105TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 105–101 Part 1

VOLUNTEER PROTECTION ACT OF 1997

MAY 19, 1997.—Ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 911]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

TABLE OF CONTENTS

	Page
The Amendment	2
Purpose and Summary	5
Background and Need for the Legislation	5
Hearings	8
Committee Consideration	8
Vote of the Committee	9
Committee Oversight Findings	12
Committee on Government Reform and Oversight Findings	12
New Budget Authority and Tax Expenditures	12
Congressional Budget Office Cost Estimate	12
Constitutional Authority Statement	13

Section-by-Section Analysis and Discussion 13
Dissenting Views 17

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

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

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 the potential for liability actions against them;

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

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

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a volunteer in which all parties

are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

(1) citing the authority of this subsection;

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

(3) containing no other provisions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

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

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

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

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

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

(A) possess an operator's license; or

(B) maintain insurance.

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

(c) NO EFFECT ON LIABILITY OF ORGANIZATION OR ENTITY.—Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

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

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

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

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

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

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

(1) GENERAL RULE.—Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

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

(f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

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

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

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

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

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

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

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

SEC. 5. LIABILITY FOR NONECONOMIC LOSS.

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

(b) AMOUNT OF LIABILITY.—

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

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

SEC. 6. DEFINITIONS.

For purposes of this Act:

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

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

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

(4) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means—

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

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

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

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

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

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

SEC. 7. EFFECTIVE DATE.

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

(b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.

PURPOSE AND SUMMARY

The Volunteer Protection Act promotes the interests of social services program beneficiaries and taxpayers, and sustains the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions. The Act accomplishes this by providing volunteers serving nonprofit organizations and governmental entities reasonable protections from liability.

H.R. 911, as amended, immunizes a volunteer from liability for harm caused by ordinary negligence, and prohibits the recovery of punitive damages unless the volunteer's conduct was willful, criminal, or in conscious flagrant indifference to the rights or safety of the claimant. It also provides that a volunteer's liability for noneconomic damages will be limited to the proportion of harm for which that volunteer is found liable. These modest limitations are intended to remove a significant barrier—the fear of unreasonable legal liability—to inducing individuals to volunteer their time to charitable endeavors.

BACKGROUND AND NEED FOR THE LEGISLATION

Volunteer service has become a high risk venture. Our "sue happy" legal culture has ensnared those selfless individuals who help worthy organizations and institutions through volunteer service. The proliferation of these types of lawsuits is proof that no good deed goes unpunished.

The litigation craze is hurting the spirit of volunteerism that is an integral part of American society. From school chaperones to Girl Scout and Boy Scout troop leaders to Big Brothers and Big Sisters, volunteers perform valuable services. But rather than thanking these volunteers, our current legal system allows them to be dragged into court and subjected to needless and unfair lawsuits. In most instances the volunteer is ultimately found not liable, but the potential for unwarranted lawsuits creates an atmosphere where too many people are pointing fingers and too few remain willing to offer a helping hand.

The need for relief from these debilitating lawsuits has increased over the last two decades. Until the mid-1980's, the number of lawsuits filed against volunteers might have been counted on one hand. Although the law permitted such suits, in practice very few were filed. Volunteers had little reason to worry about personal liability. In the last two decades, however, the number of suits

against volunteers has increased substantially, and those suits have drawn national media attention. The fear of being sued has had an impact on volunteerism, in that it has caused non-profit organizations to stop offering certain types of programs, caused potential volunteers to stay home, and led to an increase in the cost of insurance against potential verdicts.

The effect of this increase in litigation—and the media attention it has drawn—has been to dampen the willingness of people to give of their time to charity. Statistics show that the rates at which people volunteer are on the decline, particularly in categories where longstanding commitments are required. According to a report by the Independent Sector, a national coalition of 800 organizations, the percentage of Americans volunteering dropped from 54 percent in 1989 to 51 percent in 1991 and 48 percent in 1993. The Gallup organization studied volunteerism and found, in a study titled "Liability Crisis and the Use of Volunteers of Nonprofit Associations" that approximately 1 in 10 nonprofit organizations has experienced the resignation of a volunteer due to liability concerns. Gallup also found that 1 in 6 volunteers reported withholding services due to a fear of exposure to liability suits. And, 1 of 7 nonprofit agencies had eliminated one or more of their valuable programs because of exposure to lawsuits.

The increase in liability concerns is also evidenced by the increase in the liability insurance costs of nonprofit organizations. The average reported increase for insurance premiums for nonprofits over the period 1985–1988 was 155%. One in eight organizations reported an increase of over 300%. Little League Baseball reports the liability rate for a league increased from $75 to $795 in just 5 years. In fact, the Little League's major expenditure is not bats and balls, but the cost of obtaining insurance against liability. Many leagues cannot pay the $795 needed, so they operate their programs without coverage or discontinue the program altogether.

It is sometimes difficult to quantify exactly how much of an organization's time and money is spent on liability protection. However, the Executive Director of the Girl Scout Council of Washington, D.C., said in a February 1995 letter that "locally we must sell 87,000 boxes of . . . Girl Scout cookies each year to pay for liability insurance." And Charles Kolb of the United Way reports that insurance deductibles for his organization fall into the range of $25,000–30,000 a year. At three or four lawsuits a year, that diverts $100,000 or more from charitable programs.

It is not enough to leave it to the States to solve this problem. Volunteerism is a national activity and the decline in volunteerism is a national concern. And in many cases, volunteer activities cross state lines. Even a local group may operate across state lines. A Boy Scout troop in Georgia may go on an outing in Tennessee or Alabama. A Little League team might routinely play games in Virginia, Maryland and the District of Columbia. A meals-on-wheels volunteer might daily deliver meals in Kansas City, Kansas, and Kansas City, Missouri. In emergency situations and disasters, such as hurricanes or the floods in our upper Midwest states, volunteers come from many states.

Although every state now has a law pertaining specifically to legal liability of at least some types of volunteers, many volunteers

remain fully liable for any harm they cause, and all volunteers remain liable for some actions. Only about half of the states protect volunteers other than officers and directors. Moreover, every volunteer protection statute has exceptions. As a result, state volunteer protection statutes are patchwork and inconsistent. In many states, the volunteer leaders are granted immunity while the direct service providers remain exposed. Substantially different civil justice standards apply to volunteers of the same organization, providing the same services, depending on the state in which the service is delivered. This inconsistency hinders national organizations from accurately advising their local chapters on volunteer liability and risk management guidelines.

This current hodgepodge of State laws has not provided the buffer against liability that volunteers need and deserve. The very minimum amount of protection—the freedom from suit because of honest mistakes, or ordinary negligence, is not the rule. In some States the law provides little or no protection for the volunteer, and in others the law protects only certain kinds of volunteers. Certainly there is no consistency across State borders. Charities, especially small charities, do not have the resources to determine the differences in state laws affecting them so they can advise their volunteers accordingly, or implement risk management programs adequate to meet them. National nonprofit organizations are particularly burdened by these inconsistent rules, since they are unable to develop uniform management techniques which will be suitable for their volunteers, regardless of where the volunteer serves.

The patchwork quality of State volunteer liability laws also has a negative effect on the cost of insurance. Because of the small size of the market for volunteer liability insurance, insurers do not differentiate among the States. Thus, regardless of the State in which organization operates, and how broad or how narrow the relevant State volunteer protection law, the price for insurance will be the same. This means that not only are nonprofit organizations forced to use their scarce resources to pay for insurance, but that those in States where the law is protective are forced to vastly overpay if they wish to obtain coverage at all.

The Committee heard repeatedly from witnesses, such as representatives of the Big Brother/Big Sister Foundation, the American Diabetes Association, and Habitat for Humanity, of the many negative consequences the current volunteer liability system has on the delivery of charitable services to the community. The fear of litigation prevents these organizations from successfully recruiting volunteers, which in turn requires the organization to either expend funds to hire employees, or to reduce the level of services it provides.

H.R. 911, the Volunteer Protection Act of 1997, addresses all of these concerns. As introduced by Congressman John Porter, the bill provided incentives to states to enact legislation which would eliminate tort liability of any volunteer if (1) the volunteer was acting in good faith and within the scope of the volunteer's official functions and duties within volunteer organization, and (2) the damage or injury at issue was not caused by the volunteer's willful and wanton misconduct. A State which could certify within two years of enactment that it had adopted such reforms would have been en-

titled to an additional one percent allotment in the State's Social Services Block Grant award.

Based on the testimony of many witnesses of the need for uniform national standards governing volunteer liability, the Committee adopted an amendment in the nature of a substitute which takes a more direct approach to the problem. H.R. 911, as amended, preempts State law to provide that volunteers would not be liable for harm if (1) they were acting in the scope the volunteer activity, (2) they were properly licensed (if necessary), (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the claimant, and (4) the harm was not caused by the volunteer operating a vehicle.

In addition, H.R. 911 as amended does not allow punitive damages to be awarded against a volunteer unless the harm was caused by willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the claimant. In a suit against a volunteer, the volunteer's liability for noneconomic damages would be several but not joint.

H.R. 911 does allow the States to opt out of coverage under certain circumstances. It also specifies certain conditions and restrictions which a state could impose without being inconsistent with the Act. It further exempts from coverage any misconduct which constitutes a crime of violence, an act of international terrorism, a hate crime, a sexual offense, a violation of a civil rights law, or where the volunteer was under the influence of drugs or alcohol.

HEARINGS

The Full Committee held a hearing on H.R. 911 and related bill H.R. 1167 on April 23, 1997. Testimony was received from Speaker Newt Gingrich, Congressman John Porter of Illinois, Senator Paul Coverdell of Georgia, Senator Mitch McConnell of Kentucky, Senator John Ashcroft of Missouri, Senator Rick Santorum of Pennsylvania, Lynn Swann, National Spokesman, Big Brothers/Big Sisters of America, Conrad Teitell, Esq., on behalf of the American Council on Gift Annuities, Terry Orr, The Orr Company, Robert Goodwin, President and CEO, Points of Light Foundation, Fred Hanzalek, American Society of Mechanical Engineers, John Graham, CEO, American Diabetes Association (also on behalf of the American Society of Association Executives), Andrew Popper, Professor, Washington College of Law, American University, Charles Tremper, Senior Vice President, American Association of Homes and Services for the Aging, and Dr. Thomas Jones, Habitat for Humanity. In the 104th Congress, the Full Committee also held a hearing on H.R. 911 (the bill carried the same number in the preceding Congress), on February 27 and 28, 1996.

COMMITTEE CONSIDERATION

On May 13, 1997, the Committee met in open session and ordered reported the bill H.R. 911, with amendment, by a recorded vote of 20 ayes to 7 nays, a quorum being present.

VOTE OF THE COMMITTEE

The Committee considered the following amendments with recorded votes:

Mr. Conyers offered an amendment to the Inglis amendment in the nature of a substitute which would have allowed the States to elect to apply limitations on volunteer liability in exchange for an additional amount of federal funding. The amendment was defeated by a vote of 5 ayes to 21 nays.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Sensenbrenner			
Mr. McCollum		X	
Mr. Gekas		X	
Mr. Coble		X	
Mr. Smith (TX)		X	
Mr. Schiff			
Mr. Gallegly		X	
Mr. Canady		X	
Mr. Inglis		X	
Mr. Goodlatte		X	
Mr. Buyer		X	
Mr. Bono		X	
Mr. Bryant (TN)		X	
Mr. Chabot		X	
Mr. Barr			
Mr. Jenkins		X	
Mr. Hutchinson		X	
Mr. Pease		X	
Mr. Cannon			
Mr. Conyers	X		
Mr. Frank		X	
Mr. Schumer			
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler		X	
Mr. Rothman		X	
Mr. Hyde, Chairman		X	
Total	5	21	

Mr. Scott offered an amendment to the Inglis amendment in the nature of a substitute which would make the Act effective only as to claims where the harm that is the subject of the claim or the conduct that caused the harm occurred after the effective date. The amendment was adopted by a vote of 22 ayes to 4 nays.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Sensenbrenner		X	
Mr. McCollum	X		

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (TX)	X		
Mr. Schiff			
Mr. Gallegly	X		
Mr. Canady	X		
Mr. Inglis		X	
Mr. Goodlatte	X		
Mr. Buyer	X		
Mr. Bono	X		
Mr. Bryant (TN)	X		
Mr. Chabot		X	
Mr. Barr			
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon			
Mr. Conyers	X		
Mr. Frank	X		
Mr. Schumer			
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler	X		
Mr. Rothman	X		
Mr. Hyde, Chairman		X	
Total	22	4	

Mr. Watt offered an amendment to the Inglis amendment in the nature of a substitute which would have required an affirmative vote of a state legislature before the terms of the Act would be effective in that state. The amendment was defeated by a vote of 5 ayes to 17 nays.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Sensenbrenner		X	
Mr. McCollum		X	
Mr. Gekas		X	
Mr. Coble	X		
Mr. Smith (TX)		X	
Mr. Schiff			
Mr. Gallegly			
Mr. Canady		X	
Mr. Inglis		X	
Mr. Goodlatte		X	
Mr. Buyer		X	
Mr. Bono		X	
Mr. Bryant (TN)		X	
Mr. Chabot			
Mr. Barr			
Mr. Jenkins		X	

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Hutchinson		X	
Mr. Pease		X	
Mr. Cannon			
Mr. Conyers			
Mr. Frank		X	
Mr. Schumer			
Mr. Berman			
Mr. Boucher			
Mr. Nadler			
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren		X	
Ms. Jackson Lee	X		
Ms. Waters			
Mr. Meehan			
Mr. Delahunt	X		
Mr. Wexler		X	
Mr. Rothman		X	
Mr. Hyde, Chairman			
Total	5	17	

Final Passage. Mr. Hyde moved to report H.R. 911, as amended, favorably to the whole House. The bill was ordered favorably reported by a roll call vote of 20–7.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Sensenbrenner	X		
Mr. McCollum	X		
Mr. Gekas	X		
Mr. Coble	X		
Mr. Smith (TX)			
Mr. Schiff			
Mr. Gallegly			
Mr. Canady	X		
Mr. Inglis	X		
Mr. Goodlatte	X		
Mr. Buyer	X		
Mr. Bono	X		
Mr. Bryant (TN)	X		
Mr. Chabot	X		
Mr. Barr	X		
Mr. Jenkins	X		
Mr. Hutchinson	X		
Mr. Pease	X		
Mr. Cannon			
Mr. Conyers		X	
Mr. Frank			
Mr. Schumer			
Mr. Berman			
Mr. Boucher			
Mr. Nadler		X	
Mr. Scott		X	
Mr. Watt		X	
Ms. Lofgren		X	
Ms. Jackson Lee	X		
Ms. Waters		X	
Mr. Meehan	X		
Mr. Delahunt		X	
Mr. Wexler	X		

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Rothman	X		
Mr. Hyde, Chairman	X		
Total	20	7	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 911, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 16, 1997.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Office has prepared the enclosed cost estimate for H.R. 911, the Volunteer Protection Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John R. Righter (for federal costs), who can be reached at 226–2860, and Leo Lex (for the state and local impact), who can be reached at 225–3220.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 911—Volunteer Protection Act of 1997

H.R. 911 would protect individuals who volunteer their services to nonprofit organizations and government agencies from personal liability in certain cases. CBO estimates that enacting this bill would have no impact on the federal budget. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 911 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), but CBO estimates that the costs of complying with that mandate would be minimal and would not exceed the threshold established in the law ($50 million in 1996, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

The bill explicitly preempts any state law that would be less strict or inconsistent with provisions in the bill. Such a preemption constitutes an intergovernmental mandate as defined in UMRA. However, by passing appropriate legislation, states may elect to declare that the provisions of H.R. 911 do not apply to cases in state courts if all of the parties to the case are residents of the state.

Liability cases against volunteers are uncommon. Given their limited number, and the even more limited number of cases where a state, local, or tribal government might be a plaintiff suing a volunteer, the costs resulting from this preemption of state laws would be minimal.

The CBO staff contacts are John R. Righter (for federal costs), who can be reached at 226–2860, and Leo Lex (for the state and local impact), who can be reached at 225–3220. The estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The bill may be cited as the "Volunteer Protection Act of 1997."

SECTION 2. FINDINGS AND PURPOSE

Congress finds that volunteers have been deterred from offering their services due to liability concerns; that volunteers, nonprofit organizations, and government entities have faced increased liability insurance costs due to unwarranted litigation; that nonprofit organizations and government entities have been adversely affected by a resulting withdrawal of volunteers; and that much-needed contributions to communities have thereby also been diminished. Clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for federal legislation because of the national scope of the problems, federal expenditures on volunteer-

based social programs, the federal government's inability to carry out all services provided by such organizations, and due to the effects on interstate commerce. The legislation will serve those who need and use nonprofit and government programs and will sustain the availability of programs dependent on volunteers.

SECTION 3. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY

While the bill will generally preempt State law to the extent that it is inconsistent with the bill, the bill will not preempt any State laws that provide additional protections from liability relating to volunteers, nonprofit organizations, and government entities. This sets an outer limit of volunteer liability, while permitting States to provide greater protections.

The bill also permits a State to opt out of the bill's coverage in any civil action against a volunteer, nonprofit organization, or government entity in State court in which all parties are citizens of the State. This permits States to elect to apply their own legal rules in cases involving more purely State interests. The state must opt out in a free-standing bill.

SECTION 4. LIMITATION ON LIABILITY FOR VOLUNTEERS

The bill provides that a volunteer of a nonprofit organization or government entity will generally be relieved of liability for harm caused if (1) the volunteer was acting within the scope of the volunteer's responsibilities; (2) the volunteer was properly licensed, certified, or authorized by the State in which the harm occurred, if such authorization is required; (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the owner or operator to possess an operator's license or maintain insurance. This section explicitly specifies that it does not affect any civil action brought by any nonprofit organization or government entity against any volunteer of such organization or entity. This section also does not affect the liability of any nonprofit organization or government entity with respect to harm caused by a volunteer.

The bill further specifies that the following types of State laws shall not be construed as inconsistent with the bill: (1) any State law requiring a nonprofit organization or governmental entity to adhere to risk management or mandatory training procedures; (2) any State law making an organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees; (3) any State law making a liability limit inapplicable if the civil action is brought by an officer of a State or local government pursuant to State or local law; (4) and any State law making a liability limit applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity.

The bill also limits punitive damages that may be awarded against volunteers based on harm caused by a volunteer acting

within the scope of the volunteer's responsibilities. In such cases, punitive damages against any such defendant will be available only where the claimant demonstrates by clear and convincing evidence that the volunteer proximately caused the harm through willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed. This ensures that punitive damages, which are intended to punish the defendant and not to compensate the plaintiff, are available only where a volunteer has acted in an egregious fashion warranting such an award.

The bill separately provides that none of the liability limitations in the Act will apply to any misconduct that constitutes a crime of violence, act of international terrorism, or hate crime, or to any misconduct that involves a sexual offense, the violation of any State or Federal civil rights law, or intoxication or drug use. The provisions of this subsection therefore also limit the provisions of Section 5 relating to joint and several liability.

SECTION 5. LIABILITY FOR NONECONOMIC LOSS

The bill includes joint and several liability reforms applicable to any civil action against a volunteer based on an action of a volunteer acting within the scope of the volunteer's responsibilities. In such actions, the liability of any defendant who is a volunteer for noneconomic loss will be proportional to that defendant's responsibility for the harm. Any such defendant will continue to be jointly and severally liable for economic loss. This promotes a balance between ensuring full compensation for economic losses (including medical expenses, lost earnings, replacement services, and out-of-pocket expenses, etc.), and ensuring fairness in not holding volunteers responsible for noneconomic harm that they do not cause.

SECTION 6. DEFINITIONS

This section defines significant terms in the bill: "economic loss," "harm," "noneconomic loss," "nonprofit organization," "state," and "volunteer."

The term "nonprofit organization" includes organizations which have obtained tax exempt status under section 501(c)(3) of the Internal Revenue Code. It also includes organizations which may or may not have not obtained certification as tax-exempt organizations under the Internal Revenue Code, but which are nevertheless conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare or health purposes. For example, the definition is intended to include trade and professional associations and other business leagues which are exempt from taxation under section 501(c)(6) of the Internal Revenue Code. It would also include organizations which are not tax-exempt but which meet the "public benefit" and "operated primarily" tests.

The Act specifically excludes from the definition of "nonprofit organization" any organization which practices any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crimes Statistics Act. In order to fall within this exclusion, it would not be sufficient that the organization practice the conduct that forms the predicate of a crime referenced in that statute. That is, the organization's action must rise to the level of a crime.

SECTION 7. EFFECTIVE DATE

The bill will take effect 90 days after the date of enactment. It will apply to any claim filed on or after the effective date, if the harm that is the subject of the claim or the conduct that caused the harm occurred after the effective date.

DISSENTING VIEWS

Although we are fully supportive of increased volunteerism in our communities, we cannot support this well-intended, but poorly conceived legislation. The substitute amendment to H.R. 911 approved by the Committee is not only irrelevant to the issue of increasing volunteerism, it is redundant of many state laws, and is dangerous because of drafting problems that are likely to invite unintended consequences.

While we know of no volunteer liability case in the state courts whose outcome would have changed had this proposal been law,[1] this legislation is a classic case of unwarranted intrusion by the federal government into state prerogatives. H.R. 911 is particularly unnecessary in light of the fact that every state in the Union has enacted some form of protection for volunteers and charities.[2] We find it ironic that this "Washington knows best" mandate is being advanced by a party which repeatedly proclaims "states' rights" as a governing philosophy.

Moreover, not only is there no evidence of a decline in volunteerism in recent years, but there is no indication of any relationship between volunteer activity and any perceived risk of civil liability. We also oppose the legislation because it continues to allow the insulation of tortious conduct by hate groups and other undesirable entities, unnecessarily eliminates joint and several liability and limits punitive damages, and fails to adequately protect innocent victims.

For these and the reasons set forth below, we dissent from H.R. 911 as reported by the Committee.

1. No Empirical Evidence of Link Between Volunteerism and Risk of Civil Liability

While proponents of H.R. 911 claim that volunteerism is on the decline because of a "litigation explosion," there is no verifiable evidence to support this notion. During hearings on H.R. 911, no witness was able to identify a single case whose outcome would have been altered had this proposal been law at the time the case was brought.[3] At the Judiciary Committee's recent hearing Professor

[1] We have done a Westlaw search of all reported decisions at the federal and state level during the last seven years involving the terms "volunteer," "liability," and negligence, and H.R. 911 would not have altered the outcome of any of these cases.

[2] *See infra* n. 8.

[3] To the extent some individuals have reduced their commitment to volunteerism, the reason is unrelated to our tort laws. A landmark study by Robert Putnam identified the five leading social and economic factors which impact on volunteerism: (1) the movement of women into the workforce; (2) the necessity for Americans to work more hours to maintain their standard of living; (3) the mobility of people in America; (4) demographic changes, such as fewer marriages, more divorces, fewer children and lower real wages; and (5) the transformation of leisure time from volunteering to watching television. Robert D. Putnam, Bowling Alone: America's Declining Social Capital. 6:1 *Journal of Democracy* 65, Jan. 1995. Another study shows that for every 100

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Andrew Popper of American University testified that no em empirical case has been made for federal intervention in the area of volunteer liability.

> The literature does not reveal a single independent study, much less a juried piece of research, suggesting that federally imposed tort immunity will increase the number, frequency, or quality of volunteers. While there has been frequent and well publicized speculation that these benefits might accrue, speculation, rhetoric, and emotionalism are hardly the basis for federal preemption of state law.[4]

To the contrary, the empirical evidence shows a strong increase in volunteerism in recent years. Director of the Roper Center, Everett C. Ladd, notes that evidence taken from numerous polls documents a striking increase in such involvement.[5] In addition, surveys by the *Los Angeles Times* and Princeton Survey Research show growth in volunteerism in recent years.[6]

Given the dearth of empirical support, it is premature to consider federal preemptive legislation. As Professor Popper observed, "[t]he notion of a Congressional mandate changing state law is troubling, particularly in the absence of a showing that there is a national crisis, that a federal law will resolve the crisis, or that the consumers who are effected adversely by the law will be protected through some other mechanism."[7]

2. Abrogates Our Traditional Respect for State Authority in Tort Law

To the extent there is any problem with volunteer liability, the states are fully capable of passing their own laws protecting volunteers from personal civil liability. A survey by the Nonprofit Risk Management Center reveals that every state now has a law specifically limiting the legal liability volunteers or non-profit organizations.[8] In addition to limitations on the liability of directors and officers,[9] 38 states limit the liability of volunteers for simple negligence,[10] and another 20 states provide additional exemptions for recklessness and gross negligence by volunteers.[11]

Moreover, as the bill is drafted, it invites legal challenges to Congressional authority to legislate in this area, given the Supreme

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people who express interest in Big Brothers/Big Sisters of America, only 43 actually apply learn the amount of work involved. "Work Defeating Volunteer Spirit: Summit to Address Problem," *The Chicago Tribune,* March 27, 1997, A1. Similarly, the Indiana University Center on Philanthropy concluded that time pressure was the major factor effecting. Nearly 60 percent of those questioned said they had no time to work without pay. "Time Squeeze Pinches Charities," *The Indianapolis Business Journal,* June 17, 1996.

[4] Volunteer Liability Legislation: Hearing before the House Comm. on the Judiciary, 105th Cong. 1st Sess. (April 23, 1997) [hereinafter, "1997 Volunteer Liability Hearing"] (statement of Andrew Popper at 4).

[5] Pama Mitchell, "Trend Watch: Volunteers of America," The Atlanta Constitution (August 22, 1996).

[6] *Id.*

[7] *Id.*

[8] Nonprofit Risk Management Center, "State Liability Laws for Charitable Organizations and Volunteers" (1996).

[9] *Id.* at 9.

[10] *Id.* at 7.

[11] *Id.* Several states also limit liability by the charitable organizations themselves as well as their volunteers. *Id.* at 5.

Court's recent decision in *United States* v. *Lopez.* [12] In particular, Justice Department Office of Legal Counsel has expressed concern that the bill would invite constitutional challenges because its coverage is not limited to volunteer organizations that engage in interstate commerce or liability that arises by reason of volunteer services affecting interstate commerce. [13] Significantly, the Majority rejected an amendment offered by Mr. Conyers which would have remedied the constitutional concern by making the bill voluntary to the states.

Proponents' arguments that the legislation protects state prerogatives because it allows the states to elect not to have the provisions apply [14] miss the mark. It is an odd formulation of federalism which grants all power to Congress unless the states affirmatively act to protect their interests. As proponents well know, it is no easy feat to obtain approval in a state house and senate and obtain the governor's signature. Moreover, many states only meet on a biennial basis and couldn't even consider electing to opt-out for several years.

Moreover, the opt-out provision is unduly narrow in that it would only allow states to preserve their laws if all the parties are residents of the state. This is a subset of the types of matters that fall within state tort law under traditional conflict of law principles, which frequently include legal actions involving litigants who do not reside within the state. [15]

3. Fails To Protect Against Abuse by Hate Groups

Although H.R. 911 includes some minimal safeguards to insure that protection from liability does not inure to members of hate groups, these protections do not go nearly far enough. For example, the provision in the bill exempting members of hate groups from the liability limitations in the bill [16] does nothing to insure that state law does not unnecessarily immunize such persons. Thus if a particular state provides across the board immunity to volunteers, H.R. 911 continues to allow a member of a militia or hate group who negligently entrusts a gun to a child (who in turn harms an innocent victim) to avoid responsibility for the negligent entrustment. This is not appropriate. It would seem that if there truly is a basis for federalizing the field of volunteer liability (as

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[12] 514 S.Ct. 549 (1995). In *Lopez,* The Court held that the Gun-Free School Zones Act of 1990, which made illegal the knowing possession of a gun in a school zone, was beyond Congress' Commerce Clause authority. Last year, Congress acted to remedy the constitutional infirmity in the Gun-Free School Zones law by limiting it to firearms that "ha[ve] moved in or that otherwise affects interstate or foreign commerce." *See* 18 U.S.C. Sec. 922q.

[13] Office of Legal Counsel Comments on S. 543, Volunteer Protection Act of 1997. The amendment would have brought the legislation within the exercise of Congress' Spending Power by providing additional block grants for those states which enact provisions of the bill. This is identical to the approach taken in the original version of H.R. 911, introduced by Rep. Porter during the last seven Congresses which had been approved by the 103rd Congress as an amendment to the National and Community Service Act of 1990. *See* 139 Cong. Rec. P. 860 (July 28, 1993). The volunteer approach also avoids the problem of creating a confusing federal overlay on top of state law with ambiguities in interpretation only subject to final resolution by the Supreme Court. *See* H. Rep. No. 104–64, 104th Cong., 1st Sess. 40 (1995).

[14] Section 3(b).

[15] The Restatement Second of the Law provides, "The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties. . . ." Thus state law would ordinarily apply even if a party resided outside of the state if the injury took place within the state. Restatement (Second) Conflict of Laws Sec. 145 (1971).

[16] Sec. 6(4). This language was added pursuant to an amendment offered by Ms. Jackson Lee.

the legislation's proponents claim), no civil immunity of hate group members should be tolerated.

It is because of the bill's failure to provide full protection against harm perpetrated by hate group members that the Southern Poverty Law Center has chosen to oppose the legislation. Their Chief Trial Counsel, Morris Dees, has written:

> Under this legislation . . . a state could maintain or reinstate protections for volunteers of white supremacists, neo-Nazi and violent militia groups—the types of organizations the Southern Poverty Law center has crippled over the past ten years through the use of both federal and state tort laws. . . . Without two-way preemption, ensuring that volunteers connected with hate groups are never insulated from liability, we would oppose H.R. 911.[17]

4. Unnecessarily Eliminates Joint and Several Liability and Limits Punitive Damages

We also oppose the bill's elimination of joint and several liability for non-economic damages because it severely discriminates against women, children and seniors. This is because losses incurred by high paid CEO's who are victims of negligence are easily translated into economic damages (such as lost wages) which will not be subject to this new limitation. At the same time, damages incurred by a housewife or the loss of a limb by a senior or child, are more likely to included a larger proportion of "pain and suffering" damages which would be subject to the proposed limitation on joint and several damages. Moreover, as the bill is drafted, if a volunteer negligently causes an accident while driving a Salvation Army truck, the volunteer cannot be held jointly and severally liable for any non-economic damages that result.[18] We don't believe this loophole was intended by the bill's authors.

H.R. 911's limitations on punitive damages are similarly ill-conceived.[19] Given that almost all volunteers will already be totally exempt from legal liability under section 4(a) of the bill, there is little reason to further restrict the availability of punitive damages, which are incredibly rare to begin with.[20] The only parties who remain subject to liability may well be the very parties whose conduct society would want to deter—such as non-profit fraternity en-

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[17] Morris Dees, The Southern Poverty Law Center, Letter to Congressman John Conyers, Jr. (May 16, 1997).

[18] The joint and several liability provision of Sec. 5 of the bill covers "any civil action against a volunteer acting within the scope of the volunteer's responsibilities. . . ." Unlike section 4(a), which limits the application of the exemption for simple negligence to volunteers (1) acting within the scope of their responsibility to the nonprofit, (2) if appropriate, properly licensed, certified or authorized, and (3) not caused by the operation of a motor or other vehicle requiring license; section 4(e) and 5 (limiting the award of punitive and non-economic damages) applies to any volunteer acting within the scope of their responsibility to the nonprofit (i.e., the limitations would apply even to volunteers who weren't properly licensed, certified or authorized or were operating a motor vehicle).

[19] Section 4(e) provides, "Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed."

[20] *See* H. Rept. No. 104–64, 104th Cong. 1st Sess. 39 (1999) (citing numerous studies concerning the incidence of punitive damages).

gaging in a hazing ritual that results in drunkenness and harm.[21] (The same concern exists with respect to the limitation on non-economic damages—it will principally protect so-called "bad actors").

5. Fails To Adequately Protect Innocent Victims

H.R. 911 is also deficient in that instead of merely *permitting* the states to provide for adequate measures to insure that non-profit organizations operate in a safe manner—such as by allowing the states to require that non-profits adopt risk management procedures (such as training of volunteers), be subject to *respondeat superior*,[22] and have a secure source of funds for victim recovery available[23]—it should have *required* that such procedures be in place. In this way Congress could have helped insure that there was at least a measure of protection for innocent children and vulnerable individuals harmed by negligent conduct without exposing volunteers to any increased risk of legal liability.[24] For example, if we are going to exempt the volunteers of a non-profit gun club whose members unintentionally harm a child during errant target practice, we should make sure that the gun club is subject to liability and has the resources to make the child's family whole.

Conclusion

Like the other Members of this body, we believe that volunteerism can and should play an important role in restoring our communities. Unfortunately, H.R. 911 does nothing to enhance volunteerism, or help our poor and underprivileged. Instead, it creates a complex and inconsistent new overlay of limitations, confusing a system of state tort law that has served this nation well for more than 200 years. Our nation's volunteers and the persons they serve deserve better than this.

John Conyers, Jr.
Jerrold Nadler.
Robert C. Scott.
Zoe Lofgren.

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[21] The Majority rejected an *en bloc* amendment offered by Mr. Scott which would have struck the non-economic damages and punitive damage limitation.

[22] The common law doctrine of *respondeat superior* provides that employers are generally vicariously liable for the negligence of their employees and volunteers.

[23] Sec. 4(d)(1)–(4).

[24] When Mr. Scott offered an amendment to this effect, it was rejected by the Majority.