

Letting Good (and Bad?) Deeds Go Unpunished: Volunteer Liability Protection Laws and Volunteering

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Abstract

Each year, 44 percent of the U.S. adult population volunteers for a nonprofit or government organization; volunteers donated 15.5 billion hours in 2000. During the 1980s and 1990s, nearly every state provided some degree of tort immunity to volunteers. Congress followed with the 1997 Volunteer Protection Act. This article first analyzes these acts, identifying three motivations in the statutes' legislative and public histories: the chilling effects of tort liability, liability insurance unavailability, and moral concerns. Next, using data from the Independent Survey's Giving and Volunteering surveys, we identify a positive correlation between immunity and volunteering (approximately 8 percentage points more volunteering in states with lower levels of volunteer tort immunity and 9 percentage points more volunteering in states with higher levels of tort immunity compared to states with no volunteer tort immunity). We then consider implications for volunteering, nonprofits, and tort law and theory.

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I. Introduction

Americans love to give away their labor. Each year, 44 percent of the U.S. population volunteers for a nonprofit or government organization; volunteers donated 15.5 billion hours in 2000.¹ Those hours, estimated to have a value of \$239.2 billion,² are the equivalent of nearly 8 percent of the total private, nonfarm hours worked in the United States.³ As the government provides fewer services, volunteer labor will become even more important. During the 1980s and 1990s, lawmakers worried that the voluntary sector was in jeopardy and identified tort liability as the culprit.⁴ In response, virtually every state immunized at least some volunteers from tort suit. In 1997, Congress followed with the Volunteer Protection Act (VPA), which provided immunity for volunteers in states without immunity laws.⁵ Despite the rapid implementation of these laws, almost nothing is known about their effects.

In this Article, we examine the relationship between volunteer tort immunity and volunteering.⁶ More specifically, we identify the effect of the reduction of tort exposure – alternatively understood as a reduction in the price of volunteering through the mechanism of tort immunity – on an individual’s decision to volunteer. Using data from the Independent Sector (IS)’s Giving and Volunteering Survey, we compare volunteer rates across states with different liability regimes. Although we do not establish a causal relationship, we find systematic differences in volunteer rates between states with and states without volunteer tort immunity.

Identifying these effects is useful both for understanding volunteering in particular and the incentive effects of tort law more generally. First, this study begins to fill an important gap in the empirical research on volunteers. Although many economists have studied the determinants of monetary contributions, few have considered the factors influencing labor contributions, and those who have done so have focused primarily on the tradeoff between wages and volunteering. No published work examines the relationship between tort liability and

¹ THE INDEPENDENT SECTOR, GIVING AND VOLUNTEERING IN THE UNITED STATES 2 (2001) *available at* <http://www.independentsector.org/PDFs/GV01keyfind.pdf>. In 2004, the Bureau of Labor Statistics estimated the percentage of Americans who volunteer at 28.8%. BUREAU OF LABOR STATISTICS, VOLUNTEERING IN THE UNITED STATES. 1 (2004) *available at* <http://www.bls.gov/news.release/pdf/volun.pdf>.

² THE INDEPENDENT SECTOR, GIVING AND VOLUNTEERING IN THE UNITED STATES 2 (2001).

³ In 2000, these hours were the equivalent of 7.8% of full-time equivalent (FTE) employment in the private, nonfarm economy. We based these estimates on the annual hours worked in the nonfarm economy (an average of 34.3 hours per week or 1,783.6 hours per year in 2000). U.S. Department of Labor, Bureau of Labor Statistics, “Employment, Hours, and Earnings from the Current Employment Statistics survey (National),” <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet> (checked September 4, 2006). Using the Independent Sector estimate of donations of 15.5 billion hours of time per year, volunteers donated the full-time equivalent of 8.69 million workers per year. This makes 7.8% out of the total 111 million workers private, nonfarm jobs in 2000. *Id.* at Table B-1. Using a slightly different measure, Menchik and Weisbrod estimate that volunteers accounted for the “equivalent of 4.2 million full-time, full-year workers, constituting over 5 percent of full time equivalent employment in the economy, one-fourth of total FTE civilian employment in government, and more than the total FTE civilian employment by the federal government.” Paul L. Menchik & Burton A. Weisbrod, *Volunteer Labor Supply*, 32 J. PUB. ECON., 159 (1987).

⁴ See Section II, *infra*, discussing evidence regarding volunteer liability and explanation for the statutes.

⁵ The Volunteer Protection Act of 1997, 42 U.S.C. §§ 14501-05 [Hereinafter *Volunteer Protection Act* or *VPA*].

⁶ For this paper, volunteering encompasses all types (e.g. religious, sports, education) and all levels (board membership, line volunteers) of volunteering, as long as the individual provides services through a nonprofit organization or governmental entity. This choice reflects the statutory provisions that condition immunity on the affiliation with an organization. *See, e.g.*, 42 U.S.C. § 14503(a)(1)(2005) (requiring for immunity that “the volunteer was acting within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity at the time of the act or omission”).

volunteering.⁷ The legal research is similarly limited, with few articles about volunteering.⁸ Those that address volunteer protection acts and their consequences merely speculate, without empirical evidence, about the incentive effects of liability exposure on volunteering.⁹ They also rarely distinguish between volunteering on boards of directors and other types of volunteering.

Second, these results could have implications for tort law and theory more generally. A central criticism regarding deterrence theories of tort law is that they rely on an unrealistic conception of human behavior – particularly the extent to which prospective injurers understand law and risk.¹⁰ Despite the considerable theoretical research that exists on the deterrent effects of tort law, few empirical studies have examined the effects of liability on risk-taking.¹¹ The existing studies focus on areas, primarily medical malpractice and automobile accidents, that do not lead easily to generalizable conclusions. Medical malpractice studies are confounded by professional duties, organizational relationships, mandatory insurance laws, and the high costs of relocating a medical practice to a new state. It is similarly difficult to generalize from studies on automobile accidents because of widespread insurance requirements and the frequent involvement of criminal law in the cases. Deciding whether to volunteer, in contrast, is usually unburdened by government regulation or mandatory insurance requirements.

Here we provide new, albeit preliminary, evidence that individuals do reduce their activity-level engagement, such as forgoing volunteering altogether, in the face of liability exposure. These results offer some support for economic-deterrence theories of tort law, countering criticism that such theories do not accurately reflect human behavior. Our findings are of particular interest because they illustrate how the liability incentive might affect individuals, rather than corporations, which are more likely to internalize the costs of risky behavior and adjust their behavior accordingly.¹²

Moreover, the results provide a rough quantitative estimate of the degree to which volunteers who face liability choose to forgo volunteering altogether.¹³ This figure provides an estimate of a major cost of tort law – the opportunity cost of services not provided because of tort liability. It also suggests the indirect costs to the economy if government, rather than volunteers, provides these forgone services or the indirect costs to society if it does not. Although policymakers should consider these activity-level effects, we caution that they are only one part of the equation necessary to determine the social utility of tort law. Without identifying the *benefits* of tort law (e.g. the accident avoided, the extra care induced by the threat of tort liability) and other important factors, such as the distributive effects of tort law, policymakers cannot make determinative judgments about whether suits against volunteers are worth the cost of forgone volunteering.

⁷ See Part III.B., *infra*.

⁸ See Part III.A., *infra*.

⁹ *Developments in the Law -- Nonprofit Corporations, VI. Special Treatment and Tort Law*, 105 HARV. L. REV. 1677, 1689 (1992) [Hereinafter *Developments*] (“[There has been] virtually no systematic empirical research on the impact of [immunity] laws on nonprofit and charitable organizations.”).

¹⁰ DON DEWEES, DAVID DUFF, & MICHAEL TREBILCOCK, *EXPLORING THE DOMAIN OF ACCIDENT LAW: TAKING THE FACTS SERIOUSLY*. 6 (1996).

¹¹ Louis Kaplow & Steven Shavell, *Economic Analysis of Law* in 3 HANDBOOK OF PUBLIC ECONOMICS 1661, 1671 (Alan J. Auerbach & Martin Feldstein eds., 2002) (citing the few existing studies).

¹² See generally Steven P. Croley, *Vicarious Liability in Tort: On the Sources and Limits of Employee Reasonableness*, 69 S. CAL. L. REV. 1705 (1996), for a discussion of different liability effects based on type of actor, individual or corporation.

¹³ Of greater importance is the care-level deterrent effect, such as the degree to which volunteers are more careful with beneficiaries when those volunteers are subject to tort liability.

Our study also provides a useful example from which to explore the question of whether, and under what circumstances, property rules (enacted through bargaining and contracting) or liability rules (enacted through tort) provide a better mechanism to distribute the costs of accidents.¹⁴ Because volunteering is not a sudden, unexpected event like a skiing or bicycling accident, volunteers have ample time to contract around tort liability, and at least under certain circumstances, transaction costs are probably quite low. Therefore, most volunteering occurs under conditions in which theory predicts that people are most likely to rely on contracts to protect themselves from tort liability. We find, instead, that they rely on tort law, and to the extent they seek protection, they focus their effort on changing liability rules.

Third, understanding the effectiveness of the volunteer protection laws could shape government and nonprofit policy. Many policymakers wish to encourage volunteering because it benefits needy Americans and the country generally.¹⁵ In fact, in 1993 President George Bush claimed that “every serious social problem is being solved through voluntary service.”¹⁶ Volunteerism also has a positive effect on the volunteers themselves, who have been found to “live longer, have better mental health, and have higher occupational prestige than persons who do not volunteer.”¹⁷ Our study helps determine whether and how volunteer protection laws achieve their goal in encouraging individuals to volunteer or at least in preventing a reduction in volunteerism. Further, nonprofit organizations will be better able to recruit volunteers when provided with more information about why individuals do and do not volunteer.

Finally, our results may influence the adoption of shield-type laws in other contexts. For example, before passing the spate of volunteer liability laws we address here, legislators passed a series of Good Samaritan laws, which provide some liability immunity to people who provide uncompensated assistance in an emergency. The fear that lawsuits would cause the “deterrence of able citizens from acceptance of public office” led the Supreme Court to grant qualified immunity to many officials for violations of civil rights.¹⁸ More recently, the House of Representatives passed the Katrina VPA of 2005, which provides additional protection from civil liability to individuals volunteering in the aftermath of Hurricane Katrina by immunizing them from the costs of accidents caused by their gross negligence.¹⁹ For these reasons, we hope that this work will be only the first study on the relationship between tort immunity and volunteering.

In this article, Section II describes the state and federal acts and their motivations. In Section III we summarize the research on volunteering and liability. Section IV details our data

¹⁴ See Part IV.C, *infra*; see also Guido Calabresi & A. Douglas Malamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089, 1125-27 (1972) (suggesting that liability rules are best suited for situations where bargaining is difficult (unlike volunteering)).

¹⁵ See footnote 3, *supra*, for one measure of the benefit to the economy. See also *Volunteer Protection Act of 1987 Before the Senate Judiciary Subcomm, on Courts and Admin. Prac.: Hearing on S. 929/H.R. 911*, 100th Cong., 16 (1988) [hereinafter *1988 Hearing*] (statement of Representative John Porter) (“Volunteers are central to the fabric of our society, to our way of life.”); Andrew Popper, *A One-Term Tort Reform Tale: Victimized the Vulnerable*, 35 HARV. J. ON LEGIS. 123, 134 (1998).

¹⁶ *Remarks at a Celebration of the Points of Light*, 29 WEEKLY COMP. PRES. DOC 42, 43 (Jan. 14, 1993) (President George Bush).

¹⁷ Woods Bowman, *Confidence in Charitable Institutions and Volunteering*, 33 NONPROFIT & VOLUNTARY SECTOR Q. 247, 248 (2004) (citing J. Wilson & M. Musick, *The Effects of Volunteering on the Volunteer*, 62 LAW & CONTEMP. PROBS. 141 (1999)); see also David W. Hartmann, *Volunteer Immunity: Maintaining the Vitality of the Third Sector of our Economy*, 10 U. BRIDGEPORT L. REV. 63, 74 (1989) (noting that young volunteers obtain valuable experience whereas older volunteers gain a sense that they are “doing something useful” with their skills).

¹⁸ *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982). We thank Chris Whitman for this observation.

¹⁹ Katrina Volunteer Protection Act of 2005, H.R. 3736, 109th Cong. (as passed by House, Sept. 14, 2005).

and methodology, and Section V describes the results, sensitivity tests, and limitations to the empirical work. We conclude with implications of the findings and conclusions in Section VI.

II. Liability Protection Laws

In the 1980s and 1990s, advocates persuaded state and federal legislatures to immunize volunteers from civil lawsuits with impassioned pleas, such as Senator Spencer Abraham's claim that "[f]rivolous litigation is an attack on altruism itself," and Senator John Ashcroft's invocation of de Tocqueville.²⁰ Our examination of legislative histories, news reports, press releases, and the statutes themselves found that these sentiments translated into three types of justifications, often unfounded, for the sweep of federal and state legislation: (1) an instrumental claim regarding the chilling effect of liability on volunteering; (2) both instrumental and normative claims about the liability insurance crisis, which was sometimes framed more generally as a "liability crisis"²¹; and (3) particularly with the federal law, a normative claim that volunteers should not be subject to liability.²²

A. State Law

i. Statutes

State legislators acted first. Between 1984 and 1997, twenty-nine states and the District of Columbia adopted legislation providing some immunity from civil suits to all volunteers. Many other states enacted legislation protecting limited categories of volunteers (see Table 1).

To determine the scope and level of liability protection, we analyzed each state statute.²³ In almost all cases, the statutory language is clear in granting immunity to a particular class of volunteers.²⁴ Many statutes only provide protection to directors or officers, not to the general

²⁰ Spencer Abraham, *Litigation's Stranglehold on Charities*, 127 PUB. INT. 96, 97 (1997); *Volunteer Liability Legislation: Hearing Before the H. Comm. on the Judiciary*, 105th Cong. 16 (1997) [hereinafter *1997 Hearing*] (statement of Senator John Ashcroft); see also George H.W. Bush, *Remarks at a Celebration of the Points of Light*, 29 Weekly Comp. Pres. Docs. 42, 43 (Jan. 14 1993) (national strategy includes "reducing volunteer liability, because I believe that it's time that we ought to care for each other more and sue each other less").

²¹ For general discussion of the liability crisis in the 1980s see, e.g., Stephen D. Sugarman, *Taking Advantage of the Torts Crisis*, 48 OHIO ST. L. J. 329 (1987).

²² *1997 Hearing* at 54 (testimony of Lynn Swann, Immediate Past President of Big Brothers, Big Sisters of America) ("You would not take a mother and father and sue them . . . [b]ut a Big Brother Big Sister, you could."); *1997 Hearing* at 98 (testimony of Charles Tremper, Founder, Nonprofit Risk Management Center) ("The fundamental question goes beyond one of empirical data: Is it fair to ask volunteers to risk their personal assets as a condition of helping others?").

²³ We compiled the list of state statutes by searching each state's statute database on Westlaw using the search query "volunteer /s liab!.", and compared the results with the NONPROFIT RISK MANAGEMENT CENTER, STATE LIABILITY LAWS FOR CHARITABLE ORGANIZATION AND VOLUNTEERS (Sept. 2001), available at <http://www.nonprofitrisk.org/pubs/PDFs/sll.pdf>, and an outline prepared by Daniel Kurtz, a partner at Holland & Knight LLP who specializes in nonprofit law. (Outline on file with author).

²⁴ The few that were unclear required interpretation and further research into state law. The Georgia statute, for example, reads, "A person serving with or without compensation as a member, director, or trustee, or as an officer of the board without compensation, of any nonprofit hospital or association or of any nonprofit, charitable, or eleemosynary institution or organization." GA. CODE ANN. § 51-1-20. The Georgia courts have consistently interpreted the word "member" to include volunteers and employees, even if not serving in a managerial capacity. *Stephens v. Conyers Apostolic Church*, 532 S.E.2d 728, 730 n. 4 (holding that a pastor employed by a church fell within scope of statute), cert. denied (Ga. 2000); *Zarach v. Atlanta Claims Ass'n*, 500 S.E.2d 1, 4 (Ga. App. 1998) (assuming that statute covers a volunteer seminar instructor of nonprofit organization), reconsideration denied (Ga. App. 1998). Similarly, South Carolina grants immunity to "employee[s]," which is defined as "an agent, servant, employee, or officer of a charitable organization." S.C. CODE ANN. § 33-56-170(2). We interpreted this statute to

volunteers we consider in this study.²⁵ Others protect only specific categories of volunteers, such as volunteer firefighters,²⁶ coaches,²⁷ volunteers engaged in alternative dispute resolution programs,²⁸ or library volunteers for damages resulting from information contained in library materials.²⁹ The statutes also exclude certain volunteer activities from immunity. The exception for wrongful acts committed while operating a motor vehicle is quite common,³⁰ exposing many volunteers to liability despite the immunity statutes.

The statutes typically specify the lowest standard of care for which volunteers lose immunity from suit.³¹ In tort law, standards of care are roughly categorized into types with increasing levels of culpability: negligent, grossly negligent, reckless, willful and wanton, and intentional conduct.³² If a statute permits liability for a one standard, it also allows liability for all standards evincing greater culpability. Therefore, a statute that allows volunteers to be sued when they act with gross negligence will also permit suit when they act intentionally.

Three states enacted laws that are quite difficult to interpret at all. The statutes enacted by Florida, Ohio, and Missouri appear to impose liability even when the volunteer merely acts negligently, effectively draining the law of any meaning. For example, Florida grants immunity only if the volunteer was “acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances.”³³ But such a person would not be liable even without

grant immunity protection to all volunteers for two reasons. First, an opinion of the state Attorney General concluded that “[a] physician giving high school athletic physicals on a volunteer basis, without compensation, would probably be immune from liability.” 1989 Op Atty Gen, No. 89-83, p 218. Second, because the statute only protects individuals who serve without compensation, the term “employee” is likely to refer to the scope of a volunteer position with a nonprofit organization rather than to a relationship calling for a monetary exchange between the individual and the organization.

²⁵ Although this study concentrates only on statutes that apply to general volunteering activity, we have noted the scope of other volunteer liability protection statutes in the Appendix to aid other researchers.

²⁶ See, e.g., ALA. CODE § 6-5-335.

²⁷ See, e.g., LA. REV. STAT. ANN. § 9:2798.

²⁸ See, e.g., TEX. CIV. PRAC. & REM. CODE ANN. § 154.055; WASH. REV. CODE § 7.75.100.

²⁹ See, e.g., VT. STAT. ANN. tit. 12 § 5782.

³⁰ See, e.g., N.C. GEN. STAT. § 1-539.10(a)(3),

³¹ Again, although most state statutes clearly identified the level of negligence protected by the act, some were vague. The Maine statute, for example, protects volunteers “[w]hen the cause of action sounds in negligence.” ME. REV. STAT. ANN. tit. 12 § 158-A (2005) We interpreted this to mean that volunteers were protected for suits based on negligent acts, but not gross negligent acts. Maine courts have not decided this issue, because no volunteer has been sued in a reported case in that state and invoked statutory protection. Pennsylvania declines to extend immunity to volunteers when the “conduct of such person falls substantially below the standards generally practiced and accepted in like circumstances by similar persons. 42 PA. CONS. STAT. § 8332.4 (2005). Courts in Pennsylvania have interpreted this statute to mean gross negligence, which is typically understood to be a gross departure from the standard of care that a reasonable person would employ in such a situation. See *Sewickley Tp. Volunteer Fire Co. No. 3 v. First Nat. Bank of Herminie*, 8 Pa. D. & C.4th 297, 300 (Pa. Ct. Com. Pl. 1990) (holding that plaintiff must allege at least gross negligence for their claim to be outside the scope of the statute). Texas imposes liability when the volunteer’s act was “intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others.” TEX. CIV. PRAC. & REM. CODE § 84.007(a). Because earlier Texas case law defines “willfully negligent” to apply to a person who is “conscious, from his knowledge of surrounding circumstances and existing conditions, that his conduct will naturally or probably result in injury,” *Glassman v. Feldman*, 106 S.W.2d 721, 723 (Tex. Civ. App. 1937) (quoting *Sorrell v. White*, 153 A. 359, 362 (Vt. 1931)), we classify the Texas statute in the recklessness category.

³² This hierarchy is consistent with the Restatement of Torts, which adopts the view that “gross negligence carries a meaning that is less than recklessness.” RESTATEMENT (THIRD) OF TORTS: GENERAL PRINCIPLES § 2 cmt. a (Discussion Draft, 1999).

³³ FLA. STAT. § 768.1355.

the statute, so the statute adds nothing.³⁴ In fact, this interpretation is the one adopted by the Florida courts.³⁵ Missouri allows liability when the damage was caused “by the negligence of such volunteer,”³⁶ whereas Ohio permits liability for “[a]n action or omission of the volunteer [that] constitutes negligence.”³⁷ Although theoretically, the negligence standard protects volunteers against strict liability suits, this seems an unsatisfying explanation for the law, as volunteers are unlikely ever to be sued under a strict liability claim.³⁸

In addition, although the Kentucky legislature passed a statute in 1988 that immunizes volunteers from civil liability, a Kentucky Attorney General opinion found that the statute violates the three sections of the state constitution that, in part, provides that the Kentucky “General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property.”³⁹ Although the Kentucky statute has not been challenged in court, similar immunity statutes have been found to violate the Kentucky constitution.⁴⁰ For purposes of this study, we treat Florida, Kentucky, Missouri, and Ohio as having no volunteer liability protection statutes that apply to general volunteers.

ii. *Justifications: Why Did the States Pass These Laws?*

1. *Risk of Suit and Volunteer Rates*

³⁴ See RESTATEMENT (SECOND) OF TORTS § 283 (1965) (“the standard of conduct to which [the actor] must conform to avoid being negligent is that of a reasonable man under like circumstances”).

³⁵ *Campbell v. Kessler*, 848 So. 2d 369, 371 (Fla. Dist. Ct. App. 2003). Campbell’s car was rear-ended by Berger, who was volunteering with the “Citizen Observer Patrol.” *Id.* at 370. The trial court granted the volunteer summary judgment under Florida’s Volunteer Protection Act relying “upon the goal of volunteer protection as reflected in the *title of the act.*” *Id.* at 371 (italics in original). The Florida Appeals court reversed, finding that the language of the statute was “plain and unambiguous,” protecting only “reasonably prudent persons.” *Id.* As the court noted, the statute’s language is identical to Florida’s Good Samaritan immunity statute, which provided immunity to anyone responding to a medical emergency only when the person “acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.” Fla. Stat. § 768.13(2)(a) (2006); *Botte v. Pomeroy*, 438 So.2d 544, 545 (Fl. App. 1983) (noting that Good Samaritan immunity was undermined by this standard), *review denied*, 450 So.2d 488 (Fla. 1984); see also Stewart R. Reuter, *Physicians as Good Samaritans*, 20 J. LEGAL MED. 157, 163 (1999) (noting that Florida’s Good Samaritan protection is illusory). Florida’s standard may provide additional immunity to medical personnel because it applies to *any* individual who provides emergency care and imposes a duty to act as an “ordinary reasonably prudent person,” whereas physicians are expected to “exercise the skill, knowledge, and care normally possessed and exercised by other members of their profession.” *Recent Developments*, 32 FLA. ST. U. L. REV. 973, 995 n. 176 (2005) (quoting 1 Dan B. Dobbs, *The Law of Torts* § 242 (2001)).

³⁶ MO. REV. STAT. § 537.118(2)(2).

³⁷ OHIO REV. CODE ANN. § 2305.38(D)(2).

³⁸ See, e.g., Michael Mayer, *Stepping in to Step Out of Liability: The Proper Standard of Liability for Referees in Foreseeable Judgment-Call Situations*, 3 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 54, 81 n. 160 (2005) (“Based on my own personal research, I have found no authorities that support a strict liability standard [for volunteer referees.]”); Joseph H. King, Jr., *Exculpatory Agreements for Volunteers in Youth Activities—the Alternative to “Nerf®” Tiddlywinks*, 53 OHIO ST. L.J. 683, 754 (1992) (noting that it is “unlikely” that a volunteer helping youth would be subject to strict liability).

³⁹ KY. REV. STAT. ANN. §411.200(establishing tort immunity for volunteers acting in good faith unless damage was caused by willful or wanton misconduct); 1988-1991 Ky. Op. Atty. Gen. 2-637, Ky. OAG 91-89, 1991 WL 533922 (Ky. A.G.) (attorney general opinion concluding that the state volunteer immunity statute is unconstitutional).

⁴⁰ *Happy v. Erwin, Ky.*, 330 S.W. 2d 412 (1959) (statute protecting officers and employees of cities from personal liability is unconstitutional); 1979 Op. Ky. Att’y Gen. 535 (October 17, 1979) (state Good Samaritan statute violates the state constitution); see also 1994 Op. Ky. Att’y Gen. 16 (March 8, 1994) (outlining liability of volunteer engineers in post-earthquake disaster assessment and reiterating that volunteer immunity acts violate the state constitution).

States passed volunteer liability protection for several reasons. First, legislators worried that liability hindered volunteer recruiting by nonprofits. The New Jersey Assembly Insurance Committee's statement to the Senate explains that "[b]y giving immunity to trustees, officers, directors, and other uncompensated volunteers, the [volunteer immunity] bill's purpose is to permit nonprofit and charitable organizations to continue to attract able people to serve in these capacities."⁴¹ State legislators reasoned that providing some level of immunity, thereby reducing volunteers' litigation exposure, would increase volunteering.⁴²

Volunteers, however, seem to face little risk of suit. In a survey of state acts, the Nonprofit Risk Management Center identified only a handful of cases against ordinary volunteers. Rather, the bulk of reported cases involved directors (primarily involving labor disputes), auto accidents, quasi-governmental volunteers who are generally afforded sovereign immunity (e.g. for community members serving on government committees), or vicarious liability suits against nonprofit organizations for the negligence of their volunteers.⁴³

Our own efforts to find lawsuits against general, non-director volunteers also produced few results. Although we surveyed only published opinions and, therefore, do not know the underlying rate of settled or uncontroversial suits, we found few suits against ordinary volunteers. In a search of all reported cases over the past forty years, we found sixty cases against these volunteers, almost all of which would fall outside the scope of the volunteer protection acts.⁴⁴ Of the sixty cases, twenty-three claims were against volunteer firefighters (usually based on negligent driving and, therefore exempt from state statutes); three were for negligent driving by other volunteers; eight were sex related (usually against youth leaders for child molestation and, therefore, intentional torts exempted from immunity); and nineteen involved a range of non-tort claims, such as Antitrust, Fair Labor Standards Act, discrimination, interference with contract, and other claims brought in the employment context. From 1978 through 2006, only seven cases alleged a straightforward negligence claim; of these, five invoked state volunteer protection acts, two invoked the VPA, and one invoked both. Moreover, in almost all cases alleging negligence, the supervising nonprofit or government agency was also a named defendant, so the risk to the volunteer's assets was minimal.⁴⁵

⁴¹ Assembly Insurance Committee Statement to Senate, No. 2705, State of New Jersey, (February 5, 1987).

⁴² See, e.g., Washington Senate Bill Report 1643, Senate Committee on Judiciary (March 29, 2001).

⁴³ Nonprofit Risk Management Center, *supra* note 23. These few cases include *Jenkins v. Glencoe Volunteer Fire Dept.*, 685 So.2d 769 (Ala Civ. App. 1996) (volunteer fire fighter immune); *Knowles v. State Farm Mut. Auto. Ins. Co.*, 781 So. 2d 211 (Ala. 2000) (volunteer hayride operator immune for negligence), *Matlock v. Hankel*, 707 So. 2d 1016 (La. App. 1998) (volunteer firefighter immune); *Frields v. St. Joseph's*, 702 A. 2d 353 (N.J. Super. Ct. A.D. 1997) (volunteer rescue squad immune for negligent rescue), *Spruill v. Lake Phelps Volunteer Fire Dept.*, 523 S.E. 2d 672 (N.C. 2000) (volunteer firefighters immune for spilling water, which froze and caused car accident). Several cases granted sovereign immunity to volunteers assuming employee-type roles. See, e.g., *Yonker By and Through Helstrom v. Thompson*, 939 P.2d 530 (Colo. App. 1997) (child kidnapped in custody of guardian ad litem granted sovereign immunity) *Trotter v. School District 218*, 733 N.E.2d 363 (Ill. App. 2000) (volunteer lifeguards are employees under tort immunity act); *Kennedy v. State*, 730 A.2d 1252 (Me. 1999) (volunteer guardian ad litem held to be state employee).

⁴⁴ We used Westlaw's "allcases" database searching for all cases within the past 40 years with the following terms "sy(volunteer liab! Sue lawsuit tort) & volunteer/10defendant." This search produced several hundred cases, of which only sixty involved a volunteer defendant.

⁴⁵ Although tort defendants generally settle claims with insurance proceeds, threats to personal funds are used to achieve these settlements. Tom Baker, *Blood Money, New Money, and the Moral Economy of Tort Law in Action*, 35 LAW & SOC'Y REV. 275 (2001).

Therefore, state legislators often, reasonably, emphasized that they were concerned by the *perception*, rather than the real risk of suit.⁴⁶ For example, the Alabama statute states, “[t]he willingness of volunteers to offer their services has been increasingly deterred by a perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers.”⁴⁷ Hawaii legislators tried to determine the actual liability risk of volunteers through a survey of state nonprofits and concluded that “[a]lthough a perception lingers that use of volunteers increases the threat of lawsuits demanding astronomical damages, this does not appear to be the reality experienced by Hawaii's nonprofits.”⁴⁸ In fact, the Nonprofit Risk Management Center concludes,

[a]lthough we are somewhat doubtful about the claims that large numbers of persons have declined to volunteer due to fear about personal liability, we acknowledge that these fears have persisted during the past two decades. Over the past few years, the Nonprofit Risk Management Center has received dozens of calls from volunteers expressing concern about the potential for personal liability.... [W]e have yet to hear from someone whose fear of liability has led to the decision to cease participating as a volunteer in any form.⁴⁹

Rather than the presence of risk, a few highly publicized lawsuits against volunteers may have convinced legislators that there was a volunteer liability crisis.⁵⁰ In one widely cited example, parents sued their ten-year-old son's Little League coach after a ball hit him in the eye.⁵¹ The child, not accustomed to playing second base, claimed he had been given inadequate training on how to field balls.⁵² Although the case was settled, legislators used it as evidence in their arguments for volunteer immunity.⁵³ Less frequently cited was a lawsuit against volunteers of the not-for-profit Riverside Mountain Rescue (“Rescue”) of California.⁵⁴ In late October of 1983, a young mountain climber fell ninety feet and suffered spinal injuries and a leg injury.⁵⁵

⁴⁶ ARK. CODE ANN. § 16-6-102 (“While there are no known recent instances in Arkansas where a volunteer has been subjected to personal liability for negligence in performing volunteer duties..., the recent publicity generated in relation to the perceived insurance crisis has heightened concern among many who would provide volunteer services.”).

⁴⁷ Code of Ala. § 6-5-336(b)(1); Billy Buzzett, Staff Attorney, Florida House of Representatives, Committee on the Judiciary, Florida Volunteer Immunity Act Summary (on file with author)..

⁴⁸ CHARLOTTE A CARTER-YAMAUCHI, HAWAII LEGISLATIVE RESEARCH BUREAU, VOLUNTEERISM, A RISKY BUSINESS? (1996), available at <http://www.state.hi.us/lrb/rpts96/vol/voldoc.html>. The survey found only three nonprofit organizations reporting “any suit involving a volunteer had been filed or threatened; and one of these involved an injury to a volunteer, as opposed to an injury caused as a result of a volunteer's acts or omissions.” *Id.* None of the “responding organizations reported knowing of another nonprofit organization that had been sued or threatened with suit.” *Id.* The survey also identified only two insurance claims against volunteers, one for medical only, and the other was “small.” *Id.*

⁴⁹ Nonprofit Risk Management Center, *supra* note 23.

⁵⁰ Tom Baker, *The Medical Malpractice Myth* (2005) (discussing the role of anecdote in tort reform).

⁵¹ *Risks of Liable Deter Youth Coaches*, Charlotte Observer, April 11, 1986; Robert Seltzer, *Suit Throws a Curve at Little League*, Philadelphia Inquirer, July 21, 1985.

⁵² Robert Seltzer, *Suit Throws a Curve at Little League*, Philadelphia Inquirer, July 21, 1985.

⁵³ See Jamie Brown, *Legislators Strike Out: Volunteer Little League Coaches should not be Immune from Tort Liability*, 7 SETON HALL J. SPORT L. 559, 559-60 (1997) (discussing the Little League case and the background behind the New Jersey statute). 1997 Hearing at 21 (statement of Edward Porter) (Little League coaches settled for \$25,000).

⁵⁴ See generally David O. Weber, *A Thousand Points of Fright?*, 52 INS. REV. 40 (1991); 1988 Hearing at 190-92 (testimony of Kevin Walker, volunteer, Riverside Mountain Rescue).

⁵⁵ 1988 Hearing at 191 (testimony of Kevin Walker).

Volunteers from Rescue participated in an emergency nighttime helicopter evacuation of the injured hiker to a hospital.⁵⁶ Unfortunately, the hiker was left as a quadriplegic and then sued the volunteers for \$11 million, alleging “reckless and negligent” rescue techniques.⁵⁷ The case was dropped, but the volunteers incurred expenses defending the suit. Many commentators denounce these lawsuits as frivolous and cite them as evidence of the need for protecting volunteers.⁵⁸

People may have sought volunteer liability reform because they feared a future decline in volunteering. For example, researchers identified a decline in volunteering among women,⁵⁹ partially explained by increasing female workforce participation.⁶⁰

2. Insurance

Second, legislators may have passed the liability laws in reaction to an insurance crisis, the news of which filled the press during the late 1980s and early 1990s.⁶¹ This crisis was widely, though incorrectly,⁶² believed to have “disrupted product and service markets in the United States” through drastically increased premiums across diverse activities, including medical care, recreational activities, and transportation.⁶³ Advocates of liability reform blamed this crisis for many social ills including, perhaps most dramatically, obstetricians walking off the

⁵⁶ 1988 Hearing at 192.

⁵⁷ Weber, *supra* note 54; 1988 Hearing at 192.

⁵⁸ Abraham, *supra* note 20, at 100-01 (citing several examples of “frivolous” suits against volunteers); King, *supra* note 38, at 694-95; Laura A. Kiernan, *Legal Threat Casts Pall: Legislators Debate Volunteers’ Liability When Injury Claimed; Proposals Offer Range of Immunity*, Boston Globe, Jan. 17, 1988 (discussing New Hampshire, “[v]olunteer coaches are exposed to frivolous lawsuits, and because of this they are not volunteering in the numbers we have known in previous years”); *Good Sports: Coach Immunity Bill Becomes Law*, Philadelphia Daily News, May 13, 1986 (noting that supporters of New Jersey’s volunteer immunity statute argue that it will prevent frivolous suits against volunteers).

⁵⁹ CHARLES T. CLOTFELTER, FEDERAL TAX POLICY AND CHARITABLE GIVING 143, 168-70 (1985) (cited in Paul S. Carlin, *Evidence on the Volunteer Labor Supply of Married Women*, 67 S. ECON. J. 801, 803 (2001)).

⁶⁰ Paul S. Carlin, *Evidence on the Volunteer Labor Supply of Married Women*, 67 S. ECON. J. 801, 803 (2001).

⁶¹ See, e.g., Jay Mathews, *Torts and a Tug on the Heartstrings; in the Battle Over Liability Law, Ads Put Emotion on the Front Line*, Wash. Post, May 10, 1995; Weber, *A Thousand Points of Fright?*, 52 INS. REV. 40 (1991); *The Liability Crisis: Companies, Consumers and Courts; Are insurers caught in a squeeze or putting it on?* THE NEW YORK TIMES, May 25, 1986; Nancy L. Ross, *Insurance Firms Profit From Crisis; Liability Scare Ebbs, but Rates Still Rise*, WASH. POST, Dec. 21, 1986; John F. Russo, *New Jersey Opinion: Who is at fault and what can be done about Insurance?; Accountability is a prime need*, THE NEW YORK TIMES, August 31, 1986 (school district faced insurance rate increase of 25,000% in one year); Carol McGraw, *Insurance Problems Threaten the Future of Women’s Clinics*, THE LOS ANGELES TIMES, October 2, 1987 (documenting quadrupling of insurance costs for California clinics); Nancy L. Ross, *Insurance Firms Profit From Crisis; Liability Scare Ebbs, but Rates Still Rise*, THE WASHINGTON POST, December 21, 1986 (“While the shock of premium increases that often topped 100 percent in 1985 has made the 20 percent to 30 percent increases of 1986 seem mild by comparison, rates still appear to be going up briskly.”).

⁶² Recent studies have shown that premium increases are not caused by growing claims or payouts. See, e.g., Bernard Black, Charles Silver, David Hyman, William Sage, *Stability, Not Crisis: Medical Malpractice Claim Outcomes in Texas, 1988-2002* 2 Journal of Empirical Legal Studies 207 (2005).

⁶³ George L. Priest, *The Current Insurance Crisis and Modern Tort Law*, 96 Yale L.J. 1521, 1521 (1987). See generally Brenda A. Trolin, *Legislatures Awaken to Nonprofits Hit by Liability Insurance Crisis*, 2 PREVENTIVE L. REP., 12, 14 (1987) (discussing insurance difficulties faced by nonprofits); see also *Development in the Law*, 23 WILLAMETTE L. REV. 211, 324 (1987) (citing WASH. REV. CODE ANN. § 4.24.264 (1986)) (Washington legislature “responded primarily to an insurance premium problem, and not to a problem of lawsuits”); George J. Church, *Sorry, Your Policy is Cancelled*, TIME MAGAZINE, March 24, 1986.

job.⁶⁴ The perceived crisis led to calls for tort reform both generally and in the nonprofit sector specifically.

Insurance industry representatives blamed “greedy lawyers, mushy-headed juries and a litigious culture,”⁶⁵ whereas lawyers retorted that premium increases were caused by interest rate declines and an insurance business cycle, likening it to a similar “crisis” experienced in the mid-1970s.⁶⁶ Regardless of the cause, tort reform was widely adopted as a means of reducing liability insurance premiums.⁶⁷ Several states implemented “no-fault” insurance requirements during the mid-1980s when automotive insurance rates peaked.⁶⁸ Around the same time, many states passed laws to address the perceived medical malpractice insurance crisis,⁶⁹ and others called for the reformation of liability rules for product manufacturers.⁷⁰

Escalating premiums also affected nonprofits. For example, the average cost of liability insurance for nonprofit organizations increased by 155 percent in 1987.⁷¹ Regardless of the reason for the premium increases--and there were many -- large numbers of nonprofits were unable to obtain or afford insurance.⁷² In testimony before the Ohio State Senate, a representative of the local United Appeal & Community Chest of the Cincinnati Area identified several local nonprofits that faced large increases in liability insurance premiums or were unable to obtain the insurance at all.⁷³ In similar testimony, the director of the Ohio Citizens’ Council noted that “[a] major problem confronting the charitable voluntary sector today focuses on liability insurance: availability, affordability and scope.”⁷⁴

The lack of insurance led legislators to believe that liability protection was needed either to encourage insurers to insure volunteers⁷⁵ or to protect volunteers who were left without

⁶⁴ Jill R. Horwitz & Troyen A. Brennan, *No-Fault Compensation for Medical Injury: A Case Study*, 14 HEALTH AFF. 164, 166 (1995) (“Although there is no evidence that... patients were unable to obtain obstetrical care,... the mood of crisis prevailed.”); Kirk B. Johnson, et. al, *A Fault-Based Administrative Alternative for Resolving Medical Malpractice Claims*, 42 VAND. L. REV. 1365, 1375 (1989) (citing OPINION RESEARCH CORP., PROFESSIONAL LIABILITY AND ITS EFFECTS: REPORT OF A 1987 SURVEY OF ACOG’S MEMBERSHIP 5 (1988) (report prepared for the ACOG)) (“[O]ne in eight obstetrician-gynecologists has stopped delivering babies because of concern over malpractice liability.”).

⁶⁵ *The Liability Crisis: Companies, Consumers and Courts; Are insurers caught in a squeeze or putting it on?* THE NEW YORK TIMES, May 25, 1986.

⁶⁶ John F. Russo, *New Jersey Opinion: Who is at fault and what can be done about Insurance?; Accountability is a prime need*, THE NEW YORK TIMES, August 31, 1986.

⁶⁷ See generally George L. Priest, *The Current Insurance Crisis and Modern Tort Law*, 96 YALE L.J. 1521 (1987).

⁶⁸ Harvey Rosenfield, *Auto Insurance: Crisis and Reform*, 29 U. MEM. L. REV. 69, 74-76, 78 (1998).

⁶⁹ Carrie Lynn Vine, *Comment, Addressing the Medical Malpractice Insurance Crisis: Alternatives to Damage Caps*,

26 N. ILL. U. L. REV. 413, 414 (2006) (“Despite the arguments for and against the...malpractice...crises, there has been enough public outcry to lead the legislatures of all fifty states to attempt reform.”).

⁷⁰ See sources cited by Steven P. Croley & Jon D. Hanson, *What Liability Crisis? An Alternative Explanation for Recent Events in Products Liability*, 8 YALE J. ON REG. 1, 7 nn. 26-27 (1991).

⁷¹ Hartmann, *supra* note 17, at 77.

⁷² See, e.g., William Presecky, *Insurance Woes Strike Prairie Path*, Chicago Tribune, Jan. 29, 1986 (discussing volunteers’ inability to obtain liability insurance, causing them to cease operations).

⁷³ Testimony of Terry Grundy, United Appeal & Community Chest of the Cincinnati Area to the Ohio Senate State and Local Government Committee, May 13, 1986.

⁷⁴ Testimony of Judith Tieman Bird, Ohio Citizens’ Council, to the Ohio Senate State and Local Government Committee, May 13, 1986. The testimony noted that “[a] very small portion of the problem centers on directors and officers liability insurance.” *Id.*

⁷⁵ Associated Press, *Bills Seek to Shield Volunteers, Charities from Liability Woes*, DALLAS MORNING NEWS, Jan. 28, 1987 (discussing proposed Texas statute); Carolyn Acker, *Senate Passes 16 Bills on Liability Insurance*,

coverage.⁷⁶ Washington state legislators, for example, were inundated with complaints from constituents⁷⁷ that insurance coverage had evaporated⁷⁸ and concluded that “[t]he public interest is not being served by the commercial underwriters.”⁷⁹

3. *Fairness*

Third, many state legislators believed that, because volunteers were generous, holding them liable for negligence was unfair. Florida legislators believed that “[i]t is in the public interest to strike a balance between the right of a person to seek redress for injury and the right of an individual to free give of his time and energy without compensation as a volunteer in service to his community without fear of personal liability for acts undertaken in good faith absent willful or wanton conduct on the part of the volunteer.”⁸⁰ Others observed that even non-frivolous claims are unfair when they are brought against volunteers because it is wrong to penalize well-intentioned people.⁸¹ However, those who opposed volunteer immunity questioned these premises, asking, “Why should [a negligent volunteer] be immune? . . . There doesn't need to be immunity unless they did something wrong.”⁸²

B. Federal Law

Federal legislation, which came later, roughly tracked the state bills. After introducing a volunteer protection bill in each session of Congress between 1985 and 1997, Congressman John Porter of Illinois finally succeeded in overcoming the federalism objections that had caused previous attempts to fail and garnered the widespread support of his colleagues for the 1997

PHILADELPHIA INQUIRER, Dec 5, 1986 (discussing New Jersey statute); Harry Berkowitz, *Insurance as a Sure Thing? Sigh of Relief from Public On Liability*, NEWSDAY, July 1, 1986 (discussing proposed New York statute); Sharon Phillips, *A New Liability Law Spurs Debate over Insurance Rates*, PHILADELPHIA INQUIRER, June 26, 1986 (attributing Philadelphia director statute “in part” to insurance crisis); Gerald Cardinale, *Opinion: Plan to Reform Insurance*, THE RECORD, July 13, 1986 (NJ state senator arguing that volunteer immunity bill (among others) will “result in lower premiums and will increase the availability of liability insurance”).

⁷⁶ Several articles discuss charities’ inability to obtain liability insurance, and its adverse program effects. See, e.g., Randy Loftis, *Salvation Army Bells Silenced at Malls*, Miami Herald, Dec. 24, 1986; Joseph Williams, *Program to Give Rides to Drinkers is Cancelled*, Richmond Times-Dispatch, Dec. 20, 1986; Chris Kinyon, *Law May Dampen Lawton’s Parades*, Daily Oklahoman, Dec. 14, 1986; Victoria Stevens, *Volunteers Quit Youth Agency Board over Insurance Cuts*, Toronto Star, Oct 6, 1986 (discussing resignation of board members due to a lack of insurance). Mark Toohey, *Galveston Housing Board Members Resign*, Houston Chronicle, July 29, 1986 (discussing resignation of board members due to lack of insurance).

⁷⁷ Jeri A. Carver, *Immunity for Nonprofit Corporations (RCW 4.24.264)*, 23 WILLAMETTE L. REV. 321, 324 (1987) (“In adopting Section 903 [nonprofit director and officer immunity], the legislature responded primarily to an insurance premium problem, not to a problem of lawsuits.”).

⁷⁸ *Id.* at 324 n. 21.

⁷⁹ *Id.* at 324 (quoting Dick Marquart, Cover Letter, Report to the Legislature From the Joint Study Committee on Insurance Availability and Affordability 1 (Nov 12. 1985)).

⁸⁰ Billy Buzzett, Staff Attorney, Florida House of Representatives, Committee on the Judiciary, Florida Volunteer Immunity Act Summary (on file with author). Despite this explanation, the Florida act does not protect volunteers beyond pre-existing tort law, as discussed in Part II, *supra*. We were unable to find any further explanation in bill hearings. Hearing before the Subcommittee on Court Systems, Probate, and Consumer Law, February 10, 1993 (audio-tapes and notes on file with authors).

⁸¹ Dennis Romboy, *Proposed act would shield volunteers from suits*, DESERET NEWS, January 20, 2001.

⁸² *Id.* (quoting Ralph Dewsnup, past president, Utah Trial Lawyers Association).

VPA.⁸³ The nation's largest nonprofit organizations⁸⁴ supported the bill, a puzzle that we discuss in Part IV.B.⁸⁵ President Clinton signed the bill into law in 1997.

The VPA provides similar, although more complex, protections than the state laws.⁸⁶ Under the VPA, a volunteer will not be held liable for harm s/he causes to a person while negligently performing services for a nonprofit organization or government entity.⁸⁷ The act, however, has several exceptions, including liability for gross negligence,⁸⁸ willful or criminal misconduct,⁸⁹ hate crimes,⁹⁰ sexual offenses,⁹¹ harms caused by the volunteer if s/he is under the influence of alcohol or drugs at the time of the act or omission,⁹² or injuries inflicted through the volunteer's use of a motor vehicle.⁹³ The act also limits punitive damages to situations where the plaintiff proves by clear and convincing evidence that the volunteer's actions constituted "willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety" of the plaintiff⁹⁴ and eliminates joint and several liability for non-economic damage awards.⁹⁵

The VPA preempts state laws that are "inconsistent" while explicitly saving from preemption "any State law that provides additional protection from liability" to volunteers.⁹⁶ In a somewhat usual provision, the federal law permits states to opt out of the statute for suits between their own citizens by passing a statute explicitly expressing its intent permit liability.⁹⁷ To date, New Hampshire is the only state that has opted out of the regime, although it already had a statute in place.⁹⁸

⁸³ *Developments, supra* note 9, at 1686-87. In 1997, the only opposition on the floor was from Rep. Don Manzullo (R-Ill) on federalism grounds. Mary Jacoby, *House OKs Liability Protection for Volunteers*, CHI. TRIB., May 22, 1997, at 13; Alfred R. Light, *Conscripting State Law to Protect Volunteers: the Odd Formulation of Federalism in "Opt-Out" Preemption*, 10 SETON HALL J. SPORT L. 9, 14 (2000); George Constantine, *How landmark legislation evolved; Special Report: The Volunteer Protection Act of 1997*, 49 ASSOC. MGMT. 36 (1997). Previous attempts, such as Volunteer Protection Act of 1991, H.R. 911, 102nd Cong., 1st Sess., tried to overcome these objections by making state compliance optional with a 1 percent increase in Social Service Block Grants. Section 5(a); 1988 *Hearing* 25-28 (discussion between Sen. Thurmond and Rep. Porter on federalism concerns). Although the VPA's constitutionality is untested, one state passed an act out of concern that the VPA would be struck down as exceeding Congress's power. Washington Senate Bill Report 1643, Senate Committee on Judiciary, (March 29, 2001)

⁸⁴ For example, the American Association of University Women, American Council on Education, American Dental Association, American Hospital Association, American Medical Association, American Red Cross, American Symphony League, B'nai B'rith, Girl Scout Council USA, Little League, National PTA, United Way, YMCA, and others.

⁸⁵ 1997 *Hearing* at 20 (statement of Representative John Porter, U.S. House of Representatives).

⁸⁶ The Volunteer Protection Act, 42 U.S.C. §§ 14501-14505 (2006).

⁸⁷ § 14503(a).

⁸⁸ There was no gross negligence exemption in the 1987 bill.

⁸⁹ § 14503(a)(3); *Momans v. St. John's Northwestern Military Academy, Inc.*, 2000 WL 33976543 at *5-6 (N.D.Ill. 2000) (holding that VPA does not apply to fraud claim against volunteer defendant).

⁹⁰ § 14503(f)(1)B).

⁹¹ § 14503(f)(1)(C).

⁹² § 14503(f)(1)(E).

⁹³ § 14503(a)(4).

⁹⁴ § 14503(e)(1).

⁹⁵ § 14504(b).

⁹⁶ § 14502(a). The statute also bars claims brought under federal law. *Armendarez v. Glendale Youth Center, Inc.*, 265 F. Supp. 2d 1136, 1140-41 (D.Ariz. 2003).

⁹⁷ 42 U.S.C. § 14502(b); *see generally* Light, *supra* note 83.

⁹⁸ 1998 N.H. LAWS 128:1 ("Pursuant to...[the VPA]...the state of New Hampshire hereby exercises its right under such statute to elect not to have...[it]...apply to any civil action against a volunteer, in a New Hampshire court, in which all parties are citizens of the state....").

Supporters of the federal act offered a cluster of reasons similar to those advanced for state liability protection laws. First, some worried that the fear of tort liability, unfounded or otherwise, discouraged people from volunteering.⁹⁹ Rep. Porter explained that the legislation addresses a very real problem, and that is the chilling effect that is felt by volunteers across this country that they might somehow be named a party defendant in a lawsuit and have to go to court and hire a lawyer and defend themselves. And what the legislation does is remove that and say the organization remains liable but the volunteer can come forward, serve as a direct service volunteer or on a volunteer board, without worry that they have to go to court and hire a lawyer.¹⁰⁰

When Porter introduced the 1987 version of the bill he was more succinct: “The purpose behind this legislation is one thing, and one thing only – that is, to keep volunteers volunteering in our country.”¹⁰¹ Introducing a hearing before the Judiciary Committee of the House of Representatives, Chairman Henry Hyde pointed to the role of tort liability in declining volunteerism and argued that tort liability posed a particular problem in the context of a shrinking (“responsible”) government and the need to replace government services with private initiatives.¹⁰²

Second, supporters’ comments pointed to the rising cost of insurance and suggested that it was inappropriate for nonprofit organizations to spend a considerable portion of their budget on insurance. It particularly upset legislators to learn that “[n]ationally the Little League's biggest cost isn't bats and balls, but legal and insurance costs associated with liability.”¹⁰³ Many of the concerns raised during the hearings sounded the same language as in tort reform more generally.¹⁰⁴

Third, the debate included notions that lawsuits were frivolous and accidents simply a part of life. According to John Ashcroft, then Senator from Missouri, the bill goes to the heart of who we are...that those who would hold themselves out to help their fellow citizens would have to offer as a potential the well-being of their own families because of the opportunity or potential for legal liability is an idea that is offensive. . . . how many...volunteers can afford to have that kind of exposure? I was a Boy Scout, I remember playing touch football. We played worse than that. It is the nature of boys. We played fox

⁹⁹ See Howard P. Benard, *Little League Fun, Big League Liability*, 8 MARQ. SPORTS L.J. 93, 122 n. 89 (1997) for a collection of quotes on this topic from federal lawmakers.

¹⁰⁰ News Conference on the Volunteer Protection Act of 1997, June 11, 1997, Federal Information Systems Corporation, Federal News Service.

¹⁰¹ 1988 Hearing at 7 (testimony of the Honorable John. E. Porter).

¹⁰² 1997 Hearing at 1-3 (introductory statement by Hyde).

¹⁰³ Upon the passage of the VPA, Newt Gingrich commented, “the Girl Scouts of Washington DC alone had sold – I think was 87,000 boxes of cookies just in order to be able to pay their legal and litigation and liability insurance, and that Little League actually pays more nationally for legal fees and liability insurance than they pay for baseballs and bats. And average common-sense folks understand that makes no sense at all.” News Conference on the Volunteer Protection Act of 1997, June 11, 1997, Federal Information Systems Corporation, Federal News Service. It is unclear, however, whether these legal fees were for defending tort suits or doing the other legal business of the Little League, such as negotiating licenses. We thank Roberta Morris for this observation.

¹⁰⁴ 1997 Hearing at 21 (statement of Rep. Porter) (noting “litigiousness” of society); *id.* at 65 (statement of Robert Goodwin, President and CEO, Points of Light Foundation) (same).

over the hill. You just had to run from one line to another line without getting knocked down, tackled or beat up.¹⁰⁵

Other stories characterized plaintiffs as inappropriately blaming volunteers for mere accidents. For example, the story of the New Jersey Little League coaches who “were sued when a fly ball injured a young outfielder who, his family said, was a natural shortstop” was mentioned frequently in the press and debates regarding the federal legislation.¹⁰⁶ A common theme was that it is simply unfair to hold liable those who act generously.¹⁰⁷

The only dissenting voice in Congressional hearings for the 1997 VPA, that of law professor Andrew Popper, criticized the act as a class-based transfer from those who are injured to those who injure,¹⁰⁸ motivated only by politics and not by a genuine concern for volunteerism.¹⁰⁹ He further characterized tort victims as “a highly vulnerable group, legally unsophisticated, often powerless to select the person who will assist them, and sometimes unable to discern inappropriate behavior.”¹¹⁰ Although the costs of the VPA to injured parties were barely raised in the 1997 hearings, Rep. Porter had earlier expressed some worry about the legislation’s effect on injured parties and suggested that immunity should not be extended to volunteers at organizations that were immune from suit by virtue of charitable or sovereign immunity.¹¹¹

III. Previous Scholarship

A. Legal

Legal research on volunteer liability laws generally concerns the wisdom of immunity and the interplay between individual and organizational liability. Although a few authors question the constitutionality of the various acts,¹¹² most discussion centers on whether the statutes are fair and speculate about their incentive effects. Scholars disagree both about whether liability exposure discourages volunteering and whether immunity statutes encourage it. Data about volunteering, suits against volunteers, and insurance premiums are notably absent from this discussion.

i. Are the Laws Fair?

¹⁰⁵ 1997 Hearing at 16 (discussing a judgment of \$4 million, reduced from \$7 million, against the Boy Scouts and volunteers for negligent supervision on a trip where a scout suffered a paralyzing injury during a game of touch football).

¹⁰⁶ Aaron Epstein, *Congressional Leaders Back Bill to Limit Liability of Volunteers*, KNIGHT RIDDER, April 29, 1997. Tort reform opponents said VPA supporters omit important facts from their accounts. She said the boy hit in the eye by a fly ball underwent five operations and there was evidence of careless coaching. The judgment in Oregon (cited by Senator Ashcroft) for the boy crippled in a touch football game, she said, “was paid by the Boy Scout’s insurance company, not the volunteers.” *Id.*

¹⁰⁷ John Porter, *End the Liability of Volunteers*, CHI. TRIB., Aug. 24, 1986 (“Why should the assets of board members of the Junior League be jeopardized for a slip-and-fall injury in the local thrift shop? . . . We should not have to fear placing family assets at risk when we donate our time and talent without compensation to serve our communities.”).

¹⁰⁸ Popper, *supra* note 15, at 137.

¹⁰⁹ *Id.* at 133 n. 54.

¹¹⁰ *Id.* at 134.

¹¹¹ 1988 Hearing at 12-13 (statement of John Porter).

¹¹² Light, *supra* note 83, at 62-63 (arguing that the VPA violates federalism principles); Benard, *supra* note 99, at 127-28 (discussing federalism and the VPA); Charles R. Tremper, *Compensation for Harm from Charitable Activity*, 76 CORNELL L. REV. 401, 433, 468-74 (1991) (discussing potential due process, equal protection, takings, and “involuntary contribution” challenges).

The fairness debate begins by observing that volunteer immunity shifts the cost of accidents from volunteers onto nonprofit organizations or accident victims. Organizational liability could be welfare-enhancing if organizations are better able to manage risk or affect safety than are individual volunteers.¹¹³ It may require organizations to limit their use of volunteers, which may be either welfare-enhancing or welfare-decreasing depending on the nature of the volunteers.¹¹⁴ When nonprofit organizations lack assets to satisfy judgments or possess charitable immunity, the injured party must bear the costs of their injury.¹¹⁵ However, other scholars note that compensation is not the best justification for tort liability, and therefore, the cost-shifting aspects of immunity may not be the most important factors to consider in evaluating its significance.¹¹⁶

There is also debate about whether the victim or the volunteer should bear the costs of the accident. In an argument recycling the justifications for charitable immunity laws advanced in the mid-19th century,¹¹⁷ some scholars assert that requiring those who donate their services to pay for accident costs is unfair because the volunteer's kindness should not be repaid with liability.¹¹⁸ In other words, good beneficiaries should not bite gift-volunteers in the hand. Other scholars highlight the distributive implications of these arguments, noting that volunteer immunity requires the beneficiaries of volunteer service – often “low- to moderate-income individuals” -- to bear costs they are unable to handle.¹¹⁹

ii. Do the Laws Deter Risky Behavior or Volunteering?

Some research considers the deterrent effects of liability. In an article and in Congressional testimony, Professor Popper predicted that removing the threat of liability would give volunteers less incentive to act carefully.¹²⁰ Other commentators focus on the activity-level deterrent effects of liability. For example, some scholars speculate that imposing liability discourages people from engaging in activities, such as volunteering, in which personal assets are risked.¹²¹ As evidence, they rely on a 1988 Gallup survey of nonprofit directors,¹²² but do not consider the important differences between board members and non-managerial volunteers (e.g. envelope stuffers and soup ladlers).

Legal commentators do distinguish between volunteers and market actors like physicians or product manufacturers. Although market actors may not withdraw from their markets despite

¹¹³ Hartmann, *supra* note 17, at 79 (arguing that nonprofits are superior risk managers to individuals).

¹¹⁴ *C.f.* Jeffrey Kahn, *Organization's Liability for Torts of Volunteers*, 133 U. PA. L. REV. 1433, 1445-46 (1985) (arguing that *respondeat superior* liability provides nonprofit organizations a “strong economic incentive” to select and manage their volunteers to prevent negligent behavior but that high premiums make using volunteers difficult).

¹¹⁵ *Developments*, *supra* note 9, at 1690-91.

¹¹⁶ Hartmann, *supra* note 17, at 77; King, *supra* note 38, at 685-86.

¹¹⁷ Horwitz, *Charitable Immunity* (manuscript on file with author).

¹¹⁸ King, *supra* note 38, at 745-46 (arguing that it is not “fair” to hold volunteers liable for accidents); John Brown, *Statutory Immunity for Volunteer Physicians: A Vehicle for Reaffirmation of the Doctor's Beneficent Duties – Absent the Rights talk*, 1-SPG WIDENER L. SYMP. J. 425, 440 (1996) (discussing liability in the context of Good Samaritan laws for physicians).

¹¹⁹ Popper, *supra* note 15, at 134.

¹²⁰ *Id.*; *Developments*, *supra* note 9, at 1690 (“[I]mmunity can operate to under-deter risky and harmful behavior.”); Tremper, *supra* note 112, at 426-27.

¹²¹ *Developments*, *supra* note 9, at 1692.

¹²² Hartmann, *supra* note 17, at 76. See discussion of this survey in part III.C. *infra*. One commentator attributed the 6 percentage point decline in volunteerism reported by the IS between 1990-1996 to “the perception that we live in a society whose legal system has become as uncontrollable as a tornado in the Midwest,” but offers no explanation for this inference. Benard, *supra* note 99, at 122.

the potential for liability, volunteers are likely to be more sensitive to liability exposure because they “do not have to serve in order to feed and house themselves and their families.”¹²³ Some critics of volunteer liability acknowledge that the risk of suit is low, but argue that even a few highly publicized stories create a perception of danger, and speculate that “[t]he perception of risk is very real and it actually does discourage potential volunteers.”¹²⁴ In addition, liability may offer a particularly strong incentive for people to forgo volunteering when insurance is costly or impossible to obtain, such as when the insurance industry goes through a “hard cycle” like that in the late 1980s.¹²⁵

Those favoring immunity describe the potential ill effects of discouraging people from volunteering. Tremper compares volunteers to shareholders of a corporation, reasoning that just as protection from liability is necessary to generate capital in corporate law, protection from liability allows the generation of the human capital of volunteers.¹²⁶ Similarly, others fear that holding volunteers to a negligence standard will over-deter volunteering because it fails to account for positive externalities provided by volunteers while still forcing the volunteers to internalize the cost of accidents.¹²⁷

Many scholars are skeptical that liability affects volunteering at all, noting that there is no rigorous empirical evidence to support the conclusion that liability discourages volunteering.¹²⁸ They point out that (1) volunteers face little risk of liability exposure in practice because they are rarely sued,¹²⁹ (2) insurance “while expensive and sometimes difficult to obtain, can nonetheless be had in the nonprofit sector,”¹³⁰ and (3) states can choose to subsidize premiums to encourage additional coverage.¹³¹ In fact, Popper claims that volunteer protection statutes were not meant to promote volunteerism, but instead to generate “positive publicity” by appealing to the “public sentiment” glorifying volunteering.¹³²

iii. Does Immunity Encourage Volunteering?

In addition to disagreeing about whether liability *discourages* volunteering, legal scholars disagree about whether the volunteer protection statutes *encourage* it. Some are skeptical of the statutes’ effectiveness. They note the confusing lack of uniformity among jurisdictions and argue that volunteers and insurers do not understand the applicable level of protection.¹³³ These

¹²³ King, *supra* note 38, at 734.

¹²⁴ Benard, *supra* note 99, at 120-22; *see also* Brenda Kimery, *Tort Liability of Nonprofit Corporations and their Volunteers, Directors, and Officers: Focus on Oklahoma*, 33 TULSA L.J. 683, 687 (1997) (arguing that the “uncertainty” of liability prevents individuals from volunteering); King, *supra* note 38, at 702.

¹²⁵ King, *supra* note 38, at 689; Tremper, *supra* note 112, at 416-17, 428-29 (noting the lack of insurance available for volunteers).

¹²⁶ Tremper, *supra* note 112, at 443-44.

¹²⁷ *Id.* at 427-28; *Developments, supra* note 9, at 1690; Benard, *supra* note 99, at 112-14.

¹²⁸ Tremper, *supra* note 112, at 427-28; *The Quality of Mercy: ‘Charitable Torts’ and their Continuing Immunity*, 100 HARV. L. REV. 1382, 1394 (1987)..

¹²⁹ Denise Ping Lee, Note, *The Business Judgment Rule: Should it protect Nonprofit Directors?*, 103 COLUM. L. REV. 925, 961 (2003); Brown, *supra* note 53, at 572 (“Once the public became better informed on the facts that lawsuits against coaches are quite rare, support for immunity statutes would fade.”).

¹³⁰ *The Quality of Mercy: ‘Charitable Torts’ and their Continuing Immunity*, 100 HARV. L. REV. 1382, 1394 (1987); *see also* Kimery, *supra* note 124, at 689.

¹³¹ Brown, *supra* note 53, at 577.

¹³² Popper, *supra* note 15, at 133 n. 54.

¹³³ Brown, *supra* note 53, at 571-72 (noting and denouncing such variation as “unfair” to both volunteers and victims); *Developments, supra* note 9, at 1687 (noting the “disorder and complexity” among divergent state statutory protection schemes); *see also* Kenneth W. Biedzynski, *The Federal Volunteer Protection Act: Does Congress Want*

arguments, often made in support of federal legislation,¹³⁴ could derive from ambiguity about which state's law applies¹³⁵ or plaintiffs' ability to forum-shop.¹³⁶ They also assume that the burdens of learning about applicable law increase if some states have different laws.¹³⁷

However, although multi-state insurers incur additional costs in determining potential liability for insured individuals in different states, evaluating risk is their business. Similarly, the argument might assume that volunteers will be confused because they understand other states' laws but not their own (perhaps from a highly publicized lawsuit).

Other scholars question whether volunteers are aware of statutory protection or argue that conditions to immunity undermine its effectiveness. Some argue that, when immunity depends on the nonprofit's ability to meet certain conditions, volunteers will be hesitant to offer their services.¹³⁸ By requiring that the action be taken in "good faith" and not be grossly negligent or reckless, many statutes fail to provide complete immunity, which will undermine the volunteers' willingness to rely on the statutory protection.¹³⁹ Some predict that volunteers will not understand the exceptions¹⁴⁰ or that the laws are drafted ambiguously,¹⁴¹ leaving volunteers confused. The sparse case law interpreting the state and federal acts adds to the uncertainty of the volunteers' protection.¹⁴² Moreover, statutes do not protect volunteers from the expenses of defending against frivolous suits.

B. Determinants of Volunteering: Empirical Findings

to Play Ball?, 23 SETON HALL LEGIS. J. 319, 349 (1999) (criticizing the VPA for allowing variation among states to persist); Benard, *supra* note 99; Kurtz, *supra* note 133, at 289 (arguing that the variation creates "grave uncertainty" for insurance underwriters); Frank Helminski, *Good Samaritan Statutes: Time for Uniformity*, 27 WAYNE L. REV. 217 (1980-81) (proposing a uniform Good Samaritan liability standard).

¹³⁴ Abraham, *supra* note 20, at 104 (U. S. senator arguing that state action was insufficient and that the federal government should enact legislation to address volunteer liability).

¹³⁵ *Id.* (criticizing excessive judicial discretion in selecting which law applies, suggesting reform of conflict-of-law rules).

¹³⁶ *Id.*

¹³⁷ Benard, *supra* note 99 (1997) ("[D]iscrepancy in state liability rules . . . produces a confusion in understanding, resulting in legal questions as to what is not acceptable conduct.").

¹³⁸ Biedzynski, *supra* note 133, at 349 (noting that federal protection is conditioned on meeting certain state requirements, which may diminish its effectiveness); Daniel Kurtz, *Protecting your volunteer: the Efficacy of Volunteer Protection Statutes and other liability limiting devices*, C726 ALI-ABA 263, 289 (1992); King, *supra* note 38, at 703; *See 1997 Hearing* at 13 (1997) (testimony of Paul Coverdell)

¹³⁹ Kurtz, *supra* note 133, at 289; Rebecca Mowrey & Adam Epstein, *The Little Act That Could: The Volunteer Protection Act of 1997*, 13 J. LEGAL ASPECTS SPORT 289, 299 (2003) (noting VPA exclusions); *Developments, supra* note 9, at 1690; King, *supra* note 38, at 703, 707 (criticizing exclusions for the "ill-defined" concepts of willful and wanton conduct or gross negligence).

¹⁴⁰ Mowrey & Epstein, *supra* note 139, at 299 ("[V]olunteers who are confused over the liability protection might remain hesitant to . . . volunteer out of fear of being sued."); David Barrett, *A Call for more lenient director liability standards for small, charitable nonprofit corporations*, 71 IND. L. J. 697, 1000 (2000) ("[A] recklessness or gross negligence standard is about as clear as mud to the average volunteer director of a charitable organization.").

¹⁴¹ Mowrey & Epstein, *supra* note 139, at 300-01 (discussing whether volunteers engaging in fundraising activities are covered under the VPA); *Developments, supra* note 9, at 1690; Light, *supra* note 83, at 21-22; *See Byrne by Byrne v. Fords-Clara Barton Boys Baseball League, Inc.*, 564 A.2d 1222, 1224 (N.J. Super. Ct. 1989) (finding an "ambiguity" in New Jersey's volunteer coaches statute).

¹⁴² *Developments, supra* note 9, at 1688.

Little data exist regarding the relationship between immunity and volunteerism.¹⁴³ In the late 1980s, a few national opinion polls surveyed people's perception of the influence of liability on certain types of volunteering. Researchers studied the factors that affect the supply side of volunteer behavior, but with one exception, ignored the relationship between immunity and volunteering.

i. Survey Data

Liability reform proponents relied on raw data from three surveys. These surveys, which focused on the respondents' views about the liability crisis in the 1980s, provide a glimpse into how people perceived liability at that time. They are, however, of limited use in understanding volunteer behavior, the effects of liability risk and immunity, and tort law generally. Only the 1988 Gallup Survey was confined to nonprofits, but it surveyed only officers and directors, not general volunteers. The other two surveys concerned liability at both for-profit and nonprofit organizations. Finally, because the surveys were conducted in 1986-88, the data are somewhat old and cannot measure the effects of liability protection laws passed after that time.

The first survey, commissioned by the consulting firm Peat Marwick in 1986, surveyed 2,532 leaders at corporate and nonprofit organizations.¹⁴⁴ It found that nonprofit leaders tended to be less concerned about potential liability than their for-profit counterparts. However, 28 percent of the nonprofit respondents did identify a directors and officers liability "crisis."¹⁴⁵ Although 87 percent said that liability had some negative effect on the quality of governance in American organizations generally,¹⁴⁶ 38 percent claimed that it had no effect on the way that directors and officers managed their particular organizations.¹⁴⁷ The survey found that liability only had a small effect on the recruitment of nonprofit and corporate board members – only 6 percent of the survey participants, including nonprofit and for-profit corporate directors, reported having a person resign from their boards because of concern over personal liability exposure, and 8 percent reported having had a board candidate decline membership for the same reason.¹⁴⁸ A much higher percentage reported altering their own behavior on their board: 55 percent adopted expanded information reporting systems, 40 percent undertook fundamental review of governance procedures, and 24 percent recruited new members to add specific expertise or experience to board.¹⁴⁹

¹⁴³ See, e.g., H.R. REP. 105-101(I) at *17 (dissenting views) ("The literature does not reveal a single independent study, much less a juried piece of research, suggesting that federally imposed tort immunity will increase the number, frequency, or quality of volunteers.").

¹⁴⁴ *Directors' and Officers' Liability: A Crisis in the Making, National Survey Conducted by Opinion Research Corporation and Research Strategies Corporation (1987)*, reprinted in *1988 Hearing*, 108-37. The survey included 569 corporate CEOs, 678 museum directors, 121 orchestra/symphony executives, 153 Independent Sector executives, 80 Association of Governing Boards chairpersons, 367 university presidents, 350 hospital executives, 224 public, municipal officials. *Id.* at 111.

¹⁴⁵ *Id.* at 112.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 115. 49% say there has been some effect, while 12% identify considerable change. *Id.* Those in the nonprofit field blamed juries granting high awards (63%), lawyers (61%), insurance industry (53%), inadequate legislation (43%), and publicity of big settlements (46%) for the liability crisis. *Id.* at 113. An overwhelming majority (85%) favored liability protection for directors similar to Connecticut's immunity (up to willful/wanton misconduct) for volunteer directors. *Id.* at 117.

¹⁴⁸ *Id.* at 115.

¹⁴⁹ *Id.* at 119.

In 1986, the National Association of Corporate Directors (NACD)¹⁵⁰ surveyed 370 corporate directors, finding that one in seven had refused to serve on a board (corporate or not) without liability protection, whereas 4 percent had resigned from such a board.¹⁵¹ Nearly half knew someone who had refused a position on a corporate or nonprofit board for lack of directors' insurance.¹⁵²

Finally, the Gallup organization surveyed nonprofit executive officers and directors at the height of state volunteer liability efforts in 1988. It identified a perception that volunteers were volunteering less because of liability concerns.¹⁵³ Twenty percent of executive officers perceived some adverse change in their volunteer force due to potential exposure to liability,¹⁵⁴ whereas 14 percent reported eliminating programs because of liability risk.¹⁵⁵ Sixty-four percent of the executives were covered by liability insurance,¹⁵⁶ and they reported a mean increase in insurance premiums of 155 percent since 1984.¹⁵⁷ Sixteen percent of directors reported that they had withheld their volunteer services due to a fear of liability,¹⁵⁸ yet only 2 percent had ever been sued (including employment disputes by employees against nonprofits and their directors and similar claims).¹⁵⁹ Proponents of the VPA relied heavily on these data, despite the fact that the survey was limited to senior managers and volunteer board members and did not address the general volunteers covered by the immunity statutes.¹⁶⁰

ii. Who Volunteers and Why?

Economists who study the supply side of volunteerism provide compelling models for why people choose to volunteer, yet ignore the role that tort liability might have on these decisions.¹⁶¹ Sociologists have considered a wider range of determinants for volunteering. In addition to the socioeconomic and state-level economic determinants discussed below, sociologists have identified several other factors that explain volunteering; these factors are broadly identified by Smith as personality, attitude toward groups or volunteering activities, personal contacts with other volunteers or personal influence (e.g. being asked to volunteer), and social participation in other forums such as religious organizations.¹⁶² We study more concrete determinants of volunteering because of data limitations and because scholars have convincingly reasoned that “[p]references for volunteering are proxied by such variables as the individual’s

¹⁵⁰ *Id.* at 120.

¹⁵¹ *Id.* at 120-21.

¹⁵² *Id.* at 120-21.

¹⁵³ Gallup Organization, *Liability Crisis and the Use of Volunteers by Non-Profit Associations: A Survey Conducted for the Foundation of the American Society of Association Executives* (January 1988). The survey was based on a proportionate stratified random sample of 265 nonprofit CEOs and 359 nonprofit directors drawn from a database maintained by the American Society of Association Executives. *Id.* at 2.

¹⁵⁴ *Id.* at 21.

¹⁵⁵ *Id.* at 9.

¹⁵⁶ *Id.* at 7.

¹⁵⁷ *Id.* at 8.

¹⁵⁸ *Id.* at 31.

¹⁵⁹ *Id.* at 32.

¹⁶⁰ H.R. REP. 105-101(I), 1997 U.S.C.C.A.N. 152, 6,154

¹⁶¹ Menchik & Weisbrod, *supra* note 3; Richard Freeman, *Working for Nothing: The Supply of Volunteer Labor*, 15 J. Pub. Econ. S140 (1997); Eleanor Brown & Hamilton Lankford, *Gifts of Money and Gifts of Time: Estimating the Effects of Tax Prices and Available Time*, 47 J. PUB. ECON. 321 (1991).

¹⁶² David Horton Smith, *Determinants of Voluntary Association Participation and Volunteering: A Literature Review*, 23 NONPROFIT & VOLUNTARY SECTOR Q., 243, 244 (1994).

age, gender, education, religion, political party affiliation, and attitude toward volunteering to private enterprise, government, or private nonprofit organizations.”¹⁶³

Economists, who largely focus on the relationship between volunteering and wages to determine the wage elasticity of volunteer labor supply, have produced inconsistent results. Some identify a significant, negative wage effect (i.e. the higher the wage, the higher the opportunity cost of volunteering, and the less likely the wage earner is to volunteer), whereas others find little evidence of any effect or even a positive wage effect.¹⁶⁴

Other studies, however, are more directly useful for thinking about the relationship between liability protection and volunteering, providing reason to expect the laws to affect volunteering. Several economists, for example, have concluded that volunteering is better explained by self-interest than altruism because volunteers gain utility both from increasing the supply of public goods and from the act of giving.¹⁶⁵ Further, volunteers are “individuals whose family or career is likely to benefit.”¹⁶⁶ There are, therefore, both consumption (getting pleasure out of volunteering) and investment (meeting people to increase business contacts) aspects to volunteering, which may explain the positive correlation between volunteering and wages. These characterizations of volunteers suggest that decreasing the price of volunteering through such policies as limiting liability exposure should increase the volunteer rate.

Menchik and Weisbrod consider both the consumption and investment aspects of volunteering and identify a negative relationship between net wage rate and hours volunteered.¹⁶⁷ Although hindered by data limitations -- they estimate wage rates only for single-earner households, excluding married women, a major source of volunteer labor -- they identify the effect of wage rates on volunteerism as a way of comparing two competing models, finding evidence for both. In a consumption model, where volunteering one’s time is treated as a “utility-bearing good,” they expect a negative correlation between wage rate and volunteerism because of an increased opportunity cost.¹⁶⁸ In an investment model, in which one volunteers time as a way of gaining experience, contacts, or other career benefits, there is no prediction about wage rate’s effect.¹⁶⁹ They fail to find the expected “crowding-out” negative relationship from increased government expenditures for aggregate volunteerism, but did find such a relationship in the higher education and social welfare fields.¹⁷⁰

Building on Menchik and Weisbrod’s model, Brown and Lankford further explore the relationship between wage rates or available hours on volunteering.¹⁷¹ Using data from a

¹⁶³ Nancy Wolff, Burton A. Weisbrod & Edward J. Bird, *The Supply of Volunteer Labor: The Case of Hospitals*, 4 NONPROFIT MANAGEMENT & LEADERSHIP, 23, 26 (1993).

¹⁶⁴ Carlin, *supra* note 60, generally and at 816.

¹⁶⁵ See, e.g., James Andreoni, *Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving*, 100 ECON. J. 464 (1990).

¹⁶⁶ Francois Vaillancourt, *To Volunteer or Not: Canada, 1987*, 27 CANADIAN J. ECON. 813, 813 (1994).

¹⁶⁷ Menchik & Weisbrod, *supra* note 3. Menchik and Weisbrod used data from two national surveys of philanthropic activity. They control for various “preference” factors (e.g. city size, information about respondent’s parents, and demographic characteristics) and a per capita government expenditure variable to examine any crowding-out effect spending might have on volunteerism. They consider the effect of these variables on aggregate volunteering rates and four individual sectors (higher and lower education, social welfare, and natural resources).

¹⁶⁸ *Id.* at 161

¹⁶⁹ *Id.* at 162.

¹⁷⁰ *Id.* at 179-80.

¹⁷¹ Brown & Lankford, *supra* note 161, at 323. Brown and Lankford control only for education, number of people in household, age, marital status, sex, and single parenthood. They exclude respondents with greater than \$50,000 income.

random telephone survey of Floridian households, which had the advantage of providing them with explicit information on wage rates, they analyze the effect that tax incentives, net household income, available hours, and demographic variables had on both donations of time and money.¹⁷² Like Menchik and Weisbrod, they find a strong positive relationship between donations of money and time, concluding that individuals have various “tastes for donating” and that donations of money and time are gross complements.¹⁷³ They further find that higher education and lower tax-prices have a positive impact on the amount that volunteers worked and note that being single, having free time, and having a large household were all correlated with increasing levels of female volunteering.¹⁷⁴

Finally, using data from the 1989 Current Population Survey and the Independent Sector’s 1990 Giving and Volunteering survey, Freeman analyzes the socioeconomic characteristics of volunteers.¹⁷⁵ He concludes that women and parents are more likely than others to volunteer.¹⁷⁶ And although wealth, being employed, and being white are positively correlated with volunteering, people with these characteristics volunteer fewer hours than others. Consistent with previous studies, Freeman finds a strong correlation between volunteering and monetary donations, again concluding that some people have a “taste” for charity.¹⁷⁷ He argues that standard labor supply substitution behavior – e.g. the higher the wage, the higher the opportunity cost of volunteering – explains only some of these results.¹⁷⁸ Rather, volunteering can be best understood as a “conscience good,” which he defines as “public goods to which people give time or money because they recognize the moral case for doing so and for which they feel social pressure to undertake when asked, but whose provision they would just as soon let someone else do.”¹⁷⁹ Again, these conclusions suggest that volunteering is not exclusively altruistic, and therefore, liability exposure may affect the potential volunteer’s self-interested decision regarding whether to volunteer.

Naomi Feldman recently used the variation in tax-filer itemization status to decompose three separate effects of a decrease in the tax-price of monetary donations on time and money donations: the direct effect on donations of money, the direct effect on donations of time, and the indirect effect of changing the relative prices on donations of time where the “price” can be thought of as the shadow value of time (i.e. the substitution effect).¹⁸⁰ Using this approach, she finds that time and money are substitutes – that lowering the price of donating money does in fact cause people to shift their efforts from labor to money donations. She argues that researchers had overlooked this substitution effect because of the larger effect of the relationship between giving time and money that operates outside of the relative prices of those activities.

¹⁷² *Id.* at 326-27.

¹⁷³ *Id.* at 332; *see also* Wolff, Weisbrod & Bird, *supra* note 163, at 26 (citing R. Dye, *Contributors of Volunteer Time: Some Evidence on Income Tax Effects*, NAT. TAX J. 33, 89-93 (1980)); James Andreoni, William G. Gale & John K. Scholz, *Charitable Contributions of Time and Money* 24 (1996) (unpublished manuscript) (using a Hicksian notion of substitution to find that gifts of time and money are substitutes but the empirical magnitude of the compensated cross-price effect is very small), *available at* <http://econ.ucsd.edu/~jandreoni/WorkingPapers/ags-v8.pdf>.

¹⁷⁴ Brown & Lankford, *supra* note 161, at 330.

¹⁷⁵ Richard Freeman, *supra* note 161, at S140-41.

¹⁷⁶ *Id.* at S146 and S152.

¹⁷⁷ *Id.* at S148.

¹⁷⁸ *Id.* at S151-53.

¹⁷⁹ *Id.* at S141.

¹⁸⁰ Naomi Feldman, *Choosing Between Charitable Activities* (Ben-Gurion U., Monaster Center for Econ. Res., Paper 16, 2005), *available at* <http://www.econ.bgu.ac.il/papers/208.pdf> ..

She reasonably suggests that this relationship operates, for example, because individuals who donate money signal that they support the goals of the charitable organization and are therefore more likely to be asked to volunteer.¹⁸¹

iii. Immunity and Volunteering.

In the only existing research that addresses the relationship between immunity statutes and volunteer labor, Judd predicts that liability exposure reduces the utility of volunteering under both the consumption and investment models of volunteering.¹⁸² Under a consumption model, the motivation to volunteer should decrease as the expected cost in the form of liability risk increases.¹⁸³ Under the investment model, he reasons that the imposition of liability decreases the volunteer's lifetime earnings, which also decreases a volunteer's willingness to invest time.¹⁸⁴

Judd estimates the effects of two measures of liability exposure on volunteering in 1992.¹⁸⁵ He first considers state litigiousness, measured by the per capita tort caseload in state trial courts.¹⁸⁶ He also attempts to quantify volunteers' liability exposure under state volunteer immunity statutes by adding the number of "exceptions" to general immunity listed in each state statute.¹⁸⁷ Judd carefully noted that his analysis assumes that statutory law is the determinate of potential liability exposure because "judges and juries carry out their duties in a rational manner that is consistent with the laws," and will therefore follow volunteer immunity statutes.¹⁸⁸ Although he finds no relationship between volunteering and state immunity statutes, he does find evidence that residents in states with relatively high per capita tort filings are less likely to volunteer than others.¹⁸⁹

In addition to adding comprehensive control variables, our work improves on Judd's study in two important ways. First, Judd's state liability taxonomy suffers from several defects. He does not consider the *scope* of the immunity statutes, treating states that only protect narrow categories of volunteers as identical to states that protect all volunteers.¹⁹⁰ Further, he incorrectly treats the "exceptions" to the immunity statutes as non-cumulative. For example, his exceptions include Bad Faith, Willful/Intentional Acts, Recklessness, and Gross Negligence.¹⁹¹ However, if

¹⁸¹ *Id.* at 19.

¹⁸² Terry W. Judd, *Volunteer Labor Supply and Liability of Volunteers* (Mar. 30, 1998) (unpublished M.A. dissertation, Virginia Polytechnic Institute) (on file with authors).

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 21 (using data from the 1992 IS Survey). Judd estimates a crude measure of annual volunteer hours by multiplying the number of hours the respondent reported as having volunteered in the past month by 12. *Id.*

¹⁸⁶ *Id.* at 25-26 (citing COURT STATISTICS PROJECT, STATE COURT CASELOAD STATISTICS 1994, (National Center for State Courts, 1995)). Unfortunately, states vary in their reporting policies, and in 1992 there were only data available for 34 states and DC. *Id.* at 26, n. 48.

¹⁸⁷ *Id.* at 25. Judd considers each of the following to be an "exception," adding them up to obtain the final state independent variable: Bad Faith, Willful/Intentional Acts, Recklessness, Gross Negligence, Motor Vehicle Liability.

¹⁸⁸ *Id.* at 15; *see also id.* at 17 (quoting Donald Wittman, *The price of negligence under differing liability rules*, 29 J. L. & ECON. 151, 162 (1996)) ("juries . . . are 'influenced by objective criteria and change in legal Rules'").

¹⁸⁹ *Id.* at 31.

¹⁹⁰ Judd notes that he only considers statutes that provide protection to "'line worker' type of volunteers." *Id.* at 25. However, he apparently considers whether the state protects *any* non-director or officer, and not whether they protect all. For example, Judd gives California a score of 0, meaning that volunteers in California have the lowest level of liability exposure. *Id.* at App. 1. However, in California, only nonprofit directors and officers and a few other narrow categories of volunteers (architects, engineers, and emergency rescue personnel) have *any* immunity.

¹⁹¹ *Id.* at 25.

a person acts willfully, the person is almost certainly acting recklessly. Moreover, if a person is liable for an intentional act or liable under a reckless standard, that person would also be liable under a gross negligence standard.¹⁹² Second, our dataset spanned nearly a decade, rather than only one year, allowing us to analyze changes among volunteer rates within a single jurisdiction as liability exposure changed.

III. Methodology

A. Data

The data on volunteering and demographic information about the volunteers are from the Independent Sector (IS) Giving and Volunteering in the United States surveys (1988, 1990, 1992, 1994, 1996, 1999, and 2001).¹⁹³ These surveys, which include detailed questions on volunteering and charitable giving, were administered to a representative sample of adults during the spring and summer of the seven survey years. The IS, a coalition of more than 700 nonprofit organizations,¹⁹⁴ commissioned the Gallup Organization to conduct the first six surveys and Westat to conduct the survey in 2001.¹⁹⁵ Gallup conducted the surveys through face-to-face interviews, whereas Westat performed the 2001 survey through random digit dialing.¹⁹⁶ Although there was some new wording in the 2001 survey, making the surveys inconsistent across years, the questions on which we base our analysis were the same for all years.

Data on state civil suit filings are from the State Court Caseload Statistics Annual Reports published by the National Center for State Courts. State population data are from the U.S. Bureau of the Census. Data on the state wage rates are from the Bureau of Economic Analysis.¹⁹⁷ Data on the state unemployment rates are from the U.S. Bureau of Labor Statistics.¹⁹⁸ Data on the state income tax itemization rates are from the Internal Revenue Service.¹⁹⁹

B. Empirical Strategy

i. Unadjusted Averages

We first analyze the raw data to determine differences in the likelihood that survey respondents volunteered under various liability immunity regimes. We compared the following five immunity regimes: (1) state statutes up to, but not including, grossly negligent or reckless behavior; (2) state statutes up to, but not including, willful and wanton or intentional behavior;

¹⁹² See note 32, *supra*, and accompanying text.

¹⁹³ INDEPENDENT SECTOR, GIVING AND VOLUNTEERS IN THE UNITED STATES: FINDINGS FROM A NATIONAL SURVEY, 1996 EDITION xiv (1997). The surveys included oversampling of Hispanics, Blacks, and affluent Americans to increase sample sizes of those groups. The survey is conducted biennially, with the exception that the IS changed the 1998 survey year to 1999 to avoid traditional election years and, therefore, avoid burdening potential respondents in a year when many surveys are conducted.

¹⁹⁴ Independent Sector, About Us, <http://www.independentsector.org/about/index.html> (last visited February 27, 2006).

¹⁹⁵ INDEPENDENT SECTOR, GIVING & VOLUNTEERING IN THE UNITED STATES 2001: KEY FINDINGS 4 (2001), available at <http://www.independentsector.org/PDFs/GV01keyfind.pdf>.

¹⁹⁶ *Id.* Also, the 2001 survey included only adults ≥ 21 whereas the others included adults ≥ 18 . *Id.*

¹⁹⁷ Bureau of Economic Analysis, Annual State Personal Income. 28 March 2006, <http://www.bea.gov/bea/regional/spi/> (last visited May, 31 2006).

¹⁹⁸ Bureau of Labor Statistics, Local Area Unemployment Statistics, <http://www.bls.gov/lau/home.htm#data> (last visited May, 31 2006).

¹⁹⁹ IRS. *Statistics of Income Bulletin*. Spring XXXX. Washington, D.C. XXXX.

(3) the VPA and state statutes up to, but not including, grossly negligent or reckless behavior; (4) any level of immunity derived from either state or federal law; and (5) no immunity.

ii. Basic Specification

In the basic specification, we ask whether volunteering differs by state volunteer liability regime. Because we are interested in the overall effects of liability protection on volunteering, we designed this model to account for the 1997 Federal VPA as well.²⁰⁰ As explained above, the VPA imposes immunity in states that do not provide any protection, where the level of protection is lower than that specified by the federal act, and that have not opted out of the federal act. Therefore, the VPA sets a floor below which states cannot fall unless they opt out of the act.

We include several variables in the regressions to ensure that we identify the relationship between liability regimes and volunteering, rather than other factors that may be associated with volunteering. Several personal characteristics are related to an individual’s propensity to volunteer, for example, and people with volunteer-friendly characteristics may happen to live in states with certain liability regimes. Further, certain state economic factors are related to the propensity of residents to volunteer, but also may also be associated with liability regimes. Descriptive statistics for these control variables are provided in Table 2.

We model the effects of legal regime as follows:

$$(1) \quad E(\text{Volunteer Year})_{it} = \Phi[\beta_0 + \beta_1 I_{it} + \beta_2 D_{it} + \beta_3 E_{it} + \beta_4 L_{it}]$$

where Volunteer Year is a categorical variable measuring whether the respondent claimed to volunteer for a government or nonprofit organization during the previous year. There are various definitions of volunteering that, in their broadest form, include any example of altruism including helping family members with no expectation of pay, doing favors for a neighbor, or rendering assistance in an emergency. The IS defined volunteering as “*not* just belonging to a service organization, but *actually working* in some way to help others.”²⁰¹ In all specifications, we clustered the observations by state.

a. Liability Protection

I are the two main variables of interest. The first variable measures whether there exists state volunteer immunity, deriving from either state statute or the VPA, for all behavior up to either grossly negligent or reckless behavior. The second is a binary variable that indicates whether there is state statutory immunity for all behavior up to either willful or intentional conduct. If a statute immunizes only narrow categories of volunteers, such as referees or board members, we treat the state regime as not immunizing general volunteers.

²⁰⁰ We focus on the extent of protection rather than the source. In other specifications, available from the corresponding author, we found no independent federal effect using a difference and difference test.

²⁰¹ Independent Sector, Giving and Volunteering in the United States, 2001 Distribution SAS Dataset, page 31. In previous years the statement was slightly different, including the ending clause “for no monetary pay.” Independent Sector, Giving and Volunteering in the U.S., 1996 Giving and Volunteering Survey Questionnaire Appendix E, E-191.

b. Individual Characteristics

D are demographic variables associated with the propensity to volunteer, the respondent's race, age, number of children, employment status, membership in a religious institution, income, and education level.

Many studies show that women²⁰² and people who belong to religious organizations²⁰³ are more likely to volunteer than others. There are several reasons that explain why women volunteer more frequently than men, including working fewer hours, greater involvement in their children's activities, or to "[mitigate] losses in human capital investment while out of the labor force" for relatively high-wage women²⁰⁴. People who belong to religious groups may be particularly generous or have greater opportunity to volunteer than others, for example through church-sponsored volunteer programs.

In addition to age and children variables, we included age-squared and children-squared, in part, as proxies for the time and ability to volunteer. Although we expect the sign on both variables to be positive, we expect the coefficients on the squared variables either to be smaller in magnitude or negative. More intuitively, a person with eight children likely has comparatively little time to volunteer.²⁰⁵ Although this relationship likely depends on the age of the children, the data do not provide this level of detail. Researchers find that among married women both volunteering rates and the number of hours volunteered are positively correlated with the number of children in the household.²⁰⁶

We also assume that the relationship between age and volunteering would not be the same at every age. Although volunteering may increase with age, the oldest respondents would be less likely to volunteer than younger adults. For example, a person in her nineties would be less likely to be able to volunteer than a younger adult. Some research shows that volunteering rates peak around middle age; other research identifies peak volunteering at between thirty and forty-four years of age, suggesting a relationship between volunteering and the age at which childhood "activities require parental involvement."²⁰⁷ Still, others identify a broader period, "the middle years" from thirty-five to fifty-five, as the peak volunteering ages.²⁰⁸ On the contrary, it is possible that the time available to volunteer comes *later* in life. Perhaps retired

²⁰² For review, see Debra J. Mesch, Patrick M. Rooney, Kathryn S. Steinberg, & Brian Denton, *The Effects of Race, Gender, and Marital Status on Giving and Volunteering in Indiana*, 35 *NONPROFIT & VOLUNTARY SECTOR Q.* 565, 568-69 (2006); see also, Vaillancourt, *supra* note 166 at 818 (finding that Canadian "men participate significantly less in volunteer work than women"). Cf. Smith, *supra* note 162, at 248 (listing earlier studies and their relationship between gender and volunteer participation and concluding that men volunteered more than women in the 1980s).

²⁰³ Vaillancourt found that "individuals who report no religion (none) and Catholics participate less in volunteer work than Protestants." Vaillancourt, *supra* note 166, at 823. Our data regarding specific religious affiliations were incomplete and inconsistent, making detailed specification impossible. However, it is unlikely that U.S. Catholic church membership would result in the significant differences found in the Canadian study. Vaillancourt's results are explained by the "concentration of Catholics in Quebec, where the confessional school system reduces the need for involvement in Sunday-school activities." *Id.*

²⁰⁴ Carlin, *supra* note 60, at 817.

²⁰⁵ Vaillancourt speculates that volunteering will increase with the number of children because socialization needs increase. Vaillancourt, *supra* note 166 at Page 817. Carlin finds that having more children increases the probability of volunteering but reduces the number of hours volunteered. Carlin, *supra* note 60, at 802.

²⁰⁶ Carlin, *supra* note 60, at 811 (study of married women). "The marginal effect indicates that a 10 percent decrease in the average number of children per family would reduce the incidence of volunteering by about 1 percentage point." *Id.*

²⁰⁷ *Id.* at 804.

²⁰⁸ Smith, *supra* note 162, at 248.

people may have more time to volunteer,²⁰⁹ although they may have less physical ability to volunteer. Regardless of the timing, volunteering likely varies over a lifetime.

Education is perhaps the strongest predictor of volunteering.²¹⁰ We include five levels of education based on the highest level reached: high school, high-school graduate, some college or trade school or associates degree, college or more, and none of the above.²¹¹

Demographic variables also include two measures of race and ethnicity. Respondents self-identified as Hispanic and as members of various racial groups (white, black, Asian, or other).²¹² Studies predict lower participation among “dominant minorities, such as African-Americans and Hispanics.”²¹³ Finally, many studies demonstrate that higher incomes are associated with volunteering,²¹⁴ and we include indicator variables for eleven categories of income.²¹⁵

c. State Variables

E are state economic indicator variables. We include the state unemployment and income (total income divided by total labor force population in each state) as proxies for the opportunity cost of volunteering. Not only an individual’s income but also the average income and economic options of those around the volunteer determine the opportunity cost of volunteering.

T is the percentage of state tax-filers who itemize their taxes (total itemized filings / total filings). As discussed above, some studies find negative cross-price effects between time and money donations, suggesting that the relationship between the two is complementary, whereas others find that they are substitutes. These results could be consistent because different relationships may hold for volunteers and non-volunteers or if one understands volunteering as “the case where the worker has ‘donated’ back their entire wage.”²¹⁶ Regardless of the direction,

²⁰⁹ Smith, *supra* note 162, at 257, fn 2; *see also* James E. Curtis, Edward G. Grabb & Douglas E. Baer, *Voluntary Association Membership in Fifteen Countries: A Comparative Analysis*, 57 AM. SOC. REV. 139, 150 (1992) (analyzing volunteer data from fifteen countries, finding that “those in the middle-aged or older cohorts are more likely to join voluntary organizations”); Neal E. Cutler, *Toward an Appropriate Typology for the Study of the Participation of Older Persons in Voluntary Associations*, 9 J. OF VOLUNTARY ACTION RES. 9, 10, 12 (1980) (analyzing 1972 survey data of Americans to find that age is correlated with increased volunteering for certain types of organizations: farm, religious, fraternal, and veteran organizations); J. Allen Williams, Jr., & Suzanne T. Ortega, *The Multidimensionality of Joining*, 15 J. OF VOLUNTARY ACTION RES. 35, 37, (1986) (analyzing 1973 survey, finding age is correlated with membership in church-related, fraternal/service, and civic/political organizations).

²¹⁰ Smith, *supra* note 162, at 248.

²¹¹ For each year except 1988 there were separate designations for college graduate and graduate school. Because the data did not include the graduate school designation in 1988, we created a new category representing college graduate or above.

²¹² The survey included only black, white, and other in 1988; added Asian in 1990; added Native Americans and Pacific Islanders in 1996; and allowed respondents to identify two races in 2001. We coded Native Americans, Pacific Islanders, and those who reported two races (133 respondents) as Other.

²¹³ Smith, *supra* note 162, at 249. Smith suggests that racism, leading to relatively low socioeconomic status among nonwhites, explains these results. *Id.* However, controlling for socioeconomic characteristics, we find racial minorities tend to volunteer less than whites. More study is needed to identify the determinants of any disparity. See Mesch et. al., *supra* note 202, for review.

²¹⁴ Freeman, *supra* note 161, at S150; Menchik & Weisbrod, *supra* note 3, at 174-751.

²¹⁵ Some researchers might square income as well. We do not because researchers have found that volunteering peaks at incomes over \$100,000; our top category was \geq \$100,000. Smith, *supra* note 162, at 248 (citing V.A. HODGKINSON, ET. AL, *GIVING AND VOLUNTEERING IN THE UNITED STATES: 1992 ED.* (Independent Sector 1992). Income categories listed in Table 2.

²¹⁶ Laura Letee, *Work in the Nonprofit Sector*, in *NONPROFIT HANDBOOK* 166 (forthcoming).

it is important to control for this characteristic because the relationship between giving time and giving money depends on the price of each and the price of giving money varies by state tax regime. If money donors are able to deduct those donations from income tax, the price of making donations is lower than it would be otherwise.

L is the state civil litigation rate, constructed by dividing the number of civil suit filings in the state by that state’s population to generate the number of civil filings per person. We include the civil litigation rate because a potential volunteer may choose not to volunteer because of the general liability risk in the state. We hypothesize that even if a person does not know the risk of suit related to volunteering, she may feel herself at greater risk in states where the overall number of civil lawsuits is high.

Finally, because the probability of individual residents in a given state volunteering is likely not independent, we allowed for an arbitrary covariance matrix within each state over time, clustering the standard errors at the state level. We also adjusted the models for heteroskedasticity.

iii. Other Specifications – Altering the Immunity Variable

To further explore how tort immunity affects volunteer rates, we compared the effects of volunteer immunity laws in other ways. We use the same model as described above, including all the same control variables, with the exception that we replace the variable **I** with **J**, a series of alternative variables.

(2) $E(\text{Volunteer Year})_{it} = \Phi[\beta_0 + \beta_1 J_{it} + \beta_2 D_{it} + \beta_3 E_{it} + \beta_4 L_{it}]$

We use three alternative specifications : (1) where **J** is a single variable measuring whether the respondents are subject to any volunteer immunity derived either from state or federal law; (2) where **J** are two variables measuring whether the respondents are subject to (a) any state volunteer immunity and (b) federally imposed immunity; and (3) where **J** are three variables measuring whether the respondents are subject to (a) state volunteer immunity up to, but not including grossly negligent or reckless behavior; (b) state volunteer immunity up to, but not including, willful and wanton or intentional behavior, and (c) federally imposed immunity.

IV. Results, Sensitivity Tests, and Study Limitations

A. Results

We find patterns in the aggregate, unadjusted data that suggest a positive correlation between volunteering and volunteer tort immunity. As can be seen in Figure 1 and Table 3 (note that the last column does not include any state after the 1997 VPA was passed because all states imposed, at least, negligence immunity after 1997), respondents in states with any level of volunteer tort immunity were 9 percentage points more likely to volunteer than respondents in states without volunteer tort immunity ($p < 0.01$). Further, respondents were more likely to volunteer in states with relatively high levels of immunity protection compared to those in states with lower levels of protection (i.e. states that immunized volunteers for injury-causing behavior up to, but not including, willful and wanton or intentional behavior).

The regression results, which do not account for any time trend, also demonstrate a significant association between volunteering and immunity acts (Table 4, Column 2 estimated at means). Controlling for the variables listed above, volunteering in states with immunity up to gross negligence or recklessness was approximately 8.36 percentage points higher than in states

without immunity ($p < 0.01$). We find a larger effect, 9.18 percentage points, among respondents in states with more immunity ($p < 0.05$).

The results further demonstrate that a state environment with comparatively more civil litigation is correlated with low volunteering. An increase of one civil suit per 1,000 people is associated with 7.33 percentage points less volunteering ($p < 0.05$). The control variables produce results consistent with previous research.

B. Sensitivity Tests: Rejecting Alternative Explanations

i. Year Trends and State Fixed-Effects

One might think that volunteering time-trends or unobserved state characteristics, rather than volunteer immunity laws, explain our results. Although we cannot rule out either alternative, we find these alternative explanations neither theoretically nor empirically convincing. Here we present additional tests to determine whether time or location, rather than legal regime, explains the results. We then present an alternative specification to address year and state effects.

Including an indicator variable for survey year, the coefficients on both low- and high-level immunity are statistically insignificant (Table 4, Column 3). Although the coefficient on high-level immunity variable remains positive (about 3 percentage points), the coefficient on low-level immunity is effectively zero. Despite these results, there is likely a positive correlation between immunity and volunteering.

We find no secular time-trend in the aggregate data, a result confirmed by other researchers.²¹⁷ Further, because many states passed legislation in 1988 or earlier, and federal preemption applied in all eligible states in 1997, the year variables could absorb much of the immunity effect. In addition, the 2001 volunteer rate is considerably higher than other years, undermining specifications that include a 2001 dummy variable. Still, the results may be caused by (1) endogeneity -- states with more volunteering disproportionately adopted immunity statutes, or (2) an unobserved characteristic both causes volunteering and exists disproportionately in states with immunity.

To investigate these alternatives, we first use a fixed-effects approach -- examining changes in volunteering rates *within* states before and after the adoption of immunity laws -- rather than examining differences *between* states with and without laws.²¹⁸ This approach allows us to control for state-specific, time-invariant omitted variables, but it does not necessarily eliminate endogeneity. Although the magnitude is smaller than in the basic specification, the results are positive (Table 4, Column 4). The coefficient on state or federal lower-level protection is relatively large and positive (5.19 percentage points). The results for higher levels of state protection are not significantly different from zero. That the results are insignificant is unsurprising given that few states implemented immunity, particularly at the higher levels, during the study period.

We also recoded as Year-0 the year of state immunity adoption -- from either state or federal sources. We coded each year after as year 1, 2, 3 etc. and each year before as year -1, -2, -3, etc. By doing this we were able to separate the effects of immunity from a trend related to

²¹⁷ *Id.*, at 170, 169, Table-7.4.

²¹⁸ Technical problems limit the application of the fixed-effects to models with categorical dependent variables. Ethan Katz, *Bias in Conditional and Unconditional Fixed-effects Logit Estimation*, 9 POLITICAL ANALYSIS 379, 384 (2001). *Id.* at 380. There is a predictable, upward bias. *Id.* at 384.

calendar year. The results are most clearly seen in Figures 2a,b.²¹⁹ Including a year trend variable and state dummy variables, we identified a difference in average state volunteering trends before and after states adopt immunity statutes, regardless of the adoption year. Figure 2a shows an increase in volunteering rates after states enact immunity laws, regardless of the enactment year. Figure 2b, which controls for being asked to volunteer but excludes 1988 data, shows a sharper difference in volunteering trends: average state volunteering rates decline before and increase after the enactment year. These results support the idea that volunteering is responsive to immunity. They cannot, however, tell us whether the laws came just at the point where people were motivated both to act politically and increase volunteer.

Finally, we used a different-in-difference approach to determine whether the federal VPA had a differential effect in states where it preempted state law.²²⁰ We found no significant differences between states that already had volunteer immunity and others. We found that although the VPA had no independent effect on volunteering in states where it was implemented (i.e. states with no immunity pre-1997), the coefficient on the post-1997 variable was positive even in states that already provided immunity.²²¹

ii. Other Sensitivity Tests

Given the geographic distribution of immunity statutes, it is difficult to think of plausible variables that are both highly correlated with volunteering and disproportionately found in states that adopted immunity laws that we left out of our study. One possibility is that social capital (i.e. the strength of social connectedness or social engagement) is correlated with voluntarism, and because states vary considerably in their levels of civic engagement,²²² social capital may also be correlated with the adoption of immunity laws to the extent that those laws are more or less necessary to protect people. To address this alternative explanation, following Skinner and Staiger, we examine a model including Bratz and Putnam's social capital index.²²³ The index is the average z-score of 1) nonprofit organizations per-capita in 1989, (2) 1991 newspaper circulation per-capita, (3) voter turnout in the 1988 and 1992 presidential elections, (4) association memberships per-capita from the General Social Survey, 1974-1994, and (5) social trust measure from the General Social Survey, 1972-1996.²²⁴

This measure not only provides a control for differences in the propensity to volunteer among states but, because it includes a count of nonprofit organizations, it also controls for differences among states in volunteer opportunities.

²¹⁹ These results are confirmed by significant coefficients. Results available from authors.

²²⁰ The difference-in-differences method compares treatment and control groups before and after an intervention (here the VPA). States that were eligible for preemption (those with no immunity before 1997) were the treatment group, and the remainder were the control group. We compared the change in volunteering in the treatment group to the change in volunteering in the control group before and after the federal act was passed.

²²¹ Details available from authors. Controlling for all variables in the basic specification, probit coefficient = 0.182, $p < 0.01$.

²²² JAY BRATZ & ROBERT PUTNAM, *FAMILIES, COMMUNITIES, AND EDUCATION IN AMERICA: EXPLORING THE EVIDENCE* 19 (1996).

²²³ See generally, *id.*

²²⁴ Jonathan Skinner & Douglas Staiger, *Technology Adoption From Hybrid Corn to Beta Blockers*, 18 (Nat'l Bureau of Econ. Research, Working Paper No. 11251, 2005) in *HARD-TO-MEASURE GOODS AND SERVICES: ESSAYS IN HONOR OF ZVI GRILICHES* (Ernst R. Berndt & Charles M. Hulten, eds., forthcoming Spring 2007), available at <http://www.nber.org/books/CRIW03-BH/skinner-staiger7-9-06.pdf>.

State-level social capital is strongly correlated with volunteering. Controlling for all the factors identified in the basic model, a one-unit increase in the social capital z-score is related to approximately 7 to 8 percentage points more volunteering depending on the model.²²⁵ Including the social capital variable, the relationship between immunity regime and volunteering appears stronger than in the basic specification; states with immunity show approximately 11 percentage points (up to gross negligence/recklessness) or 10 percentage points (up to willful/intentional) more volunteering.²²⁶ Interaction tests demonstrate that the effect of social capital does not vary by immunity type.

In addition, because previous research suggests that volunteers are often motivated by social obligation,²²⁷ we tested the relationship between immunity and being asked to volunteer. Controlling for being asked -- a large predictor of volunteering (coefficient 0.455, $p < 0.001$) -- respondents were more likely to volunteer when immunized: 5.2 percentage points ($p < 0.001$) in lower-level states and 1.5 percentage points in higher-level states (insignificant).²²⁸ We found no significant effects among respondents being asked to volunteer, which likely indicates selection on an endogenous variable²²⁹; perhaps volunteers are more likely than non-volunteers to be recruited, or altruistic people make themselves available for recruitment.

We also considered whether there might be variation in the amount rather than on overall participation. That is, potential volunteers might adjust time donations rather than forgo volunteering according to liability exposure. Among respondents who volunteered for at least one hour in the previous month, volunteering was 0.788 hours per month higher in states with lower levels of protection (t -stat 1.08) and 1.33 hours per month higher in states with higher levels of protection (t -stat 0.96).

C. Study Limitations

In addition to those discussed above,²³⁰ there are other data limitations. The IS data raise four problems. First, they are self-reported, retrospective, and, because no agency requires that nonprofits track or report volunteer time, unverified. Further, other surveys report different amounts of volunteering.²³¹ There is, however, no *a priori* reason to believe that the survey accuracy varies by volunteer status or immunity regime. Second, the survey method changed from in-person to telephone in 2001, which raises a particular concern given the apparently large increase in volunteer rates that year.

Third, there were missing data. Thirteen states were missing at least one year of data because no survey respondent lived in that state in a particular year.²³² However, there appears to be no correlation between liability regime and missing data. Where demographic information was missing from the IS surveys, we imputed values by using the median value for the variable

²²⁵ The social capital coefficients are 0.0724 (linear probability model) and 0.0832 (probit model estimated at means), both $p < 0.01$. Results available from authors. Excludes Alaska and Hawaii.

²²⁶ Results, based on probit model estimated at mean values ($p < 0.01$), available from authors.

²²⁷ Letee, *supra* note 216, at 167 (citing Freeman, *supra* note 161).

²²⁸ Results, from linear-probability-model available from authors. Excludes 1988.

²²⁹ Results available from authors, excludes 1988.

²³⁰ See, e.g., footnote 212, *supra*.

²³¹ Steinberg et. al., 31 *NONPROFIT & VOLUNTARY SECTOR Q.* 484-501 (2002) (finding that detailed surveys produce higher reported levels and hours of volunteering than others).

²³² Nebraska, Hawaii, Maine, New Hampshire, Iowa, and Vermont had no 1999 data, New Mexico had no 1996 data, and South Dakota and the District of Columbia had no 1992 data. Montana had no data for 1996 or 1999. Idaho had no data for 1988, 1999, or 2001. Alaska only had data for 1990 and 2001, and Wyoming only had data for 2001.

in the state. Missing values ranged from approximately 0.5 percent to almost 10 percent of the observations.²³³ Finally, the surveys did not differentiate between wages and other income, making the income variable an imperfect proxy for the opportunity cost of volunteer time.

The state litigation variable was also imperfect. It included all civil suits rather than only tort suits, which would, arguably, make for a better measure of the real liability risk to volunteers. The data on tort litigation by state, however, are inconsistent across states and only sporadically reported. Because Mississippi provided no data on state civil filings until 1990, we extrapolated the value for 1988 using the average annual change in Mississippi civil filings from 1990 to 2002.²³⁴

VI. Insights, Implications, and Conclusions

Despite these limitations, the cross-sectional results suggest a plausible positive relationship between volunteering and immunity. Here we discuss the implications of that relationship.

A. The Supply Side: Why Do People Volunteer?

People are motivated to volunteer for several reasons, and our results demonstrate that the immunity regime is likely one of them. Economic theories on volunteering are based on the underlying idea that people weigh the costs and benefits of volunteering. Tort liability alters the potential volunteer's utility calculation by raising the costs of volunteering without raising corresponding benefits.

How might this work? Our results are consistent with the idea that liability exposure raises the expected cost of volunteering in at least three ways:²³⁵ (1) The volunteer's own-price evaluation -- the tradeoff between volunteering versus working -- changes because an hour worked must be compared not only to an hour not earning any wage but to a potential loss from tort liability. (2) The cross-price evaluation -- the comparison to prices of unrelated activities such as leisure -- changes because volunteering becomes more expensive relative to these other activities. (3) The direct expected risk of income loss increases with liability exposure. As we discuss in detail below, however, we question whether the direct financial effects of tort law offer the most plausible explanation for our findings.

Among people who were asked to volunteer (yet were similar in terms of socioeconomic and state characteristics), immunity laws seem to have no effect. It might be that pleasing recruiters or volunteering with friends and acquaintances increases the benefits of volunteering more than liability exposure increases the costs. Alternately, the results offer compelling support for Freeman's claims that volunteering is not really voluntary at all.²³⁶ People volunteer because of social pressure, and these results suggest that it takes social pressure to overcome the potential cost of liability. However, Freeman also suggests that people volunteer from moral imperative, yet our results suggest that such imperative (to the extent it exists) is not strong enough to overcome the aversion to liability exposure for some people who are not asked to volunteer.

²³³ Details available from author.

²³⁴ We took the average percentage change in civil filings from 1990-2002 (2003 was an outlier), extrapolated back from 1990 to 1988, then divided civil filings by the 1988 population. The resulting litigation rate value in 1988 is 0.384, the 1990 value 0.40. Other extrapolation methods yielded consistent results.

²³⁵ See Weisbrod.

²³⁶ Freeman, *supra* note 161, at S164.

B. The Demand Side: Why Do Organizations Want Volunteer Protection?

The focus of volunteering research on volunteer supply yields an incomplete picture of the way in which volunteer markets work.²³⁷ We know little about why organizations use volunteer labor or how immunity affects the demand for volunteers. The widespread organizational support for the volunteer immunity that we identified above raises some puzzles.

There are many reasons to expect demand for volunteers to be limited.²³⁸ Volunteers can be costly to organizations²³⁹ because using them may crowd-out monetary donations or government support, violate labor contracts, or come with high direct costs of recruiting, screening, training, managing, and retaining volunteers.²⁴⁰ “Furthermore, the presence of volunteers may complicate the management and motivation of paid staff.”²⁴¹ In short, free labor is not a free lunch, and volunteer immunity may make it more expensive.

Immunizing volunteers theoretically increases organizational costs in two ways: it shifts liability onto the organization, and it increases liability by removing the incentive that tort liability gives volunteers to refrain from risky behavior. Although it is true that “the lower the wealth-at-risk of an enterprise, the greater the likelihood that a volunteer will be sued personally in the event of a harmful incident,”²⁴² the inverse is also true. If an individual is not available for suit, then the plaintiff can turn to the organization to make a direct claim (e.g. that the Little League did not adequately train the volunteer) or indirectly through vicarious liability. In hearings regarding the 1997 VPA, only one expert noted this risk when he advised senators to “be aware...that...some nonprofits...are concerned that by limiting personal liability we will increase the likelihood of litigation against parent nonprofit organizations.”²⁴³ He concluded, however, that the concern was “best handled by organizational liability insurance.”²⁴⁴

It could be that despite the potential cost of increased liability –either because plaintiffs turn to organizations when individuals are unavailable for suit or because of an increase in the underlying riskiness of volunteer behavior – it is worth it for nonprofits to use the additional volunteer labor. There are hints in the VPA history that the organizational demand for volunteers was not satisfied. Further, scholars predict that nonprofit growth²⁴⁵ and changing demographic conditions will lead to increased competition for volunteers.²⁴⁶

In addition, some nonprofits have organizational immunity and, therefore, do not face increased liability exposure from volunteer protection acts. Some state volunteer immunity statutes extend protection to nonprofit organizations, and although the common law charitable immunity doctrine has been abolished in almost every jurisdiction, remnants exist in nine

²³⁷ Wolff, Weisbrod & Bird, *supra* note 163, at 24.

²³⁸ *See id.* at 23 n. 1.

²³⁹ Femida Handy & Narasimhan Srinivasan, *The Demand for Volunteer Labor: A Study of Hospital Volunteers*, 34 NONPROFIT & VOLUNTARY SECTOR Q. 491 (2005).

²⁴⁰ *Id.*

²⁴¹ Letee, *supra* note 216, at 167.

²⁴² Kevin Davis, *Vicarious Liability, Judgment Proofing, and Non-Profits*, 50 U. TORONTO L.J. 407 (2000).

²⁴³ *1997 Hearing*, at 65 (prepared statement of Robert K. Goodwin, President & CEO, the Points of Light Foundation).

²⁴⁴ *Id.*

²⁴⁵ WEISBROD, *THE NONPROFIT ECONOMY*, 62-63, & App. A (1988) (from 1967 to 1985, nonprofits increased from 309,000 to 900,000 organizations).

²⁴⁶ Wolff, Weisbrod & Bird, *supra* note 163, at 24.

states,²⁴⁷ including damage caps, protections against vicarious liability,²⁴⁸ and immunity from suits by charitable beneficiaries.²⁴⁹ Representative Porter addressed the effects of this immunity on injured parties in 1988 when he proposed that states extend protection to volunteers only when nonprofits were “financially responsible” whether through private insurance, a state pool, or the nonprofit’s assets, so as to limit immunity in the “unusual circumstances where a volunteer would be the only person available with assets to protect the injured party.”²⁵⁰ There is some evidence that after passage of the VPA, nonprofits reorganized to create their own immunity. Harvey Dale reported several instances in which nonprofits reorganized to separate their risky activities from their assets, leaving victims without compensation and reducing incentives for nonprofits to “engage in prudent risk-management activities.”²⁵¹

Since then, other laws have worked to protect nonprofit assets against tort claims. Although it does not explain support for the VPA, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 requires bankruptcy courts to apply state law in determining the ownership of nonprofit assets.²⁵² As a result, assets may be deemed to be held in trust for a charitable purpose and, therefore, unavailable to settle tort claims against nonprofit organizations.

On a practical level, both our qualitative and quantitative results offer insights to nonprofits that wish to recruit more volunteers. Although volunteers fear liability, this fear does not mean that immunity statutes are needed or are even helpful.²⁵³ Accurate information about underlying tort risk may be more effective and fair.

Finally, our study raises several questions that need further study. Does organizational liability affect individual conduct, and *vice versa*? How much? These tradeoffs between organizational and individual risk are complicated in the nonprofit context. Davis, for example, argues that “reducing... a non-profit enterprise’s wealth-at-risk will not necessarily give... volunteers... an incentive to lead the enterprise into risky activities.”²⁵⁴ He explains how the for-profit context, in which shareholders are presumed to both control corporations and benefit from cost-justified liability avoidance, differs from the nonprofit context. Unlike shareholders, non-altruistic donors will donate even though their donations go to tort victims rather than beneficiaries and judgment-proofing will have little effect on them; however, those altruists who disregard tort victims may withhold contributions from charities.²⁵⁵

²⁴⁷ Alabama, Arkansas, Georgia, Maine, Maryland, New Jersey, Virginia, Utah, and Wyoming. Nonprofit Risk Management Center, *supra* note 23, at 7-8. Three additional states (Colorado, Massachusetts, and South Carolina) cap nonprofit tort liability. *Id.* at 8.

²⁴⁸ *See, e.g. Munoz v. City of Palmdale*, 89 Cal. Rptr. 2d 229, 232 (Cal. Ct. App. 1999) (no vicarious liability where volunteer placed a coffeepot on shelf at senior center and injured woman), *review denied* (Cal. 1999).

²⁴⁹ *Radosevic v. Virginia Intermont College*, 633 F.Supp. 1084, 1086 (W.D. Va. 1986) (applying Virginia law); *Hill v. Leigh Memorial Hospital Inc.*, 132 S.E.2d 411, 414 (Va. 1963).

²⁵⁰ *1988 Hearing*, at 12-13 (statement of John Porter, Representative).

²⁵¹ Harvey P. Dale, Speech given on the occasion of the 10th Anniversary of Peter Swords as President of the Nonprofit Coordinating Committee (Nov. 17, 1997) pg. 10. (*citing* several IRS letter rulings approving reorganizations).

²⁵² S. 256, 109th Cong. (2005)

²⁵³ *Developments, supra* note 9, at 1689 (“[I]n almost every jurisdiction, the contours of both individual and organizational liability protection remain undefined.”).

²⁵⁴ *See, e.g.,* Davis, *supra* note 242.

²⁵⁵ *Id.* at 413.

C. Insights for Tort Law and Theory

i. *Deterrence*

A major theory of tort law characterizes its purpose as promoting social welfare through deterring future accidents. Imposing damage awards on negligent defendants forces them to internalize externalities and, therefore, only engage in risky behavior to the extent it generates more benefits than costs. A central objection to this and related deterrence-based theories has been that they are unrealistic.

[T]ort doctrines, however abstractly calculated to promote efficient resource allocation, do not actually affect human behavior. Most people, it is argued, do not even know the doctrines of tort law; behavior in the face of danger is dominated by concern with personal safety rather than with the financial consequences...and people lack sufficient information about the probability of an accident to make rational judgments concerning accident avoidance.²⁵⁶

John Goldberg puts it simply: “a fundamental premise of the deterrence model is that legal sanctions are capable of deterring, . . . [yet] the available evidence suggests that actors do not respond to the threat of liability with anything like regularity.”²⁵⁷

Whether deterrence occurs is an empirical question. Although the financial risk of liability may not be the primary, or even a major, reason for why people avoid volunteering, our study provides some evidence to inform this debate. The law may inspire people to do an activity more carefully or, as we suggest here, avoid that activity altogether.²⁵⁸ Potential volunteers who live in jurisdictions without immunity are less likely than others to volunteer, suggesting that individuals do indeed react to tort risk -- or at least the perception of that risk -- through activity avoidance.

Perhaps the most interesting and compelling evidence for the deterrent effect of tort law that what we have observed here is that the activity-level deterrent effect *increases* with the level of legal risk. People who live in regimes that shield volunteers from liability for accidents caused by grossly negligent, reckless, or willful and wanton behavior are more likely to volunteer than those who live in regimes that shield volunteers from liability for accidents caused by negligent behavior.

Further, our data are particularly useful because they suggest the deterrent effects of tort liability on individuals, rather than on organizations. Despite the range of tort defendants, [m]any analyses of the tort system, as well as many important substantive tort doctrines, tacitly assume that the paradigm tortfeasor is an individual person. Other[s]... contemplate that the tortfeasor is a firm, but nevertheless attribute to the firm certain characteristics commonly thought possessed by individual persons but not firms, such as autonomy and control over one’s own risk-taking behavior.²⁵⁹

Yet firms and people are unlikely to respond to tort law, particularly its deterrence aspects, in the same way.²⁶⁰ This does not mean that one of them will be rational and the other irrational –

²⁵⁶ William M. Landes & Richard A. Posner, *The Positive Economic Theory of Tort Law*, 15 GA. L. REV. 851, 857 (1981).

²⁵⁷ John C. P. Goldberg, *Twentieth-Century Tort Theory*, 91 GEO. L.J. 513, 558 (2003).

²⁵⁸ Steven Shavell, *Strict Liability versus Negligence*, 9 J. LEGAL STUD. 1 (1980); Landes & Posner, *supra* note 256, at 871. Landes and Posner offer the canonical example of reducing crop damage from locomotive sparks by either reducing activities (either railroading or farming) or acting more carefully (either installing spark-arresting equipment on trains or using fire-retardant chemicals on crops). *Id.*

²⁵⁹ Croley, *supra* note 12, at 1705.

²⁶⁰ *Id.*

firms are not monolithic actors,²⁶¹ and individuals often behave irrationally – but the responses will vary according to risk aversion. Firms with teams of lawyers and individuals with limited knowledge of the law will differ in their knowledge of the legal risks posed by their activities.

Using these results, we estimate that volunteer tort immunity generates about \$4.4 billion dollars a year (the equivalent of 0.035 percent of the GDP in 2005). We base this estimate on our finding that people are about 7.5 percentage points more likely to volunteer in states with some volunteer liability immunity than in states with no liability protection.²⁶² Using the Bureau of Labor Statistics data finding that volunteers spent a median of 50 hours on volunteer activities from September 2004 to September 2005,²⁶³ we assumed that volunteers deterred by liability exposure would have volunteered at the same level as those who were not deterred by liability exposure. This assumption probably generates an higher than accurate estimate because those who decide to volunteer are likely more committed than those deterred by tort liability. We then assess the value of a volunteer hour during that time as about \$17.80 an hour, using IS estimates,²⁶⁴ and we adopted the CPS estimate that 65.4 million people volunteered during the period.²⁶⁵ Using this number also introduces some error because it includes volunteer rates in both states with and without liability protection. The estimate can be seen as something of a lower bound because volunteers in states with liability immunity do not have complete immunity. Although it would likely be undesirable to have blanket immunity, it would also likely induce more volunteering.

As discussed above, we believe these results are generalizable because the relationship between individual financial risk and behavior is quite straightforward.²⁶⁶ Although social pressures may be at play, no law forces anyone to engage in volunteer activities or to purchase liability insurance. A potential volunteer who fears liability can simply choose not to volunteer. But this estimate does not, however, say anything about whether the forgone activity is efficient or fair. This depends on both the value of the accidents that are avoided and the distribution of those accidents. To the extent that tort law deterred people who are particularly accident prone from volunteering, it may have had a good effect. To the extent it over-deterred, by causing people to forgo volunteering altogether rather than simply moderating their care, it had a bad effect. Without more specific information, there is no *a priori* reason to believe that volunteering is a particularly risky activity and that we would want to deter participation. In fact, those who view deterrence as the best justification for tort law “emphasize that accident rates are typically correlated with levels of inherently risky activity,” so that strict liability may be

²⁶¹ *Id.* (citing Jennifer Arlen, *The Potentially Perverse Effects of Corporate Criminal Liability*, 23 J. LEGAL STUD. 833, 834 (1994)).

²⁶² Using the same control variables and data described above, the coefficient on a variable representing respondents in states with any level of volunteer immunity, from either state or federal law, was 0.0748 ($p < 0.01$). This result may be an underestimate. Using a probit model, estimating all variables at their mean values, the coefficient on the same variable = 0.0841 ($p < 0.01$). All results available from author.

²⁶³ [ftp://ftp.bls.gov/pub/news.release/volun.txt](http://ftp.bls.gov/pub/news.release/volun.txt). Total Annual Hours Spent Volunteering: “Volunteers spent a median of 50 hours on volunteer activities during the period from September 2004 to September 2005.”

²⁶⁴ We took the average of the \$17.55/hour (2004) and \$18.04/hour (2005), both based on average hourly earnings of nonsupervisory workers on nonfarm payrolls increased by 12% for fringe benefits.

http://www.independentsector.org/programs/research/volunteer_time.html.

²⁶⁵ The CPS estimates are lower than the IS results for overall volunteering, though the *difference* between volunteering rates should be the same.

²⁶⁶ See discussion surrounding footnote 11, *supra*.

warranted in certain high-risk situations.²⁶⁷ However, it would be odd to characterize volunteering as one of those contexts.

ii. Risk v. Perception

Although possible, we doubt that direct financial risk is the best explanation for why people are more likely to volunteer in states with liability protection laws. Although the probability of suit is unknown,²⁶⁸ it appears to be quite small. As discussed above, there are only a few reported cases against non-director volunteers.²⁶⁹ Further, volunteer protection laws do not fully protect volunteers from legal costs. Tort victims may still bring suits and defendants must still hire lawyers to defend them, if only to demonstrate their immunity and, although perhaps it is just a short-term issue, the laws are drafted so vaguely that using them to effectively defend volunteer behavior would likely involve protracted litigation.

It still may be that volunteers *perceive* that the immunity laws are effective and misunderstand the remaining financial risk of volunteering in regimes covered by the laws. This explanation makes one question why volunteers in those states are so knowledgeable about their liability regimes, yet so confused about the risks that come with those regimes.²⁷⁰ It appears that publicity about the acts is not the answer because we found little mention of even the federal act in major newspapers. We think it possible, however, that volunteers in states without liability protection perceive volunteering to be less valuable for reasons that are related to liability exposure but not necessarily to the expected value of the *financial* loss of exposure. For example, if volunteering is a consumption good, liability exposure decreases the feel-good value of volunteering. It is unpleasant to worry about getting sued which coaching or teaching Sunday school. To the extent that volunteering is an investment good -- a way for volunteers to invest in their careers, for example by making contacts or pleasing those who recruit them -- the investment may appear to be worth less in regimes without liability protection. For example, volunteers risk that their reputation will be harmed by suit.

Or maybe the laws did something entirely different from what their sponsors proposed. The passage of the laws could have directed public attention to volunteer opportunities.²⁷¹ There is some evidence for this effect in the difference-in-differences results, in which we found that the VPA had no independent effect on volunteering in states where it was implemented. Publicity for the VPA could have encouraged volunteering everywhere, as publicity was not limited to the preempted states. However, we observed a larger effect in states with higher immunity levels than in states with lower immunity levels, which is contrary to this interpretation.

iii. Property Rule v. Liability Rules

Our results can be used to examine the commonly advanced idea that tort law is only an appropriate vehicle for distributing accident costs among strangers (i.e. those who cannot express their risk preferences through contracting) or in other situations when transaction costs are high. Under this view, it is more efficient for private parties to negotiate contracts than for tort law to

²⁶⁷ DON DEWEES, DAVID DUFF, & MICHAEL TREBILCOCK, EXPLORING THE DOMAIN OF ACCIDENT LAW: TAKING THE FACTS SERIOUSLY 5 (1996).

²⁶⁸ We hope that future researchers will investigate the risk of suit.

²⁶⁹ Committee Report, at 17 & n. 1 (dissenting views) (noting that no witness identified a single case that would be decided differently under VPA).

²⁷⁰ We thank Chris Whitman for this observation.

²⁷¹ We thank Jeremy Webber for this observation.

displace what would naturally arise from private initiative – so courts ought to rely on property rules when they can and, as a positive matter, contracts will flourish. Although some scholars have convincingly challenged these views,²⁷² others have recently defended the benefits of property over liability rules because of their flexibility in allowing people to express their subjective valuations.²⁷³

Our findings suggest that people do not contract when they can. According to the VPA hearings, volunteers understood (in fact, overestimated) their liability exposure. Because volunteering is seldom a spur of the moment decision, volunteers had plenty of time to negotiate risk –not with the potential victims, but with nonprofit organizations. Potential volunteers could have fully externalized the cost of their negligence by asking nonprofit agencies to indemnify them or, at least, partially externalized the cost of their negligence by personally insuring against tort risk, perhaps quite easily through umbrella insurance or as a rider to their home owners' policies.²⁷⁴ If tort law had been simply displacing efficient, private initiative, we should have found no effect from the passage of liability protection laws because private agreements, reflecting the preferences of volunteers and others, would have been in place already. But this is not what we found.

There are several possible interpretations of our results that inform a long-standing puzzle over the property versus liability rules debate, at least regarding its practical application. Maybe people did insure against liability or force nonprofit organizations to do so on their behalf; perhaps we identified an effect because the immunity laws imposed excess protection from liability compared to that which volunteers were willing to purchase. Although this level of protection was not worth it to the volunteers, it may still have been efficient from a societal perspective if social welfare was increased by motivating more people to volunteer. We find this explanation unlikely given the many anecdotes from nonprofits that potential volunteers felt too exposed to liability to volunteer.

More likely, people simply failed to negotiate the distribution of risk that they would wish in advance. They were too busy, lazy, or confused to do so (yet paradoxically, some took the time and expense to advocate for legal change). Therefore, tort law may provide a useful administrative fix *even where* parties are familiar and can negotiate.

There are, however, explanations other than failed initiative. It may be that volunteers *wanted* liability insurance, but could not buy it. In fact, immunity advocates advanced several anecdotes suggesting that this was the case. Rep. Porter first became concerned with volunteer liability when a proposed battered women's shelter in his district failed; it could not recruit directors because it could not find liability coverage.²⁷⁵ Perhaps the shelter could not get

²⁷² For a detailed explanation of these conventional arguments and theoretical explanations of why they are flawed see Louis Kaplow & Steven Shavell, *Property Rules versus Liability Rules: An Economic Analysis*, 109 HARV. L. REV. 715, 719 *et seq.* (1996) (arguing that when transaction costs are high, liability rules are not merely second-best rules but are preferable because potential injurers can make efficient decisions with their private knowledge regarding the cost of accident avoidance; when transaction costs are low, they demonstrate that with perfect information the two rules are equivalent but with imperfect information neither rule is to be preferred *a priori*); James E. Krier & Stewart J. Schwab, *Property Rules and Liability Rules: The Cathedral in Another Light*, 70 N.Y.U. L. REV. 440 (1995) (arguing against the conventional wisdom that judges should use liability rules when transaction costs are high).

²⁷³ Keith Hylton, *Property Rules and Liability Rules, Once Again*, 2 REV. L. & ECON. 137 (2006); Richard A. Epstein, *A Lear View of the Cathedral: The Dominance of Property Rules*, 106 YALE L.J. 2091, 2120 (1997).

²⁷⁴ Homeowners policies often include coverage. Volunteers have disproportionately high incomes and, therefore, own homes.

²⁷⁵ 1988 Hearing, at 14.

insurance because of a market failure. If so, a socially productive activity was unsuccessful for the wrong reason; immunity, therefore, works in a second-best world where insurance market failures cannot be addressed directly. In the face of such market failures, theorists have suggested that tort law acts as an appropriate administrative remedy.²⁷⁶

But maybe insurance was available and the shelter didn't like the price. In this case, immunity would represent an inefficient redistribution of accident costs away from the tortfeasor. Under this explanation, the statutes were *part* of a negotiation over liability. The immunity was either an effective way for volunteers to fully place the cost of risky behavior on victims or nonprofits, or it was part of an overall program on the part of nonprofit organizations to encourage tort reform – an explanation with plenty of evidence in the record. For example, the Junior League of Great Falls, Indiana, complained that D&O premiums amounted to 7 percent of its budget and 58 percent of the proceeds from a major fundraiser.²⁷⁷ The Helicopter Association International's supportive letter amounts to little more than a complaint that flying helicopters is risky and, therefore, expensive to insure; the organization offers its continuing support for "general tort reform with emphasis upon products liability and aviation products liability relief. Your legislation is equally important in that it will allow us to continue to attract volunteer leaders to serve the needs of the helicopter industry."²⁷⁸ This possibility is also suggested at the state level.²⁷⁹ Hawaii passed its statute despite evidence that liability insurance was available to nonprofits.²⁸⁰

Constructing, debating, and passing the immunity acts occupied legislative attention for years. It is remarkable that so little subsequent legal or scholarly attention has been paid to these laws. Despite data and methodological limitations that prevent us from establishing a causal connection between volunteering and immunity, we offer evidence that is strongly suggestive of a positive association. We conclude that one cost of tort liability is that it deters volunteers. This does not necessarily mean that policymakers should provide immunity to increase volunteering -- we know neither the benefits of tort liability in terms of accident reduction nor the characteristics of those potential volunteers who are deterred by perceived tort exposure. Perhaps those who are deterred are disproportionately careless. If, in fact, nonprofits face volunteer recruitment shortages, perhaps educating potential volunteers on the real risks suit or indemnifying them would solve the problem. Given the potential for understanding volunteering, nonprofit activity, and the deterrent effects of tort law, we hope that others will continue this examination.

²⁷⁶ George L. Priest, *The Current Insurance Crisis and Modern Tort Law*, 96 YALE L.J. 1521, 1588 (1987) ("These [tort] reforms[, including volunteer immunity], while helpful, constitute only partial contributions toward solution of the problems caused by modern tort law.").

²⁷⁷ *1988 Hearing*, at 40 (letter from Colen Eidel, Chairman & Barbara Holden, President, Junior League of Great Falls).

²⁷⁸ *Id.* at 69 (letter from Frank L. Jensen, Jr., president of Helicopter Association International); *see also id.* at 78 (letter from Albert H. Quie, president, Prison Fellowship Ministries).

²⁷⁹ Washington legislators were convinced that state volunteer immunity was "important because it protects credit union volunteers, and the federal law does not. Volunteers are the backbone of credit unions." Washington Senate Bill Report 1643, Senate Committee on Judiciary, (March 29, 2001).

²⁸⁰ CARTER-YAMAUCHI, *supra* note 48.

VII. Tables and Figures

Table 1: State Immunity Regime

No Immunity States	Negligence Immunity States	High Immunity States
Alaska	Arkansas (1987)	Minnesota (R 1989)
California	Arizona (1993)	Texas (R 1987)
Connecticut	Delaware (1989)	Alabama (W 1991)
Florida	Hawaii (1997)	Colorado (W 1992)
Illinois	Maryland (1987)	District Columbia (W 1993)
Indiana	Maine (1987)	Idaho (W 1987)
Kentucky	Mississippi (1988)	Kansas (W 1987)
Louisiana	North Carolina (1987)	Montana (W 1987)
Massachusetts	North Dakota (1987)	Nevada (W 1987)
Michigan	New Hampshire (1988)	Rhode Island (W 1984)
Missouri	New Jersey (1987)	Utah (W 1990)
Nebraska	Oklahoma (1995)	Wisconsin (W 1987)
New Mexico	Pennsylvania (1988)	Iowa (I 1987)
New York	South Carolina (1984)	
Ohio	South Dakota (1987)	
Oregon	Washington (2001)	
Tennessee	Wyoming (1992)	
Virginia	Georgia (1987)	
Vermont		
West Virginia		

R=shields up to reckless (i.e. gross negligence)

W=shields up to willful/wanton (i.e. gross negligence and recklessness)

I=shields up to intentional (i.e. gross negligence, recklessness, and willful/wanton)

Table 2: Variable Definitions and Descriptive Statistics

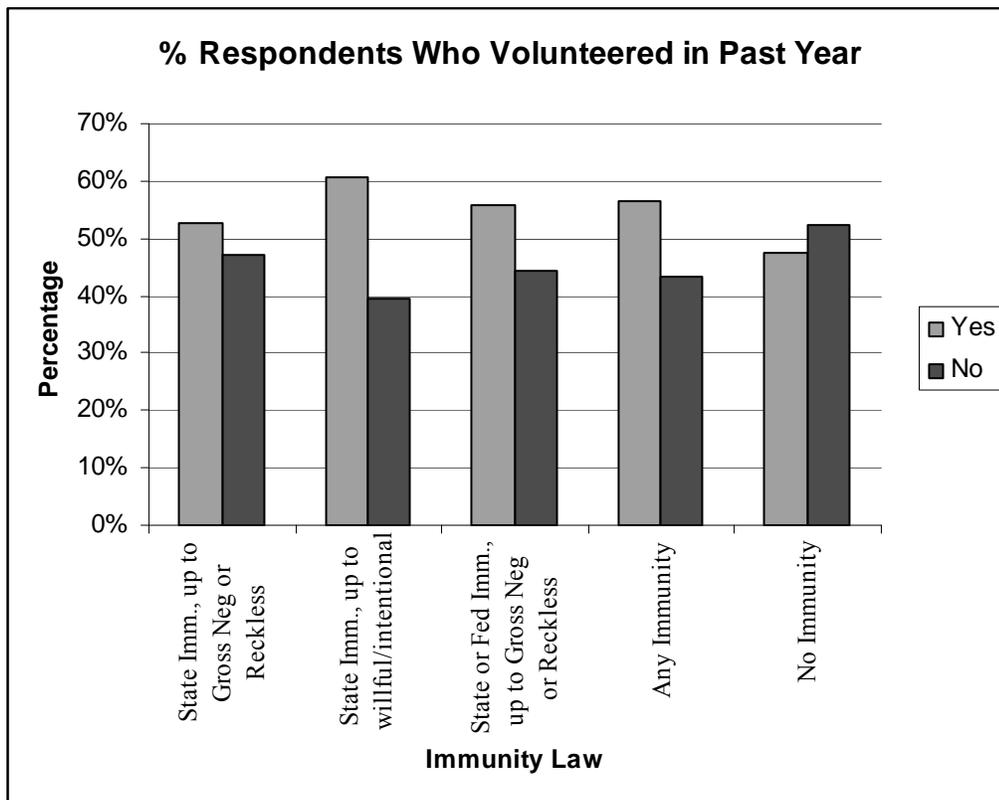
Variable	Definition	Full Sample		Volunteers	
		mean	sd	mean	sd
Year	(0,1) variable, 1 if year==1990	0.142	0.349	0.141	0.348
	(0,1) variable, 1 if year==1992	0.140	0.347	0.136	0.343
	(0,1) variable, 1 if year==1994	0.079	0.270	0.070	0.256
	(0,1) variable, 1 if year==1996	0.142	0.349	0.125	0.331
	(0,1) variable, 1 if year==1999	0.134	0.341	0.110	0.313
	(0,1) variable, 1 if year==2001	0.218	0.413	0.300	0.458
Volunteered Year	(0,1) variable, 1 if respondent volunteered in past 12 months	0.529	0.499	1	0
Liab. Imm. - Any Level	State has immunity statute	0.599	0.490	0.639	0.480
Liab. Imm. – GNR	State immunizes volunteers up to gross negligence or recklessness	0.489	0.500	0.514	0.500
Liab. Imm. – WINT	State immunizes volunteers up to willful/wanton or intentional	0.110	0.313	0.126	0.331
State Unemployment	Unemployed state residents/state labor force by year	5.556	1.504	5.442	1.481
Mean State Income	Total state income/total state labor force participation	27,048	5,364	27,005	5,182
State Civil Litigation	Annual state civil filings/annual state pop.	0.743	0.350	0.739	0.346
State Tax Itemizer Rate	Itemized state returns/state tax returns by year	30.645	6.707	30.935	6.758
Age	Respondent's age	46.6	17.2	45.8	15.9
Age2	Respondent's age-squared	2,463	1,745	2,350	1,587
Household Children	# of children <18	0.860	1.224	0.927	1.243
Child2	# of children <18 squared	2.237	5.145	2.405	5.192
Employed	(0,1) variable, 1 if respondent employed at interview	0.617	0.486	0.676	0.468
Sex	(0,1) variable, 1 if interviewer identifies respondent as male, 0 if female	0.479	0.500	0.450	0.498
Hispanic Descent	(0,1) variable, 1 if respondent identifies as Hispanic	0.126	0.332	0.088	0.284
Income2	(0,1) variable, 1 if income \$10-\$14,999	0.070	0.254	0.047	0.213
Income3	(0,1) variable, 1 if income \$15-\$19,999	0.072	0.258	0.051	0.220
Income4	(0,1) variable, 1 if income \$20-\$24,999	0.074	0.262	0.067	0.249

Table 2 (con't)

Variable	Definition	Full Sample		Volunteers	
		mean	sd	mean	sd
Income5	(0,1) variable, 1 if income \$25-\$29,999	0.092	0.289	0.087	0.282
Income6	(0,1) variable, 1 if income \$30-\$34,999	0.095	0.293	0.096	0.295
Income7	(0,1) variable, 1 if income \$35-\$39,999	0.081	0.272	0.087	0.281
Income8	(0,1) variable, 1 if income \$40-\$49,999	0.110	0.313	0.121	0.326
Income9	(0,1) variable, 1 if income \$50-\$74,999	0.171	0.377	0.208	0.406
Income10	(0,1) variable, 1 if income \$75--\$99,999	0.059	0.235	0.075	0.263
Income11	(0,1) variable, 1 if income >=\$100,000	0.081	0.273	0.099	0.298
Married	(0,1) variable, 1 if respondent identifies married	0.612	0.487	0.664	0.472
Religious Group Member	(0,1) variable, 1 if respondent identifies member of a church or synagogue	0.595	0.491	0.663	0.473
School2	(0,1) variable, 1 if high-school grad	0.327	0.469	0.285	0.452
School3	(0,1) variable, 1 if trade, 2-yr coll. grad, or 4-yr coll. incomplete.	0.281	0.450	0.312	0.463
School4	(0,1) variable, 1 if >=4-yr coll. grad	0.236	0.424	0.316	0.465
Race-Black	(0,1) variable, 1 if respondent identifies black	0.138	0.345	0.105	0.307
Race-Asian	A (0,1) variable equal to one if the respondent identifies Asian	0.010	0.099	0.008	0.091
Race-Other	(0,1) variable. 1 if respondent identifies Native American, Pac. Islander, Other, or belonging to >=2 categories in 2001	0.046	0.210	0.044	0.204
Social Capital ***	Braatz/Putnam Index	-0.197	0.557	-0.143	0.579
N=		19,132		10,128	

Notes: Left out categories: income=<\$10,000, education=high school incomplete. Social Capital measure missing Alaska, Hawaii.

Figure 1: Percentage of respondents volunteering, previous year, by regime



Source: Authors' analysis of Independent Sector's Giving and Volunteering Survey.

Notes: State Imm. up to Gross Negligence or Recklessness=conduct up to, but excluding, grossly negligent or reckless; State Imm., up to willful/intentional=conduct up to, but excluding, willful and wanton or intentional. State or Fed Imm., up to Gross Neg or Reckless=conduct up to, but excluding, grossly negligent or reckless, through state statute or VPA. Any Immunity=any source of law. No Immunity=no general volunteer immunity.

Table 3: Percentage Respondents, Volunteering Previous Year, by Immunity Regime

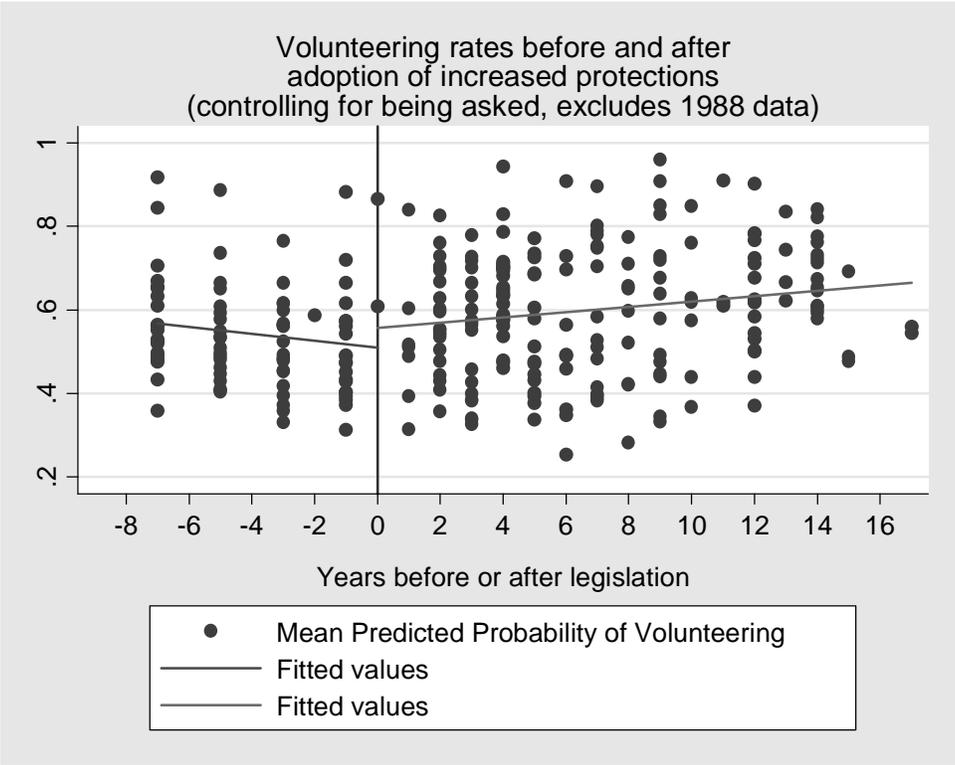
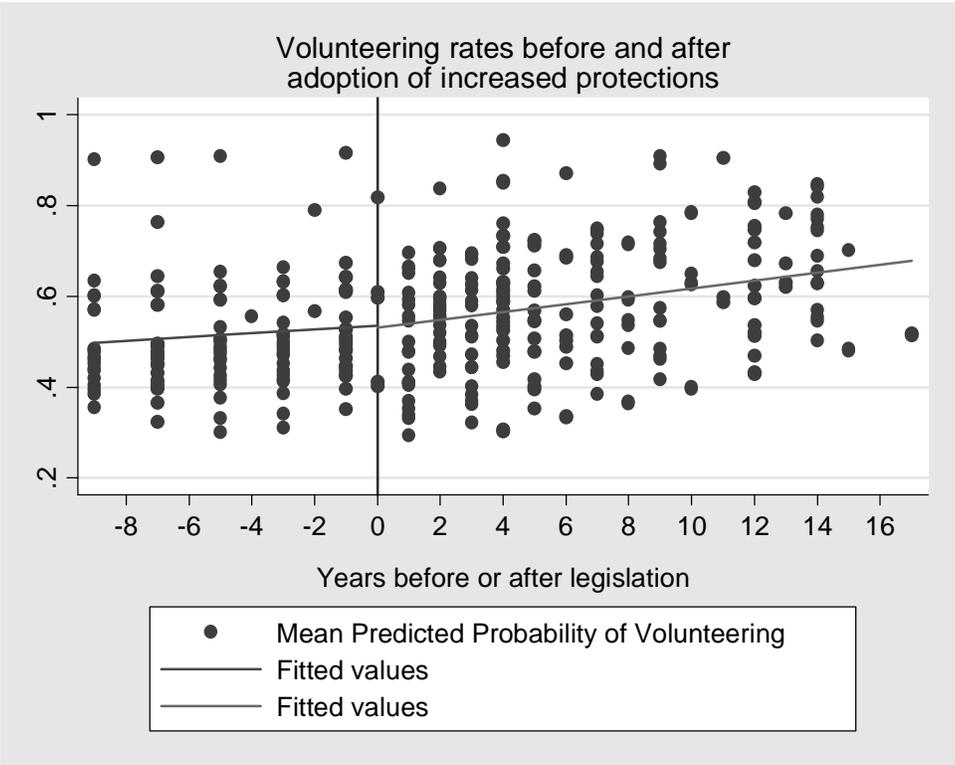
Source:	State		State or Federal		
Immunity Level:	Gross Neg/ Reckless	Willful/ Intent	Gross Neg/ Reckless	Any Immunity	No Immunity
Yes	53%	60%	56%	57%	48%
No	47%	40%	44%	43%	52%
# Respondents	5,670	2,096	9,341	11,437	7,695

Table 4: High v. Low Immunity Levels

	(1)	(2)	(3)	(4)
Model Type	Linear Probability	Probit	Linear Probability	Linear Probability
Additional Variables			Year Dummy	State Fixed- effects
Coefficient				
State or Federal, GNR Protection	0.0751*** (0.027)	0.211*** (0.075)	-0.0004 (0.022)	0.0519 (0.033)
State, Willful/Intent Imm.	0.0823** (0.038)	0.234** (0.109)	0.030 (0.034)	0.004 (0.044)
State Civil Litigation Rate	-0.0641** (0.031)	-0.184** (0.091)	-0.033 (0.023)	0.194* (0.100)
Constant	0.165 (0.088)*	-0.926*** (0.254)	0.239*** (0.077)	-0.350*** (0.110)
Observations	19,132	19,132	19,132	19,132

Note: Robust standard errors in parentheses; *** p<0.01, ** p<0.05, * p<0.1. Results control for unemployment rate, mean state wage, state tax itemization, age, age², # children, # children², employment, sex, Hispanic descent, income category, marital status, racial category, religious group membership, and education level.

Figures 2a, 2b



Appendix

State	STATUTE	Scope	Standard	Vehicle exception?	Specific coverage	Charity?	Year enacted
Alaska	ALASKA STAT. § 09.65.170	Director	Gross				1986
Alaska	ALASKA STAT. § 09.65.090	Specific	Gross Willful &		Emergency organization		1967
Alabama	ALA. CODE § 6-5-336(d)	General	Wanton			Yes	1991
Arizona	ARIZ. REV. STAT. ANN. § 12-982	General	Gross			Yes	1993
Arkansas	ARK. CODE ANN. § 16-6-105	General	Gross	Y			1987
California	CAL. CORP. CODE § 5239	Director	Gross Willful &			Yes	1988
Colorado	COLO. REV. STAT. ANN. § 13-21-116(b)(I)	Director	Wanton Willful &				1986
Colorado	COLO. REV. STAT. ANN. § 13-21-115.5	General	Wanton	Y	Gross neg standard for MD	Yes	1992
Connecticut	CONN. GEN. STAT. § 52-557m	Director	Reckless Willful &				1986
DC	D.C. CODE ANN. § 29-599.15	General	Wanton			Limited	1992
Delaware	DEL. CODE ANN. tit. 10, § 8133	General	Gross	Y		Yes	1989
Florida	FLA. STAT. ANN. § 768.1355	General	Negligence Willful &			Yes	1993
Georgia	GA. CODE ANN. § 51-1-20	General	Wanton				1987
Hawaii	HAW. REV. STAT. § 662D-3	General	Gross Willful &	Y	Doesn't cover professionals	Yes	1997
Idaho	IDAHO CODE § 6-1605	General	Wanton	Y			1987
Illinois	805 ILL. COMP. STAT. 105/108-70	Director	Reckless				1986
Illinois	745 ILL. COMP. STAT. 80/1	Specific	Gross Willful &	Y	Coaches	Yes	1987
Illinois	740 ILL. COMP. STAT. 75/1	Specific	Wanton		Firemen		1969
Indiana	IND. CODE § 34-30-4-2	Director	Gross			Yes	1985
Iowa	IOWA CODE § 613.19	General	Intentional Willful &				1987
Kansas	KAN. STAT. ANN. § 60-3601	General	Wanton Willful &				1987
Kentucky	KY. REV. STAT. ANN. § 411.200	General	Wanton Willful &		Violates State Constitution		1988
Louisiana	LA. REV. STAT. ANN. § 9:2792.3	Director	Wanton				1987
Maine	ME. REV. STAT. ANN. tit. 14, § 158-A	General	Gross	Limited			1987
Maryland	MD. CODE ANN., CTS. & JUD. PROC. § 5-407	General	Gross				1987
Massachusetts	MASS. GEN. LAWS CH. 231, § 85W	Director	Gross	Y			1987
Michigan	MICH. COMP. LAWS § 324.20302	Specific	Gross		Hazardous clean-up		1994
Michigan	MICH. COMP. LAWS § 691.1407	Specific	Gross		Government agency		1986

Appendix

Minnesota	MINN. STAT. ANN. § 317A.257	General	Reckless			1989
Mississippi	MISS. CODE ANN. § 95-9-1	General	Gross	Y		1988
Missouri	MO. REV. STAT. § 537.118	General	Negligence		Yes	1989
	MONT. CODE ANN. § MCA 27-1-732		Willful &			
Montana		General	Wanton		Yes	1987
	NEB. REV. STAT. § 25-21,188.02		Willful &			
Nebraska		Specific	Wanton	Y	medical practitioner in free clinic	2003
	NEB. REV. STAT. § 25-21,191		Willful &			
Nebraska		Director	Wanton			1987
	NEV. REV. STAT. § 41.485		Willful &			
Nevada		General	Wanton		Yes	1987
New Hampshire	N.H. REV. STAT. ANN. § 508:17					
		General	Gross	Y	Limited	1988
New Jersey	N.J. STAT. ANN. § 2A:53A-7.1	General	Gross	Y	No	1987
New Mexico	N.M. STAT. ANN. § 41-12-1	Specific	Gross	Y	Coaches	1989
New Mexico	N.M. STAT. ANN. § 53-8-25.3	Director	Reckless			1987
	N.Y. GEN. MUN. LAW § 205-b		Willful &			
New York		Specific	Wanton		Firemen	1934
North Carolina	N.C. GEN. STAT. § 1-539.10	General	Gross	Y	Doesn't cover professionals	1987
North Carolina	N.C. GEN. STAT. § 55A-8-60	Director	Gross	Y	Yes	1993
North Dakota	N.D. CENT. CODE § 32-03-45	General	Gross	Y		1987
Ohio	OHIO REV. CODE ANN. § 2305.38	General	Negligence			1986
	OHIO REV. CODE ANN. § 2305.38		Willful &			
Ohio		Director	Wanton			1986
Ohio	OHIO REV. CODE ANN. § 2305.381	Specific	Intentional		Coaches (must be trained)	1996-99
Oklahoma	OKLA. STAT. ANN. tit. 76, § 31	General	Gross		Yes	1995
Oklahoma	OKLA. STAT. ANN. tit. 18, § 867	Director	Intentional			1987
Oregon	OR. REV. STAT. § 30.792	Specific	Gross		medical practitioner in free clinic	1995
Oregon	OR. REV. STAT. § 30.480	Specific	Gross		transporter of disabled persons	1983
Pennsylvania	42 PA. CONS. STAT. ANN. § 8332.4	General	Gross	Y		1988
	R.I. GEN. LAWS § 7-6-9		Willful &			
Rhode Island		General	Wanton	Y		1984
South Carolina	S.C. CODE ANN. § 33-56-180	General	Gross		Yes	1984
South Dakota	S.D. CODIFIED LAWS § 47-23-29	General	Gross	Y		1987
	S.D. CODIFIED LAWS § 47-23-2.1		Willful &			
South Dakota		Director	Wanton			1987
Tennessee	TENN. CODE ANN. § 48-58-601	Director	Gross			1986
Texas	TEX. CIV PRAC & REM CODE ANN. § 84.004	General	Reckless		Yes	1987
	UTAH CODE ANN. § 78-19-2		Willful &			
Utah		General	Wanton	Y	Yes	1990

Appendix

Vermont	VT. STAT. ANN. tit.12, § 5781 VA. CODE ANN. § 13.1-870.1	Director	Gross Willful &	Y		1987
Virginia		Director	Wanton			1987
Washington	WASH. REV. CODE ANN. § 4.24.264	Director	Gross			1987
Washington	WASH. REV. CODE ANN. § 4.24.670	General	Gross	Y	Yes	2001
West Virginia	W. VA. CODE § 55-7C-3 WIS. STAT. ANN. § 181.0670	Director	Gross Willful &	Y	Yes	1988
Wisconsin		General	Wanton	Y	Doesn't cover professionals	1987
Wyoming	WYO. STAT. ANN. § 1-1-125	General	Gross	Y	Yes	1992

* Statutes that immunize volunteers beyond a volunteer subcategory are labeled "general."