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## Senate

The Senate met at 9:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Lord of all time, keep us from being distracted from what's important today by the tyranny of the urgent. Help us prioritize the demands of this day. Give us the courage to live on what You will show us is on Your agenda. May we deem urgent what glorifies You, brings us into a deeper relationship with You, and serves the needs of people. Our desire is to live with an inner serenity about the pressures of the day. Rather than thrashing about to keep afloat, free us to float uplifted by the blessed buoyancy of Your power. Carry us by the currents of Your spirit. Guide us through the rocks in the river, some of which are hidden beneath the surface.

Lord, we want to be inner-directed people rather than those who are pulled in all directions. Make us so secure in You that we will have strength to discover and do Your will. Give us courage to say, "No" to some things and "Yes" to others on the basis of Your guidance in our minds and hearts.

We press on to this day with our only concern being that we might miss Your best in the busy schedule of the day. So now quiet any dissonance in us, overcome any resistance in our wills, and fill any emptiness in our hearts. Through our Saviour and Lord. Amen.

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT from Mississippi, is recognized.

Mr. LOTT. Good morning, Mr. President.

### SCHEDULE

Mr. LOTT. Mr. President, today, the Senate will resume consideration of the motion to proceed to the consideration of S. 543, the Volunteer Protection Act. Debate on the motion to proceed will continue until 12:30 p.m., with the time equally divided between Senator COVERDELL, or his designee, and the ranking member, or his designee. From 12:30 p.m. to 2:15 p.m., the Senate will be in recess for the weekly policy luncheons. By a previous order, at 2:15 p.m., there will be a cloture vote on the motion to proceed to S. 543, the Volunteer Protection Act. If cloture is invoked, there will be 1 hour of debate, followed by a vote on the motion to proceed. As a reminder, a second cloture motion was filed last night on the motion to proceed to S. 543. Therefore, if cloture is not invoked at 2:15 p.m., there will be a second vote on Wednesday. Hopefully, cloture will be invoked today, and the Senate can begin consideration of this important bill.

I note again, this is debate on the motion to proceed on a bill that seems to me we would certainly want to pass in short order to provide some basic protection for volunteers who serve on boards of charitable organizations, volunteer organizations. That is the spirit of what we have seen in Philadelphia for the last 3 days, and yet, if you volunteer in America, you run the risk of being sued. Maybe we can work out some of the concerns that lawyers may have about this bill. But it seems like it is the fair thing to do.

We have other work we need to do. I am sure Senators would like to turn to the supplemental appropriations bill as soon as possible. We hope that bill will be ready for consideration Wednesday or Thursday, but we have to dispose of the Volunteer Protection Act first. There are other concerns that we think need to be addressed. So we will be working with the minority leader to see if we can come to some agreement

on how we can conclude these very important pieces of legislation.

I yield the floor, Mr. President.

### VOLUNTEER PROTECTION ACT OF 1997—MOTION TO PROCEED

The PRESIDING OFFICER (Mr. HUTCHINSON). Under the previous order, the Senate will now resume consideration of the motion to proceed to S. 543, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 543) to provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

The Senate resumed consideration of the motion to proceed.

Mr. LOTT. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COVERDELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The time between 9:30 a.m. and 12:30 p.m. shall be equally divided between the Senator from Georgia [Mr. COVERDELL] or his designee, and the Senator from Vermont [Mr. LEAHY] or his designee. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, just for clarification, we are debating, in essence, whether the other side will allow us to move to the Volunteer Protection Act. That is the beginning of something we describe in the Senate as a filibuster, an attempt to block consideration of the Volunteer Protection Act.

I will take a moment just to describe the cast of characters here. What we have is a community that can perhaps be best described as Little League baseball that is trying to find relief from our current litigious society because they claim and can substantiate

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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that it is having a chilling effect on the volunteer community.

We have a number of legislators—myself, Senators MCCONNELL, ASHCROFT, SANTORUM, and others—who have tried to frame legislation under the Volunteer Protection Act that would protect the unique creature of a volunteer in America. We have some trial attorneys who are apparently objecting to even these limited reforms to protect volunteers and their participation in what makes America so good.

The Volunteer Protection Act of 1997 is a bill, first to describe it in general terms, to provide certain protections to volunteers, nonprofit organizations, and Government entities from lawsuits based on activities of the volunteers. The findings are that potential volunteers are deterred from offering their services by the potential for liability actions against them; that many nonprofit organizations and Government entities that rely on volunteer service are harmed by the withdrawal of volunteers from boards of directors and other service; and that this, therefore, diminishes the contribution of these programs in this most important time in our history, of volunteer activity on behalf of communities and, therefore, our nonprofit organizations have fewer programs and they are experiencing higher costs.

The purpose of the Volunteer Protection Act is to promote the interests of social service programs beneficiaries and taxpayers by sustaining programs that rely on volunteers, by helping those entities, those organizations that encourage voluntarism in America.

This would reform the laws to provide liability protection for volunteers serving nonprofit organizations and Government entities. It would put a limitation on the liability for volunteers. No volunteer of a nonprofit organization or governmental entity would be liable for harm caused by the act or omission of the volunteer. It has certain protections, of course. The volunteer must be acting within the scope of his or her responsibilities in the organization. If required, the volunteer must be properly licensed, certified, or authorized in the State where the harm might have occurred. There is no protection for volunteers if harm caused was willful or criminal misconduct, if it was gross negligence or reckless misconduct.

The legislation does not affect any action brought by the organization itself against a volunteer, and it does not affect the liability of the organization itself for harm caused to any person.

Mr. President, in the area of punitive damages—this is an area of the law that goes beyond just direct costs and deals with punishing someone—punitive damages are awarded to punish or deter misconduct by a defendant, as opposed to compensatory damages awarded to pay the plaintiff for harm that he or she has suffered.

In this legislation, punitive damages may not be awarded against a volun-

teer, nonprofit organization, or government entity for harm caused by a volunteer without clear and convincing evidence that the harm resulted from willful or criminal misconduct or gross negligence.

No protection for volunteers or organizations for misconduct that constitutes a crime of violence, a hate crime, a crime that involves a sexual offense or a civil rights violation, or where the defendant was under the influence of drugs or alcohol. The legislation offers no defense or protection in these critical areas.

The legislation deals with liability for noneconomic loss. Noneconomic losses are such things as physical and emotional pain or suffering, inconvenience, mental anguish, or injury to reputation, et cetera.

The legislation requires liability for noneconomic losses to be proportionately assigned and paid by each defendant. So it is therefore abolishing joint and several liability where any defendant can be required to pay the whole judgment even if the defendant were only minimally involved or at fault.

The legislation, Mr. President, recognizes the State role in these affairs. It would preempt State law to the extent that State laws are inconsistent with the Volunteer Protection Act. But it does not preempt a State that provides greater protection for volunteers or any category of volunteers performing services for a nonprofit organization or governmental entity or for the organizations themselves.

A State, Mr. President, may elect to have the Volunteer Protection Act not apply in cases where all parties are a citizen of that State. So, in other words, it can elect to opt out from under this national law if it is a circumstance that involves just citizens of their State. To opt out, the State must declare its election to do so in a freestanding bill.

The Volunteer Protection Act would take effect 90 days after the date of enactment, and it applies to any claim filed on or after the effective date regardless of whether the underlying harm or the conduct that caused the harm occurred before the effective date.

Mr. President, you cannot see this, but this is two complete pages of the kinds of institutions that are asking for national policy to protect the natural resource, the Nation's resource, that are represented by the American volunteer. It ranges from the Air Force Association—which reminds me of a vignette, Mr. President, that occurred over the weekend.

I do not know if you can see this jagged scar above my eye here, but in running to get out of the inclement weather in my home State, in the middle of the State, I was jumping into an automobile owned by the U.S. Air Force, and misjudged and hit the corner of the door—it made for a rather interesting moment or two—and the first words from my Air Force companion were,

"Gosh, I hope you're not going to sue the Air Force," which I have no intention of doing.

But it sort of reminded me of that. The first organization is the Air Force Association. And there is the American Camping Association, American Diabetes Association, American Hospital Association, American Red Cross, American Symphony Orchestra League, American Society of Association Executives, the B'Nai B'rith International, Big Brothers and Big Sisters, Boys Club, Little League, which I mentioned a moment ago, the Lupus Foundation of America, the National Association of Towns and Townships, the National Council of Jewish Women, the National Crime Prevention Council, the National Easter Seal Society, the National Military Family Association, the National PTA—and the list goes on.

Just to restate the nature of what these organizations are saying and the appeal they are making, it is well documented in a letter to me dated April 22, 1997. I want to read it again. It is directed to me from the office of the president and chief executive officer of the National Little League Baseball, Inc., from their international headquarters in Williamsport, PA.

Dear Senator COVERDELL: On behalf of the 1,000,000 annual Little League Baseball volunteers, I am writing to express Little League Baseball's support for the "Volunteer Protection Act."

Little League Baseball, played in 6,800 communities in all 50 States, exists today with volunteerism as its foundation strength. Each year this corps of 1,000,000 adult volunteers, mostly mothers and fathers who consider Little League as a healthy activity which strengthens families, give freely of their time to provide an athletic arena in which their children will learn valuable leadership lessons. To let this volunteer spirit erode or be eliminated through frivolous and expensive litigation would be a grave injustice to the present and future generations.

The time is now to reduce the chilling effect of liability exposure for those who [would] donate their time and services to Little League Baseball or any non-profit, charitable institution. If protection from nuisance suits is not provided, every community is at risk of losing those very people whose community service will mold the leaders of tomorrow.

We thank you and your colleagues for giving this important issue the attention it needs.

Sincerely, Stephen D. Keener, President and Chief Executive Officer.

Here is a letter dated April 15, directed to me from Gordon Banks, who is the executive director of the American Industrial Hygiene Association.

On behalf of the American Industrial Hygiene Association, I am pleased to convey our support for passage of . . . the "Volunteer Protection Act of 1997."

AIHA is the world's largest association of occupational and environmental health professionals. The membership of AIHA, nearly 13,000 members, comes from government, labor, industry, academia and private business. You would be hard-pressed to find a more diverse, professional organization dedicated solely to the prevention of workplace

fatalities, injury, and illness. AIHA's goal is to bring "good science" and the benefit of our work place experience to the public policy process directed at worker health and safety.

Enactment of [the Volunteer Protection Act] would be of great benefit to AIHA.

This is testimony of John H. Graham IV, who is the chief executive officer of the American Diabetes Association on behalf of the American Society of Association Executives and the National Coalition for Volunteer Protection. This testimony, Mr. President, was before the House Judiciary Committee on April 23, 1997. This gentleman says that:

... on behalf of the American Society of Association Executives, an organization representing more than 23,500 individuals from more than 11,000 national, state and local trade and professional associations. As a member of the ASAE's board of directors, I can report that these associations are completely dependent upon volunteers who serve on their boards and committees and who perform direct service functions. ...

The National Coalition for Volunteer Protection continues to coordinate and generate support for the passage of volunteer protection legislation. As of April 18, 1997, this coalition represents more than 300 national, state and local volunteer-dependent groups. These groups collectively utilize tens of millions of volunteers.

He goes on to say:

We have seen recently that otherwise qualified and willing individuals are withholding their services out of fear of liability and confusion concerning the different volunteer protection laws on the books in many states. These are individuals who would help house and feed the homeless, who would treat and support the elderly, and who would clothe and care for the poor.

In his statement he cites a study done in 1988, a Gallop study. He says:

The study, "The Liability Crisis and the Use of Volunteers by Nonprofit Associations," was released by the Gallop Organization in January 1988. The study was sponsored by the American Society of Association Executives and funded by the Gannett Foundation. The study concentrated on director and officers liability. The results of the study revealed very interesting data on the effect of this crisis on direct service volunteers. According to the study:

Approximately one in ten nonprofit organizations have experienced the resignation of a volunteer due to liability concerns. If this figure were multiplied by the number of nonprofit organizations in America (600,000), then it would mean that 48,000 volunteers would have been lost during the past few years strictly due to liability concerns. Remember: these volunteers resigned. Resignation is a very drastic measure.

One in six volunteers report withholding their services due to fear of exposure to liability suits.

On that point, Mr. President, when we had a press conference in the House several days ago, it was attended by a very famous athlete with the Washington Redskins, Terry Orr, who remembered when he came to play for the Washington Redskins that it was a common practice for the senior members of the team to come to the rookies and say, "We need some help with this Boy's Club or another organization generally dedicated to youth and

youthful activities." When it came his turn—he was no longer the rookie—he was going to the rookies and asking for support to get these famous role models before young people right here in the Nation's Capital City. And to his surprise, Mr. President, he was shocked that it was not, as in his day, the response, "Well, where do we go and what Saturday morning is it?" The response was, "What's the liability coverage and what is my risk and what kinds of forms do I have to complete in order to participate?" And, "I'm not sure that I can afford to do this kind of thing."

This is a dramatic change of events and a chilling experience that robs people of all walks of life, indeed, of an opportunity to be helped by the unique volunteer spirit that we know in America.

Mr. President, I see we have been joined by the other side on this issue. As I understand it, we have from 9:30 to 12:30 equally divided. I yield to the other side at this point.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. ROBERTS). The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Chair will observe the time between 9:30 and 12:30 is equally divided between the Senator from Georgia and the Senator from Vermont. The Senator from Vermont has 84 minutes remaining on his time. The Senator from Georgia has 64 minutes.

Mr. LEAHY. I thank the Chair.

Mr. President, like many who have volunteered for everything from helping out libraries to volunteering on law enforcement matters, I support the idea of voluntarism, but 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 the Philadelphia summit on volunteering in America.

I applaud President Clinton, General Powell, President Bush, President Carter, Mrs. Reagan, and others who were at the summit on voluntarism in Pennsylvania. I hope it will encourage people to continue beyond the time of the weekend.

We also have some things we are supposed to do in this body. We are supposed to pass a Federal budget. You and I, Mr. President, are required by law to file our income tax returns by April 15. If we do not, we get a knock on the door from the IRS. We are also, as Members of the Senate and Members of the House, required to pass a budget by April 15. The determination of when we start on a budget resolution is determined by the Republican leadership of the House and the Republican leadership of the Senate. Today is April 29 and they have yet to schedule 12 seconds of debate on the budget that the law requires us to have by April 15.

We have a number of members of the President's Cabinet and subcabinet

that we cannot get 18 seconds of debate on, or to vote on them. We have 100 vacancies in the Federal courts. We have only found time—between a number of vacations this year—to confirm two members of the court, even though the Chief Justice has said that the vacancies have created a crisis in the courts of this country.

Now, America's 93 million volunteers, in the spirit of altruism, should get better treatment than to be used as unwilling partners in a partisan publicity stunt as a way to come up with the fact that the Senate is not doing the work the law requires us to do, the responsibility that we dictate we do. Instead, we have this.

Here we are, 2 weeks after the Senate missed its deadline to consider the budget, the legislative schedule again stretches before us as a vast desert of inactivity, but now in the vapor, also like a mirage, coming out of the desert, comes this bill.

Now, why was this particular bill suddenly brought to the floor without any notice, without any hearings, 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 is this bill being tendered to the Senate and the public like a stowaway, opportunistically cloaked in the camouflage of the week—voluntarism?

Mr. President, the answer is that this is a bill whose flaws would come to light under the scrutiny of our regular order. If we actually had 20 minutes of hearings, if we actually had a committee report, if we actually had a debate, we would find out the flaws.

Now, a commendable bill in the other body, which more precisely and thoughtfully addresses the issue which S. 543 purports to address on liability and volunteer work, has been introduced by Congressman JOHN PORTER. The Porter bill is being publicly examined through committee hearings, as it should be, 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 voluntarism. It is 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 themselves to make life better in our communities and our Nation. The events in Philadelphia this week are designed to be nonpartisan and inclusive of the interests of all.

I mentioned those who were there, and I want to express again my gratitude to President George Bush and Barbara Bush for their longstanding leadership in this cause. I remember Mrs. Bush reading to children when they were at the White House and the example that set. It is time to recognize the personal commitment of Jimmy and Rosalynn Carter with Habitat for Humanity. They have gone out

and worked and actually built houses for people to live in. They have done work around the world. It is time to heed and welcome the calls to action by national leaders such as Gen. Colin Powell, who, by his own life, set such a fine example to appreciate the vision of President Clinton and our First Lady. We see the President, even with his leg in a cast, hobbling over to set an example of helping.

We should all look forward to the results of the summit, and we should pledge to work in a bipartisan way to consider any recommendations—any recommendations—for legislation that may emerge from this national forum and accept the example of President Clinton and President Bush, of President Carter and Mrs. Reagan, of General Powell and others, to act in a non-partisan fashion.

By contrast, the motion by the Republican majority to move to immediate consideration of S. 543, a bill rushed into the hop only days ago, reflects none of the spirit and instead actually is a narrow, partisan effort. Again, we find the Senate ignoring its own duties and responsibilities. We find the Senate ignoring the April 15 date, which by law required the leadership to bring forward a budget resolution. We ignored our duties and responsibilities to confirm Alexis Herman as the Secretary of Labor. We have ignored our responsibilities and duties and allowed this lengthening backlog of judicial nominees to the Federal court—now almost 100 vacancies—in order to tell some others what they should be doing and how.

This time, what the majority in this body, the Republican leadership, has targeted are the legislatures of the 50 States. What the Senate is trying to tell the State legislatures is that they do not know how to do their business. Big Daddy is right here in Washington. We will tell you how to do it better. Frankly, that might not go over too well with the legislature in Vermont, and I hope it will not in Kansas, Georgia, or anywhere else. 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 or work for charitable organizations.

In 1990, President Bush endorsed a model State law to protect volunteers from legal liability, but he did it the right way. President Bush said, "Here is a good law, here is a model law, but we are not going to impose it on the State legislatures. We in Washington are not going to tell the people of Missouri, Georgia, Vermont, Kansas, or anywhere else, how you must do it. We will make the suggestion but your own legislature can make that determination."

Amazingly, for once, the Senate of the United States or the House of Representatives was not trying to tell them what they had to do. They were delighted, and they endorsed it. Since

1990, when President Bush made what I thought was a very sensible call, and one I encourage, State legislatures across the country have moved to protect volunteers through enactment of State laws, not something imposed on them from Washington, but something they designed within their own States. At least 44 of the 50 States have enacted some form of volunteer protection from liability. But even though those 44 have been active, we want to come rushing in, with no hearings, no debate, no discussion, no consideration by the States or anything else of legislation, and we say, "Tough luck, your legislatures do not count. Here we are. We will tell you what to do."

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 when we cannot even do the work we are supposed to do? We cannot even get the budget here on April 15 like we are required. We cannot confirm judges. We cannot do anything we are supposed to do. Why are we proceeding to a bill that was only introduced days ago? Why are we proceeding without any hearings or committee consideration? Why are we being forced to proceed without the benefit of a committee report, without an opportunity to study the recent actions of our State legislatures? Can we at least look at what legislatures do before we hit them over the head and tell all these States, "You are not smart enough to do this. We are so much smarter than you are."

Do we really want to do that when we have not even had 12 seconds of hearings on this bill? Why is the Republican leadership demanding the Senate consider a law to override the laws of each of our State legislatures designed to protect volunteers and charitable organizations in our States? Why are we being told to just wipe out all the things the State legislatures have done to protect volunteers in their States? The States of Vermont, Georgia, and many others, for example, have already provided protection for directors and officers of nonprofit organizations from civil liability. Do we, in the U.S. Senate, intuitively know better than our State legislatures what is needed?

Do we know whether the better approach is to require indemnification or mandate insurance or provide limited immunity or help properly to structure acceptance of limitations of liabilities so that State law can serve to encourage charitable efforts without leaving innocent citizens to suffer from wrongful conduct without legal recourse? Have we developed any kind of a record—a page, a paragraph, a sentence, one itty-bitsy tiny word—on which to justify such a legislative judgment or to justify Federal intrusion into areas that are traditionally matters of local concern? Of course not.

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 it knows better than anyone else what the States should pass to encourage local volunteers. You go home and give a speech to the local Rotary Club and say, "We want to give the power back to the States. We want the people to make these decisions; however, we know better than you in the long run, so we will pass this." For a group that criticizes others for acting as if Washington has solutions to every local problem, the smell of cherry blossoms seems to have gotten to someone.

I do not know what is wrong with the partial immunity and limited liability laws passed in Georgia, Kentucky, Michigan, Pennsylvania, or Missouri. I have not seen convincing evidence that vast punitive damage judgments exist to a significant factor in voluntarism, yet we are about 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 Senate Joint Resolution 22, the independent counsel resolution, it was only a patently partisan sense-of-the-Senate resolution. It was inappropriate. It demeaned the Senate. But it 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 at least 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 at least it concerned Federal law, not State law. But this matter is different. It is not a sense-of-the-Senate resolution. It is not about a Federal agency or a Federal law or a Federal law problem. Instead, it is a repudiation of federalism and the primary role of the States in defining liability laws for local activities. It can have serious repercussions. When we just slap down the States like that and say they don't know enough to do these things, so we will do it for you, we ought to at least consider it substantively.

There is a slight procedural twist in S. 543. It is technically not being discharged from the Senate Judiciary Committee because it wasn't referred to the committee at all. On April 9, the same group of Republican sponsors introduced the same bill twice, held it 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 their purposes. They get impatient after less than 3 weeks, and here we are on the floor with this ill-considered legislation and, again, we ignored the statutory date to get important legislation out, like the budget, on April 15.

Now, of course, I did have a chance to read the bill over the weekend. That is a lot bigger opportunity for deliberation than was afforded the Senate when we voted on a substitute version of S. 495 the same afternoon it was offered. So we in the minority are grateful to actually have a chance to do our job.

I want to point to a couple of problems. I wish to alert the Senate to several aspects of the bill. It may not be apparent from the statement of the sponsors. First, this bill is misnamed. It ought to be called the Ku Klux Klan Protection Act. That is as good an example as any of the nonprofit, "volunteer" organizations 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. If we had had a hearing—something that apparently we no longer do in the Senate; we just bring bills to the floor—do you know what we would have found out about this bill, Mr. President? This bill is going to be supported, I assume strongly, by the Ku Klux Klan, because if you look at the web page of the Ku Klux Klan, look what they say on it: "The Knights of the Ku Klux Klan are a noncommercial, nonprofit, volunteer organization." And when we knock down all the State laws by passing this to give immunity, who are we giving immunity to? Noncommercial, nonprofit, volunteer organizations like—oh, I don't know, maybe the Ku Klux Klan. Well, if we had had 20 minutes of hearings on this bill, we might have known that. Isn't this special? In rushing this sucker through, we rush through something that wipes out State laws and imposes our feelings and our judgment to protect noncommercial, nonprofit, volunteer organizations like "the world's oldest, largest, and most professional whites' civil rights organization, the Knights of the Ku Klux Klan."

Mr. President, look at the picture taken off of the web page of the Ku Klux Klan: "The world's oldest, largest, and most professional whites' civil rights organization \* \* \* a noncommercial, nonprofit, volunteer organization." But no matter what kind of laws we might have in Vermont or any other State, this bill would wipe those laws off the books and give them protection.

I am not suggesting for one moment that this is what the sponsors of this legislation want to do. There is not a single one of these sponsors of this legislation that want to do something to protect the Ku Klux Klan. I think we all know that. But what happens, Mr. President, is that we just rush legislation through because it sounds good

and fits in for a good political sound bite for the day, and we haven't had any hearings, haven't done any of the work the Senate is supposed to do. This is what happens—something like this comes slipping through. This is why I oppose this moving forward like this.

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.

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 "noncommercial, nonprofit, 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? Is it a matter for the organization to declare its purpose, such as the Ku Klux Klan does when it designates itself to be a noncommercial, nonprofit, volunteer organization? Do we want Government to decide 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 or nonqualifying groups or activities? Consistent with the first amendment principles, can Government be directed to make judgments on liability based on the political orientation of the group? Should the group on the left be allowed and a group on the right not be allowed, or vice versa? 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, don't believe victims of hate groups should have to overcome the Federal law immunities that would be created by this bill in order to recover damages done to them. I don't think that somebody who wants to recover damages caused by actions of the Ku Klux Klan against them should have to overcome the prohibitions of this bill. 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 for not-for-profit and nonprofit organizations under S. 543.

The overly broad definition of nonprofit in S. 543 might also shield many hospitals from legal liability for actions involving a volunteer. If a not-for-profit hospital uses a volunteer to take down patient information during the admittance process, or to wheel a patient down a hallway, should that hospital be shielded later from liability for medical malpractice? Do we really want to close off remedies for medical malpractice because a hospital used a volunteer and, thus, is insulated under this?

I don't know that victims of malpractice in not-for-profit hospitals need to overcome special federally imposed immunity rules to recover for their injuries and pain and suffering. In fact, 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. We don't have a mess of suits against volunteers going on around this country, where the States are saying: Please come in and save us from ourselves. You can do our jobs so much better than we can. You know so much better. You people are so much wiser in Washington than we are in the State legislatures. Please save us from ourselves.

I haven't heard a lot of that. Maybe others have, but I haven't.

When we want to encourage voluntarism 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. Now, that actually helps.

Last year, we enacted a targeted bill to encourage the delivery of food to the poor and needy when we passed the Bill Emerson Good Samaritan Act. It provides food banks to people on the front lines in the war against hunger, with sensible liability protection. We thought it out and did it.

But this bill, 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—if they are crossing the street and somebody goes barreling through a red light and nails you, when you are lying in traction in the hospital, you don't really care that that driver was speeding because he or she was late to a PTA meeting, or a meeting of some trade association. But if they are going to a PTA meeting and nailed you, you may not be able to recover. But if they are going to a trade association, you can. This might be enough to exempt the volunteer driver under volunteer in the bill.

Many States have excluded motor vehicle injuries from their laws protecting volunteers. The Senators pushing this through to override what the States think, do they really know better than the State legislatures? What makes them think that the potential of a lawsuit for negligent driving 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 be insured against, which is so affecting national insurance rates, that the Federal Government has to step in and create a Federal immunity? I doubt it.

I will work with people who want to make a better law. We can do it. We ought to work together to correct the

excesses of S. 543. I believe that nobody wants to exempt the Ku Klux Klan, but that is what the bill does. Why don't we find a way that we can work on something, as President Bush did when he put together a model law and passed it on to the States and said, here, use your wisdom and determine what you need in your State. That sets a better way.

The real volunteer protection act is H.R. 911, legislation introduced by Congressman PORTER. This actually has tripartisan support—Democrats, Republicans, and Independents—and almost 140 House cosponsors. 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 a whole lot of others.

That bill seeks to respect State prerogatives and State law, and it says we are not going to just pound you over the head in Washington and say that we know better, no matter what you think; we are so much wiser than your State legislatures on whether to impose Federal immunities, preempting State law. It offers financial incentives for States to enact model language for limiting volunteer liability. That makes a lot more sense to me.

If we can achieve the objective in encouraging and protecting real volunteers in direct contact with those who need help, without Federalizing State law, we ought to consider the benefits of that. I know the Democratic leader, Senator DASCHLE, and I strongly support the Porter bill as a substitute to S. 543.

There is no record that our State courts are glutted with liability cases against volunteers. And there is no record that our State legislatures have fallen down on the job and have been ignoring a crisis that threatens voluntarism in our society. Frankly, Mr. President, I am far more comfortable to have the legislature, the general assembly in Vermont determine what makes a good law for Vermont than I am with a law rushed through the Senate with no hearings, virtually no debate. We don't have a Ku Klux Klan chapter in Vermont. At one time in our history, we did. I don't want anything that is going to encourage them to come back.

Indeed, the Wall Street Journal reported last week, on April 23, 1997: "Voluntarism, a classic American solution to social problems, appears to be on the rise." I think we should tread kind of lightly. The States seem to know what they are doing. They usually do. We should tread lightly before we jump in and give them a slap up alongside the head and take over.

This bill doesn't just apply to volunteers. In fact, immunizing the negligent conduct of volunteers is a small part of the bill. It also creates a regime

of governmental entities, nonprofit organizations and not-for-profit organizations that changes the laws in our 50 States whenever a claim for personal injury is based on the action of a volunteer.

It would shield myriad organizations from being liable for damages for failing to properly supervise or train or screen their volunteers.

Suppose you say to the volunteers, take the car and drive down and pick somebody up. Are you screened from liability when they run over somebody? If a group that works with young people fails to investigate reports of sexual abuse by a volunteer and several young girls or young boys suffer abuse, should that organization be immune from sharing the damages for the trauma, suffering and psychological scars these young victims would carry with them the rest of their lives? Is that really a Federal immunity we want to pass? If the Senate wants to immunize them from any liability to those children who might be sexually abused, well, then, let us at least have a hearing on it and make that determination. I, for one, am not willing to give that immunity.

The House Judiciary Committee last week held a hearing on volunteer liability. They considered H.R. 911 as a proposal to provide exemptions from liability for volunteers, not the supervisory organizations. I do not perceive the compelling need to extend liability protection beyond such volunteers as S. 543 insists. We should be encouraging, not discouraging, nonprofit organizations to properly screen and train and supervise their volunteers. We ought to have fair and balanced legislation on this.

As a lifelong Vermonter, I am proud and profoundly appreciative of the thousands of volunteers in Vermont, and millions across the country in all our States, whose selfless acts make the world a better place for all of us. The people who spend their weekends preparing dinners for the homeless and the poor, the parents who organize a car wash to raise money for the local PTA, those filling sandbags in flood-threatened areas—these kinds of acts of voluntarism are an essential part of the American social fabric, the kind of voluntarism I learned from my parents growing up as a boy in Montpelier, VT, as so many of the rest of Americans did. Those who volunteer deserve our thanks and encouragement.

I think if we work together on this and actually have some hearings, we can have broad, strong consensus of Republicans and Democrats to give any needed protection and other helpful encouragement to our volunteers. These really are the heroes of America. These volunteers in service organizations are not asking for a free ride, for a license to behave badly. In fact, I imagine many of them, if they read what is in here, are going to be very offended to have any suggestion that they might want something like this. But S. 543

would encourage free rides and licenses to behave badly. Before we needlessly cut off rights of victims of harmful conduct, we ought to consider whether it is necessary or it is desirable.

I think what we ought to do is send this bill on for its normal hearings in the Judiciary Committee. Lord knows, we are not doing anything there to get judges out, notwithstanding our 100 vacancies. We could take some time to take a look at this piece of legislation. Let us do that, Mr. President. Let us not rush something through just because it is volunteer week. I would hate to think if next week became organ transplant week; we might find ourselves all being marched down to the Capitol physician's office to donate an organ before we had any—maybe then we would actually ask for a hearing if it affected us that way. This affects a lot more than 100 Members of the Senate. It affects 260 million of our American citizens, 260 million Americans who have gone to their State legislatures and assume their State legislatures know what they are doing. We are saying to those 260 million Americans, "You do not need your State legislatures. You have us." Well, I do not want us to make this decision without any kind of a hearing.

Mr. President, I reserve the remainder of my time.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, in a moment I am going to yield to my distinguished colleague from Missouri, but I want to make a couple of comments regarding the remarks of the Senator from Vermont. I have long worked with the Senator from Vermont on issues relating to voluntarism in the Peace Corps when I was director. But I have to say to him that evoking the Ku Klux Klan is something I would not have expected from him. It is demeaning. It is an inaccurate portrayal of the legislation. There is regional arrogance in the context of the Senator's statement, and I do not appreciate it.

I will read to the Senator the exact sections of the bill.

Section 4(f). Exceptions to Limitations on Liability. The limitations on the liability of a volunteer, nonprofit organization, or governmental entity under this section shall not apply to any misconduct that—

(1) 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;

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

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

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

(5) 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.

I refer the Senator to:

Section 6(4) Nonprofit Organization. The term "nonprofit organization" means—

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

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

Mr. LEAHY. Will the Senator yield for a question on that point?

Mr. COVERDELL. I do not yield just yet.

Mr. President, I might also say that the organizations to which the Senator from Vermont alluded, Little League and others, are supporting this legislation before the Senate, or hope to if we can get it before the Senate, if we can get it over the cloture and the filibuster that is being conducted by the other side. These organizations hardly constitute a force in our society of evil or ill repute.

Mr. President, I would like to yield at this time my time to the Senator from Missouri.

Mr. LEAHY. Will the Senator yield for a question on my time?

Mr. COVERDELL. I do not yield at this time.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. ASHCROFT. I am pleased to have this opportunity to address this problem. It is a problem that challenges the capacity of individuals in our culture to share with each other and to help one another. The fact that there are proposals that relate to this, in addition to this proposal, from a wide variety of perspectives, demonstrates that this is not an effort to address something that is not a problem.

Let me just give you a couple of examples of how this problem has manifested itself and what are the effects. First of all, I will give you some of the general effects. The Gallup organization conducted a survey entitled: "The Liability Crisis and the Use of Volunteers of Nonprofit Associations." What did the Gallup organization find? Approximately 1 in 10 nonprofit organizations has experienced the resignation of a volunteer due to liability concerns. One in six volunteers was reported to have withheld services due to a fear of exposure to liability suits.

Now, the question is, do we need more volunteers in our culture or do we need less? Our current system is stopping 18 percent of volunteers from doing some volunteer activity and resulting in 10 percent of the organizations having people resign from their boards of directors.

I might also indicate that mention has been made that some of the States have provided some protection for volunteers. I find it ironic that about half of all the States which provide protection do so only for the guy on the board of directors or the person at the top of the organization setting policy. The person who is the silk stocking guy in

the boardroom gets protected, but the fellow out there on the field, the Little League coach, is the guy against whom the big judgment is rendered.

Our question has to be, are we going to tie the hands of the person who is actually going to deliver the help while we provide some cocoon of protection to the fellow in the boardroom? Or are we going to say to the average citizen, you can afford to get involved in your community without putting your house on the line, without jeopardizing your children's college education. You can afford to help the Little League because we are not going to make it so that you will be sued when someone does not catch a fly ball. You might laugh and say, wait a second, getting sued because a child doesn't catch a fly ball? I wish it were not so true.

Let me refer you to a 1982 case, and this is one of the first cases that started the run of liability cases against volunteers. In Runnemede, NJ, a Little League coach volunteer was sued because he repositioned his Little League shortstop to the outfield, and in the outfield the Little League shortstop misjudged a fly ball and sustained an eye injury.

A suit was filed on the allegation that the 10-year-old youngster was "a born shortstop" but not an outfielder, and the courts found the volunteer coach negligent. Over the next 5 years, liability rates for Little League baseball in that area went up 10 times—1,000 percent.

Here is another example. We are talking about real people, real folks who get up in the morning early, work hard all day, sometimes take time off their jobs to go out and volunteer to help the kids of America, some of the kids without moms or dads or who do not have time to help children, kids who need positive role models, and here is what we do to them. A boy in a scouting unit with the Boy Scouts of the Cascade Pacific Council—a national problem, Runnemede, NJ, on the one side of the country, Cascade Pacific Council on the other side. A Boy Scout suffers a paralyzing injury while playing in a touch football game. I remember being a Boy Scout. Touch football was as mild as the supervisors could possibly make it. We wanted to play tackle football or flag football, but touch football was a part of the curriculum we had to play.

A boy gets injured. What in the world happens when the volunteers are found personally liable for \$7 million? What would a \$7 million judgment do to your capacity to send your kids to college if you were the volunteer? What would it do to your capacity to have the kind of life you wanted? We are not making it difficult for volunteers; in many instances, we are saying to them, you cannot volunteer.

Frankly, this is not something any of us intend. This is not a partisan issue. This is an issue of compassion. It is an issue about the character of America. When Alexis de Tocqueville came to

America—and they are having a wonderful series on de Tocqueville on C-SPAN; they are following his steps that he took across America 150 years ago—he talked about the greatness of this country, and he said greatness in America is not governmental. Greatness is not a matter of the law of this country. It is a matter of the people of this country. America is great because the people are good. But that was at a time when there was such a thing known as charitable immunity, when charities were simply held totally immune, so that if people were going to charities to get help, they got what help they could, and if a mistake was made or an injury, that is the way it was.

Now, we are not asking that it be restored to that condition. But we are saying that, when a volunteer, someone who is giving of her time or of his time, when they are giving that time generously and they are trying to help the Boy Scouts, they should not end up with a \$7 million judgment.

I should add a correction. In that case, the judgment was reduced to \$4 million by the courts. That would have been a great comfort to me and my family. We would not come any closer to paying a \$4 million judgment than we would a \$7 million judgment. The system, though, rewards those who try to help the youngsters with that kind of legal liability. The system is broken in that respect. If we want America to be great, it will be not because we have a governmental program that will fix everything. But we, at least, need to release the energy available in the American culture that comes from volunteers.

I indicate, as well, that the bill, which is being filibustered by the other side, is not a bill that relieves organizations of all their responsibility. This is a bill that relieves the volunteer of responsibility for economic damages that are suffered by individuals who are injured through simple negligence. Economic damages still can be recovered against the organization, but the fellow who works all day and works hard to keep his family together and sometimes takes a little time away from his family to help the rest of the world should not find himself looking down the barrel of a \$4 million judgment because he has been a good Scout leader. And unfortunately that has happened too frequently.

Here is another example. From the Richmond Times-Dispatch, November 4, 1995. A Red Cross volunteer in Virginia "was driving a woman to a medical facility for routine care." I have volunteered for the Red Cross, done Meals on Wheels and things like that. "The Red Cross-owned car was involved in a collision and the passenger was injured. She later died from causes unrelated to the crash. But the administrator of the woman's estate sought judgment against the volunteer and alleged that he negligently operated the vehicle."



We should not have people being hauled into court on things like that. The fact is that these volunteers are being asked to defend themselves.

Here is an interesting fact from the Washington Times, a May 2, 1995, article.

"A Legal System That Fails the Test of Charity," was the headline. "A Washington, DC, area Girl Scout council reports that it must sell 87,000 boxes of Girl Scout cookies each year just to pay for liability insurance." The first 87,000 boxes of cookies do not provide any help to any girls, do not provide any assistance, do not provide any of the reinforcement that these kids, without many of the benefits that you and I enjoyed as children, need. The first 87,000 boxes of cookies have to go to carry the liability insurance.

"We have no diving boards at our camps," the executive director said. "We will never own horses. And, many local schools will no longer provide meeting space for our volunteers," because of the liability crisis as it relates to volunteers.

Here is an interesting item from the Washington Times, May 1995. "A Legal System That Fails the Test of Charity," again.

The Junior League in Evanston, IL, discovered a few years ago that, to set up a shelter for battered women, they would have had to go without liability insurance for three years. No directors would serve under these conditions, and the plans for the shelter were shelved.

We need people to drive people to the hospital for the Red Cross. We need the Junior League to help sponsor shelters for battered women. We need Boy Scout volunteers that will not operate under the threat of \$4 million judgments against them and the assets of their families. We need Little League volunteers who have the ability to ask the kid to play left field instead of shortstop, in spite of the claims of the child's parents that the child is a born shortstop and not an outfielder.

We simply have to create an environment in this country where we do not rely on the Government for everything. And, in that context, we have to free up the energy of the goodness of the American people and not ask them to operate under the threat of judgments that would deprive them of their homes, their families' well-being, and their capacity to send their children to college.

Americans are sacrificial people. They are willing to give you the proverbial shirts off their backs. But we should not make it a situation where, if they give you the shirt and you do not like the shirt, you can sue them and take their house and deprive their kids of an opportunity to go to college. That is too much. It is too much to ask of these generous volunteers. And our system of Government simply needs to provide a little protection, a framework in which people can operate in decency and can beneficially extend themselves, one to another. The idea

that somehow America is automatically good and the Government can handle all this stuff is a bankrupt concept. We understood that in the debate last year over welfare reform. We saw the kind of miserable response that has come from this culture to welfare. We were intensifying problems. The problem was growing rather than slowing.

If anything is going to help us recover, it will be our understanding that we can help each other. But we will have a hard time helping each other if we make it a condition of volunteering that you put your family's well-being on the line and you look down the barrel of that \$4 million cannon every time you want to go and help a few Boy Scouts. That is why I think it is so important to have a discussion of these issues and to act on these issues. It is high time we do so. It is a matter in discussion in this country and has been a matter of public debate. This is not a surprise.

There are bills on the issue of voluntarism in both the House and Senate. Frankly, S. 543, Senator COVERDELL's legislation, is outstanding legislation designed to relieve the volunteer of liability. This bill does not relieve organizations of liability for economic damages. I find it troublesome to have it suggested that this bill is designed in some way to relieve the Ku Klux Klan from consequences against the organization for criminal acts, or acts that would somehow disparage the civil rights or dignity of Americans. It is simply not so.

I wonder if there are not any good arguments against this legislation when the only arguments that come up against it are arguments which do not hold water and which are designed to go to the most base emotions within us.

When we are talking about making it possible for Americans to help other Americans, it is particularly troublesome that in order to disrupt this discussion we try to talk about Americans hating other Americans. We should be careful never to do anything to promote hate. It would be a terrible thing if we allowed those who suggested that we were doing that to impair our ability to provide a framework in which people could promote love and care and concern. One of the real values of volunteer activity is what it communicates. When you get something from the Government you do it because you are entitled to it, so you take it. But when you get something from your neighbor you know that he or she cares for you and loves you. And that mutual sense of concern is what builds community. It is what binds us together; it is not what tears us apart. We are talking about providing a context for people to demonstrate a sense of community.

Two hundred years ago John Donne said it as eloquently as anyone has ever said it in his sonnet, on the fact that no man is an island. He said, "No man is an island." He started out saying we are all in this thing together.

We are not by ourselves. And he ends his sonnet:

... never send to know for whom the bell tolls; it tolls for thee.

And, in America, we have that sense. It is unique to America. It is what makes America what she is and what she will be in the future. And it is not that we want to try to promote organizations that would teach us to hate one another. This bill is designed and crafted and drafted to promote opportunities for people who want to demonstrate that they care for each other and respect one another.

The hyperlitigious nature of our civil justice system is creating a barrier, though, between the desire of Americans to help others and their ability to do so. It is empirically established. The data is there: The resignations from the boards of directors; the reluctance of volunteers to do what they wanted to volunteer to do; one out of six volunteers say they withhold services; the absence of programs that can no longer be offered; the program for battered women in Evanston that the Junior League wanted to have. You do not have diving boards at the camp. You do not have horses at the camp.

We must free this energy in America, this impetus that says I love you and I care for you and I would like to be active in helping you but I cannot afford to risk everything I own and have, and my children's education, to do so. I would like for that desire to be fostered and lifted up, and we ought to fan that ember of hope for America and we should not douse it.

So I believe we need the Volunteer Protection Act of 1997. I am proud to join as a cosponsor of this legislation. It will reinstate reason. It will reinstate rationality. It will reinstate certainty and fairness in a judicial system with regard to voluntarism. And I am grateful for that. The Volunteer Protection Act of 1997 covers nonprofit organizations which are defined as those organizations having a 501(c)(3) status, or nonprofit entities that are organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes. And, if any organization is involved in criminal activity, any protection for the volunteer in that endeavor is gone.

The volunteers are relieved of liability for simple acts of negligence, but it does not relieve the volunteer organization from liability for economic damages. This bill establishes a standard for punitive damages so there could not be outrageous levels of damages without high standards of proof. And it eliminates joint and several liability for noneconomic damages. Economic damages are those that you actually have in a monetary sense: The hospital bills, the lost wages and the like. In those settings, there is no limitation on the ability of an injured individual to go against the organization.

This bill does say that the volunteer should not be held responsible unless



she engages in criminal activity or acted in a willful and wanton way. And if that is the case, the volunteer is not protected at all, because we are not interested in protecting willful or wanton activity or criminal activity. We are trying to allow people to say to their communities and to their fellow citizens that we care enough to love you and to share ourselves with you but we do not think we ought to have to risk the entirety of our family or the well-being of our family to do so.

With that in mind, I am pleased to support this legislation. I think, when the President of the United States asks us to engage in volunteering, he calls us to the very best that is in us. He calls us to the character of America, to rekindle a spirit of community which could be lost. He needs to call us, though, in a context which makes our response reasonable and possible. Simply, we are trying to develop a framework for reasonable participation by volunteers, protecting them and their families from a litigious system which has found Scout leaders saddled with \$4 million judgments because of a touch football game; which has found a Little League coach staring down the barrel of judgments because he shifted a boy from shortstop to left field; which has found people in court because they were good enough to drive a sick citizen in their community to the hospital.

I do not think that is the kind of community in which we want to live. We want to live in a place that puts reasonable limits on the exposure and risk to people who are actually giving of themselves so they can afford to extend their charity to others without destroying the future of their own families.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. COVERDELL. Mr. President, could I inquire as to the time remaining on both sides?

The PRESIDING OFFICER. The Senator from Georgia has 39 minutes remaining. The Senator from Vermont has 51 minutes remaining.

Mr. COVERDELL. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it be equally charged to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I have listened to the comments of my friends and colleagues on the other side. I wish to recount for the body parts of a conversation I had with the distinguished Senator from Georgia, my good friend, Mr. COVERDELL, during the time when the other Senator was speaking.

I had the pleasure of working with Senator COVERDELL when he was in a

position where he had to go not only around this country, but around the world seeking volunteers and help in some of the most important aspects of life. So I do not question his commitment to voluntarism. He has lived it and done it.

My concern, as I expressed to the distinguished Senator from Georgia, is that this bill came to the floor immediately in this fashion with no hearings. I should note for the RECORD, so there will be no confusion on that, that this is not the decision of the Senator from Georgia or the decision of the Senator from Vermont as to when the bill would come to the floor. That has to be done by the Republican leadership, and I have expressed my concern to the Republican leadership in the past, and will again in the future, that bills cannot come to the floor in that fashion, bills with significant repercussions, with no hearings.

Frankly, I took exactly the same position during the times I served here when the Democrats were in the majority and would determine what bills would come on the floor. I have been very consistent throughout my career in the Senate. If you have a significant matter, something that is going to affect all of us, take time to discuss it before it comes to the floor. We pass resolutions and sense-of-the-Senate resolutions all the time that say, "on the one hand" this, "on the other hand" that, "God bless America." Those can move through quickly. But this is a bill, at least the analysis that I have of it and the analysis of totally nonpartisan lawyers who have discussed it with me, which would, in effect, replace State laws.

I think that the 50 States of the United States should expect no less of the U.S. Senate. If we are going to fetch them a smack up alongside the head and knock their legislative work in the trash can, we ought to at least have a hearing about it and discuss what is involved in it.

I am perfectly willing to work with the Senator from Georgia and others—as he knows we have worked together on so many issues in the past—on a voluntarism bill, on the question, as I did and others did, with former President Bush on volunteers, but in the normal course of events, with discussion. I hope we will not proceed to this bill today, not to kill the bill, not to kill the act, but to send it back, to at least go through the normal process where we actually have hearings.

I have discussed the Ku Klux Klan and others. The Ku Klux Klan has had what I think is a vicious and long history in most States. It did in my State of Vermont during the time my parents were younger, and they saw directly the effect of the hate of the Ku Klux Klan. The church where my parents were married and where they were buried—one of them just a year from this coming Monday—the church where I was baptized had the cross of the Ku Klux Klan burned on its front steps. So

I know the sense that they have, the sense that my mother of an immigrant family recounted to me of how she felt about that, the fear that was driven in to people who spoke a different language, as my mother and her family did, who practiced a religion very much in the minority in Vermont at that time.

None of us in this body, Republican or Democrat, wants to encourage in any way racism or the kind of things that the Ku Klux Klan and many other organizations similar throughout this country stand for. There are exceptions on limits and liabilities, those who have been found to violate Federal and States civil rights laws, and so on.

It is still too broad. If the Ku Klux Klan marches down a street carrying signs, they are not going to be convicted of international terrorism or a hate crime on that, but under the definition in here, they may still well qualify, under their definition, which is under section 6(4)(B):

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

Because it does not state who is making these kinds of determinations.

Again, Mr. President, let me make it very clear what my concerns are about this bill. One, it is a major piece of legislation that is on the floor with no hearings, none whatsoever. I understand it is the majority leader who makes that determination, not the Senator from Georgia who was called to be here on the floor and discuss this matter. But we should not have that procedure. We did it once on a major piece of legislation, raising actually worldwide implications on terrorism, a week ago with a bill, a huge bill that everybody voted on, either for or against. I doubt there were three Senators who could honestly say when they walked off the floor of the Senate that they had read the bill, because it was presented to us hours, some of us minutes, before we voted on it. But it affected everything from our international relations to our use of antiterrorism legislation, major criminal codes, treaties and everything else—a very thick bill—and we voted on it. I voted against it because it raised enough of a red flag, even though there were parts of the bill that were verbatim from parts of legislation I had written.

I suppose imitation is the sincerest form of flattery, but not when it is slapped together and handed to you to vote on matters that have major implications, and we whip it through. In fact, I encouraged the press actually to ask Senators who voted on it if they either read it or knew what was in it. To my knowledge, nobody was asked that question. It would have been interesting to hear the answers, because we all knew the answer. Nobody had.

Now we have a similar piece of legislation brought up, hurried, no hearings, and pass it, even though it is

going to override the efforts of our State legislatures. I have heard so many speeches given about "give the power back to the States; let the States make the decisions. So much wisdom resides in the States." Why do we say we are the ones who know what is best for the States? Why not let the State legislatures have the ability to make some of these decisions? And then when we are given that chance, we say, "Not you, not you, State legislature, not this particular one." Actually, this other one, this other one, this other one—actually, not any of the 50 legislatures are smart enough to do the work that the U.S. Senate can do without hearings, without debates and without any kind of a markup on a piece of legislation on the day we come back to work.

Well, Mr. President, those who vote to go forward with this bill, I ask this question of them; maybe their State legislatures, maybe their State press could ask this question: Of those who vote to go forward with this, are you willing to go back to your State legislature and say that on a piece of legislation that overrides their work, you are willing to vote to do that, even though there have been no hearings on this bill, even though there has been no debate in committee, even though there is no report saying what it does? You are willing to on an act of faith, because the Republican leadership said we have to do this this week, because we have nothing else to do, you are willing to override the efforts of your State legislature? I wonder how many Senators are willing to go back home and say that. I am not. I have too much respect for the Vermont Legislature to do that. I think our general assembly can make this determination.

So I encourage my friend from Georgia, and others, maybe we can sit down together and try to put together a good piece of legislation, as the Congressman from Illinois, Mr. PORTER, has done in the other body, to find a way to do this without trampling on our States.

I understand there is some concern in the Republican leadership knowing that all Americans had to file their taxes on April 15 because the law requires it, but the Republican leadership in the House and the Senate did not bring forth a budget on April 15, as the law also requires. Maybe we should talk about other things, and with the sterling example of the President and Mrs. Clinton, of President and Mrs. Bush, of President and Mrs. Carter or President Ford or Mrs. Reagan and others, General Powell, who went to Philadelphia, why not just jump on this bandwagon because, politically, who can be against some idea of protecting volunteers? That is not the issue.

The issue is, do we draw it so broadly that we bring in organizations like the Ku Klux Klan that every single one of us in this body oppose? Do we draw it so broadly that we just knock down our

State legislatures and say, "You're immaterial because we 100 Members of the Senate, in our collective wisdom, know a lot more than you do?" Do we draw it so broadly that we do not think of the rights of all individuals, not just a volunteer organization, but the rights of all individuals? Do we give blanket immunity to organizations we do not intend to, like hospitals and others?

These are questions that should be asked if we have a hearing, but these are the questions that will never be answered if we continue with what I find a very, very disturbing trend in this country to rush major pieces of legislation to the floor with no hearings, no debate and then just ask us to vote on it, especially when we do not have time to fulfill the backlog in the Senate Judiciary on judges. Chief Justice Rehnquist said we have a real crisis because we have about 100 vacancies in the Federal courts, and yet we have only filled two of those in 4 months.

We have taken several vacations, but we have not had time to fill more than two. We have almost a zero population growth in the Federal judiciary. We have not found time to have a minute of debate on the budget, even though the law requires it by April 15. We have a number of other Cabinet officials, from Alexis Herman on, to be blocked. But suddenly we have time to rush forward something that just slaps down our 50 State legislatures, tells them they do not know enough, certainly do not know as much as we do. And we are rushing through with no hearings and no debate. I think we should find a better way to do it.

Mr. President, I reserve the remainder of my time.

I suggest the absence of a quorum. I am sorry, I see the Senator from Georgia on his feet. I did not realize that. I reserve the remainder of my time.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. I am going to yield in a moment up to 10 minutes to the Senator from Alabama, but I would just make two or three very quick points.

No. 1, I believe the issues before us have been thoroughly debated over the last decade. This is not a piece of new legislation. No one in this body is surprised by any of the language in it.

No. 2, this language preempts the assertion that the other side has made that it would have protections for an organization like the Ku Klux Klan. That is just not so, as has been stated by myself and the Senator from Missouri.

No. 3, yes, it is an adjunct to the summit in Philadelphia. Here we had a bipartisan expression of Republican and Democrat Presidents calling on America to reinforce voluntarism, and it is an appropriate response. Yes, this is linked to that summit. It would be highly appropriate to respond aggres-

sively to freeing up the American volunteer from a cloud hanging over his or her head.

Mr. President, I now yield up to 10 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Thank you, Mr. President.

I take the floor today to offer my support as a cosponsor of S. 543, the Volunteer Protection Act of 1997.

As this week's volunteer summit clearly shows, there is a need throughout America for the kinds of services that are offered by selfless volunteers who are applying their time, their skills, and their labor toward bettering the lives of others.

Regrettably, however, the fear of lawsuits has become so pervasive that many people fail to follow through on their charitable impulses, or the charities themselves decide not to take on activities because of the fear of litigation. The legislation being discussed today will go a long way toward removing this artificial barrier to individual service.

I would also like to congratulate the drafters of the bill, Senator COVERDELL in particular, for recognizing the need to take this corrective action. In my own experience as a member of various boards and commissions for charitable organizations, I have witnessed firsthand the difficulties these organizations face in recruiting volunteers to undertake worthwhile activities. Fear of lawsuits is one of these reasons.

I remind my colleagues that there was a time in American tort law when the doctrine of charitable immunity would have isolated many of the individuals subjected to lawsuits today from this type of liability. This doctrine was based in large part on the public policy premise that a society is bettered in the long run not by creating barriers to volunteer activity but, instead, by encouraging volunteer action. In recent years, this fundamental policy principle has been undermined.

I think it is time for this body to begin to address this problem. Few people will deny the need for unpaid, selfless volunteers in our society. These highly motivated individuals often will tackle problems that would have been impractical for anyone else, including the Government, to take on. In its purest form, every individual action taken by a volunteer in one area allows scarce resources to be used somewhere else. The efficient use of volunteers allows us to have more bang for our charitable buck.

These efficiencies and cost savings are being undermined, however, in higher insurance premiums and legal fees. Senators ABRAHAM, COVERDELL, and MCCONNELL pointed out this fact recently in a newspaper article. In their article they cite the example of a Little League baseball league that had its liability premiums go from \$75 to \$795 in just 5 years.

I have been involved in Little League baseball. My son has played, and I have

coached. I know how hard those individuals work to sell hamburgers and hot dogs and peanuts to make money to buy ball caps and uniforms. These kinds of insurance rates are really detrimental to the public spirit in America—and the rate increases are driven by lawsuits.

I believe that this bill will strengthen the role of both volunteers and non-profit organizations. It restores common sense to the way our courts treat volunteers by protecting them from tort liability for simple acts of negligence. It also retains penalties for egregious activities such as sexual abuse and hate crimes and civil rights violations. Individuals who commit these kinds of acts will still be subject to lawsuits.

It will not protect people who have done acts under the influence of drugs or alcohol, so that volunteers who commit illegal acts or improper acts under the influence of alcohol will still be liable. And, although the individual volunteer may not be liable for compensatory damages, the organizations who are utilizing the volunteer's services would remain liable to compensate injured parties who have been wronged.

I support this bill's limitation on punitive damages. Under this bill punitive damages may not be awarded unless a claimant demonstrates through clear and convincing evidence—it is not impossible evidence; just clear and convincing evidence—that the harm arising from the actions of a volunteer was the result of conduct that was either willful or criminal in nature or that showed a genuine indifference to the safety of others.

By raising the legal bar for the award of punitive damages, we will accomplish two goals. We will help ensure that only the conduct that truly deserves such a penalty will be punished and we will reduce the amount of punitive damages awarded, thereby freeing up resources to be used for more productive purposes.

The bill's elimination of joint and several liability for noneconomic losses, such as pain and suffering, will advance these goals as well.

Let me say this, Mr. President. There has been a suggestion that the Ku Klux Klan would be covered under this bill. I do not believe that is correct. I do not believe the Klan would be covered by the definition of a charitable organization under this bill. I certainly would not want it to be covered. But in any case, in any circumstance, actions that are willful and unlawful would remain, under this bill, subject to lawsuits and punitive damages.

I had the opportunity, as U.S. attorney, to be involved in prosecuting a number of Klan members for an illegal action. It resulted in the death of a young black man for no other reason than because of his race. One of those individuals is serving life without parole and another one is on death row today. As U.S. attorney, just last year, that death sentence was upheld by the

Eleventh Circuit Court of Appeals. I expect, as months go by, that he will be brought forward to execution, as he should be.

Arising out of that case, under the leadership of one of America's most capable lawyers, Morris Dees, a civil lawsuit was filed against the Klan. It resulted in the winning of that lawsuit because of the Klan's policies that encouraged violence. That organization itself was held responsible for the criminal actions of its members. As a result of that action, the Klan headquarters was forfeited and sold for the benefit of the family that suffered death in that case.

I will just say this, Mr. President. That lawsuit would not be prohibited by this bill, because it was illegal and a part of a hate crime. The activities that gave rise to that lawsuit are exempted from the protections offered by this bill. Those kinds of lawsuits would continue. It is disturbing to me to see individuals take this floor and suggest that a bill designed to protect people's charitable impulses, to allow them to participate freely in helping other people without fear of being sued, that that would somehow be a bill designed to protect that despicable organization, the Ku Klux Klan. I think that it is unfortunate that that suggestion has been made. It is not true and is not a legitimate basis to object to this bill.

Finally, I support the bill's respect for federalism. The inclusion of the State opt-out provision in this bill recognizes the role of individual States in setting the statutory boundaries of their own tort laws when citizens of the same State are the only parties to an action. States can opt out of this if they choose. It does not mandate that they concur in these activities.

So again, I would like to encourage my colleagues to support this bill. It is good legislation which will serve to reinvigorate the volunteer spirit that has been a traditional component of the American character.

There have been a number of shows and studies and reports done on Alexis de Tocqueville and his travels throughout America. One of the things he was most struck by was the volunteer community spirit of America. That is a good spirit. The President, former President Bush, Gen. Colin Powell, and others recognized that just this weekend. We need to make sure that the laws of this country are supportive and conducive to the volunteer spirit. I think we have lost some of that protection. It needs to be restored.

I congratulate Senators COVERDELL, ABRAHAM, and MCCONNELL for their efforts. I look forward to having the opportunity to vote for this bill's final passage.

Thank you, Mr. President.

I yield the floor.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. I want to thank the Senator from Alabama for his out-

standing remarks, and I appreciate his support of the measure, particularly in light of his experience. I commend him for his involvement in this important concept to help promote volunteering and to help foster and encourage the better impulses we have to help each other. That is what this bill is about.

I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from North Dakota.

Mr. DORGAN. My understanding is there are 36 minutes left on the time controlled by Senator LEAHY.

The PRESIDING OFFICER. That is correct.

Mr. DORGAN. Mr. President, I ask unanimous consent that the time be allocated as follows: That I be allowed to speak for 14 minutes; the Senator from the State of Washington, Senator MURRAY, for 14 minutes; the Senator from Massachusetts, Senator KENNEDY, for 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### THE DISASTER IN THE NORTHERN GREAT PLAINS

Mr. DORGAN. Mr. President, I come to the floor today once again to talk about the disaster that has occurred in the northern Great Plains, specifically South Dakota, Minnesota, and North Dakota, and to talk just a bit about the need for us to proceed with a disaster appropriations bill.

Mr. President, this poster is of a North Dakota farmer standing in front of a 20-foot snowbank. This happens to be level ground. You could not tell that much by what the poster looks like. Three years of snow falling in 3 months in North Dakota, capped by the worst blizzard in 50 years, which in many parts of the State added 2 more feet of snow. That created a set of conditions that resulted in the disastrous flooding that now occurs.

This is a farmer standing in his yard, backgrounded by a 20-foot snowbank. Unless you are there and have seen it, have seen the 40- and 50-mile-an-hour winds with 60 and 80 below windchills that have created this kind of situation, you really do not understand how it results in this. This is the Wahpeton-Breckenridge area, right on the border of the Red River. You will see the downtown area, and you will see that the downtown is completely under water.

This is a picture just north of Fargo, ND, which gives a sense that in an area as flat as a table top, the Red River Valley, the flood waters expanded to cover virtually everything. This little city of Harwood built a ring dike, and you will see that this tiny town of Harwood is not inundated, but you will see the rest of the Red River Valley is flooded. As the rivers course through Fargo, first Wahpeton, then Fargo, and on up to Grand Forks, you see now a picture of downtown Grand Forks, ND,