§ 181.297, 180.0828.

<sup>17</sup> Ga. Code Ann. § 105-114 (Harrison 1984).

<sup>18</sup> "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.

## VOLUNTEER PILOT ORGANIZATIONS

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 include environmental observation, wilderness rescue, delivery of medical supplies and organs, and transport of medical patients. In the area of medical patient transport alone, volunteer pilot organizations provided long distance transportation at no cost to over 40,000 patients and their escorts in 2003.

However, the activities of volunteer pilots and volunteer organizations are not protected from liability by the VPA, which provided limited liability protection to a range of volunteers and volunteer organizations. As a result, volunteer pilot organizations (such as the Air Care Alliance) and the pilots who fly for them have come under legal attack for providing vital air transportation services to needy patients. Spiraling costs associated with this litigation have increased insurance premiums for these organizations and creating difficulty in obtaining the necessary insurance because of liability exposure fears. 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 recommending a needy patient to the care of a volunteer pilot association.

## H.R. 1084, THE “VOLUNTEER PILOT ORGANIZATION PROTECTION ACT”

H.R. 1084 was introduced by Representative Schrock on March 5, 2003. The legislation 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 purposes of such organizations. The bill is designed to accomplish this by amending § 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 the VPA. The legislation also provides limited protection to institutions (such as hospitals) that refer patients to these organizations. The exceptions to the general liability protections contained in the existing Federal statute would still apply (i.e., intentional or criminal misconduct, certain State laws on *respondeat superior*, or adherence to licensing or risk management standards).

## HEARINGS

The full Committee on the Judiciary held a hearing on H.R. 1084 and two related bills, H.R. 1787, and H.R. 3369, on July 20, 2004. Testimony was received from Mr. Edward R. Boyer, President and CEO of Mercy Medical Airlift and Vice Chairman, Angel Flight America, testified in favor of H.R. 3369. According to Mr. Boyer’s testimony 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” but need liability relief in order to obtain necessary insurance and continue operating with pilots willing to perform these volunteer duties.

## COMMITTEE CONSIDERATION

On September 8, 2004, the full Committee on the Judiciary met in open session and ordered favorably reported the bill H.R. 1084, with an amendment, by a 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 there were no recorded votes during the Committee's consideration of H.R. 1084.

## 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. 1084, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 13, 2004.

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. 1084, the Volunteer Pilot Organization Protection Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs), and Melissa Merrell (for the state and local impact).

Sincerely,

DOUGLAS HOLTZ-EAKIN,  
*Director.*

Enclosure.

*H.R. 1084—Volunteer Pilot Organization Protection Act of 2004*

H.R. 1084 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 with the scope of the organization's mission. Such organizations typically provide wilderness rescue or medical evacuation services.

CBO estimates that enacting the legislation would result in no significant costs to the federal government. H.R. 1084 would not affect direct spending or revenues.

H.R. 1084 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act, but CBO estimates that the resulting costs, if any, would not be significant and would be well below the threshold established in that act (\$60 million in 2004, adjusted annually for inflation). 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. The bill contains no new private-sector mandates.

The CBO staff contacts for this estimate are Lanette J. Walker (for federal costs), and Melissa Merrell (for the state and local impact). 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. 1084 would protect and promote the important work of volunteer pilot organizations by creating limited liability protections to volunteer pilot organizations so they are able to attract needed pilots and procure necessary insurance and continue their important operations.

#### 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 article I, § 8 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes H.R. 1084 as reported by the Judiciary Committee.

##### *Section 1—Short Title*

Section 1 provides that H.R. 1084 may be cited as the “Volunteer Pilot Organization Protection Act of 2004.”

##### *Section 2—Findings and Purpose*

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

(b) PURPOSE—Subsection 2(b) sets out 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 first creating an exception to the section of the VPA



that does NOT currently extend the liability protections of the Act to any activity involving the volunteer operating a vehicle that is required under state law to be licensed and insured to operate. Secondly, section 3 extends the protection of the VPA to cover volunteer pilot organizations.

Section 3 does this by first extending the VPA's protection to volunteer pilots themselves adding a new § 14503(a)(4)(B) that provides that harm caused by the volunteer pilots flying in furtherance of the purpose of the organization is within the VPA's liability protections for volunteers.

Section 3 also extends the VPA's protection to volunteer pilot organizations as entities that will uniquely enjoy the liability protections of the VPA when they comply with the exceptions of the VPA that currently extend only to individual volunteers and not to organizations. Section 3 does this by amending § 14503(c) to add a new subsection (c)(2) that provides the unique protection for the volunteer pilot organizations.

#### *Section 4. Report by Attorney General*

Section 4 was added by an amendment offered by Representative Scott and passed by voice vote. It provides for the Attorney General to carry out a study on the availability of insurance to non-profit volunteer pilot organizations that fly for public benefit.

#### 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.*

\* \* \* \* \*

(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.*

\* \* \* \* \*

#### MARKUP TRANSCRIPT

### BUSINESS MEETING

WEDNESDAY, SEPTEMBER 8, 2004

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, Hon. F. James Sensenbrenner, Jr., [Chairman of the Committee] Presiding.

[Intervening business.]

Chairman SENSENBRENNER. Pursuant to notice, I now call up the bill H.R. 1084, the Volunteer Pilot Organization Protection Act 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, and the Chair recognizes the gentleman from Virginia, Mr. Forbes to explain the bill.

[The bill, H.R. 1084, follows:]

108TH CONGRESS  
1ST SESSION

# H. R. 1084

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2003

Mr. SCHROCK (for himself, Mr. ISAKSON, Mr. GOODE, Mr. KIRK, Mr. TAYLOR of Mississippi, and Mr. FORBES) 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.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Volunteer Pilot Orga-  
5 nization Protection Act”.

### 6 SEC. 2. FINDINGS AND PURPOSE.

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

1           (1) Scores of public benefit nonprofit volunteer  
2       pilot organizations provide valuable services to com-  
3       munities and individuals.

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

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

12          (4) Such organizations have supported the in-  
13      terests of homeland security by providing volunteer  
14      pilot services at times of national emergency.

15      (b) PURPOSE.—The purpose of this Act is to promote  
16      the activities of nonprofit volunteer pilot organizations fly-  
17      ing for public benefit and to sustain the availability of the  
18      services that such organizations provide, including trans-  
19      portation at no cost to financially needy medical patients  
20      for medical treatment, evaluation, and diagnosis, as well  
21      as other flights of compassion and flights for humani-  
22      tarian and charitable purposes.

1 **SEC. 3. LIABILITY PROTECTION FOR NONPROFIT VOLUN-**  
 2 **TEER PILOT ORGANIZATIONS FLYING FOR**  
 3 **PUBLIC BENEFIT AND TO PILOTS AND STAFF**  
 4 **OF SUCH ORGANIZATIONS.**

5 Section 4 of the Volunteer Protection Act of 1997  
 6 (42 U.S.C. 14503) is amended—

7 (1) in subsection (a)(4)—

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

10 (B) by inserting “(A)” after “(4)”;

11 (C) by striking the period at the end and  
 12 inserting “; or” and

13 (D) by adding at the end the following:

14 “(B) the harm was caused by a volunteer of a non-  
 15 profit volunteer pilot organization that flies for pub-  
 16 lic benefit, while the volunteer was flying in further-  
 17 ance of the purpose of the organization and was op-  
 18 erating an aircraft for which the volunteer was prop-  
 19 erly licensed and individually insured.”; and

20 (2) in subsection (c)—

21 (A) by inserting “(1)” before “Nothing”;  
 22 and

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

25 “(2) Notwithstanding paragraph (1), a nonprofit vol-  
 26 unteer pilot organization that flies for public benefit, and

1 the staff, mission coordinators, officers, and directors  
2 (whether volunteer or otherwise) of such organization or  
3 a referring agency of such organization, shall not be liable  
4 with respect to harm caused to any person by a volunteer  
5 of such organization, while the volunteer is flying in fur-  
6 therance of the purpose of the organization and is oper-  
7 ating an aircraft for which the volunteer is properly li-  
8 censed and has certified to such organization that such  
9 volunteer has in force individual insurance for operating  
10 such aircraft.”.

○

Mr. FORBES. Thank you, Mr. Chairman.

Mr. Chairman, I would like to thank Congressman Schrock for his hard work on the bill before us today.

H.R. 1084, the "Volunteer Pilot Protection Act," will help 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.

Volunteer pilot organizations and the pilots who fly for them are involved in a range of activities, generally known as 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 patients. In the area of medical patient transport alone, every year thousands of pilots with years of experience and hundreds of flight hours under their belt volunteer their time to fly these missions.

In 2003, volunteer pilot organizations provided long-distance transportation for free to over 40,000 patients and their escorts. These flights enabled patients to travel to remote specialized medical centers to receive lifesaving treatments and for taking clinical trials that they could not otherwise obtain in their own hometowns or even in their own regions of the country.

Unfortunately the activities of volunteer pilots and volunteer pilot organizations are not protected from liability by the Volunteer Protection Act. And these organizations and the pilots who fly them face difficulty obtaining the necessary insurance because of liability exposure fears.

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 mere recommendation of these services.

The Committee conducted a legislative hearing on H.R. 1084 and other bills on July 20, 2004. Mr. Boyer, who was the CEO of Mercy Medical Air Lift and vice chairman of Angel Flight of America, testified that the activities of volunteer pilots and volunteer pilot organizations are not protected from liability by the VPA. 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 aircraft, time and insurance are reluctant to take on passengers and expose themselves to potential liability.

When Congress passed the Volunteer Protection Act, volunteers operating a motor vehicle or aircraft were not given liability protection because these volunteers are required to have private insurance to operate the vehicle. When a group such as Angel Flight located in my home flight applies for insurance coverage, insurance companies interpret this clause in the VPA to leave charitable groups such as Angel Flight and all of their volunteers with no legal liability protection.

This interpretation of the law has driven the insurance costs of these charities far higher than they can afford. The insurance that was available for \$1,000 a year or a few years ago now costs more than \$25,000 a year. The Volunteer Pilot Organization Protection Act would solve this problem by creating specific liability protection

for nonprofit volunteer pilot organizations flying for public benefit and their pilots.

It does not change the effect or the impact of the VPA. It only adds protection for a worthwhile group. The exceptions to the general liability protections contained in the VPA would still apply—IE, intentional or criminal misconduct, certain State laws and respond yet superior or to licensing or risk management standards.

The Volunteer Pilot Organization Protection Act will insure that many of these organizations can continue to fly.

Mr. Chairman, there is a whole host of groups that support this legislation, including the Shriners Hospital for Children. I would request unanimous consent to allow the letters of support to be introduced on behalf of this legislation.

Chairman SENSENBRENNER. Without objection.

[The material referred to follows:]



HOMES THAT HELP AND HEAL

May 24, 2004

Congressman Ed Schrock  
3622 Cannon HOB  
Washington, DC 20515

Dear Congressman Schrock:

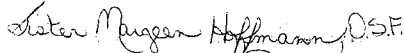
This letter is written giving our strong support for H.R. 1084 – the Volunteer Pilot Organization Liability Protection Act.

The National Association of Hospital Hospitality Houses (NAHHH) is a non-profit association of nearly 200 hospital hospitality houses around the country – themselves also a 501(c)(3) organizations always concerned with liability issues. Our member hospitality houses assist and help upwards of 150,000 patient and patient family members annually – and need to be free to make referrals to charitable medical air transportation charities as a means of assistance to our patients.

It is essential that the liability protections provided through H.R. 1084 be enacted. This would greatly facilitate willingness on the part of any non-profit organizations to refer patients to volunteer pilot organizations flying for public benefit. Without referrals patients will not know that charitable medical air transportation is available and thus they will not be served.

We would be pleased to take any further steps you may suggest to assist in moving this legislation on to passage in the House of Representatives.

Sincerely,

 Sister Margeen Hoffmann, OSF

Sister Margeen Hoffmann, OSF  
President

National Association of Hospital Hospitality Houses

Children's Organ Transplant Association

June 3, 2004

Congressman Ed Schrock  
322 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Schrock:

This letter concerns the importance of passage of H.R. 1084, the Volunteer Pilot Organization Protection Act.

The Children's Organ Transplant Association (COTA) works with thousands of patients and their family members. The issue of charitable long-distance patient medical air transportation is important to all of these folks most of whom cannot personally pay for the transplants nor the travel related to their transplants.

The subject legislation will be a real boost for the volunteer pilot organizations with whom we work. Of primary concern to us is that the legislation would provide us with liability protection as a "referring agency." Concern over this issue has been part of our lives throughout the history of our organization.

I would urge you to move this legislation forward – for the reason I cited above and for the reason that H.R. 1084 will be of direct help to the volunteer pilot organizations themselves.

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

Sincerely,



Rick Lofgren, CFRE  
President



May 24, 2004

Congressman Ed Schrock  
322 Cannon HOB  
Washington, DC 20515

Dear Congressman Schrock:

This letter is written giving our strong support for H.R. 1084 - the Volunteer Pilot Organization Liability Protection Act.

Health & Medical Research Charities of America (HMR) represents 138 of the nation's foremost health-related nonprofit organizations. These organizations routinely depend on each other and work together, including coordinating patient transportation.

It is essential that the liability protections provided through H.R. 1084 be enacted. This will greatly facilitate willingness on the part of non-profit organizations to refer patients to volunteer pilot organizations flying for public benefit. Without referrals patients will not know that charitable medical air transportation is available and thus cannot be served.

We would be pleased to take any further steps you may suggest to assist in moving this legislation on to passage in the House of Representatives.

Sincerely,

Cindy Schneible  
President

Cc: HMR Board of Directors





Formerly Organ Transplant Fund, Inc.

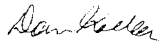
May 26, 2004

Congressman Ed Schrock  
322 Cannon House Office Building  
Washington, DC 20515

Dear Congressman Schrock:

The National Foundation for Transplant strongly supports HR1084 and appreciates your efforts to see that this bill is passed quickly. The legislation will make it feasible for our organization to refer transplant patients to charitable medical air transportation volunteer pilot organizations.

Sincerely,



Donna Noelker  
Director of Patient Services



May 24, 2004

Congressman Ed Schrock  
322 Cannon HOB  
Washington, DC 20515

Dear Congressman Schrock:

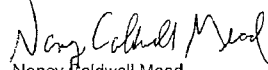
This letter is written giving our strong support for H.R. 1084 - the Volunteer Pilot Organization Liability Protection Act.

Independent Charities of America (ICA) is a federation of 800 national non-profit organizations many of whom work in the field of health and human services. Their noteworthy efforts are almost always accomplished by volunteers. These organizations routinely depend on each other and work together.

It is essential that the liability protections provided through H.R. 1084 be enacted. This will greatly facilitate willingness on the part of non-profit organizations to refer patients to volunteer pilot organizations flying for public benefit. Without referrals patients will not know that charitable medical air transportation is available and thus cannot be served.

We would be pleased to take any further steps you may suggest to assist in moving this legislation on to passage in the House of Representatives.

Sincerely,

  
Nancy Caldwell Mead  
President

Cc: ICA Board of Directors

21 Tamal Vista Blvd., Suite 209  
Corte Madera, CA 94925  
Phone (800) 477-0733  
Fax (415) 924-1379  
[www.independentcharities.org](http://www.independentcharities.org)





*Supporting the Nationwide Community of Charitable Aviators*

Office of the Chairman 149 Walnut Street Willimantic, Connecticut 06226 860 423-8273 www.aircareall.org

The Air Care Alliance promotes, supports, and represents public benefit flying through communication and cooperation among organizations facilitating flights for health, compassion, and community service.

May 19, 2004

The Honorable Ed Schrock  
United States Congressman  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Representative Schrock,

The Air Care Alliance, a national association of organizations whose volunteer pilots fly to help others, wishes to express our strong support for H.R. 1084, the Volunteer Pilot Organization Protection Act you have introduced.

Over the last several decades thousands of pilots have decided to offer themselves and their aircraft to fly missions of service at absolutely no cost to those they help. They fly indigent patients for diagnostics or care. They support animal counts or environmental assay missions. They bring emergency personnel and supplies to areas affected by disasters.

Often they are available when even paid services are not. For example, a transplant candidate in a rural town and a pilot living nearby may both carry pagers. When an organ becomes available they can meet at the airport and fly to a big-city medical center where the transplant can take place while the organ is still viable.

Most such pilots have banded together to form or join nonprofit organizations which handle such tasks as promoting the services available, providing pilots with lists of patients needing transport, and researching voluntary safety practices that enhance the missions their volunteers fly. There are more than fifty groups or sub-groups.

These public benefit flying groups across the country are facing a crisis because of high insurance costs and the uncertainties of liability exposure in these litigious times. Usually the pilots themselves are required to have an insurance policy to protect against their own losses following an accident, but the non-profit organizations that arrange these flights may need to take out insurance too in order to protect the other volunteers in the organization from possible suits. Some years ago low-cost policies were available but now policies for operations are either unavailable or unaffordable for the groups, many of which are quite small.

Officers/Directors

Chairman & CEO  
Riel Morrow  
Emergency Volunteer  
Air Corps

Executive Vice President  
Doug Vincent  
Angel Flight of Oklahoma

Secretary  
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Lightseek

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Tami Braum  
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Jeanne Chambers  
Angel Flight of Georgia

Dr. Bruce Chien  
LifeLine Pilots

Keith Lukan  
LifeLine Pilots

Keri McAllister  
Mercy Med Flight, Inc.

Randy Quast  
Angel Flight Central

Kevin Sell  
Volunteer Pilot Association



304 Main Street, Suite 14  
P.O. Box 653  
Lander, Wyoming  
82520-0653  
T el: (307) 232-2242  
F ax: (307) 332-1641  
www.lighthawk.org

June 4, 2004

The Honorable Ed Schrock  
U.S. House of Representatives  
322 Cannon HOB  
Washington, DC 20515

Dear Representative Schrock:

I am writing on behalf of LightHawk's more than 130 volunteer pilots to express our support for H.R.1084, the Volunteer Pilot Organization Protection Act. We are a non-profit environmental aviation organization that leverages the services of its volunteers, with only a handful of staff, to conduct more than 700 flights each year for 200 environmental partner organizations throughout eight countries in North and Central America. LightHawk has been offering flights to support environmental research and education work since 1979 and works on issues that range from sprawl to forest management and endangered species. The diverse types of missions LightHawk volunteer pilots undertake include guided educational flights for community leaders and legislators; media flights for reporters, photographers, and documentarians; technical flights to support habitat and species surveys; and surveillance flights that document environmental crimes and land use conditions. All of our flight services are provided to our partners free-of-charge.

In the past six years, it has become increasingly expensive and difficult for LightHawk and its volunteer pilots to conduct missions in light of ever-rising insurance premiums. In 1997, LightHawk carried an aviation insurance policy that provided us \$10 million in liability coverage on our owned aircraft (at the time we owned three) and for the volunteer pilots who flew for us. By 1999, the limit of liability on our annual renewal was reduced to \$3 million, while the premium for the same policy doubled. The following year, after much discussion, the insurer granted us \$2 million in coverage, but would not extend coverage to our volunteer pilots. LightHawk was informed that kind of coverage would not be available for any price from any underwriter. And again, our premiums increased by approximately 20 percent.

This change in our liability coverage left our volunteer pilots without coverage under LightHawk's umbrella, causing them to be entirely dependent on their own coverage. Additionally, LightHawk had to begin to require that all of our volunteers list LightHawk as an additional insured on their own policies — at their own expense. Since instituting this mandate, we have heard from a number of our volunteer pilots that they are unable or unwilling to fly for us, either because of the additional expense, additional liability exposure, or the hassle of dealing with their insurance company — some of which will not list our organization as an additional insured.

*Change is in the air.*



In 2001, LightHawk was sued for an accident involving one of its volunteer pilots. We had no control over the flight in any way; we did not specify when the flight took place, the route of the flight, the altitude at which it was flown, appropriate weather conditions for the flight, or any of the numerous decisions that a pilot in command makes in the course of conducting a flight. Nevertheless, LightHawk was sued following the accident. There was no indication of any liability on the part of LightHawk and the case was settled prior to trial. Fortunately, the pilot had added LightHawk to his insurance policy as an additional insured; the cost of defense of LightHawk approached six figures — something that would probably have wiped out the organization had there not been insurance to cover that expense.

Today, LightHawk's liability limits on the policy for our own Cessna 206 are set at \$1 million, we are allowed to name only five volunteer pilots to our policy, and our rates continue to rise approximately 12 to 15 percent each year. As an organization that operates solely off of donations and foundation grants, these high insurance costs and low liability limits could easily cause us to have to close our doors permanently. H.R. 1084, the Volunteer Pilot Organization Protection Act, will close the loophole that has created this problem.

H.R. 1084 will give LightHawk and other charitable flying organization, their volunteer pilots, and their boards of directors and staffs, protection and will allow them to continue the valuable services they provide. LightHawk would like to thank you for introducing this legislation and we would like to assure you that we and our volunteer pilots will be urging members of the House Judiciary Committee and our respective Congressional representatives to support this important bill as it moves through the legislative process.

Please do not hesitate to contact me with any questions or concerns regarding this matter at (310) 544-8707.

Sincerely,

Maureen Smith  
Executive Director



May 28, 2004

Congressman Ed Schrock  
322 Cannon HOB  
Washington, DC 20515

Dear Congressman Schrock:

This letter is written giving our support for H.R. 1084 - the Volunteer Pilot Organization Liability Protection Act.

Our company has worked with and served volunteer pilot organizations for many years and we are well aware of the liability challenges they face. We also know they served more than 20,000 financially-needy patients last year at no cost to the patient or patient family.

From an insurance industry perspective, it is important that this legislation solve the liability issues faced by volunteer pilot organizations. It is no longer possible for us to obtain non-owned aircraft liability insurance to cover the needs addressed in H.R. 1084.

Without a doubt public benefit aviation in the United States will receive a real boost with the passage of this legislation. Organization or physicians who refer patients to charitable medical air transportation will be much more willing to do so with all their patients. Staff and board members of volunteer pilot organizations will get the protection they need.

Please let us know if we can be of further assistance in moving forward passage of H.R. 1084.

Sincerely,

Stephen Johns  
President

SJ/aw

6557 HIGHLAND ROAD, SUITE 170  
WATERBORO, MICHIGAN 48327  
800 662 4401 • 248 666 4400  
FAX 248 666 4779  
www.ljohns.com

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Rosemary G. Murray  
Vice President  
Government Affairs

June 3, 2004

The Honorable Edward Schrock  
United States House of Representatives  
Washington, DC 20510

Dear Congressman Schrock:

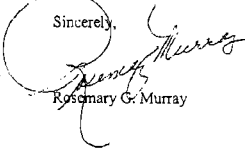
Thank you for spending so much time with me during our recent visit and for sharing H.R. 1084 with me. US Airways always has placed charitable giving high on our priority list. Even during these very difficult financial times when money has not been available, we have been generous participants in many ways with charities throughout our system.

Thus, we recognize the importance of helping others become charitable through gifts of their personal time and talent. Your legislation to provide liability protection to nonprofit volunteer pilot organizations offers a great incentive to those who might not otherwise be able to donate their services.

You are applauded for taking such a unique approach through H.R. 1084 by offering this necessary and important protection which ultimately benefits both the charities and their donors.

With warm wishes, I am

Sincerely,

  
Rosemary G. Murray

Mr. FORBES. Without this legislation, these organizations will be unable to provide their important services and the tens of thousands of people who benefit from their work will be unable to obtain the medical care they so desperately need. It is essential that we keep these lines of transportation to the people who need it the most.

It would certainly be a tragedy if the lawsuit or the threat of a lawsuit were to bring down this network. This is a crisis we are having today. I thank the Chairman for holding this markup. I look forward to working with this Committee for further consideration of this legislation.

Chairman SENSENBRENNER. The gentleman's time has expired. Who wishes to give the Democratic opening statement? Okay.

If there is nobody who wishes to do that—without objection, all Members opening statements will appear in the record at this point.

Are there amendments? The gentleman from Virginia has a manager's amendment. The Chair recognizes the gentleman for purposes of offering the amendment.

Mr. FORBES. Mr. Chairman, the manager's amendment makes clerical—

Chairman SENSENBRENNER. The clerk will report the managers amendment.

The CLERK. Amendment to H.R. 1084 offered by Mr. Forbes of Virginia. Page 1, line 5 insert of 2004 before the closed quotation marks. Page 3, line 19 strike "individually." page 4, line 19, strike "individual."

[The amendment follows:]

H.L.C.

#### AMENDMENT TO H.R. 1084

OFFERED BY MR. [REDACTED] FORBES OF  
[REDACTED] VIRGINIA

Page 1, line 5, insert "of 2004" before the closed quotation marks.

Page 3, line 19, strike "individually".

Page 4, line 9, strike "individual".

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FORBES. Thank you, Mr. Chairman. The manager's amendment simply makes three technical changes to the bill to correct drafting errors.

First, the year in the short title was changed from 2003 to 2004. The other two changes made by the manager's amendment are to strike the words individually and individual in two places where they appear before the words "insured" and "insurance."

This is done to correct a drafting oversight that while most aviation insurance at issue is individual to a pilot or aircraft, there are other forms of nonindividual insurance policies that should not be discriminated against for no good reason.

I yield back my time, Mr. Chairman.

Chairman SENSENBRENNER. The question is on adoption of the manager's amendment.

The gentleman from North Carolina, Mr. Watt.

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Just for the purpose of asking the same question I was trying to ask on the wrong bill before we recessed.

Under this bill, the pilot would—the volunteer would certify that he has an operating license and insurance for such craft, aircraft. I am just trying to figure out what that insurance would normally consist of and whether there are exclusions and whether there are any exclusions in those policies that he would be certifying were in effect that might make it impossible for a third party to get anything if the airplane crashed, for example.

A lot of insurance policies say we will insure you for your individual risk but not when you are engaged in any kind of third party or business risk. And I am just trying to get fixed in my own mind whether there is any kind of insurance likely to be out there to cover somebody if they are injured.

I will yield to the gentleman.

Mr. FORBES. Mr. Chairman, I can't tell you what insurance is out there or not, but let me tell you what we did have at the hearing. First of all, the intent of this legislation is to do exactly what the Volunteer Protection Act does for other volunteers, and just extend it to these volunteers on pilot associations.

The focus of the Act, when it comes to insurance, is to make sure that the pilots are required to have whatever insurance the States require them to have.

Mr. WATT. Will you talk into the mike?

Mr. FORBES. The intent is that the pilots will have whatever insurance coverage the States require them to have. Same with the operators license. If the State requires them to have an operators license, they would have to have it. The type of insurance required by the State, they would have to have.

The only reason for this correction on the technical correction with the manager's amendment is that some of these associations are able to get a group coverage that they get through the association and some of them, the bulk of them, get individual pilot coverage, of course.

The other thing that was important from the hearing to note is that there was not a single bit of testimony that there was any negligence concerns, any problems with insurance in terms of the kind of insurance they were carrying.

The testimony before the Subcommittee was clearly that this was serving as a chilling effect to absolutely stop this service from tak-

ing place, which is providing incredible benefit to patients across the country. So the insurance that would be there would be the insurance that would be required by the States for these pilots.

Mr. WATT. As far as you know, those insurance policies wouldn't have any kind of exclusion that would make it impossible for a third party to recover, even if they were operating under these conditions?

Mr. FORBES. Mr. Chairman. I don't want to represent that none of the policies would have that, because I don't know that. We have not gone through every individual policy. I would say, as the gentleman knows, these policies are going to vary from State to State. So there very well could be a company out there that has that exclusion in it.

What I can say very clearly is that this will refer it back to the States for whatever insurance requirements that those particular States have currently.

Mr. WATT. Okay. Mr. Chairman. Would you have any more information about the question in response to that?

Chairman SENSENBRENNER. If the gentleman will yield, the answer is no.

Mr. WATT. All right. I am not trying to pin anybody down. I am just trying to find out whether there might be some unintended consequences.

Mr. CARTER. Mr. Chairman, would the gentleman yield?

Mr. WATT. Yes, I would be happy to yield.

Mr. CARTER. As I recall from the hearing that we held, I believe that pilot air liability insurance, they would still have to carry that. This is to prevent them from being sued when they are flying a patient, and the patient gets to the location and either dies or gets more ill than he was before he left the destination. They are getting sued for the condition of the patient that they are transporting.

Mr. WATT. Oh, I see what you are saying.

Mr. CARTER. Not for any pilot error. The pilot may have flown there effectively, gotten there on time or been delayed by weather, whatever the reason. But they ended up being sued because the patient gets sicker or dies. They are wanting—they are having to carry a load of additional insurance, as I understand, to cover these patients that they are hauling in these airplanes.

They would still have to have pilot liability if the pilot made an error, they would have to have the insurance that is required by the State to maintain pilot error insurance. That is what I understood from a question that I asked at the hearing.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. I yield back the last word.

Chairman SENSENBRENNER. The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you very much for your comments. If I remember the testimony from this, if there is an allegation of ignorance—the victim would have recourse.

Mr. FORBES. That is correct. The victim would have recourse to any insurance that would be available and that could include insurance that the organization has or insurance that the individual pilot has.

Mr. SCOTT. And so the pilot would be covered for negligence in operating the aircraft—and that is what the insurance would be for—and a victim would have access to that liability policy so that we would not be leaving victims without any resource?

Mr. FORBES. That is correct.

Mr. SCOTT. The volunteer organization, however, that put the people together would not be part of the lawsuit because of the bill?

Mr. FORBES. Both the volunteer organization, and also—as you recall from the hearing—the referring agencies were having a difficult time. Hospitals who simply wanted to make patients aware of these organizations were very concerned that they would have suits coming against them as well, and this is designed to protect them.

Mr. SCOTT. And, again, reclaiming my time.

A victim of ordinary negligence would be covered by the insurance policy covering the airplane?

Mr. FORBES. Would continue to be covered.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The question is on agreeing to the manager's amendment.

Those in favor say aye.

Aye.

Opposed, no.

The ayes appear to have it. The manager's amendment is agreed to.

Are there any further amendments.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Mr. Chairman, I have the amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment H.R. 1084 offered by Mr. Scott.

At the end of the bill, insert the following new section:

Section 4, report by Attorney General.

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

[The amendment follows:]

**AMENDMENT TO H.R. 1084****OFFERED BY M.R. Scott**

At the end of the bill, insert the following new section:

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

2 (a) STUDY REQUIRED.—The Attorney General shall  
3 carry out a study on the availability of insurance to non-  
4 profit volunteer pilot organizations that fly for public ben-  
5 efit. In carrying out the study, the Attorney General shall  
6 make findings with respect to—

7 (1) whether nonprofit volunteer pilot organiza-  
8 tions are able to obtain insurance;

9 (2) if no, then why;

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

12 (4) if the inability of nonprofit volunteer pilot  
13 organizations to obtain insurance has any impact on  
14 the associations' ability to operate; and

15 ~~(5) if there is any collusion among insurance~~  
16 ~~companies not to offer insurance to such organiza-~~  
17 ~~tions.~~

18 (b) REPORT.—After completing the study, the Attor-  
19 ney General shall submit to Congress a report on the re-



1 sults of the study. The report shall include the findings  
2 of the study and any conclusions and recommendations  
3 that the Attorney General considers appropriate.

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, we have heard from the organizations that this insurance patiently is not available. We are asking the attorney general to determine whether or not—and this can't be the only situation where insurance of this kind is desired and difficult to find. We would like to have a study to find out exactly why they are not getting insurance and why it is not available.

Mr. FORBES. Mr. Chairman, it is my understanding that the Chairman of the Subcommittee is willing to accept this amendment, and I don't have any objection to it.

Mr. SCOTT. 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.

Aye.

Opposed no.

The ayes appear to have it. The ayes have it. The amendment is agreed to. Are there further amendments? If there are no further amendments, a reporting quorum is present.

The question occurs on the motion to report the bill H.R. 1084 favorably as amended.

All in favor will say aye.

Aye.

Opposed, no.

The ayes appear to have it. The ayes have it.

The motion to report 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 amendments adopted here today. Without objection the Chairman is authorized to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by House rules in which to submit additional dissenting, supplemental or minority views.

## DISSENTING VIEWS

H.R. 1084, the “Volunteer Pilot Organization Protection Act” is the product of overreaching by the Majority. It is a response to a hypothetical problem and does nothing but let insurance companies off the hook while potentially harming innocent victims. And it flies in the face of the Volunteer Protection Act, a bill Congress passed into law after eight years of debate extending over five Congresses. The Volunteer Protection Act was carefully deliberated and negotiated, and this bill wipes that slate clean and acts as if the Volunteer Protection Act never existed.

We oppose this bill for several reasons. First, it undoes the balance achieved in the Volunteer Protection Act by specifically exempting pilots and aircraft carriers from liability. Second, it not only applies to pilots, but also to staff, mission coordinators, officers and directors of volunteer pilot organizations, and referring agencies, whether for profit or not-for-profit. Third, it would leave innocent victims without recourse in some situations by reducing the standard of care applicable to pilots. H.R. 1084 also does nothing to tackle the real problem, which is the insurance industry’s failure to offer insurance to the volunteer pilot organizations. Finally, the bill is poorly drafted and includes loopholes that would insulate international terrorist organizations from liability and subjects 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 non-profit 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 non-profit volunteer pilot organization. Section 3 also carves out liability protection for the nonprofit volunteer pilot organization, the staff, mission coordinates, officers, directors, and referring agencies.

## BACKGROUND ON THE VOLUNTEER PROTECTION ACT OF 1997

The Volunteer Protection Act of 1997 was passed 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 responsibilities; (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.<sup>1</sup>

In addition, the Act eliminates joint and several liability for non-economic damages with respect to volunteers and limits 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 preempts inconsistent state laws except to the extent that such laws provide additional protection from liability to volunteers. Moreover, the legislation specifically provides 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. respondent superior); (3) makes a limitation of liability inapplicable only if the nonprofit organization or governmental entity provides financial 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. 1084

##### *A. H.R. 1084 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.”<sup>2</sup> Unfortunately, H.R. 1084 completely undoes this decision. 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’ judgement 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 financially 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, Con-

<sup>1</sup> 42 U.S.C. § 14053 (2003).

<sup>2</sup> 42 U.S.C. § 14053 (2003).

gress 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. 1084 goes well beyond protecting volunteers*

The 1997 Act excuses volunteers from negligence but holds organizations accountable if they act irresponsibly.<sup>3</sup> By contrast, H.R. 1084 protects not just the volunteer, but also the staff, mission coordinator, officer, or director (whether volunteer or not) of the non-profit 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:

H.R. 1084 undercuts a fundamental premise of existing [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.<sup>4</sup>

*C. H.R. 1084 reduces the standard of care for pilots*

Finally, H.R. 1084 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.<sup>5</sup> However, a number of courts have held that operators of private aircraft 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 judgement consistent with the practical operation of the plane. No lesser degree of care and prudence would be adequate under the circumstances or commensurate with the danger involved.<sup>6</sup>

<sup>3</sup>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.")

<sup>4</sup>Increasing Volunteers by Reducing Legal Fears: Hearings on H.R. 1084, 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)).

<sup>5</sup>*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 runway landing accident. The court noted that under Texas law, liability growing out of aircraft accidents is determined by ordinary rules of negligence.

<sup>6</sup>*Dyer v. United States*, 551 F. Supp. 1266 (W.D. Mich. 1982), applying federal and Michigan law.

Under H.R. 1084 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.”<sup>7</sup> 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. 1084 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.”<sup>8</sup>

At the markup of this bill, Rep. Scott offered an amendment that directs the Attorney General to conduct a study to determine the insurance situation. The study will include an analysis of whether or not insurance is available to these nonprofit volunteer pilot organizations, and if not, then why. If insurance is available, the study will determine if it is made available on reasonable terms. Finally, the study will determine if there is collusion among insurance companies not to offer insurance, and the extent to which the inability to obtain insurance has affected these organizations’ ability to operate.

The study is a good first step in figuring out the problem, but it should have been conducted before Congress decided 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. 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 the 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.

<sup>7</sup> 42 U.S.C. § 14503.

<sup>8</sup> Increasing Volunteers by Reducing Legal Fears: Hearings on H.R. 1084, H.R. 3369, and H.R. 1787, Before the Comm. on the Judiciary, 108th Cong. (statement of Edward R. Boyer) (July 20, 2004.)

## CONCLUSION

H.R. 1084 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 separately passed protections for non-profit organizations. There is no need to preempt State laws in this case.

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