

Now, if that is great, beam me up, Mr. Speaker.

TRADE WITH CHINA

(Mr. BARRETT of Nebraska asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARRETT of Nebraska. Mr. Speaker, tomorrow the House will again debate the continuation of normal trade relations with China. This debate has become the whipping post on which to affix our concerns with a host of issues which we have affecting China.

Some opponents of trade with China, while doing a good job in publicizing the Chinese Government's atrocities, are short-sighted. So, we cease trading with China? Then what? Do we end diplomatic relations with China? Do we blockade China? Our relations are far, far too complicated to be lumped into a single vote on continuing normal trade relations with China.

The House should debate a comprehensive China bill that will give the American people and China full knowledge of the consequences of their behavior and what our response will be. I urge my colleagues to continue normal trade relations with China. We cannot burn our trade with China on the short-sighted assumption that China, a new China, will be born of its ashes.

TWO CHEERS FOR TITLE 9, WITH MORE TO COME

(Ms. NORTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. NORTON. Mr. Speaker, today is the 25th anniversary of a landmark civil rights statute. Title 9 is singularly responsible for remarkable progress in eliminating sex discrimination from athletic and sports programs in schools and colleges.

Two years before title 9's effective date, an estimated 50,000 men, but only 50 women, were attending college on athletic scholarships. Today, women account for \$137 million in Division I athletic scholarships but men get \$407 million. Way to go; but a long way to go, too.

Title 9 requires equal allocation between male and female athletes. There are very good reasons for insisting upon strict enforcement, and many of them have little to do with athletics. Girls who participate in sports are more likely to graduate from high school and from college and have less depression.

Surely these are reasons enough to restore enforcement funds for States that Congress ripped out of title 9 last year. For now, only two cheers for title 9, with more to come.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 5 of rule

I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after debate has concluded on all motions to suspend the rules, but not before 5 p.m. today.

FEDERAL TORT CLAIMS CLARIFICATION ACT

Mr. HYDE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1901) to clarify that the protections of the Federal Tort Claims Act apply to the members and personnel of the National Gambling Impact Study Commission.

The Clerk read as follows:

H.R. 1901

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

SECTION 1. APPLICABILITY OF FEDERAL TORT CLAIMS PROVISIONS.

Section 6 of the National Gambling Impact Study Commission Act (18 U.S.C. 1955 note) is amended by adding at the end the following:

“(e) APPLICABILITY OF FEDERAL TORT CLAIMS PROVISIONS.—For purposes of sections 1346(b) and 2401(b) and chapter 171 of title 28, United States Code, the Commission is a ‘Federal agency’ and each of the members and personnel of the Commission is an ‘employee of the Government’.”.

SEC. 2. CONSTRUCTION.

The amendment made by section 1 shall not be construed to imply that any commission is not a “Federal agency” or that any of the members or personnel of a commission is not an “employee of the Government” for purposes of sections 1346(b) and 2401(b) and chapter 171 of title 28, United States Code.

SEC. 3. EFFECTIVE DATE.

The amendment made by section 1 shall be effective as of August 3, 1996.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] and the gentleman from Massachusetts [Mr. FRANK] each will control 20 minutes.

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

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

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

Mr. Speaker, today the House considers H.R. 1901, a bill to clarify that the protections of the Federal Tort Claims Act apply to members and employees of the National Gambling Impact Study Commission.

Last year, we authorized the Commission to conduct a comprehensive 2-year study of the impact of gambling on the United States. The members of the commission have now been appointed and the commission held its first meeting last Friday. Two members of the commission have called me regarding their concerns about incurring personal liability as a result of their work on the commission.

Normally, under the Federal Tort Claims Act, when someone sues a Federal employee for acts occurring within the scope of his or her employment, the United States substitutes itself as the party, defends the action, and pays any judgment. I believe that the commission is covered under the FTCA because it is an independent establishment of the United States.

For that reason, I initially believed we could resolve this matter by an exchange of letters with the Department of Justice. After several weeks of study, the Department has not been able to come to a clear resolution of whether the commission is or is not covered by the FTCA. With the commission having already begun its work, I believe we must move forward with a legislative solution.

H.R. 1901 simply provides that for purposes of the Federal Tort Claims Act, the commission is a Federal agency and its members and employees are Federal employees. At the suggestion of the gentleman from Michigan, Mr. JOHN CONYERS, we have added language that makes it clear that by acting explicitly in this case we will not by implication affect the FTCA's status of any other commission.

As it does in all FTCA cases, the Department of Justice will still make the determination of whether the particular conduct at issue is within the scope of employment. Thus, members and employees of the commission will not receive any special treatment; rather, they will receive the same treatment as all other Federal employees. This treatment will apply equally to all members and employees of the commission. The members and employees should not have to put their personal assets at risk in order to serve their country. For that reason, I urge the house to suspend the rules and pass the bill.

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

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I agree with what the gentleman from Illinois [Mr. HYDE] has said about this bill. I do feel constrained to point out that I think these are unnecessary Federal employees doing an unnecessary job. I still do not understand why the Federal Government thinks the States cannot handle this. But as long as we have set up this commission, over my objection, there is no reason to immunize these commissioners.

The Federal Tort Claims Act is a perfectly sensible approach. I have to say it is unlikely that any of the commissioners are going to get sued. I am not sure for what. I do not think counting cards at a casino where they play blackjack is a subtle offense. But in case it is, if the commissioners are sued for tortious interfering with other people's gambling, they will be able to defend themselves under the Federal Tort Claims Act. This seems to me a

perfectly reasonable solution to a problem which we should not have allowed to arise in the first place.

Mr. CONYERS. Mr. Speaker, I rise in support of this legislation amending the National Gambling Impact Study Commission. Chairman HYDE introduced this bill after two of the Commissioners, James Dobson, president of Focus on the Family, and Kay James, dean of Regent University, refused to serve on the commission unless they were assured that they cannot be sued for their work on the Commission. Apparently, Mr. Dobson served on a pornography commission in the 1980's at which time he was sued over his work on the commission. Although the Department of Justice eventually did defend him, it was only because the Attorney General had been named in the same suit.

Now, because the Department of Justice will not agree that a member of the Gambling Commission is a Federal employee for purposes of liability under the Federal Tort Claims Act, Chairman HYDE has introduced this legislation specifically providing that the Gambling Commission is a Federal agency under FTCA and that all members and personnel of the Commission are Federal employees under the act.

The legislation also includes a rule of construction making it clear that this bill does not imply that other commissions or other members or personnel on other commissions are not covered by the FTCA.

Given the fact that two commissioners may resign without assurances that they will not be sued for their work, I understand the desire to quickly pass this legislation. Nonetheless, I do have some concerns.

When we have created other commissions in the past, we have been silent as to whether or not the commissioners were covered by the Federal Tort Claims Act. I don't know whether we assumed they were covered or we assumed they weren't covered, but it seems to me that we should consider the consequences of what it means to change the law to clearly cover such individuals. This issue is likely to come up again since I would imagine that other people might also be hesitant to serve on future commissions without assurances that they will be defended in the event of suits, particularly given that at least the Gambling Commissioners now have this protection.

I think it would be very useful for the committee to hold hearings considering the definitions of Federal agency and employee of the Government under the Federal Tort Claims Act. There are questions not only as to whether commissions are covered, but as to whether committees, boards and other quasi-governmental organizations are covered as well. Since the Federal Tort Claims Act is unclear in this regard, perhaps the best course of action would be to amend that act itself to be clear as to which governmental and quasi-governmental entities are covered.

The bottom line is that we shouldn't have to guess as to whether or not a certain entity is covered by the Federal Tort Claims Act. If the law is unclear, we should determine what should be covered and then make certain that those entities are covered. I hope the chairman will consider holding hearings and perhaps even moving legislation—should it be appropriate—to clear up this morass.

In the meantime, however, I support the passage of this legislation.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield back the balance of my time.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois [Mr. HYDE] that the House suspend the rules and pass the bill, H.R. 1901.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

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. 1901.

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

There was no objection.

CHARITABLE DONATION ANTITRUST IMMUNITY ACT OF 1997

Mr. HYDE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1902) to immunize donations made in the form of charitable gift annuities and charitable remainder trusts from the antitrust laws and State laws similar to the antitrust laws.

The Clerk read as follows:

H.R. 1902

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 Donation Antitrust Immunity Act of 1997".

SEC. 2. IMMUNITY FROM ANTITRUST LAWS.

The Charitable Gift Annuity Antitrust Relief Act of 1995 (15 U.S.C. 37 et seq.) is amended—

(1) by amending section 2 to read as follows:

"SEC. 2. IMMUNITY FROM ANTITRUST LAWS.

"(a) INAPPLICABILITY OF ANTITRUST LAWS.—Except as provided in subsection (d), the antitrust laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.

"(b) IMMUNITY.—Except as provided in subsection (d), any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning, issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.

"(c) TREATMENT OF CERTAIN ANNUITIES AND TRUSTS.—Any annuity treated as a charitable gift annuity, or any trust treated as a charitable remainder trust, either—

"(1) in any filing by the donor with the Internal Revenue Service; or

"(2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;

shall be conclusively presumed for the purposes of this Act to be respectively a charitable gift annuity or a charitable remainder trust, unless there has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the donor's annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder trust when created.

"(d) LIMITATION.—Subsections (a) and (b) shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift annuities, or charitable remainder trusts, created after the State enacts a statute, not later than December 8, 1998, that expressly provides that subsections (a) and (b) shall not apply with respect to such charitable gift annuities and such charitable remainder trusts."; and

(2) in section 3—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (1);

(C) by inserting after paragraph (1), as so redesignated, the following:

"(2) CHARITABLE REMAINDER TRUST.—The term 'charitable remainder trust' has the meaning given it in section 664(d) of the Internal Revenue Code of 1986 (26 U.S.C. 664(d)).";

(D) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(E) by inserting after paragraph (3) the following:

"(4) FINAL DETERMINATION.—The term 'final determination' includes an Internal Revenue Service determination, after exhaustion of donor's and donee's administrative remedies, disallowing the donor's charitable deduction for the year in which the initial contribution was made because of the donee's failure to comply at such time with the requirements of section 501(m)(5) or 664(d), respectively, of the Internal Revenue Code of 1986 (26 U.S.C. 501(m)(5), 664(d))."

SEC. 3. APPLICATION OF ACT.

This Act, and the amendments made by this Act, shall apply with respect to all conduct occurring before, on, or after the date of the enactment of this Act and shall apply in all administrative and judicial actions pending on or commenced after the date of the enactment of this Act.

SEC. 4. STUDY AND REPORT.

(a) STUDY AND REPORT.—The Attorney General shall carry out a study to determine the effect of this Act on markets for non-charitable annuities, charitable gift annuities, and charitable remainder trusts. The Attorney General shall prepare a report summarizing the results of the study.

(b) DETAILS OF STUDY AND REPORT.—The report referred to in subsection (a) shall include any information on possible inappropriate activity resulting from this Act and any recommendations for legislative changes, including recommendations for additional enforcement resources.

(c) SUBMISSION OF REPORT.—The Attorney General shall submit the report referred to in subsection (a) to the Chairman and the ranking member of the Committee on the Judiciary of the House of Representatives, and to the Chairman and the ranking member of the Committee on the Judiciary of the Senate, not later than 27 months 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 Massachusetts [Mr. FRANK] each will control 20 minutes.