

NOT VOTING—5

Andrews Lewis (GA) Snowbarger  
Hunter Schiff

□ 1517

Messrs. BOSWELL, RAHALL, and WISE changed their vote from “yea” to “nay.”

Mr. SESSIONS changed his vote from “nay” to “yea.”

So the previous question was ordered. The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to. A motion to reconsider was laid on the table.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE CURRENT RESOLUTION 65

Mr. MOAKLEY. Mr. Speaker, I ask unanimous consent to remove the name of the gentleman from Colorado [Mr. BOB SCHAFFER] as a cosponsor of House Concurrent Resolution 65. The name of gentleman from Colorado was inadvertently added by my staff. The correct name should have been the gentleman from Colorado [Mr. DAN SCHAEFER].

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

There was no objection.

VOLUNTEER PROTECTION ACT OF 1997

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, the pending business is the question of suspending the rules and passing the bill, H.R. 911, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from South Carolina [Mr. INGLIS] that the House suspend the rules and pass the bill, H.R. 911, as amended, on which the yeas and nays are ordered.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The recording machines are now working. Members will record their vote by electronic device.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 390, nays 35, not voting 9, as follows:

[Roll No. 150]

YEAS—390

Abercrombie Bartlett Boehner  
Ackerman Barton Bonilla  
Aderholt Bass Bonior  
Allen Bateman Bono  
Archer Bentsen Borski  
Armey Bereuter Boswell  
Bachus Berry Boucher  
Baesler Bilbray Boyd  
Baker Bilirakis Brady  
Baldacci Bishop Brown (FL)  
Ballenger Blagojevich Brown (OH)  
Barcia Bliley Bryant  
Barr Blumentauer Bunning  
Barrett (NE) Blunt Burr  
Barrett (WI) Boehlert Burton

Buyer Gutknecht Millender-  
Callahan Hall (OH) McDonald  
Calvert Hall (TX) Miller (CA)  
Camp Hamilton Miller (FL)  
Campbell Hansen Minge  
Canady Harman Mink  
Cannon Hastert Moakley  
Capps Hastings (WA) Molinari  
Cardin Hayworth Moran (KS)  
Carson Hefley Moran (VA)  
Castle Hefner Morella  
Chabot Herger Murtha  
Chambliss Hill Myrick  
Chenoweth Hillery Neal  
Christensen Hinchey Nethercutt  
Clay Hinojosa Neumann  
Clement Hobson Ney  
Clyburn Hoekstra Northrup  
Coburn Holden Norwood  
Collins Hooley Nussle  
Combest Horn Obey  
Condit Hostettler Olver  
Cook Houghton Ortiz  
Cooksey Hoyer Owens  
Costello Hulshof Oxley  
Cox Hutchinson Packard  
Coyne Hyde Pallone  
Cramer Inglis Pappas  
Crane Istook Parker  
Crapo Jackson-Lee Pascrell  
Cubin (TX) Pastor  
Cummings Jenkins Paxon  
Cunningham John Payne  
Danner Johnson (CT) Pease  
Davis (FL) Johnson (WI) Pelosi  
Davis (VA) Johnson, E. B. Peterson (MN)  
Deal Johnson, Sam Peterson (PA)  
DeFazio Jones Petri  
DeGette Kanjorski Pickering  
DeLauro Kaptur Pickett  
DeLay Kasich Pitts  
Dellums Kelly Pomeroy  
Diaz-Balart Kennedy (MA) Porter  
Dickey Kennedy (RI) Portman  
Dicks Kennelly Poshard  
Dingell Kildee Price (NC)  
Dixon Kilpatrick Pryce (OH)  
Dooley Kim Quinn  
Doolittle Kind (WI) Radanovich  
Doyle King (NY) Rahall  
Dreier Kingston Ramstad  
Duncan Kleczka Redmond  
Dunn Klink Regula  
Edwards Klug Reyes  
Ehlers Knollenberg Riggs  
Ehrlich Kolbe Riley  
Emerson LaHood Rivers  
Engel Lampson Rodriguez  
English Roemer  
Ensign Lantos Rogan  
Eshoo Largent Rogers  
Etheridge Latham Rohrabacher  
Evans LaTourrette Ros-Lehtinen  
Everett Lazio Rothman  
Ewing Leach Rothman  
Farr Levin Roukema  
Fawell Lewis (CA) Royce  
Fazio Lewis (KY) Rush  
Flake Linder Ryun  
Flake Lipinski Sabo  
Foglietta Livingston Salmon  
Foley LoBiondo Sanchez  
Forbes Lowey Sanders  
Ford Lucas Sanford  
Fowler Luther Sawyer  
Fox Maloney (CT) Saxton  
Frank (MA) Maloney (NY) Scarborough  
Franks (NJ) Manton Schaefer, Dan  
Frelinghuysen Martinez Schaefer, Bob  
Frost Mascara Schumer  
Furse Matsui Sensenbrenner  
Gallegly McCarthy (MO) Serrano  
Ganske McCarthy (NY) Sessions  
Gejdenson McCollum Shadegg  
Gekas McCrery Shaw  
Gephardt McCreery Shays  
Gibbons McDade Sherman  
Gilchrest McDermott Shimkus  
Gillmor McGovern Shuster  
Gilman McHale Sisisky  
Gonzalez McHugh Skaggs  
Goode McLinnis Skeeen  
Goodlatte McIntosh Skelton  
Goodling McKeon Slaughter  
Gordon McKinney Smith (MI)  
Goss McNulty Smith (NJ)  
Graham Meehan Smith (OR)  
Granger Menendez Smith (TX)  
Green Metcalf Smith, Adam  
Gutierrez Mica Smith, Linda

Snyder Taylor (MS) Wamp  
Solomon Taylor (NC) Watkins  
Souder Thomas Waxman  
Spence Thompson Weldon (FL)  
Spratt Thornberry Weller  
Stabenow Thune Wexler  
Stark Thurman Weygand  
Stearns Tiahrt White  
Stenholm Torres Whitfield  
Stokes Towns Wicker  
Strickland Trafficant Wise  
Stump Turner Wolf  
Stupak Upton Woolsey  
Sununu Velazquez Wynn  
Talent Vento Yates  
Tanner Visclosky Young (AK)  
Tauzin Walsh Young (FL)

NAYS—35

Becerra Hastings (FL) Oberstar  
Berman Hilliard Paul  
Brown (CA) Jackson (IL) Pombo  
Clayton Jefferson Rangel  
Coble Kucinich Roybal-Allard  
Conyers LaFalce Sandlin  
Davis (IL) Lofgren Scott  
Delahunt Manzullo Tauscher  
Deutsch Markey Tierney  
Doggett Meek Waters  
Fattah Mollohan Watt (NC)  
Filner Nadler

NOT VOTING—9

Andrews Lewis (GA) Snowbarger  
Greenwood McIntyre Watts (OK)  
Hunter Schiff Weldon (PA)

□ 1526

So (two-thirds having voted in favor thereof) the rules were suspended, and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Mr. INGLIS of South Carolina. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 543) to provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers, and ask for its immediate consideration in the House.

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

There was no objection.

The Clerk read the Senate bill, as follows:

S. 543

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Volunteer Protection Act of 1997”.

SEC. 2. FINDINGS AND PURPOSE.

The Congress finds and declares that—  
(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because—

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and

(ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) PURPOSE.—The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

### SEC. 3. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

(a) PREEMPTION.—This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

(b) ELECTION OF STATE REGARDING NON-APPLICABILITY.—This Act shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

- (1) citing the authority of this subsection;
- (2) declaring the election of such State that this Act shall not apply, as of a date certain, to such civil action in the State; and
- (3) containing no other provisions.

### 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) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not 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; and

(4) 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) possess an operator's license; or

(B) maintain insurance.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS TO ORGANIZATIONS AND ENTITIES.—Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION OR ENTITY.—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.

(d) EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION.—If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) LIMITATION ON PUNITIVE DAMAGES BASED ON THE ACTIONS OF VOLUNTEERS.—

(1) GENERAL RULE.—Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes 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.

(2) CONSTRUCTION.—Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

(1) IN GENERAL.—The limitations on the liability of a volunteer under this Act shall not apply to any misconduct that—

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to effect subsection (a)(3) or (e).

### SEC. 5. LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b).

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

### SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) HARM.—The term "harm" includes physical, nonphysical, economic, and noneconomic losses.

(3) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) **NONPROFIT ORGANIZATION.**—The term “nonprofit organization” means—

(A) any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; or

(B) any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes.

(5) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) **VOLUNTEER.**—The term “volunteer” means an individual performing services for a nonprofit organization or a governmental entity who does not receive—

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

(B) any other thing of value in lieu of compensation,

in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

#### SEC. 7. EFFECTIVE DATE.

(a) **IN GENERAL.**—This Act shall take effect 90 days after the date of enactment of this Act.

(b) **APPLICATION.**—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act, without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before such effective date.

MOTION OFFERED BY MR. INGLIS OF SOUTH CAROLINA

Mr. INGLIS of South Carolina. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. INGLIS of South Carolina moves to strike all after the enacting clause of the bill, S. 534, and insert in lieu thereof the text of the bill, H.R. 911, as passed by the House.

The motion was agreed to.

The Senate bill was ordered read a third time, was read the third time and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 911) was laid on the table.

#### INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

The SPEAKER pro tempore. Pursuant to House Resolution 153 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 408.

□ 1529

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 408) to amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes, with Mr. GUTKNECHT in the chair.

The Clerk read the title of the bill.

□ 1530

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from New Jersey [Mr. SAXTON] and the gentleman from California [Mr. MILLER], each will control 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Chairman, I yield myself such time as I may consume.

I rise in support of H.R. 408, officially called the International Dolphin Conservation Program Act. This, Mr. Chairman, is essentially an ocean habitat management act to protect ocean species in the eastern tropical Pacific, including not just dolphins, but tuna fish as well, particularly juvenile tuna, sea turtles, bill fish, sharks and other species.

This bill has been worked on for the last 3 years by the gentleman from Alaska [Mr. YOUNG], our committee chairman, and by the gentleman from Maryland [Mr. GILCREST], and by the gentleman from California [Mr. CUNNINGHAM], and by others on the committee.

This is an international declaration, the Declaration of Panama, a binding international agreement signed by 12 nations on October 4, 1995. The nations are Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, Venezuela, and of course the United States. The United States was ably represented by our State Department, and these issues are, of course, of great importance to the American people as well as to the international community.

During the 104th Congress, a nearly identical measure was passed by the House overwhelmingly with a 316 to 108 vote. But the Senate had insignificant time to consider the measure before the sine die adjournment. This year's measure, H.R. 408, amends the Mammal Protection Act to encourage fishing methods which protect dolphins and the other important species of marine life which I mentioned.

The bipartisan bill has the support of the administration and various environmental groups, including Greenpeace, the World Wildlife Fund, the Center for Marine Conservation, the National Wildlife Federation, and the Environmental Defense League.

Mr. Chairman, I would just like to say that the history of this bill is very, very important. In 1992, we passed a bill to protect dolphins in the eastern tropical Pacific. That bill worked with American fishermen. It worked because of the mechanism that was set up, but it did not work, Mr. Chairman, in the international community because an American law has little force and effect on foreign fishermen, particularly foreign fishermen that found other markets and continued to fish on dolphins or tuna fish and market them elsewhere.

So I congratulate the Committee on Resources for this bill. I hope that ev-

eryone will vote for it. It is good legislation and our distinguished colleague, its author, the gentleman from Maryland [Mr. GILCREST] should be congratulated for his hard work, as well as the gentleman from California [Mr. CUNNINGHAM], for initially bringing this matter to our attention more than 3 years ago.

This is a true marine ecosystem protection bill and worthy of Members' support. I urge all Members to vote in favor.

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

Mr. MILLER of California. Mr. Chairman, I yield 1 minute to the gentleman from Hawaii [Mr. ABERCROMBIE].

Mr. ABERCROMBIE. Mr. Chairman, today I rise in strong opposition to H.R. 408, the International Dolphin Conservation Program Act, with all due respect to my good friend, the gentleman from Maryland [Mr. GILCREST] and the gentleman from New Jersey [Mr. SAXTON].

This bill is not about protecting dolphins; this bill is about the U.S. Department of State arbitrarily dictating changes in U.S. law without consulting Congress until after the deed is done.

I have further remarks, Mr. Chairman, that I will submit, but in the interest of time, I would just like to follow up on that remark.

During committee markup I offered an amendment on bycatch reduction. The issue of bycatch should be addressed in this fishery and every other fishery with a strong bycatch reduction requirement. The gentleman from Maryland [Mr. GILCREST], I am happy to say, was willing to accept the amendment. The gentleman from New Jersey [Mr. SAXTON] was willing to cooperate.

However, word came down to the committee that the State Department was firmly opposed to any changes in the legislation. The State Department does not want to accept the amendment, did not want to accept our amendment, because it would strengthen the commitment by including specific bycatch reduction.

Mr. Chairman, today I rise in strong opposition to H.R. 408, the International Dolphin Program Act. With all due respect to my good friends from Maryland, Mr. GILCREST, and from New Jersey, Mr. SAXTON, this bill is not about protecting dolphins. This bill is about the U.S. Department of State arbitrarily dictating changes in U.S. law without consulting Congress until after the deed is done.

In 1990, Mexico and Venezuela filed a formal complaint with GATT after the Mexican tuna was embargoed for not achieving comparability with the United States tuna fleet. The GATT panel ruled that the United States had no right to use trade restrictions on a product based on the way the product was made or harvested. This finding has broad implications for a variety of U.S. consumer protection, health and safety, and environmental laws. However it is important to point out that the panel did not address the dolphin-safe label itself.

Since the ruling, Mexico has been pressuring the United States to change its dolphin