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I thank my colleague from Georgia for his graciousness.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa for 2 minutes.

Mr. HARKIN. I thank the President.

Mr. HARKIN. Mr. President, I would like to make a brief comment about Alexis Herman. Recall that Ms. Herman was unanimously reported out of this committee. We should not be holding her hostage over an unrelated policy dispute—a disagreement with the President over project labor agreements. I hope that whatever one's views are on project labor agreements that her nomination can move forward.

The Secretary of Labor serves as the spokesperson for working families in this country. We are considering several pieces of legislation that will affect working families and it is important that the Secretary of Labor be at the table as these changes in our workplaces are being considered. Ms. Herman must be allowed to assume her responsibilities as Secretary of Labor without further delay. I think it is unfortunate that our colleagues continue to deny the Senate even a vote on this important member of the President's Cabinet.

Now, let us be clear on the proposed Executive order regarding project labor agreements [PLA's]. The Executive order only directs Federal agencies to consider using PLA's, it does not require them to do so. The Federal Government's interest in PLA's is to help ensure that public sector projects are completed efficiently, economically, and safely.

PLA's set wages, working conditions, and dispute-resolution procedures for the duration of the project. This makes it easier for agencies to avoid cost-overruns and delays, while ensuring high quality work and safety at the worksite. They guarantee that the project will be completed on time, without strikes or lockouts. I find it incredible that the majority is so offended by this commonsense initiative.

There is nothing new about project labor agreements—the Federal Government has used them on Federal projects since the 1930's. Examples include the Grand Coulee Dam, the Cape Canaveral Space Center, and the Nevada test site. Project labor agreements have been a very effective tool

for Federal, State and local governments when faced with a major public works projects. PLA's have helped bring management and labor together to work out arrangements in terms of things like wages, benefits, and working conditions in return for a promise of no work stoppages or strikes.

Contrary to what has been said about project labor agreements, non-union contractors and nonunion workers would not be prohibited from working on Federal projects—they simply would have to abide by the terms of the project labor agreement for that particular project.

Republican Governors Christine Todd Whitman of New Jersey and George Pataki of New York issued similar executive orders authorizing state agencies to use project labor agreements. Also, State and local governments regularly use PLA's.

One notable example is the giant sewage treatment system now being built for metropolitan Boston as part of a court ordered clean up of Boston Harbor. Forty percent of the contractors on the Boston Harbor project are non-union. Furthermore, the projected cost of the project was \$6.1 billion, the present estimate for completion is \$3.4 billion. The Boston Harbor project is on schedule for completion by the year 2000 and safety, measured in lost time due to workplace injuries is below the industry average. During the 7 years of work on this project, there have been approximately 20 million hours worked without lost time due to strike or lock-out. This is quite a record of success.

Lastly, contrary to the claim that President Clinton's proposed Executive order (EO) exceeds his constitutional authority, this action is legitimate and typical of actions taken by other Presidents with clear constitutional and statutory authority. For decades, presidents of both political parties have exercised their authority to issue executive orders to implement changes in Government contracting policies. Furthermore, when President Bush issued an Executive order in 1992 to prohibit Federal agencies and Federal contractors from entering into project labor agreements, there was no similar outcry.

The Executive order on PLA's and the upcoming regulations on procurement reform are not a pay off to labor. They are sound policies that will make government operate more efficiently. The Federal Government should consider using project labor agreements when they increase efficiency, stability, and save taxpayer money.

VOLUNTEER PROTECTION ACT OF 1997—MOTION TO PROCEED

The Senate continued with the consideration of the motion to proceed.

Mr. COVERDELL. Mr. President, I yield up to 10 minutes of our allotted time to the distinguished Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, let me start by thanking my friend and colleague from Georgia, Senator COVERDELL, for his leadership on this important issue this year.

As the principal cosponsor of this bill in the previous Congresses, I am excited about the fact it is on the agenda and has an excellent chance of becoming law.

My wife Elaine, who many of my colleagues know is former head of the United Way of America, was up at the volunteer conference yesterday in Philadelphia and there is no question that the timing of this could not be better. I commend my colleague from Georgia and the majority leader for scheduling this important piece of legislation during the volunteer conference, obviously making it easier for more and more Americans to contribute their time to others. It is something that ought to be a high priority in America in 1997.

Unfortunately, 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. They try to do good and end up risking their fortunes. These lawsuits are proof that no good deed goes unpunished. In order to relieve volunteers from this unnecessary and unfair burden of liability, I am pleased to join in the reintroduction of the Volunteer Protection Act. I am particularly happy it is being considered today.

The litigation craze is hurting the spirit of voluntarism that is an integral part of our American society. From school chaperons to Girl Scout and Boy Scout troop leaders to Big Brothers and Big Sisters, volunteers, as we all know, perform invaluable services for our society. At no time is this value more evident than right now where organizations like the Red Cross are making such a big difference for the victims in flood ravaged North Dakota, just like they did for the folks in my home State of Kentucky during the floods there earlier this year.

So how do we thank the volunteers? All too often we drag them into court and subject them to needless and unfair lawsuits. The end result: too many people pointing fingers and too few offering a helping hand. Even Little League volunteers face major league liabilities.

In February 1995, Dr. Creighton Hale, the CEO of Little League Baseball, wrote in the Wall Street Journal that Little League had in fact turned into "litigation league." He pointed out that in one instance two youngsters collided in the outfield, picked themselves up, dusted themselves off, and then sued the coach. In another case, a woman won a cash settlement when she was struck by a ball that a player failed to catch. Incidentally, the player was her own daughter.

It is sometimes difficult to quantify exactly how much of an organization's

time and money is spent on liability protection. But the Girl Scouts have been able to put it into terms we can all understand. The executive director of the Girl Scout Council of Washington, here in the District of Columbia, said in a February 1995 letter that "locally, we must sell 87,000 boxes of Girl Scout cookies each year to pay our liability insurance."

Very simply, this bill protects volunteers who act within the scope of their responsibilities—within the scope of their responsibilities—who are properly licensed or certified where necessary, and some places require that, and, third, who do not act in a willful, criminal or grossly negligent fashion.

We are not trying to insulate from liability those who may act in a wanton way. Let me emphasize this bill does not create immunity for the organizations themselves or for volunteers who act, as I said, in a willful or grossly negligent manner.

Let me also point out that our bill clearly spells out that there is no protection for individuals who commit hate crimes or violent crimes or who violate the civil rights of others. So the opponents of the volunteer protection bill who claim that this is a KKK bill are simply engaging in fear mongering and demagoguery at its worst. This is a bill about protecting our volunteers. That is what it is about, nothing more and nothing less. This bill creates a minimum standard for volunteer protection and then allows the States to add further refinements and protections to that standard.

In short, the bill gives States flexibility. It strikes a balance between the federalism interests on the one hand and the need to protect volunteers from unfair and unnecessary litigation on the other. Specifically, any of the following State law provisions would be—I say would be—consistent with our bill.

First, a requirement that the organization or entity be accountable for the actions of its volunteers in the same way that an employer is liable for the acts of its employees.

Second, an exemption from liability protection in the event that the volunteer is using a motor vehicle or similar instrument.

Third, a requirement that liability protection applies only if the nonprofit organization or Government entity provides a financially secure source of recovery such as an insurance policy for those who suffer harm.

Fourth, a requirement that the organization or entity adhere to risk management procedures including the training of volunteers.

Now, none of those would be inconsistent with our bill should they be the standards adopted by a given State. The bottom line: liability problems for volunteers is a national problem that deserves a national solution—a national problem that cries out for a national solution. My state of Kentucky

just experienced devastating floods. During those floods, we also experienced an outpouring of compassion from volunteers all across the country. The volunteers were not just from Kentucky. They were from Ohio, Indiana, Illinois, just to name a few States from which people came to help us out in Kentucky. If a Red Cross volunteer from Ohio wants to cross the bridge and come into northern Kentucky and help on our flood relief, they cannot just put on their coat and boots and go to Kentucky. They need to do some legal research first. They need to do a survey of Kentucky and Ohio law to see if volunteers are protected and to what extent they are protected. Volunteering is obviously a national issue and volunteers regularly and repeatedly cross State lines to help their neighbors.

That is why, among other reasons, this is a national problem calling out for a national solution. I urge my colleagues to move forward on this bill. The volunteer summit in Philadelphia is a testament to our country's strong efforts in this regard. And we think that clearly this is the time for action.

Today, in the cooperative spirit of the President's summit, I would ask our colleagues to set aside our differences on other issues like labor issues. I also would respectfully ask my colleagues not to try to suggest that this bill is about anything other than what it is about. It is not about the Ku Klux Klan. It is about protecting American volunteers.

I am amazed, I might say further, Mr. President, how one day we are criticized for moving too slowly and the next day we are criticized for moving too fast. It is pretty difficult here to figure out exactly what avoids criticism. These criticisms appear to be nothing more than attempts to divert this legislation which is obviously good for volunteers and good for our country.

Let me just summarize. What we are talking about here is a national problem crying out for a national solution to make it more possible for American volunteers to go to the assistance of their neighbors. We are bringing this bill up in the middle of the national summit in Philadelphia to encourage volunteerism and some are saying we are moving too fast. This bill has been around for quite a while. I offered a measure similar to this in 1991, I believe it was. It got about 31 votes. But times have changed. There is a growing awareness that legal reform of a variety of different sorts is important to our country, and we are starting in this area with the volunteer protection bill because it is timely, it is important, and this is obviously the time to move forward.

So let me conclude by thanking my good friend from Georgia for his leadership on this important issue. I hope we will soon be past the motion to proceed and well onto sending this legislation down to the President for signature.

I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I am going to consume about 1 minute, so I would ask the Chair to keep an eye on the clock for me so that I leave time for my colleague from Minnesota.

The PRESIDING OFFICER. At the current time, all the Democratic time has been divided between Senator HARKIN and Senator WELLSTONE.

Mr. WELLSTONE. How much time do I have?

The PRESIDING OFFICER. Each Senator has 2 minutes.

Mr. WELLSTONE. I will yield 1 of my minutes to the Senator from Connecticut and tell him that he owes me big time forever.

Mr. DODD. I owe him 1½ minutes, a minute with interest.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. As a former Peace Corps volunteer and someone who was a Big Brother and served on the national board of Big Brothers, I commend the effort to focus attention on the Philadelphia conference. I would like to make note of the fact, we are 6 months almost to the day since election day and still there is a chair vacant around the Cabinet table, that of the Secretary of Labor. This is a critically important issue to millions of people, a substantive issue that must be addressed immediately. My hope is that the leadership would see to it this week that we would vote. Vote against Alexis Herman if people wish but give her the opportunity to be confirmed or not confirmed. Give us a chair at that Cabinet table for the millions of people representing management and labor. So I urge that the leadership move on this issue. We brought up this issue. I understand that. But the confirmation of the Secretary of Labor 6 months after the election is long overdue.

I thank my colleague for yielding.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Chair.

Mr. President, this is blatant politics at its worst. Alexis Herman was voted unanimously out of the Labor and Human Resources Committee. She is eminently well qualified. This is an extremely important position to working people, to working families. We have a lot of important legislation before us—the TEAM Act, comptime, flextime. We are supposed to be focusing on living wage jobs and educational opportunities for our citizens. The Secretary of Labor is a critical position. She should not be held hostage. If the majority party does not like an action taken by the administration, then oppose that action, but do not hold Alexis Herman hostage. Free her. Let her become Secretary of Labor and let her serve working families all across this country.

Mr. President, I am pleased to go on but I think I used up my minute.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, I yield 1 minute of our time to the distinguished Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I thank the Senator from Georgia.

I actually think that I was able to do this in a minute. Again, I think that it really behooves the Senate to move forward on this nomination. I do not think the Senate looks good as an institution. I think people really do not like this kind of inside politics where a particular party—in this case it is the majority party—does not agree with a particular policy or particular action taken by the President or the executive branch and then chooses to hold someone else, in this particular case Alexis Herman, hostage. It is not the way we should be conducting our business. It is not fair to her, an eminently well qualified candidate to serve our country and, quite frankly, it is not fair to families all across Minnesota and all across the Nation that are focused on good jobs, education, and safe workplaces. These are workaday issues. This is the Secretary of Labor—6 months without a Secretary of Labor. Again, do not hold her hostage. Free her and let us move forward. If my colleagues want to vote against her, vote against her, but she deserves a vote in this Chamber.

I thank my colleague from Georgia for his graciousness.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 19 minutes and 40 seconds.

Mr. COVERDELL. Mr. President, I yield myself up to 5 minutes of my own time.

Mr. President, of course, the matter before the Senate is the Volunteer Protection Act which we had hoped would be a response to an historic bipartisan summit on voluntarism. The Volunteer Protection Act is designed to stop a circumstance developing in our country where volunteers are frightened to participate in the 600,000 volunteer organizations for fear that by participating they will have put their family and their family's assets at risk.

In the American Bar Association's section of business law recently a very balanced article occurs about the subject. It says:

An analysis of the laws around the Nation uncovers two important facts.

This is not exactly a partisan outfit.

Many volunteers remain fully liable for any harm they cause and all volunteers remain liable for some actions. Prior to 1980, the number of significant lawsuits filed against volunteers might have been counted on one hand—

Prior to 1980, lawsuits directed at volunteers could be counted on one hand—

with fingers left over. But that all changed in the mid 1980's as several suits against vol-

unteers attracted national media attention. Besides accounts of lawsuits against coaches, one of the most frequently publicized cases involved a California mountain rescue team which evacuated a climber who had injured his spine in a fall. The man later sued for \$12 million alleging that rescuers' negligence had caused him to become paralyzed. With stories like this getting big play, volunteers were suddenly worrying about the possibility of personal liability.

In other words, stepping forward, being a good Samaritan, and then having your family's assets all at risk.

To meet the cost of higher insurance premiums, some nonprofit organizations cut back on services, that is, less attention to helping the elderly, the poor, and the children of our Nation. Others went without insurance, increasing the risk that an injured party would sue the organization's volunteers in search of a deep pocket.

As publicity about the lawsuits and insurance crunch raised volunteers' apprehension, their willingness to serve waned. Even though reports of actual judgments against volunteers remain scarce, the specter of a multimillion-dollar claim cast a deep shadow—and this is the point. This is not a 300-page bill. This bill is 12 pages long, double spaced. This is not rocket science law. This does not require 15 years of hearings. This bill is very simple. It begins to protect the volunteer from simple mistakes or errors or omissions, not from gross negligence. It does not protect hate organizations. It is disappointing, to say the least, that an attempt to respond to four Presidents, two Republican and two Democrat, calling on America to step forward, and trying to aid and abet that by a very narrowly focused proposition that says when they do step forward, they are not stepping forward in front of a gun; they are free to step forward and volunteer without being unnaturally and unduly threatened from frivolous lawsuits or from an effort to seek a deep pocket.

The PRESIDING OFFICER. The 5 minutes of the Senator has expired.

Mr. COVERDELL. In that I have consumed these 5 minutes in an effort to protect those coming to speak, I suggest the absence of a quorum. As I understand it, that will be equally divided, but it will fall on our time when theirs has expired.

The PRESIDING OFFICER. It will come out of the time of the Senator from Georgia.

Mr. COVERDELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will 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.

Mr. COVERDELL. Mr. President, I see I have been joined by the distinguished senior Senator from Texas. In an effort to leave him as much of the remainder of the time—how much time remains?

The PRESIDING OFFICER. There is 12 minutes, 45 seconds.

Mr. COVERDELL. Twelve minutes remaining, and I yield as much time as necessary to the Senator from Texas.

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas.

Mr. GRAMM. Mr. President, there has been an extended debate here this morning about many different issues, about confirmation of Presidential nominees and about the protection of hate groups. What I would like to do is to get back to the point of this bill, to get back to a definition of what we are trying to achieve, what kind of safeguards we have in the bill, and to explain why it is critically important that we support this legislation.

The distinguished Senator from Georgia and those who have cosponsored his bill—and I am proud to be one of them—believe in voluntarism. We believe that there is no Government substitute for people being engaged in and trying to participate in the activities of their own communities. We do not believe there is any Government program that can substitute for genuine volunteers.

The President, numerous past Presidents, and General Powell are engaged at this very moment in trying to promote voluntarism. I see the bill of the Senator from Georgia as being a complement to that effort.

First, let me try to define the problem. When I was coaching little league football 25 years ago, I never thought about the fact that I might be liable had some player who was playing for me been hurt. I never thought about the liability implications because 25 years ago, at least in the very active central Texas league I coached in for 3 years, to my knowledge we never had a lawsuit filed against any volunteer.

The problem is that the world has changed dramatically in the last 25 years. It is now commonplace for volunteers who are trying to help people, for no pay, taking time away from their businesses, their professions and their families, to end up being attacked in a lawsuit. Furthermore, the volunteer frequently has very little, if any, involvement in the incident, has very little responsibility for the harm that has been alleged, and yet is often the only one with deep pockets.

Let me just give an example that I think is pretty easy to envision. Assume you have a volunteer working at a boys and girls club. Let us assume that the volunteer is working at the front entrance, checking people in as they come in to participate in the activities. This volunteer is critically important because, in trying to conserve the money we raise for the boys and girls club, we can hold down our costs if we can use volunteers.

The problem that Senator COVERDELL is trying to deal with is the following: You have a volunteer working at the front door checking people in. You have a professional staff person working in the back of the facility, say the

weight room, who might not be providing sufficient supervision and as a result some young person who is lifting weights, drops the weights on his leg, breaks his leg, and sues.

The professional employee at the boys club probably does not have deep pockets. The boys club of Bryan-College Station, where I am from, is not a rich organization. But the volunteer, working in the front, who by definition of being a volunteer is able to give their time voluntarily might have substantial assets. Under Texas law, they could be held liable. In this situation, you might end up having a volunteer, who never went into the weight room and who simply was there helping check people in, be the only one with deep pockets. Some knowledgeable and aggressive lawyer could end up suing the volunteer for something they had nothing to do with.

Here is what the Coverdell bill does, and it does it very simply. No. 1, it recognizes the contributions that volunteers make and defines the reason we want to encourage voluntarism. Then it sets out some very simple principles about liability. That is, it relieves volunteers from liability for harm caused if: No. 1, the volunteer was acting within the scope of their responsibility; No. 2, if a license or training was required for the job the volunteer was doing and the volunteer indeed had the license or the required training; and, No. 3, if the harm was not caused by willful or criminal misconduct or gross negligence.

So, it sets out some simple common-sense criteria which requires that volunteers meet the training requirements and to be carrying out their function for which they volunteered in a responsible manner. The bill also bars the awarding of punitive damages against a volunteer and, in a very important provision of the law, it sets out proportional liability for noneconomic damages. Under this bill, if you have a volunteer who has deep pockets and who is simply checking people in at the front of the building, and has nothing to do with what is going on in other parts of the building, then if a lawsuit should be filed, they could be liable only for an amount proportionate to their involvement in causing the harm.

In addition, there are many safeguards in this bill which have been discussed at some length in this debate. States have the ability to opt out of this if they choose to do so. I do not believe they will choose to do this because basically what we are trying to do in this bill is to encourage voluntarism by limiting liability, by assuring people that if they are willing to put up their time and their talent and their money to help other people, and if they are willing to volunteer to try to help their community, as long as they do their job in a reasonable and responsible manner, then they are not going to end up being dragged into a courtroom.

I want to address one part of the opposition to this bill. This is a very tiny

step, in my opinion, in the right direction toward legal liability reform. This is a tiny step in the direction of beginning to do something about runaway litigation in America. I believe that the opposition to this bill really springs from those who do not want any limits on legal liability. I would just simply ask my colleagues to look at the limited nature of this bill, to look at the fact that America is a great beneficiary from volunteer activity by our citizens, and that one thing that has tended to happen as Government has done more and more is that volunteers have been crowded out into doing less and less in our communities. I believe that we are all losers for that decline in voluntarism.

People who, 25 years ago, routinely volunteered to do things, now, in some cases, fear to do them because of legal liability. Two weeks ago I visited a school, a charter school in Texas, called the Dallas CAN Academy. This was the first charter school in my State. It is run almost exclusively by volunteers.

It has a very small professional staff which runs a mentoring program where business and professional people come in and serve as mentors to kids who have dropped out of school because they have had some sort of problem. These kids have come back to this special charter school and, with the mentoring program, in about 80 percent of the cases are able to graduate from high school—and a not insignificant number of them end up going on to college. The secret of this program is voluntarism.

This little program in Dallas, TX, pays \$15,000 a year in liability insurance to protect its volunteers. That is \$15,000 a year that could go to helping kids. That is \$15,000 a year that might make it possible for 15, 20, 30, or 50 more kids to graduate from high school and to have an opportunity to get on the playing field of life.

What the Coverdell bill will do is, by setting standards of reason and responsibility, it will dramatically reduce the liability cost of this charter school. It will make it easier to get people to coach youth soccer and little league. It will get more people involved, and I can say as a person who was very actively involved in volunteering in youth sports when I was a college professor, that the volunteer gets more out of it than the people who are the beneficiaries of voluntarism.

We are trying to make it possible for millions of Americans to help tens of millions of Americans, but the benefits do not just go to the people who are the targets of this voluntarism, the benefits go to the people who volunteer as well. The Coverdell bill tries to limit a real impediment to voluntarism. The legal costs of people being liable for things they did not cause is driving away hundreds of thousands of volunteers.

I want to congratulate Senator COVERDELL. This is a very important

bill, and I hope our colleagues will not let this whole political issue of legal liability and the interests of lawyers versus people who are sued interfere with what is a straightforward, reasonable, and limited bill. I strongly urge that this bill be adopted.

Mr. COVERDELL. Mr. President, I thank the Senator from Texas once again for making a very cogent statement on this piece of important legislation. I thank him for coming to the floor.

How much time is remaining?

The PRESIDING OFFICER. One minute.

Mr. COVERDELL. I yield the balance of my time to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas has 1 minute.

Mrs. HUTCHISON. I ask unanimous consent to have 5 minutes in morning business rather than taking from Senator COVERDELL's time. So if the Senator wants to finish on his bill for a minute, then I would like to ask unanimous consent for 5 minutes.

Mr. COVERDELL. I yield back my time.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent to have 5 minutes in morning business.

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

Mrs. HUTCHISON. Thank you, Mr. President.

WELFARE REFORM AND WAIVER REQUEST FOR TEXAS

Mrs. HUTCHISON. Mr. President, I want to talk today about welfare reform. Now you may say, "My goodness, why are you talking about welfare reform? We passed that last year."

It is true, Congress passed welfare reform last year. We said to the States, "We want you to run your own programs. We're going to send you less money so that you will have the ability to be more efficient and make up for the dollars that we are not sending you from the Federal Government by efficiencies in your State programs."

We said to the States, "We're going to cut the strings. You're not going to have to come to Washington every time you turn around. And that will give you the ability to enact the programs that your States need to operate in a more efficient way."

Mr. President, you would have thought that everyone would have said, "Hallelujah, we are going full steam ahead." Well, Mr. President, the States said, "Hallelujah, we're going full steam ahead." The problem is, this administration is thwarting the attempts of State after State to do the job we asked them to do.

Mr. President, today the State of Texas has been waiting for 170 days, 5 months, for a clearance to run its welfare program in a more efficient way. The Governor of Texas has said it is costing our State \$10 million a month because they are waiting for Federal approval so that they can go out and