Vancouver, plus payments to Canadian vendors and employees of over $119 million.

If that business had taken place in the United States, in U.S. ports such as Tacoma or San Francisco, it would have been worth additional Federal, State and local tax revenues of approximately $60 million.

I note that there is interest now in ports in South Carolina to offer sailings along the eastern seaboard. It is interesting to note also that we have already seen fit to exempt Puerto Rico from the Passenger Service Act, under less onerous restrictions than in this bill, so that foreign vessels are allowed to from the United States to the territory of Puerto Rico. So we have made these exceptions, they can work without destroying the fabric of our life, and there is no justification why this should not also be done for voyages from the west coast to Alaska.

In addition to the opportunities now being shunted to Vancouver, we are also missing an opportunity to create entirely new jobs and increased income flow by developing new cruise routes between Alaska ports.

The city of Ketchikan, AK, was told a few years ago that there were two relatively small cruise lines that were very interested in establishing short cruises within southeastern Alaska, and indeed, were interested in basing their vessels in Ketchikan. I am told such a business could have contributed as much as $2 million or more to that small community's economy and created dozens of new jobs, but because of the current policy, the opportunity simply evaporated.

Why, Mr. President, do we allow this to happen? This is a market almost entirely focused on U.S. citizens going to see one of the most spectacular States of the United States, namely, Alaska, and yet we force them to go to another country, Canada, to do it. We are throwing away both jobs and money and getting nothing in return. Why is this allowed to happen? The answer is simple, but it is not rational.

Although the current law is a job loser, there are those who argue that any change would weaken U.S. maritime interests. I submit that simply is not the case. For some inexplicable reason, paranoia seems to run deep among those who oppose this bill. They seem to feel that, by amending the Passenger Service Act so that it makes sense for the United States and would create jobs, somehow it is a threat to the Jones Act. That is not true. The vessels covered under the Jones Act haul freight, not passengers, between U.S. ports. They are required to be U.S. built, U.S. crewed, and U.S. documented, and because this protects an existing industry, we support that. But the circumstances for freight vessels do not exist for passenger ships.

There is simply no connection whatsoever between the two issues. I have repeatedly made it clear that I have no intention of using this bill to create cracks in the Jones Act. This bill would actually enhance, not impede, opportunities for U.S. workers—shipyard workers and certainly longshoremen, not to mention hotel and restaurant workers, and many others who would have a great deal to gain from this legislation.

The bill has been carefully written to prevent the loss of any existing jobs in other trades. As I have said before, Puerto Rico already enjoys an exemption from the Passenger Service Act. We looked at that exemption—which has worked successfully—and drafted this effort with even more care in mind.

Finally, there can be no suggestion that this bill might harm smaller U.S. tour or excursion vessels built in U.S. yards with U.S. crews. The industry featuring these small vessels is thriving and doing well but simply does not cater to the same clientele and same base as the larger cruise ships. For one thing, the tour boats operating in Alaska are much smaller. The smallest foreign flag vessel eligible under this is Carnival Cruise Lines *Wind Star*, which is about 5,700 gross deadweight tons. It overnights approximately 159 passengers.

By contrast, although the largest U.S. vessel in the Alaska trade is rated at 138 passengers, she is less than 100 gross deadweight tons. This means there is a vast difference between these two vessels. The small U.S. vessels should be protected from foreign competition, and our bill does that, but it does so with the realization that not all markets, and not all passengers, are the same.

The fact of the matter is that there is no significant competition between the two types of vessels, because the passengers inclined to one are not likely to be inclined to the other. The larger passenger vessels offer unmatched luxury, personal service, onboard shopping, entertainment, gaming and so forth. The smaller vessels offer more flexible routes, the ability to get closer to the extraordinary natural attractions along the way and are able to get into the smaller communities.

Now Mr. President, in the spirit of full disclosure, let me acknowledge that there is one operating U.S. vessel that does not fit the mold, as I mentioned earlier. That is the *Constitution*, an aging 30,000-ton vessel operating only in Hawaii. It was a U.S. flag vessel that was built years ago to operate in the United States. It went out of U.S. operation, into foreign flag service, then was refitted. It took action by Congress to allow it to come back into the U.S. trade.

This is the only oceangoing-capable U.S. ship that might fit the description of a cruise vessel, but I question its ability to compete, certainly in the market with the newer cruise vessels. And I repeat, it is the only one. I searched for other U.S. vessels that meet or exceed the 5,000-ton limit in the bill, and the only ones I found that even approach it are the *Delta Queen* and the *Mississippi Queen*, both of which are approximately 3,300 tons and both of which are somewhat like 19th century riverboats. They can operate on the Mississippi and other large rivers, but are entirely unsuitable for any open-ocean itinerary.

I cannot claim this legislation would immediately lead to increased earnings to U.S. ports. There are advantages of operating out of Vancouver—the sailing time to Alaska is shorter, and so forth. But I can say that it would allow U.S. ports—ports like Tacoma and San Francisco—to compete fairly for this lucrative business.

Instead of being anchored by a rule that is actively harmful to U.S. interests, as I said at the beginning, this is only a way to open the door so we can look at what we are losing and look at what we can gain.

We heard a lot of talk about growing the economy and creating jobs during the last years, and we all know that such changes are easy to talk about but difficult to accomplish. Here is a bill that opens up the door to thousands of jobs and hundreds of millions of dollars, and can do it without 1 red cent of the taxpayers' money. Isn't that worth thinking about?

It has been 110 years since the current law was enacted, and it is time for a change.

VOLUNTEER PROTECTION ACT OF 1997

The Senate continued with the consideration of the bill.

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

Mr. COVERDELL. Mr. President, I ask unanimous consent that during the pendency of S. 543, there be 30 minutes for debate, to be equally divided between Senators COVERDELL and LEAHY or their designees, with an additional 15 minutes under the control of Senator MCCONNELL; that there be one amendment in order only, to be offered by Senator COVERDELL, encompassing the managers' agreed-upon language, that there be 40 minutes of debate on the amendment to be equally divided between Senators COVERDELL and LEAHY or their designees, that no other amendments or motions be in order and, following the disposition of the amendment, the bill be advanced to third reading and there be an additional 10 minutes for debate to be equally divided between Senators COVERDELL and LEAHY.

Mr. President, this agreement has been cleared by the ranking minority member.

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

AMENDMENT NO. 53

(Purpose: To provide a complete substitute.)

Mr. COVERDELL. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Georgia [Mr. COVERDELL], for himself, Mr. LEAHY, Mr. ASHCROFT, Mr. MCCONNELL and Mr. ABRAHAM, proposes an amendment numbered 53.

Mr. COVERDELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS AND PURPOSE.

The Congress finds and declares that—

(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

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

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY.—This Act shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation—

(1) citing the authority of this subsection;

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

(3) containing no other provisions.

SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

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

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

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

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

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

(A) possess an operator's license; or

(B) maintain insurance.

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

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

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

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

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

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

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

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

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

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

(f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

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

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

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

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

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

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

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

SEC. 5. LIABILITY FOR NONECONOMIC LOSS.

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

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant who is a volunteer shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2))

for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

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

SEC. 6. DEFINITIONS.

For purposes of this Act:

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

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

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

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

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

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

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

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

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

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

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

SEC. 7. EFFECTIVE DATE.

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

(b) APPLICATION.—This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act, without regard to whether the harm that is the subject of the claim or the conduct that caused the harm occurred before such effective date.

Mr. COVERDELL. Mr. President, let me explain our disposition. While there is considerable more time in the unanimous consent, it is anticipated that there would be a delegating of time back so we might vote as closely to 2 o'clock as possible. So, I would like to proceed to explain this amendment so we might get this piece done. There are conditions that are affecting certain Members that would require, hopefully, we could vote as close to 2 o'clock as possible.

Mr. President, I want to explain to our colleagues. First, I thank the ranking member, the Senator from Vermont, Senator LEAHY. It has been a long week for both of us. He and his staff and colleagues have worked diligently with this Senator and his staff and colleagues throughout the morning to arrive at the amendment that has just been forwarded to the desk under unanimous consent.

This substitute adds a finding to clarify the Federal role in civil liability matters related to voluntarism. The substitute clarifies the State opt-out section, to ensure the provision does not supersede State requirements for enacting legislation and allows for States to include an effective date. The substitute clarifies the punitive damage protections only relate to cases that are based on the actions of the volunteer and do not supersede more restrictive Federal or State laws.

The substitute would clarify that the specific exemptions in the bill for cases of violent crime, sex offenses, hate crimes, civil rights violations, and DUI, do not restrict the general exemption where the harm was willful or criminal misconduct, gross negligence, reckless misconduct or conscious, flagrant indifference to the rights or safety of the individual harmed.

The substitute clarifies that the joint and several liability limitations for noneconomic damages and the punitive damage limitations only apply to defendants who are volunteers. The substitute clarifies that the volunteer can receive reimbursement for reasonable expenses and still be considered a volunteer.

I and the other authors on our side have concurred with these changes. We still believe the version we submitted, S. 543, was reasoned and balanced, but feel that this is a compromise that gets us to the target we were after—the shield for the volunteer. And in these actions, assuming we receive a favorable vote, we will have responded responsibly and rightfully to the call of the administration, President Clinton, and Presidents Bush, Ford, and Carter, to launch a new era in voluntarism in the United States.

With that brief statement, I yield the floor.

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

Mr. MURKOWSKI. Mr. President, I am pleased to learn we have worked out a compromise with the other side on this very important issue. I commend the Senator for his diligence and commitment to proceed with a solution that is going to be in the best interests of voluntarism.

Mr. COVERDELL addressed the Chair.

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

Mr. COVERDELL. Mr. President, let me give the disposition of our situation on S. 543. We are trying to communicate to the principal authors so that they might have a chance to make closing comments with regard to the amendment that I have submitted, and we are still endeavoring to try to vote between 2 and 2:15.

While we are waiting for those Senators to arrive, I will talk about what the passage of this bill will mean, an achievement that will be secured in the Senate.

We will have effectively responded to a circumstance that has been developing since the mid-1980's when volunteers suddenly found themselves the targets of lawsuits in the act of volunteering. Prior to that time, very little of this type of legal allegation occurred. We have discovered that voluntarism has been chilled and threatened and pushed back and been less exuberant. Volunteers' behavior is even different when they do volunteer because of the threat of legal consequences.

When we pass this legislation, S. 543, and hopefully ultimately pass it in the House and send it to the President and he signs it, we will have created a protective buffer, a shield for the well-meaning volunteer, the volunteer who experiences a simple accident or omission. We have heard some of the stories on the floor of the Senate. A coach who has a player who inadvertently slides into home head first instead of feet first will not have to spend long nights awake wondering whether, because he was or she was a volunteer, they will lose their home and assets and checking account, et cetera. The principle we will have accomplished is to protect a volunteer from being under assault for that kind of omission.

The second thing we will have achieved is that the volunteer will no longer be looked at as the deep pocket. If they volunteer for an organization that does not have any resources, they may have a home, or something to that effect, and so the suit goes to the volunteer instead of the organization. But now the volunteer cannot be held liable for anything more than their proportional responsibility. So the story we talked about on the floor of the Senate yesterday and today of the woman who was nothing more than a receptionist out front answering a phone while an accident occurred in the gym will no longer be held liable for the fact that something went wrong somewhere else.

So this is very meaningful, as I said a moment ago, a very significant congressional initiative that keeps the legacy of the summit alive and helps fuel the call for new volunteers.

The Senator from Pennsylvania, Senator SANTORUM, said earlier today that one of the concerns of the summit was that it would flame out, that after all the glitz and the visuality of seeing the celebrities and political leaders gathered together, what would keep it

going? I think S. 543 will be one response from the Congress, one opportunity to keep the fuel under the idea of more and more Americans stepping forward in a very, very difficult time.

Mr. President, I am hopeful that we will be able to conclude this vote, if at all possible, by at least 2:15.

Mr. HATCH. Mr. President, I am pleased today to announce my strong support for S. 543, the Volunteer Protection Act.

As the excitement surrounding today's events in Philadelphia have so poignantly illustrated, ours is a nation that has a particular dependence on the volunteer movement. Nonprofit organizations mobilize volunteers by drawing on their members' special talents to meet social or economic needs. Volunteer organizations are currently deeply involved in such activities as alleviating hunger, educating the public about the dangers of drug and alcohol abuse, providing care of the elderly and infirm, providing athletic programs for our Nation's youth, providing opportunity for the poor, building housing for the homeless, promoting literacy and education, finding missing children, teaching fire safety, aiding victims of natural disasters, providing moral education for our youth, and spreading American ideals across the world. In fact, according to a 1990 study by the Hudson Institute, which polled approximately 5,500 associations, volunteer time in America was conservatively estimated to total $3.3 billion per year.

This is nothing new. In his 1835 commentary of our country, the epic ''Democracy in America,'' Alexis de Toqueville noted that America was a nation of joiners. To de Toqueville this was very significant. Nongovernmental charitable, religious, and community organizations combined with the family and other natural social units to form what he termed ''intermediary'' organizations—organizations that impede the trend toward centralization of virtually all administration in the national government. It is these intermediary groups that are essential in protecting the liberty of the individual and community from the regulatory state.

In recent times, there has been an awareness of the need to strengthen volunteer organizations as a way to buttress the newly rediscovered virtues of limited government. Americans are coming to realize that government should not and cannot be relied on to provide all social services. The gap between American needs and American resources must be filled by the generous efforts of our volunteer corps. But the current litigation nightmare sweeping our Nation is going a long way to hinder the efforts of these important volunteers. This at a time when we must be doing everything possible to encourage the spirit of voluntarism.

Mr. President, I'd like to illustrate for you a couple of reasons why I believe the litigious nature of our society is dampening the spirit of voluntarism. A Gallup study revealed the large extent to which the threat of lawsuits, and the prohibitive cost of liability insurance, have a negative effect on volunteer participation in charitable organizations. The survey found that nearly 20 percent of all nonprofit organizations in the United States have experienced volunteers withholding service or resigning due to fear of liability exposure. This figure represents a very significant portion of the volunteer community. Specifically, 1 in 10 nonprofit organizations have experienced the resignation of a volunteer due to liability concerns. Let's do the math—with approximately 600,000 nonprofit organizations in America, we know that 48,000 volunteers have been lost during the past few years strictly due to liability concerns. Additionally, one in six volunteers report withholding their services due to fear of exposure to liability suits. This means that 100,000 potential American volunteers have declined to serve due to fear of exposure to lawsuits. This is an extraordinary figure.

Additionally, the rate voluntarism has been steadily declining in recent years. The percentage of Americans volunteering dropped from 54 percent in 1989 to 48 percent in 1993. Sadly, charitable donations are also declining, falling roughly $100 per household during this same short period. However, in 1991 alone, Americans spent a hefty $132 billion on the civil justice system. As a result, it is not surprising to note that liability insurance premiums for nonprofit organizations continue to rise.

These figures demonstrate that the on-going litigation craze has seriously damaged the spirit of voluntarism. I would like to document several cases that stand out in particular:

Lawyers for an injured mountain climber sued volunteer rescuers for $12 million on the grounds that their rescue methods were negligent and reckless. Prior to assisting this particular climber, the rescue team successfully and carefully made hundreds of rescues without incident.

In February 1995, Cleighton Hall, then CEO of Little League Baseball, wrote in the Wall Street Journal that Little League had turned into ''Litigation League.'' In one instance, two youngsters collided in the outfield, picked themselves up, dusted themselves off, and sued their coach. In another instance, lawyers won a large cash settlement when their client was struck by a ball that a player failed to catch—that player, strangely enough, was the client's daughter. Finally, trial attorneys for a child in Runnymeade, NJ, filed suit against the youth's coach when he was struck by a flyball in center field.

Finally, a boy in a scouting unit with the Boy Scouts of the Cascade Pacific Council suffered a paralyzing injury in a game of touch football. Several adults volunteered to supervise the trip. The youth's attorneys filed a personal injury suit alleging that the Boy Scouts and the volunteers were negligent for failing to supervise the youth adequately. The jury found that the volunteers were personally liable for $7 million. Oregon law ultimately caused the judgment to be reduced to around $4 million, but few Boy Scout volunteers can afford this kind of judgment.

Anyone who has been a Boy Scout or has volunteered in any capacity knows that certain accidents are impossible to prevent. The basic problem is that the actions of this Nation's greedy trial lawyers are serving to undermine the positive effects of voluntarism. Clearly, Mr. President, the current situation cries out for reform.

The Volunteer Protection Act helps charities and nonprofit organizations serve their communities by giving their volunteers immunity from lawsuits. Volunteers who act in a grossly negligent or incompetent manner are, of course, not be protected under the legislation.

This bill will provide a volunteer protection from litigation in cases where, first, the volunteer was acting within the scope of the volunteer's responsibilities; second, the volunteer was properly licensed, certified, or authorized by the State in which the harm occurred, if such authorization is required; and third, the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer.

The bill also limits punitive damages that may be awarded against volunteers and nonprofit organizations based on harm caused by a volunteer acting within the scope of the volunteer's responsibilities. Punitive damages against any such defendant will be available only where the claimant demonstrates by clear and convincing evidence that the volunteer caused the harm through willful or criminal misconduct.

Finally, while the bill preempts State law to the extent that it is inconsistent with the bill, the bill will not preempt any State laws that provide additional protections from liability relating to volunteers or nonprofit organizations.

Mr. President, this bill is consistent with the overall thrust and punitive damages reforms of my bill, S. 79, the Civil Justice Fairness Act. I am proud to support it as another step in our march toward complete civil justice reform.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. THOMAS. Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. COVERDELL. Mr. President, I yield up to 10 minutes of my time to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator has 8 minutes left.

Mr. COVERDELL. Mr. President, I yield 5 minutes to the distinguished Senator.

The PRESIDING OFFICER. The Senator from Wyoming has 5 minutes.

Mr. THOMAS. Thank you, Mr. President.

First, let me say how much I have appreciated the efforts of the Senator from Georgia in promoting this legislation, this Volunteer Protection Act of 1997. I think probably most everything about the bill has been said. I am delighted to hear that there has been an agreement. I can hardly imagine that anybody does not agree with the concept of making it easier for people to volunteer, of taking away some of the kinds of threats that have inevitably been there when someone does volunteer to serve. So I am very pleased about that.

I think it is true—and I guess I will probably be saying some of the same things again—it is true that the nature of this society, this democracy, requires that people care. It is a Government of the people and by the people, and designed to be a relatively minimal Government in that it sets a framework for us to do the things that we think should be done, for us to take the leadership to cause our communities to be strong.

The Federal Government clearly has a role. But, you know, the more I am here, Mr. President, and the more I see what I think is the role of the Federal Government, the more I am impressed with the fact that you and I make our communities strong there. And much of that is because we are willing to volunteer. I think it was the Frenchman de Tocqueville who came to examine and to explore and to look into this new idea of democracy. One of the things that he observed and found to be most important was this was a country, this was a society that was doing things together for each other voluntarily. And that still is—that still is—the root, it seems to me, of our society. The role of the Federal Government is minimal in that.

I was pleased with the President and the several Presidents last week who raised the image and raised the visibility of voluntarism. But the fact is, national voluntarism is not really the key. It is in Casper, WY, or Gillette, WY, or Louisville, KY. That is where voluntarism works and that is where it will continue to work.

So I think this bill is something we all should support. I am so delighted that the sponsors have done this, worked on it. I am delighted that we will be able to vote and vote positively on it in a few minutes.

I see some others wishing to speak, Mr. President, so I yield the floor.

Mr. COVERDELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. COVERDELL. Mr. President, I now ask for the yeas and nays on final passage of S. 543.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The yeas and nays were ordered.

Mr. MCCONNELL addressed the Chair.

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

Mr. MCCONNELL. Mr. President, this is a very significant bill. I want to commend the Senator from Georgia for his leadership which has brought us to this point this year. As he knows, I introduced similar legislation in 1990 and in 1993 and again in 1995. So I take particular pride in seeing it moved to this point where, hopefully, it will pass the Senate in the next minutes ahead.

This bill really, Mr. President, comes from the grassroots of American voluntarism. This bill sprang from the concerns and complaints of volunteers and national leaders in the volunteer community, thoughts of the men and women who are on the frontlines in our national volunteer efforts.

Just last week over on the House side we heard from Terry Orr, a former Washington Redskins football player. He said when he came into the NFL a few years ago players were asked to volunteer, and they responded, ''Just tell me where to go.'' There was not a moment's hesitation. In today's litigious world, players are asked to volunteer, and they respond, as Terry Orr said, ''Do we have coverage?''

Players are afraid to play a benefit ballgame or do any kind of volunteer activity without engaging in extensive discussions with their lawyers. That is today's environment, Mr. President.

Lynn Swann, another famous football player with the Pittsburgh Steelers, is a commentator on one of the networks. He was also at that press conference. He is the immediate past president of Big Brothers/Big Sisters of America. This is what he had to say. He said in the late 1980's the Big Brothers/Big Sisters federation endorsed Federal volunteer protection legislation. According to Lynn Swann, the Big Brothers and Big Sisters organization endorsed the legislation because ''a series of high visibility law suits against direct service volunteers had dampened [the] enthusiasm for volunteering in our program.''

He went on to say the legislation was necessary because: ''We [can] not afford to lose prospective, high quality volunteers due to liability fears.''

That was Lynn Swann and Terry Orr, two former professional football players, just expressing their own experience in this highly litigious society in which we live and how it affects the willingness of people to volunteer their time.

William Cople, former pro bono general counsel for the National Capital Area Council of the Boy Scouts of America has written as follows:

> Volunteer service is under assault from an unlikely quarter—the civil justice system.

The civil justice system.

> Like so many others, volunteers and their service organizations have been swept into the courts to face potential liability in civil suits.

Thomas L. Jones of Habitat for Humanity International also testified just this past week that volunteers across the United States have declined service on Habitat for Humanity boards ''because of perceived liability responsibility.''

Mr. President, the bill before us protects volunteers who serve on the boards of nonprofit organizations.

H.R. 911, a bill over on the House side, however, provides little protection for volunteers who want to serve as officers on nonprofit boards. H.R. 911 defines volunteer so narrowly that it excludes anyone who receives reimbursement for expenses of $300 per year. And H.R. 911 would not—I repeat, not—cover a volunteer who serves in a rape crisis center or a child abuse center and gets reimbursed $30 a month for reasonable expenses, such as transportation costs. In other words, the bill over in the House is simply too narrow.

Our bill allows a volunteer to be fully reimbursed for reasonable expenses.

The opponents of volunteer protection argue that: This legislation is not necessary because there is no comprehensive digest of jury awards against volunteers. That is the argument.

First, let me say I have already cited several examples of outrageous lawsuits and jury verdicts. Second, the fact that jury verdicts are not rendered against volunteers every month is simply not relevant—simply not relevant.

Most lawsuits settle before trial and thus are unreported. The chilling effects of even one case is astounding.

As the Boy Scouts' former general counsel has explained, ''a legal judgment entered in a single case can have a multitude of consequences extending far beyond that case itself. This surely is a reason for concern in the case of volunteers to service organizations.''

We have heard opponents argue that the bill is too broad and might offer immunity to the Ku Klux Klan or other organizations whose views we all abhor. This argument fails for several reasons.

Organizations are not granted immunity from lawsuits under this bill.

A volunteer is not covered under this bill if the volunteer engages in willful misconduct, specifically including hate crimes or civil rights violations.

It is not at all clear that the KKK would be covered as a nonprofit entity that exists primarily for public benefit and operates primarily for charitable purposes.

Survey of State volunteer protection laws indicates that there are States

that define ''nonprofit organization'' in the same manner as S. 543 or even broader. Yet, no one can come up with any examples from those States where KKK members were immune from lawsuits. The KKK argument is an offensive and bogus bogeyman argument.

Mr. President, also, opponents argue that this is a matter of States rights. I am constantly amazed to hear people make that argument. It is reminiscent of the argument against the civil rights laws in the 1960's where opponents said this really is a States rights matter, not a matter for the Federal Government.

The same argument was made against national voting rights legislation. And a lot of the folks who were the most enthusiastic for that kind of legislation now turn around and start arguing that the States rights is a good argument to not deal with what is clearly a national problem with national implications which needs a national solution.

Opponents also argue that some States have some protections for some volunteers in some circumstances. Well, that is not good enough. That kind of patchwork protection is simply not going to get the job done.

In my State we have some basic protections for volunteers. But these Kentucky protections are of no benefit to a Kentucky volunteer who goes to help his neighbor in one of the seven States which border the Commonwealth of Kentucky.

Volunteers, Mr. President, should not have to hire a lawyer in order to cross State lines to help their neighbor.

Bob Goodwin, president and CEO of the Points of Light Foundation, testified last week that a national solution is necessary because ''there is no consistency among our States with regard to volunteer liability statutes, and that lack of consistency has led to confusion in the volunteer community.''

Let me quote another leader in the national volunteer movement. John H. Graham, CEO of the American Diabetes Association, also testified last week on behalf of the National Coalition for Volunteer Protection. This is what he had to say:

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

So in summary, Mr. President, our national volunteer movement is built upon the idea of loving your neighbor as yourself, of being a good Samaritan, of stopping alongside the road and lending your neighbor a helping hand.

People from my home State of Kentucky understand this concept. Their neighbor is not just the child across the street, but it is the family across the bridge or across the State line.

If the Kentucky Red Cross volunteer wants to cross over into Tennessee or Ohio or Illinois or Indiana or West Virginia or Virginia and help his neighbor recover from a flood, then he should not have to call his lawyer to check on his liability potential in a surrounding State. We must have a uniform minimum standard.

The principles of loving your neighbor, of being a good Samaritan are woven deeply into the fabric of our Nation. We need to find ways to free up this spirit, not to suppress it. We must inspire and encourage people to do good works, not sue and harass and discourage.

Those who say that our volunteers do not need this legislation have obviously not been talking to the people on the frontlines.

My longstanding interest in this issue comes from talking to volunteers like the very ones that I have mentioned here today. However, I must confess, Mr. President, that one particular volunteer leader has had my ear on this issue for quite awhile. That is my wife, Elaine, who is a former Director of the Peace Corps and former president and CEO of the United Way of America. She has been involved in this battle for a long time and understands fully the implications.

So, Mr. President, let me close by again thanking Senator COVERDELL for his leadership, and the others who participated in this. This is an extremely important piece of legislation which I hope will pass the Senate overwhelmingly.

I yield the floor.

Mr. LEAHY. Mr. President, I do wish to thank my friend from Georgia, Mr. COVERDELL. With the Coverdell-Leahy-Ashcroft-McConnell and others substitute, I think this piece of legislation has been substantially improved.

So Members know, we have limited it to individual volunteers. The bill is no longer intended to provide immunity or limitation of liability for organizations. I think it is also important that the original sponsors of the bill agree not to include any limitation on motor vehicle liability, even as it relates to individuals. I think that is important.

I believe this bill has been significantly modified. It is not precisely the bill I would have written, but it is not precisely the bill my friend from Georgia would have written. I think it reflects what is best in the Senate when both sides can give and come out with something that can be better and more acceptable to a broad cross-section of Senators. Most of us do have concerns if we preempt State laws. In this, we have tried as best as possible to preserve State options.

I do not believe the threat of litigation deters Americans from volunteering to help neighbors, and did not deter the hundreds and hundreds who volunteered in floods in the Dakotas or in so many other areas we have seen in recent times. I am glad we have been able to limit the reach of the Federal protections provided, but we will be able to help individual volunteers. They should have some insulation from honest mistakes. We all want volunteers to be able to help whenever they can and worry most about how much stamina they will have to help, and have that be their chief concern.

So we will continue to work on this. Of course, it will have to go through conference, and we will make sure there is no unintended benefit or defenses available to anybody, and that nobody is harmed or left without a remedy.

We have seen an extraordinary week, as I said, in Philadelphia, with the President of the United States, together with past Presidents, the wife of a past President, General Powell, and others, who came together to promote voluntarism. We do not want to do anything to hamper that.

Again, I thank my friend from Georgia. I thank Ed Pagano and Jonathan Lamy on the Judiciary Committee staff, and all the others on both sides of the aisle who worked to make this legislation better.

I am prepared to yield if there is any time left on this side, and am prepared to go to vote on the Coverdell-Leahy substitute.

Mr. COVERDELL. I will take just a few minutes of my time, then do the same as the Senator from Vermont and yield back time and proceed to the vote.

I want to take a moment to thank Senator LEAHY and his staff. It is interesting how life makes people's paths cross each other from time to time. He and I have done so now on various occasions over the last decade. As always, I have found him to be an admirable either adversary or cooperator, but always with well-intentioned and good purpose. I thank him for his attention to this matter and the assistance both here and on those occasions in the past.

I also want to thank Senator MCCONNELL. Senator MCCONNELL has labored in this area for years and has made contributions to this legislation that are exceedingly significant. I am very grateful for his assistance on this matter, as well as Senators ASHCROFT, SANTORUM, and others.

I want to acknowledge the work of Kyle McSlarrow, Terri Delgadillo, and Dan McGirt on our side who have worked so hard to iron out the differences so we could produce this meaningful piece of legislation.

The hour is 2:05. We said we would vote as near as possible to 2 o'clock. I yield back all time on our side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 53) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. There are now 10 minutes equally divided.

Mr. LEAHY. All time is yielded back.

Mr. COVERDELL. We yield back all time on this side.

The PRESIDING OFFICER. The question is on final passage of S. 543 as amended. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 1, as follows:

[Rollcall Vote No. 55 Leg.]

YEAS—99

Abraham	Faircloth	Lieberman
Akaka	Feingold	Lott
Allard	Feinstein	Lugar
Ashcroft	Ford	Mack
Baucus	Frist	McCain
Bennett	Glenn	McConnell
Biden	Gorton	Mikulski
Bingaman	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grams	Murkowski
Breaux	Grassley	Murray
Brownback	Gregg	Nickles
Bryan	Hagel	Reed
Bumpers	Harkin	Reid
Burns	Hatch	Robb
Byrd	Helms	Roberts
Campbell	Hollings	Rockefeller
Chafee	Hutchinson	Roth
Cleland	Hutchison	Santorum
Coats	Inhofe	Sarbanes
Cochran	Inouye	Sessions
Collins	Jeffords	Shelby
Conrad	Johnson	Smith (NH)
Coverdell	Kempthorne	Smith (OR)
Craig	Kennedy	Snowe
D'Amato	Kerrey	Specter
Daschle	Kerry	Stevens
DeWine	Kohl	Thomas
Dodd	Kyl	Thurmond
Domenici	Landrieu	Torricelli
Dorgan	Lautenberg	Warner
Durbin	Leahy	Wellstone
Enzi	Levin	Wyden

NAYS—1

Thompson

The bill (S. 543), as amended, was passed.

Mr. COVERDELL. Mr. President, I move to reconsider the vote.

Mr. ABRAHAM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT—S. 672

Mr. LOTT. Mr. President, I ask unanimous consent that at 1 p.m. on Monday, May 5, the Senate turn to consideration of calendar No. 43, S. 672, the supplemental appropriations bill.

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

Mr. LOTT. Mr. President, for the information of all Senators, then there will be no further rollcall votes today nor on Friday. We have a prior agreement with the Democratic leadership that we would not have a session on Friday because of a meeting that they have. We have a similar agreement for Friday of next week because of a meeting that we have.

The Senate will shortly begin debate on the motion to proceed to S. 4, the flextime/comptime bill.

On Monday, at 1 p.m., the Senate will begin consideration of the supplemental appropriations bill. Amendments are expected to be offered. Therefore, votes could occur but are not expected prior to 5 p.m. on Monday.

As we work through agreements on amendments, or getting an understanding about amendments, we will let Senators know what time they may expect votes late Monday afternoon, Tuesday, or early.

FAIR LABOR STANDARDS ACT AMENDMENTS—MOTION TO PROCEED

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 32, S. 4, the flextime legislation.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I object.

Mr. LOTT. Mr. President, in light of that objection, I move to proceed to Calendar No. 32, S. 4, the flextime bill.

The PRESIDING OFFICER. The question is on the motion.

Mr. LOTT. Mr. President, we will have some debate, I believe, and then I will have a further motion.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

(The remarks of Mr. CONRAD pertaining to the introduction of S. 684 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

DISASTER SUPPLEMENTAL APPROPRIATIONS BILL

Mr. CONRAD. Mr. President, I would like to speak for one moment about the disaster supplemental bill.

It is fair to say that my State has been absolutely devastated by this extraordinary set of occurrences. First of all, the greatest snowfall in our State's history—over 10 feet of snow—followed in early April by the most severe winter storm in 50 years. Nearly 2 feet of snow fell in that one blizzard, accompanied by 70-mile-an-hour winds and an ice storm that brought down the electrical grid serving 80,000 people. That was followed by what we are now told was not the 500-year flood but the 1,000-year flood. That was coupled in Grand Forks with a fire that destroyed nearly three city blocks and was only contained because of the heroic efforts of the fire department in Grand Forks.

Mr. President, we have not had in this country a circumstance in which a town of the size of the city of Grand Forks with more than 50,000 people having been evacuated on a mandatory basis. Those people are not able to return to their homes for perhaps as long as a month.

This is a disaster of truly staggering proportion and dimension. Those people need help, and they need it now.

Mr. President, I know there are some who would like to attach amendments that are, in fact, extraneous to disaster relief to that legislation. I ask my colleagues to forbear the temptation to add extraneous matters to this disaster legislation. I know that some feel these amendments are not extraneous. In my own judgment, virtually all of these amendments that have been added have nothing to do with the immediate purpose of the legislation, which is to address the disasters that have been experienced in some 22 States—most recently the States of North Dakota, South Dakota and Minnesota. Some of these amendments really relate to the budget dispute of last year. We are going to have lots of opportunities for budget discussions. This disaster bill is not the time and is not the place for that to be.

The people who have been hurt deserve to be helped, just as we have helped other States impacted by disaster. Over and over, when we have had disaster bills, we have agreed, on a bipartisan basis, to withhold extraneous amendments. I have agreed to do it, even though I, too, have been tempted to offer things that I thought were critically important.

I hope my colleagues will extend that same courtesy to those of us who represent States that have been devastated in the most recent disasters. Our people deserve the same consideration and the same treatment that we have extended to others in similar circumstances.

Mr. DORGAN. Mr. President, will the Senator yield?

Mr. CONRAD. I am happy to yield.

Mr. DORGAN. Mr. President, I will be very brief, for a question.

Senator CONRAD talks about the disasters that have precipitated the need for a disaster bill. As a member of the Appropriations Committee in the Senate, I participated yesterday in writing the bill that would come to the floor of the Senate next week.

Included in that legislation are amendments that have really nothing to do with the legislation at all, that are very controversial and could delay or impede the progress of this bill.

I join with my colleague to urge those who I know have other agendas and amendments, which I am sure are important to them, to decide not to offer them to this legislation.

I encourage those who have offered them in the Senate Appropriations Committee to take those amendments out of this bill and allow us to do what we need to do for the victims of these disasters—to extend a helping hand and say to those who have suffered so much