

NCWGE NATIONAL COALITION FOR WOMEN AND GIRLS IN
EDUCATION

September 13, 2004

Dear Representative:

On behalf of the National Coalition for Women and Girls in Education (NCWGE), a nonprofit coalition of more than 50 organizations dedicated to improving educational opportunities for women and girls, we urge you to vote against H.R. 3369, the “Nonprofit Athletic Organization Protection Act of 2003.” If enacted, this bill could allow nonprofit athletic organizations to evade civil rights laws and unlawfully discriminate on the basis of sex, race, disability, or other characteristics protected by federal and/or state law.

While the preamble suggests that the bill’s intent is to protect nonprofit athletic organizations from liability arising from claims of *ordinary negligence* relating to the adoption of rules for competitions/practices, the actual text of the bill is much broader and creates the risk that such organizations could evade their obligations under other laws having nothing to do with negligence, such as federal and state civil rights laws. More specifically, the bill provides that “a nonprofit athletic organization [which includes the employees, agents, and volunteers of such organization] shall not be liable for harm caused by an act or omission of the . . . organization in the adoption of rules for sanctioned or approved athletic competitions or practices” This language creates the risk of eliminating valid discrimination claims such as those found in the following cases:

- ◆ In *Michigan High School Athletic Association v. Communities for Equity*, federal district and appellate courts in the Sixth Circuit have ruled that the state high school athletic association’s practice of scheduling six girls’ sports, and no boys’ sports, in nontraditional and/or disadvantageous seasons discriminated against female athletes in violation of Title IX of the Education Amendments of 1972 and the U.S. Constitution. The court found that the association’s scheduling decisions harmed girls by limiting their opportunities for athletic scholarships and collegiate recruitment, limiting their opportunities to play in club or Olympic development programs, and causing them to miss opportunities for awards and recognition.
- ◆ In *Cureton v. NCAA*, a class action lawsuit filed by African-American student athletes challenged the National Collegiate Athletic Association’s rule requiring all potential student-athletes to achieve a minimum score on the SAT or the ACT as having a disparate impact on African-American students, in violation of Title VI of the Civil Rights Act of 1964. Early on, the Educational Testing Services (ETS), which designed the SAT, criticized the NCAA’s then-proposed use of a fixed cut-off score and warned such a rule would have such a disproportionate impact, and it did. But only in the face of a lawsuit did the NCAA change its rule so that student athletes could be eligible for Division I schools on the basis of their grades, not just their test scores.
- ◆ In *PGA Tour, Inc. v. Martin*, the U.S. Supreme Court ruled that the Americans with Disabilities Act requires the PGA Tour to allow professional golfer Casey Martin, who

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suffers from a circulatory disorder making it painful to walk long distances, to ride in a golf cart between shots at Tour events. The nonprofit PGA had ruled that walking the course is an integral part of golf, and Martin would gain an unfair advantage using the cart. In a 7-2 decision, the Supreme Court decided that the PGA could not deny Martin equal access to its tours on the basis of his disability.

Entities that violate our civil rights laws must be held accountable if these laws are to mean anything, and nonprofit athletic organizations are no exception.

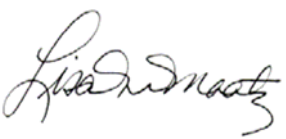
In addition, H.R. 3369 allows nonprofit athletic organizations to sue, but not be sued. It is the height of hypocrisy to suggest that these organizations should be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

Finally, the bill preempts state law that provides less liability protection to nonprofit athletic organizations but not state law that gives additional protection to nonprofit athletic organizations. But there is no need for Congress to preempt state law at all. If states want to protect certain state athletic organizations, they can do so right now without any action by Congress.

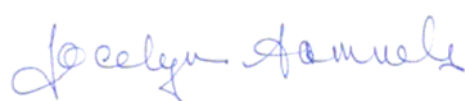
Supporters of this bill claim that it will reduce litigation, but in fact, it would create additional litigation about who is covered and what types of claims are precluded under it. More importantly, we urge you to consider the risks that this bill could be interpreted to exempt nonprofit athletic organizations, which exercise control over the lives of student-athletes, coaches, and many others, from treating these individuals fairly and in accordance with our nation's civil rights laws.

Thank you for your consideration. If you have any questions, please contact either of us.

Sincerely,



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