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Letting Good Deeds Go Unpunished: Volunteer Immunity Laws and Tort Deterrence

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June 2008

Abstract

Does tort law deter risky behavior in individuals? We explore this question by examining the relationship between tort immunity and volunteering. During the 1980s and 1990s, nearly every state provided some degree of volunteer immunity. Congress followed with the 1997 Volunteer Protection Act. This article analyzes these acts, identifying three motivations for them: the chilling effects of tort liability, limits on liability insurance, and moral concerns. Using data from the Independent Survey's Giving and Volunteering surveys, we then identify a large and positive correlation between immunity and volunteering. We next consider the implications of the findings for tort theory and nonprofit law.

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I. Introduction

Does tort law deter risky behavior? This question lies at the center of a major debate in tort law. Some scholars suggest that individuals respond to liability risk with increased care or by avoiding risky activities altogether; others criticize deterrence theories as unrealistic, particularly because they assume that prospective tortfeasors understand law and risk.[1] Despite considerable theoretical research on the deterrent effects of tort law, few empirical studies examine whether liability affects risk-taking.[2] Even these few previous studies do not lead easily to generalizable conclusions because they mostly focus on medical malpractice (which is confounded by professional duties, organizational relationships, mandatory insurance laws, and the high costs of relocating to a new state) and automobile accidents (which are muddied by insurance mandates and criminal law). Such complications, however, do not complicate an individual's decision to volunteer.

Here we examine the relationship between volunteer tort immunity and volunteering. During the 1980s and 1990s, state lawmakers worried that tort liability was harming nonprofits and responded by immunizing at least some volunteers from suit. Congress followed with the 1997 Volunteer Protection Act (VPA), which provided immunity for volunteers in states without immunity laws.[3] By comparing volunteer rates across states with different liability regimes, we attempt to identify the effect of the reduction of tort exposure – that is, a reduction in the price of volunteering – on an individual's decision to volunteer.

We find systematic differences in volunteer rates between states with and without volunteer tort immunity. We provide new, albeit preliminary, evidence suggesting that individuals reduce their activity-level engagement by forgoing volunteering in the face of liability exposure. These results support economic-deterrence theories of tort law, countering criticism that they do not accurately reflect human behavior and that the laws have little or no effect. Our findings are particularly interesting because they illustrate how liability exposure might influence individuals rather than corporations, which are more likely than individuals to internalize the costs of risky behavior and adjust.[4] Moreover, the results provide a rough quantitative estimate of foregone volunteering by offering a rough estimate of the activity-level opportunity cost of tort liability. They also suggest the economic costs 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 *benefit*s of tort law (e.g., the accident avoided, the extra care induced by liability exposure) and other important factors, such as tort's distributive effects, policymakers cannot determine whether suits against volunteers are worth the cost of forgone volunteering.

This study also helps explore whether, and under what circumstances, property rules (enacted through bargaining and contracting) or liability rules (enacted through tort) provide a

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[1] *See, e.g.*, DON DEWEES, DAVID DUFF, & MICHAEL TREBILCOCK, EXPLORING THE DOMAIN OF ACCIDENT LAW: TAKING THE FACTS SERIOUSLY 6 (1996).

[2] Louis Kaplow & Steven Shavell, *Economic Analysis of Law in* 3 HANDBOOK OF PUBLIC ECONOMICS 1661, 1671 (Alan J. Auerbach & Martin Feldstein eds., 2002).

[3] The Volunteer Protection Act of 1997, 42 U.S.C. §§ 14501-14505.

[4] *See generally* Steven P. Croley, *Vicarious Liability in Tort: On the Sources and Limits of Employee Reasonableness*, 69 S. CAL. L. REV. 1705 (1996) (discussing liability effects on individuals versus corporations).

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better mechanism to distribute the costs of accidents.[5] Because volunteering is not a sudden, unexpected event like a skiing or bicycling accident, volunteers have ample time to contract around tort liability. They are able to buy insurance or ask the charitable organizations to indemnify them 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. Instead, we find that volunteers seek protection from tort law by attempting to change liability rules.

We also contribute to the research on volunteering, something almost half of Americans do every year.[6] 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 wage-labor tradeoff. Previous legal research is similarly sparse; articles about the immunity acts and their consequences merely speculate, without empirical evidence, about the incentive effects of liability exposure on volunteering.[7]

Finally, the results are policy-relevant because they help determine whether immunity encourages volunteering, something politicians often wish to encourage. In 1993, President George H.W. Bush even claimed that "every serious social problem is being solved through voluntary service."[8] Volunteer immunity has come up in other political contexts. The Good Samaritan laws that predate volunteer immunity laws, for example, provide some liability immunity for 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.[9] More recently, the Katrina VPA of 2005 would have extended the VPA by immunizing individuals volunteering in the aftermath of Hurricane Katrina from the costs of accidents caused by their *gross* negligence.[10]

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[5] *See* 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)).

[6] Forty-four percent of the U.S. population volunteers for a nonprofit or government organization annually; volunteers donated 15.5 billion hours in 2000. THE INDEPENDENT SECTOR, GIVING AND VOLUNTEERING IN THE UNITED STATES 2 (2001) *available at* http://www.independentsector.org/PDFs/GV01keyfind.pdf. In 2004, 28.8% of Americans volunteered. BUREAU OF LABOR STATISTICS, VOLUNTEERING IN THE UNITED STATES. 1 (2004) *available at* http://www.bls.gov/news.release/pdf/volun.pdf. Volunteer hours have been valued at $239.2 billion. INDEPENDENT SECTOR, *supra*. Total volunteering is equivalent to nearly eight percent of the total private, nonfarm hours worked in the United States. Using the Independent Sector estimate of 15.5 billion hours of time donated per year, volunteers worked the full-time equivalent of 8.69 million workers per year, assuming a nonfarm economy average of 1,783.6 hours per year. *See* United States 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 (last visited Sept. 4, 2006). 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, 159 (1987).

[7] *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.").

[8] George H.W. Bush, *Remarks at a Celebration of the Points of Light*, 29 WEEKLY COMP. PRES. DOC 42, 43 (Jan. 14, 1993).

[9] *Harlow v. Fitzgerald*, 457 U.S. 800, 814 (1982).

[10] Katrina Volunteer Protection Act of 2005, H.R. 3736, 109th Cong. (as passed by House, Sept. 14, 2005). The bill did not pass the Senate.

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For these reasons, we hope that this work will be only the first study on the relationship between tort immunity and volunteering.

Section II describes the immunity acts and their justifications. Section III summarizes previous research. Section IV details our data and methodology, and Section V describes the results, sensitivity tests, and limitations to the empirical work. We conclude and discuss the implications of the findings in Section VI.

II. Immunity Laws

During the 1980s and 1990s, impassioned advocacy, such as Senator Spencer Abraham's declaration that "[f]rivolous litigation is an attack on altruism itself," and Senator John Ashcroft's invocation of de Tocqueville,[11] persuaded state and federal legislatures to immunize volunteers from civil lawsuits. We examined legislative histories, news reports, and press releases to find these sentiments translated into three types of justifications for the sweep of federal and state legislation: (1) instrumental claims regarding the chilling effect of liability on volunteering; (2) both instrumental and normative claims about the liability insurance crisis, sometimes framed more generally as a "liability crisis"; and (3) particularly at the federal level, a normative claim that volunteers should not be sued.

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 protected limited categories of volunteers (see Table 1). We analyzed each state statute to determine the scope of immunity.[12] In almost all cases, the statutory language clearly grants immunity to a particular class of volunteers, although some statutes require more interpretation.[13] Others protect only specific volunteer types, such as volunteer firefighters,[14]

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[11] 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").

[12] 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 a summary by Daniel Kurtz, Holland & Knight LLP (on file with authors).

[13] In Georgia, for example, "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. Georgia courts interpret "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). 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 as immunizing all volunteers because, 1) an AG opinion concluded that "[a] physician giving high school athletic physicals on a volunteer basis, without

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coaches,[15] mediators,[16] or librarians (for damages resulting from information contained in library materials).[17] The statutes also often include exceptions, such as wrongful acts committed while operating a motor vehicle,[18] exposing many volunteers to liability risk. The statutes typically specify the lowest standard of care for which volunteers may face liability.[19] If a statute permits liability for one standard, it allows liability for all standards involving greater culpability. Therefore, a statute that allows volunteers to be sued when they act with gross negligence will permit suit when they act intentionally.

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

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compensation, would probably be immune from liability," 1989 Op Atty Gen, No. 89-83, p 218., and 2) the statute only protects uncompensated individuals.

[14] *See, e.g.*, ALA. CODE § 6-5-335.

[15] *See, e.g.*, LA. REV. STAT. ANN. § 9:2798.

[16] *See, e.g.*, TEX. CIV. PRAC. & REM. CODE ANN. § 154.055; WASH. REV. CODE § 7.75.100.

[17] *See, e.g.*, VT. STAT. ANN. tit. 12 § 5782.

[18] *See, e.g.*, N.C. GEN. STAT. § 1-539.10(a)(3),

[19] Again, some statutes were unclear. Maine protects volunteers "[w]hen the cause of action sounds in negligence." ME. REV. STAT. ANN. tit. 12 § 158-A (2005). We interpreted this as immunizing negligence but not gross negligence. Pennsylvania does not immunize 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). This likely means gross-negligence. *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 statute as immunizing up to recklessness. Three state statutes are quite difficult to interpret at all. Florida, Ohio, and Missouri appear to impose liability even when the volunteer merely acts negligently, effectively draining the law of any force. For example, Florida only grants immunity to a volunteer "acting as an ordinary reasonably prudent person would have acted under the same or similar circumstances," FLA. STAT. § 768.1355, making the statute superfluous. *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"). In fact, Florida courts adopted this interpretation. *Campbell v. Kessler*, 848 So. 2d 369, 371 (Fla. Dist. Ct. App. 2003); *see also Botte v. Pomeroy*, 438 So.2d 544, 545 (Fl. App. 1983) (noting that Good Samaritan immunity was undermined by this standard). Missouri allows liability when the damage was caused "by the negligence of such volunteer," MO. REV. STAT. § 537.118(2)(2), whereas Ohio permits liability for "[a]n action or omission of the volunteer [that] constitutes negligence." OHIO REV. CODE ANN. § 2305.38(D)(2). Although theoretically, the negligence standard immunizes volunteers from strict liability suits, this is an unsatisfying explanation because volunteers are unlikely to face a strict liability claim. *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). In addition, although the Kentucky legislature passed a volunteer immunity statute in 1988, an Attorney General opinion found that the statute violates the three sections of the state constitution that, in part, provides that the legislature "shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property." 1988-1991 Ky. Op. Atty. Gen. 2-637, Ky. OAG 91-89, 1991 WL 533922 (Ky. A.G.) We treat Florida, Kentucky, Missouri, and Ohio as having no immunity for general volunteers.

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States passed volunteer liability protection for several reasons predominantly to 1) increase volunteering, 2) address an insurance crisis, and 3) maintain fairness. First, legislators worried that liability hindered volunteer recruitment and reasoned that immunity would encourage volunteering.[20] For example, 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 bill's purpose is to permit nonprofit and charitable organizations to continue to attract able people to serve in these capacities."[21]

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 their volunteers' negligence.[22]

Our efforts to find lawsuits against non-director volunteers also produced few results. Although we do not know whether these volunteers settled their suits, we found few reported suits against them. In a search of all cases with written decisions over the past forty years (therefore, covering the period both before and after the immunity acts), we found sixty cases against these volunteers, almost all of which would fall outside the scope of the volunteer protection acts.[23] Of the sixty cases, twenty-three 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 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 and two invoked the VPA, with one invoking both. Moreover, the supervising nonprofit or government agency was also a named defendant in almost all of these cases, so the risk to the volunteer's assets was minimal. In fact, although threats to personal funds are used to achieve settlements, tort defendants generally settle claims with insurance proceeds.[24]

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[20] *See, e.g.,* Washington Senate Bill Report 1643, Senate Committee on Judiciary (March 29, 2001).

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

[22] Nonprofit Risk Management Center, *supra* note 12. These few cases include *Junkins 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 government 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).

[23] 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.

[24] Tom Baker, *Blood Money, New Money, and the Moral Economy of Tort Law in Action*, 35 LAW & SOC'Y REV. 275 (2001).

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It is not surprising, therefore, that state legislators often emphasized their concern for the *perception,* rather than the real risk of suit.[25] The Alabama statute asserts that "[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."[26] 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."[27] 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.[28]

A few highly publicized lawsuits against volunteers may have convinced legislators that there was a volunteer liability crisis.[29] In one widely cited example, parents sued their ten-year-old son's Little League coach after a ball hit him in the eye because the child was not accustomed to playing second base and had not been trained to field balls correctly.[30] Legislators used the settled case to show the need for volunteer immunity.[31] Another lawsuit that

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[25] 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.").

[26] ALA. CODE § 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).

[27] 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*.

[28] Nonprofit Risk Management Center, *supra* note 12.

[29] Tom Baker, The Medical Malpractice Myth (2005) (discussing the role of anecdote in tort reform). *See also,* Abraham, *supra* note 11, at 100-01 (citing several examples of "frivolous" suits against volunteers); King, *supra* note 19, 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).

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

[31] *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

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sparked outrage involved a young mountain climber who became quadriplegic after a ninety-foot fall; he sued the volunteers who participated in a nighttime helicopter evacuation for $11 million, alleging "reckless and negligent" rescue techniques, but later dropped the case.[32] Others may have sought liability reform because they feared a future decline in volunteering, possibly caused by increasing female workforce participation.[33] Second, legislators may have passed the liability laws in reaction to a widely publicized liability and insurance crisis.[34] This crisis was commonly 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.[35] Reform advocates blamed this crisis for many social ills including, perhaps most dramatically, obstetricians walking off the job.[36] Insurance industry representatives blamed "greedy lawyers, mushy-headed juries and a litigious culture,"[37] 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.[38] Regardless of the cause, tort reform was embraced to reduce liability insurance premiums.[39] Several states implemented "no-

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behind the New Jersey statute); *1997 Hearing* at 21 (statement of Edward Porter) (Little League coaches settled for $25,000).

[32] *See generally* David O. Weber, *A Thousand Points of Fright?*, 52 INS. REV. 40 (1991); *Volunteer Protection Act of 1987 Before the Senate Judiciary Subcomm, on Courts and Admin. Prac.: Hearing on S. 929/H.R. 911*, 100th Cong., 190-92 (1988) [hereinafter *1988 Hearing*] (testimony of Kevin Walker, volunteer, Riverside Mountain Rescue).

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

[34] *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, *supra* note 32, at 40; *The Liability Crisis: Companies, Consumers and Courts; Are insurers caught in a squeeze or putting it on?* N.Y. 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*, N.Y. TIMES, Aug. 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*, L.A. TIMES, Oct.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*, WASH. POST, Dec. 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.").

[35] 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.

[36] 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."). 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 J. EMPIRICAL LEGAL STUD. 207 (2005).

[37] *The Liability Crisis: Companies, Consumers and Courts; Are insurers caught in a squeeze or putting it on?* N.Y. TIMES, May 25, 1986.

[38] Russo, *supra* note 34.

[39] *See generally* Priest, *supra* note 35.

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fault" insurance during the mid-1980s when automotive insurance rates peaked.[40] Around the same time, many states regulated medical malpractice insurance,[41] and others called for limiting product liability.[42] Escalating premiums also affected nonprofits directly; the average cost of liability insurance for nonprofits increased by 155 percent in 1987.[43] Regardless of the reason for the premium increases – and there were many reasons offered some nonprofits could not afford insurance.[44] Legislators believed that liability protection was needed either to encourage insurers to insure volunteers[45] or to protect volunteers who were left without coverage.[46] Washington state legislators, for example, were inundated with complaints from constituents that insurance coverage had evaporated and concluded that "[t]he public interest is not being served by the commercial underwriters."[47]

Third, many state legislators believed that holding volunteers 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."[48] Others observed that even non-frivolous claims are unfair when they are

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

[41] 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.").

[42] 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).

[43] David W. Hartmann, *Volunteer Immunity: Maintaining the Vitality of the Third Sector of our Economy*, 10 U. BRIDGEPORT L. REV. 63, 77 (1989).

[44] *See, e.g.*, William Presecky, *Insurance Woes Strike Prairie Path*, CHI. TRIB., Jan. 29, 1986 (discussing volunteers' inability to obtain liability insurance, causing them to cease operations); Testimony of Terry Grundy, United Appeal & Community Chest of the Cincinnati Area to the Ohio Senate State and Local Government Committee, May 13, 1986; 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.*

[45] 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*, PHILA. 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*, PHILA. 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").

[46] 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 CHRON., July 29, 1986 (discussing resignation of board members due to lack of insurance).

[47] 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." (quoting Dick Marquart, Cover Letter, Report to the Legislature From the Joint Study Committee on Insurance Availability and Affordability 1 (Nov 12. 1985)).

[48] 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

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brought against volunteers because it is wrong to penalize well-intentioned people.[49] However, immunity opponents wondered, "Why should [negligent volunteers] be immune? . . . There doesn't need to be immunity unless they did something wrong."[50]

B. Federal Law

Federal legislation roughly tracked the state bills.[51] In 1997, Illinois Congressman John Porter introduced a bill that overcame the federalism objections that had caused twelve previous attempts to fail.[52] 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, with several exceptions including liability for gross negligence,[53] willful or criminal misconduct,[54] hate crimes,[55] sexual offenses,[56] harms caused by a volunteer who is under the influence,[57] or injuries from motor vehicle use.[58] 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 plaintiff[59] and eliminates joint and several liability for non-economic damage awards.[60] The VPA preempts state laws that are "inconsistent" while explicitly saving from preemption "any State law that provides additional protection from liability" to volunteers.[61] 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 to

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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).

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

[50] *Id.* (quoting Ralph Dewsnup, past president, Utah Trial Lawyers Association).

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

[52] *Developments*, *supra* note 7, 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).

[53] § 14503(a). There was no gross negligence exemption in the 1987 bill.

[54] § 14503(a)(3); *Momans v. St. John's Northwestern Military Academy, Inc.*, 2000 WL 33976543, at *5-6 (N.D. Ill. Apr. 20, 2000) (holding that VPA does not apply to fraud claim against volunteer defendant).

[55] § 14503(f)(1)B).

[56] § 14503(f)(1)(C).

[57] § 14503(f)(1)(E).

[58] § 14503(a)(4).

[59] § 14503(e)(1).

[60] § 14504(b).

[61] § 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).

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permit liability.[62] New Hampshire is the only state that has opted out, despite having its own act.[63]

Advocates supported the federal act for similar reasons to those advanced for state immunity. First, some worried that the fear of tort liability, unfounded or otherwise, discouraged volunteering.[64] Representative 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.[65]

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."[66] Other politicians pointed to the role of tort liability in declining volunteerism, a particular problem in the context of a shrinking government and the need to replace government services with private initiatives.[67]

Second, supporters thought that it was inappropriate for nonprofit organizations to spend a considerable, and rising, 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."[68] Many of these concerns reflected the same worries expressed in the general tort reform debates.[69]

Third, supporters believed that lawsuits were generally frivolous and accidents were simply a part of life. According to John Ashcroft, then Senator from Missouri, the bill

> goes to the heart of who we are. . . . [T]hat 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. . . . [H]ow 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

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[62] 42 U.S.C. § 14502(b).

[63] 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….").

[64] 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.

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

[66] *1988 Hearing* at 7 (testimony of the Honorable John. E. Porter).

[67] *1997 Hearing* at 1-3 (introductory statement by Hyde).

[68] 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.

[69] *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).

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> the nature of boys. We played fox over the hill. You just had to run from one line to another line without getting knocked down, tackled or beat up.[70]

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.[71] A common theme was that it is simply unfair to hold liable those who act generously.[72]

There was only one dissenting voice in Congressional hearings about the 1997 VPA. Law Professor Andrew Popper criticized the act as a class-based transfer from those who are injured to those who injure,[73] motivated only by politics and not by a genuine concern for volunteerism.[74] 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."[75] Although the costs of the VPA to injured parties were barely raised in the 1997 hearings, Representative Porter had earlier suggested that immunity should not be extended to volunteers at organizations that held either charitable or sovereign immunity.[76]

III. Previous Scholarship

A. Legal

Legal research on volunteer immunity generally focuses on whether the statutes are either fair or on their incentive effects, particularly whether liability exposure discourages volunteering.[77] First, scholars concerned with the fairness of immunity note that in the volunteer context it shifts the cost of accidents from volunteers onto nonprofit organizations or, worse, accident victims. Some find this welfare-enhancing because organizations may be better

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[70] *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).

[71] 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.*

[72] 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."). *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?").

[73] Andrew Popper, *A One-Term Tort Reform Tale: Victimizing the Vulnerable*, 35 HARV. J. ON LEGIS. 123, 137 (1998).

[74] *Id.* at 133 n. 54.

[75] *Id.* at 134.

[76] *1988 Hearing* at 12-13 (statement of John Porter).

[77] A few authors consider constitutional issues. *See, e.g.*, Light, *supra* note 52, at 62-63 (arguing that the VPA violates federalism principles); Benard, *supra* note 64, 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).

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able to manage risk than individual volunteers.[78] It may also, however, require organizations to limit their use of volunteers, which may be either welfare-enhancing or welfare-decreasing depending on the nature of the volunteers.[79] Further, if organizations cannot satisfy judgments or possess charitable immunity, the injured party, often someone of "low- to moderate-income" bears the loss.[80] Whether this is unfair depends on significance of compensation as a justification for tort and one's views on the appropriateness of the redistributive implications of tort.[81] In fact, in an argument echoing the justifications for charitable immunity laws advanced in the mid-nineteenth century,[82] some claim that it is unfair for a volunteer's kindness to be repaid with liability[83]–that is, good beneficiaries should not bite gift-volunteers in the hand.

Second, other legal scholars concentrate on deterrence, both predicting that immunity increases carelessness and that liability decreases volunteering.[84] Deterrent effects may be particularly strong for volunteers because, unlike market actors, it is relatively easy for volunteers to quit when they perceive themselves to be exposed to liability.[85] 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.[86]

In addition to disagreeing about whether liability *discourages* volunteering, legal scholars disagree about whether the volunteer immunity *encourages* it. Supporters of immunity argue that it is necessary to generate human capital as liability protection is necessary to generate financial capital in the corporate context.[87]

More skeptical observers point to widespread confusion regarding the laws because of 1) the lack of uniformity among jurisdictions, 2) volunteer awareness of the laws, their exceptions, [88] and their scope,[89] 3) ambiguity due to poor drafting[90] and over which state's law applies,[91] and

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[78] Hartmann, *supra* note 43, at 79 (arguing that nonprofits are superior risk managers to individuals).

[79] 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).

[80] *Developments*, *supra* note 7, at 1690-91.; Popper, *supra* note 73, at 134.

[81] Hartmann, *supra* note 43, at 77; King, *supra* note 19, at 685-86.

[82] Horwitz, Charitable Immunity (manuscript on file with author).

[83] King, *supra* note 19, 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).

[84] *Developments*, *supra* note 7, at 1690, 1692 ("[I]mmunity can operate to under-deter risky and harmful behavior."); Tremper, *supra* note 77, at 426-27.

[85] Benard, *supra* note 64, 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 19, at 702, 734.

[86] Tremper, *supra* note 77, at 427-28; *Developments*, *supra* note 7, at 1690; Benard, *supra* note 64, at 112-14.

[87] Tremper, *supra* note 77, at 443-44.

[88] Rebecca Mowrey & Adam Epstein, *The Little Act That Could: The Volunteer Protection Act of 1997*, 13 J. LEGAL ASPECTS SPORT 289, 299 (2003) ("[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.").

[89] Brown, *supra* note 31,, at 571-72 (noting and denouncing such variation as "unfair" to both volunteers and victims); *Developments*, *supra* note 7, 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 to Play Ball?,* 23 SETON HALL LEGIS. J. 319, 349 (1999) (criticizing the VPA for allowing variation among states to

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4) plaintiffs' ability to forum-shop.[92] Sparse case law interpreting the state and federal acts adds to the uncertainty of the volunteers' protection.[93]

Other scholars argue that when immunity depends on the volunteer or nonprofit's ability to meet certain conditions, volunteers will be hesitant to offer their services.[94] The statues, for example, only provide partial immunity. They often require volunteers to act in "good faith" or not be grossly negligent or reckless, thereby undermining the volunteers' willingness to rely on the statutory protection.[95] Moreover, statutes do not protect volunteers from the expenses of defending against frivolous suits.

Many scholars are appropriately skeptical about these claims because there is no rigorous empirical evidence to support them.[96] Further, volunteers face little risk of liability exposure in practice because they are rarely sued;[97] insurance, "while expensive and sometimes difficult to obtain, can nonetheless be had in the nonprofit sector;"[98] and states can choose to subsidize premiums to encourage additional coverage.[99]

B. Determinants of Volunteering: Empirical Findings

Little data exist regarding the relationship between immunity and volunteerism.[100] Previous studies include a few national opinion polls from the 1980s and scholarly studies regarding the factors that affect volunteer supply which, with one exception, overlook the relationship between immunity and volunteering.

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persist); Benard, *supra* note 64; Daniel Kurtz, *Protecting your volunteer: the Efficacy of Volunteer Protection Statutes and other liability limiting devices*, C726 ALI-ABA 263, 289 (1992) (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).

[90] Mowrey & Epstein, *supra* note 88, at 300-01 (discussing whether volunteers engaging in fundraising activities are covered under the VPA); *Developments*, *supra* note 7, at 1690; Light, *supra* note 52, 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).

[91] Abraham, *supra* note 11, at 104 (criticizing excessive judicial discretion in selecting which law applies, suggesting reform of conflict-of-law rules).

[92] *Id*.

[93] *Developments*, *supra* note 7, at 1688.

[94] Biedzynski, *supra* note 89, at 349 (noting that federal protection is conditioned on meeting certain state requirements, which may diminish its effectiveness); Kurtz, *supra* note 89, at 289; King, *supra* note 19, at 703; *See 1997 Hearing* at 13 (1997) (testimony of Paul Coverdell).

[95] Kurtz, *supra* note 89, at 289; Mowrey & Epstein, *supra* note 88, at 299 (noting VPA exclusions); *Developments*, *supra* note 7, at 1690; King, *supra* note 19, at 703, 707 (criticizing exclusions for the "ill-defined" concepts of willful and wanton conduct or gross negligence).

[96] Tremper, *supra* note 77, at 427-28; *The Quality of Mercy: 'Charitable Torts' and their Continuing Immunity*, 100 HARV. L. REV. 1382, 1394 (1987).

[97] Denise Ping Lee, Note, *The Business Judgment Rule: Should it protect Nonprofit Directors?,* 103 COLUM. L. REV. 925, 961 (2003); Brown, *supra* note 31, at 572 ("Once the public became better informed on the facts that lawsuits against coaches are quite rare, support for immunity statutes would fade.").

[98] *The Quality of Mercy: 'Charitable Torts' and their Continuing Immunity*, 100 HARV. L. REV. 1382, 1394 (1987); *see also* Kimery, *supra* note 85, at 689.

[99] Brown, *supra* note 31, at 577.

[100] *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.").

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i. Survey Data

Liability reform proponents relied on raw data from three surveys which, although providing a glimpse into perceptions about liability in the 1980s, are of more limited use in understanding the relationship between liability and volunteering. A survey of 2,532 leaders at for-profit and nonprofit organizations, commissioned by Peat Marwick in 1986,[101] found that twenty-eight percent of the nonprofit respondents identified a directors' and officers' liability "crisis"[102] and eighty-seven percent said that liability negatively affected governance in the United States.[103] Among all respondents, only six percent reported having a director resign and only eight percent reported having had a board candidate decline membership because of liability exposure.[104] However, a much higher percentage reported adopting new governance procedures in response.[105] In 1986, the National Association of Corporate Directors[106] surveyed 370 nonprofit and for-profit directors, finding that one in seven had refused to serve on a board without liability protection, whereas four percent had resigned from such a board.[107] Nearly half knew someone who had refused service for lack of directors' insurance.[108] Finally, in 1988, the Gallup Organization surveyed nonprofit executives and directors, identifying a widespread perception that liability was causing volunteering to decline: twenty percent of executive officers reported reductions in their volunteer force and fourteen percent reported eliminating programs because of liability risk.[109] The survey also reported concern about drastically increasing liability insurance premiums.[110] Sixteen percent of directors reported that they had withheld their volunteer services due to a fear of liability; only two percent had ever been sued, even including suits regarding employment disputes.[111]

ii. Who Volunteers and Why?

Although empirical scholars have provided compelling models for volunteer supply, they have yet to consider whether and how tort liability affects the decision to volunteer.[112]

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[101] *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.

[102] *Id.* at 112.

[103] *Id.*

[104] *Id.* at 115.

[105] *Id.* at 119. 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.

[106] *Id.* at 120.

[107] *Id.* at 120-21.

[108] *Id.* at 120-21.

[109] 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, 9, 21 (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.

[110] *Id.* at 8.

[111] *Id.* at 31-32.

[112] *See, generally,* Menchik & Weisbrod, *supra* note 6; 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*

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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.[113]

Many studies conclude that volunteering is explained by self-interested utility gains rather than pure altruism, suggesting that decreasing the price of volunteering through immunity should increase the volunteer rate. Empiricists have identified the "warm glow" that comes both from increasing the supply of public goods and from giving itself.[114] There are both consumption (getting pleasure, improving health)[115] and investment (meeting people to increase business contacts)[116] aspects to volunteering, which may explain the positive correlation between volunteering and wages.

Menchik and Weisbrod consider both the consumption and investment aspects of volunteering, finding evidence for both, and identify a negative relationship between net wage rate and hours volunteered.[117] They fail to find the expected "crowding-out" negative relationship from increased government expenditures for aggregate volunteerism, which would suggest altruistic volunteering, but did find such a relationship in the higher education and social welfare fields.[118] Brown and Lankford also find[119] a strong positive relationship between donations of money and time, concluding that individuals have various "tastes for donating" and that donation of money and time are gross complements.[120]

Finally, Freeman analyzes the socioeconomic characteristics of volunteers (e.g., women and parents volunteer more than others).[121] Consistent with previous studies, he also finds a strong correlation between volunteering and giving, concluding that some people have a "taste" for charity.[122] 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.[123]

Time: Estimating the Effects of Tax Prices and Available Time, 47 J. PUB. ECON. 321 (1991); David Horton Smith, *Determinants of Voluntary Association Participation and Volunteering: A Literature Review*, 23 NONPROFIT & VOLUNTARY SECTOR Q., 243, 244 (1994).

[113] Carlin, *supra* note 33, generally and at 816.

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

[115] 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* Hartmann, *supra* note 43, at 74 (noting that young volunteers obtain valuable experience whereas older volunteers gain a sense that they are "doing something useful" with their skills).

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

[117] Menchik & Weisbrod, *supra* note 6.

[118] *Id*. at 179-80.

[119] Brown & Lankford, *supra* note 112, at 323.

[120] *Id.* at 332, 330; *see also* Nancy Wolff, Burton A. Weisbrod & Edward J. Bird, *The Supply of Volunteer Labor: The Case of Hospitals*, 4 NONPROFIT MANAGEMENT & LEADERSHIP, 23, 26 (1993) (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/~jandreon/WorkingPapers/ags-v8.pdf.

[121] Richard Freeman, *supra* note 112, at S140-41, S146, S152.

[122] *Id*. at S148.

[123] *Id*. at S151-53.

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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."[124]

Feldman recently decomposed separate effects of a reduction in the tax-price of monetary donations on giving and volunteering: the direct effect on donations of money and 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.[125] She finds that time and money are substitutes—i.e. lowering the price of donating money causes people to shift from labor towards money donations—and that researchers had overlooked this effect because other, non-price factors influence the relationship between giving time and money. For example, financial donors are relatively likely to be asked to volunteer.[126]

These studies suggest that volunteering is not exclusively altruistic, and therefore, liability exposure may affect the potential volunteer's self-interested decision regarding whether to volunteer.

iii. Immunity and Volunteering

In the only previous study to examine immunity and volunteering, Judd predicts that liability exposure reduces the utility of volunteering under both the consumption and investment models of volunteering.[127] Under a consumption model, the motivation to volunteer should decrease as the expected cost in the form of liability risk increases. Under the investment model, liability decreases the volunteer's lifetime earnings, which also decreases a volunteer's willingness to invest time.

Judd estimates the effects of two measures of liability exposure on volunteering in 1992. He first considers state litigiousness, measured by the per capita tort caseload in state trial courts.[128] He also attempts to quantify volunteers' liability exposure under state immunity statutes by adding the number of exceptions to general immunity listed in each state statute. Judd carefully notes that his analysis assumes that statutory law is accurately applied by the courts.[129] He finds no relationship between volunteering and immunity statutes, but does find that residents in states with high per capita tort filings volunteer less than others.

Our study improves on Judd's work in important ways, including adding comprehensive controls and using multiple years of data. We also consider the scope of immunity statutes whereas Judd treats alike statutes that immunize all volunteers and only some volunteers.[130]

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[124] *Id*. at S141.

[125] 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 .

[126] *Id.* at 19.

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

[128] *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.

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

[130] Judd notes that he only considers statutes that provide protection to "'line worker' type of volunteers." Judd, *supra* note 127, 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

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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. However, if a person acts willfully, for example, the person is almost certainly acting recklessly.

IV. Methodology

A. Data

Volunteering data are from the Independent Sector (IS) Giving and Volunteering in the U.S. surveys (1988, 1990, 1992, 1994, 1996, 1999, and 2001). The IS commissioned the Gallup Organization to conduct the first six surveys (in person) and Westat to conduct the 2001 survey (random digit dialing). Although the 2001 survey included new questions and a new organization, the questions in our analysis were constant across all years. While the 2001 survey over-sampled certain groups (African-American, Hispanic, and wealthy households) to obtain sufficient samples, our models control for these categories. State civil filings are from the State Court Caseload Statistics Annual Reports (1986-2003) published by the National Center for State Courts. State population data are from the U.S. Bureau of the Census. State wages are from the Bureau of Economic Analysis. State unemployment rates are from the U.S. Bureau of Labor Statistics.[131] Income tax itemization rates are from the Internal Revenue Service.[132]

B. Empirical Strategy

We first compare volunteer rates in various immunity regimes.[133] We categorize the immunity into five regimes: (1) up to, but not including, gross negligence or recklessness from state law; (2) up to, but not including, willful and wanton or intentional behavior from state law; (3) up to, but not including, gross negligence or recklessness from state and federal law; (4) from any source; and (5) no immunity.

In the basic regression 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 state and federal law.[134] As explained above, the VPA sets a floor below which states cannot fall unless they opt out of the act. Individual and state control variables are listed in Table 2.

We model the effects of legal regime as follows:

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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.

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

[132] IRS. *Statistics of Income Bulletin*. Annual Reports, Washington, D.C. (1988, 1990, 1992, 1994, 1996, 1999, 2001).

[133] Following the statutes, we categorize the standards by increasing levels of culpability: negligent, grossly negligent, reckless, willful and wanton, and intentional conduct. 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).

[134] In unreported specifications, we found no independent federal effect using a difference and difference test.

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

where Volunteer_Year is a categorical variable measuring whether the respondent claimed to volunteer for a government or nonprofit organization during the previous year. As required by the statutes, volunteering encompasses all types (e.g., religious, sports, education) and levels (directorships and line volunteers) of volunteering, if the service is provided through a formal entity.[135] The surveys defined volunteering as not merely membership but "*actually working* in some way to help others."[136]

I are the two central variables. We first construct **I** as a binary variable measuring whether the respondent lives in a state with either federal or state immunity up to, but not including, gross negligence or recklessness. Then we construct **I** to measure immunity up to, but not including, willful or intentional conduct. We treat states that immunize only directors or particular volunteer types, such as firefighters, as not immunizing volunteers in general.

D are demographic variables associated with the propensity to volunteer, including the respondent's race, age, number of children, employment status, membership in a religious institution, income, and education. Both women and religious organization congregants are disproportionately likely to volunteer. [137] According to scholars, women may volunteer more than men because they work fewer hours, are more involved in children's activities, or, if they are high-earners, may seek to preserve their human capital while not doing paid work.[138] Religious group members may be particularly generous or have greater opportunity to volunteer than others.

We include a variable for children because, among married women, both volunteering rates and the number of hours volunteered are positively correlated with the number of children in the household.[139] We include a children-squared variable, in part, as a proxy for the time to volunteer. We expect the coefficient on the squared variables either to be smaller in magnitude than the age variable or negative because people with many children likely have less time to volunteer.[140] Similarly, because we assume that volunteering likely varies over a lifetime we include age and age-squared variables. Some researchers show that volunteering rates peak

[135] *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").

[136] 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.

[137] *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 116, at 818 (finding that Canadian "men participate significantly less in volunteer work than women"). *Cf.* Smith, *supra* note 112, at 248 (listing earlier studies and their relationship between gender and volunteer participation and concluding that men volunteered more than women in the 1980s).

[138] Carlin, *supra* note 33, at 817.

[139] Carlin, *supra* note 33, 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.*.

[140] Vaillancourt speculates that volunteering will increase with the number of children because socialization needs increase. Vaillancourt, *supra* note 116, at 817. Carlin finds that having more children increases the probability of volunteering but reduces the number of hours volunteered. Carlin, *supra* note 33, at 802.

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around middle age; others identify peak volunteering at between thirty and forty-four years.[141] Still others identify a broader period, "the middle years" (from thirty-five to fifty-five), as the peak volunteering ages.[142] On the contrary, it is possible that the time available to volunteer comes *later* in life. Perhaps retired people may have more time to volunteer,[143] although they may have less physical ability.

Because education is a strong predictor of volunteering, we include five levels of education based on the highest level reached: high school, high-school graduate, post-high school but less than a four-year college degree, four-year college degree or more, and none of the above.[144] We also include two measures of race and ethnicity. Respondents self-identified as Hispanic and as either white, black, Asian, or other.[145] Studies predict lower participation among "dominant minorities, such as African-Americans and Hispanics."[146] Finally we include indicator variables for eleven categories of income because volunteering is positively associated with income. [147]

E are state economic variables. We include 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 divided by total filings) and is included to account for the cross-price effects between time and money donations. 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 giving from income tax, the price of making donations is lower than it would be otherwise.

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[141] *Id.* at 804.

[142] Smith, *supra* note 112, at 248.

[143] Smith, *supra* note 112, 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).

[144] Smith, *supra* note 112, at 248. 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.

[145] 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.

[146] Smith, *supra* note 112, 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 137, for review.

[147] Freeman, *supra* note 112, at S150; Menchik & Weisbrod, *supra* note 6, at 174-75l. 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 >=$100,000. Smith, *supra* note 112, 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.

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We construct **L,** the state civil litigation rate, by dividing state civil filings by state population. We hypothesize that even if a potential volunteer does not know the liability risk of volunteering, she may perceive a greater risk in states with relatively high levels of civil lawsuits.

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

After performing the initial analysis, we estimate the effects of volunteer immunity laws by replacing **I** with **J,** a series of alternative variables. We use three alternative specifications: (1) where **J** is a single variable for any state or federal volunteer immunity; (2) where **J** are two variables for (a) any state immunity and (b) federally imposed immunity; and (3) where **J** are three variables measuring (a) state immunity up to, but not including gross negligence or recklessness; (b) state immunity up to, but not including, willful and wanton or intentional behavior, and (c) federally imposed immunity.

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

V. Results, Sensitivity Tests, and Study Limitations

A. Results

The aggregate, unadjusted data suggest a positive correlation between volunteering and immunity. Respondents in states with immunity were nine percentage points more likely to volunteer than respondents in states without immunity ($p<0.01$) (See Figure 1, Table 3). Further, respondents were more likely to volunteer in states with relatively high levels of immunity compared to those in states with lower levels.

The main regression results, which exclude a time trend, demonstrate a significant association between volunteering and immunity (Table 4, Columns 1& 2). Estimating the probability of volunteering with control variables set at their mean values, 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 ($p<0.05$).

Respondents also volunteer less in states with comparatively more civil litigation. An increase of one civil suit per 1,000 people is associated with 7.33 percentage points less volunteering ($p<0.05$).

B. Sensitivity Tests: Rejecting Alternative Explanations

i. Year Trends and State Fixed-Effects

Our results cannot rule out an effect of either a secular trend or unobserved state characteristics. Here we present additional tests, including alternative regression specifications, to help determine whether immunity, rather than a time or state effect, explains the results.

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Ordinarily one would include an indicator variable for year of survey in the main specification, particularly given the increase in volunteering in 2001.[148] However, because many states passed legislation in 1988 or earlier and federal preemption applied everywhere in 1997, we suspected that year variables would absorb much of the immunity effect because of multi-collinearity. Including a year dummy, the coefficient on high-level immunity variable remains positive (about 3 percentage points) and the coefficient on low-level immunity is effectively zero but, as we predicted, the coefficients on both are statistically insignificant (Table 4, Column 3). Unfortunately, we cannot solve this problem with adding data because there are no pre-1988 observations in the dataset.

Still, there are reasons to believe that immunity, rather than timing alone, might explain at least some of the results. First, we find no secular time-trend in the aggregate data, a result confirmed by other researchers.[149] Second, we find strong evidence that each of our measures of immunity were highly collinear with survey-year.[150] Still, the results may be caused by (1) endogeneity (states with more volunteering disproportionately adopted immunity statutes), or (2) an unobserved characteristic that 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.[151] 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. These insignificant results are unsurprising given that few states implemented immunity, particularly at the higher levels, during the study period. We therefore pursued an additional approach.

We recoded as Year-0 the year of state immunity adoption, from either state or federal sources. We coded each year after as 1, 2, 3 etc. and each year before as -1, -2, -3, etc., thereby separating the effects of immunity from a year trend. The results are most clearly seen in Figures 3a and 3b.[152] 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 3a shows an increase in volunteering rates after states enact immunity laws, regardless of the enactment year. Figure 3b, which controls for being asked to volunteer, shows a sharper difference in volunteering trends: average state volunteering rates decline before and increase after the enactment year.[153] These results support the idea that volunteering is responsive to immunity. They cannot, however, tell us whether the laws came

[148] Because the surveys were performed in May, June, and July of 2001, the 2001 increase in volunteering does not reflect increased volunteering after the attacks of September 11, 2001.
[149] *Id.*, at 170, 169, Table-7.4.
[150] The condition indices for the relationship between various immunity variables and survey-year ranged from 891-1,174 where an index of 30 suggests strong collinearity. Peter Kennedy, A GUIDE TO ECONOMETRICS 213 (5th ed. 2003).
[151] 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.
[152] These results are confirmed by significant coefficients. Results available from authors.
[153] This test excludes 1988 because the survey did not ask respondents whether they were asked to volunteer.

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just at the point where respondents were motivated both to act politically and increasingly volunteer.

Finally, we used a difference-in-difference approach to determine whether the federal VPA had a differential effect in states where it preempted state law.[154] 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 before 1997), the coefficient on the post-1997 variable was positive even in states that already provided immunity.[155]

ii. Other Sensitivity Tests

Given the geographic distribution of immunity statutes, it is difficult to think of plausible left-out variables that are both correlated with volunteering and disproportionately found in states with immunity. One possibility is that social capital – the strength of social connectedness or social engagement – is both correlated with voluntarism and with the political will to protect volunteers. To address this alternative explanation, we examine a model including Bratz and Putnam's social capital index.[156] 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.[157]

This measure not only controls for differences in state residents' propensity to volunteer but, because it includes a count of nonprofits, also controls for state differences in volunteering opportunities.

Social capital is strongly correlated with volunteering. Including the controls in equation 1, a one-unit increase in the social capital z-score is related to approximately 8 percentage points more volunteering.[158] Yet the relationship between immunity 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.[159] Interaction tests demonstrate that the effect of social capital does not vary by immunity type.

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[154] 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.

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

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

[157] 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., 2007), *available at* http://www.nber.org/books/CRIW03-BH/skinner-staiger7-9-06.pdf.

[158] 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.

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

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Because previous research suggests that volunteers are often motivated by social obligation,[160] we also 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).[161] We found no significant effects among respondents being asked to volunteer, which likely indicates selection on an endogenous variable;[162] 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 higher in states with immunity than in states without immunity, although the results were not statistically significant (lower level protection, 0.788 hours per month; higher level protect, 1.33 hours per month).

C. Study Limitations

The data raise four limitations in addition to those discussed above. First, they are self-reported and retrospective. Second, the number of observations and survey method changed in 2001; these changes raise a particular concern given the large increase in volunteer rates that year. Further, the 2001 survey targeted only adults 21 years and older, whereas the earlier surveys targeted adults 18 and older. There is no a priori reason to believe, however, that the self-reported data, survey changes, or increase in observations had a differential effect in states with or without immunity. Moreover, the additional observations appear not to be concentrated in states with a particular immunity regime – in Figure 3a, the lines representing the increase in respondents from 1999 to 2001 are roughly parallel, particularly for respondents in states with volunteer immunity up to either gross negligence or recklessness and in states with no state immunity (i.e. where the federal immunity applied). Third, there were no respondents in thirteen states for at least one survey year.[163] 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 in the state. Missing values ranged from approximately 0.5 percent to almost 10 percent of the observations. Finally, the surveys did not differentiate between wage and other income, making for an imperfect proxy for the opportunity cost of volunteering.

The state litigation variable was also imperfect.[164] It included all civil suits rather than only tort suits, which would, arguably, make for a better measure of the real liability risk to

[160] Laura Leete, *Work in the Nonprofit Sector*, *in* THE NONPROFIT SECTOR 166-67 (2006) (citing Freeman, *supra* note 112).
[161] Results from linear-probability-model available from authors, excluding 1988.
[162] Results available from authors, excluding 1988.
[163] 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.
[164] 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.

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volunteers. The data on tort litigation by state, however, are inconsistent across states and only sporadically reported.[165]

VI. Insights, Implications, and Conclusions

Despite limitations, we believe that the cross-sectional results suggest a plausible positive relationship between volunteering and immunity and, therefore, consider the implications of the relationship.

A. The Supply Side: Why Do People Volunteer?

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: (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.[166] 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.

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

We know comparatively little about why organizations use volunteer labor or how immunity affects the demand for volunteers. The widespread organizational support for volunteer immunity—including most of the nation's largest nonprofits[167]–raises some puzzles. One might expect limited demand for volunteers; they may crowd-out donations or government

[165] 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.

[166] Freeman, *supra* note 112, at S164.

[167] 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. *1997 Hearing* at 20 (statement of Representative John Porter, U.S. House of Representatives).

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support, violate labor contracts, complicate relations with paid-staff,[168] or come with high direct costs of recruiting, screening, training, managing, and retaining volunteers. [169]

In short, free labor is not a free lunch, and volunteer immunity may make it more expensive for organizations in two ways: it shifts liability onto the organization, and it increases liability by removing individual incentive effects of tort exposure for individual volunteers. 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," the inverse is also true.[170] If an individual volunteer is immune, a plaintiff can make direct and indirect claims against the nonprofit. This increased risk was only briefly mentioned in the 1997 VPA hearings and dismissed as an issue "best handled by organizational liability insurance."[171]

Despite the potential cost of increased liability –either because plaintiffs increasingly sue organizations or because of an increase in the underlying riskiness of volunteer behavior – the additional volunteer labor is worth it. In some cases, such as free health clinics, organizations simply cannot operate without volunteer labor.[172] There are hints in the VPA history that demand for volunteers was not satisfied. Further, scholars predict that nonprofit growth[173] and changing demographic conditions will lead to increased competition for volunteers.[174]

Finally, some organizations are themselves immune from suit. Some state immunity statutes extend protection to nonprofit organizations,[175] and remnants of common law charitable immunity exist in several states,[176] including damage caps, protections against vicarious

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[168] Leete, *supra* note 160, at 167.

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

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

[171] *1997 Hearing*, at 65 (prepared statement of Robert K. Goodwin, President & CEO, the Points of Light Foundation).

[172] Commentators have suggested that malpractice exposure deters physicians from volunteering, particularly in cases where the physician's liability insurance will not cover volunteer activities or where a retired physician has no malpractice insurance. Paul A. Hattis, *Overcoming Barriers to Physician Volunteerism: Summary of State Laws Providing Reduced Malpractice Liability Exposure for Clinician Volunteers*, 2004 UNIV. ILL. L.R. 1033. During the study period, several states immunized physicians, either through general volunteer immunity statutes or specific health care statutes. *Id.* However, we found no evidence that health care organizations were influential players in lobbying efforts to secure volunteer immunity. More traditional voluntary organizations, such as the Little League, dominated discussion.

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

[174] Wolff, Weisbrod & Bird, *supra* note 120, at 24.

[175] *See, e.g.*, D.C. CODE ANN. § 29-301.113(d) (limiting nonprofit organization's liability for negligent volunteer to extent of insurance); N.H. REV. STAT. § 508:17(II) (limiting nonprofit organization's liability for negligent volunteer to $250,000); UTAH CODE ANN. § 78-19-3 (limiting nonprofit organization's liability for volunteers who commit an intentional or willful and wanton act of misconduct). See Appendix for more information on whether a nonprofit organization is liable for the torts of its volunteers under each state's law.

[176] Alabama, Arkansas, Georgia, Maine, Maryland, New Jersey, Virginia, and Wyoming. Nonprofit Risk Management Center, *supra* note 12, at 8. The Nonprofit Risk Management Center also lists Utah, which abrogated charitable immunity in *Sessions v. Thomas D. Dee Memorial Hospital Ass'n*, 78 P.2d 645, 651-53 (Utah 1938), but restored it by statute in case where the volunteer acted with at least willful or wanton misconduct and the organization had reasonable notice of the volunteer's unfitness. Utah Code Ann. §78-19-3. Three additional states (Colorado, Massachusetts, and South Carolina) cap nonprofit tort liability. Tennessee also preserves immunity when payment of the tort judgment would divert charitable funds and the tort arises out of the organization's core charitable activities. *C.f. Applewhite v. Memphis State University*, 495 S.W.2d 190, 197 (Tenn. 1973); *Gamble v. Vanderbilt University*, 200 S.W. 510, 512-13 (Tenn. 1918).

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liability,[177] and immunity from suits by charitable beneficiaries.[178] There is some evidence that after passage of the VPA, nonprofits reorganized to create their own immunity, separating their risky activities from their assets, leaving victims without compensation and reducing incentives for nonprofits to "engage in prudent risk-management activities."[179]

These issues need further study. We plan to examine the potential interactions between organizational and individual immunity in future work.[180] One such question is to what extent, if any, organizational liability influences individual conduct, and *vice versa*? These tradeoffs between organizational and individual risk are complicated in the nonprofit context. Davis, for example, argues that shielding a nonprofit's wealth will not necessarily give volunteers "an incentive to lead the enterprise into risky activities."[181] Unlike shareholders of for-profits who both control corporations and benefit from cost-justified liability avoidance, non-altruistic donors will donate even though their donations go to tort victims rather than beneficiaries and judgment-proofing will have little affect on them, while altruists who disregard tort victims may withhold contributions from charities.[182]

On a practical level, 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. Accurate communication about underlying tort risk may be more effective and fair than these statutes.

C. Insights for Tort Law and Theory

i. Deterrence

A dominant tort theory characterizes its purpose as promoting social welfare through accident deterrence; by forcing potential defendants to internalize the costs of their risky behavior, they impose only efficient risks. 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 . . . 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

[177] *See, e.g. Munoz v. City of Palmdale*, 75 Cal. App. 4th 367, 372, 89 Cal. Rptr. 2d 229, 232 (1999) (no vicarious liability where volunteer placed a coffeepot on shelf at senior center and injured woman), *review denied* (Cal. 1999).
[178] *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).
[179] Harvey P. Dale, Speech given on the occasion of the 10th Anniversary of Peter Swords as President of the Nonprofit Coordinating Committee 10 (Nov. 17, 1997) (citing several IRS letter rulings approving reorganizations).
[180] One might expect that volunteer immunity laws to have little or no effect in states without charitable immunity for organizations and to have a larger effect in states with organizational immunity. This is because organizations might be more willing to recruit volunteers when they are not liable for the negligence of those volunteers. In very preliminary testing of this hypothesis, we have found no difference in volunteer rates in states with and without organizational immunity. This might be because of the weakness of charitable immunity laws even in those states that have them. We are grateful to Jennifer Arlen for suggesting this line of research.
[181] *See, e.g.,* Davis, *supra* note 170.
[182] *Id.* at 413.

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> people lack sufficient information about the probability of an accident to make rational judgments concerning accident avoidance.[183]

Goldberg puts it simply: "a fundamental premise of the deterrence model is that legal sanctions are capable of deterring, . . . [yet] . . . evidence suggests that actors do not respond to the threat of liability with anything like regularity."[184]

Whether deterrence occurs is an empirical question. While liability exposure 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 increase care or, as we suggest here, avoid an activity altogether.[185] People who live in jurisdictions without immunity are less likely than others to volunteer, suggesting that individuals do indeed react to tort risk—or the perception of that risk—through activity avoidance.

A compelling piece of evidence for the deterrent effect of tort law from 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 more careless behavior are more likely to volunteer than those who live in regimes that shield negligence. 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, many analyses and tort doctrines tacitly assume the tortfeasor is either an individual or a firm, but the two are unlikely to respond to tort law in the same way. [186] This does not mean that one of them will be rational and the other irrational – firms are not monolithic actors[187] and individuals often behave irrationally. But firms with teams of lawyers and individuals with limited knowledge of the law will likely differ in their understanding of legal risk.

More concretely, we estimate that volunteer tort immunity generates about $4.4 billion a year (0.035 percent of 2005 GDP). We base this estimate on our finding of 7.5 percentage points more volunteering in states with some immunity than in states no immunity.[188] Since volunteers spent a median of 50 hours volunteering annually,[189] 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 a 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 at $17.80 an hour[190] and we adopt the CPS estimate

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[183] William M. Landes & Richard A. Posner, *The Positive Economic Theory of Tort Law*, 15 GA. L. REV. 851, 857 (1981). *See also,* Richard A. Epstein, *The Social Consequences of Common Law Rules*, 95 HARV. L. REV. 1717 (1982).

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

[185] Steven Shavell, *Strict Liability versus Negligence*, 9 J. LEGAL STUD. 1 (1980); Landes & Posner, *supra* note 183, at 871.

[186] Croley, *supra* note 4, at 1705.

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

[188] 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.

[189] Bureau of Labor Statistics, ftp://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."

[190] 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.

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that 65.4 million people volunteered during the period.[191] Using this number also introduces some error because it includes volunteer rates in states with and without immunity, but probably makes the estimate a lower bound of the immunity effect since even 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.

We believe these results are generalizable. Although social pressures may be at play, no law forces anyone to volunteer or to purchase liability insurance. Someone fearful of liability can simply choose not to volunteer. This estimate does not, however, indicate whether the forgone activity is efficient or fair. This depends on both the value and distribution of avoided accidents. To the extent that tort law deterred particularly accident-prone people, it may have had a good effect.[192] 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 information, there is no *a priori* reason to believe that volunteering is a particularly risky activity and that we would want to deter participation.[193]

ii. Risk versus Perception

Although possible, we doubt that direct financial risk is the best explanation for our findings. The probability of suit, either before or after the introduction of the immunity laws, appears to be quite small with only a few reported cases against non-director volunteers.[194] Moreover, immunity does not fully protect volunteers from legal costs since volunteer-defendants must hire a lawyer to raise immunity as an affirmative defense and has the burden of proof on the issue.[195] Further, at least in the short term, the laws are vaguely drafted without interpretive caselaw that using them as an effective defense would likely involve protracted litigation.

Volunteers may *perceive* that the immunity laws are effective and misunderstand the remaining financial risk of volunteering in regimes with immunity. If true, why would volunteers be so knowledgeable about their liability regimes yet so confused about their true risks under immunity? Publicity about immunity appears not to be the answer; we found little mention of even the federal act in major newspapers. Maybe volunteers in states without immunity 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

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

[192] In a related context, David Hyman has suggested that in the context of emergencies people volunteer too much. David A. Hyman, *Rescue Without Law: An Empirical Perspective on the Duty to Rescue*, 84 TEX. L. REV. 933 (1997) (summarizing reports of failures to rescue, rescues, and accidents during rescues; concluding that six times as many Americans die in annual rescue attempts as those that die in situations where a potential rescuer chose not to act).

[193] Those who endorse deterrence as the best justification for tort "emphasize that accident rates are typically correlated with levels of inherently risky activity," so that strict liability may be warranted in certain high-risk situations. DEWEES, DUFF & TREBILCOCK, *supra* note 1, at 5. However, it would be odd to characterize volunteering as one of those contexts.

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

[195] *See, e.g.*, *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997). Further, whether a volunteer acted in good faith or with gross negligence is usually a question of fact not suited for early dispositive motions. *See, e.g.*, *Metge v. Central Neighborhood Improvement Ass'n*, 649 N.W.2d 488, 501 (Minn. App. 2002).

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example, if volunteering is a consumption good, liability exposure decreases the feel-good value of volunteering. It is unpleasant to worry about getting sued for teaching Sunday school. To the extent that volunteering is an investment good (e.g., a way for volunteers to invest in their careers) he investment may appear to be worth less in regimes without immunity; for example, volunteers risk their reputations in lawsuits.

Or maybe the laws did something entirely different from their intended goals. They may have directed public attention to volunteer opportunities. There is some evidence for this in the difference-in-differences results, where 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 since it was not limited to the preempted states. However, the relatively large effect in states with high immunity levels is contrary to this interpretation.

iii. Property Rule versus Liability Rules

We also use our results to examine the 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 where transaction costs are otherwise high. Accordingly, it is more efficient for private parties to negotiate contracts than for tort law to 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,[196] others have recently defended the benefits of property over liability rules because of their flexibility in allowing people to express their subjective valuations.[197]

Our findings suggest that people do not contract when they can. Our qualitative research suggests that volunteers understood (in fact, overestimated) their liability exposure. Because volunteering is seldom a spur of the moment decision, volunteers had ample time to negotiate risk –not with potential victims, but with nonprofits. Potential volunteers could have externalized the cost of their negligence by asking nonprofits to indemnify them or, at least, partially externalized the cost of their negligence with personal insurance, perhaps quite easily through umbrella insurance or home-owners' policies.[198] If tort law had been simply displacing efficient, private initiative, we would not have found an effect from the passage of liability protection laws because private agreements, reflecting the preferences of volunteers and others, would have been in place already.

Several possible interpretations of our results 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 nonprofits to do so on their behalf; perhaps we identified an

[196] 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).

[197] 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).

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

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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 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 can negotiate.

There are, however, explanations other than failed initiative. It may be that volunteers *wanted* liability insurance, but could not obtain it. Immunity advocates advanced several anecdotes suggesting that this was the case.[199] If liability insurance was unavailable because of a market failure, a socially productive activity was displaced 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.[200]

But maybe insurance was unavailable because the nonprofits didn't like the price.[201] 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.[202] The Helicopter Association International's letter in support of immunity, which amounts to little more than a complaint that flying helicopters is risky and expensive to insure, urges Congress to adopt "general tort reform with emphasis upon products liability and aviation products liability relief."[203] This possibility is also suggested at the state level.

Despite data and methodological limitations that prevent us from conclusively establishing a causal connection between volunteering and immunity, we offer evidence that indicates a positive association. We suggest that one cost of tort liability is that it likely deters volunteers. This does not mean that using immunity to increase volunteering is worth it – 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. It may, in fact, be less costly to indemnify volunteers or to educate potential volunteers on the risks of being sued. Given the potential of the relationship between immunity and volunteering for explaining the deterrent effects of tort law, we intend this study only as a first step and plan further work with more comprehensive data sources.

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[199] *1988 Hearing*, at 14.

[200] Priest, *supra* note 35, at 1588 ("These [tort] reforms[, including volunteer immunity], while helpful, constitute only partial contributions toward solution of the problems caused by modern tort law.").

[201] See, e.g., CARTER-YAMAUCHI, *supra* note 27.

[202] *See, e.g.*, *1988 Hearing*, at 40 (letter from Colen Eidel, Chairman & Barbara Holden, President, Junior League of Great Falls). 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).

[203] *1988 Hearing*, 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).

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VII. Tables and Figures

Table 1: State Immunity Regime

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

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Table 2: Variable Definitions and Descriptive Statistics

Variable	Definition	Full Sample mean & sd	Volunteers mean & sd	Any State Immunity Statute mean & sd	No State Immunity mean & sd
Year	(0,1) variable, 1 if year=1990	0.142 (0.349)	0.141 (0.348)	0.132 (0.339)	0.150 (0.357)
	(0,1) variable, 1 if year=1992	0.140 (0.347)	0.136 (0.343)	0.130 (0.337)	0.146 (0.353)
	(0,1) variable, 1 if year=1994	0.079 (0.270)	0.070 (0.256)	0.080 (0.271)	0.078 (0.268)
	(0,1) variable, 1 if year=1996	0.142 (0.349)	0.125 (0.331)	0.145 (0.353)	0.140 (0.347)
	(0,1) variable, 1 if year=1999	0.134 (0.341)	0.125 (0.313)	0.141 (0.348)	0.128 (0.344)
	(0,1) variable, 1 if year=2001	0.218 (0.413)	0.300 (0.458)	0.253 (0.435)	0.195 (0.396)
Volunteered Year	(0,1) variable, 1 if respondent volunteered in past 12 months	0.529 (0.499)	1 (0)	0.549 (0.498)	0.516 (0.500)
Liab. Imm. - Any Level	State has immunity statute	0.599 (0.490)	0.639 (0.480)	1.000 (0.000)	0.323 (0.468)
Liab. Imm. – GNR	State immunizes volunteers up to gross negligence or recklessness	0.489 (0.500)	0.514 (0.500)	0.730 (0.444)	0.323 (0.468)
Liab. Imm. – WINT	State immunizes volunteers up to willful/wanton or intentional	0.110 (0.313)	0.126 (0.331)	0.270 (0.444)	0.000 (0.000)
State Unemployment	Unemployed state residents/state labor force by year	5.556 (1.504)	5.442 (1.481)	5.201 (1.312)	5.793 (1.578)
Mean State Income	Total state income/total state labor force participation	27,048 (5,364)	27,005 (5,182)	26,036 (5,115)	27,730 (5,411)
State Civil Litigation	Annual state civil filings/annual state pop.	0.743 (0.350)	0.739 (0.346)	0.760 (0.376)	0.729 (0.331)
State Tax Itemizer Rate	Itemized state returns/state tax returns by year	30.645 (6.707)	30.935 (6.758)	29,931 (7,591)	31,129 (5,965)
Age	Respondent's age	46.6 (17.2)	45.8 (15.9)	46.872 (17.343)	46.348 (17.072)
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)	0.878 (1.244)	0.852 (1.211)
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)	0.611 (0.487)	0.620 (0.485)
Sex	(0,1) variable, 1 if interviewer identifies respondent as male, 0 if female	0.479 (0.500)	0.450 (0.498)	0.479 (0.500)	0.480 (0.500)
Hispanic Descent	(0,1) variable, 1 if respondent identifies as Hispanic	0.126 (0.332)	0.088 (0.284)	0.127 (0.333)	0.126 (0.332)
Income2	(0,1) variable, 1 if income $10-$14,999	0.070 (1.254)	0.047 (0.213)	0.078 (0.268)	0.064 (0.245)
Income3	(0,1) variable, 1 if income $15-$19,999	0.072 (0.258)	0.051 (0.220)	0.081 (0.272)	0.066 (0.248)

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Table 2 (continued)

Variable	Definition	Full Sample mean & sd	Volunteers mean & sd	Any State Immunity Statute mean & sd	No State Immunity mean & sd
Income4	(0,1) variable, 1 if income $20-$24,999	0.074 (0.262)	0.067 (0.249)	0.075 (0.264)	0.073 (0.260)
Income5	(0,1) variable, 1 if income $25-$29,999	0.092 (0.289)	0.087 (0.282))	0.113 (0.317)	0.078 (0.268)
Income6	(0,1) variable, 1 if income $30-$34,999	0.095 (0.293)	0.096 (0.295)	0.084 (0.278)	0.102 (0.303)
Income7	(0,1) variable, 1 if income $35-$39,999	0.081 (0.272)	0.087 (0.281)	0.065 (0.247)	0.092 (0.289)
Income8	(0,1) variable, 1 if income $40-$49,999	0.110 (0.313)	0.121 (0.326)	0.107 (0.309)	0.112 (0.315)
Income9	(0,1) variable, 1 if income $50-$74,999	0.171 (0.377)	0.208 (0.406)	0.165 (0.371)	0.176 (0.381)
Income10	(0,1) variable, 1 if income $75-$99,999	0.059 (0.235)	0.075 (0.263)	0.058 (0.234)	0.059 (0.236)
Income11	(0,1) variable, 1 if income ≥$100,000	0.081 (0.273)	0.099 (0.298)	0.075 (0.264)	0.085 (0.279)
Married	(0,1) variable, 1 if respondent identifies married	0.612 (0.487)	0.664 (0.472)	0..616 (0.486)	0.068 (0.488)
Religious Group Member	(0,1) variable, 1 if respondent identifies member of a church or synagogue	0.595 (0.491)	0.663 (0.473)	0.645 (0.478)	0.559 (0.497)
School2	(0,1) variable, 1 if high-school grad	0.327 (0.469)	0.285 (0.452)	0.343 (0.475)	0.317 (0.465)
School3	(0,1) variable, 1 if trade, 2-yr coll. grad, or 4-yr coll. incomplete.	0.281 (0.450)	0.312 (0.463)	0.250 (0.433)	0.302 (0.459)
School4	(0,1) variable, 1 if ≥4-yr coll. grad	0.236 (0.424)	0.316 (0.465)	0.239 (0.426)	0.234 (0.423)
Race–Black	(0,1) variable, 1 if respondent identifies black	0.138 (0.345)	0.105 (0.307)	0.149 (0.356)	0.131 (0.337)
Race–Asian	(0,1) variable equal to one if the respondent identifies Asian	0.010 (0.099)	0.008 (0.091)	0.008 (0.091)	0.011 (0.105)
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)	0.048 (0.215)	0.045 (0.206)
Social Capital ***	Braatz/Putnam Index	-0.197 (0.557)	-0.143 (0.579)	-0.318 (0.662)	-0.114 (0.455)
N=		19,132	10,128	7,765	11,370

Notes: Left out categories include 1988, income =<$10,000, education=high school incomplete. * The Braatz/Putnam Index does not include data for either Alaska or Hawaii. For the social capital measure, N=19,062 in the full sample and N=10,091 in the sample of volunteers. For other variables, N varies by one or two observations. Columns with descriptive statistics for observations from states with "Any State Immunity Statute" include only data from states that have immunity via state acts. They do *not* include states that have immunity via the federal 1997 Volunteer Protection Act. Left out categories include 1988, income =<$10,000, education=high school incomplete.

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Table 3: Percentage of Respondents Volunteering in 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

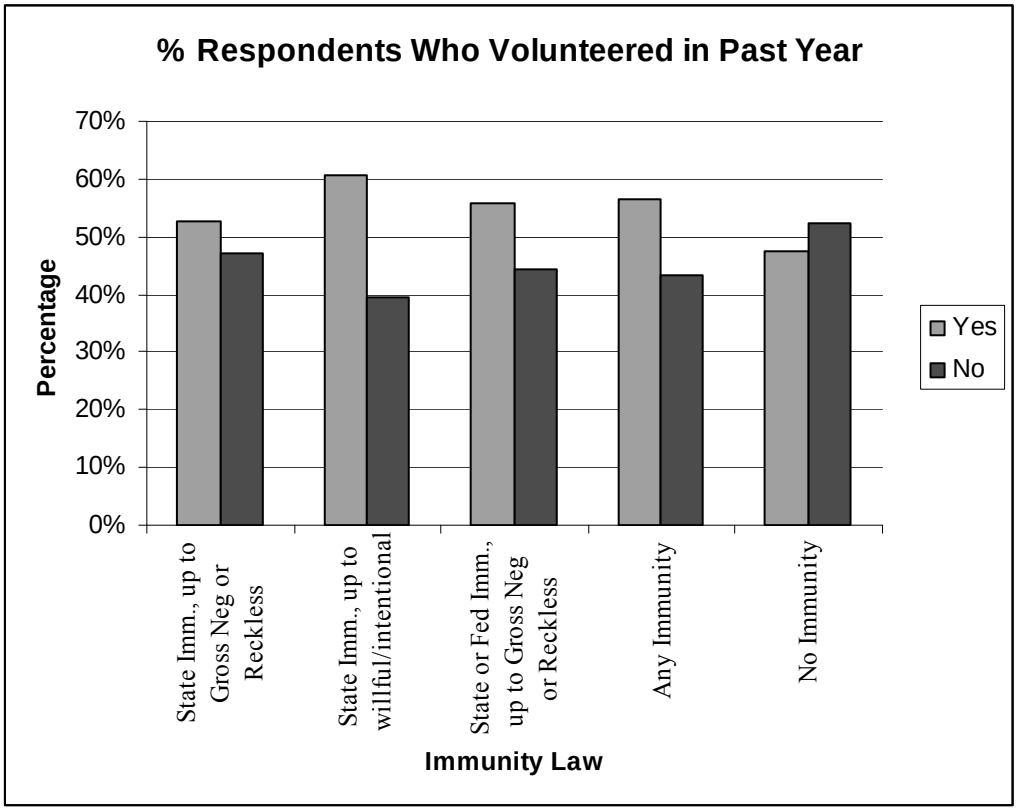
Table 4: Regression Results, volunteer rates by immunity regime

	(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, age^2, # children, # children^2, employment, sex, Hispanic descent, income category, marital status, racial category, religious group membership, and education level.

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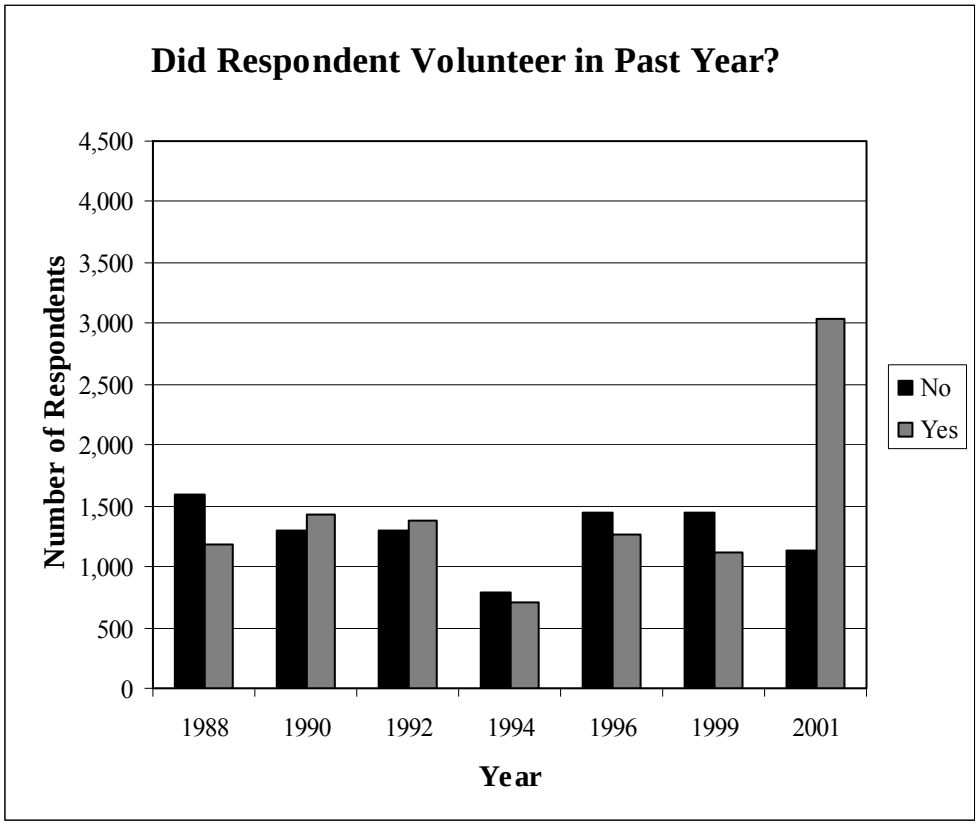
Figure 1: Percentage of respondents volunteering, previous year, by regime



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.

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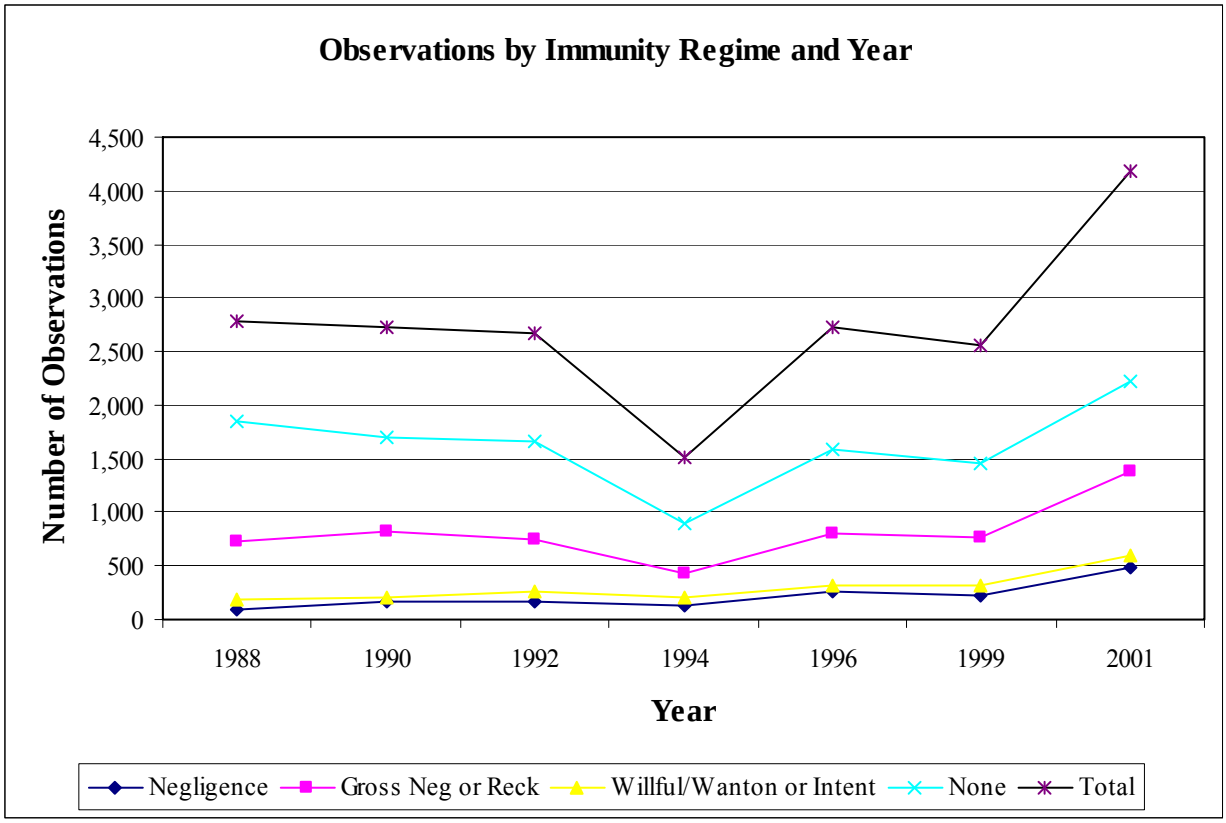
Figure 2: Volunteer Rates by Year



Source: Authors' analysis of Independent Sector's Giving and Volunteering Survey.
Notes: Surveys were completed before 9/11. Therefore, the bump in volunteering is not a 9/11 effect.

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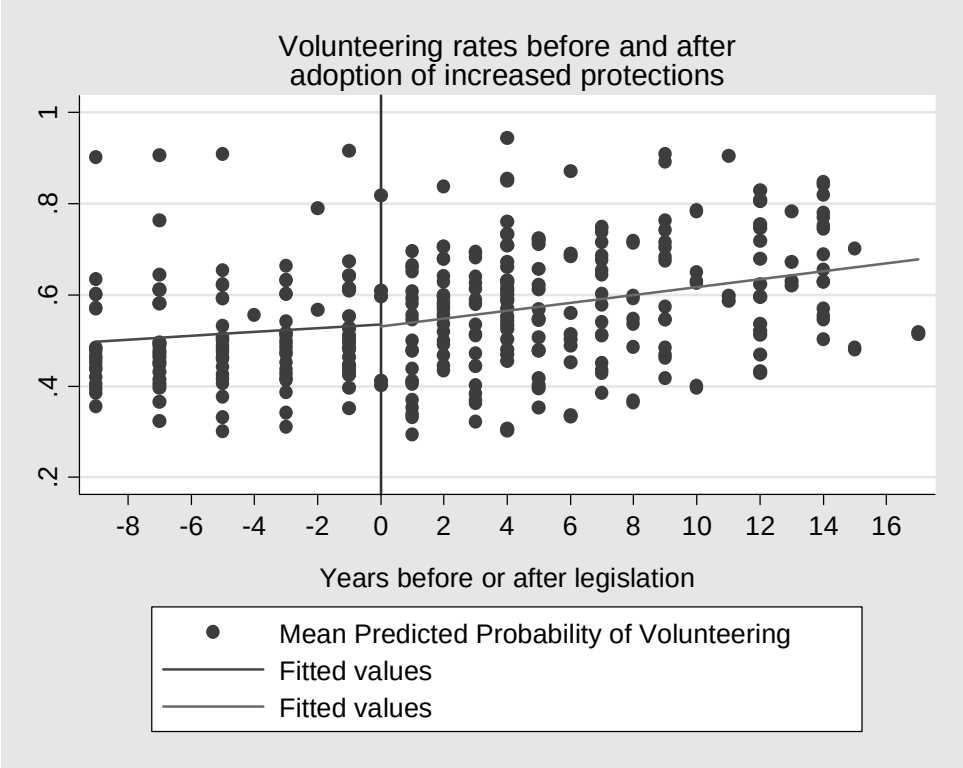
Figure 2a: Observations by Immunity Regime and Year

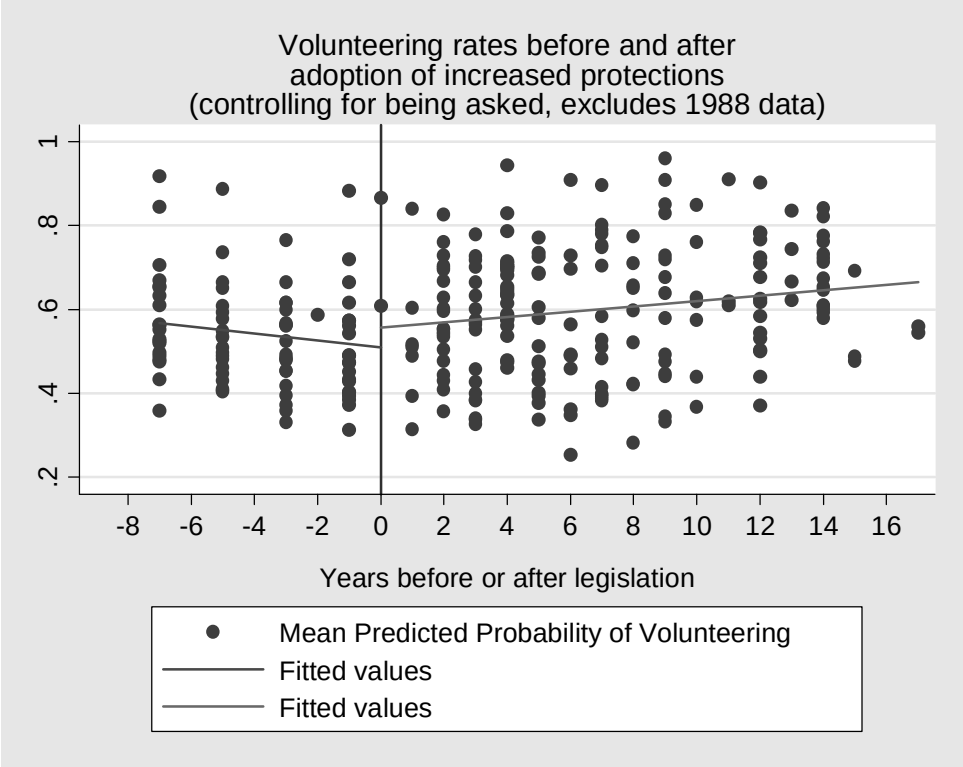


Source: Authors' analysis of Independent Sector's Giving and Volunteering Survey.
Notes: Negligence=observations from states with immunity protection up to negligence; Gross Neg or Reck =observations from states with immunity protection up to gross negligence or recklessness; Willful/Wanton or Intent =observations from states with immunity protection up to willful and wanton or intentional behavior; None = no state volunteer immunity before 1997, state immunity via the federal Volunteer Protection Act after 1997.

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Figures 3a, 3b





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Appendix

State	Statute	Scope	Standard	Vehicle exception	Specific coverage	Organizational Liability	Year enacted
Alaska	ALASKA STAT. § 09.65.170	Director	Gross			Yes	1986
Alabama	ALA. CODE § 6-5-336(d)	General	Willful & Wanton			Yes	1991
Arizona	ARIZ. REV. STAT. ANN. § 12-982	General	Gross			Yes	1993
Arkansas	ARK. CODE ANN. § 16-6-105	General	Gross	Y		No	1987
California	CAL. CORP. CODE § 5239	Director	Gross			Yes	1988
Colorado	COLO. REV. STAT. ANN. § 13-21-116(b)(I)	Director	Willful & Wanton			Limited	1986
Colorado	COLO. REV. STAT. ANN. § 13-21-115.5	General	Willful & Wanton	Y	Gross neg standard for MD	Limited	1992
Connecticut	CONN. GEN. STAT. § 52-557m	Director	Reckless			Yes	1986
D.C.	D.C. CODE ANN. § 29-301.113	General	Willful & Wanton		Volunteer immunity applies only if charity is insured.	Limited	1992
Delaware	DEL. CODE ANN. tit. 10, § 8133	General	Gross	Y		Yes	1989
Florida	FLA. STAT. ANN. § 768.1355	General	Negligence			Yes	1993
Georgia	GA. CODE ANN. § 51-1-20	General	Willful & Wanton			No	1987
Hawaii	HAW. REV. STAT. § 662D-1-662D-3	General	Gross	Y	Doesn't cover professionals	Yes	1997
Idaho	IDAHO CODE § 6-1605	General	Willful & Wanton	Y		Yes	1987
Illinois	805 ILL. COMP. STAT. 105/108.70	Director	Reckless			Yes	1986
Indiana	IND. CODE § 34-30-4-2	Director	Gross			Yes	1985
Iowa	IOWA CODE § 613.19	General	Intentional			Yes	1987
Kansas	KAN. STAT. ANN. § 60-3601	General	Willful & Wanton			Yes	1987
Kentucky	KY. REV. STAT. ANN. § 411.200	General	Willful & Wanton		Violates State Constitution	Yes	1988
Louisiana	LA. REV. STAT. ANN. § 9:2792.3	Director	Willful & Wanton			Yes	1987
Maine	ME. REV. STAT. ANN. tit. 14, § 158-A	General	Gross	Limited		Limited	1987
Maryland	MD. CODE ANN., CTS. & JUD. PROC. § 5-407	General	Gross			No	1987
Massachusetts	MASS. GEN. LAWS CH. 231, § 85W	Director	Gross	Y		Limited	1987
Minnesota	MINN. STAT. ANN. § 317A.257	General	Reckless			Yes	1989
Mississippi	MISS. CODE ANN. § 95-9-1	General	Gross	Y		Yes	1988
Missouri	MO. REV. STAT. § 537.118	General	Negligence			Yes	1989
Montana	MONT. CODE ANN. § 27-1-732	General	Willful & Wanton			Yes	1987
Nebraska	NEB. REV. STAT. § 25-21,191	Director	Willful & Wanton	Y	Exception for director under the influence of alcohol	Yes	1987
Nevada	NEV. REV. STAT. § 41.485	General	Willful & 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

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Appendix

New Mexico	N.M. STAT. ANN. § 53-8-25.3	Director	Reckless			Yes	1987
North Carolina	N.C. GEN. STAT. § 1-539.10	General	Gross	Y	Doesn't cover professionals; waived to limit of volunteer or nonprofit's liability insurance	Yes	1987
North Carolina	N.C. GEN. STAT. § 55A-8-60	Director	Gross	Y	Waived to extent of insurance	Yes	1993
North Dakota	N.D. CENT. CODE § 32-03-45	General	Gross	Y		Unclear	1987
Ohio	OHIO REV. CODE ANN. § 2305.38	General	Negligence			Yes	1986
Ohio	OHIO REV. CODE ANN. § 2305.38	Director	Willful & Wanton			Yes	1986
Oklahoma	OKLA. STAT. ANN. tit. 76, § 31	General	Gross			Yes	1995
Oklahoma	OKLA. STAT. ANN. tit. 18, § 866-867	Director	Gross			Yes	1987
Pennsylvania	42 PA. CONS. STAT. ANN. § 8332.4	General	Gross	Y		Yes	1988
Rhode Island	R.I. GEN. LAWS § 7-6-9	General	Willful & Wanton	Y		Yes	1984
South Carolina	S.C. CODE ANN. § 33-56-180	General	Gross			Limited	1984
South Dakota	S.D. CODIFIED LAWS § 47-23-29	General	Gross	Y		Unclear	1987
South Dakota	S.D. CODIFIED LAWS § 47-23-2.1	Director	Willful & Wanton			Unlcear	1987
Tennessee	TENN. CODE ANN. § 48-58-601	Director	Gross			Limited	1986
Texas	TEX. CIV PRAC & REM CODE ANN. § 84.004	General	Reckless	Limited		Yes	1987
Utah	UTAH CODE ANN. § 78-19-2	General	Willful & Wanton	Y	Nonprofit must provide "financially secure source of recovery."	Limited	1990
Vermont	VT. STAT. ANN. tit.12, § 5781	Director	Gross	Y		Yes	1987
Virginia	VA. CODE ANN. § 13.1-870.1	Director	Willful & Wanton			No, unless neg. hiring	1987
Washington	WASH. REV. CODE ANN. § 4.24.264	Director	Gross			Yes	1987
Washington	WASH. REV. CODE ANN. § 4.24.670	General	Gross	Y		Limited	2001
West Virginia	W. VA. CODE § 55-7C-3	Director	Gross	Y		Yes	1988
Wisconsin	WIS. STAT. ANN. § 181.0670	General	Willful & Wanton	Y	Doesn't cover professionals	Yes	1987
Wyoming	WYO. STAT. ANN. § 1-1-125	General	Gross	Y		Yes	1992

Notes: Column 3 designates whether the statute immunizes only directors or is a general statute that immunizes all volunteers. Many states statutes apply only to very specific categories of volunteers, as when immunity is afford only to emergency room volunteers, fireman, sports coaches, or volunteers in the act of cleaning up hazardous waste. This chart excludes such statutes. The column labeled "Organizational Liability" represents our interpretation of whether, taken as a whole, all sources of state law permit, limit, or allow claims for vicarious liability against the charitable organization. These laws include provisions of state immunity statutes that either expressly preserve or abrogate common law charitable immunity.

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