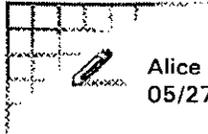


NLWJC - Kagan

DPC - Box 037 - Folder 009

Product Liability (Volunteers)

Product liability -
volunteers



Alice E. Shuffield
05/27/97 05:19:48 PM

Record Type: Record

To: Ellen S. Seidman/OPD/EOP, Peter G. Jacoby/WHO/EOP, Elena Kagan/OPD/EOP, Charles
Konigsberg/OMB/EOP

cc: Lawrence J. Haas/OMB/EOP, John A. Gribben/OMB/EOP

Subject: Volunteer Bill

OMB's press office received calls today regarding the Volunteer bill, HR 911. Evidently, the AP says that Coverdell is telling reporters in Georgia that our Statement is incorrect. He says that the bill does not contain the "total prohibition on joint and several liability for non-economic damages." Our SAP (3rd paragraph) says the "total prohibition" would "unfairly and inequitably impact poor, sick, and older Americans."

Ellen, I understand that you and Larry Haas are trading calls to discuss.

Product liability -
volunteers

DRAFT -- NOT FOR RELEASE

May 21, 1997
(House)

H.R. 911 - Volunteer Protection Act of 1997
(Porter (R) Florida and 150 cosponsors)

The Administration supports the intent of ^{15/}H.R. 911 -- to facilitate the work of an ever-growing number of volunteers -- but ~~we~~ remain concerned with several of the bill's provisions.

In general, H.R. 911 is designed to protect non-profit or government volunteers from civil liability and punitive damages for harm caused during the course of their volunteer duties.

H.R. 911 would generally preempt State laws that are inconsistent with the limits provided in the bill, but State laws that provide additional protections to volunteers would not be preempted. States could choose to opt out of the bill's requirements for actions that only involve parties from that State. None of the bill's limitations on liability would apply to misconduct that constitutes a crime of violence, an act of international terrorism, a hate crime, or to any misconduct that involves intoxication, drug use, a sexual offense, or the violation of any State or Federal civil rights law.

The Administration will work with the Congress to resolve the following remaining concerns with this legislation: First, the prohibition on joint and several liability for non-economic damages would unfairly and inequitably impact poor, sick, and older Americans -- those most likely to use volunteer services. Second, sections 3(a) and 4(e)(2) apply the principle of one-way preemption: State laws that further limit volunteer liability are recognized, but those that expand plaintiff's rights are not. This is an inappropriate imbalance. Finally, the definition of "non-profit organization" remains too broad, encompassing organizations about which no independent judgment of their public benefit has been made.

Then two puns

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Schroeder), in consultation with Justice (Silas), Education (Somerville), HHS (Wallace), Labor (Taylor), Treasury (Levy), Corporation for National and Community Service (Sofer), NEC (Seidman), HR (VanWie), BASD (Balis).

H.R. 911 was ordered reported (with amendments) on May 13th by a vote of 20-7. The report has not been filed.

Administration Position to Date

The Administration opposed the Senate companion bill (S. 543) in a Senate SAP on April 29th because the bill would:

- potentially exempt certain "hate groups, street gangs, or violent militia" from liability;
- preempt state law without demonstrating the inadequacy of state law in this area. It also contains a one-way pre-emption of State law (State laws would be pre-empted if they favor plaintiffs, but not if they favor defendants); and
- abolish joint and several liability for non-economic damages (e.g. pain and suffering).

S. 543 was amended during Senate floor consideration to limit the scope of the liability protections to cover only volunteers. (S. 543 originally covered volunteers, non-profit organizations, and government entities.) The Senate amendments did not address the second and third objections listed above

The Senate passed the amended version of S. 543 on May 1st by a vote of 99-1.

The Administration has not taken a position on H.R. 911 or the Senate-passed version of S. 543.

Summary of H.R. 911

The following provisions of H.R. 911 are identical to the Senate-passed version of S. 543:

Civil Liability. H.R. 911 provides that non-profit or government volunteers would not be liable for harm caused by an act or omission of their volunteer duties, with certain exceptions. The volunteer would not be shielded from liability in cases: (1) of willful or criminal misconduct; (2) of gross negligence; or (3) where the volunteer does not have the State-required operators' licenses or insurance for certain equipment.

H.R. 911 would not affect State laws that limit volunteer liability subject to certain conditions (e.g., requiring mandatory training for volunteers or requiring insurance). In addition, the bill does not affect the liability of non-profits and government entities for harm caused by a volunteer

and would not prohibit organizations from bringing suit against their own volunteers.

Punitive Damages. H.R. 911 provides that punitive damages may not be awarded against a volunteer in an action related to a volunteer's activity, with certain exceptions. Punitive damages may only be awarded in cases where the claimant demonstrates "by clear and convincing evidence" that the volunteer caused the harm through willful or criminal misconduct or a conscious, flagrant indifference to the rights or safety of the individual.

Noneconomic Loss (pain and suffering, etc.). H.R. 911 would abolish joint and several liability for noneconomic losses. Therefore each volunteer only would be responsible for his/her portion of any noneconomic loss incurred by the claimant. Each volunteer would continue to be jointly and severally liable for any economic loss (medical expenses, lost earnings, etc.) incurred by the claimant.

Preemption of State Law. H.R. 911 would preempt State laws that are inconsistent with limits on volunteer liability that are provided in the bill, with certain exceptions. State laws that provide additional protections to volunteers would not be preempted. States may choose to opt out of the bill's requirements in civil actions against a volunteer that only involve parties from that State. To opt out, the State would have to enact a statute that: (1) cites and exercises the H.R. 911 opt-out authority, and (2) contains no other provisions.

Exceptions. None of the bill's limitations on liability would apply to misconduct that constitutes a crime of violence, an act of international terrorism, a hate crime, or to any misconduct that involves intoxication, drug use, a sexual offense, or the violation of any State or Federal civil rights law.

The differences between H.R. 911 and the Senate-passed version of S. 543 are listed below:

Effective Date. H.R. 911 would take effect 90 days after enactment and would only apply to actions that occur after the effective date of the bill. (S. 543 would apply only to claims filed after the effective date regardless of when the incident occurred.)

Additional Exceptions. H.R. 911 would not apply to organizations that practice actions covered by the Hate Crime Statistics Act (i.e., excludes the Klan, etc.). (S. 543 did not include this specific exception in the definition of "non-profit.")

Pay-As-You-Go Scoring

Per BASD (Balis) H.R. 911 would not affect direct spending and receipts, and therefore is not subject to the PAYGO requirement of the Omnibus Budget Reconciliation Act.

Legislative Reference Division
5/19/97 -- :00 a.m.

Product Liability -
volunteers

May 20, 1997
(House)

DRAFT -- NOT FOR RELEASE

H.R. 911 - Volunteer Protection Act of 1997
(Porter (R) Florida and 150 cosponsors)

H.R. 911 is a reasonable attempt to address the country's need for the services of an ever-growing number of volunteers. It is targeted to those acting without financial motives, and limited with respect to the types and extent of liability excluded. The bill permits States not only to opt out of the bill's provisions entirely but also to require proper licensing and evidence of financial responsibility. Application of the bill's provisions only to harm arising after the effective date effectively ties the bill's purpose -- to encourage volunteering -- to its effect.

While the Administration applauds the intent of H.R. 911, it remains concerned with several of its provisions. First, the total prohibition on joint and several liability for non-economic damages would unfairly and inequitably impact poor, sick, and older Americans -- those most likely to use volunteer services. Second, sections 3(a) and 4(e)(2) apply the principle of one-way preemption: State laws that further limit volunteer liability are recognized, but those that expand plaintiff's rights are not. This is an inappropriate imbalance. Finally, the definition of "non-profit organization" remains too broad, encompassing organizations about which no independent judgment of their public benefit has been made.

The Administration will work with the Congress to resolve these concerns.

* * * * *



Ellen S. Seidman

05/19/97 03:42:19 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: hhs

I'd also still be interested in seeing your proposed changes. ellne

----- Forwarded by Ellen S. Seidman/OPD/EOP on 05/19/97 03:44 PM -----



Ellen S. Seidman

05/19/97 03:41:33 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:

Subject: hhs

Here's the deal. HHS believes that current law is that private citizens volunteering for the USG, e.g., doctors helping out in a disaster, get the benefit of the FTCA, i.e., that they're immune from suit, and the USG is on the hook. They say it's hard enough to get these folks, and they want to be able to continue to provide this kind of assurance. They also say there's some disagreement with DOJ on the extent of the immunity.

This sounds like a reasonable thing to be worried about. We don't use many volunteers, but when we do, we really want them, and it's in potentially liability-generating situations.

Given what's likely to happen to this legislation, we tentatively worked up some language that says that one of our concerns is "we wish to ensure that this legislation does not affect current law, including the Federal Tort Claims Act, concerning private citizens who provide volunteer services for the federal government."

HHS is busily trying to get this cleared within the agency, but who knows when that might happen. I've therefore called Fran Allegra and alerted him to the issue and the proposed solution. He's going to run it by his FTCA folks to find out what gives. Obviously, one possibility is that this statute gives the volunteer MORE protection than they have under the FTCA and doesn't do anything concerning the USG's responsibility, but I can think of other possibilities too.

In any event, both Fran and HHS will get back to me.

I've alerted Ingrid Schroeder to the state of play. The bill is scheduled to come up on the suspension calendar on Wednesday.

Ellen

Product liability -
volunteers



Ellen S. Seidman

05/19/97 03:58:19 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Ingrid M. Schroeder/OMB/EOP

cc:

Subject: volunteers and hhs

Heard from DOJ. They claim there's no way on earth this statute could be read as overruling the EXPLICIT coverage of doctors under the FTCA that Congress enacted last year, over the OBJECTIONS of DOJ and HHS (long story). They also say there's no argument that anyone not a federal employee and not covered by the special doctor statute (Fran thinks it might also cover, e.g., EMTs) is covered by the FTCA, so this bill would provide them additional protection. In short, they would object to the addition of HHS's proposed language, which, of course, HHS has not yet sent over officially.

I think we wait to see if senior HHS people support sending the language. If they do -- if we get it officially -- then we have a conference call with us, HHS and DOJ to try to resolve the problem. But if I had to guess, I don't think we're going to be adding anything.

Ellen

Product liability -
volunteers



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 21, 1997
(House)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 911 - Volunteer Protection Act of 1997 (Porter (R) Florida and 156 cosponsors)

The Administration supports the intent of H.R. 911 – to facilitate the work of an ever-growing number of volunteers – but we remain concerned with several of the bill’s provisions.

H.R. 911 is a reasonable attempt to address the country’s need for the services of an ever-growing number of volunteers. It is targeted to those acting without financial motives, and limited with respect to the types and extent of liability excluded. The bill permits States not only to opt out of the bill’s provisions entirely but also to require proper licensing and evidence of financial responsibility. None of the bill’s limitations on liability would apply to misconduct that constitutes a crime of violence, an act of international terrorism, a hate crime, or to any misconduct that involves intoxication, drug use, a sexual offense, or the violation of any State or Federal civil rights law. Application of the bill’s provisions only to harm arising after the effective date effectively ties the bill’s purpose – to encourage volunteering – to its effect.

While the Administration applauds the intent of H.R. 911, it remains concerned about several of its provisions. First, the total prohibition on joint and several liability for non-economic damages would unfairly and inequitably impact poor, sick, and older Americans – those most likely to use volunteer services. Second, sections 3(a) and 4(e)(2) apply the principle of one-way preemption: State laws that further limit volunteer liability are recognized, but those that expand plaintiff’s rights are not. While perhaps appropriate in the context of encouraging individuals to volunteer, one-way preemption in general remains a troubling interference with state prerogatives. Finally, the definition of “non-profit organization” remains too broad, encompassing organizations about which no independent judgment of their public benefit has been made.

The Administration will work with the Congress to resolve these concerns.

* * * * *

Product liability -
volunteers

May 20, 1997
(House)

DRAFT -- NOT FOR RELEASE

H.R. 911 - Volunteer Protection Act of 1997
(Porter (R) Florida and 150 cosponsors)

H.R. 911 is a reasonable attempt to address the country's need for the services of an ever-growing number of volunteers. It is targeted to those acting without financial motives, and limited with respect to the types and extent of liability excluded. The bill permits States not only to opt out of the bill's provisions entirely but also to require proper licensing and evidence of financial responsibility. Application of the bill's provisions only to harm arising after the effective date effectively ties the bill's purpose -- to encourage volunteering -- to its effect.

While the Administration applauds the intent of H.R. 911, it remains concerned with several of its provisions. First, the total prohibition on joint and several liability for non-economic damages would unfairly and inequitably impact poor, sick, and older Americans -- those most likely to use volunteer services. Second, sections 3(a) and 4(e)(2) apply the principle of one-way preemption: State laws that further limit volunteer liability are recognized, but those that expand plaintiff's rights are not. This is an inappropriate imbalance. Finally, the definition of "non-profit organization" remains too broad, encompassing organizations about which no independent judgment of their public benefit has been made.

The Administration will work with the Congress to resolve these concerns.

* * * * *

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Schroeder), in consultation with Justice (Silas), Education (Somerville), HHS (Wallace), Labor (Taylor), Treasury (Levy), Corporation for National and Community Service (Sofer), NEC (Seidman), HR (VanWie), BASD (Balis).

H.R. 911 was ordered reported (with amendments) on May 13th by a vote of 20-7. The report has not been filed.

Administration Position to Date

The Administration opposed the Senate companion bill (S. 543) in a Senate SAP on April 29th because the bill would:

- potentially exempt certain "hate groups, street gangs, or violent militia" from liability;
- preempt state law without demonstrating the inadequacy of state law in this area. It also contains a one-way pre-emption of State law (State laws would be pre-empted if they favor plaintiffs, but not if they favor defendants); and
- abolish joint and several liability for non-economic damages (e.g. pain and suffering).

S. 543 was amended during Senate floor consideration to limit the scope of the liability protections to cover only volunteers. (S. 543 originally covered volunteers, non-profit organizations, and government entities.) The Senate amendments did not address the second and third objections listed above

The Senate passed the amended version of S. 543 on May 1st by a vote of 99-1.

The Administration has not taken a position on H.R. 911 or the Senate-passed version of S. 543.

Summary of H.R. 911

The following provisions of H.R. 911 are identical to the Senate-passed version of S. 543:

Civil Liability. H.R. 911 provides that non-profit or government volunteers would not be liable for harm caused by an act or omission of their volunteer duties, with certain exceptions. The volunteer would not be shielded from liability in cases: (1) of willful or criminal misconduct; (2) of gross negligence; or (3) where the volunteer does not have the State-required operators' licenses or insurance for certain equipment.

H.R. 911 would not affect State laws that limit volunteer liability subject to certain conditions (e.g., requiring mandatory training for volunteers or requiring insurance). In addition, the bill

does not affect the liability of non-profits and government entities for harm caused by a volunteer and would not prohibit organizations from bringing suit against their own volunteers.

Punitive Damages. H.R. 911 provides that punitive damages may not be awarded against a volunteer in an action related to a volunteer's activity, with certain exceptions. Punitive damages may only be awarded in cases where the claimant demonstrates "by clear and convincing evidence" that the volunteer caused the harm through willful or criminal misconduct or a conscious, flagrant indifference to the rights or safety of the individual.

Noneconomic Loss (pain and suffering, etc.). H.R. 911 would abolish joint and several liability for noneconomic losses. Therefore each volunteer only would be responsible for his/her portion of any noneconomic loss incurred by the claimant. Each volunteer would continue to be jointly and severally liable for any economic loss (medical expenses, lost earnings, etc.) incurred by the claimant.

Preemption of State Law. H.R. 911 would preempt State laws that are inconsistent with limits on volunteer liability that are provided in the bill, with certain exceptions. State laws that provide additional protections to volunteers would not be preempted. States may choose to opt out of the bill's requirements in civil actions against a volunteer that only involve parties from that State. To opt out, the State would have to enact a statute that: (1) cites and exercises the H.R. 911 opt-out authority; and (2) contains no other provisions.

Exceptions. None of the bill's limitations on liability would apply to misconduct that constitutes a crime of violence, an act of international terrorism, a hate crime, or to any misconduct that involves intoxication, drug use, a sexual offense, or the violation of any State or Federal civil rights law.

The **differences** between H.R. 911 and the Senate-passed version of S. 543 are listed below:

Effective Date. H.R. 911 would take effect 90 days after enactment and would only apply to actions that occur after the effective date of the bill. (S. 543 would apply only to claims filed after the effective date regardless of when the incident occurred.)

Additional Exceptions. H.R. 911 would not apply to organizations that practice actions covered by the Hate Crime Statistics Act (i.e., excludes the Klan, etc.). (S. 543 did not include this specific exception in the definition of "non-profit.")

Pay-As-You-Go Scoring

Per BASD (Balis) H.R. 911 would not affect direct spending and receipts, and therefore is not subject to the PAYGO requirement of the Omnibus Budget Reconciliation Act.

Legislative Reference Division
5/19/97 -- :00 a.m.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 29, 1997
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 543 - Volunteer Protection Act of 1997
(Coverdell (R) Georgia and 10 cosponsors)

Although the Administration strongly supports national and community service and volunteerism, it opposes S. 543.

The President has a deep commitment to volunteer and service activities and supports efforts to encourage Americans to engage in these activities. The Administration will work with Congress on proposals that, while respecting state law, help provide reasonable liability protection to volunteers involved in the delivery of needed services.

S. 543 is not such a bill. Without any hearings demonstrating the inadequacy of state law in this area, S. 543 effects a sweeping preemption of state law in cases involving "non-profit organizations" and "volunteers." The over-broad definitions in the bill — which might apply to hate groups, street gangs, or violent militia — make this takeover of state law potentially troubling.

As with broader tort reform measures, the Administration is also troubled by the legislation's one-way preemption — state laws would be preempted if they favor plaintiffs, but not if they favor defendants — and by Section 5 of the Bill, which would totally abolish joint-and-several liability for noneconomic damages (e.g., pain and suffering). This provision would unfairly discriminate against the most vulnerable members of our society — the elderly, the poor, children, and nonworking women — whose injuries often involve mostly noneconomic losses. Noneconomic damages are as important to victims as economic damages and must not be relegated to second-class status.

Product Liability -
volunteers



Ellen S. Seidman

05/22/97 03:21:54 PM

Record Type: Record

To: Kathleen M. Wallman/WHO/EOP, Elena Kagan/OPD/EOP
cc: Ingrid M. Schroeder/OMB/EOP, James J. Jukes/OMB/EOP
Subject: The volunteer liability (S 543) bill is cleared for the President.

Bruce is against a public event, leans to doing nothing, but is OK with a signing statement that follows the SAP. I'm in about the same place. I think the issue is whether a Presidential signing statement would be more or less likely than our SAP to lay out the differences clearly. Don't forget, this looks like a pretty sympathetic bill. ellen

----- Forwarded by Ellen S. Seidman/OPD/EOP on 05/22/97 03:22 PM -----

James J. Jukes

05/22/97 12:32:53 PM

Record Type: Record

To: Ellen S. Seidman/OPD/EOP
cc: Ingrid M. Schroeder/OMB/EOP
Subject: The volunteer liability (S 543) bill is cleared for the President.

The Senate agreed to the House version late yesterday.

STATEMENT BY THE PRESIDENT

Today, I have approved H.R. 911, the "Volunteer Protection Act of 1997," which will provide volunteers working for non-profit and governmental entities certain protections from civil liability. Citizen service is the main way we recognize that we are responsible for one another, that we are members of a true community, with all of us working together. Governments at all levels must encourage all our citizens to volunteer for service. This bill is a small part of what the federal government is doing to help people serve.

H.R. 911 is a limited and targeted bill that deals with the specific concerns of individuals serving our communities without compensation. It preserves for the states, the traditional source of tort law, not only the ability to opt out of the bill's provisions entirely, but also the right to require proper licensing and evidence of financial responsibility. It is important that none of the bill's limitations on liability will apply to misconduct that constitutes a crime of violence, an act of international terrorism, a hate crime, or to any misconduct that involves intoxication, drug use, a sexual offense or the violation of any State or Federal civil rights laws, or to actions on behalf of any organization that engages in hate crimes. Anyone hurt by a negligent volunteer will have recourse against the organization for whom the volunteer was working.

I remain concerned, however, that H.R. 911 contains both an absolute prohibition on joint and several liability for non-economic damages and elements of one-way preemption. These are both modifications of tort law that make it harder for innocent injured parties to recover. I emphasize that my signing this specialized and limited bill designed to promote individual citizen service in no way mitigates my opposition to these modifications if they were to be applied more generally. A prohibition on joint and several liability for non-economic damages hurts those least able to recover on their own -- poor, sick and older Americans. One-way preemption usurps state prerogatives to balance the rights and responsibilities of plaintiffs and defendants.

On balance, however, H.R. 911 will encourage service without unduly impacting the rights of citizens who benefit from such service. I am pleased to sign the bill.

105TH CONGRESS
1ST SESSION

H. R. 911

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 1997

Mr. PORTER (for himself, Mr. ACKERMAN, Mr. BAKER, Mr. BARRETT of Nebraska, Mr. BARTLETT of Maryland, Mr. BEREUTER, Mr. BLILEY, Mr. BOEHLERT, Mr. BUNNING, Mr. CALLAHAN, Mr. CAMPBELL, Mr. CANADY of Florida, Mrs. CARSON, Ms. CHRISTIAN-GREEN, Mr. COOKSEY, Mr. COYNE, Mr. CUNNINGHAM, Ms. DANNER, Mr. DAVIS of Virginia, Mr. DICKEY, Mr. DOYLE, Ms. DUNN, Mr. EHLERS, Mr. EHRLICH, Mrs. EMERSON, Mr. ENGLISH of Pennsylvania, Mr. ENSIGN, Mr. EVANS, Mr. FATTAH, Mr. FILNER, Mr. FOLEY, Mr. FRANK of Massachusetts, Mr. FRANKS of New Jersey, Mr. FROST, Ms. FURSE, Mr. GALLEGLY, Mr. GILCHREST, Mr. GOODLATTE, Mr. GOODLING, Mr. GOSS, Mr. GREENWOOD, Mr. HALL of Ohio, Mr. HASTERT, Mr. HAYWORTH, Mr. HERGER, Mr. HOBSON, Mr. HOLDEN, Mr. HORN, Mrs. JOHNSON of Connecticut, Mrs. KELLY, Mr. KIM, Mr. LARGENT, Mr. LEACH, Mr. LIVINGSTON, Mr. MCCOLLUM, Mr. MCHUGH, Mr. MCKEON, Ms. MCKINNEY, Mr. MCINTOSH, Mr. MEEHAN, Ms. MOLINARI, Mr. NEAL of Massachusetts, Mr. NEY, Ms. NORTON, Mr. OLVER, Mr. OWENS, Mr. PARKER, Mr. PAYNE, Mr. PETRI, Mr. PICKETT, Mr. POSHARD, Mr. QUINN, Mr. RAMSTAD, Mr. RIGGS, Mr. ROMERO-BARCELÓ, Mr. SANDERS, Mr. SANFORD, Mr. SCHIFF, Mr. SENSENBRENNER, Mr. SERRANO, Mr. SHAYS, Mr. SISISKY, Mr. SKEEN, Ms. SLAUGHTER, Mr. STARK, Mr. STUMP, Mrs. THURMAN, Mr. TOWNS, Mr. WALSH, Mr. WATTS of Oklahoma, Mr. WELDON of Pennsylvania, Mr. WELLER, Mr. WICKER, Mr. WOLF, Mr. CASTLE, Mr. FALEOMAVAEGA, Mr. FOX of Pennsylvania, Ms. JACKSON-LEE of Texas, and Mr. MARTINEZ), introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Volunteer Protection Act of 1997”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. No preemption of State tort law.
- Sec. 4. Limitation on liability for volunteers.
- Sec. 5. Certification requirement and adjustment of Social Services Block Grant Program allotments.
- Sec. 6. Definitions.

8 **SEC. 2. FINDINGS AND PURPOSE.**

9 (a) FINDINGS.—The Congress finds and declares
10 that—

11 (1) the willingness of volunteers to offer their
12 services is deterred by potential personal liability for
13 simple mistakes made in the course of volunteer
14 service;

15 (2) as a result, many nonprofit public and pri-
16 vate organizations and governmental entities, includ-
17 ing voluntary associations, social service agencies,

1 educational institutions, local governments, founda-
2 tions, and other civic programs, have been adversely
3 affected through the withdrawal of volunteers from
4 boards of directors and service in other capacities;

5 (3) the contribution of these programs to their
6 communities is thereby diminished, resulting in
7 fewer and higher cost programs than would be ob-
8 tainable if volunteers were participating; and

9 (4) because Federal funds are expended on use-
10 ful and cost-effective social service programs which
11 depend heavily on volunteer participation, protection
12 of voluntarism through clarification and limitation of
13 the personal liability risks assumed by the volunteer
14 in connection with such participation is an appro-
15 priate subject for Federal encouragement of State
16 reform.

17 (b) PURPOSE.—It is the purpose of this Act to pro-
18 mote the interests of social service program beneficiaries
19 and taxpayers and to sustain the availability of programs
20 and nonprofit organizations and governmental entities
21 which depend on volunteer contributions by encouraging
22 reasonable reform of State laws to provide protection from
23 personal financial liability to volunteers serving with non-
24 profit organizations and governmental entities for actions
25 undertaken in good faith on behalf of such organizations.

1 **SEC. 3. NO PREEMPTION OF STATE TORT LAW.**

2 Nothing in this Act shall be construed to preempt the
3 laws of any State governing tort liability actions.

4 **SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

5 (a) **LIABILITY PROTECTION FOR VOLUNTEERS.**—Ex-
6 cept as provided in subsections (b) and (d), any volunteer
7 of a nonprofit organization or governmental entity shall
8 incur no personal financial liability for any tort claim al-
9 leging damage or injury from any act or omission of the
10 volunteer on behalf of the organization or entity if—

11 (1) such volunteer was acting in good faith and
12 within the scope of such volunteer's official functions
13 and duties with the organization or entity; and

14 (2) such damage or injury was not caused by
15 willful and wanton misconduct by such volunteer.

16 (b) **CONCERNING RESPONSIBILITY OF VOLUNTEERS**
17 **WITH RESPECT TO ORGANIZATIONS.**—Nothing in this
18 section shall be construed to affect any civil action brought
19 by any nonprofit organization or any governmental entity
20 against any volunteer of such organization or entity.

21 (c) **NO EFFECT ON LIABILITY OF ORGANIZATION.**—
22 Nothing in this section shall be construed to affect the
23 liability of any nonprofit organization or governmental en-
24 tity with respect to injury caused to any person.

1 (d) EXCEPTIONS TO VOLUNTEER LIABILITY PRO-
2 TECTION.—A State may impose one or more of the follow-
3 ing conditions on and exceptions to the granting of liabil-
4 ity protection to any volunteer of an organization or entity
5 required by subsection (a):

6 (1) The organization or entity must adhere to
7 risk management procedures, including mandatory
8 training of volunteers, as defined by the Secretary of
9 Health and Human Services by regulation.

10 (2) The organization or entity shall be liable for
11 the acts or omissions of its volunteers to the same
12 extent as an employer is liable, under the laws of
13 that State, for the acts or omissions of its employ-
14 ees.

15 (3) The protection from liability does not
16 apply—

17 (A) if the volunteer was operating a motor
18 vehicle, vessel, aircraft, or other vehicle for
19 which the State involved requires the operator
20 or vehicle owner to maintain insurance;

21 (B) in the case of a suit brought by an ap-
22 propriate officer of a State or local government
23 to enforce a Federal, State, or local law; and

24 (C) to the extent the claim would be cov-
25 ered under any insurance policy.

1 (4) The protection from liability shall apply
2 only if the organization or entity provides a finan-
3 cially secure source of recovery for individuals who
4 suffer injury as a result of actions taken by a volun-
5 teer on behalf of the organization or entity. A finan-
6 cially secure source of recovery may be an insurance
7 policy within specified limits, comparable coverage
8 from a risk pooling mechanism, equivalent assets, or
9 alternative arrangements that satisfy the State that
10 the entity will be able to pay for losses up to a speci-
11 fied amount. Separate standards for different types
12 of liability exposure may be specified.

13 **SEC. 5. CERTIFICATION REQUIREMENT AND ADJUSTMENT**
14 **OF SOCIAL SERVICES BLOCK GRANT PRO-**
15 **GRAM ALLOTMENTS.**

16 (a) **CERTIFICATION AND BLOCK GRANT ALLOT-**
17 **MENTS.**—In the case of any State which certifies, not later
18 than 2 years after the date of the enactment of this Act,
19 to the Secretary of Health and Human Services that it
20 has enacted, adopted, or otherwise has in effect State law
21 which substantially complies with section 4(a), the Sec-
22 retary shall increase by 1 percent the fiscal year allotment
23 which would otherwise be made to such State to carry out
24 the Social Services Block Grant Program under title XX
25 of the Social Security Act.

1 (b) CONTINUATION OF INCREASE.—Any increase
2 made under subsection (a) in an allotment to a State shall
3 remain in effect only if the State makes a certification
4 to the Secretary of Health and Human Services, not later
5 than the end of each 1-year period occurring successively
6 after the end of the 2-year period described in subsection
7 (a), that it has in effect State law which substantially com-
8 plies with section 4(a).

9 **SEC. 6. DEFINITIONS.**

10 For purposes of this Act—

11 (1) the term “volunteer” means an individual
12 performing services for a nonprofit organization or
13 a governmental entity who does not receive—

14 (A) compensation (including reimburse-
15 ment or allowance for expenses), or

16 (B) any other thing of value in lieu of com-
17 pensation,

18 in excess of \$300, and such term includes a volun-
19 teer serving as a director, officer, trustee, or direct
20 service volunteer;

21 (2) the term “nonprofit organization” means
22 any organization described in section 501(e) of the
23 Internal Revenue Code of 1986 and exempt from tax
24 under section 501(a) of such Code;

1 (3) the term "damage or injury" includes phys-
2 ical, nonphysical, economic, and noneconomic dam-
3 age; and

4 (4) the term "State" means each of the several
5 States, the District of Columbia, the Commonwealth
6 of Puerto Rico, the Virgin Islands, Guam, American
7 Samoa, the Northern Mariana Islands, any other
8 territory or possession of the United States, or any
9 political subdivision of any such State, territory, or
10 possession.

○

product liab -
volunteers

PETER G. JACOBY

05/15/97 12:05:55 PM

Record Type: Record

To: Ellen S. Seidman/OPD/EOP, Elena Kagan/OPD/EOP, Tracey E. Thornton/WHO/EOP, Kathleen M. Wallman/WHO/EOP

cc: Ingrid M. Schroeder/OMB/EOP

Subject: Volunteer Liability SAP

House Judiciary staff (R's and D's) expect the Volunteer Liability bill to be considered by the House on the suspension calendar next Tuesday, 5/20. Currently, the House is scheduled to consider the Judiciary Committee bill and not the Senate-passed version of the bill. In preparation for the House floor, I would suggest a SAP that is drafted to clearly distinguish this legislation from anything that we might face in a products bill. Peter

Product liability - volunteers

AMENDMENT TO H.R. 911

OFFERED BY MR. INGLIS OF SOUTH CAROLINA

*AYES - 20
NAYS - 7*

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Volunteer Protection
3 Act of 1997".

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 The Congress finds and declares that—

6 (1) the willingness of volunteers to offer their
7 services is deterred by the potential for liability ac-
8 tions against them;

9 (2) as a result, many nonprofit public and pri-
10 vate organizations and governmental entities, includ-
11 ing voluntary associations, social service agencies,
12 educational institutions, and other civic programs,
13 have been adversely affected by the withdrawal of
14 volunteers from boards of directors and service in
15 other capacities;

16 (3) the contribution of these programs to their
17 communities is thereby diminished, resulting in
18 fewer and higher cost programs than would be ob-
19 tainable if volunteers were participating;

2

1 (4) because Federal funds are expended on use-
2 ful and cost-effective social service programs, many
3 of which are national in scope, depend heavily on
4 volunteer participation, and represent some of the
5 most successful public-private partnerships, protec-
6 tion of volunteerism through clarification and limita-
7 tion of the personal liability risks assumed by the
8 volunteer in connection with such participation is an
9 appropriate subject for Federal legislation;

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

14 (6) due to high liability costs and unwarranted
15 litigation costs, volunteers and nonprofit organiza-
16 tions face higher costs in purchasing insurance,
17 through interstate insurance markets, to cover their
18 activities; and

19 (7) clarifying and limiting the liability risk as-
20 sumed by volunteers is an appropriate subject for
21 Federal legislation because—

22 (A) of the national scope of the problems
23 created by the legitimate fears of volunteers
24 about frivolous, arbitrary, or capricious law-
25 suits;

1 (B) the citizens of the United States de-
2 pend on, and the Federal Government expends
3 funds on, and provides tax exemptions and
4 other consideration to, numerous social pro-
5 grams that depend on the services of volun-
6 teers;

7 (C) it is in the interest of the Federal Gov-
8 ernment to encourage the continued operation
9 of volunteer service organizations and contribu-
10 tions of volunteers because the Federal Govern-
11 ment lacks the capacity to carry out all of the
12 services provided by such organizations and vol-
13 unteers; and

14 (D)(i) liability reform for volunteers, will
15 promote the free flow of goods and services,
16 lessen burdens on interstate commerce and up-
17 hold constitutionally protected due process
18 rights; and

19 (ii) therefore, liability reform is an appro-
20 priate use of the powers contained in article 1,
21 section 8, clause 3 of the United States Con-
22 stitution, and the fourteenth amendment to the
23 United States Constitution.

24 (b) PURPOSE.—The purpose of this Act is to promote
25 the interests of social service program beneficiaries and

1 taxpayers and to sustain the availability of programs. non-
2 profit organizations, and governmental entities that de-
3 pend on volunteer contributions by reforming the laws to
4 provide certain protections from liability abuses related to
5 volunteers serving nonprofit organizations and govern-
6 mental entities.

7 SEC. 3. PREEMPTION AND ELECTION OF STATE
8 NONAPPLICABILITY.

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

16 (b) ELECTION OF STATE REGARDING
17 NONAPPLICABILITY.—This Act shall not apply to any civil
18 action in a State court against a volunteer in which all
19 parties are citizens of the State if such State enacts a stat-
20 ute in accordance with State requirements for enacting
21 legislation—

22 (1) citing the authority of this subsection;

23 (2) declaring the election of such State that this
24 Act shall not apply, as of a date certain, to such civil
25 action in the State; and

1 (3) containing no other provisions.

2 **SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

3 (a) **LIABILITY PROTECTION FOR VOLUNTEERS.**—Ex-
4 cept as provided in subsections (b) and (d), no volunteer
5 of a nonprofit organization or governmental entity shall
6 be liable for harm caused by an act or omission of the
7 volunteer on behalf of the organization or entity if—

8 (1) the volunteer was acting within the scope of
9 the volunteer's responsibilities in the nonprofit orga-
10 nization or governmental entity at the time of the
11 act or omission;

12 (2) if appropriate or required, the volunteer was
13 properly licensed, certified, or authorized by the ap-
14 propriate authorities for the activities or practice in
15 the State in which the harm occurred, where the ac-
16 tivities were or practice was undertaken within the
17 scope of the volunteer's responsibilities in the non-
18 profit organization or governmental entity;

19 (3) the harm was not caused by willful or crimi-
20 nal misconduct, gross negligence, reckless mis-
21 conduct, or a conscious, flagrant indifference to the
22 rights or safety of the individual harmed by the vol-
23 unteer; and

24 (4) the harm was not caused by the volunteer
25 operating a motor vehicle, vessel, aircraft, or other

1 vehicle for which the State requires the operator or
2 the owner of the vehicle, craft, or vessel to—

3 (A) possess an operator's license; or

4 (B) maintain insurance.

5 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
6 TO ORGANIZATIONS AND ENTITIES.—Nothing in this sec-
7 tion shall be construed to affect any civil action brought
8 by any nonprofit organization or any governmental entity
9 against any volunteer of such organization or entity.

10 (c) NO EFFECT ON LIABILITY OF ORGANIZATION OR
11 ENTITY.—Nothing in this section shall be construed to af-
12 fect the liability of any nonprofit organization or govern-
13 mental entity with respect to harm caused to any person.

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

19 (1) A State law that requires a nonprofit orga-
20 nization or governmental entity to adhere to risk
21 management procedures, including mandatory train-
22 ing of volunteers.

23 (2) A State law that makes the organization or
24 entity liable for the acts or omissions of its volun-

1 teers to the same extent as an employer is liable for
2 the acts or omissions of its employees.

3 (3) A State law that makes a limitation of li-
4 ability inapplicable if the civil action was brought by
5 an officer of a State or local government pursuant
6 to State or local law.

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

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

22 (1) GENERAL RULE.—Punitive damages may
23 not be awarded against a volunteer in an action
24 brought for harm based on the action of a volunteer
25 acting within the scope of the volunteer's responsibil-

1 ities to a nonprofit organization or governmental en-
2 tity unless the claimant establishes by clear and con-
3 vincing evidence that the harm was proximately
4 caused by an action of such volunteer which con-
5 stitutes willful or criminal misconduct, or a con-
6 scious, flagrant indifference to the rights or safety of
7 the individual harmed.

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

13 (f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

14 (1) IN GENERAL.—The limitations on the liabil-
15 ity of a volunteer under this Act shall not apply to
16 any misconduct that—

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

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

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

4 (D) involves misconduct for which the de-
5 fendant has been found to have violated a Fed-
6 eral or State civil rights law; or

7 (E) where the defendant was under the in-
8 fluence (as determined pursuant to applicable
9 State law) of intoxicating alcohol or any drug at
10 the time of the misconduct.

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

14 **SEC. 5. LIABILITY FOR NONECONOMIC LOSS.**

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

21 (b) AMOUNT OF LIABILITY.—

22 (1) IN GENERAL.—Each defendant who is a
23 volunteer, shall be liable only for the amount of non-
24 economic loss allocated to that defendant in direct
25 proportion to the percentage of responsibility of that

1 defendant (determined in accordance with paragraph
2 (2)) for the harm to the claimant with respect to
3 which that defendant is liable. The court shall
4 render a separate judgment against each defendant
5 in an amount determined pursuant to the preceding
6 sentence.

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

13 SEC. 6. DEFINITIONS.

14 For purposes of this Act:

15 (1) ECONOMIC LOSS.—The term "economic
16 loss" means any pecuniary loss resulting from harm
17 (including the loss of earnings or other benefits re-
18 lated to employment, medical expense loss, replace-
19 ment services loss, loss due to death, burial costs,
20 and loss of business or employment opportunities) to
21 the extent recovery for such loss is allowed under ap-
22 plicable State law.

23 (2) HARM.—The term "harm" includes phys-
24 ical, nonphysical, economic, and noneconomic losses.

1 (3) NONECONOMIC LOSSES.—The term “non-
 2 economic losses” means losses for physical and emo-
 3 tional pain, suffering, inconvenience, physical im-
 4 pairment, mental anguish, disfigurement, loss of en-
 5 joyment of life, loss of society and companionship,
 6 loss of consortium (other than loss of domestic serv-
 7 ice), hedonic damages, injury to reputation and all
 8 other nonpecuniary losses of any kind or nature.

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

11 (A) any organization described in section
 12 501(c)(3) of the Internal Revenue Code of 1986
 13 and exempt from tax under section 501(a) of
 14 such Code; or

15 (B) any not-for-profit organization orga-
 16 nized and conducted for public benefit and op-
 17 erated primarily for charitable, civic, edu-
 18 cational, religious, welfare, or health purposes.

19 (5) STATE.—The term “State” means each of
 20 the several States, the District of Columbia, the
 21 Commonwealth of Puerto Rico, the Virgin Islands,
 22 Guam, American Samoa, the Northern Mariana Is-
 23 lands, any other territory or possession of the Unit-
 24 ed States, or any political subdivision of any such
 25 State, territory, or possession.

different
 than
 Senate
 passed bill
 May 9, 1997 10:37 a.m.)

(C) This act shall not apply to any
 organization that practices action covered by
 the Hate Crime Act.

1 (6) VOLUNTEER.—The term “volunteer” means
 2 an individual performing services for a nonprofit or-
 3 ganization or a governmental entity who does not re-
 4 ceive—

5 (A) compensation (other than reasonable
 6 reimbursement or allowance for expenses actu-
 7 ally incurred); or

8 (B) any other thing of value in lieu of com-
 9 pensation,
 10 in excess of \$500 per year, and such term includes
 11 a volunteer serving as a director, officer, trustee, or
 12 direct service volunteer.

13 SEC. 7. EFFECTIVE DATE.

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

16 (b) APPLICATION.—This Act applies to any claim for
 17 harm caused by an act or omission of a volunteer where
 18 that claim is filed on or after the effective date of this
 19 Act ^{but only if the harm that is the subject} ~~without regard to whether the harm that is the sub-~~
 20 ~~ject of the claim or the conduct that caused the harm oc-~~ ^{such}
 21 ~~curred before~~ ^{after} such effective date.

*different
 than
 Senate
 passed
 bill*

Product - volunteer

Total Pages: _____

LRM ID: REJ94

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Friday, May 16, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference *Ji-*

OMB CONTACT: Ronald E. Jones
PHONE: (202)395-3386 FAX: (202)395-3109

SUBJECT: National Economic Council Statement of Administration Policy on HR911
Volunteer Protection Act of 1997 

DEADLINE: 5:00 PM TODAY Friday, May 16, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS:
DISTRIBUTION LIST

- AGENCIES:**
- 81-JUSTICE - Andrew Fois - (202) 514-2141
 - 62-LABOR - Robert A. Shapiro - (202) 219-8201
 - 30-EDUCATION - Jack Kristy - (202) 401-8313
 - 24-Corporation for Natl and Community Service - Gene Sofer - (202) 606-5000
 - 52-HHS - Sondra S. Wallace - (202) 690-7780
 - 118-TREASURY - Richard S. Carro - (202) 622-0650
 - 76-National Economic Council - Sonyla Matthews - (202) 45/8-5351
 - 18-Council of Economic Advisers - Liaison Officer (see below) - (202) 39/5-5084

- EOP:**
- John E. Thompson
 - Pamela B. VanWie
 - Keith J. Fontenot
 - Lisa B. Fairhall
 - Steven D. Aitkon
 - Diana Fortuna
 - Timothy J. Brennan
 - William P. Marshall
 - Tracey E. Thornton
 - Peter G. Jacoby
 - Elena Kagan

Bruce R. Lindsey
Ellen S. Seidman
Sylvia M. Mathews
Charles Konigsberg
Lisa M. Kountoupes
Alice Shuffield
Kathleen M. Wallman

May 16, 1997
(House)

DRAFT -- NOT FOR RELEASE

H.R. 911 - Volunteer Protection Act of 1997
(Porter (R) Florida and 150 cosponsors)

H.R. 911 is a reasonable attempt to address the country's need for the services of an ever-growing number of volunteers. It is effectively targeted to those acting without financial motives, and limited with respect to the types and extent of liability excluded. The bill includes important reservations to the States not only to opt out of the bill's provisions entirely but also to require proper licensing and evidence of financial responsibility. Application of the bill's provisions only to harm arising after the effective date effectively ties the bill's purpose -- to encourage volunteering -- to its effect.

While the Administration applauds the intent of H.R. 911, it remains concerned with several of its provisions. First, the total prohibition on joint and several liability for non-economic damages would unfairly and inequitably impact poor, sick, and older Americans -- just those most likely to use volunteer services. Second, sections 3(a) and 4(e)(2) apply the principle of one-way preemption: State laws that further limit volunteer liability are recognized, but those that expand plaintiff's rights are not. We believe this is an inappropriate imbalance. Finally, the definition of "non-profit organization" remains too broad, encompassing organizations about which no independent judgment of their public benefit has been made.

The Administration will work with the Congress to resolve these concerns.

* * * * *



DEPARTMENT OF HEALTH & HUMAN SERVICES

Product liability -
volunteers
Office of the Secretary

Office of the General Counsel
Legislation Division
Washington DC 20201

May 16, 1997

NOTE TO RON JONES/INGRID SCHROEDER (OMB)

Re: Draft SAP on H.R. 911 - Volunteer Protection Act of 1997

As Tim White and I indicated in our conversation with you this afternoon, please hold the train on this one. Among other problems, HHS is very concerned both that the bill affords insufficient protection to volunteers (because they are still liable for substantial damages for non-economic injuries) and gives no recourse to individuals injured by volunteers (because they could not seek redress under the Federal Tort Claims Act).

We will be raising these concerns to HHS policy officials, and I think it very probable that they will wish to urge that the draft SAP take a tougher line -- possibly even threatening veto if the objectionable provisions are not satisfactorily amended.

Thank you for your assistance. Have a good weekend.

Sandra Stigen Wallace
202-690-7760

Elena. She asked omb to ask HHS for as much as possible on what they were thinking abt re federal volunteers. She really not sure we want to make w/ the FTCA & moreover, since the fedl volunteers are not acting in their govt capacity when they go volunteering. (I think), she not sure the FTCA applies at all. Before we weigh in on this, I'd like to

Conversat will take until
(an opinion will next year)

Get a serious ~~opinion~~ from Justice, ~~before we~~
~~hear that she should do anything in this~~

~~area.~~

E

65359

Product liability -
volunteers



Ellen S. Seidman

05/07/97 02:03:32 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Paul J. Weinstein Jr./OPD/EOP
cc:
Subject: Leahy-altered version of volunteer bill

This is the e-mail on the volunteerism bill. A subsequent exchange with Tracy indicates that she at least thought we were OK with this. And we should have been given the time and place. However, we now have work to do to avoid letting this become the camel's nose under the tent -- particularly on joint and several liability -- for general tort reform. ellen

----- Forwarded by Ellen S. Seidman/OPD/EOP on 05/07/97 02:02 PM -----



Ellen S. Seidman

05/01/97 07:41:39 PM

Record Type: Record

To: Bruce R. Lindsey/WHO/EOP, Jennifer D. Dudley/WHO/EOP, Kathleen M. Wallman/WHO/EOP, Elena Kagan/OPD/EOP
cc: Ben A. Freeland/WHO/EOP, Tracey E. Thornton/WHO/EOP, Alice E. Shuffield/OMB/EOP
Subject: Leahy-altered version of volunteer bill

I got a call earlier today from Ben Freeland in Leg Affairs asking whether the Leahy changes in the volunteer bill -- which then went on to pass by 99-1 -- "satisfied the Administration's concerns." As I understand it, Ben is writing this for something to go to a Senate caucus this weekend, so it's important we get the right answer. Unfortunately (for all of you) I will be out of the office and unreachable until late in the day tomorrow. Ben needs an answer before then. Someone needs to call him on 66650.

I've left copies of the bill on your desks. Essentially, all Leahy was able to do -- under, I gather, pressure from the majority to claim Democrats were hypocrites because they wouldn't support volunteerism -- was limit the bill to volunteers only, eliminating the limitations on liability of nonprofits and government entities.

In my opinion, the resulting bill would, standing alone, be acceptable in the context of the push for volunteerism, although there still is the broader issue whether anyone has demonstrated a need to preempt. Admittedly, someone volunteering with the Klan who negligently hits someone else while riding a bicycle to get the food for a Klan picnic would probably get the benefit of the bill (since I assume the picnic wouldn't be a hate crime) but I assume we could live with that eventuality.

The real problem, of course, is that this bill does not stand alone, out of the context of broad tort reform. THEREFORE, the fact that the bill still contains: (i) one-way preemption; (ii) a total bar of joint and several liability for non-economic damages; and (iii) a punitive standard that might be tougher than we want, in addition to the overly broad definition of non-profit organization, does raise some concern. The Porter bill pending in the House with bi-partisan support is not really a preemption bill at all, but an incentive. Even looked at as a preemption, it has NONE of the

problems of the revised Coverdale bill.

I therefore think our message to the Democratic Senators should be: we think Senator Leahy's initial speech was right on point but understand why you went along with this, and it's certainly better than the original Coverdale bill. However, the basic question of "why preemption?" hasn't been answered, and moreover there are still some real problems with the bill, in the context of the Republicans' broader push for tort reform, namely one-way preemption, the total bar on joint and several liability for non-economic damages and [? an excessively high punitives standard?].

Moreover, the extremely broad definition of nonprofit organization remains troubling. We think the right thing to do is for every Democrat, and the Administration, to get behind the Porter bill, and to work hard to get that bill, which has none of these problems, through the House and, eventually, the bill that is adopted by the conference committee. Failing that, we think it essential that at least the joint and several liability provision be removed.

Ellen



O:\COE\COE97.313

Product liability -
volunteers

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide a complete substitute.

IN THE AMENDMENT NO. 53 of Sess.

By Coverdell-Leahy (Others)

BILL/Res. No. S. 543

To print _____ organized on _____

Page(s) 13

GPO: 1989 35-021 (Rev. 1-80)

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. COVERDELL / Ashcroft, McConnell,
Abraham

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Volunteer Protection
- 5 Act of 1997".
- 6 SEC. 2. FINDINGS AND PURPOSE.
- 7 The Congress finds and declares that—
- 8 (1) the willingness of volunteers to offer their
- 9 services is deterred by the potential for liability ac-
- 10 tions against them and the organizations they serve.

1 (2) as a result, many nonprofit public and pri-
2 vate organizations and governmental entities, includ-
3 ing voluntary associations, social service agencies,
4 educational institutions, and other civic programs,
5 have been adversely affected by the withdrawal of
6 volunteers from boards of directors and service in
7 other capacities;

8 (3) the contribution of these programs to their
9 communities is thereby diminished, resulting in
10 fewer and higher cost programs than would be ob-
11 tainable if volunteers were participating;

12 (4) because Federal funds are expended on use-
13 ful and cost-effective social service programs, many
14 of which are national in scope, depend heavily on
15 volunteer participation, and represent some of the
16 most successful public-private partnerships, protec-
17 tion of volunteerism through clarification and limita-
18 tion of the personal liability risks assumed by the
19 volunteer in connection with such participation is an
20 appropriate subject for Federal legislation;

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

O:\COE\COE97.313

S.L.C.

:]

1 (6) due to high liability costs and unwarranted
2 litigation costs, volunteers and nonprofit organiza-
3 tions face higher costs in purchasing insurance,
4 through interstate insurance markets, to cover their
5 activities; and

6 (7) clarifying and limiting the liability risk as-
7 sumed by volunteers, ~~nonprofit organizations, and~~
8 ~~governmental entities based on the actions of volun-~~
9 ~~teers~~ is an appropriate subject for Federal legisla-
10 tion because—

11 (A) of the national scope of the problems
12 created by the legitimate fears of volunteers
13 about frivolous, arbitrary, or capricious law-
14 suits;

15 (B) the citizens of the United States de-
16 pend on, and the Federal Government expends
17 funds on, and provides tax exemptions and
18 other consideration to, numerous social pro-
19 grams that depend on the services of volun-
20 teers;

21 (C) it is in the interest of the Federal Gov-
22 ernment to encourage the continued operation
23 of volunteer service organizations and contribu-
24 tions of volunteers because the Federal Govern-
25 ment lacks the capacity to carry out all of the

O:\COE\COE97.313

S.L.C.

4

1 services provided by such organizations and vol-
2 unteers; and

3 (D)(i) ~~liability reform for volunteers, non-~~
4 ~~profit organizations, and governmental entities~~
5 ~~involved in volunteer activities~~ will promote the
6 free flow of goods and services, lessen burdens
7 on interstate commerce and uphold constitu-
8 tionally protected due process rights; and

9 (ii) therefore, liability reform is an appro-
10 priate use of the powers contained in article I,
11 section 8, clause 3 of the United States Con-
12 stitution, and the fourteenth amendment to the
13 United States Constitution.

14 (b) PURPOSE.—The purpose of this Act is to promote
15 the interests of social service program beneficiaries and
16 taxpayers and to sustain the availability of programs, non-
17 profit organizations, and governmental entities that de-
18 pend on volunteer contributions by reforming the laws to
19 provide certain protections from liability abuses related to
20 volunteers serving nonprofit organizations and govern-
21 mental entities.

22 **SEC. 3. PREEMPTION AND ELECTION OF STATE NON-**
23 **APPLICABILITY.**

24 (a) PREEMPTION.—This Act preempts the laws of
25 any State to the extent that such laws are inconsistent

O:\COE\COE97.313

81.0

1 with this Act, except that this Act shall not preempt any
2 State law that provides additional protection from liability
3 relating to ~~the~~

4 ~~the~~ volunteers or to any category of volunteers
5 in the performance of services for a nonprofit organiza-
6 tion or governmental entity, and

7 ~~(2) nonprofit organizations or governmental en-~~
8 ~~tities.~~

9 (b) ELECTION OF STATE REGARDING NON-
10 APPLICABILITY.—This Act shall not apply to any civil ac-
11 tion in a State court against a volunteer, ~~nonprofit organi-~~
12 ~~zation, or governmental entity~~ in which all parties are citi-
13 zens of the State if such State enacts a statute in accord-
14 ance with State requirements for enacting legislation—

15 (1) citing the authority of this subsection;

16 (2) declaring the election of such State that this
17 Act shall not apply, as of a date certain, to such civil
18 action in the State; and

19 (3) containing no other provisions.

20 **SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

21 (a) LIABILITY PROTECTION FOR VOLUNTEERS.—Ex-
22 cept as provided in subsections (b) and (d), no volunteer
23 of a nonprofit organization or governmental entity shall
24 be liable for harm caused by an act or omission of the
25 volunteer on behalf of the organization or entity if—

O:\COE\COE97.J13

S.L.C.

6

1 (1) the volunteer was acting within the scope of
2 the volunteer's responsibilities in the nonprofit orga-
3 nization or governmental entity at the time of the
4 act or omission;

5 (2) if appropriate or required, the volunteer was
6 properly licensed, certified, or authorized by the ap-
7 propriate authorities for the activities or practice in
8 the State in which the harm occurred, where the ac-
9 tivities were or practice was undertaken within the
10 scope of the volunteer's responsibilities in the non-
11 profit organization or governmental entity;

12 (3) the harm was not caused by willful or crimi-
13 nal misconduct, gross negligence, reckless mis-
14 conduct, or a conscious, flagrant indifference to the
15 rights or safety of the individual harmed by the vol-
16 unteer; and

17 (4) the harm was not caused by the volunteer
18 operating a motor vehicle, vessel, aircraft, or other
19 vehicle for which the State requires the operator or
20 the owner of the vehicle, craft, or vessel to—

21 (A) possess an operator's license; or

22 (B) maintain insurance.

23 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
24 TO ORGANIZATIONS AND ENTITIES.—Nothing in this sec-
25 tion shall be construed to affect any civil action brought

O:\COE\COE97.313

SL

1 by any nonprofit organization or any governmental entity
2 against any volunteer of such organization or entity.

3 (c) NO EFFECT ON LIABILITY OF ORGANIZATION OR
4 ENTITY. ~~Except as provided under subsection (a).~~ **Notli-**
5 **ing** in this section shall be construed to affect the liability
6 of any nonprofit organization or governmental entity with
7 respect to harm caused to any person.

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

13 (1) A State law that requires a nonprofit orga-
14 nization or governmental entity to adhere to risk
15 management procedures, including mandatory train-
16 ing of volunteers.

17 (2) A State law that makes the organization or
18 entity liable for the acts or omissions of its volun-
19 teers to the same extent as an employer is liable for
20 the acts or omissions of its employees.

21 (3) A State law that makes a limitation of li-
22 ability inapplicable if the civil action was brought by
23 an officer of a State or local government pursuant
24 to State or local law.

O:\COE\COE97.313

S.L.

8

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

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

16 (1) GENERAL RULE.—Punitive damages may
17 not be awarded against a volunteer, ~~nonprofit orga-~~
18 ~~nization, or governmental entity~~ in an action
19 brought for harm based on the action of a volunteer
20 acting within the scope of the volunteer's responsibil-
21 ities to a nonprofit organization or governmental en-
22 tity unless the claimant establishes by clear and con-
23 vincing evidence that the harm was proximately
24 caused by an action of such volunteer which con-
25 stitutes willful or criminal misconduct, or a con-

O: COEN\COE97.313

S.L.C.

9

1 serious, flagrant indifference to the rights or safety of
2 the individual harmed.

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

8 (F) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

9 (1) IN GENERAL.—The limitations on the liabil-
10 ity of a volunteer, ~~nonprofit organization, or govern-~~
11 ~~mental entity~~ under this Act shall not apply to any
12 misconduct that—

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

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

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

O:\COE\COE97.313

S.L.C.

10

1 (D) involves misconduct for which the de-
 2 fendant has been found to have violated a Fed-
 3 eral or State civil rights law; or

4 (E) where the defendant was under the in-
 5 fluence (as determined pursuant to applicable
 6 State law) of intoxicating alcohol or any drug at
 7 the time of the misconduct.

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

11 **SEC. 5. LIABILITY FOR NONECONOMIC LOSS.**

12 (a) GENERAL RULE.—In any civil action against a
 13 volunteer, ~~nonprofit organization, or governmental entity~~
 14 based on an action of a volunteer acting within the scope
 15 of the volunteer's responsibilities to a nonprofit organiza-
 16 tion or governmental entity, the liability of each defendant *the*
 17 ~~who is a volunteer, nonprofit organization, or govern-~~
 18 ~~mental entity~~ for noneconomic loss shall be determined in
 19 accordance with subsection (b).

20 (b) AMOUNT OF LIABILITY.—

21 (1) IN GENERAL.—Each defendant who is a
 22 volunteer, ~~nonprofit organization, or governmental~~
 23 ~~entity~~ shall be liable only for the amount of non-
 24 economic loss allocated to that defendant in direct
 25 proportion to the percentage of responsibility of that

O:\COE\COE97.JLJ

S.L.J.

11

1 defendant (determined in accordance with paragraph
2 (2)) for the harm to the claimant with respect to
3 which that defendant is liable. The court shall
4 render a separate judgment against each defendant
5 in an amount determined pursuant to the preceding
6 sentence.

7 (2) PERCENTAGE OF RESPONSIBILITY.—For
8 purposes of determining the amount of noneconomic
9 loss allocated to a defendant who is a volunteer, ~~non-~~
10 ~~profit organization, or governmental entity~~ under
11 this section, the trier of fact shall determine the per-
12 centage of responsibility of ^{that defendant} ~~each person~~ responsible
13 for the claimant's harm, ~~whether or not such person~~
14 ~~is a party to the action.~~

15 **SEC. 6. DEFINITIONS.**

16 For purposes of this Act:

17 (1) ECONOMIC LOSS.—The term "economic
18 loss" means any pecuniary loss resulting from harm
19 (including the loss of earnings or other benefits re-
20 lated to employment, medical expense loss, replace-
21 ment services loss, loss due to death, burial costs,
22 and loss of business or employment opportunities) to
23 the extent recovery for such loss is allowed under ap-
24 plicable State law.

COE\COE97.313

SLU

1 (2) HARM.—The term “harm” includes phys-
2 ical, nonphysical, economic, and noneconomic losses.

3 (3) NONECONOMIC LOSSES.—The term “non-
4 economic losses” means losses for physical and emo-
5 tional pain, suffering, inconvenience, physical im-
6 pairment, mental anguish, disfigurement, loss of en-
7 joyment of life, loss of society and companionship,
8 loss of consortium (other than loss of domestic serv-
9 ice), hedonic damages, injury to reputation and all
10 other nonpecuniary losses of any kind or nature.

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

13 (A) any organization described in section
14 501(c)(3) of the Internal Revenue Code of 1986
15 and exempt from tax under section 501(a) of
16 such Code; or

17 (B) any not-for-profit organization orga-
18 nized and conducted for public benefit and op-
19 erated primarily for charitable, civic, edu-
20 cational, religious, welfare, or health purposes.

21 (5) STATE.—The term “State” means each of
22 the several States, the District of Columbia, the
23 Commonwealth of Puerto Rico, the Virgin Islands,
24 Guam, American Samoa, the Northern Mariana Is-
25 lands, any other territory or possession of the Unit-

O:\COE\COE97.313

S.L.C.

13

1 ed States, or any political subdivision of any such
2 State, territory, or possession.

3 (6) VOLUNTEER.—The term “volunteer” means
4 an individual performing services for a nonprofit or-
5 ganization or a governmental entity who does not re-
6 ceive—

7 (A) compensation (other than reasonable
8 reimbursement or allowance for expenses actu-
9 ally incurred); or

10 (B) any other thing of value in lieu of com-
11 pensation,

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

15 **SEC. 7. EFFECTIVE DATE.**

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

18 (b) APPLICATION.—This Act applies to any claim for
19 harm caused by an act or omission of a volunteer where
20 that claim is filed on or after the effective date of this
21 Act, without regard to whether the harm that is the sub-
22 ject of the claim or the conduct that caused the harm oc-
23 curred before such effective date.

Product Liability -
volunteers



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LEGISLATIVE REFERENCE DIVISION
ECONOMICS , SCIENCE , AND GENERAL GOVERNMENT BRANCH

TO: Elena Kagan
Ellen Seidman
Bill Marshall

FROM: INGRID SCHROEDER
phone: (202) 395-3883
FAX: (202) 395-3109

DATE: 5/2/97

NUMBER OF PAGES (including this cover sheet): 2

COMMENTS:

OLC's [^] comments on S.543 - Thought you
Late
might be interested

FYI: Office of Legal Counsel Comments on S. 543, Volunteer Protection Act of 1997

This memorandum provides the views of the Office of Legal Counsel on S. 543, the Volunteer Protection Act of 1997. The bill would provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers. We believe there is some question whether Congress has authority broadly to regulate liability standards for volunteers and volunteer service organizations.

The congressional findings contained in the bill state that it is "an appropriate subject for Federal legislation" 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." Even with this express finding, we are concerned that the bill might invite challenge as to Congress's source of authority because it is not directly tied to Congress's spending power. compare H.R. 911, 105th Cong., 1st Sess. (Mar. 4, 1997) (encouraging states to adopt federal liability standard for volunteers by providing one percent increase in Social Services Block Grant for those who do), and not limited to volunteer organizations that engage in interstate commerce or liability that arises by reason of volunteer services affecting interstate commerce, see United States v. Lopez, 115 S. Ct. 1624 (1995).

Finally, we note that the provision allowing states to avoid the application of the federal liability standards by enacting a specific law to that effect does not address the question whether Congress has power to act in this area, and, indeed, is inconsistent with the notion that there exists a need for a uniform federal rule.

Alice -

Sylvia Mathews asked me to rewrite the JAP to express more clearly the President's willingness to support some kind of volunteer liability protection (just not this one). I have drafted two paragraphs to go in ~~the~~ place of the current second paragraph. Please get it around to the people who must see it and send it up, Thanks much.
(assuming it's OK)

Elena

Product liability -
Volunteers

S. 543 - Volunteer Protection Act of 1997
(Coverdell (R) Georgia and 7 cosponsors)

Although the Administration strongly supports community service and volunteerism, it opposes S. 543.

S.543 would override state law concerning the liability of volunteers for negligence; and of volunteers, nonprofit organizations and governmental entities for punitive damages and joint and several responsibility for non-economic damages arising out of the actions of volunteers. The definitions of "nonprofit organization" and of "volunteer" give this bill ~~notwithstanding its limitations and the right of states to opt out~~ a breadth of impact that is potentially troublesome. Tort law has traditionally been left to the states, and in the absence of hearings, the need for such a sweeping preemption of state law has not been demonstrated.

SECRET ~~with broader~~ As with broader tort reform measures, the Administration ~~is~~ ^{also} troubled by the legislation's one-way preemption -- state laws would be preempted if they favor plaintiffs, but not if they favor defendants -- and by Section 5 of the Bill, which would totally abolish joint-and-several liability for noneconomic damages (e.g., pain and suffering). This provision would unfairly discriminate against the most vulnerable members of our society -- the elderly, the poor, children, and nonworking women -- whose injuries often involve mostly noneconomic losses. Noneconomic damages are as important to victims as economic damages and must not be relegated to second-class status.

* * * * *

The President has a deep commitment to volunteer and service activities and ~~unwaveringly~~ supports efforts to encourage Americans to engage in these activities. He will work with Congress for a bill that helps provide reasonable liability protection to volunteers involved in the delivery of needed services while respecting state law.

S. 543 is not such a bill. Without any hearings demonstrating the ~~need to preempt~~ ^{inadequacy of} state law in this area, S.543 effects a sweeping preemptive of state law in cases involving "nonprofit organizations" and "volunteers." The ~~broad~~ ^{over} definitions used in the bill -- which might apply to hate groups, street gangs, or violent militias -- make this sweeping ~~preemptive~~ takeover of state law ~~very~~ ^{potentially} troubling.

Volunteer Protection Issue Causes Divisions in Senate

Even as President Clinton was joining hands in Philadelphia with two of his Republican predecessors to celebrate volunteerism, the Senate was mired in a partisan dispute over GOP-drafted legislation to protect volunteers from liability lawsuits.

Republicans argued that the bill, sponsored by Sen. Paul Coverdell (R-Ga.), was necessary to protect volunteers for nonprofit or government agencies from costly lawsuits in cases involving simple negligence. "More and more citizens are refusing to volunteer their time and talents because they fear the financial consequences of rampant and often absurd lawsuits," Coverdell said in an opening statement.

Sen. Patrick J. Leahy (Vt.), ranking Democrat on the Judiciary Committee, said in a statement that Republicans were hurrying a fatally flawed bill to the floor to share in the reflected glory of the Philadelphia event. States are already handling the problem adequately, and immunity granted by the bill is so broad it would protect the Ku Klux Klan, Leahy argued.

Democrats also are refusing to allow votes on GOP-drafted legislation as long as Republicans hold Labor Secretary-designate Alexis M. Herman's nomination hostage in an effort to force Clinton to abandon a planned executive order urging federal contractors to consider labor agreements for government-funded projects. Talks to resolve that dispute are underway.

— Helen Dewar

VA Retreats on Harassment Case

■ The Department of Veterans Affairs has retreated from its pledge to defend a former hospital director who was removed from his job on charges that he had harassed female employees.

VA general counsel Mary Lou Keener surprised members of a House subcommittee on April 17 when she said the department would be obligated to defend the former director, Jerome Calhoun, from civil suits that might be filed by the women. Calhoun was dismissed as director of the Fayetteville, N.C., VA hospital last year and transferred at government expense to a newly created job at a VA hospital near Tampa.

In a statement last week, the VA said that "representation will not be recommended if there is persuasive evidence that the employee's conduct was beyond the scope of his or her official conduct." The House Veterans Affairs oversight subcommittee has directed the VA to reopen its investigation of Calhoun to see if additional charges should be considered.

— Bill McAllister

Speakes Steers Clear of 'Bugs'

■ Don't ask Larry M. Speakes, the U.S. Postal Service's top public relations executive, "What's up, Doc?"

In a March 27 memo to his staff, Speakes effectively barred himself from talking about the new Bugs Bunny stamp or anything related to Bugs's parent company, Time-Warner Inc. The reason is that an executive search firm asked Speakes, the former Reagan White House spokesman, if he might be interested in a job with the communications conglomerate.

"I've always had the policy that if a talk to them," said Speakes, a Postal Service president, noting that he once talked with Owners of America about working with

Since Time-Warner is a major mailer, he issued the memo because he wanted to screen him from any issue that might affect Time-Warner, including the stamp featuring a cartoon rabbit from Warner Bros. Studios.

Speakes said he has not heard any news about a search firm and, as a result, did not know if a Time-Warner ban would have to remain

— I

Questions About AmeriCorps

■ President Clinton's showcase agency AmeriCorps is being asked to explain why five of its jobs were abolished last spring were given to private contractors and were allowed to continue work through December. The corporation operates under a Clinton project to promote volunteerism.

The agency's inspector general also is asking why one of the five, Michael Woo, wrote a letter to a public fund-raiser John Huang for help in a meeting between a Clinton administration and Asian American business owners in Los Angeles.

Agency critics say the episode is the latest in a series of AmeriCorps allowing politics to intrude on its business.

Woo, a former Los Angeles City Council member and mayoral candidate, declined to specify why he performed after his job as western regional director was eliminated. "I do believe I did things to advance the cause of national service," he said, referring all such questions to the corporation.

Rep. Peter Hoekstra (R-Mich.) and Sen. Charles Grassley (R-Iowa), two critics of AmeriCorps, asked the corporation to provide detailed information on what duties Woo and his four colleagues performed and their salaries after their jobs were eliminated.

Hoekstra and Grassley estimated that a total of five officials was paid about \$95,000 when their positions were eliminated. There was no immediate comment from agency officials.

— Associa

Espy Ex-Aide Pleads Not Guilty

■ The top aide to former agriculture secretary Earl Butte pleaded not guilty yesterday to criminal charges of hiding about \$22,000 in fees he received from farmers while working for Espy.

Ronald Blackley, who served as Espy's chief of staff, entered his plea at a brief arraignment in U.S. District Court. Federal prosecutors said they would take the case to trial by early July.

Last week, a federal grand jury indicted Blackley on three counts of making false statements to federal investigators and hiding income that was not reported under government ethics rules. The indictment also accuses him with failing to report fees he received from farming clients obtain subsidies from the Agriculture Department while he worked there.

URGENT

*product liability -
volunteers*

Total Pages: _____

LRM ID: IMS50

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Friday, April 25, 1997

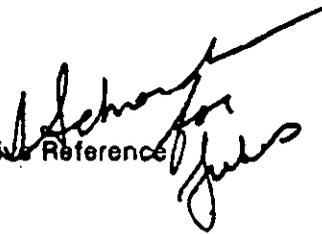
LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference

OMB CONTACT: Ingrid M. Schroeder

PHONE: (202)395-3883 **FAX:** (202)395-3109



SUBJECT: Statement of Administration Policy on HR543 Volunteer Protection Act of 1997 

DEADLINE: 5pm Friday, April 25, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: S. 543 is scheduled for Senate floor action on Monday, April 28th. Therefore the above deadline is FIRM.

DISTRIBUTION LIST

AGENCIES:

- 24-Corporation for Natl and Community Service - Gene Sofer - (202) 606-5000
- 61-JUSTICE - Andrew Fois - (202) 514-2141
- 88-Office of Government Ethics - Jane Ley - (202) 208-8022
- 62-LABOR - Robert A. Shapiro - (202) 219-8201
- 52-HHS - Sondra S. Wallace - (202) 690-7760
- 118-TREASURY - Richard S. Carro - (202) 622-0650
- 18-Council of Economic Advisers - Liaison Officer (vacant) - (202) 39/5-5084
- 76-National Economic Council - Sonyla Matthews - (202) 45/6-5351
- 30-EDUCATION - Jack Kristy - (202) 401-8313

EOP:

- John E. Thompson
- Pamela B. VanWie
- Keith J. Fontenot
- Lisa B. Fairhall
- Steven D. Aitken
- William P. Marshall
- Elena Kagan
- Ellen S. Seldman
- Ellen J. Balis

Charles Konigsberg
Alice E. Shuffield
Peter G. Jacoby
Tracey E. Thornton
Jim Murr

Watt

While the Administration strongly supports community service and volunteerism, it opposes S. 543, the Volunteer Protection Act of 1997, for at least two reasons.

First, the development of tort law has traditionally been left to the states in the exercise of their police powers and this tradition has been particularly strong with respect to volunteers, nonprofit organizations and government entities. Although the Congress has occasionally enacted legislation in areas traditionally left to the states, it has done so only where there has been a problem of national scope that could not be dealt with effectively by the states either individually or collectively. In the instant case, the proponents of this bill have not met their burden of demonstrating the need for Federal legislation that would override critical features of the liability laws of the states as they apply to volunteers, nonprofit organizations and government entities.

Second, even were there evidence to support Federal legislation in this area, the Administration has consistently opposed provisions, such as Section 5 of the Bill, that would abolish joint-and-several liability for noneconomic damages (e.g., pain and suffering). This provision would unfairly discriminate against the most vulnerable members of our society -- the elderly, the poor, children, and nonworking women -- whose injuries often involve mostly noneconomic losses. Noneconomic damages are as important to victims as economic damages and must not be relegated to second-class status.

Product liability -
✓ volunteers

S. 543 - Volunteer Protection Act of 1997
(Coverdell (R) Georgia and 7 cosponsors)

Although the Administration strongly supports community service and volunteerism, it opposes S. 543, the "~~Volunteer Protection Act of 1997~~" as written, for several reasons.

~~Tort law has traditionally been left to the States, and this tradition is particularly strong with respect to volunteers, nonprofit organizations and governmental entities.~~ S.543 overrides state law concerning the liability of volunteers for negligence; and of volunteers, nonprofit organizations and governmental entities for punitive damages and joint and several responsibility for non-economic damages arising out of the actions of volunteers. The ~~extremely broad~~ definitions of "nonprofit organization" and of "volunteer" give this bill -- notwithstanding some of its limitations and the right of states to opt out -- a breadth of impact that is potentially very troublesome. In the absence of hearings, ~~there has been no showing of the existence, nature or extent of any problem in the recruitment or placement of volunteers arising from provisions of state tort law, and thus no justification for this sweeping a preemption of state law.~~ *showing the*

As w/ broad - product but return measures

The Administration is also particularly troubled by the legislation's one-way preemption -- state laws would be preempted if they favor plaintiffs, but not if they favor defendants -- and by Section 5 of the Bill, which would ~~abolish~~ *to totally* joint-and-several liability for noneconomic damages (e.g., pain and suffering). This provision would unfairly discriminate against the most vulnerable members of our society -- the elderly, the poor, children, and nonworking women -- whose injuries often involve mostly noneconomic losses. Noneconomic damages are as important to victims as economic damages and must not be relegated to second-class status.

* * * * *

U.S. SENATOR PATRICK LEAHY**CONTACT: David Carle, 202-224-3693****VERMONT**

**Statement of Senator Patrick Leahy
In Opposition To The Motion To Proceed
To Immediate Consideration
Of S.543, The So-Called
"Volunteer Protection Act of 1997"**

*Product Liability -
volunteers*

April 29, 1997

MR. PRESIDENT, I oppose the motion to proceed to immediate consideration of S.543. The merit of this motion seems solely to be the fact that this may be an opportunity to jump aboard the train of press coverage of the Summit on Volunteering in America, during a week when the Senate is not prepared to accept the responsibilities that we have to pass a federal budget or confirm members of the President's cabinet or his nominations to fill the vacancies on the federal courts. America's 93 million volunteers and the spirit of altruism that this week should bring to the surface deserve better treatment than to be used as unwilling partners in this partisan publicity stunt.

Here we are, two weeks after the Senate has missed its deadline to consider a budget, the legislative schedule again stretches before us as a vast desert of inactivity, and now this bill has appeared before us, out of the vapor.

Why was this particular bill suddenly brought to the floor without notice, without hearings and without a committee report? Why was careful scrutiny of this bill avoided by short-circuiting the normal process of bringing bills through committee and to the floor of the Senate? Why has this bill been tendered to the Senate and the public like a stowaway, opportunistically cloaked in the camouflage of the week, volunteerism?

Mr. President, the answer is that this is a bill whose flaws would come to light under the scrutiny of our regular order. A commendable bill in the other body which more precisely and thoughtfully addresses the issue which S.543 purports to address - liability in volunteer work - has been introduced by Congressman John Porter. The Porter bill is being publicly examined through committee hearings, and it is a better bill for the examination it is receiving.

The events this weekend in Philadelphia and for much of the rest of this week are a tribute to the spirit of American volunteerism and a magnifying glass that will help spark intensified efforts by all Americans to be better citizens and better neighbors; citizens who will be more willing to give of ourselves to make life better in our communities and nation. The events in Philadelphia this week are designed to be nonpartisan and inclusive of the interests of all.

It is a time to express our gratitude to President George Bush and Barbara Bush for their longstanding leadership in this cause. It is a time to recognize the personal commitment and generous involvement of Jimmy and Rosalynn Carter with Habitat for Humanity and so many other worthwhile efforts. It is a time to heed and welcome the calls to action by such other national leaders as General Colin Powell and to appreciate the vision of President Clinton and our First Lady.

We all should look forward to the results of the Summit and pledge to work in a bipartisan way to consider any recommendations for legislation that may emerge from this national forum.

senator_leahy@leahy.senate.gov

http://www.senate.gov/~leahy/

By contrast, the motion by the Majority to move to immediate consideration of S.543, a bill rushed into the hopper only days ago, reflects none of this spirit and instead is a narrow partisan effort. Again we find the Senate ignoring its own duties and responsibilities — such as enacting a budget or proceeding to confirm Alexis Herman as the Secretary of Labor and the lengthening backlog of judicial nominees to the federal courts — in order to tell others what they should be doing and how.

This time it is the legislatures of the 50 states that the Republican majority has targeted. Over the last several years the states have considered and passed a variety of statutes to provide protections they determined advisable to encourage and protect those who volunteer for or work for charitable organizations.

In 1990, President Bush endorsed a model state law to protect volunteers from legal liability and called upon the states to consider it. They have. Since 1990, state legislatures across the country have acted to protect volunteers through enactments of state laws. In fact, at least 44 states have enacted some form of volunteer protection from liability.

Why does the Senate of the United States need to take up and pass federal legislation on this subject on an emergency or expedited basis? Why are we proceeding to a bill that was only introduced earlier this month? Why are we proceeding without hearings or committee consideration? Why are we being forced to proceed without the benefit of a committee report and without an opportunity to study the recent actions of our state legislatures to determine whether federal preemption of state law is in any way justified? Why is the Republican leadership demanding that the Senate consider and pass a federal law to override the laws that each of our state legislatures has designed to protect volunteers and charitable organizations in our States? Why, indeed.

The States of Vermont and Georgia and many others, for example, already provide protection for directors and officers of nonprofit organizations from civil liability. Do we in the United States Senate innuendously know better than our state legislatures what is needed for liability protection for directors and officers of nonprofits?

Do we know whether the better approach is to require indemnification or mandate insurance or provide limited immunity or how properly to structure exceptions to limitations on liability so that state law can serve to encourage charitable efforts without leaving innocent citizens to suffer for wrongful conduct without legal recourse? Have we developed a record on which to justify such a legislative judgment or to justify federal intrusion into areas that are traditionally matters of local concern? Hardly.

For a group whose rhetoric is about reducing the role of the federal government and returning power to the states, the Republican Senate seems awfully sure that it knows better than anyone else what the states should have passed to encourage local volunteers. For a group that criticizes others for acting as if Washington has solutions to every local problem, the smell of cherry blossoms around the Tidal Basin seems to have gotten to someone.

I frankly do not know what is wrong with the partial immunity and limited liability laws passed in Georgia, Kentucky, Michigan, Pennsylvania or Missouri. Moreover I have not seen convincing evidence that vast punitive damages judgments even exist, let alone are any significant factor in volunteerism. Yet here we are again, poised to enact a federal law regime to alter state law and state common law traditions in one ill-considered swoop.

At least when we considered S.J. Res. 22, the independent counsel resolution, it was only a patently partisan sense of the Senate resolution. It was inappropriate and demeaned the Senate, but did not strip rights from individual Americans.

At least when we considered the substitute for the Taxpayer Browsing Protection Act on April 15 to distract from the Republican leadership's failure to produce a federal budget by that statutory deadline, we had previously considered and passed the National Information Infrastructure Protection Act, we had a GAO report

noting the continuing problem of IRS employees snooping into confidential tax records, and we limited our action to a federal agency.

At least when the Senate discharged the Judiciary Committee from any consideration of S.495 and engaged in an artificially abbreviated discussion of its provisions in order to get to debate on the Chemical Weapons Convention, it did so knowing that we would have an opportunity to reconsider and correct it in the context of implementing legislation for the Chemical Weapons Treaty, and it concerned federal law, not state law.

This matter is different. It is not just a sense of the Senate resolution. It is not about a federal agency, federal law or a federal law problem. Instead, it is a repudiation of federalism and the primary role of the states in defining our liability laws for local activities. It can have serious repercussions and ought to be considered seriously.

There is a slight procedural twist to the Republican leadership's insistence on consideration of S.543. It is technically not being discharged from the Senate Judiciary Committee because it was not referred to the committee at all. On April 9 the same group of Republican sponsors introduced the same bill twice and held one on the Senate calendar and allowed the identical twin to be referred to the Judiciary Committee as S.544. I guess Chairman Hatch and I did not jump quickly enough for Republican leadership purposes. They got impatient after less than three weeks, and here we are on the Senate floor with more ill-considered legislation.

Over the weekend I did have a chance at least to read the bill. This is greater opportunity for deliberation than was afforded the Senate when we voted on a substitute version of S.495 the afternoon that it was offered. We in the minority are grateful.

I wish to alert the Senate to several aspects of the bill that may not be apparent from the statements of its sponsors. First, it is misnamed: It should be called the Ku Klux Klan Protection Act, for that is as good an example as any of the nonprofit, "volunteer" organization that will be the principal beneficiaries of premature consideration of this legislation. The bill's definition of "nonprofit organization" is overly broad and unnecessarily so.

This bill has been so hastily drafted as to provide legal protection to the Ku Klux Klan and its "volunteer members" as well as to all 501(c)(3) tax-exempt organizations under the Internal Revenue Code and to an untold variety of not-for-profit organizations. The bill includes protections for what it loosely defines as "any not-for-profit organization organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes."

Who is to decide which groups qualify for limited liability under such a definition? Is it a matter for the organization to declare in its purposes, such as when the Ku Klux Klan declares itself to be a "non-commercial, non-profit, volunteer organization"? Is this a matter for the state courts to decide or is it a federal question that will be reserved for federal courts to determine on a case-by-case basis? Do we want government deciding whether the organization's activities are such that it should be held to be engaged in "civic" or "educational" purposes? Are the state legislatures expected hereafter to pass lists of qualifying and nonqualifying groups or activities? Consistent with First Amendment principles, can government be directed to make judgments on liability based on the political orientation of the group? And for that matter how are state legislatures constitutionally permitted to make case-by-case determinations that avoid the constraints of this federal preemptive statute such as required by section 3(b) of S.543?

I, for one, do not believe that victims of hate groups should have to overcome the federal law immunities that would be created by this bill in order to recover for damages done to them. Nor do I believe it is our job to encourage "volunteer" members of the KKK, street gangs or violent militias, all of which might qualify as not-for-profit and nonprofits organizations under S.543.

This overly broad definition of nonprofit in S.543 might also shield many hospitals from legal liability for

actions involving a volunteer. If a nonprofit hospital uses a volunteer to take down patient information during the admittance process, or to wheel a patient down a hallway, should the hospital be shielded later from liability for medical malpractice? Do we really want to close off remedies for victims of medical malpractice because a hospital used a volunteer? I do not know that victims of malpractice in nonprofit and not-for-profit hospitals around the country need to overcome special, federally imposed immunity rules to recover for their injuries and pain and suffering. For that matter, I am unaware of a rush to suits against volunteers or any circumstances that cry out for federal preemption of state law on this subject.

When we want to encourage volunteerism to help others we can do so as we did when we considered and passed legislation to encourage doctors to serve in medical clinics to provide medical services to people who would otherwise do without.

Likewise, last year we enacted a targeted bill to encourage the delivery of food to the poor and needy when we considered and passed the Bill Emerson Good Samaritan Act which provides food banks, the people on the front lines in the war against hunger, with sensible liability protection.

But S.543 is not so targeted. I do not understand, for example, why the Republican sponsors insist on forcing victims of negligent driving by a volunteer for any nonprofit and "not-for-profit" activity to carry a heavier burden and be denied compensation for their disfigurement and pain and suffering. A victim of an auto accident does not care that the driver was speeding because he or she was late to a PTA meeting or a meeting of some trade association. Yet that would be enough to exempt the driver "volunteer" under the bill.

Many states have excluded motor vehicle injuries from their laws protecting volunteers. Are the Republican sponsors of this bill so sure that they know better? What makes them think that it is the potential of a lawsuit for negligent driving that is impeding volunteer activity across the nation? Is it the potential to be liable like any other driver, a liability that I believe all states require a driver to insure against, that is so affecting national insurance rates that the federal government must step in and create a federal immunity? I doubt it.

I remain ready to work with members on both sides of the aisle to pass a good bill that provides volunteers involved in the delivery of needed services with reasonable liability protection, but this is not that bill.

If we want to build on the success of the Summit on Volunteerism, we should work together to correct the excesses in S.543 and pass legislation that will encourage more Americans to volunteer for activities that provide direct contact and direct benefit with those who need help. We ought to see some justification before we provide federal exemptions to state law liability for the officers and directors of all nonprofit and not-for-profit enterprises and should think long and hard whether the federal imposition of required jury findings and the federal imposition of proportionate liability into state tort law before imposing it by fiat. I believe that this bill, its exceptions and federally imposed standards and requirements will do little to encourage volunteerism and that its most likely effect will be to provide defense barriers and massively complicate the determination of personal injury claims.

The real Volunteer Protection Act is H.R.911, legislation introduced in the House by Congressman Porter. That bill enjoys the *tri-partisan* support of Democrats, Republicans, and Independents, with 137 House co-sponsors. It is endorsed by the American Heart Association, American Red Cross, Big Brothers/Big Sisters of America, Girl Scout Council USA, Little League, National Easter Seal Society, National PTA, Salvation Army, the United Way, American Diabetes Association, the National Coalition of Volunteer Protection, and countless others.

That bill takes an approach that seeks to respect state prerogatives and state law. Rather than impose federal immunities by preempting state law, H.R.911 offers a financial incentive for states to enact model language for limiting volunteer liability. If a state enacts liability limitations consistent with the model in H.R.911, that state would be eligible for a 1 percent increase in its allocation under the Social Services Block Grant Program.

HR911 Porter (R-IL) 03/04/97 (217 lines)
Introduced in House

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

Special typefaces used in this bill version:

// \ Italic

!! !! Bold roman

Item Key: 1752

105TH CONGRESS
1ST SESSION

H. R. 911

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

IN THE HOUSE OF REPRESENTATIVES

March 4, 1997

Mr. PORTER (for himself, Mr. ACKERMAN, Mr. BAKER, Mr. BARRETT of Nebraska, Mr. BARTLETT of Maryland, Mr. BEREUTER, Mr. BLILEY, Mr. BOEHLERT, Mr. BUNNING, Mr. CALLAHAN, Mr. CAMPBELL, Mr. CANADY of Florida, Mrs. CARSON, Ms. CHRISTIAN-GREEN, Mr. COOKSEY, Mr. COYNE, Mr. CUNNINGHAM, Ms. DANNER, Mr. DAVIS of Virginia, Mr. DICKEY, Mr. DOYLE, Ms. DUNN, Mr. EHLERS, Mr. EHRLICH, Mrs. EMERSON, Mr. ENGLISH of Pennsylvania, Mr. ENSIGN, Mr. EVANS, Mr. FATTAH, Mr. FILNER, Mr. FOLEY, Mr. FRANK of Massachusetts, Mr. FRANKS of New Jersey, Mr. FROST, Ms. FURSE, Mr. GALLEGLY, Mr. GILCHREST, Mr. GOODLATTE, Mr. GOODLING, Mr. GOSS, Mr. GREENWOOD, Mr. HALL of Ohio, Mr. HASTERT, Mr. HAYWORTH, Mr. HERGER, Mr. HOBSON, Mr. HOLDEN, Mr. HORN, Mrs. JOHNSON of Connecticut, Mrs. KELLY, Mr. KIM, Mr. LARGENT, Mr. LEACH, Mr. LIVINGSTON, Mr. MCCOLLUM, Mr. MCHUGH, Mr. MCKEON, Ms. MCKINNEY, Mr. MCINTOSH, Mr. MEEHAN, Ms. MOLINARI, Mr.

NEAL of Massachusetts, Mr. NEY, Ms. NORTON, Mr. OLVER, Mr. OWENS, Mr. PARKER, Mr. PAYNE, Mr. PETRI, Mr. PICKETT, Mr. POSHARD, Mr. QUINN, Mr. RAMSTAD, Mr. RIGGS, Mr. ROMERO-BARCELO, Mr. SANDERS, Mr. SANFORD, Mr. SCHIFF, Mr. SENSENBRENNER, Mr. SERRANO, Mr. SHAYS, Mr. SISISKY, Mr. SKEEN, Ms. SLAUGHTER, Mr. STARK, Mr. STUMP, Mrs. THURMAN, Mr. TOWNS, Mr. WALSH, Mr. WATTS of Oklahoma, Mr. WELDON of Pennsylvania, Mr. WELLER, Mr. WICKER, Mr. WOLF, Mr. CASTLE, Mr. FALEOMAVAEGA, Mr. FOX of Pennsylvania, Ms. JACKSON-LEE of Texas, and Mr. MARTINEZ), introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To encourage the States to enact legislation to grant immunity from personal civil liability, under certain circumstances, to volunteers working on behalf of nonprofit organizations and governmental entities.

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

!!SECTION 1. SHORT TITLE; TABLE OF CONTENTS.!!

(a) SHORT TITLE.--This Act may be cited as the "Volunteer Protection Act of 1997".

(b) TABLE OF CONTENTS.--The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. No preemption of State tort law.
- Sec. 4. Limitation on liability for volunteers.
- Sec. 5. Certification requirement and adjustment of Social Services Block Grant Program allotments.
- Sec. 6. Definitions.

!!SEC. 2. FINDINGS AND PURPOSE.!!

(a) FINDINGS.--The Congress finds and declares that--

(1) the willingness of volunteers to offer their services is deterred by potential personal liability for simple mistakes made in the course of volunteer service;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, local governments, foundations, and other civic programs, have been adversely affected through 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; and

(4) because Federal funds are expended on useful and cost-effective social service programs which depend heavily on volunteer participation, protection of voluntarism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal encouragement of State reform.

(b) PURPOSE.--It is the purpose of this Act to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs and nonprofit organizations and governmental entities which depend on volunteer contributions by encouraging reasonable reform of State laws to provide protection from personal financial liability to volunteers serving with nonprofit organizations and governmental entities for actions undertaken in good faith on behalf of such organizations.

!!SEC. 3. NO PREEMPTION OF STATE TORT LAW.!!

Nothing in this Act shall be construed to preempt the laws of any State governing tort liability actions.

!!SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.!!

(a) LIABILITY PROTECTION FOR VOLUNTEERS.--Except as provided in subsections (b) and (d), any volunteer of a nonprofit organization or governmental entity shall incur no personal financial liability for any tort claim alleging damage or injury from any act or omission of the volunteer on behalf of the organization or entity if-

(1) such volunteer was acting in good faith and within the

scope of such volunteer's official functions and duties with the organization or entity; and

(2) such damage or injury was not caused by willful and wanton misconduct by such volunteer.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS WITH RESPECT TO ORGANIZATIONS.--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.--Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to injury caused to any person.

(d) EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION.--A State may impose one or more of the following conditions on and exceptions to the granting of liability protection to any volunteer of an organization or entity required by subsection (a):

(1) The organization or entity must adhere to risk management procedures, including mandatory training of volunteers, as defined by the Secretary of Health and Human Services by regulation.

(2) The organization or entity shall be liable for the acts or omissions of its volunteers to the same extent as an employer is liable, under the laws of that State, for the acts or omissions of its employees.

(3) The protection from liability does not apply--

(A) if the volunteer was operating a motor vehicle, vessel, aircraft, or other vehicle for which the State involved requires the operator or vehicle owner to maintain insurance;

(B) in the case of a suit brought by an appropriate officer of a State or local government to enforce a Federal, State, or local law; and

(C) to the extent the claim would be covered under any insurance policy.

(4) The protection from liability shall apply only if the organization or entity provides a financially secure source of recovery for individuals who suffer injury 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 entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

!!SEC. 5. CERTIFICATION REQUIREMENT AND ADJUSTMENT OF SOCIAL SERVICES BLOCK GRANT PROGRAM ALLOTMENTS.!!

(a) **CERTIFICATION AND BLOCK GRANT ALLOTMENTS.**--In the case of any State which certifies, not later than 2 years after the date of the enactment of this Act, to the Secretary of Health and Human Services that it has enacted, adopted, or otherwise has in effect State law which substantially complies with section 4(a), the Secretary shall increase by 1 percent the fiscal year allotment which would otherwise be made to such State to carry out the Social Services Block Grant Program under title XX of the Social Security Act.

(b) **CONTINUATION OF INCREASE.**--Any increase made under subsection (a) in an allotment to a State shall remain in effect only if the State makes a certification to the Secretary of Health and Human Services, not later than the end of each 1-year period occurring successively after the end of the 2-year period described in subsection (a), that it has in effect State law which substantially complies with section 4(a).

!!SEC. 6. DEFINITIONS.!!

For purposes of this Act--

(1) the term "volunteer" means an individual performing services for a nonprofit organization or a governmental entity who does not receive--

(A) compensation (including reimbursement or allowance for expenses), or

(B) any other thing of value in lieu of compensation, in excess of \$300, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer;

(2) the term "nonprofit organization" means any organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code;

(3) the term "damage or injury" includes physical, nonphysical, economic, and noneconomic damage; and

(4) 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.

Product liability -

volunteers

II

Calendar No. 38

105TH CONGRESS
1ST SESSION

S. 543

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

IN THE SENATE OF THE UNITED STATES

APRIL 9, 1997

Mr. COVERDELL (for himself, Mr. MCCONNELL, Mr. ABRAHAM, Mr. SANTORUM, and Mr. ASHCROFT introduced the following bill; which was read the first time

APRIL 10, 1997

Read the second time and placed on the calendar

A BILL

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

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 Protection
5 Act of 1997".

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 The Congress finds and declares that—

3 (1) the willingness of volunteers to offer their
4 services is deterred by the potential for liability ac-
5 tions against them and the organizations they serve;

6 (2) as a result, many nonprofit public and pri-
7 vate organizations and governmental entities, includ-
8 ing voluntary associations, social service agencies,
9 educational institutions, and other civic programs,
10 have been adversely affected by the withdrawal of
11 volunteers from boards of directors and service in
12 other capacities;

13 (3) the contribution of these programs to their
14 communities is thereby diminished, resulting in
15 fewer and higher cost programs than would be ob-
16 tainable if volunteers were participating;

17 (4) because Federal funds are expended on use-
18 ful and cost-effective social service programs, many
19 of which are national in scope, depend heavily on
20 volunteer participation, and represent some of the
21 most successful public-private partnerships, protec-
22 tion of volunteerism through clarification and limita-
23 tion of the personal liability risks assumed by the
24 volunteer in connection with such participation is an
25 appropriate subject for Federal legislation;

3

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

5 (6) due to high liability costs and unwarranted
6 litigation costs, volunteers and nonprofit organiza-
7 tions face higher costs in purchasing insurance,
8 through interstate insurance markets, to cover their
9 activities; and

10 (7) reform efforts should respect the role of the
11 States in the development of civil justice rules, but
12 recognize the national Government's role.

13 (b) PURPOSE.—The purpose of this Act is to promote
14 the interests of social service program beneficiaries and
15 taxpayers and to sustain the availability of programs, non-
16 profit organizations, and governmental entities that de-
17 pend on volunteer contributions by reforming the laws to
18 provide certain protections from liability abuses related to
19 volunteers serving nonprofit organizations and govern-
20 mental entities.

21 **SEC. 3. PREEMPTION AND ELECTION OF STATE NON-**
22 **APPLICABILITY.**

23 (a) PREEMPTION.—This Act preempts the laws of
24 any State to the extent that such laws are inconsistent
25 with this Act, except that this Act shall not preempt any

4

1 State law that provides additional protection from liability
2 relating to—

3 (1) volunteers or to any category of volunteers
4 in the performance of services for a nonprofit orga-
5 nization or governmental entity; and

6 (2) nonprofit organizations or governmental en-
7 tities.

8 (b) ELECTION OF STATE REGARDING NON-
9 APPLICABILITY.—This Act shall not apply to any civil ac-
10 tion in a State court against a volunteer, nonprofit organi-
11 zation, or governmental entity in which all parties are citi-
12 zens of the State if such State enacts a statute—

13 (1) citing the authority of this subsection;

14 (2) declaring the election of such State that this
15 Act shall not apply to such civil action in the State;
16 and

17 (3) containing no other provisions.

18 **SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

19 (a) LIABILITY PROTECTION FOR VOLUNTEERS.—Ex-
20 cept as provided in subsections (b) and (d), no volunteer
21 of a nonprofit organization or governmental entity shall
22 be liable for harm caused by an act or omission of the
23 volunteer on behalf of the organization or entity if—

24 (1) the volunteer was acting within the scope of
25 the volunteer's responsibilities in the nonprofit orga-

1 nization or governmental entity at the time of the
2 act or omission;

3 (2) if appropriate or required, the volunteer was
4 properly licensed, certified, or authorized by the ap-
5 propriate authorities for the activities or practice in
6 the State in which the harm occurred, where the ac-
7 tivities were or practice was undertaken within the
8 scope of the volunteer's responsibilities in the non-
9 profit organization or governmental entity; and

10 (3) the harm was not caused by willful or crimi-
11 nal misconduct, gross negligence, reckless mis-
12 conduct, or a conscious, flagrant indifference to the
13 rights or safety of the individual harmed by the vol-
14 unteer.

15 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
16 TO ORGANIZATIONS AND ENTITIES.—Nothing in this sec-
17 tion shall be construed to affect any civil action brought
18 by any nonprofit organization or any governmental entity
19 against any volunteer of such organization or entity.

20 (c) NO EFFECT ON LIABILITY OF ORGANIZATION OR
21 ENTITY.—Except as provided under subsection (e), noth-
22 ing in this section shall be construed to affect the liability
23 of any nonprofit organization or governmental entity with
24 respect to harm caused to any person.

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

6 (1) A State law that requires a nonprofit orga-
 7 nization or governmental entity to adhere to risk
 8 management procedures, including mandatory train-
 9 ing of volunteers.

10 (2) A State law that makes the organization or
 11 entity liable for the acts or omissions of its volun-
 12 teers to the same extent as an employer is liable for
 13 the acts or omissions of its employees.

14 (3) A State law that makes a limitation of li-
 15 ability inapplicable if the volunteer was operating a
 16 motor vehicle, vessel, aircraft, or other vehicle for
 17 which the State requires the operator or vehicle
 18 owner to possess an operator's license or to maintain
 19 insurance.

20 (4) A State law that makes a limitation of li-
 21 ability inapplicable if the civil action was brought by
 22 an officer of a State or local government pursuant
 23 to State or local law.

24 (5) A State law that makes a limitation of li-
 25 ability applicable only if the nonprofit organization

7

1 or governmental entity provides a financially secure
2 source of recovery for individuals who suffer harm
3 as a result of actions taken by a volunteer on behalf
4 of the organization or entity. A financially secure
5 source of recovery may be an insurance policy within
6 specified limits, comparable coverage from a risk
7 pooling mechanism, equivalent assets, or alternative
8 arrangements that satisfy the State that the organi-
9 zation or entity will be able to pay for losses up to
10 a specified amount. Separate standards for different
11 types of liability exposure may be specified.

12 (c) LIMITATION ON PUNITIVE DAMAGES OF VOLUN-
13 TEERS, NONPROFIT ORGANIZATIONS, AND GOVERN-
14 MENTAL ENTITIES.—

15 (1) GENERAL RULE.—Punitive damages may
16 not be awarded against a volunteer, nonprofit orga-
17 nization, or governmental entity in an action
18 brought for harm because of the action of a volun-
19 teer acting within the scope of the volunteer's re-
20 sponsibilities to a nonprofit organization or govern-
21 mental entity unless the claimant establishes by
22 clear and convincing evidence that the harm was
23 proximately caused by an action of such volunteer
24 which constitutes willful or criminal misconduct, or

8

1 a conscious, flagrant indifference to the rights or
2 safety of the individual harmed.

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

8 (f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—
9 The limitations on the liability of a volunteer, nonprofit
10 organization, or governmental entity under this section
11 shall not apply to any misconduct that—

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

17 (2) constitutes a hate crime (as that term is
18 used in the Hate Crime Statistics Act (28 U.S.C.
19 534 note));

20 (3) involves a sexual offense, as defined by ap-
21 plicable State law, for which the defendant has been
22 convicted in any court;

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

1 (5) where the defendant was under the influ-
2 ence (as determined pursuant to applicable State
3 law) of intoxicating alcohol or any drug at the time
4 of the misconduct.

5 **SEC. 5. LIABILITY FOR NONECONOMIC LOSS.**

6 (a) **GENERAL RULE.**—In any civil action against a
7 volunteer, nonprofit organization, or governmental entity
8 based on an action of a volunteer acting within the scope
9 of the volunteer's responsibilities to a nonprofit organiza-
10 tion or governmental entity, the liability of each defendant
11 who is a volunteer, nonprofit organization, or govern-
12 mental entity for noneconomic loss shall be determined in
13 accordance with subsection (b).

14 (b) **AMOUNT OF LIABILITY.**—

15 (1) **IN GENERAL.**—Each defendant shall be lia-
16 ble only for the amount of noneconomic loss allo-
17 cated to the defendant in direct proportion to the
18 percentage of responsibility of the defendant (deter-
19 mined in accordance with paragraph (2)) for the
20 harm to the claimant with respect to which the de-
21 fendant is liable. The court shall render a separate
22 judgment against each defendant in an amount de-
23 termined pursuant to the preceding sentence.

24 (2) **PERCENTAGE OF RESPONSIBILITY.**—For
25 purposes of determining the amount of noneconomic

1 loss allocated to a defendant under this section, the
2 trier of fact shall determine the percentage of re-
3 sponsibility of each person responsible for the claim-
4 ant's harm, whether or not such person is a party
5 to the action.

6 **SEC. 6. DEFINITIONS.**

7 For purposes of this Act:

8 (1) **ECONOMIC LOSS.**—The term “economic
9 loss” means any pecuniary loss resulting from harm
10 (including the loss of earnings or other benefits re-
11 lated to employment, medical expense loss, replace-
12 ment services loss, loss due to death, burial costs,
13 and loss of business or employment opportunities) to
14 the extent recovery for such loss is allowed under ap-
15 plicable State law.

16 (2) **HARM.**—The term “harm” includes phys-
17 ical, nonphysical, economic, and noneconomic losses.

18 (3) **NONECONOMIC LOSSES.**—The term “non-
19 economic losses” means losses for physical and emo-
20 tional pain, suffering, inconvenience, physical im-
21 pairment, mental anguish, disfigurement, loss of en-
22 joyment of life, loss of society and companionship,
23 loss of consortium (other than loss of domestic serv-
24 ice), hedonic damages, injury to reputation and all
25 other nonpecuniary losses of any kind or nature.

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

3 (A) any organization described in section
 4 501(c)(3) of the Internal Revenue Code of 1986
 5 and exempt from tax under section 501(a) of
 6 such Code; or

7 (B) any not-for-profit organization orga-
 8 nized and conducted for public benefit and op-
 9 erated primarily for charitable, civic, edu-
 10 cational, religious, welfare, or health purposes.

11 (5) STATE.—The term “State” means each of
 12 the several States, the District of Columbia, the
 13 Commonwealth of Puerto Rico, the Virgin Islands,
 14 Guam, American Samoa, the Northern Mariana Is-
 15 lands, any other territory or possession of the Unit-
 16 ed States, or any political subdivision of any such
 17 State, territory, or possession.

18 (6) VOLUNTEER.—The term “volunteer” means
 19 an individual performing services for a nonprofit or-
 20 ganization or a governmental entity who does not re-
 21 ceive—

22 (A) compensation (other than reimburse-
 23 ment or allowance for expenses actually in-
 24 curred); or

12

1 (B) any other thing of value in lieu of com-
2 pensation,
3 in excess of \$500 per year, and such term includes
4 a volunteer serving as a director, officer, trustee, or
5 direct service volunteer.

6 **SEC. 7. EFFECTIVE DATE.**

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

9 (b) **APPLICATION.**—This Act applies to any claim for
10 harm caused by an act or omission of a volunteer where
11 that claim is filed on or after the effective date of this
12 Act, without regard to whether the harm that is the sub-
13 ject of the claim or the conduct that caused the harm oc-
14 curred before such effective date.