

and Girls Ranches to provide services to children and has the potential of bankrupting and closing the ranches permanently.

Because the future of philanthropy in the United States as we now know it is at stake and the future of the New Mexico Boys and Girls Ranches and many other New Mexico charities is threatened, I am urgently asking you to co-sponsor (if you have not already done so) and support HR 2519, introduced jointly by Representative Thomas Bailey of Virginia, Chairman of the House Commerce Committee and Representative Jack Fields of Texas, Chairman of that committee's subcommittee on Telecommunications and Finance. I also urge you to co-sponsor and support HR 2525, introduced by representative Henry Hyde, Chairman of the House Judiciary Committee.

I would deeply appreciate hearing from you as soon as possible. I thank you in advance for your help in addressing this crisis. I honestly feel that the work of the charitable community throughout this nation will be seriously damaged if this legislation is not passed very soon.

Sincerely yours,

MICHAEL H. KULL,
President.

Mr. STEARNS. Mr. Speaker, I rise in strong support of H.R. 2519, legislation to modify our federal securities laws to preclude litigation that is threatening the future funding of our Nation's numerous philanthropic organizations.

Philanthropic organizations are some of the most important organizations in the United States today. These charitable, religious and educational groups have the laudable goal of providing assistance, support and hope to those in society that may need a helping hand.

When an individual makes the generous decision to contribute to a charitable donation fund, the charity should not be prevented from enjoying the benefits derived from that contribution because some disgruntled relative, feeling that the money should go in their pockets, makes a claim on the money. Such relatives should not be allowed to initiate lawsuits on these grounds especially when the donor made a valid gift with sufficient donative intent.

Charitable donations funds fall outside the purview of our securities laws for the simple reason that donors do not intend to reap high returns on their investments. Instead they are seeking to make a gift to charity.

I urge all my colleagues to support H.R. 2519 to prevent contributions intended for charitable donation funds out of the pockets of selfish relatives.

□ 1500

Mr. MARKEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FIELDS of Texas. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BARR). Pursuant to the rule, the previous question is ordered on the amendment in the nature of a substitute and the bill.

The question is on the amendment in the nature of a substitute offered by the gentleman from Virginia [Mr. BILEY].

The amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken.

Mr. MARKEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, further proceedings on this bill will be postponed.

The point of no quorum is considered withdrawn.

GENERAL LEAVE

Mr. FIELDS of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to insert extraneous material on H.R. 2519.

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

There was no objection.

CHARITABLE GIFT ANNUITY ANTITRUST RELIEF ACT OF 1995

The Clerk called the bill (H.R. 2525) to modify the operation of the antitrust laws, and of State laws similar to the antitrust laws, with respect to charitable gift annuities.

The Clerk read the bill, as follows:

H.R. 2525

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 "Charitable Gift Annuity Antitrust Relief Act of 1995".

SEC. 2. MODIFICATION OF ANTITRUST LAWS.

(a) EXEMPT CONDUCT.—Except as provided in subsection (b), it shall not be unlawful under any of the antitrust laws, or under a State law similar to any of the antitrust laws, for 2 or more persons described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) that are exempt from taxation under section 501(a) of such Code to use, or to agree to use, the same annuity rate for the purpose of issuing 1 or more charitable gift annuities.

(b) LIMITATION.—Subsection (a) shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to conduct described in subsection (a) occurring after the State enacts a statute, not later than 3 years after the date of the enactment of this Act, that expressly provides that subsection (a) shall not apply with respect to such conduct.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) ANNUITY RATE.—The term "annuity rate" means the percentage of the fair market value of a gift (determined as of the date of the gift) given in exchange for a charitable gift annuity, that represents the amount of the annual payment to be made to 1 or 2 annuitants over the life of either or both under the terms of the agreement to give such gift in exchange for such annuity.

(2) ANTITRUST LAWS.—The term "antitrust laws" has the meaning given it in subsection

(a) of the first section of the Clayton Act (15 U.S.C. 12), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

(3) CHARITABLE GIFT ANNUITY.—The term "charitable gift annuity" has the meaning given it in section 501(m)(5) of the Internal Revenue Code of 1986 (26 U.S.C. 501(m)(5)).

(4) PERSON.—The term "person" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)).

(5) STATE.—The term "State" has the meaning given it in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

SEC. 4. APPLICATION OF ACT.

This Act shall apply with respect to conduct occurring before, on, or after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] and the gentleman from Michigan [Mr. CONYERS] each will be recognized for 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 2525.

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

There was no objection.

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

Mr. Speaker, I rise in support of H.R. 2525, the Charitable Gift Annuity Antitrust Relief Act, which provides antitrust protection for nonprofit organizations that issue charitable gift annuities. H.R. 2525 has been crafted in an extremely narrow manner, so as to protect only very limited conduct and to avoid application to any potential anti-competitive conduct. I am pleased to be joined by the ranking member of the Judiciary Committee, Mr. CONYERS, in sponsoring this bipartisan measure.

Charitable gift annuities are one of the oldest and most commonly used planned giving vehicles in existence today. Many charities, including relatively small ones, issue dozens of gift annuity contracts each year, and they do so within rules established by the Internal Revenue Code. You have all probably seen the advertisements for charities that promise to "pay you an income for life." This is what a gift annuity does, and it is the kind of giving that H.R. 2525 is designed to protect.

When a person enters into a gift annuity agreement, he or she is actually doing two things—making a charitable gift and purchasing a fixed income for life. Probably, if the donor could afford to do so, he or she would turn over to the organization as an outright gift the entire amount paid for the annuity; but the donor needs to make some provision for income while alive. The important thing to remember is that gift annuities are not arms-length commercial insurance transactions. Donors expect charities to benefit from their gift, and they know the charities will

pay less income than banks or insurance companies.

The annuity rate applied to the value of the gift is the critical element in ensuring that the transaction will result in a meaningful gift to the charity. The American Council on Gift Annuities, a nonprofit organization representing more than 1,500 charitable organizations and institutions, assists its members in determining annuity rates which will produce an average gift to the organization of between 40 and 60 percent of the amount originally donated under the agreement.

H.R. 2525 addresses the application of the antitrust laws, and of similar State laws, to the issuance of charitable gift annuities and the publication and distribution of suggested annuity rates for charitable gift annuities—the activities of the American Council and other charitable organizations. In defining the application of the law as it pertains to charitable gift annuities, the bill addresses issues raised in a class action lawsuit brought in the U.S. District Court for the Northern District of Texas, Wichita Falls Division. This lawsuit charges that use of the annuity rates recommended by the council constitutes price fixing, and thus violates the antitrust laws.

Mr. Speaker, I believe in the vigorous and nondiscriminatory application of the antitrust laws, and as a general matter, I do not favor exemptions or exclusions from the antitrust laws. In this limited instance, however, it would serve no public policy purpose to subject the calculation of charitable gifts to antitrust scrutiny.

First of all, it is not at all certain that the use of consistent annuity rates would be found to be a violation of the antitrust laws. The answer depends on whether the issuance of gift annuities is deemed “pure charity” or a “commercial transaction with a ‘public service aspect.’” If it is considered “pure charity,” the conduct is not trade or commerce, and therefore not within the scope of the antitrust laws.

Even if the issuance of charitable annuities were considered trade or commerce, a court might well find that use of the same annuity rates is not anticompetitive in effect. It is particularly difficult to see what anticompetitive effect the supposed setting of prices has in a context where the decision to give is motivated not by price but by interest in and commitment to a charitable mission. Furthermore, it is unclear whether the selection of an annuity rate could be characterized as the setting of a price: in this instance an annuity rate merely determines the portion of the donation to be returned to the donor, and the portion the charity will retain. Donors are not primarily buying an annuity; they are making a gift.

Notwithstanding the serious doubts as to whether the alleged conduct would be considered a violation of the antitrust laws, the current litigation is causing charities to expend massive

amounts of time and resources on defending their positions. It is also forcing these organizations to make public information about their donors, a fact which makes people who guard their privacy reluctant to give. In addition, the class action certification makes donors—people who want to help their charities—into unwilling adversaries, causing the charities to expend donated funds opposing those who gave the funds in the first place.

If the plaintiffs in the class action lawsuit prevail, thousands of charities nationwide would be required to refund donations and to pay treble damages. This would mean that virtually every charitable organization in America is threatened with losses which could total billions of dollars.

Our goal should be to encourage gift giving through legitimate means, and particularly through instruments which the IRS approves and regulates. Gift annuities carry this imprimatur. Regardless of the outcome of the suit, there is no denying that it has had and will continue to have a chilling effect on gift giving and that it is consuming financial resources which would otherwise be allocated to charitable millions. This loss to society far outweighs any possible benefit from the application of the antitrust laws to the setting and use of charitable annuity rates.

To eliminate the uncertainty raised by this litigation, and to ensure the proper public policy result, H.R. 2525 makes clear that charities’ use of the same annuity rates when they issue gift annuities does not violate Federal or State antitrust laws. The antitrust protection provided by H.R. 2525 is intended to extend to attorneys, accountants, actuaries, consultants and others retained or employed by a person described in section 501(c)(3) of the Internal Revenue Code of 1986, when assisting in the issuance of charitable gift annuities or the setting of charitable annuity rates.

I urge my colleagues to join me in protecting the charities of this country by voting in favor of H.R. 2525. I also urge my colleagues to support complementary legislation introduced by the gentleman from Texas [Mr. FIELDS] which addresses allegations of securities and insurance law violations contained in the class action suit. Enactment of that bill, H.R. 2519, along with H.R. 2525, will ensure that the vital work of charitable organizations can continue without the threat of crippling lawsuits.

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

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

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

Mr. CONYERS. Mr. Speaker, I am pleased this day to join with the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary, in cosponsoring

legislation that will help our non-profits solicit charitable gifts which are so vital to their long-term operation and exclude them from being subjected to the possibility of unnecessary antitrust litigation.

As the Members of this body know so well, I support antitrust laws and their vigorous exercise thereof, and I am pleased to note that the ever-watchful Assistant Attorney General Anne Bingaman of the Antitrust Division has not had anything to do with the bringing of this case. This case was not brought nor was the Department of Justice involved in it in any way.

I favor the enforcement of antitrust laws and normally am very careful about exclusions or exemptions to the antitrust law. This limited instance, however, I believe, is one so important and so vital to public policy purpose that to subject the calculation of charitable gifts to antitrust scrutiny is something that we might want to avoid. Moreover, the bill has been crafted in an extremely narrow manner, and so it will not apply to any potential anticompetitive conduct.

The measure before us will overturn a legal action brought in a Federal court challenging the actions of the American Council on Gift Annuities in recommending annuity rates for non-profits. These annuity rates represent complex calculations which allow donors to receive a reasonable future income and a tax deduction while preserving much of the gift’s value for the charity. If the courts find the antitrust laws apply to these actions, it would cost our charities billions of dollars in resources and this would come at the expense of urgently needed civic and charitable needs at a time when they are more vital than ever to those who need them.

I would like to point out that the case that has been referenced has not been concluded. No decision has been rendered. And so we are acting in a very zealous fashion to make sure that no outcome that would cast a doubt over many of the activities of non-profits could ever occur.

I must make one observation, though, that we are here under the corrections day calendar, Mr. Speaker. There have been 5 correction days and 7 bills so far, but might I point out that this measure could have perhaps more properly been brought under suspension of the rules. We have bipartisan support, there is little opposition, but to suggest that the Sherman Act and the Clayton Act, the antitrust laws of the Federal Government, should be subject to a corrections day revision I do not think speaks very thoughtfully about the importance of our bill, and the fact that the amendment we are making is neither ludicrous nor arbitrary. It is a serious change that we are making. We are making it in anticipation of a decision that nobody knows what would have happened. I think we are quite properly removing a cloud

from over charitable gifts in the first place.

With that very minor and I hope not too nagging technicality, I also, as an original cosponsor of the legislation, urge Members to support the passage of this measure.

Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. STARK].

□ 1515

Mr. STARK. Mr. Speaker, I thank the gentleman for his kindness.

I want to support H.R. 2525, granting antitrust relief to charitable gift annuities, because we are going to need some more charitable gifts.

Now, to my modern-day pharisees on the other side of the aisle, I would point out it is, indeed, a Christian thing to do to encourage giving. The Bible uses the word "give" 862 times, and the phrase "stop giving" does not appear at all. But the Republicans are stopping giving.

H.R. 2525 may help that. But I wonder, and I am not a lawyer so I would have to rely on the Committee on the Judiciary, low-income energy assistance is being cut. Should we, therefore, give an exemption to the oil companies?

Food stamps are being capped and cut 20 percent.

POINT OF ORDER

Mr. HYDE. Mr. Speaker, point of order. Should the gentleman's remarks be confined to the bill and not to extraneous matter that may be lurking within his fertile imagination?

The SPEAKER pro tempore (Mr. BARR). The gentleman is correct. The Chair would admonish the gentleman from California to limit his remarks to the subject matter of H.R. 2525 currently pending before this body.

Mr. STARK. I thank the Speaker, and I shall continue to talk about granting of antitrust relief to encourage gift annuities, which I believe is the bill, the nexus of the relationship.

For instance, Medicare, which is being cut where it pays for debt for low-income seniors, the hospitals very much want an antitrust exemption, which is really the nexus of this bill.

Would it not be wise to correct the Republican mistake of cutting Medicare and to give hospitals an antitrust exemption?

Or, in the same vein, H.R. 2525 allows antitrust relief. Would it not be good to give antitrust relief to the landlords of Macy's and Wal-Mart because of the \$33 billion in earned income tax credits being cut out of low-income people while rich people will not need it? I suggest that is within the nexus of H.R. 2525 and antitrust relief.

Finally, college aid is being cut \$5 billion. Last weekend Muskingum College in Ohio was dropping tuition from \$13,000 a year to \$9,000 a year. I remember when MIT and the Ivy leagues were clamped for antitrust for getting together on student aid.

Why not give the college antitrust relief? Then we will not need the col-

lege loan program that the Republican are gutting.

So I say support H.R. 2525. Start a movement. Replace the \$254 billion in charitable cuts the Republicans are making with a Thousand Points of Light.

I urge support of the bill.

Mr. THORNBERRY. Mr. Speaker, I rise today to add my support to the effort being made to assist our Nation's charities, universities, hospitals, and other organizations that hold as their sole objective assisting the needy. The Philanthropy Protection Act and the Charitable Gift Annuity Antitrust Relief Act are necessary steps toward restoring the interpretation of the purpose of charitable gifts. Without these two pieces of legislation, the foundation for donating charitable gifts and trusts will be eliminated.

Because of a lawsuit filed in my district, organizations ranging from the Girl Scouts of America and the Southern Baptist Foundation to the Red Cross and Texas Tech University will be in true danger of losing their primary source of revenue. In an era when we are asking Americans to take greater responsibility for themselves, their families, and their neighbors, we must protect charitable organizations' ability to continue their work.

The two acts offered on the House floor today will establish charitable gift annuities as an exemption from Federal antitrust and securities laws that require interest return at market rates. This will enable charitable organizations to continue to accept planned giving donations from individuals, pay out reasonable annual returns to the donor and provide the excess interest to benevolent activities.

People who give charitable gifts do not do it to get rich—they do it mainly to help others. Using charitable gift annuities and charitable trusts makes it possible for donors to make a contribution, while still retaining some income from their gift. This flexible arrangement allows the funds to be used to care for and educate the less fortunate while at the same time providing investment income for the donor.

In light of the immense benefit of these kind of gifts, it is only unfortunate that these bills were precipitated by some heirs seeking to retain the donations for their own use. Although this originated in the 13th District in Texas, the effects of these two acts will benefit the entire Nation. It is for these reasons that I am proud to join in this bipartisan effort.

Mr. CONYERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HYDE. Mr. Speaker, I just want to say how pleasant it is to have the gentleman from Michigan [Mr. CONYERS] on our side.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to the rule, the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken.

Mr. HYDE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, further proceedings on this question are postponed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12, rule I, the Chair declares the House in recess until 5:30 p.m.

Accordingly (at 3 o'clock and 20 minutes p.m.), the House stood in recess until 5:30 p.m.

□ 1730

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. BARR) at 5 o'clock and 30 minutes p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair will now put the questions that were postponed earlier today in the order in which each question was entertained.

Votes will be taken in the following order:

H.R. 2519 de novo; and

H.R. 2525 by the yeas and nays.

The Chair will reduce to 5 minutes the time for any electronic vote after the first such vote in this series.

PHILANTHROPY PROTECTION ACT OF 1995

The SPEAKER pro tempore. The pending business is the question de novo on the passage of the bill, H.R. 2519, on which further proceeding were postponed.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the passage of the bill.

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

Mr. KLECZKA. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 421, nays 0, not voting 11, as follows:

[Roll No. 822]

YEAS—421

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|-------------|--------------|-----------|
| Abercrombie | Baker (CA) | Bartlett |
| Ackerman | Baker (LA) | Barton |
| Allard | Baldacci | Bass |
| Andrews | Ballenger | Bateman |
| Archer | Barcia | Becerra |
| Armey | Barr | Beilenson |
| Bachus | Barrett (NE) | Bentsen |
| Baesler | Barrett (WI) | Bereuter |